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MOTOR VEHICLE COMMISSION

Driver Management Bureau

Proposed Readoption with Amendments: N.J.A.C. 13:19 –1 through 9 and 11

Proposed Amendments: N.J.A.C. 13:19-10.1, 12.1, 12.2, 12.11, 12.12, 13.1 and 13.2



Authorized By: Motor Vehicle Commission, _____
Stephen S. Scaturro, Vice Chair

Authority: N.J.S.A. 17:29A-35, 39:2-3, 39:3-10, 39:3-10.4 et seq., 39:3-11, 39:3-15, 39:3-15.1, 39:3-16, 39:4-50, 39:4-50.16 et seq., 39:5-30, 39:5D-4, 39:5F-1 et seq., 52:14B-1 et seq. and Pub. L. 99-570.

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

Proposal Number: PRN 2009 -

Submit written comments by _____, 20__ to:

Steven E. Robertson, Director

Legal and Regulatory Affairs

Motor Vehicle Commission

225 East State Street

PO Box 162

Trenton, NJ 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 exempted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Motor Vehicle Commission (Commission) proposes to readopt with amendments the provisions of N.J.A.C. 13:19-1 to 9, inclusive, and N.J.A.C. 13:19-11 concerning driver control service in accordance with the “sunset” and other provisions of Executive Order No. 66 (1978) and the Administrative Procedure Act at N.J.S.A. 52:14B-5.1. These rules expire on January 5, 2010. On June 29, 1994, the Governor directed that the five-year sunset provision of Executive Order No. 66 (1978) is waived for subchapters 10, Point System and Driving During Suspension; 12, Motor Vehicle Insurance Surcharge; and 13, Motor Vehicle Insurance Surcharge: Supplemental Surcharges, of N.J.A.C. 13:19 until such time as the bonds, which funded a portion of the Market Transition Facility deficit have been retired. (See 26 N.J.R. 2905 (a)). Surcharges collected by the Commission are transferred to the Market Transition Facility Revenue Fund for the purpose of discharging the bonds, notes and obligations of the Market Transition Facility.

The rules contained in N.J.A.C. 13:19 implement various provisions of the Motor Vehicle and Traffic Laws, N.J.S.A. 39:1-1 et seq., pertaining to driver qualification, administrative hearing procedures, and driver license denial and

suspension. The Commission has reviewed N.J.A.C. 13:19-1 through 13:19-9, inclusive, and N.J.A.C. 13:19-11 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,” but has also determined to propose amendments to various rules contained in said subchapters as part of this proposal. Many of the rules contained in N.J.A.C. 13:19 implement the public policy of this State as set forth in the Motor Vehicles and Traffic Law; namely, to foster highway safety by limiting licensure to those who are physically qualified to safely operate motor vehicles and those who demonstrate an ability to comply with the Motor Vehicles and Traffic Law.

A summary of each subchapter and important sections in N.J.A.C. 13:19 follows:

Subchapter 1 pertains to administrative hearings.

N.J.A.C. 13:19-1.1 provides that the provisions of the subchapter shall apply to administrative hearings in cases involving revocation, suspension or refusal to renew licenses, including cases involving imposition of insurance surcharges by the Commission pursuant to N.J.S.A. 17:29A-35. However, the provisions of N.J.A.C. 13:19-1 do not apply to hearings in fatal accident cases in which the Commission has initiated administrative suspension action against a licensee pursuant to subsection b, c, or e of N.J.S.A. 39:5-30; requests for hearings and the scheduling and conduct of same in such cases are governed by the provisions of subsection b or e of N.J.S.A. 39:5-30.

N.J.A.C. 13:19-1.2 affords a licensee or his or her attorney a period of 25 days from the date of notice of proposed Commission action against such licensee in which to make a written hearing request to the Commission. N.J.A.C. 13:19-1.2 also provides that requests for a hearing must specify all disputed material facts that the licensee or his or her attorney intends to raise at such hearing. Requests for a hearing must also set forth all legal issues that the licensee or his or her attorney intends to raise, and must present all arguments on those issues that the licensee wishes the Commission to consider. N.J.A.C. 13:19-1.2 further provides that when a hearing request fails to set forth any disputed material fact and fails to set forth any legal issue or any argument on an issue, the request for a hearing shall be denied. The Commission shall notify the licensee of this denial and the grounds thereof, and shall notify the licensee that the proposed action shall become effective on such date as the Commission shall specify. The rule further provides that such notice of denial of a hearing request shall be deemed to constitute the final decision of the Commission in such matter. N.J.A.C. 13:19-1.2 also provides that when a hearing request sets forth disputed material facts that the licensee or his or her attorney intends to raise at such hearing, the Chief Administrator shall require the licensee to attend a prehearing conference conducted by designated Commission employees. N.J.A.C. 13:19-1.2 further provides that when there are no disputed material facts and when a request for a hearing sets forth legal issues and presents arguments on those issues, the Chief Administrator may either consider those legal issues and arguments on the basis of the written record and render a

written determination, which shall constitute the final agency decision in the matter; or may require the licensee to attend a prehearing conference conducted by designated employees of the Commission; or may transmit the matter directly to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 1:1. The proposal amends N.J.A.C. 13:19-1.2 (b) by changing the name of the unit that receives hearing requests from the "Driver Management Bureau" to the "Scheduling Unit" and changing the corresponding post office box number and zip code.

N.J.A.C. 13:19-1.3 provides that the Commission shall notify the licensee of the date, time and place of a prehearing conference scheduled pursuant to N.J.A.C. 13:19-1.

N.J.A.C. 13:19-1.4 is reserved.

N.J.A.C. 13:19-1.5 governs adjournments and failure to appear. The proposal amends N.J.A.C. 13:19-1.5(a) by changing the name of the unit that receives adjournment requests from the "Driver Management Bureau" to the "Scheduling Unit" and changing the corresponding post office box number and zip code. It also deletes the line below the city, state, and zip code that read: "Attention: Prehearing Conference Scheduling Unit."

N.J.A.C. 13:19-1.6 concerns representation by counsel.

N.J.A.C. 13:19-1.7 provides for the conduct of prehearing conferences by driver improvement analysts.

N.J.A.C. 13:19-1.8 indicates that the purpose of the prehearing conference is to clarify disputed material facts and legal issues raised in the

hearing request; to review the evidence upon which the licensee bases his or her claim; to ascertain the discovery needs of the licensee; to supply the licensee with any discovery to which the licensee may be entitled under the Uniform Administrative Procedure Rules; and to attempt to resolve the administrative action to be taken. N.J.A.C. 13:19-1.8 also provides that a Commission driver improvement analyst shall conduct a prehearing conference with a licensee who has been scheduled for such a conference pursuant to N.J.A.C. 13:19-1. N.J.A.C. 13:19-1.8 further provides that when the Commission and a licensee cannot reach a resolution of the proposed administrative action at the prehearing conference, the matter shall be transmitted to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 1:1, unless there are no disputed material facts and no legal issues or argument on those issues raised at the conference. The rule further provides that in the event there is no resolution of the proposed administrative action at the prehearing conference and there are no disputed material facts and no legal issues or argument on those issues raised at the conference, the Commission shall notify the licensee that the matter shall not be transmitted to the Office of Administrative Law and the grounds thereof and shall notify the licensee that the proposed action shall become effective on such date as the Commission shall specify. Such notice shall constitute the final agency decision in the matter.

N.J.A.C. 13:19-1.9 through 1.12 are reserved.

N.J.A.C.13:19-1.13(a) provides that the Commission shall not take administrative action against a person unless it has first afforded the person an

opportunity to be heard in conformity with N.J.A.C. 13:19-1, except as set forth in subsections (b), (c) and (d) of the rule. Subsection (b) of the rule provides that when the administrative action proposed by the Commission against any person is one wherein the Commission has authority to act without first providing an opportunity to be heard, the Commission shall promptly afford the person an opportunity to be heard in conformity with N.J.A.C. 13:19-1. Subsection (c) of the rule provides that a hearing shall not be provided when the action taken by the Commission is required by any law that prescribes a suspension or revocation of a license or a privilege and that requires no exercise of discretion on the part of the Commission. A hearing shall not be provided when a license or privilege is suspended or revoked by order of a court of competent jurisdiction. Subsection (d) of the rule provides that when a license is restored with the understanding that any subsequent moving violation will be cause for a summary suspension, the issue of any hearing provided with respect to a proposed suspension for such subsequent moving violation will be limited to whether or not the licensee has been convicted of a subsequent moving violation and ascertaining whether the licensee received notice that the license had been restored with that understanding.

Subchapter 2 was repealed effective June 20, 1983. That subchapter contained rules concerning probationary driver licenses.

Subchapter 3 was repealed effective August 18, 1989. That subchapter contained rules concerning accident claims filed with the Unsatisfied Claim and

Judgment Fund Board, which was transferred from the former Division of Motor Vehicles to the then Department of Insurance pursuant to N.J.S.A. 39:6-64a.

Subchapter 4 pertains to cardiovascular disorders.

N.J.A.C. 13:19-4.1 provides for the appointment of a Cardiovascular Committee (Committee) to advise the Commission concerning the physical qualifications of drivers.

N.J.A.C. 13:19-4.2 provides that the Chief Administrator, in determining the driver qualification of a person affected by a cardiovascular disorder, may require the person to provide a statement of his or her medical history and a statement from his or her physician pertaining to diagnosis, treatment and prognosis.

N.J.A.C. 13:19-4.3 indicates that the Chief Administrator may refer cases to the Committee for review and recommendation relating to driver qualification. If the Committee deems it advisable, the applicant or licensed driver may be required to be examined by an internal medicine specialist or a cardiologist.

N.J.A.C. 13:19-4.4 indicates that the Committee members will report their findings and recommendations to the Chief Administrator who will determine whether or not to issue a driver license or whether or not to allow an existing licensee to retain his or her driving privilege(s). The proposed amendment to the rule conforms this section to the rest of the subchapter and to existing Commission practice by acknowledging that the Committee is not only called upon to issue findings and recommendations for new drivers, it also is called upon to issue findings and recommendations as to whether or not existing drivers

should be permitted to retain their basic and/or commercial and/or passenger driving privileges.

N.J.A.C. 13:19-4.5 provides that cases may also be referred to the Committee upon application for restoration of driving privileges.

N.J.A.C. 13:19-4.7 provides that restoration of driving privileges may be conditioned upon the driver's agreement to submit interval medical reports.

N.J.A.C. 13:19-4.8 provides that the Chief Administrator may require a driver to be reexamined as to his or her ability to safely operate motor vehicles prior to the restoration of driving privileges.

Subchapter 5 pertains to convulsive seizures.

N.J.A.C. 13:19-5.1 requires a person who has been subject to recurrent convulsive seizures, recurrent periods of impaired consciousness or impairment or loss of motor coordination to establish that he or she has been free of such condition for one year as a prerequisite to the issuance of a learner's permit, driver's license, driver's license renewal or the retention of the driver's license that has been issued to said person.

N.J.A.C. 13:19-5.2 provides that the Chief Administrator, after notice and hearing, may suspend the driving privilege of, or deny the issuance of a learner's permit or driver's license to a person who is affected by a seizure disorder. When the Chief Administrator determines it to be in the public interest, a suspension may be imposed pending administrative hearing.

N.J.A.C. 13:19-5.3 provides that the Chief Administrator, in determining the driver qualification of a person affected by a seizure disorder, may require the

person to provide a statement of his or her medical history, a statement from the treating physician pertaining to diagnosis, treatment and prognosis, and any other information deemed necessary.

N.J.A.C. 13:19-5.4 provides that the Chief Administrator shall appoint a Neurological Disorder Committee upon consultation with and advice of the Medical Society of the State of New Jersey.

N.J.A.C. 13:19-5.5 provides that the Chief Administrator may refer individual cases to the Neurological Disorder Committee for review and recommendation relating to driver qualification.

N.J.A.C. 13:19-5.6 requires each member of the Neurological Disorder Committee to separately report the member's findings and recommendations to the Chief Administrator.

N.J.A.C. 13:19-5.7 provides that the Chief Administrator upon consultation with members of the Neurological Disorder Committee, may grant a learner's permit or initial driver's license or may permit a person to retain his or her driver's license although such person may have suffered a seizure, period of impaired consciousness, or impairment or loss of motor coordination within a one year period when the specific characteristics of a person's disorder do not adversely impact on the person's ability to safely operate a motor vehicle.

N.J.A.C. 13:19-5.8 provides that a determination to issue or restore driving privileges is predicated on the submission of a current statement of medical history, a current physician's statement, and evidence that the seizure-free requirement has been satisfied or that waiver thereof has been granted by the

Chief Administrator upon consultation with members of the Neurological Disorder Committee.

N.J.A.C. 13:19-5.9 indicates that a determination to issue or restore driving privileges is conditioned upon the person's agreement to submit interval reports containing the medical history and physician's statement. Interval reports must be submitted every six months for a period of two years from the date of license issuance or restoration. Thereafter, yearly reports must be submitted. The Chief Administrator, in his or her discretion, may waive or alter the interval report requirement.

N.J.A.C. 13:19-5.10 provides that a driver reexamination may be required as a condition of the issuance, retention, or restoration of driving privileges.

Subchapter 6, Installation and Use of Ignition Interlock Devices, establishes procedures and requirements for the certification of breath alcohol ignition interlock devices.

N.J.A.C. 13:19-6.1 articulates the purpose and scope of the subchapter.

N.J.A.C. 13:19-6.2 defines the words and terms used in the subchapter.

N.J.A.C. 13:19-6.3 adopts and incorporates by reference the National Highway Traffic Safety Administration's (NHTSA) Model Specifications for breath alcohol ignition interlock devices (BAIIDs).

N.J.A.C. 13:19-6.4 sets forth standards governing the use and installation of BAIIDs for the purpose of satisfying DWI sentencing requirements. The rule sets forth the sentenced offender's obligation to have a BAIID installed in every vehicle he or she owns, leases, or regularly operates by a service center

designated by the Chief Administrator, and to have the BAIID regularly serviced at a designated service center. The rule also sets forth the general obligation that no one remove a BAIID until the offender's sentence is completed.

N.J.A.C. 13:19-6.5 establishes the specifications for BAIIDs used for satisfaction of DWI sentencing requirements. BAIIDs are required to meet the NHTSA Model Specifications, to have an alcohol setpoint of 0.05 percent breath alcohol concentration (BrAC), to have fixed thereto a label warning against tampering liability, and to have a maximum required service interval of 67 days.

N.J.A.C. 13:19-6.6 establishes the application procedure for the Chief Administrator's certification of BAIIDs. The proposal amends subsection (b)6 of the rule by correcting the regulatory citation contained in that section. The citation is currently listed as N.J.A.C. 16:19-6.14; it should be 13:19-6.14.

N.J.A.C. 13:19-6.7 provides that the Chief Administrator shall certify a BAIID for use in meeting DWI sentencing requirements provided the BAIID meets the requirements of N.J.A.C. 13:19-6.5, the manufacturer has filed a completed application containing the certifications and information required in N.J.A.C. 13:19-6.6, and the manufacturer's service center complies with the requirements of N.J.A.C. 13:19-6.11. The Chief Administrator is empowered to deny certification to a BAIID model if certification or approval has been denied, suspended, or revoked in another state. The Chief Administrator provides written notice of the grant or denial of certification, and in case of denial, the reason therefor. After BAIID certification, manufacturers are required to file a surety bond in the amount of \$10,000 with the Commission.

N.J.A.C. 13:19-6.8 requires manufacturers to obtain liability insurance in specified amounts and to file proof thereof with the Commission.

N.J.A.C. 13:19-6.9 requires manufacturers of certified BAIDs to provide annually to the Chief Administrator reports concerning the consistency in the manufacture of the BAID and complaints received and corrective action taken with respect to the BAID. In addition, manufacturers are required to notify the Commission within 30 days of their receipt of notice of another state's suspension, revocation, or denial of certification of the model certified by the Commission.

N.J.A.C. 13:19-6.10 provides the bases for the Chief Administrator's authority to revoke BAID certification and establishes the effective date of the revocation. In addition, the rule requires BAIDs installed under the subchapter to be removed from the program participants' vehicles at the manufacturer's expense when the Chief Administrator has revoked certification for the BAID.

N.J.A.C. 13:19-6.11 establishes requirements for BAID service centers that address such facilities' physical layout, operation, and staffing. The requirements also address the matters of installation security, tampering memorialization, access to BAID installation and maintenance without regard to economic status, training, and responsible staffing.

N.J.A.C. 13:19-6.12 requires BAID manufacturers to register with the Commission in each year subsequent to the year in which the model was certified by the Chief Administrator a certified model's continued compliance with the requirements of the subchapter.

N.J.A.C. 13:19-6.13 is reserved.

N.J.A.C. 13:19-6.14 provides that indigent persons are able to participate in the program at half the regular installation and leasing charges, and requires persons applying for the reduced rates to show proof of eligibility at the time of application.

N.J.A.C. 13:19-6.15 provides information as to how to obtain lists of certified BAIDs and service center locations.

Subchapter 7, Reciprocity Agreement between Connecticut and New Jersey, contains the reciprocity agreement between the two states concerning motor vehicle violations, bail forfeitures and failures to appear by drivers licensed in the respective states.

Subchapter 8, Reciprocity Agreement between Province of Alberta and State of New Jersey, contains the reciprocity agreement concerning motor vehicles registered in the respective jurisdictions.

Subchapter 9, Designation of State Official to Be Notified by Drivers of Commercial Motor Vehicles Concerning Out-of-State Motor Vehicle Convictions, designates the Motor Vehicle Commission's Director, Compliance and Safety, as the State official to be notified by drivers of commercial motor vehicles of out-of-State motor vehicle convictions pursuant to the Federal Commercial Motor Vehicle Safety Act of 1986, and also indicates the address to which such notification is to be sent. The proposal updates the title of the official designee; it formerly was "Director, Driver Management/Regulatory Affairs" and it is now "Director, Compliance and Safety."

Subchapter 10, Point System and Driving During Suspension, provides a framework for administrative action against repetitive violators of the Motor Vehicles and Traffic Law. It lists the violations for which points are assessed and the number of points assessed for each of those violations. The subchapter also sets the periods of suspension for points accumulation. The proposal amends N.J.A.C. 13:19-10.1 by clarifying when points are assessed for violations of N.J.S.A. 39:4-97.2, driving in an unsafe manner, in accordance with Hina K Patel v. New Jersey Motor Vehicle Commission, Supreme Court of New Jersey, A-86 September Term 2008, 2009 N.J. LEXIS 1008. According to the Court, no points shall be assessed for the first two violations of N.J.S.A. 39:4-97.2 but points shall be assessed for third and subsequent violations that occur within five years of the prior N.J.S.A. 39:4-97.2 violation. This proposed amendment will not change the way the MVC administers the assessment of points for N.J.S.A. 39:4-97.2 since its computer system's programming already conforms to the Supreme Court's decision; it will just clarify the language in the regulation. The sunset provision of Executive Order No. 66 (1978) has been waived for this subchapter.

Subchapter 11, Suspension for Out-of-State Convictions; Administrative Determinations and Bail Forfeitures for Driving While Under the Influence of Intoxicating Liquor or Drugs; Refusal to Submit to Chemical Test, provides for the uniform application of New Jersey law in matters relating to out-of-State convictions for alcohol-related violations. New Jersey licensed drivers are subject to the terms of suspension and alcohol education or rehabilitation

program requirements specified at N.J.S.A. 39:4-50 and 39:4-50a for alcohol-related violations incurred out-of-State.

Subchapter 12, Motor Vehicle Insurance Surcharge (title of subchapter amended by this proposal to be Motor Vehicle Violations Surcharge System), specifies the Commission's hearing, suspension and installment payment procedures to implement the Motor Vehicle Violations Surcharge System as provided for in N.J.S.A. 17:29A-35. The sunset provision of Executive Order No. 66 (1978) has been waived for this subchapter.

The proposal amends the term "Insurance Surcharge Bill" to "Motor Vehicle Violations Surcharge System Bill" in the title of N.J.A.C. 13:19-12.1 and the text in N.J.A.C. 13:19-12.1(b) to be consistent with terminology in P.L. 2007, c. 282 that implemented Recommendation 8 ("Rename the Insurance Surcharge Program to reflect its current purpose as a driver assessment penalty.") of the Motor Vehicles Affordability and Fairness Task Force Final Report, February 2006, prepared by the Alan M. Voorhees Transportation Center of the Edward J. Bloustein School of Planning and Public Policy of Rutgers, the State University of New Jersey and the New Jersey Motor Vehicle Commission.

In N.J.A.C. 13:19-12.2, the proposal amends the address to which hearing requests shall be addressed to reflect the program's name change, pursuant to P.L. 2007, c. 282. "Automobile Insurance Surcharge and Collections" is replaced by "Motor Vehicle Violations Surcharge System."

The proposal amends N.J.A.C. 13:19-12.11 to conform the section to the changes made pursuant to P.L. 2007, c. 282 that authorize the MVC to allow, for

good cause, surcharge payments to be made in up to thirty-six monthly installments. These changes to the law were prompted by a Motor Vehicles Affordability and Fairness Task Force recommendation.

The proposal also amends N.J.A.C. 13:19-12.12 to reflect the fact that the New Jersey Merit Rating Plan is now the Motor Vehicle Violations Surcharge System as a result of the changes made by P.L 2007, c. 282.

Subchapter 13, Motor Vehicle Insurance Surcharge (title of this subchapter amended by this proposal to be Motor Vehicle Violations Surcharge System); Supplemental Surcharges, implements the Motor Vehicle Violations Surcharge System (N.J.S.A. 17:29A-35), which provides for the imposition of motor vehicle insurance surcharges. The subchapter establishes supplemental surcharges for certain motor vehicle convictions and administrative suspensions. The supplemental surcharges are levied for serious motor vehicle violations such as driving while suspended and driving without liability insurance. The sunset provision of Executive Order No. 66 (1978) has been waived for this subchapter. References to "Plan" surcharges in N.J.A.C. 13:19-13.1(a) and 13:19-13.2 (a) are proposed for change to "System" surcharges to reflect the name change enacted by P.L. 2007, c. 282.

Social Impact

The readoption of N.J.A.C. 13:19 will have a beneficial social impact in that the rules contained therein promote highway safety by implementing various provisions of the Motor Vehicles and Traffic Law pertaining to driver qualification,

driver rehabilitation and driver disqualification for violation of the motor vehicle laws. The readoption of N.J.A.C. 13:19 also promotes the social welfare in that it sets forth administrative hearing procedures that comport with due process requirements of notice and hearing before final administrative action is taken by the Commission in license suspension and insurance surcharge matters.

Persons may be disqualified from licensure because their medical condition (that is, cardiovascular or convulsive seizure disorder) creates an unreasonable risk to the safety of other motorists. Persons who have repeatedly violated the Motor Vehicles and Traffic Law or have incurred alcohol-related violations may have their driving privileges suspended because they also present a disproportionate risk to the safety of other motorists. Imposition of driving privilege suspensions fosters highway safety in that said suspensions are intended to deter further violations upon license restoration. Driver improvement programs for motor vehicle violators and alcohol education or rehabilitation program requirements for persons committing alcohol-related violations also foster highway safety in that said programs are designed and intended to modify driver behavior. Installation of ignition interlock devices on motor vehicles owned, leased or regularly operated by DWI offenders as a condition of driver license restoration promotes highway safety by preventing motor vehicles from being driven by persons whose breath alcohol concentrations effectively prohibit the vehicles' engines from being started.

Allowing qualified drivers to pay their surcharges in up to thirty-six monthly installments conforms the regulations to recent changes in the law that make it

less burdensome to those drivers who cannot afford large monthly payments, decreases the likelihood of drivers having their driving privileges suspended because they cannot afford to make their surcharge payments, and makes it more likely that the Motor Vehicle Violations Surcharge System will receive its payments in a timely fashion because drivers are less likely to default on their payments if they have more affordable monthly payment amounts.

Economic Impact

The economic impact on the State in funding the Motor Vehicle Commission's Driver Control Services Division is partially offset by the driver improvement program fees that are collected by the Commission pursuant to N.J.S.A. 39:5-30.4 and N.J.A.C. 13:19-10.3(c). There is an adverse economic impact on drivers who commit motor vehicle violations and who as a result incur driver improvement program fees; or who as a result incur a driver license suspension necessitating a payment of a license restoration fee or alcohol program fee as a prerequisite to license restoration; or who as a result incur an insurance surcharge; or who as a result are required to install an ignition interlock device as a condition of license restoration. There is an adverse economic impact on drivers who incur serious motor vehicle violations in that they are subject to the imposition of insurance surcharges as provided by law. Following a recommendation by the Motor Vehicles Affordability and Fairness Task Force, P.L. 2007, c. 282 was passed. P.L. 2007, c. 282 has somewhat tempered the adverse economic impact on individuals that emanates from insurance

surcharges by increasing the allowable amount of monthly installment payments from 12 to up to 36. The proposed amendments to N.J.A.C. 13:19-12.11 will conform the rule to the law and current MVC practice.

There is an economic impact on the State in funding the Commission's Automobile Insurance Surcharge and Collection Unit which is charged with the administration of the supplemental surcharge rules. Prior to September 1, 1996, the former Division of Motor Vehicles' administrative costs incurred in collecting insurance surcharges were partially offset in that the Division was permitted by N.J.S.A. 17:29A-35 to retain 10 percent of the monies collected, or the actual cost of administering the collection of surcharges, whichever was less. Also, prior to September 1, 1996, the former Division of Motor Vehicles was permitted by N.J.S.A. 17:29A-35 to retain five percent of the monies collected, or the actual cost of administering the insurance cancellation notification system established pursuant to N.J.S.A. 17:33B-41, whichever was less. Commencing September 1, 1996, all surcharges collected by the former Division, including the supplemental surcharges collected pursuant to N.J.A.C. 13:19-13, have been remitted to the Division of Motor Vehicles' Surcharge Fund for transfer to the Market Transition Facility Revenue Fund for the purpose of discharging the bonds, notes and obligations of the Market Transition Facility. See N.J.S.A. 17:29A-35 and 34:1B-21.1 et seq. The administrative costs incurred by the Commission's Automobile Insurance Surcharge and Collection Unit is now funded through the State General Fund.

Federal Standards Statement

In compliance with Executive Order No. 27 (1994), Requirement for Statement Concerning Federal Standards in State Agency Rulemaking, notice is hereby given that the rules proposed for readoption herein pertaining to the installation of an ignition interlock device incorporate by reference the NHTSA Model Specifications; thereby meeting but not exceeding the Federal requirements set forth in the Transportation Equity Act for the 21st Century (TEA-21), Pub. L.105-178, 111 Stat. 107 et seq.

A Federal standards analysis is not required for the remainder of the rules proposed for readoption with amendments herein because the subject matter of those rules is governed by State law and is not subject to any Federal requirements or standards.

Jobs Impact

The Division does not anticipate that any jobs will be generated or lost as a result of the rules proposed for readoption with amendments.

Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact on the agriculture industry in the State.

Regulatory Flexibility Statement

The rules proposed for readoption impose reporting, recordkeeping and compliance requirements on ignition interlock device manufacturers, some of which may be small businesses within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Manufacturers that seek to participate in the certified ignition interlock device program are required to comply with the application and post-certification reporting, recordkeeping and compliance requirements imposed by N.J.A.C. 13:19-6. To obtain certification, the rules require manufacturers to ensure that the device proposed for certification complies with the NHTSA model specifications, has the designated alcohol setpoint, bears the prescribed warning label, has a required service interval of no more than 67 days, and does not impede the safe operation of the vehicle in which it is installed. To ensure compliance with NHTSA model specifications, the rules require manufacturers to submit with their applications the training and operational instructions, technical specifications and proof of either laboratory testing or another state's certification of the device as meeting the NHTSA Model Specifications. The rules require that manufacturers provide indigent persons with device installation and leasing at half the regular price.

The rules also require a manufacturer to carry liability insurance in the specified amount, and to provide the Commission with a certificate of insurance upon application. Upon the Chief Administrator's certification of a manufacturer's device, the manufacturer is required to post a bond in a specified amount.

The rules also require a manufacturer to submit with its application a list of states that have approved, revoked, suspended, and denied certification of the device in a program that requires compliance with the NHTSA Model Specifications, and in the case of a revocation, suspension, or denial, the reasons and contact information of the state official responsible therefore. Manufacturers have a continuing obligation upon certification to notify the Commission in case of a subsequent revocation, suspension, or denial of certification or approval of a device certified by the Chief Administrator.

The rules also require manufacturers to maintain a network of device service centers. The manufacturer must submit with its application for certification a list of the service centers in the network, information relating to the nature of the proprietorship thereof, and a list of the employees of the centers. The employees of service centers have to be free from records of certain criminal offenses that could have the propensity to impair the integrity of, and public confidence in the program. Manufacturers must provide employees with appropriate training, and submit the training documentation with their applications.

The rules require the configuration of service centers to provide a secure service area, a secure record storage area, a waiting area for customers, and a training area in which to provide required hands-on training to device users. Service centers must display certain signage and must be equipped with appropriate tools, testing equipment, and service manuals. Service centers must maintain in a secure area all material and supplies relating to BAIID servicing.

Service centers must keep as confidential program participants' personal and medical information.

Service centers are required to operate during normal business hours, to maintain a 24-hour emergency response telephone number, and to provide prompt responses to emergency service requests. Service centers are required to complete installations within seven days of a request, and to provide device users in the DWI sentencing program with a certificate of installation.

Service centers are required to provide device users in the sentencing program with hands-on training, care and maintenance instructions, emergency procedures, and the emergency response telephone number. In conducting required service, service centers are required to check for proper device functioning and operation and for evidence of tampering, and to document in written and photographic form indicia of tampering and circumvention efforts and attempts.

Manufacturers are required to report to the Commission annually that the manufacture of the device has not changed, and to provide a summary of reported problems with the device, categorized by the nature of the complaint. Manufacturers and their service centers are required to maintain service records for each offender for a specified time period after device removal.

Failure of manufacturers to remain in compliance with the application and post-certification requirements, or inaccurate misrepresentation of the device, provide grounds for the Chief Administrator's decertification of the device. Manufacturers whose devices the Chief Administrator decertifies are required to

pay for the removal of devices installed to satisfy sentencing program requirements, and for the cost of installation of certified devices.

The rules proposed for re adoption do not require small businesses to engage additional professional services for compliance therewith. The records are of a kind that are maintained in the ordinary course of business. Therefore, the rules do not impose additional reporting or recordkeeping burdens on small businesses nor do they necessitate initial capital and annual expenditures for reporting or recordkeeping compliance by small businesses.

The Commission rules are intended to ensure that persons sentenced to use the ignition interlock device have a reliable resource to aid them in complying with their sentences, that indigent persons are not precluded by cost from participating in the program, and that the devices used are in compliance with the NHTSA Model Specifications and are consistent in their design and operability. The DWI sentencing program has as its goal the deterrence of DWI recidivism, thereby promoting the health and safety of the public. The Commission has determined that the uniform application of rules to all manufacturers, regardless of business size, is necessary to ensure that the conduct of manufacturers meets these reliability, safety, and fairness goals. Therefore, the Commission has provided no distinction in the rules based on business size.

The remainder of the rules proposed for re adoption with amendments herein have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Those rules impose no recordkeeping or compliance

requirements on small businesses; therefore, a regulatory flexibility analysis is not required. Those rules regulate individual driver licensees.

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

Housing affordability will not be impacted in any significant way by this proposed readoption with amendments. The proposed readoption is concerned with driver management and control including the administrative hearing process for taking action against errant drivers. It does not impose any requirements on housing units or affect their affordability.

Smart Growth Development Impact

The proposed readoption with amendments should not have a significant impact on smart growth development because they do not impose any requirements on housing units, affordable housing or new construction within Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:19-1 through 9 and 11.

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

CHAPTER 19. [DRIVER MANAGEMENT BUREAU] COMPLIANCE AND SAFETY

SUBCHAPTER 1. ADMINISTRATIVE HEARINGS

13:19-1.2 Requests for hearings; disposition of hearing requests

(a) (No change.)

(b) Requests for a hearing shall, except as specified in (c) below and in N.J.A.C. 13:19-12.2(b), be sent to the following address:

Motor Vehicle Commission

[Driver Management Bureau] **Scheduling Unit**

PO Box [134] **166**

Trenton, New Jersey 08666-[0134] **0166**

(c) – (g) (No change.)

13:19-1.5 Adjournments; failure to appear

(a) No prehearing conference shall be adjourned from the scheduled prehearing conference date except for good cause and upon order of the Chief Administrator or an employee designated by the Chief Administrator. All requests for adjournment must be made in writing, with the reasons specified

therein, not later than seven days before the date scheduled for the prehearing conference. All requests shall be sent to the following address:

Motor Vehicle Commission
[Driver Management Bureau] **Scheduling Unit**
PO Box [134] **166**
Trenton, New Jersey 08666-[0134] **0166**
[Attention: Prehearing Conference Scheduling
Unit]

- (b) (No change.)
- (c) (No change.)
- (d) (No change.).

SUBCHAPTER 4. CARDIOVASCULAR DISORDERS

13:19-4.4 Findings report

The members of the Cardiovascular Committee will report their findings and recommendations to the Chief Administrator and the Chief Administrator will determine whether or not a person may be issued a driver license. **If a person has an existing driver license, the Chief Administrator will determine whether or not the person can retain his or her driving privilege.**

**SUBCHAPTER 6. INSTALLATION AND USE OF IGNITION INTERLOCK
DEVICES**

13:19-6.6 Application for certification of BAID

(a) (No change.)

(b) The manufacturer shall certify the following as to the BAID for which the manufacturer seeks certification:

1. (No change;)

2. (No change;)

3. (No change;)

4. (No change;)

5. (No change;)

6. The manufacturer shall provide BAIDs to indigents in accordance with N.J.A.C. [16] 13:19-6.14.

(c) (No change.)

**SUBCHAPTER 9. DESIGNATION OF STATE OFFICIAL TO BE NOTIFIED BY
DRIVERS OF COMMERCIAL MOTOR VEHICLES
CONCERNING OUT-OF-STATE MOTOR VEHICLE
CONVICTIONS**

13:19-9.1 Designation of State official; notification

(a) The Director, [Driver Management/Regulatory Affairs] **Compliance and Safety**, is designated as the State official to be notified, pursuant to the Commercial Motor Vehicle Safety Act of 1986, Pub. L. 99-570, concerning out-of-State motor vehicle convictions.

(b) A driver of a commercial motor vehicle, as defined in the Commercial Motor Vehicle Safety Act of 1986, Pub. L. 99-570, shall submit within 30 days of conviction a notice concerning an out-of-State conviction(s) for a violation(s) of any law relating to motor vehicle traffic control to the following address:

Director, [Driver Management/Regulatory Affairs] **Compliance and Safety**

Motor Vehicle Commission

PO Box 174

Trenton, New Jersey 08666-0174

SUBCHAPTER 10. POINT SYSTEM AND DRIVING DURING SUSPENSION

13:19-10.1 Point assessment

Any person who is convicted of any of the following offenses, including offenses[,] committed while operating a motorized bicycle, shall be assessed points for each conviction in accordance with the following schedule:

| <u>Section Number</u> | <u>Offense</u> | <u>Points</u> |
|-----------------------|--|---------------|
| 1. - 35. | (No change.) | |
| 36. | Driving in an unsafe manner (points only assessed for the third or subsequent violation[(s)] when that violation occurs | 4 |

within [a] five years [period] of the most recent prior offense)

37. - 54. (No change.)

**SUBCHAPTER 12. MOTOR VEHICLE [INSURANCE] VIOLATIONS
SURCHARGE SYSTEM**

13:19-12.1 Failure to pay surcharge; [Insurance] Motor Vehicle Violations Surcharge System Bill

- (a) (No change.)
- (b) Surcharge notification shall be in the form of [an] a “[Insurance] **Motor Vehicle Violation Surcharge System Bill.**” A person shall have 30 days from the date of surcharge notification to pay the surcharge before his or her driving privileges are suspended by the Chief Administrator of the Motor Vehicle Commission.

13:19-12.2 Requests for hearings

- (a) (No change.)
- (b) All requests for a surcharge hearing shall be sent to the following address:

State of New Jersey
[Automobile Insurance Surcharge and Collections] **Motor Vehicle Violations Surcharge System**
PO Box 136
Trenton, New Jersey 08666-0136

13:19-12.11 Driving while intoxicated surcharges; installments

Licenses **who are** surcharged for driving while intoxicated convictions may pay the surcharge in [12] **up to 36** monthly installments pursuant to a schedule established by the Chief Administrator of the Motor Vehicle Commission. Failure to adhere to the payment schedule will result in the immediate suspension of the licensee's driving privileges.

13:19-12.12 Certificate of debt; installment payments; failure to pay installment; suspension of driving privilege

(a) The Chief Administrator may, in his or her discretion, issue a certificate of debt to the Clerk of the Superior Court in accordance with N.J.S.A. 17:29A-35b(2) identifying a person as indebted to the State of New Jersey under the [New Jersey Merit Rating Plan] **Motor Vehicle Violations Surcharge System**.

(b) – (c) (No change.)

SUBCHAPTER 13. MOTOR VEHICLE [INSURANCE] VIOLATIONS SURCHARGE SYSTEM; SUPPLEMENTAL SURCHARGES

13:19-13.1 Surcharges for three-year period; convictions; amounts

(a) [Plan] **System** surcharges shall be levied by the Motor Vehicle Commission for convictions of violations set forth in (b) below, which violations occurred on or after March 19, 1984, the effective date of

the original regulation. The surcharges shall be annually assessed for a three-year period.

(b) (No change.)

13:19-13.2 Surcharges for three-year period; administrative violations; amounts

(a) [Plan] **System** surcharges shall be levied by the Motor Vehicle Commission for violations resulting in license suspensions imposed administratively which are set forth in (b) below and which violations or suspensions have occurred on or after March 19, 1984, the effective date of the original regulation. The surcharge shall be assessed each year for a three-year period and shall be in addition to the license restoration fee charged pursuant to N.J.S.A. 39:3-10a.

(b) (No change.)