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## **TRANSPORTATION**

### **MOTOR VEHICLE COMMISSION**

#### **Bus Safety Compliance Oversight, Enforcement, Out-Of-Service Violations and Penalties**

**Proposed Readoption with Amendments: N.J.A.C. 16:53A**

**Authorized By:** \_\_\_\_\_  
**Motor Vehicle Commission Board,**  
**Stephen S. Scaturro, Vice-Chair**

Authority: N.J.S.A. 48:4-2.1c et seq., 2A:58-10 et seq. and 52:14D-6, and October 5, 1978 Executive Reorganization Plan.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009 –

Submit comments by \_\_\_\_\_, 2009 to:

Steven E. Robertson, Director  
Legal and Regulatory Affairs  
Motor Vehicle Commission  
225 East State Street  
P.O. Box 162  
Trenton, New Jersey 08666-0162

The agency proposal follows:

### **Summary**

The public comment period for this proposal will be 60 days, since the proposal is not listed in the agency rulemaking calendar. This notice of proposal is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Motor Vehicle Commission proposes to readopt with amendments the provisions of N.J.A.C. 16:53A concerning bus safety compliance oversight in accordance with the “sunset” and other provisions of Executive Order No. 66 (1978) and the Administrative Procedure Act (N.J.S.A. 52:14B-5.1). These rules expire on July 30, 2009.

The rules contained in N.J.A.C. 16:53A implement the Bus Safety Compliance Act (P.L. 1995, c. 225), which provides for the establishment of a schedule of bus safety out-of-service violations and penalties for buses operating with serious mechanical, electrical or vehicular conditions that may cause an accident or breakdown or contribute to a driver’s loss of control of a bus.

The Motor Vehicle Commission has reviewed N.J.A.C. 16:53A in accordance with Executive Order No. 66 (1978) and the Administrative Procedure Act (N.J.S.A. 52:14B-5.1) and has determined that said rules are “necessary, adequate, reasonable, efficient, understandable and responsive to the purpose for which they were promulgated.” The rules implement the public policy of this State as set forth in the Bus Safety Compliance Act, namely, to foster bus safety by establishing bus out-of-service violations and imposing

substantial penalties on bus operators who cause buses with out-of-service violations to be operated in this State.

The Bus Safety Compliance Act, as amended by P.L. 2003, c.13, §§ 94 through 97, hereinafter referred to as the Act, directs the Motor Vehicle Commission to establish by regulation a schedule of bus safety out-of-service violations and applicable penalties for buses operating with bus safety out-of-service violations. The Act mandates that the Commission categorize each out-of-service violation as either a category 1 or category 2 violation. The Act defines a “category 1 violation” as any bus safety out-of-service violation that should have been detected during the daily pre-trip inspection or during periodic repair and maintenance procedures conducted by the driver or the operator. The Act defines a “category 2 violation” as any bus safety out-of-service violation that may have occurred after the daily pre-trip inspection and therefore might not have been detected by the operator or driver during the daily pre-trip inspection or during periodic repair and maintenance procedures. The Act further mandates that the Commission establish a specific monetary civil penalty for each violation that is proportional to the nature and severity of the violation. The Act specifies that monetary civil penalties for category 1 violations shall be a minimum of \$300.00 and a maximum of \$5,000 and for category 2 violations shall be a maximum of \$500.00. The categorization of out-of-service violations and the schedule of civil penalties proposed for readoption herein are predicated upon the seriousness of the mechanical, electrical or vehicular condition discovered. The rules proposed for readoption are meant to address those conditions that are

so unsafe as potentially to cause an accident or breakdown or potentially to contribute to a driver's loss of control of a bus.

The purpose of these rules is to promote bus safety in the State of New Jersey. The Legislature has determined that bus safety is of paramount importance to the residents of New Jersey and to the many tourists and travelers who visit this State's many diverse tourist and business destinations. In order to promote and assure the highest possible level of bus safety, the Legislature determined to establish statutory sanctions and penalties for bus safety out-of-service violations that are to be enforced through the Motor Vehicle Commission.

A summary of each subchapter in N.J.A.C. 16:53A follows:

Subchapter 1 contains general provisions. N.J.A.C. 16:53A-1.1(c) provides that the rules are consistent with national safety standards established by the Federal Highway Administration and the Commercial Vehicle Safety Alliance, which is an organization of Federal, State and Provincial government agencies and representatives from private industry in the United States, Canada and Mexico dedicated to the improvement of commercial vehicle safety.

Subchapter 2 contains the definitions of words and terms used in the chapter.

Subchapter 3 sets forth the schedule of violations and applicable penalties for the following mechanical systems: brake system, exhaust system, frame, fuel system, lamps and turn signals, steering mechanism, suspension, tires, wheels and rims, windshield wipers, and emergency exits. Subchapter 3 is proposed to

be amended to conform with Federal standards as set forth in the Federal Motor Carrier Safety Regulations as follows:

N.J.A.C. 16:53A-3.2(a) is proposed to be amended to permit a three-axle bus with a defective brake to remain in operation if the defective brake constitutes less than 20 percent of the brakes on the vehicle. N.J.A.C. 16:53A-3.4(a)6 is proposed to be amended to delete the provision that an improperly welded frame member, which either permits shifting of the body of the vehicle on to moving parts, constitutes a condition indicating imminent collapse of the frame or affects support of functional components. In its place, a provision requiring that all welding be performed in accordance with the vehicle manufacturer's recommendation is proposed. N.J.A.C. 16:53A-3.5 is proposed to be amended to replace the reference to springs and bushings with a requirement that the fuel tank be attached in a workmanlike manner and to delete the prohibition against using bailing wire or coat hangers to attach the fuel tank to the vehicle.

Subchapter 4 establishes standards for evidence of insurance for New Jersey and out-of-State bus companies.

Subchapter 5 sets forth the sanctions for out-of-service violations, including the placement of buses out-of-service and the impoundment of buses by authorized representatives of the Commission or by law enforcement authorities.

Subchapter 6 provides for the examination of driver operating credentials and sets forth driver out-of-service violations and penalties.

Subchapter 7 relates to vehicle inspection reports. N.J.A.C. 16:53A-7.2 provides that no operator shall compel, coerce or otherwise cause a driver to include false information on a vehicle inspection report and provides for a maximum civil penalty of \$5,000.

Subchapter 8 provides the method for the collection of penalties.

### **Social Impact**

The rules proposed for readoption, as amended, which rules establish a schedule of bus safety out-of-service violations and penalties for buses operating with bus safety out-of-service violations, have a beneficial social impact on the residents of the State of New Jersey. Bus safety is enhanced for those traveling by bus on the public highways or in public places within New Jersey, including tourists and business travelers who visit New Jersey's many tourist and business destinations, such as the Atlantic City casinos. The rules proposed for readoption are comprehensive and apply to all bus operators, whether located within or outside of New Jersey, whose vehicles travel on the public highways or in public places in this State.

### **Economic Impact**

The Act, as amended by P.L. 2003, c.13, designates the Motor Vehicle Commission as the agency responsible for the ongoing enforcement of bus safety out-of-service penalties and other sanctions provided by the Act. The Commission incurs ongoing personnel-related costs by employing investigators

to perform the large volume of statewide roadside safety inspections and administrative personnel who track violations, summonses and complaints, court scheduling and appearances, court imposed penalties, and collection of penalties. Additionally, the Commission incurs substantial ongoing equipment-related costs for investigative personnel to insure the statewide enforcement of the Act and the rules proposed for readoption. Costs for enforcement include preparation of cases for trial, statewide day and night court appearances on return dates for summonses and complaints, and assisting municipal prosecutors and/or the Attorney General's Office in the preparation and presentation of cases against violators of the Act in Superior Court or municipal court.

Bus operators incur ongoing costs for periodic repair and maintenance of vehicles so that their buses do not operate with out-of-service violations. The rules proposed for readoption do not result in any additional financial burden for those operators who consistently perform periodic repair and maintenance on their vehicles in order to identify and remediate bus safety out-of-service violations.

However, for those operators who fail to perform periodic repair and maintenance on their vehicles, the rules impose penalties for out-of-service violations incurred by such operators and repair costs associated with bringing the vehicles into compliance with bus safety requirements. Additional expenses may be imposed on operators whose vehicles are placed out-of-service or are impounded by reason of out-of-service violations. Although the rules may

impose direct and indirect costs upon some operators, concern for the public safety outweighs any additional costs borne by such operators.

The proposed amendments to subchapter 3 should reduce costs both to the operators and to the Commission, in that they eliminate safety standards in excess of those required by the Federal government.

### **Federal Standards Analysis**

The rules proposed for readoption establish a schedule of bus safety out-of-service violations and applicable penalties for buses operating with bus safety out-of-service violations. The out-of-service violations established by the rules are consistent with national safety standards and do not exceed those set forth in Federal statutes and regulations except as outlined herein. The violations established by the rules are consistent with the Federal Motor Carrier Safety Regulations (49 CFR Parts 390-397), which have been promulgated by the Federal Highway Administration (FHWA), and the standards established by the Commercial Vehicle Safety Alliance (CVSA).

The FMCSR apply to commercial motor vehicles, including buses designed to transport 16 or more passengers, including the driver. The rules proposed for readoption herein apply to buses as that term is defined in the Bus Safety Compliance Act. The term "bus or buses" is defined therein as including "all autobuses, of whatever size or configuration, under the jurisdiction of the Commission; all autobuses of the NJ Transit and its contract carriers which are under the inspection jurisdiction of the Commission; all autobuses of whatever

size or configuration, that are subject to Federal Motor Carrier Safety Regulations, operated on public highways or in public places in this State; and all autobuses operated on public highways or in public places in this State under the authority of the Interstate Commerce Commission, or its successor agency.”

The Bus Safety Compliance Act not only directs the Commission to establish a schedule of bus safety out-of-service violations but also requires the Commission to categorize each violation as either a category 1 or category 2 violation. The Act provides that the civil penalty for each category 1 violation be between \$300.00 and \$5,000 and up to \$500.00 for each category 2 violation. The Act directs the Commission to specify the monetary civil penalty for each category 1 and category 2 violation so that the penalty is proportional to the nature and severity of the violation.

With regard to imposition of sanctions and penalties for bus safety out-of-service violations, Federal law and regulation provide for indirect penalties to the bus operator for violations. Buses are placed out-of-service if found to have out-of-service safety violations. The buses remain out-of-service until the operator makes all necessary repairs of out-of-service violations. The amount of time the bus is out-of-service and, therefore, not producing revenue for the bus operator, is solely within the control of the operator. The bus is placed back in service only when all repairs of out-of-service violations are made. The Act provides for the same indirect penalty to the bus operator. In addition, the Act directs the Commission to specify monetary civil penalties for each bus safety out-of-service violation.

The rules proposed for readoption with amendments impose a specific civil penalty for each bus safety out-of-service violation, based on the nature and severity of the violation. The penalty is imposed directly on the bus operator who, during a roadside safety inspection, is found to be operating a bus with a bus safety out-of service violation(s). When a violation is found, a summons and complaint are issued by the Commission to the bus operator returnable in a municipal court or other court of competent jurisdiction.

Although Federal regulation authorizes the imposition of fines for out-of-service violations, the Federal government does not impose direct monetary civil penalties on bus operators for operation of a bus with bus safety out-of service violations that are consistent with those violations established by the FHWA and the CVSA. New Jersey's Bus Safety Compliance Act and the rules proposed for readoption herein were the first law and regulation in the United States to impose specific monetary civil penalties directly on bus operators for operating with bus safety out-of-service violations. The amounts of the direct penalties imposed are within the limits set by the Legislature at N.J.S.A. 48:4-2.1f.

I, Stephen S. Scaturro, Vice-Chair, Motor Vehicle Commission Board, certify that the above analysis permits the public to understand accurately and plainly the purposes and expected consequences of the proposal.

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Stephen S. Scaturro, Vice-Chair

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Date

### **Jobs Impact**

The rules proposed for re-adoption have a positive impact on jobs in that the bus industry must employ mechanical and inspection personnel in order to comply with the safety standards set forth in applicable Federal and State laws and regulations. Commission investigative personnel are required to administer and enforce the bus out-of-service safety criteria. The proposed amendments are anticipated to reduce jobs slightly, due to the deletion of safety standards that were stricter than the Federal standards.

### **Agriculture Industry Impact**

The rules proposed for re-adoption with amendments will have no impact on the agriculture industry in the State of New Jersey.

### **Regulatory Flexibility Statement**

The rules proposed for re-adoption have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are approximately 700 businesses that operate buses in New Jersey pursuant to either State or Federal authority. Many of these businesses qualify as small businesses under the New Jersey Regulatory Flexibility Act. The rules impose no additional reporting, recordkeeping or other compliance requirements on operators of buses designed to transport 16 or more passengers, including the driver, beyond those

already contained in the FMCSR at 49 CFR §§396.11 and 396.13 and in the New Jersey Motor Carrier Safety Regulations at N.J.A.C. 13:60. Thus, the reporting, recordkeeping and compliance requirements imposed by the rules already have been applied to operators of buses designed to transport 16 or more passengers, including the driver. The rules impose the same reporting, recordkeeping and compliance requirements upon operators of all other buses used in intrastate commerce. These requirements pertain to the identification of bus mechanical defects or deficiencies and to their subsequent remediation by the operator's maintenance staff or repair facilities. As such, these requirements directly involve and positively affect bus safety. Thus, balanced against the benefits to the public safety and interest, the reporting, recordkeeping and compliance requirements impose only a minimal burden upon small businesses.

Compliance with the reporting and recordkeeping provisions of the rules does not require the use of traditional professional services (such as licensed engineers, attorneys or accountants) but does require bus mechanics and technicians, maintenance managers and supervisors.

### **Smart Growth Impact**

It is not anticipated that the rules proposed for readoption with amendments will have any impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan within the meaning of Executive Order No. 4(2002).

### **Housing Affordability Impact**

It is not anticipated that the proposed amendment will have any impact on housing costs because the scope of the regulation, inasmuch as it applies only to autobus safety violations, is minimal, and there is an extreme unlikelihood that it would evoke a change in the average costs associated with housing.

### **Smart Growth Development Impact**

It is anticipated that the proposed readoption will have only an insignificant impact, if any, on any new construction. Moreover, because the rule applies only to autobus safety violations, it does not apply to housing units at all. Thus, the scope of the regulation is minimal and there is an extreme unlikelihood that the readoption will evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers under the State Development and Redevelopment Plan.

**Full text** of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 16:53A.

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

### **SUBCHAPTER 3. SCHEDULE OF VIOLATIONS AND APPLICABLE PENALTIES**

#### **16:53A-3.2 Brake system**

(a) The number of defective brakes is equal to or greater than 20 percent of brakes on the vehicle or combination [, provided, however, on a three axle bus, one defective brake shall constitute a violation.] Steering axle brakes are to be included in the 20 percent criterion. A defective brake includes any brake that meets one of the following criteria:

1. – 7. (No change.)

(b) – (l) (No change.)

#### **16:53A-3.4 Frame**

(a) the following are the violations, categories and penalties operating the frame members:

1. - 5. (No change.)

(b) Any cracked, loose, sagging or broken frame siderail, resulting from a preexisting rust, corrosion or other deteriorating condition [or improperly welded frame member, which either permits shifting of the body onto moving parts or other condition indicating an imminent collapse of the frame, or affects support of functional components such as steering gear, engine, transmission, body parts and suspension]. Parts and accessories shall not be welded to the frame nor shall repair of the frame be welded other than in accordance with the

vehicle manufacturer's recommendation. This is a category 1 violation. The penalty for this violation shall be \$1000.

**16:53A-3.5**

(a) (No change.)

(b) A fuel tank not securely attached to the vehicle in a workmanlike manner. [Some fuel tanks use spring or rubber bushings to permit movement] This is a category 2 violation. The penalty for this violation shall be \$500.00

[(c) A fuel tank improperly attached to the vehicle by use of bailing wire, coat hanger type wire or other like material is a category 1 violation. The penalty for this violation shall be \$5000.]