

CHAPTER 74

PROCEDURE FOR CLAIMS

Authority

N.J.S.A. 27:25-2(a), 27:25-5(e), (h) and (k), and 27:25-7(b).

Source and Effective Date

R.2001 d.275, effective July 16, 2001.
See: 33 N.J.R. 1503(a), 33 N.J.R. 2693(a).

Chapter Expiration Date

Chapter 74, Procedure for Claims, expires on July 16, 2006.

Chapter Historical Note

Chapter 74, Procedure for Claims, was adopted as R.1986 d.434, effective October 20, 1986. See: 18 N.J.R. 1255(a), 18 N.J.R. 2133(a). Pursuant to Executive Order No. 66(1978), Chapter 74, Procedure for Claims, expired on October 20, 1991.

Chapter 74, Procedure for Claims, was adopted as new rules by R.1991 d.593, effective December 16, 1991. See: 23 N.J.R. 1773(a), 23 N.J.R. 3770(b). Pursuant to Executive Order No. 66(1978), Chapter 74, Procedure for Claims, expired on December 16, 1996.

Chapter 74, Procedure for Claims, was adopted as new rules by R.1997 d.117, effective March 17, 1997. See: 28 N.J.R. 5058(a), 29 N.J.R. 913(a).

Chapter 74, Procedure for Claims, was readopted as R.2001 d.275, effective July 16, 2001. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

16:74-1.1 Purpose

(a) The New Jersey Transit Corporation (NJ TRANSIT) was established by the New Jersey Public Transportation Act of 1979 (N.J.S.A. 27:25-1 et seq.) as the instrumentality of the State Government responsible to establish and provide for the operation and improvement of a coherent public transportation system in the most efficient and effective manner. One of the legislative findings set forth in the Act is that, in the provision of public transportation services, it is desirable to encourage to the maximum extent feasible

the participation of private enterprise and to avoid destructive competition. To insure the accomplishment of this goal, N.J.S.A. 27:25-7(b) requires NJ TRANSIT to establish procedures for the handling of claims of destructive competition which are brought by carriers providing motor bus regular route service.

(b) Certain mass transit services or service improvements by NJ TRANSIT shall be excluded from the scope of these rules as they are, as a matter of law, in the public interest and have been authorized for funding, construction and implementation by Congress and/or the New Jersey State Legislature. Consistent with various legislative procedures and enactments by Congress and the President of the United States and/or by the Legislature and Governor of the State of New Jersey, the implementation and operation of any mass transit service or service improvements on certain identified Federal or State mass transit projects which are specified in these rules shall be excluded from the ambit of these rules.

Amended by R.2001 d.275, effective August 6, 2001.

See: 33 N.J.R. 1503(a), 33 N.J.R. 2693(a).

Designated existing paragraph as (a) and added (b).

16:74-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Act” means the New Jersey Public Transportation Act of 1979.

“Actions by NJ TRANSIT” means the operation of equipment or facilities by NJ TRANSIT, its subsidiaries, or other carriers contracting with NJ TRANSIT pursuant to Section 6 of the Act to the extent that such operation by contract carriers is within the control of NJ TRANSIT.

“Board” means the Board of Directors of NJ TRANSIT.

“Carrier” means any individual, co-partnership, association, corporation, joint stock company, trustee or receiver or any operating or controlling regular route motor bus service on established routes within the State or between points in this State and points in adjacent states.

“Established routes” means all regular intrastate or interstate routes as authorized by NJ TRANSIT, the New Jersey Department of Transportation, the Interstate Commerce Commission, a municipality, or any other regulatory body.

“Equipment or facilities” means passenger stations, shelters and terminals, automobile parking facilities, ramps, track connections, signal systems, power systems, information and communication systems, roadbeds, transit lanes or rights of way, equipment storage and servicing facilities,

bridges, grade crossings, rail cars, locomotives, motor bus and other motor vehicles, maintenance and garage facilities, revenue handling equipment and any other equipment, facility or property useful for or related to the provision of public transportation service.

“Executive Director” means the Executive Director of NJ TRANSIT or his designee.

“Motorbus regular route services” means the operation of any motor bus or motor buses on streets, public highways or other facilities, over a fixed route and between fixed termini on a regular schedule for the purpose of carrying passengers for hire or otherwise, in this State or between points in this State and points in other states.

“NJ TRANSIT” means the New Jersey Transit Corporation.

“Rail passenger service” means and includes the operations of a railroad, subway, street, traction or electric railway for the purpose of carrying passengers in this State or between points in this State and points in other states.

SUBCHAPTER 2. PROCEDURES

16:74-2.1 Filing of claims

(a) All claims must be filed in writing with NJ TRANSIT's Department of Corporate Affairs, One Penn Plaza East, Newark, New Jersey 07105-2246.

(b) Claims may be filed only by properly certified carriers providing regular route motor bus services.

(c) The claim must contain the following information or it will not be cognizable under this chapter or N.J.S.A. 27:25-7(b):

1. The names and addresses of the carrier and its officers;

2. A copy of the relevant operating authority or Certificate of Public Convenience and Necessity issued by the New Jersey Department of Transportation, Interstate Commerce Commission, a municipality, or any other regulatory body;

3. A description of the actions of NJ TRANSIT alleged to be destructively competitive including but not limited to the date of such actions and the actions taken by the carrier in response thereto. This statement must contain the facts upon which the carrier relies to support its claim of destructive competition;

4. The economic and operational impact of the alleged acts of destructive competition on the carrier or its employees and users;

5. A statement setting forth the carrier's reasons why particular competitive actions of NJ TRANSIT are alleged to be “destructively competitive”;

6. A statement of the relief sought, including alternatives deemed appropriate by the carrier.

(d) Nothing in this section shall be construed to prevent the carrier from presenting additional facts to the Administrative Law Judge (ALJ) for his or her consideration.

Amended by R.1997 d.117, effective March 17, 1997.

See: 28 N.J.R. 5058(a), 29 N.J.R. 913(a).

In (a), amended Department reference and address.

16:74-2.2 Conferences

(a) Settlement conference will be held in accordance with the provisions of N.J.A.C. 1:1-5.4.

(b) Unaccepted proposals of settlement or of adjustment not agreed to shall be privileged and shall not be admissible in evidence against NJ TRANSIT, the carrier, or their attorneys.

16:74-2.3 Transmittal to Office of Administrative Law (OAL)

When the carrier has satisfied all of the requirements of N.J.A.C. 16:74-2.1, the matter shall be considered a contested case and the Executive Director or his or her designee shall, within 30 days of receipt of the completed claim, refer the complaint to the OAL to be processed in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Amended by R.1991 d.593, effective December 16, 1991.

See: 23 N.J.R. 1773(a), 23 N.J.R. 3770(b).

Revised text.

16:74-2.4 Factors to be considered

(a) The following factors may be considered by the Board in determining whether NJ TRANSIT has engaged in destructive competition:

(b) For purposes of this section, when considering whether the NJ TRANSIT service alleged to be destructively competitive is in the public interest, implementation and operation of any new mass transit service or any service improvements resulting from any of the projects contained in the “Circle of Mobility” as defined in P.L. 1984, c.73 (N.J.S.A. 27:1B-3) or amendments thereto shall be deemed to be in the public interest and not a violation of N.J.S.A. 27:25-1 et seq. and these rules. As defined in that law, “Circle of Mobility” means an essential group of related transit projects that include:

1. The New Jersey Urban Core Project, as defined in section 3031 of the “Intermodal Surface Transportation Efficiency Act of 1991,” Pub. L. 102-240, and consisting of the following elements:

- i. Secaucus Transfer;
- ii. Kearny Connection, that is, the NJ TRANSIT service known as Midtown Direct;
- iii. Waterfront Connection;
- iv. Northeast Corridor Signal System;
- v. Hudson River Waterfront Transportation System; that is, the Hudson Bergen Light Rail System;
- vi. Newark-Newark International Airport Elizabeth Transit Link;
- vii. A rail connection between Penn Station Newark and Broad Street Station, Newark, New York Penn Station concourse; and
- viii. The equipment needed to operate revenue service associated with improvements made by the projects;

2. The modification and reconstruction of the West Shore Line in Bergen County connected to Allied Junction/Secaucus Transfer Meadowlands Rail Center; the construction of a rail station and associated components at the Meadowlands Sports Complex; the modification and reconstruction of the Susquehanna and Western Railway, as defined and provided in section 3035(a) of the "Intermodal Surface Transportation Efficiency Act of 1991"; the modification and reconstruction of the Lackawanna Cutoff Commuter Rail Line connecting Morris, Sussex and Warren Counties to the North Jersey Transportation Rail Centers; and

3. Commuter rail service in the central New Jersey region terminating at the proposed Lakewood Transportation Center in Ocean County or other location as determined by the Board of the New Jersey Transit Corporation pursuant to a resolution of the Board providing for the achievement of a consensus among the interested parties as to the direction of the proposed rail line.

(c) Nothing in this section should be construed to prevent the Board from considering factors other than those set forth in this section in determining whether NJ TRANSIT has engaged in destructive competition.

Amended by R.2001 d.275, effective August 6, 2001.

See: 33 N.J.R. 1503(a), 33 N.J.R. 2693(a).

Inserted a new (b) and recodified former (b) as (c).

16:74-2.5 Remedy and Order

(a) The sole remedy that may be considered by the Board pursuant to this chapter and N.J.S.A. 27:25-7(b), is to direct NJ TRANSIT to cease and desist in whole or part from using its equipment or facilities in a destructively competitive manner.

(b) Upon receipt of the Initial Decision of the ALJ, the Executive Director shall present the matter to the Board and the Board shall adopt an order or final decision accepting, rejecting, or modifying the Initial Decision by the ALJ or remanding the decision to the OAL all in accordance with N.J.A.C. 1:1-16.5 and 1:1-16.6.