

**CHAPTER 74
PROCEDURE FOR CLAIMS**

Authority

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

Source and Effective Date

R.2007 d.66, effective February 20, 2007.
See: 38 N.J.R. 3281(a), 39 N.J.R. 668(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 74, Procedure for Claims, expires on February 20, 2014. See: 43 N.J.R. 1203(a).

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

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 74, Procedure for Claims, expired on January 12, 2007. See: 38 N.J.R. 3281(a).

Chapter 74, Procedure for Claims, was adopted as new rules by R.2007 d.66, effective February 20, 2007. See: Source and Effective Date.

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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 of New Jersey to carry out the State’s responsibility 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. N.J.S.A. 27:25-7(b) requires NJ TRANSIT to establish rules and regulations regarding procedures for hearings before the Board of claims of destructive competition arising from alleged actions by NJ TRANSIT which are brought by private entities providing motorbus regular route service.

(b) Certain mass transit services or service improvements by NJ TRANSIT are 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 are 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).
Amended by R.2007 d.66, effective February 20, 2007.
See: 38 N.J.R. 3281(a), 39 N.J.R. 668(a).

Rewrote (a); and in (b), substituted the first and fourth occurrences of “are” for “shall be”.

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 (N.J.S.A. 27:25-1 et seq.).

“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 carriers is within the control of NJ TRANSIT.

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

“Carrier” means any individual, partnership, association, corporation, limited liability company, joint stock company, trustee or receiver or any other private entity operating or controlling regular route motorbus service on established routes within the State or between points in this State and points in adjacent states.

“Equipment or facilities” means passenger stations, shelters and terminals, 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, motorbus 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.

“Established routes” means the intrastate or interstate motorbus regular route service of the carrier authorized by the Office of Regulatory Affairs of the New Jersey Motor Vehicle Commission, the Federal Motor Carrier Safety Administration or Surface Transportation Board of the United States Department of Transportation (or its predecessor the Interstate Commerce Commission), a municipality, or any other regulatory body.

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

“Motorbus regular route service” means the operation of any motorbus or motorbuses 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 operation 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.

Amended by R.2007 d.66, effective February 20, 2007.
See: 38 N.J.R. 3281(a), 39 N.J.R. 668(a).

In definition “Act”, inserted the N.J.S.A. reference; in definition “Actions by NJ TRANSIT”, deleted “contract” preceding the second occurrence of “carriers”; rewrote definitions “Carrier” and “Established routes”; in definition “Equipment or facilities”, deleted “automobile” preceding “parking facilities” and substituted “motorbus” for “motor bus”; in definition “Executive Director”, inserted “or her”; substituted definition “Motorbus regular route service” for definition “Motorbus regular route services”; in definition “Motorbus regular route service”, substituted “motorbus or motorbuses” for “motor bus or motor buses”; and in definition “Rail passenger service”, substituted “operation” for “operations”.

SUBCHAPTER 2. PROCEDURES

16:74-2.1 Filing of claims

(a) All claims must be filed in writing with NJ TRANSIT’s Executive Director, One Penn Plaza East, Newark, New Jersey 07105-2246.

(b) Claims may be filed only by properly certified carriers providing motorbus regular route service.

(c) All claims must contain the following information; otherwise such claims will not be cognizable:

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

2. An identification and description of the established route or routes of the carrier alleged to have been impacted by the actions of NJ TRANSIT;

3. A copy of the relevant operating authority or Certificate of Public Convenience and Necessity issued by a regulatory body for each established route of the carrier alleged to have been impacted by the actions of NJ TRANSIT;

4. 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;

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

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

7. 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.

(e) Upon receipt of the claim, the Executive Director or his or her designee shall provide the claimant with an acknowledgement of receipt of the claim and shall perform a review of the submitted claim within 30 days of receipt to ensure that it is complete with respect to the requirements of this section. The purpose of this review is not to pass judgment on the accuracy or completeness of the facts relating to the allegation or on the merits of the claim, but rather to ensure its completeness.

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.
Amended by R.2007 d.66, effective February 20, 2007.
See: 38 N.J.R. 3281(a), 39 N.J.R. 668(a).

In (a), substituted “Executive Director” for “Department of Corporate Affairs”; in (b), substituted “motorbus regular route service” for “regular route motor bus services”; rewrote introductory paragraph of (c); added new (c)2; recodified former (c)2 through (c)6 as (c)3 through (c)7; rewrote (c)3; in (c)4, inserted commas following “including” and “limited to”; in (c)5, substituted “, its employees,” for “or its employees”; in (c)6, substituted “the particular” for “particular competitive”; and added (e).

16:74-2.2 Conferences

(a) Settlement conferences will be held in accordance with the provisions of N.J.A.C. 1:1-4.2.

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

Amended by R.2007 d.66, effective February 20, 2007.
See: 38 N.J.R. 3281(a), 39 N.J.R. 668(a).

In (a), substituted "conferences" for "conference" and updated the N.J.A.C. reference; and in (b), substituted the first occurrence of "will" for "not agreed to shall" and the second occurrence of "will" for "shall".

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 will 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.

Amended by R.2007 d.66, effective February 20, 2007.
See: 38 N.J.R. 3281(a), 39 N.J.R. 668(a).

Substituted "will" for the first occurrence of "shall".

16:74-2.4 Factors to be considered

(a) The following factors should be considered in determining whether NJ TRANSIT has engaged in destructive competition:

1. Which carrier was the first to provide the service in question;
2. Whether the action of NJ TRANSIT was a significant factor in causing the alleged adverse impact on the carrier;
3. Whether NJ TRANSIT is complying with all applicable Federal and State laws, its Certificates of Public Convenience and Necessity and applicable tariffs, in providing the service alleged to be destructively competitive;
4. The inherent benefits of the service to the riders, including, but not limited to, destination, door to door travel time, frequency of service, comfort, cost, transfer frequencies or proximity to the riders' residence;
5. Whether the NJ TRANSIT service alleged to be destructively competitive is in the public interest; and
6. Whether the level of service and fares of NJ TRANSIT are destructively competitive.

(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; and
- viii. New York Penn Station concourse;

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;

3. Commuter rail service in the central New Jersey region terminating at the proposed Lakewood Transportation Center in Ocean County or another location as determined by the Board; and

4. The equipment or facilities needed to operate revenue service associated with the improvements made by the above projects.

(c) Nothing in this section should be construed to preclude additional factors from being considered 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).
Administrative correction.

See: 33 N.J.R. 4151(a).

Amended by R.2007 d.66, effective February 20, 2007.
See: 38 N.J.R. 3281(a), 39 N.J.R. 668(a).

In the introductory paragraph of (a), substituted “should” for “may” and deleted “by the board” following “considered”; in (a)1, inserted “in question”; in (a)2, substituted “factor in causing the alleged” for “cause of the”; in (a)4, substituted “service to the riders” for “services to the rider”; in (a)6, deleted “/or” following “and” and substituted “are” for “is”; in the introductory paragraph of (b), substituted “c. 73” for “c.73”; in (b)1ii, substituted “MidTOWN” for “Midtown”; in (b)1v, substituted a comma for a semicolon following “Transportation System”; deleted former (b)1viii; recodified portion of (b)1vii as new (b)1viii; in (b)1vii, substituted “; and” for a comma following “Newark”; in (b)1viii, deleted “and” from the end; in (b)2, deleted “and” from the end; rewrote (b)3; added (b)4; and rewrote (c).

16:74-2.5 Remedy and Order

(a) The sole remedy that may be considered 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. 1:1-18.6 and 18.7.

Amended by R.2007 d.66, effective February 20, 2007.
See: 38 N.J.R. 3281(a), 39 N.J.R. 668(a).

In (a), deleted “by the Board” following “considered” and deleted a comma following the N.J.S.A. reference; and in (b), inserted a comma following “OAL” and updated the N.J.A.C. references.