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**TRANSPORTATION
MOTOR VEHICLE COMMISSION**

Driving Schools

Proposed Readoption with Amendments: N.J.A.C. 13:23

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

Authority: N.J.S.A. 39:2-3 and 39:12-4.

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

Proposal Number: PRN 2009–372.

Submit comments by February 5, 2010 to:

Steven E. Robertson, Director

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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, therefore, 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 amendments the provisions of N.J.A.C. 13:23, Driving Schools, 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 expire on May 4, 2010, pursuant to N.J.S.A. 52:14B-5.1c. The Commission has reviewed these rules pursuant to the Executive Order and has found them to be necessary and required for the purpose for which they were promulgated.

The rules implement the provisions of N.J.S.A. 39:12-1 et seq., which provide for the licensing of businesses engaged in driving instruction and the licensing of instructors employed by such businesses. The rules implement the public policy of this State as set forth in N.J.S.A. 39:12-1 et seq., by establishing licensing standards for driving schools and driving school instructors; establishing standards for licensed driving schools that seek to be issued a driving school license endorsement(s), so as to be authorized to administer the State-approved written drivers’ examination and/or the State-approved eye examination; and setting forth guidelines for transactions between a driving school and persons seeking driving instruction.

Commission rules pertaining to business location, business hours, service agreements, vehicle equipment requirements, signs, exam administration, instructor

license standards, recordkeeping requirements and use of exam materials, are proposed for amendment as part of this notice of proposal, as summarized below. These amendments are necessary to ensure safety, to promote fairness in dealings between students and driving schools and to preserve the integrity of the instruction process.

The rules pertaining to the use of a telephone answering service are proposed for amendment as well. Currently, driving schools may not utilize a telephone answering service with respect to telephone calls made to such businesses during regular business hours. Rather, office personnel must be present at the school's principal place of business and licensed branch office(s) or a telephone answering machine must be utilized at such places of business during regular business hours because telephone calls made to such businesses may not be received at, call forwarded to, or otherwise transferred to any other location during regular business hours. See N.J.A.C. 13:23-2.14(b) and 2.30(d). In its adoption of amendments to its driving school rules published in the New Jersey Register on August 6, 2007, 39 N.J.R. 3391(a), the Commission described a public comment in which the commenter requested that N.J.A.C. 13:23-2.30(d) be changed. The Commission summarized the commenter's belief that ". . . all calls to a licensed driving school, including those after regular business hours, must be handled in-house by a driving school employee or an onsite telephone answering machine terminating at a driving school's principal place of business or licensed branch office" and that ". . . allowing calls to be received after regular business hours via a telephone answering service at a remote location, or to be transferred or forwarded to a driving school owner's or employee's home telephone or

cellular telephone, runs counter to the intentions of the MVC . . . regarding the accessibility of driving schools by consumers.” See Comment 1, 39 N.J.R. 3391(a), at 3391. In its response to the public comment, the Commission expressed its agreement with the commenter’s recommendation that N.J.A.C. 13:23-2.30(d) should be changed, so as to delete the words “during regular business hours,” and indicated that it would incorporate the commenter’s recommended rule change by way of a separate rulemaking proposal. The Commission also indicated it would address the definition of the term “telephone answering service” contained in N.J.A.C. 13:23-1.1. See the Commission’s Response to Comment 1, 39 N.J.R. 3391(a), at 3391-3392. In accord with the foregoing, the Commission’s proposed amendments herein of N.J.A.C. 13:23-1.1, 2.10(a), and 2.30(d) with regard to this subject together have the effect of eliminating the use of a telephone answering service by driving schools at any time.

N.J.A.C. 13:23 contains five subchapters. The existing rules, and proposed additions and deletions thereto, are summarized below.

Subchapter 1 contains a rule pertaining to definitions used in N.J.A.C. 13:23.

N.J.A.C. 13:23-1.1 sets forth definitions of various words and terms used in the chapter. The definition of the term “telephone answering service” is proposed for deletion from the rule. The proposed amendment is consistent with the proposed amendment of N.J.A.C. 13:23-2.30, to eliminate the use of a telephone answering service by driving schools at any time.

Subchapter 2 contains rules pertaining to driving schools, including the licensing and oversight thereof by the Commission.

N.J.A.C. 13:23-2.1 sets forth the general requirement that every person proposing to engage in the business of conducting a driving school must be licensed by the Chief Administrator prior to engaging in such business. The rule provides that in accordance with N.J.S.A. 39:12-2, a driving school license, either initial or renewal, will not be issued unless an owner of the driving school or an employee thereof is a qualified supervising instructor. In accordance with N.J.S.A. 39:12-2.1, a person will receive hour-for-hour credit from the Commission for the person's behind-the-wheel instructional experience in a public or non-public secondary school toward the fulfillment of the behind-the-wheel hourly instructional requirement for classification as a qualified supervising instructor imposed pursuant to N.J.S.A. 39:12-2. In order to maintain licensure during the term of the license, an owner of the driving school or an employee thereof must be a qualified supervising instructor. Compliance with the qualified supervising instructor requirement set forth in N.J.S.A. 39:12-2 may not be attained by means of subcontracting. A driving school license, either initial or renewal, will not be issued unless the applicant therefor has filed with the Commission a surety bond in the amount of \$10,000, issued by a company authorized to transact surety business in this State and payable to the Commission. If a surety bond is cancelled or terminated during the term of the license, the company that issued the surety bond must notify the Chief Administrator of such cancellation or termination. The licensee must immediately obtain and file with the Chief Administrator a replacement surety bond covering the remaining term of the license. The rule also provides that a driving school license, either initial or renewal, will not be issued unless at least one motor vehicle that is

owned or leased by the driving school and registered in the name of the driving school or the lessor is insured and equipped in accordance with N.J.A.C. 13:23-2.28.

N.J.A.C. 13:23-2.2 specifies the application procedure for licensure as a driving school. Applicants for an initial license are required to submit the license fee with the application. In addition to other documents, an applicant must submit samples of each form that he or she proposes to use in the business. An individual applicant, all partners and all corporate officers must, at the time of his or her initial application, submit documentation confirming that such individual applicant, partner or corporate officer has submitted to a criminal history record check in accordance with rules promulgated by the Division of State Police at N.J.A.C. 13:59. The Commission will request the State Bureau of Identification to attach an SBI Number Flag to the individual applicant's, partner's and corporate officer's SBI numbers in accordance with N.J.A.C. 13:59-1.8.

N.J.A.C. 13:23-2.3 pertains to driving school license fees. The fee for an initial driving school license is \$250.00; an annual renewal license fee of \$200.00 is collected by the Commission thereafter.

N.J.A.C. 13:23-2.4 pertains to the display of a driving school license by a licensee.

N.J.A.C. 13:23-2.5 pertains to a change of driving school business ownership or interest.

N.J.A.C. 13:23-2.6 pertains to lost, mutilated or destroyed driving school licenses.

N.J.A.C. 13:23-2.7 pertains to the surrender of a driving school license.

N.J.A.C. 13:23-2.8 provides that a driving school business shall not be conducted at a location or in a manner that gives the appearance to the public that the business has some official connection with the Commission.

N.J.A.C. 13:23-2.9 provides that changes of driving school business location or name may not be made without the prior approval of the Chief Administrator.

N.J.A.C. 13:23-2.10 sets forth prohibited business locations for driving schools. The rule as proposed for amendment provides at subsection (a) that a license shall not be issued for a driving school where the place of business is conducted from a liquor store, a bar, a grocery store, a restaurant, a tent, a temporary stand, a temporary address or "an address" (changed from "through the exclusive facilities") of a telephone answering service. Subsection (b) of N.J.A.C. 13:23-2.10 provides that a license will not be issued for a driving school where the place of business is conducted from a private residence unless the office dedicated for driving school use is separated from the living quarters of the private residence and ingress to and egress from the office is attained by means of a separate entrance. N.J.A.C. 13:23-2.10(b) is proposed for amendment to require that, if an office in a private residence has toilet facilities, those toilet facilities must also be separated from the living quarters of the private residence.

N.J.A.C. 13:23-2.11 is reserved.

N.J.A.C. 13:23-2.12 sets forth specific standards for the denial, suspension or revocation of a driving school license by the Chief Administrator. N.J.A.C. 13:23-2.13 pertains to the restoration of a driving school license that is suspended or revoked. The rule provides that the fee specified in N.J.S.A. 39:3-10a shall be payable to the

Commission for the restoration of a driving school license that is suspended or revoked pursuant to N.J.S.A. 39:12-1 et seq., or N.J.A.C. 13:23-2. Such license restoration fee (which is presently \$100.00) must be paid to the Commission before the license may be restored. N.J.A.C. 13:23-2.14, which pertains to driving school business hours, provides that a driving school must be accessible to the public during regular business hours of each business day. This requirement may be satisfied either by having office personnel available at the driving school's principal place of business and branch office(s) or by having a telephone answering machine at such places of business.

N.J.A.C. 13:23-2.15, which pertains to driving school branch offices, provides that a driving school branch office must meet all of the requirements for a licensed principal place of business. The rule requires that each initial or renewal application for a branch office license be accompanied by the applicable fee specified in N.J.A.C. 13:23-2.3(a), that is, \$250.00 for an initial branch office license and \$200.00 for the annual renewal of a branch office license.

N.J.A.C. 13:23-2.16 provides that in the event the use of a driving school branch office is discontinued, the branch office license must be surrendered within seven days to the Commission.

N.J.A.C. 13:23-2.17 is reserved.

N.J.A.C. 13:23-2.18 provides that the Chief Administrator must be notified within 30 days, in writing, if a change occurs in the residence address of any proprietor, partner, officer, director, authorized agent or instructor of any driving school.

N.J.A.C. 13:23-2.19 pertains to recordkeeping requirements. Subsection (a) as proposed for amendment specifies that a file must be maintained by a driving school

containing the student record and the service agreement between the driving school and every person receiving lessons, lectures, tutoring, instructions or other services relating to the acquisition of a license or endorsement “to drive” (changed from “in the driving of”) motor “vehicles” (changed from “vehicle”) or motorcycles. The student record includes the student’s name, driver license number, instructor’s name and the date, type and duration of all lessons, lectures, tutoring, instructions or other services relating to the acquisition of a license or endorsement to drive motor vehicles or motorcycles. The rule also provides that the records of the business maintained in accordance with N.J.A.C. 13:23-2 may be electronically stored.

N.J.A.C. 13:23-2.20 pertains to the loss, mutilation or destruction of records required to be kept by a driving school.

N.J.A.C. 13:23-2.21 pertains to the retention of records by a driving school. The rule provides that all records that a driving school is required to maintain pursuant to N.J.A.C. 13:23-2 must be maintained at the principal place of business of the driving school for a period of three years, during which period they will be subject to audit and inspection by the Chief Administrator or his or her designee at any time during regular business hours.

N.J.A.C. 13:23-2.22 pertains to driving school service agreements and the conditions to be set forth therein. All driving school service agreements must contain at a minimum all information contained in the sample service agreement set forth in the rule. The agreement may be rescinded by the student within 72 hours of the first lesson and the student is entitled to a refund for any lesson or service not provided. N.J.A.C. 13:23-2.22 also requires driving schools to provide all students with a statement of

services to be rendered and fees to be charged, and requires driving schools to provide to all students a receipt for payments made to the driving school. N.J.A.C. 13:23-2.22 is proposed for amendment to make the issuance of a service agreement mandatory (as opposed to the current language requiring only that the prospective students be advised of the availability of a service agreement) and that the service agreement must be signed by a parent or legal guardian if the student is under 18 years of age. The Commission also proposes to amend N.J.A.C. 13:23-2.22 to require that the service agreement reflect the requirement that no more than two hours of behind-the-wheel instruction may be provided to any one student within a 24-hour period, and that the only occupants of a driving school vehicle being operated on a public road for purposes of the required six hours of behind the wheel instruction shall be the instructor and the student receiving instruction.

N.J.A.C. 13:23-2.23 pertains to agreements between driving schools and secondary schools. The rule provides that a driving school may enter into an agreement where authorized by law with a secondary school for the purpose of teaching the classroom and/or behind-the-wheel driver education portions of a high school driver education program. The classroom portion of a high school driver education program provided by a driving school must be taught by a qualified supervising instructor employed by the driving school or by a licensed driving instructor employed by the driving school who has successfully completed a three-credit New Jersey driver education college course offered by a college or university licensed by the New Jersey Commission on Higher Education. A driving school must notify the Chief Administrator in writing within 10 days of entering into an agreement with a secondary school to

provide classroom and/or behind-the-wheel driver education instruction for the secondary school.

N.J.A.C. 13:23-2.24 pertains to driving school student requirements. The rule provides that driving school instructors, prior to giving behind-the-wheel instruction, shall make certain that each student has a valid permit, has passed a vision test and has passed the law knowledge test.

N.J.A.C. 13:23-2.25 through 2.27 are reserved.

N.J.A.C. 13:23-2.28 pertains to motor vehicles used in a driving school business. Any vehicle, except buses, motorcycles and articulated vehicles, used for instruction by a driving school must be equipped with dual controls on foot brake and, if any, on clutch. Any vehicle, except a motorcycle, used for instruction by a driving school must also be equipped with seat belts for both the student(s) and instructor and with inside and outside rear view mirrors for both student and instructor. Any vehicle, except a motorcycle, used for instruction by a driving school must have a clean interior and must be equipped with operable door locks, an operable heater, defroster and air conditioner, and properly operating seats and seat adjustments.

Motor vehicles owned or leased by a driving school and used for behind-the-wheel driving instruction or for the road test portion of the driving test administered by the Commission must be covered by liability insurance in the amounts of at least \$250,000/\$500,000/\$50,000, or, in the alternative, such vehicles must be covered by liability insurance in the amount of at least \$500,000 combined single limit of liability in any one accident for bodily injury liability and property damage liability. Evidence of the required liability insurance with a company authorized to do business in this State must

be filed by licensed driving schools with the Chief Administrator in accordance with the rule. The liability insurance policy must provide that such insurance coverage may not be cancelled or terminated unless the Chief Administrator of the Motor Vehicle Commission has been given 30 days prior written notice by the insurer. In the event of the cancellation or expiration of such insurance, no motor vehicle listed on the certificate of insurance may thereafter be used for the provision of behind-the-wheel driving instruction or for the road test portion of the driving test administered by the Commission. N.J.A.C. 13:23-2.28 is proposed for amendment to provide that all vehicles used for instruction shall be subject to inspection at any time during regular business hours by the Chief Administrator, or designee, with 24 hours notice, at the principal place of business or branch office of the licensee.

N.J.A.C. 13:23-2.29 pertains to signs displayed on driving school vehicles.

The rule is proposed for amendment to make the display of a roof sign optional, as opposed to mandatory. As amended, the rule provides that every driving school vehicle, while being used for driving instruction and/or the transportation of driving school students to or from a Commission driver testing facility, may display a roof-mounted sign visible to both front and rear indicating "Student Driver." The sign must also indicate the business name and license number of the driving school unless an additional sign containing such information is used. This rule is also proposed for amendment to provide that, if no roof sign is displayed with the information set forth in subsection (a), the licensee must display two additional signs setting forth the driving school's business name and license number, which signs must be placed on the

exterior of the front driver's side door of the vehicle and on the exterior of the front passenger's side door, and may be permanent or removable.

N.J.A.C. 13:23-2.30 regulates the advertising that may be used by a driving school. School advertisements may not guarantee licensure upon completion of instruction. A driving school may not advertise in such a manner as to give the impression that it has some official connection with the Commission or an authorized motor vehicle agent. Advertisements shall be based on fact and shall not be false, deceptive or misleading. Advertisements that cannot be changed, deleted or withdrawn within a period of seven days or less, including classified telephone directory advertisements, must be approved by the Chief Administrator or his or her designee prior to printing. Any advertising used by a driving school in any medium must contain the license number of the driving school. Subsection (d) of the rule provides that a driving school may advertise only those telephone numbers that are listed for the school's principal place of business or licensed branch office(s).

The second sentence of subsection (d), as proposed for amendment, provides that "[t]elephone calls shall not be received at, call forwarded to, or otherwise transferred to any other location" (changed from "[t]elephone calls shall not be received at, call forwarded to, or otherwise transferred to any other location during regular business hours"). Upon adoption of such amendments, telephone calls made to such businesses, regardless of what time of day they are made, will not be received at, call forwarded to, or otherwise transferred to any location other than a driving school's principal place of business or licensed branch office(s) (rather than being answered at

an offsite location by a telephone answering service or other person during nonbusiness hours).

N.J.A.C. 13:23-2.31 is reserved.

N.J.A.C. 13:23-2.32 prohibits practice driving on State grounds used for State driving tests. The rule also provides that an instructor must remain in a vehicle, except a motorcycle, used for instruction by a driving school at all times during which a student is behind the wheel of the vehicle and the keys are in the ignition. As amended, N.J.A.C. 13:23-2.32 will have a new subsection (c), which will require that the only occupants of a driving school vehicle, other than a motorcycle, that is being operated on a public road for purposes of the required six hours of behind-the-wheel instruction shall be the driving school instructor and the student receiving behind-the-wheel driving instruction. As amended, N.J.A.C. 13:23-2.32 will also have a new subsection (d), to include the requirement that behind-the-wheel driving instruction must be provided in increments of no more than two hours within a 24-hour period.

N.J.A.C. 13:23-2.33 requires that an instructor confirm that a student has a valid driver's license or validated permit prior to conducting behind-the-wheel instructions or presenting the student for a driving test. The rule also provides that an instructor is prohibited from signing a student permit and further provides that an instructor shall not surrender a student permit to a student unless the student has completed the required six hours of behind-the-wheel instruction and the permit has been properly endorsed by the driving school owner or the person(s) so authorized by the driving school owner.

N.J.A.C. 13:23-2.34 requires that applicants appearing for the road test portion of the driving test in a motor vehicle used for instruction by a driving school be

accompanied by a licensed driver who has in his or her possession a valid New Jersey instructor's license or a New Jersey authorized agent identification certificate, a valid registration, a valid insurance identification card and a copy of the declaration page of the liability insurance policy issued to the driving school confirming that the motor vehicle is insured in the amounts set forth in N.J.A.C. 13:23-2.28(b).

N.J.A.C. 13:23-2.35 prohibits a driving school from employing any person as an instructor or agent who has been convicted of any of the offenses set forth in N.J.A.C. 13:23-2.12(a)3, unless the Chief Administrator has determined that such person may serve in such capacity.

N.J.A.C. 13:23-2.36 establishes the requirements for the issuance of authorized agent identification certificates. An applicant for an authorized agent identification certificate must be at least 18 years of age, must be of good moral character and must have a driving record devoid of the offenses set forth in subsection (d) of the rule. An applicant for an authorized agent identification certificate must be the holder of a valid basic driver's license issued by the Commission pursuant to N.J.S.A. 39:3-10 or a driver's license issued by another state that is substantially similar to this State's basic driver's license. Such an applicant, if licensed by another state or states during the past three years, must submit a certified abstract of his or her driving record from the state(s) in which he or she is or was licensed to drive. An applicant for an authorized agent identification certificate must, at the time of his or her initial application, submit documentation confirming that such applicant has submitted to a criminal history record check in accordance with rules promulgated by the Division of State Police at N.J.A.C. 13:59. The Commission will request the State Bureau of Identification to attach an SBI

Number Flag to the applicant's SBI number in accordance with N.J.A.C. 13:59-1.8. N.J.A.C. 13:23-2.36(c) sets forth an annual fee of \$25.00 for an authorized agent identification certificate. The rule also sets forth standards for the denial, suspension or revocation of an authorized agent identification certificate by the Chief Administrator.

Driving school licensees and their employees are subject to the requirements set forth in N.J.A.C. 13:23-2.37 and may not act in such a way as to attempt to influence Commission employees in their official determinations relative to the licensing of the driving school's students.

N.J.A.C. 13:23-2.38 is reserved.

Subchapter 3 contains rules pertaining to driving school instructors, including the licensing and oversight thereof by the Commission.

N.J.A.C. 13:23-3.1 requires the licensing of a person as a driving school instructor as a condition to that person providing driving instructions on behalf of a driving school.

N.J.A.C. 13:23-3.2 provides that instructor's licenses are valid for use only in connection with the business of the driving school(s) listed thereon and only for lessons authorized by those schools.

N.J.A.C. 13:23-3.3, which sets forth standards for the issuance of a driving school instructor's license, is proposed for amendment. The rule currently provides that an instructor's license will not be issued to any person unless that person is the holder of a valid basic driver's license issued by the Commission pursuant to N.J.S.A. 39:3-10 or a valid driver's license issued by another state that is substantially similar to this State's basic driver's license, and has held such a license permitting him or her to drive

for at least the past three consecutive years, and has complied with the other requirements set forth in the subchapter. As amended, the rule provides that the license held by an applicant seeking a license to instruct motorcycle operation must have held a license to operate a motorcycle for at least the past three consecutive years.

N.J.A.C. 13:23-3.4, specifying the application procedure for licensure as a driving school instructor, is proposed for amendment to include the requirement that an applicant for an initial instructor's license must be at least 21 years of age and must have a minimum of three consecutive years' driving experience with a basic driver's license issued by the Commission pursuant to N.J.S.A. 39:3-10 or a driver's license issued by another state that is substantially similar to this State's basic driver's license. As amended, the rule provides that the license held by an applicant seeking a license to instruct motorcycle operation must have held a license to operate a motorcycle for at least the past three consecutive years. The rule also provides that an applicant licensed to drive by another state or states during the past three consecutive years must submit a certified abstract of his or her driving record from the state(s) in which he or she is or was licensed to drive with the initial application and all renewals thereof. Every applicant for an initial instructor's license must, at the time of his or her initial application, submit documentation confirming that such applicant has submitted to a criminal history record check in accordance with rules promulgated by the Division of State Police at N.J.A.C. 13:59. The Commission will request the State Bureau of Identification to attach an SBI Number Flag to the applicant's SBI number in accordance with N.J.A.C. 13:59-1.8.

N.J.A.C. 13:23-3.5 pertains to driving school instructor's license fees. The fee for an initial license is \$75.00; an annual renewal license fee of \$50.00 is collected by the Commission thereafter.

N.J.A.C. 13:23-3.6 provides that a valid instructor's license must be in the possession of the instructor at all times when he or she is giving driving instructions, is appearing at a Commission facility to purchase a student permit or is accompanying a student to or from a Commission facility.

N.J.A.C. 13:23-3.7 pertains to lost, mutilated or destroyed driving school instructor's licenses.

N.J.A.C. 13:23-3.8 pertains to the surrender of a driving school instructor's license or endorsement.

N.J.A.C. 13:23-3.9 provides that applicants for instructor's licenses are subject to specialized testing as part of the licensing procedure and must submit proof of having completed the six-hour or eight-hour National Safety Council Defensive Driving Program or a Commission-approved Motor Vehicle Defensive Driving Course. As amended, N.J.A.C. 13:23-3.9 will require that the applicant complete the six-hour or eight-hour National Safety Council Defensive Driving Program or a Commission-approved Motor Vehicle Defensive Driving Course prior to issuance of the instructor's license.

N.J.A.C. 13:23-3.10 pertains to the use of interactive wireless communication devices in driving school vehicles. The rule provides that neither a driving school instructor nor a student may use any interactive wireless communication device in a driving school vehicle that is being operated on a public road or highway for purposes of behind-the-wheel driving instruction. For purposes of the rule, "use" includes, but is not

limited to, talking or listening on any interactive wireless communication device or operating its keys, buttons or other controls. The prohibition contained in N.J.A.C. 13:23-3.10 does not apply in an emergency situation.

Driving school instructors are subject to the requirements set forth in N.J.A.C. 13:23-3.11 and may not act in such a way as to attempt to influence Commission employees in their official determinations relative to the licensing of the instructor's students.

N.J.A.C. 13:23-3.12 provides specific standards for the denial, suspension or revocation of a driving school instructor's license by the Chief Administrator. As amended, N.J.A.C. 13:23-3.12 will make it grounds for denial, suspension or revocation, or grounds for refusal to issue an instructor's license or a renewal thereof, if such instructor or applicant has accumulated seven (as opposed to the current nine) or more points by reason of convictions for violations of the Motor Vehicle Law or has been convicted of a violation of N.J.S.A. 39:4-50, 39:4-50.2 or 39:4-49.1, or has incurred a conviction or administrative determination of a substantially similar offense in any jurisdiction.

N.J.A.C. 13:23-3.13 pertains to the restoration of a driving school instructor's license that is suspended or revoked. The rule provides that the fee specified in N.J.S.A. 39:3-10a shall be payable to the Commission for the restoration of an instructor's license that is suspended or revoked pursuant to N.J.S.A. 39:12-1 et seq., or N.J.A.C. 13:23-3. Such license restoration fee (which is presently \$100.00) must be paid to the Commission before the license may be restored.

Subchapter 4 contains two rules pertaining to driving school classrooms.

N.J.A.C. 13:23-4.1 pertains to driving school classroom facilities and N.J.A.C. 13:23-4.2 pertains to driving school classroom requirements.

N.J.A.C. 13:23-4.3 through 4.4 are reserved.

Subchapter 5 contains rules pertaining to the Commission's issuance of a driving school license endorsement(s) to those driving schools that qualify to administer the State-approved written drivers' examination and/or the State-approved eye examination.

N.J.A.C. 13:23-5.1 and 5.2 set forth, respectively, the purpose and scope of the subchapter. N.J.A.C. 13:23-5.1 and 5.2(a) are proposed for amendment to state that the subchapter applies to students "for whom special learners' permits have been issued," replacing "in conjunction with the students' applications for special learners' permits." N.J.A.C. 13:23-5.2(c), as amended, will substitute "who are holders of or are seeking to be issued examination permits" for "in conjunction with applications for examination permits." N.J.A.C. 13:23-5.3 sets forth the definitions of "State-approved eye examination" and "State-approved written drivers' examination" as those terms are used in the subchapter, and, as amended, defines "State-approved eye examination" as "the visual acuity and color perception tests administered to special learners' permittees in accordance with N.J.A.C. 13:21-8.9 through 8.11." "State-approved written drivers' examination" is defined as "the 50-question written law knowledge test administered in English to special learners' permittees in accordance with N.J.A.C. 13:21-8.6."

N.J.A.C. 13:23-5.4 provides that Commission approval to conduct the State-approved written drivers' examination or the State-approved eye examination will not be issued unless the licensed driving school demonstrates its ability to comply with N.J.A.C. 13:23-5.14 and 5.15 pertaining to test administration and equipment.

N.J.A.C. 13:23-5.5 sets forth application procedures for driving school license endorsement approval and specifies the information that is to be included on such applications.

N.J.A.C. 13:23-5.6 sets forth various driving school license endorsement fees. The initial application by a driving school for approval to administer the State-approved written drivers' examination must be accompanied by a license endorsement fee of \$250.00; each renewal application for such endorsement must be accompanied by a license endorsement fee of \$200.00. The initial application by a driving school for approval to administer the State-approved eye examination must be accompanied by a license endorsement fee of \$250.00; each renewal application for such endorsement must be accompanied by a license endorsement fee of \$200.00.

N.J.A.C. 13:23-5.7 sets forth application procedures for renewals of driving school license endorsements.

N.J.A.C. 13:23-5.8 pertains to the surrender of a driving school's license endorsement(s).

N.J.A.C. 13:23-5.9 provides that the proprietor, partners, corporate officers, corporate directors and persons possessing a controlling interest in a driving school are responsible to the Chief Administrator for the administration of examinations by the driving school and for all actions performed by its employees in connection with the administration of examinations pursuant to N.J.A.C. 13:23-5.

N.J.A.C. 13:23-5.10 requires that a driving school display its license endorsement(s) at its business location in a conspicuous location that is accessible to the public. A driving school approved by the Commission to administer the State-

approved written drivers' examination and/or the State-approved eye examination and that imposes a fee(s) for the administration of such examination(s) must post in a conspicuous location accessible to the public a "Notice to Students" concerning the driving school's approval to administer such examinations and indicating that students may, if they so choose, have such examinations administered by the Commission at a Commission driver testing facility at no cost to the students. A driving school approved by the Commission to administer State-approved written drivers' examinations and/or State-approved eye examinations must maintain copies of all such examinations administered by the driving school owner or by qualified supervising instructors employed by the school or by licensed driving instructors employed by the school. The driving school must maintain such copies for a period of at least four years. N.J.A.C. 13:23-5.10(c), as amended, will require that the records kept include a copy of the special learner's permit issued for such student, in addition to the existing requirements listed in the rule. Failure to permit the audit or inspection of such records will subject the driving school to administrative suspension action.

N.J.A.C. 13:23-5.11 provides for the imposition of a driving school license endorsement denial, suspension or revocation for certain enumerated violations.

N.J.A.C. 13:23-5.12 requires that the driving school licensee or a qualified supervising instructor or a licensed driving instructor in its employ be certified by the Commission as an examination administrator. An examination may not be administered by any person unless such person has been certified by the Commission as an examination administrator. Certification is predicated upon a person's satisfactory

demonstration of his or her ability to administer the State-approved written drivers' examination and/or the State-approved eye examination.

N.J.A.C. 13:23-5.13 provides that a driving school must grant the Commission access to the examination records required to be maintained pursuant to N.J.A.C. 13:23-5.10 for auditing and must, upon Commission request, furnish advance notice with regard to the dates, times and locations of its administration of the State-approved written drivers' examination and/or the State-approved eye examination.

N.J.A.C. 13:23-5.14 provides that the State-approved written drivers' examination must be conducted in accordance with N.J.A.C. 13:21-8.6 as such rule is administered by the Commission at its driver testing facilities. The rule as proposed for amendment further provides that driving schools must administer the State-approved written drivers' examination on paper examination forms "derived from information electronically" supplied by the Commission (changed from "paper examination forms supplied by the Commission"). The State-approved written drivers' examination must be administered by a driving school at its principal place of business, branch office or classroom facility, or at a secondary school where the driving school teaches the classroom portion of a high school driver education program. A driving school that administers the State-approved written drivers' examination must secure all master test forms, all blank test forms and all blank New Jersey Driver Examination Certificates in a locked safe that is secured by a combination lock. N.J.A.C. 13:23-5.14(c) is proposed to be added to include the provision that a driving school shall utilize the test questions that comprise the State-approved written drivers' examination only in its administration of such

examination, and shall not otherwise disseminate or reproduce the test questions in any manner for any other purpose.

N.J.A.C. 13:23-5.15 provides that the State-approved eye examination must be conducted in accordance with N.J.A.C. 13:21-8.9 through 8.11 as such rules are administered by the Commission at its driver testing facilities. The State-approved eye examination must be administered by a driving school at its principal place of business, branch office or classroom facility or at a secondary school where the driving school teaches the classroom portion of a high school driver education program. The State-approved eye examination must be administered using vision testing equipment that comports with the vision testing equipment utilized by the Commission at its driver testing facilities. As proposed for amendment, new N.J.A.C. 13:23-5.15(c) will include the provision that a driving school shall utilize the eye charts that comprise the State-approved eye examination only in its administration of such examination, and shall not otherwise disseminate or reproduce the eye charts in any manner for any other purpose.

N.J.A.C. 13:23-5.16 provides that a driving school that imposes a fee for the administration of the State-approved written drivers' examination and/or the State-approved eye examination must, in accordance with N.J.A.C. 13:23-2.22, disclose to each student in writing the amount of such fee prior to the administration of such examination. The driving school must inform the student in writing that the student may choose to have such examinations administered by the Commission at a Commission driver testing facility at no cost to the student.

N.J.A.C. 13:23-5.17 provides for the investigation of driving schools for violations of the driving school laws and regulations.

N.J.A.C. 13:23-5.18 provides for the issuance of a notice of refusal or suspension or revocation of a driving school license endorsement(s) to applicants and licensees setting forth the reasons for the proposed refusal or suspension or revocation of the license endorsement(s).

N.J.A.C. 13:23-5.19 provides for the filing of a request for an administrative hearing by a driving school license endorsement applicant or licensee.

N.J.A.C. 13:23-5.20 provides that hearings relating to the suspension, revocation or refusal to renew a driving school license endorsement(s) will be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

N.J.A.C. 13:23-5.21 provides that a person whose driving school license endorsement(s) is suspended or revoked will not be entitled to apply for a license endorsement during the period of suspension or revocation.

N.J.A.C. 13:23-5.22 pertains to the restoration of a driving school license endorsement(s) that is suspended or revoked. The rule provides that the fee specified in N.J.S.A. 39:3-10a shall be payable to the Commission for the restoration of a driving school license endorsement(s) that is suspended or revoked pursuant to N.J.S.A. 39:12-1 et seq., or N.J.A.C. 13:23-5. Such license endorsement restoration fee (which is presently \$100.00) must be paid to the Commission before the license endorsement(s) may be restored.

Social Impact

The rules proposed for readoption with amendments have a positive social impact. The rules benefit the public by promoting fairness in dealings between a driving school and its prospective students and ensuring the integrity and safety of the learning process. A prospective student may rescind a contract within 72 hours of the first lesson with a full refund for instruction or other services that have not been provided by the school. The licensing standards imposed by N.J.A.C. 13:23 on applicants for and holders of driving school licenses, driving school license endorsements, driving school instructor's licenses and authorized agent identification certificates also protect the public by providing specific standards for the denial, suspension or revocation of such licenses, endorsements and certificates. The rules proposed for readoption with amendments also safeguard the public by prohibiting false or deceptive advertising.

The proposed amendment of N.J.A.C. 13:23-1.1, 2.10(a) and 2.30(d) will have a positive social impact in that together they have the effect of eliminating the use of a telephone answering service by driving schools at any time. Upon adoption of such amendments, telephone calls made to such businesses, regardless of what time of day they are made, will not be received at, call forwarded to or otherwise transferred to any location other than a driving school's principal place of business or licensed branch office(s) (rather than being answered at an offsite location by a telephone answering service or other person during nonbusiness hours). Since driving schools presumably already utilize telephone answering machines at such places of business during regular business hours in order to comply with the requirement imposed by N.J.A.C. 13:23-2.14(b) that they be accessible to the public during regular business hours of each

business day, it is not anticipated that the additional use of such answering machines at such places of business during non-business hours will impose a burden upon driving schools.

N.J.A.C. 13:23-2.10(b) is proposed for amendment to require that, if an office in a private residence has toilet facilities, those toilet facilities must also be separated from the living quarters of the private residence. This amendment will have a positive social impact on the public in that it further ensures the safety of students by keeping driving school facilities separate from living quarters where driving schools services are conducted in a private residence. It is not anticipated that this requirement will be a burden on driving schools.

The proposed amendment of N.J.A.C. 13:23-2.19(a), which corrects several grammatical errors in the rule and requires the driving school to keep a copy of the service agreement, will have a positive social impact in that it clarifies the rule, so as to make it more easily understood by the regulated community and the public, and is consistent with the amendment to N.J.A.C. 13:23-2.22, requiring that the driving school provide a service agreement to each student.

The proposed amendment of N.J.A.C. 13:23-2.22 will have a positive social impact in that it requires the execution of a service agreement, which must be signed by the student or parent or legal guardian if the student is under 18 years of age. This amendment ensures fairness in dealing between the student and the driving school. The rule, as amended, also requires that the service agreement include the provision that no more than two hours of behind-the-wheel instruction may be given to any one student within a 24-hour period, and that the only occupants of a vehicle during the

course of behind-the-wheel instruction shall be the instructor and the student receiving instruction. This amendment will have a positive social impact in that it ensures that the student is aware of these requirements, and ensures the integrity of the instruction process. It is not anticipated that this requirement will be a burden on driving schools.

As amended, N.J.A.C. 13:23-2.28, pertaining to insurance and equipment requirements, will have a positive social impact in that, by having the ability to inspect instruction vehicles for the proper equipment, the Commission is better able to enforce the safety standards of this rule. It is not anticipated that this will be a burden on driving schools, as the Commission is obligated to give the driving school 24 hours notice of the inspection and the inspection will be conducted at a location convenient to the driving school: either its principal place of business or an approved branch office.

N.J.A.C. 13:23-2.29, pertaining to signage on vehicles, and proposed for amendment to make a roof-top sign optional, with an alternative two-sign minimum on the sides of the driving school vehicle, will have a positive social impact because it ensures fairness in advertising and ensures that driving school information is visible to the public. It is not anticipated that these amendments will impose a burden on driving schools.

The proposed amendment of N.J.A.C. 13:23-2.32 will have a positive social impact in that it clarifies that the student receiving behind-the-wheel instruction and the instructor are the only permitted occupants of the driving school vehicle while the vehicle is being operated on a public road or highway. The amended rule also implements a maximum length of two hours for behind-the-wheel instruction during any 24-hour period. These amendments ensure the safety of students and maintain the

integrity of the driving school instruction process. These amendments ensure that the student receiving the instruction is the sole focus of the lesson and obtains the maximum benefit of behind-the-wheel instruction, and that each student receives six hours of behind-the-wheel instruction and is actively operating the vehicle for the entire six hours of instruction. It is not anticipated that this amendment will impose a burden on driving schools.

The proposed amendment of N.J.A.C. 13:23-3.3 and 3.4 to require a motorcycle instructor applicant have had a license to operate a motorcycle for at least three years, will have a positive social impact in that the amendment ensures that the instructor has the experience necessary and appropriate to the type of vehicle in which instruction is being given. It is not anticipated that this amendment will impose a burden on driving schools.

The proposed amendment of N.J.A.C. 13:23-3.9, to require completion of the six-hour or eight-hour National Safety Council Defensive Driving Program or a Commission-approved Motor Vehicle Defensive Driving Course prior to issuance of the initial instructor's license, will have a positive social impact in that it ensures that the instructor is properly trained before commencing instruction. Although instructors will have to complete the six-hour or eight-hour National Safety Council Defensive Driving Program or a Commission-approved Motor Vehicle Defensive Driving Course prior to issuance of the initial instructor's license, it is not anticipated that this amendment will impose a burden on driving schools.

The amendment of N.J.A.C. 13:23-3.12, which lowers the point total at which the Chief Administrator may deny, suspend or revoke an instructor's license, from nine

points to seven points, will have a positive social impact in that it ensures that instructors with poor driving records are not giving instruction in the operation of a motor vehicle. This amendment may affect driving schools in that the amendment may result in the loss of driving school instructors at an earlier point than under the current rules.

N.J.A.C. 13:23-5.1, 5.2(a) and 5.3 are proposed for amendment to clarify that a student must have a special learner's permit before the driving school can administer the State-approved written driver's examination and the State-approved eye examination. These amendments further the statutory intent that a school offering behind-the-wheel instruction to a student may also offer the State-approved written and eye examinations. In order to avoid the administration of the State-approved written and eye examinations to students not intending to complete behind-the-wheel instruction, this rule, as amended, will require that the student have already obtained the special learner's permit before the driving school may offer the State-approved written and eye examinations to the student. This amendment ensures the integrity of the instruction program and ensures that the students who profess their intention to obtain behind-the-wheel instruction actually obtain that instruction. It is not anticipated that these amendments will impose a burden on driving schools.

N.J.A.C. 13:23-5.10(c), as amended, will require that the records kept include a copy of the special learner's permit issued for such student, in addition to the other information listed in the rule. This amendment is consistent with the requirement in N.J.A.C. 13:23-5.3, as amended, that a special learner's permit already have been issued prior to administration of the State-approved written drivers' examination and State-approved eye examination. This rule, as amended, will have a positive social

impact by requiring a driving school to document that the student has obtained a special learner's permit prior to administration of the State-approved written drivers' examination and eye examination. It is not anticipated that this amendment will impose a burden on driving schools.

The proposed amendment of N.J.A.C. 13:23-5.14(a), which provides that the written driver examination shall be administered on paper examination forms derived from information electronically supplied by the Commission, reflects the current practice of supplying the examinations in the form of electronic media; the driving schools print out the examination forms as needed. It is not anticipated that this amendment will impose any burden on driving schools.

The proposed amendment of N.J.A.C. 13:23-5.14 to include the provision that a driving school shall utilize the test questions that comprise the State-approved written drivers' examination only in its administration of such examination, and shall not otherwise disseminate or reproduce the test questions in any manner for any other purpose, will have a positive social impact. This amendment ensures the integrity of the examination process by prohibiting students from gaining knowledge of the examination questions before the examination, thus giving certain students an unfair advantage. It is not anticipated that this amendment will impose a burden upon driving schools.

The proposed amendment of N.J.A.C. 13:23-5.15, to include the provision that a driving school shall utilize the eye charts that comprise the State-approved eye examination only in its administration of such examination, and shall not otherwise disseminate or reproduce the eye charts in any manner for any other purpose, will have a positive social impact, in that this amendment ensures the integrity of the eye

examination process by prohibiting students from gaining knowledge of the eye examination charts before the examination, thus giving certain students an unfair advantage. It is not anticipated that this amendment will impose a burden upon driving schools.

The rules proposed for readoption with amendments have no social impact upon the Commission.

Economic Impact

The rules proposed for readoption with amendments have an economic impact on the Commission in that its Business License Services Bureau is responsible for the processing of applications for the various types of licenses, endorsements and certificates provided for in N.J.A.C. 13:23. The Bureau is also responsible for monitoring driving school, driving school instructor and driving school authorized agent compliance with the provisions of N.J.S.A. 39:12-1 et seq., and N.J.A.C. 13:23 and for initiating administrative suspension proceedings against violators.

An initial license fee of \$250.00 and an annual renewal license fee of \$200.00 must be paid to the Commission by driving schools pursuant to N.J.S.A. 39:12-2.

The proposed amendment of N.J.A.C. 13:23-1.1 and 2.10(a), deleting the definition of "telephone answering service" and eliminating the use of telephone answering services, will have no economic impact upon the State, any regulated entity or the public.

As proposed for amendment, N.J.A.C. 13:23-2.10(b) will require that, if an office in a private residence has toilet facilities, those toilet facilities must also be separated from the living quarters of the private residence.

N.J.A.C. 13:23-2.13 provides that the fee specified in N.J.S.A. 39:3-10a must be paid to the Commission for the restoration of a driving school license that is suspended or revoked. That fee is presently \$100.00.

N.J.A.C. 13:23-2.15(a) requires that each initial or renewal application by a driving school for a branch office license be accompanied by the applicable fee specified in N.J.A.C. 13:23-2.3(a), that is, \$250.00 for an initial branch office license and \$200.00 for the annual renewal of a branch office license.

The proposed amendment of N.J.A.C. 13:23-2.19(a), which pertains to driving school recordkeeping requirements, corrects several grammatical errors in the rule and imposes a requirement that driving schools keep a copy of the service agreement will have no economic impact upon the State, any regulated entity or the public.

The proposed amendment of N.J.A.C. 13:23-2.22, pertaining to the requirement that a service agreement be executed, and that the service agreement provide information stating that no more than two hours of behind-the-wheel instruction may be provided to any one student within a 24-hour period and that the only occupants in the vehicle during behind-the-wheel instruction are to be the instructor and the student receiving instruction, will have no economic impact on the State or the public, and may have only minor economic impact on a driving school that does not currently use a

service agreement. Any such economic impact would be limited to paper stock for the service agreement.

The proposed amendment of N.J.A.C. 13:23-2.28, requiring inspection of special equipment upon request of the Chief Administrator, with 24 hours notice and at the place of business or branch office of the licensee, will have no economic impact upon the State, any regulated entity or the public.

The proposed amendment of N.J.A.C. 13:23-2.29, pertaining to signs permitted on instructional vehicles, making the roof sign optional as opposed to mandatory, and, in the alternative, requiring a two-sign minimum on the sides of the driving school vehicle, will have no economic impact upon the State, any regulated entity or the public.

N.J.A.C. 13:23-2.30, which prohibits false or deceptive advertising by driving schools, is expected to protect the economic interest of the public. It is not anticipated that the proposed amendment of N.J.A.C. 13:23-1.1, 2.10(a) and 2.30(d) will have an economic impact upon the State, driving schools, driving school instructors, driving school authorized agents or the public. The proposed amendments together effectively eliminate the use of a telephone answering service by driving schools at any time. Upon adoption of such amendments, telephone calls made to such businesses, regardless of what time of day they are made, will not be received at, call forwarded to or otherwise transferred to any location other than a driving school's principal place of business or licensed branch office(s) (rather than being answered at an offsite location by a telephone answering service or other person during nonbusiness hours).

The proposed amendment of N.J.A.C. 13:23-2.32, which clarifies that the only occupants permitted in a driving school vehicle during behind-the-wheel instruction are

the student receiving instruction and the instructor, will have no economic impact on the State, any regulated entity or the public.

An annual identification certificate fee of \$25.00 must be paid to the Commission by driving school authorized agents pursuant to N.J.A.C. 13:23-2.36(c).

The proposed amendment of N.J.A.C. 13:23-3.3 and 3.4 to require an applicant for an instructor's license to have had a license for three years, which license must also authorize the applicant to operate a motorcycle if the applicant seeks to instruct motorcycle operation will have no economic impact upon the State, any regulated entity or the public.

The proposed amendment of N.J.A.C. 13:23-3.9, to require completion of the six-hour or eight-hour National Safety Council Defensive Driving Program or a Commission-approved Motor Vehicle Defensive Driving Course prior to issuance of the initial instructor's license, will have no economic impact upon the State, any regulated entity or the public.

The amendment of N.J.A.C. 13:23-3.12, which lowers the point total at which the Chief Administrator may deny, suspend or revoke an instructor's license, from nine to seven, will have no economic impact upon the State, the public or driving schools. The amendment may have an economic impact upon licensed driving school instructors whose instructor licenses may be suspended at an earlier point than under the current rules, thus resulting in lost income.

N.J.A.C. 13:23-3.13 provides that the fee specified in N.J.S.A. 39:3-10a must be paid to the Commission for the restoration of a driving school instructor's license that is suspended or revoked. That fee is presently \$100.00.

It is not anticipated that the proposed amendment of N.J.A.C. 13:23-5.1, 5.2 and 5.3, requiring the student to provide the special learner's permit prior to the driving school administering the State-approved written and eye examinations will have an economic impact on the State, any regulated entity or the public.

N.J.A.C. 13:23-5.6 imposes license endorsement fees upon those driving schools that qualify to administer the State-approved written drivers' examination and/or the State-approved eye examination. The initial application by a driving school for approval to administer the State-approved written drivers' examination must be accompanied by a license endorsement fee of \$250.00; each renewal application for such endorsement must be accompanied by a license endorsement fee of \$200.00. The initial application by a driving school for approval to administer the State-approved eye examination must be accompanied by a license endorsement fee of \$250.00; each renewal application for such endorsement must be accompanied by a license endorsement fee of \$200.00. Those members of the public who choose to avail themselves of such driving school service(s) will presumably be charged a fee(s) by driving schools in connection therewith. N.J.A.C. 13:23-5.6 does not impose license endorsement fees upon driving schools that do not wish to administer written drivers' examinations or eye examinations. Those members of the public who choose not to avail themselves of such driving school services will not be affected economically by fees charged by driving schools in connection therewith.

The proposed amendment of N.J.A.C. 13:23-5.14(a), providing that the written driver examination shall be administered on paper examination forms derived from information electronically supplied by the Commission, may have a minor economic

impact on driving schools in that the driving school may incur additional costs for paper supply on which to print the examinations. There may be minor economic savings to the Commission in the form of decreased expenditures for paper supplies. It is not anticipated that this amendment will have any economic impact on the public.

The proposed amendment of N.J.A.C. 13:23-5.14 to include the provision that a driving school shall utilize the test questions that comprise the State-approved written drivers' examination only in its administration of such examination, and shall not otherwise disseminate or reproduce the test questions in any manner for any other purpose, is not anticipated to have any economic impact on the State, any regulated entity or the public.

The proposed amendment to N.J.A.C. 13:23-5.15, to include the provision that a driving school shall utilize the eye charts that comprise the State-approved eye examination only in its administration of such examination, and shall not otherwise disseminate or reproduce the eye charts in any manner for any other purpose, will not have any economic impact on the State, any regulated entity or the public.

N.J.A.C. 13:23-5.22 provides that the fee specified in N.J.S.A. 39:3-10a must be paid to the Commission for the restoration of a driving school license endorsement(s) that is suspended or revoked. That fee is presently \$100.00.

An initial license fee of \$75.00 and an annual renewal license fee of \$50.00 must be paid to the Commission by driving school instructors pursuant to N.J.S.A. 39:12-5.

Federal Standards Statement

A Federal standards analysis is not required because the rules that are the subject of the rules proposed for re adoption with amendments relate to the licensing and oversight of driving schools and driving school instructors, pursuant to N.J.S.A. 39:12-1 et seq., and are 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 re adoption with amendments.

Agriculture Industry Impact

The rules proposed for re adoption with amendments will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for re adoption with amendments continue to impose upon driving schools the reporting and recordkeeping requirements currently required by N.J.A.C. 13:23.

Approximately 241 entities are licensed by the Commission to engage in the business of a driving school. Approximately 45 licensed driving schools have been issued a license endorsement by the Commission that qualifies them to administer the State-approved written drivers' examination. Approximately 42 licensed driving schools have been issued a license endorsement by the Commission that qualifies them to administer the State-approved eye examination. Most, if not all, licensed driving

schools qualify as small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed amendment of N.J.A.C. 13:23-1.1, 2.10(a) and 2.30(d) impose a new compliance requirement upon driving school licensees. The proposed amendments together effectively eliminate the use of a telephone answering service by driving schools at any time. Upon adoption of such amendments, telephone calls made to such businesses, regardless of what time of day they are made, will not be received at, call forwarded to, or otherwise transferred to any location other than a driving school's principal place of business or licensed branch office(s) (rather than being answered at an offsite location by a telephone answering service or other person during nonbusiness hours).

The proposed amendment of N.J.A.C. 13:23-2.19 imposes a new recordkeeping requirement upon driving school licensees. As proposed for amendment, N.J.A.C. 13:23-2.19 specifies that a file shall be maintained by a driving school containing the student record and the service agreement between the driving school and every person receiving lessons, lectures, tutoring, instructions or other services relating to the acquisition of a license or endorsement to drive motor vehicles or motorcycles. N.J.A.C. 13:23-2.19 also specifies that the student record shall include the student's name, driver license number, instructor's name and the date, type and duration of all lessons, lectures, tutoring, instructions or other services relating to the acquisition of a license or endorsement to drive motor vehicles or motorcycles. N.J.A.C. 13:23-2.19 permits business records maintained in accordance with N.J.A.C. 13:23-2 to be electronically stored.

N.J.A.C. 13:23-2.22 pertains to driving school service agreements and the conditions to be set forth therein. All driving school service agreements must contain at a minimum all information contained in the sample service agreement set forth in the rule as amended. N.J.A.C. 13:23-2.22 also requires driving schools to provide to all students a statement of services to be rendered and fees to be charged, and requires driving schools to provide to all students a receipt for payments to the driving school. The proposed amendment of N.J.A.C. 13:23-2.22 imposes a new compliance requirement on driving schools. As amended, N.J.A.C. 13:23-2.22 makes the issuance of a service agreement mandatory, as opposed to the current language requiring only that the prospective students be advised of the availability of a service agreement. The rule, as amended, also requires that the service agreement be signed by a parent or legal guardian if the student is under 18 years of age. The Commission also proposes to amend N.J.A.C. 13:23-2.22 to require that the service agreement state that no more than two hours of behind-the-wheel instruction may be provided to any one student within a 24-hour period, and that the only occupants of a driving school vehicle being operated on a public road for purposes of the required six hours of behind the wheel instruction shall be the instructor and the student receiving instruction.

The proposed amendment of N.J.A.C. 13:23-2.28, pertaining to insurance and equipment requirements, imposes a new compliance requirement on driving schools. As amended, N.J.A.C. 13:23-2.28 provides that all vehicles used for instruction by driving schools are subject to inspection by the Chief Administrator or designee upon 24 hours notice and at the principal place of business or branch office of the licensee.

N.J.A.C. 13:23-2.29 pertains to signs displayed on driving school vehicles. The proposed amendment of N.J.A.C. 13:23-2.29 imposes a new compliance requirement on driving schools. As amended, the rule provides that every driving school vehicle, while being used for driving instruction and/or the transportation of driving school students to or from a Commission driver testing facility, may display a roof-mounted sign visible to both front and rear indicating "Student Driver." The sign must also indicate the business name and license number of the driving school unless an additional sign containing such information is used. This rule is also proposed for amendment to provide that, if no roof sign is displayed with the information set forth in subsection (a), the licensee must display two additional signs setting forth the driving school's business name and license number, which signs must be placed on the exterior of the front driver's side door of the vehicle and on the exterior of the front passenger's side door and may be permanent or removable.

The proposed amendment of N.J.A.C. 13:23-2.32 clarifies that the student receiving behind-the-wheel instruction and the instructor are the only permitted occupants of the driving school vehicle while the vehicle is being operated on a public road or highway. The proposed amendment imposes no compliance, reporting or recordkeeping requirements on small businesses licensed as driving schools.

All driving schools are subject to various recordkeeping provisions in N.J.A.C. 13:23-2. Since the general licensing provisions proposed for readoption and amendment contained in N.J.A.C. 13:23-2 have uniform application to all entities that engage in the business of driving instruction and are necessary for the safety and general welfare of the public safety and welfare, it is not feasible to exempt small

businesses from these requirements. There are no new costs or fees associated with the proposed amendments in N.J.A.C. 13:23-2. The rules proposed for readoption and amendments thereto will not require small businesses to engage additional professional services for compliance therewith, as the records are of a kind that would be maintained in the ordinary course of business, nor do they necessitate initial capital and annual expenditures for reporting or recordkeeping compliance by small businesses.

The proposed amendment of N.J.A.C. 13:23-3.3 and 3.4 to require an applicant for an instructor's license to have had a license for three years, which license must also authorize the applicant to operate a motorcycle if the applicant seeks to instruct motorcycle operation, imposes a new compliance requirement on small businesses licensed as driving schools.

The proposed amendment of N.J.A.C. 13:23-3.9, to require completion of the six-hour or eight-hour National Safety Council Defensive Driving Program or a Commission-approved Motor Vehicle Defensive Driving Course prior to issuance of the initial instructor's license, imposes a new compliance requirement on small businesses licensed as driving schools.

The amendment of N.J.A.C. 13:23-3.12, which lowers the point total at which the Chief Administrator may deny, suspend or revoke an instructor's license, from nine to seven, imposes a new compliance requirement on small businesses licensed as driving schools.

The rules contained in N.J.A.C. 13:23-3, pertaining to the licensing of driving school instructors, have uniform application to all entities that engage in the business of driving instruction. Since the general licensing provisions proposed for readoption and

amendment contained in N.J.A.C. 13:23-3 have uniform application to all entities that engage in the business of driving instruction and are necessary for the safety and general welfare of the public, it is not feasible to exempt small businesses from these requirements. There are no new costs or fees associated with the proposed amendments in N.J.A.C. 13:23-3. The rules proposed for readoption and amendments thereto will not require small businesses to engage additional professional services for compliance therewith, as the records are of a kind that would be maintained in the ordinary course of business, nor do they necessitate initial capital and annual expenditures for reporting or recordkeeping compliance by small businesses.

The rules contained in N.J.A.C. 13:23-4 regarding driving school classroom facilities and requirements have uniform application to driving school licensees with respect to the subject matter set forth therein except as to those licensees that have been grandfathered with regard to the minimum space per student requirement in N.J.A.C. 13:23-4.2(a)1. No basis exists upon which to exempt small businesses from the provisions of the subchapter. Since the general licensing provisions proposed for readoption contained in N.J.A.C. 13:23-4 have uniform application to all entities that engage in the business of driving instruction and are necessary for the safety and general welfare of the public, it is not feasible to exempt small businesses from these requirements.

N.J.A.C. 13:23-5.1, 5.2(a) and 5.3, as amended, impose a new compliance requirement on driving schools. The amended rule clarifies that a student must have a special learner's permit before the driving school can administer the State-approved written drivers' examination and the State-approved eye examination.

N.J.A.C. 13:23-5.10 imposes notice and recordkeeping requirements upon those driving schools that qualify to administer the State-approved written drivers' examination and/or the State-approved eye examination. The rule requires a driving school to maintain, for a period of at least four years, copies of all examinations administered by the driving school owner or by qualified supervising instructors employed by the school or by licensed driving instructors employed by the school. The records required to be maintained include the name of the student examined, the name of the person administering the examination, the date of the examination, the result of the examination and the serial number of the eye test machine on which the eye examination was administered. N.J.A.C. 13:23-5.10(c), as amended, will require that the records kept include a copy of the special learners' permit issued for such student, in addition to the other information listed in the rule. Failure to permit the audit or inspection of such records will subject the driving school to administrative suspension action.

N.J.A.C. 13:23-5.14 imposes document security requirements upon those driving schools that qualify to administer the State-approved written drivers' examination. A driving school that administers the State-approved written drivers' examination must secure all master test forms, all blank test forms and all blank New Jersey Driver Examination Certificates in a locked safe that is secured by a combination lock. The proposed amendment of N.J.A.C. 13:23-5.14(a), requiring that the written driver examination shall be administered on paper examination forms derived from information electronically supplied by the Commission, reflects the current practice of supplying the examinations in the form of electronic media; the driving schools print out the

examination forms as needed. The proposed rule amendment imposes no new compliance, reporting or recordkeeping requirements on small businesses licensed as driving schools.

The proposed amendment of N.J.A.C. 13:23-5.14 to add the provision that a driving school shall utilize the test questions that comprise the State-approved written drivers' examination only in its administration of such examination, and shall not otherwise disseminate or reproduce the test questions in any manner for any other purpose, imposes a new compliance requirement on small businesses licensed as driving schools.

The proposed amendment of N.J.A.C. 13:23-5.15 to add the provision that a driving school shall utilize the eye charts that comprise the State-approved eye examination only in its administration of such examination, and shall not otherwise disseminate or reproduce the eye charts in any manner for any other purpose, imposes a new compliance requirement on small businesses licensed as driving schools.

The rules contained in N.J.A.C. 13:23-5 regarding administration of the State-approved written drivers' examination and the State-approved eye examination have uniform application to driving school licensees with respect to the subject matter set forth therein. An exemption from the compliance and recordkeeping requirements set forth in the rules at N.J.A.C. 13:23-5 for small businesses that qualify to administer the State-approved written drivers' examination and/or the State-approved eye examination is not warranted since such an exemption would impair the Commission's ability to properly monitor the driver examinations administered by such driving schools. The rules proposed for readoption and amendments thereto will not require small

businesses to engage additional professional services for compliance therewith. The records are of a kind that would be 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.

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

The rules proposed for readoption and the proposed amendments thereto will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the regulation would evoke a change in the average costs associated with housing because the rules pertain to driving school requirements.

Smart Growth Development Impact

The rules proposed for readoption and the proposed amendments thereto will have an insignificant impact on smart growth and there is an extreme unlikelihood that the regulation 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 driving school requirements.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:23.

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

SUBCHAPTER 1. DEFINITIONS

13:23-1.1 Definitions

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

. . .

["Telephone answering service" means the location of a telephone used only for the purpose of answering telephone inquiries pertaining to the driving school services. A telephone answering service is not to be considered a branch office, and the location and/or address of a telephone answering service shall not be advertised if it differs from that of a licensed location.]

SUBCHAPTER 2. DRIVING SCHOOLS

13:23-2.10 Prohibited business locations

(a) A license shall not be issued for a driving school where the place of business is conducted from a liquor store, a bar, a grocery store, a restaurant, a tent, a temporary stand, a temporary address[,] or [through the exclusive facilities] **an address** of a telephone answering service.

(b) A license shall not be issued for a driving school where the place of business is conducted from a private residence unless the office, **including toilet facilities if made available to the public**, dedicated for driving school use is separated from the living quarters of the private residence and ingress to and egress from the office is attained by means of a separate entrance.

13:23-2.19 Recordkeeping requirements

(a) A file shall be maintained containing the student record and the service agreement[, if used,] between the driving school and every person receiving lessons, lectures, tutoring, instructions or other services relating to the acquisition of a license or endorsement [in the driving of] **to drive** motor vehicles or motorcycles.

(b) - (e) (No change.)

13:23-2.22 Statement of services to be rendered and fees to be charged; service agreements

(a) The driving school shall provide to all students a statement of services to be rendered and fees to be charged [and shall advise all students of the availability of] **and** a service agreement wherein the services to be rendered are specifically set forth.

The service agreement must be signed by a parent or legal guardian if the student is under 18 years of age.

(b) – (c) (No change.)

(d) All service agreements shall contain, at a minimum, all information contained in the following sample service agreement:

**SAMPLE
Service Agreement**

School Information

Name _____
 Address _____
 License # _____
 Phone # _____

Student Information

Name _____
 Address _____
 Permit/License #
 of Student _____
 Phone # _____

This agreement between (Driving School Name) and (Student Name) will include the following services:

Itemized Account Services	Total Cost to Student
Purchase Permit at Agency (Paid to School)	_____
Transportation to Law Knowledge and Vision Tests	_____
Road Test Services	_____

Instruction Services	# Lessons	# Min. Per Lesson	Cost Per Lesson	Total Cost of Lessons
Behind the Wheel	_____	_____	_____	_____
Classroom	_____	_____	_____	_____
Grand Total Cost to Student				\$_____

This agreement must show an itemized account of any and all services rendered. In order to cancel a lesson and reschedule that lesson, 24 hours advance notice is required or the student may be charged for that lesson. Cancellation must be made at the phone number for the school listed above. Appointments must be mutually agreed upon for date, time and location.

The number of minutes per lesson specified shall be the actual number of minutes of instruction provided to the student. **No more than two hours of behind-the-wheel instruction may be provided within a 24-hour period. The only occupants of a driving school vehicle, other than a motorcycle, that is being operated on a public road or highway for purposes of the required six hours of behind-the-wheel driving instruction shall be the driving school instructor and the student who is receiving behind-the-wheel driving instruction.**

The vehicle to be used for instruction has: automatic transmission; standard manual gear shift; and shall be equipped with, at minimum, a brake for both the instructor and the student.

No fees will be charged other than those specified above.

This constitutes the entire agreement between the school and the student, **or parent or legal guardian if the student is under 18 years of age**, and no verbal statements or promises will be recognized. The student, **or parent or legal guardian if the student is under 18 years of age**, may rescind this agreement within 72 hours of the first lesson and upon such rescission shall receive a refund for any lesson or service not conducted or provided.

Signature Requirement

Date _____

Student Signature
or Legal Guardian _____

Date _____

Instructor's Signature _____

13:23-2.28 Insurance and vehicle equipment requirements

(a) – (e) (No change.)

(f) All vehicles used for instruction by a driving school, except a motorcycle, shall be subject to inspection by the Chief Administrator or his or her designee, for compliance with the requirements of this section. Any

such inspection may be conducted at any time during regular business hours, upon 24 hours notice to the driving school. Such inspection shall take place at the driving school's principal place of business or approved branch office.

13:23-2.29 Sign(s) displayed on vehicles

(a) [Every] **Any** vehicle of a driving school, while being used for driving instruction and/or the transportation of driving school students to or from a Commission driver testing facility, [shall] **may** have conspicuously displayed thereon a roof-mounted sign visible to both front and rear indicating "Student Driver." [The] **Any such** sign shall also indicate the business name and license number of the driving school unless an additional sign containing such information is utilized in accordance with (b) below.

(b) [In lieu of including its business name and license number on the sign required by (a) above,] **If** a driving school [may] **does not display a roof-mounted sign conforming to the requirements of (a) above, a driving school must** display [an] **two** additional signs on its vehicles that set[s] forth such information. [This] **The** additional signs, if utilized, shall be placed on the exterior of the front driver's side door of the vehicle **and the front passenger's side door of the vehicle**, and may be permanent or removable.

(c) (No change.)

13:23-2.30 Advertising

(a) - (c) (No change.)

(d) A driving school may advertise only those telephone numbers that are listed for the school's principal place of business or licensed branch office(s). Telephone calls shall not be received at, call forwarded to[,], or otherwise transferred to any other location [during regular business hours].

13:23-2.32 Practice driving

(a) – (b) (No change.)

(c) The only occupants of a driving school vehicle, other than a motorcycle, that is being operated on a public road or highway for purposes of the required six hours of behind-the-wheel driving instruction shall be the driving school instructor and the student who is receiving behind-the-wheel driving instruction.

(d) No more than two hours of behind-the-wheel driving instruction may be provided to any one student within any 24-hour period.

SUBCHAPTER 3. DRIVING SCHOOL INSTRUCTORS

13:23-3.3 Standards for instructor's license issuance

An instructor's license shall not be issued to any person unless that person is the holder of a valid basic driver's license issued by the Commission pursuant to N.J.S.A. 39:3-10 or a valid driver's license issued by another state that is substantially similar to this State's basic driver's license, and has held such a license permitting him or her to drive for at least the past three consecutive years, and has complied with the other requirements contained in this subchapter. **If the applicant seeks a license to**

instruct motorcycle operation, the applicant must have held a license to operate a motorcycle for at least the past three consecutive years, and must have complied with the other requirements contained in this subchapter.

13:23-3.4 Application for instructor's license

(a) – (d) (No change.)

(e) An initial instructor's license shall not be issued unless the applicant is at least 21 years of age and has a minimum of three consecutive years driving experience with a basic driver's license issued by the Commission pursuant to N.J.S.A. 39:3-10 or a driver's license issued by another state that is substantially similar to this State's basic driver's license. **If the applicant seeks a license to instruct motorcycle operation, the applicant must have held a license to operate a motorcycle for at least the past three consecutive years, and must have complied with the other requirements contained in this subchapter.**

(f) (No change.)

13:23-3.9 Special tests

(a) – (b) (No change.)

(c) All instructors licensed after July 1, 1984 shall be required to complete the six-hour or eight-hour National Safety Council Defensive Driving Program or a Commission-approved Motor Vehicle Defensive Driving Course. Evidence of having completed such program shall be filed with the Chief Administrator. Instructors shall submit such evidence prior to [renewal] **issuance** of the initial instructor's license.

13:23-3.12 Revocation, suspension or refusal to issue or renew instructor's license

(a) (No change.)

(b) The Chief Administrator or his or her designee may deny, suspend[,] or revoke an instructor's license, or may refuse to issue an instructor's license or a renewal thereof, if such instructor or applicant has accumulated [nine] **seven** or more points by reason of convictions for violations of the Motor Vehicle Law or has been convicted of a violation of N.J.S.A. 39:4-50, 39:4-50.2[,] or 39:4-49.1, or has incurred a conviction or administrative determination of a substantially similar offense in any jurisdiction.

SUBCHAPTER 5. ADMINISTRATION OF STATE-APPROVED WRITTEN DRIVERS' EXAMINATIONS AND STATE-APPROVED EYE EXAMINATIONS BY DRIVING SCHOOLS

13:23-5.1 Purpose

Section 9 of P.L. 2001, [c.420] **c. 420** provides that a driving school licensed pursuant to N.J.S.A. 39:12-2 may be approved to conduct the State-approved written drivers' examination and the State-approved eye examination. The purpose of this subchapter is to establish an application and approval procedure for the issuance of license endorsements to driving schools that seek Commission approval to administer the State-approved written drivers' examination and/or the State-approved eye examination to their students [in conjunction with the students' applications] for **whom** special learners' permits **have been issued** in accordance with N.J.S.A. 39:3-13.1 et seq.

13:23-5.2 Scope

(a) This subchapter shall apply to licensed driving schools that administer the State-approved written drivers' examination and/or the State-approved eye examination to their students [in conjunction with applications] for **whom** special learners' permits **have been issued** in accordance with N.J.S.A. 39:3-13.1 et seq.

(b) (No change.)

(c) A licensed driving school shall not administer the State-approved written drivers' examination or the State-approved eye examination to its students [in conjunction with applications for] **who are holders of or are seeking to be issued** examination permits in accordance with N.J.S.A. 39:3-13.

13:23-5.3 Definitions

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

"State-approved eye examination" means the visual acuity and color perception tests administered to [applicants for] special learners' [permits] **permittees** in accordance with N.J.A.C. 13:21-8.9 through 8.11.

"State-approved written drivers' examination" means the 50-question written law knowledge test administered in English to [applicants for] special learners' [permits] **permittees** in accordance with N.J.A.C. 13:21-8.6.

13:23-5.10 Notice and recordkeeping requirements

(a) – (b) (No change.)

(c) Every driving school approved by the Commission to administer State-approved written drivers' examinations and/or State-approved eye examinations shall maintain copies of all such examinations administered by the driving school owner or by qualified supervising instructors employed by the school or licensed driving instructors employed by the school. Such copies shall be kept for at least four years and shall be available for audit and inspection by the Chief Administrator, the Director of the Division of Consumer Affairs, the Superintendent of the Division of State Police[,] or any person designated by them during regular business hours. The records shall include the name of the student examined, **a copy of the special learner's permit issued for such student**, the name of the person administering the examination(s), the date(s) of the examination(s), the result(s) of such examination(s)[,] and, in the case of the administration of the State-approved eye examination, the serial number of the eye test machine on which the eye examination was performed. Failure to permit the audit or inspection of such records shall subject the driving school to administrative suspension action pursuant to this subchapter.

13:23-5.14 State-approved written drivers' examination; forms; document security

(a) The State-approved written drivers' examination shall be conducted in accordance with N.J.A.C. 13:21-8.6 as such rule is administered by the Commission at its driver testing facilities; provided, however, that driving schools shall administer the State-approved written drivers' examination on paper examination forms **derived from**

information electronically supplied by the Commission. The State-approved written drivers' examination shall be administered by a driving school at its principal place of business, branch office or classroom facility[,] or at a secondary school where the driving school teaches the classroom portion of a high school driver education program pursuant to N.J.A.C. 13:23-2.23(a).

(b) (No change.)

(c) A driving school shall utilize the test questions that comprise the State-approved written drivers' examination only in its administration of such examination, and shall not otherwise disseminate or reproduce the test questions in any manner for any other purpose.

13:23-5.15 State-approved eye examination; equipment

(a) – (b) (No change.)

(c) A driving school shall utilize the eye charts that comprise the State-approved eye examination only in its administration of such examination, and shall not otherwise disseminate or reproduce the eye charts in any manner for any other purpose.