

**TRANSPORTATION**

**MOTOR VEHICLE COMMISSION**

**Motorized Bicycles**

**Proposed Readoption with Amendment: N.J.A.C. 13:25**

Authorized By: Motor Vehicle Commission Board, Raymond P. Martinez, Chair.

Authority: N.J.S.A. 39:2-3, 39:3-10a, 39:4-14.3, 39:4-14.3a et seq. and 39:5-30.

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

Proposal Number: PRN 2010-231.

Submit comments by December 3, 2010 to:

Steven E. Robertson, Director

Legal and Regulatory Affairs

Motor Vehicle Commission

225 East State Street

PO Box 162

Trenton, New Jersey 08666-0162

The agency proposal follows:

**Summary**

The public comment period for this notice of proposal will be 60 days, since the notice 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 (hereinafter “the Commission”) proposes to readopt with amendment the provisions of N.J.A.C. 13:25, Motorized Bicycles, in accordance with N.J.S.A. 52:14B-5.1 and the “sunset” and other provisions of Executive Order No. 66 (1978). These rules are scheduled to expire on September 7, 2010, pursuant to N.J.S.A. 52:14B-5.1. By filing this notice of readoption prior to that date, the expiration date is extended to March 6, 2011, pursuant to N.J.S.A. 52:14B-5.1c. The Commission has reviewed these rules and has found them to be necessary and required for the purpose for which they were promulgated.

The rules that are the subject of this notice of proposed readoption implement various provisions of the Motor Vehicle and Traffic Laws, N.J.S.A. 39:1-1 et seq., concerning the operation of motorized bicycles (which are also known as “mopeds”). The rules pertain to the issuance of motorized bicycle learner’s permits and motorized bicycle licenses, as well as the operation of motorized bicycles by the holders of such permits or licenses. Many of the rules contained in N.J.A.C. 13:25 foster highway safety by limiting licensure to those who can demonstrate an ability to operate motorized bicycles safely.

The subchapters of N.J.A.C. 13:25 are briefly summarized below, together with the proposed amendment of a rule (N.J.A.C. 13:25-1.1) contained therein.

Subchapter 1 consists of a rule that sets forth definitions of various words and terms used in N.J.A.C. 13:25. The Commission proposes to amend the definition of the

term “motorized bicycle” in N.J.A.C. 13:25-1.1 by inserting therein the phrase “or is powered by an electric drive motor.” The proposed amendment conforms the definition in the rule to the statutory definition of the term “motorized bicycle” set forth in N.J.S.A. 39:1-1.

Subchapter 2 sets forth requirements that must be met by an applicant seeking to obtain a motorized bicycle learner’s permit. The subchapter also pertains to the issuance of motorized bicycle learner’s permits by the Commission. Included in this subchapter are rules concerning requirements imposed upon applicants for motorized bicycle learner’s permits, among which are proof of the applicant’s identity and date of birth and proof that his or her presence in the United States is authorized under Federal law; and prerequisites for the validation of motorized bicycle learner’s permits.

Subchapter 3 sets forth requirements that must be met by an applicant seeking to obtain a motorized bicycle license. The subchapter also contains several provisions pertaining to the issuance of motorized bicycle licenses by the Commission. Included in this subchapter are rules concerning age requirements; proof of the applicant’s identity and date of birth and proof that his or her presence in the United States is authorized under Federal law; permits; physical and mental qualifications; motorized bicycle operating privilege status; written and oral law-knowledge tests; visual acuity test standards; color perception check standards; necessity of motorized bicycle driving test; motorized bicycle driving test maneuvers; motorized bicycle used in driving demonstration; failure of motorized bicycle driving test; period of validity of motorized bicycle licenses; digitized color picture required on motorized bicycle licenses and the

fee for such picture; restoration fees; eye color and weight numerical code charts; and surrender of motorized bicycle license.

Subchapter 4 sets forth rules pertaining to the issuance and/or retention of motorized bicycle learner's permits or motorized bicycle licenses with regard to persons who suffer or have suffered from recurrent convulsive seizures, recurrent periods of impaired consciousness or from impairment or loss of motor coordination due to conditions such as, but not limited to, epilepsy, in any of its forms. This subchapter also contains several provisions pertaining to the Commission's suspension and/or restoration of the motorized bicycle operating privileges of such persons. Included in this subchapter are rules concerning satisfaction of physical qualifications; physically unqualified pending hearing; history of seizures and physician's report; Neurological Disorder Committee; Committee review of case; report of findings; Committee recommendations; restoration qualifications; interval reports of seizures; and driver reexamination.

Subchapter 5 sets forth rules pertaining to the issuance and/or retention of motorized bicycle operating privileges with regard to persons who suffer or have suffered from cardiovascular disorders. This subchapter also contains provisions pertaining to the Commission's suspension and/or restoration of the motorized bicycle operating privileges of such persons. Included in this subchapter are rules concerning Cardiovascular Committee; case history and physician's statement; review and recommendation; findings report; consideration of restoration; case referral; interval reports; and driver reexamination.

Subchapter 6 was repealed effective September 6, 1983. The subchapter contained rules concerning the point system. See N.J.A.C. 13:19-10 for current treatment of this subject.

Subchapter 7 pertains to serious motorized bicycle traffic offenses. Included in this subchapter are rules concerning reckless operation; careless operation; and excessive speed.

The subchapter previously codified at N.J.A.C. 13:25-8, which contained rules concerning the procedure to regulate the operation of motorized bicycles on specific highways, was recodified to N.J.A.C. 16:26-1 as rules of the Department of Transportation effective January 3, 2005. See 37 N.J.R. 88(b). Accordingly, that subchapter is not part of this notice of proposed readoption because it is no longer part of N.J.A.C. 13:25.

Subchapter 9 sets forth rules pertaining to motorized bicycle operator protective helmets. Included in this subchapter are rules concerning approval of helmets; helmet approval specifications; reflectorized surface on helmets; identification label on helmets; and helmet retention system.

### **Social Impact**

The readoption of N.J.A.C. 13:25 will have a beneficial social impact upon the public, since many of the rules proposed for readoption enhance highway safety. Applicants for motorized bicycle learner's permits are required to meet certain prerequisites before receiving a permit. Applicants for motorized bicycle licenses are likewise required to meet certain requirements before being issued a motorized bicycle

license. Persons may be disqualified from operating a motorized bicycle because their medical condition poses an unreasonable risk to the safety of other motorists. The rules proposed for readoption with amendment have no social impact on the Commission.

### **Economic Impact**

There is an economic impact on the State in funding the Motor Vehicle Commission, which is charged with the administration of these rules.

Motorized bicycle operators incur an expense in connection with purchasing a protective helmet in compliance with N.J.S.A. 39:4-14.3q and these rules.

A motorized bicycle learner's permit fee of \$5.00 must be paid to the Commission by permit applicants pursuant to N.J.S.A. 39:4-14.3.

A fee of \$6.00 for the digitized color picture of the licensee on a motorized bicycle license must be paid to the Commission by motorized bicycle license applicants. The \$6.00 digitized picture fee is mandated by N.J.S.A. 39:3-10f4. N.J.S.A. 39:2A-37 denotes such fee as revenue of the Commission. Every motorized bicycle license is required to have a digitized color picture of the licensee. See N.J.A.C. 13:25-3.15. Although the cost imposed upon the holder of a motorized bicycle license by the digitized color picture requirement is relatively modest (\$6.00, as noted above), such picture will facilitate the proper identification of the licensee and may also help to prevent the theft of the licensee's identity. Accordingly, the Commission discerns no valid basis upon which to change the digitized color picture requirement imposed upon motorized bicycle licensees by N.J.A.C. 13:25-3.15.

N.J.A.C. 13:25-3.16 has an economic impact upon those members of the public who apply for restoration of a suspended or revoked license or registration. The rule provides that the fee specified in N.J.S.A. 39:3-10a shall be paid to the Chief Administrator for the restoration of any suspended or revoked license or registrations. The fee presently set forth in N.J.S.A. 39:3-10a for the restoration of any license by the Commission is \$100.00. The fee presently set forth in N.J.S.A. 39:3-10a for the restoration of registrations by the Commission is \$100.00.

### **Federal Standards Analysis**

N.J.A.C. 13:25-2.1 requires that as a prerequisite to the issuance of motorized bicycle learner's permits, applicants therefor must submit proof to the Commission that the applicant's presence in the United States is authorized under Federal law in the manner set forth in N.J.A.C. 13:25-8.2(a), (b) and (c). N.J.A.C. 13:25-3.1(b) imposes the same requirement as a prerequisite to the issuance of motorized bicycle licenses to applicants therefor. The rules, which are reflective of the public policy of this State embodied in P.L. 1993, c. 34, do not impose a standard or requirement that exceeds the standards or requirements imposed by Federal law.

N.J.A.C. 13:25-9.3, which provides that protective helmets used by the operators of motorized bicycles must have a reflectorized surface on both sides or have securely affixed thereto reflectorized material on both the left and right side of the helmet, sets forth a requirement that exceeds the standards for motorcycle helmets set forth in 49 CFR 571.218. The Federal motorcycle helmet standards have been made applicable to helmets used by motorized bicycle operators pursuant to N.J.A.C. 13:25-9.2, but the

Federal standard does not contain the reflectorization requirement set forth in N.J.A.C. 13:25-9.3. However, N.J.A.C. 13:25-9.3 also requires the protective helmets used by motorized bicycle operators to be in compliance with N.J.S.A. 39:3-76.7, a New Jersey statute pertaining to motorcycle helmets that predates the adoption of the aforementioned Federal standard and that contains a reflectorization requirement. Although the New Jersey Legislature has amended N.J.S.A. 39:3-76.7 three times since the adoption of 49 CFR 571.218, it has chosen not to delete the reflectorization provision contained in the statute. Accordingly, the Commission has retained the reflectorization requirement for protective helmets set forth in N.J.A.C. 13:25-9.3 because, although the cost to motorized bicycle operators to reflectorize a protective helmet is relatively modest (it may be accomplished by means of reflective tape), the use of reflectorization may prevent accidents by assisting other motorists in the identification of motorized bicycle operators during nighttime hours. The Commission discerns no valid basis upon which to impose less stringent protective helmet standards on operators of motorized bicycles.

N.J.A.C. 13:25-9.2, 9.4 and 9.5 each require compliance with the Federal motorcycle helmet standards set forth in 49 CFR 571.218, but do not impose a standard that exceeds the Federal standards.

A Federal standards analysis is not required for the remainder of the rules in N.J.A.C. 13:25 that are proposed for readoption and amendment because the subject matter of said rules is authorized under State law and is not subject to Federal requirements or standards.

### **Jobs Impact**

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

### **Agriculture Industry Impact**

The rules proposed for readoption with amendment will have no impact on the agriculture industry.

### **Regulatory Flexibility Analysis**

The rules proposed for readoption with amendment have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed readoption of N.J.A.C. 13:25-9.2, 9.4 and 9.5 will impact small businesses that manufacture or supply protective helmets for use by the operators of motorized bicycles if such helmets fail to meet the U.S. Department of Transportation standards set forth in 49 CFR 571.218. The sale of protective helmets will be impacted if such helmets cannot be used by the operator of a motorized bicycle because they are in noncompliance with N.J.A.C. 13:25-9.2, 9.4 or 9.5. However, it is anticipated that most affected small businesses also manufacture or supply protective helmets that may be used by operators of motorized bicycles in lieu of the noncompliant helmets. The interest of the public in terms of highway safety reflected by N.J.A.C. 13:25-9.2, 9.4 and 9.5 outweighs any negative impact on helmet sales that may affect certain small businesses. Accordingly, an exemption from the requirements of N.J.A.C. 13:25-9.2,

9.4 and 9.5 with regard to protective helmets manufactured or supplied by small businesses for motorized bicycle operators is not warranted.

Except as otherwise noted above with respect to N.J.A.C. 13:25-9.2, 9.4 and 9.5, the remaining rules in N.J.A.C. 13:25 that are proposed for readoption and amendment impose no compliance, reporting or recordkeeping requirements on small businesses, do not necessitate capital and annual expenditures for compliance by small businesses and do not require small businesses to engage additional professional services; therefore, a regulatory flexibility analysis of those provisions is not required.

### **Smart Growth Impact**

It is not anticipated that the rules proposed for readoption with amendment 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**

The rules proposed for readoption with amendment will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules pertain to motorized bicycles.

### **Smart Growth Development Impact**

The rules proposed for readoption with amendment will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the rules pertain to motorized bicycles.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:25.

**Full text** of the proposed amendment follows (additions indicated in boldface **thus**):

## SUBCHAPTER 1. DEFINITIONS

### 13:25-1.1 Definitions

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

...

“Motorized bicycle” means a pedal bicycle having a helper motor characterized in that either the maximum piston displacement is less than 50 c.c. or said motor is rated at no more than 1.5 brake horsepower **or is powered by an electric drive motor** and said bicycle is capable of a maximum speed of no more than 25 miles per hour on a flat surface.

...