

The agency proposal follows:

Summary

The State Board of Polysomnography (Board) is proposing to amend N.J.A.C. 13:44L-5.4(g) to resolve an inconsistency between the existing rule and N.J.S.A. 45:14G-3 to clarify that polysomnographic technicians may read or analyze the data obtained from home-based unattended self-administered diagnostic sleep tests. N.J.S.A. 45:14G-3 exempts from the definition of polysomnography “home-based unattended self-administered diagnostic tests, provided that any test results are read and analyzed by a licensed polysomnographic technologist or polysomnographic technician or licensed physician.”

N.J.A.C. 13:44L-5.4(e) provides that an unattended diagnostic test is not considered to be the unlicensed practice of polysomnography, so long as: (1) the test is performed in a patient’s home; (2) the patient places any sensors on him or herself; and (3) the test is performed using three or fewer channels of data. N.J.A.C. 13:44L-5.4(g) requires any diagnostic test performed pursuant to N.J.A.C. 13:44L-5.4(e) be read or analyzed by a licensed polysomnographic technologist or a licensed physician. Because the statute permits polysomnographic technicians to read and analyze unattended diagnostic tests but the rule does not, the Board is proposing to amend N.J.A.C. 13:44L-5.4(g) to resolve this inconsistency. The Board proposes to include polysomnographic technicians among the professionals who are permitted to read or analyze the data obtained from home-based unattended self-administered diagnostic tests.

The Board has provided a 60-day comment period for this notice of proposal. Therefore, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Board believes that the proposed amendment will have a positive social impact because it will resolve an inconsistency between the rule and the statute and clarify that technicians may read and analyze home-based unattended self-administered diagnostic sleep tests.

Economic Impact

The Board believes that the proposed amendment may reduce the cost of care to the extent that providers of these tests will now know that they may hire technicians, as well as technologists and licensed physicians, to read or analyze the data obtained from home-based unattended self-administered diagnostic tests.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendment is governed by N.J.S.A. 45:14G-1 et seq., and is not subject to any Federal requirements or standards.

Jobs Impact

The Board does not believe that the proposed amendment will result in the creation or loss of jobs in the State.

Agriculture Industry Impact

The proposed amendment will have no impact on the agriculture industry in the State.

Regulatory Flexibility Statement

Since the approximately 284 polysomnographic technicians are individually licensed by the Board, they may be considered “small businesses” under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment does not impose any new reporting, recordkeeping, or compliance requirements. Therefore, no regulatory flexibility analysis is required.

Housing Affordability Impact Analysis

The proposed amendment will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rule would evoke a change in the average cost associated with housing because the proposed amendment resolves an inconsistency between the statute and the existing rule to clarify that polysomnographic technicians may read and analyze home-based unattended self-administered diagnostic sleep tests.

Smart Growth Development Impact Analysis

The proposed amendment will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rule 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 proposed amendment resolves an inconsistency between the statute and the existing rule to clarify that polysomnographic technicians may read and analyze home-based unattended self-administered diagnostic sleep tests.

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

SUBCHAPTER 5. PRACTICE REQUIREMENTS

13:44L-5.4 Unlicensed practice of polysomnography; exemptions

(a)-(f) (No change.)

(g) The result from a diagnostic test that is exempt from this chapter pursuant to (e) above shall be read or analyzed by a licensed polysomnographic technologist, **polysomnographic technician**, or a licensed physician.

TRANSPORTATION

(a)

MOTOR VEHICLE COMMISSION

**Compliance and Safety
Point System and Driving During Suspension
Penalties for Prohibited Use of Hand-held Wireless
Telephone and Electronic Communication
Devices While Driving**

Proposed Amendment: N.J.A.C. 13:19-10.1

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

Authority: N.J.S.A. 39:4-97.3 and 39:5-30.5.

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

Proposal Number: PRN 2015-060.

Submit comments July 31, 2015, to:

Kate Tasch
Administrative Practice Officer
Motor Vehicle Commission
225 East State Street
PO Box 162
Trenton, NJ 08666-0162
RuleComments@mvc.nj.gov

The agency proposal follows:

Summary

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

Effective July 1, 2014, the Legislature amended N.J.S.A. 39:4-97.3 (pursuant to P.L. 2013, c. 70) to mandate, among other changes, that three penalty points be assessed to an individual’s driving record for third or subsequent violations of that statute. This amendment to the Commission’s point assessment rule, N.J.A.C. 13:19-10.1, is proposed to conform with that legislation.

The proposed amendment revises the point assessment chart in N.J.A.C. 13:19-10.1 to include newly designated points for prohibited use of a wireless telephone or electronic communication device by an operator of a moving vehicle, as established by P.L. 2013, c. 70. In accordance with the amended statute, three motor vehicle points will be assessed against an individual for a third or subsequent violation of N.J.S.A. 39:4-97.3. The proposed amendment also states the limited “step

down” provision provided for in N.J.S.A. 39:4-97.3, allowing a second time offender whose first violation occurred more than 10 years prior to the second offense to be sentenced as a first time offender, and a third time offender whose second violation occurred more than 10 years prior to the third offense to be sentenced as a second time offender. The proposed amendment further clarifies that all previous violations of N.J.S.A. 39:4-97.3 are counted when determining the sentence for subsequent violations of the statute, regardless of whether the offender benefited from the step-down provision during the sentencing of a previous violation.

Social Impact

The Commission anticipates any social impact upon adoption of this proposed amendment to be negligible, as the amendment will apply only to those individuals who have three or more convictions under N.J.S.A. 39:4-97.3 and merely implements an existing statute.

Economic Impact

The economic impact of the proposed amendment is anticipated to be insignificant because the proposed amendment simply pertains to assessed motor vehicle points for a person convicted of a third or subsequent violation of prohibited use of a wireless telephone or electronic communication device by an operator of a moving vehicle.

Federal Standards Statement

The Code of Federal Regulations (CFR) was amended in 2010 to prohibit texting while driving in commercial vehicles and prescribe appropriate penalties for violating that rule. See 49 CFR 392.80 and 49 CFR 391.15(e), respectively. However, the CFR does not address texting for non-commercial drivers. Thus, no comparable Federal law or regulation exists, therefore, a Federal standards analysis is not applicable to this rulemaking.

Jobs Impact

The proposed amendment will have no impact on jobs because the amended rule simply pertains to assessed motor vehicle points for a person convicted of a third or subsequent violation of prohibited use of a wireless telephone or electronic communication device by an operator of a moving vehicle.

Agriculture Industry Impact

The proposed amendment will have no impact on the agriculture industry because the amended rule simply pertains to assessed motor vehicle points for a person convicted of a third or subsequent violation of prohibited use of a wireless telephone or electronic communication device by an operator of a moving vehicle.

Regulatory Flexibility Statement

The proposed amendment will have no impact on small businesses because the amended rule simply pertains to assessed motor vehicle points for a person convicted of a third or subsequent violation of prohibited use of a wireless telephone or electronic communication device by an operator of a moving vehicle. Thus, a regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Housing Affordability Impact Analysis

The proposed amendment will have no impact on housing affordability and would not evoke a change in the average cost associated with housing because the proposed amendment simply pertains to assessed motor vehicle points for a person convicted of a third or subsequent violation of prohibited use of a wireless telephone or electronic communication device by an operator of a moving vehicle.

Smart Growth Development Impact Analysis

The proposed amendment will have no impact on smart growth development and would not 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 proposed amendment simply pertains to assessed motor vehicle points for a person convicted of a third or subsequent violation of prohibited use of

a wireless telephone or electronic communication device by an operator of a moving vehicle.

Full text of the proposal follows (additions indicated in italicized boldface *thus*):

SUBCHAPTER 10. POINT SYSTEM AND DRIVING DURING SUSPENSION

13:19-10.1 Point assessment

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

<u>Section Number</u>	<u>Offense</u>	<u>Points</u>
37. <i>N.J.S.A. 39:4-97.3</i>	<i>Prohibited use of wireless telephone or electronic communication device while driving, third or subsequent violation (No points will be assessed for the third violation if it occurs more than 10 years after the second violation)</i>	3

Recodify existing 37.-54. as 38.-55. (No change in text.)

(b) *The treatment of a violation under the “step down” sentencing provision in N.J.S.A. 39:4-97.3 is solely for the purposes of calculating penalties at sentencing for a second time offender whose first violation occurred more than 10 years prior to the second offense, or a third time offender whose second violation occurred more than 10 years prior to the third offense. Penalties for an offense committed under N.J.S.A. 39:4-97.3 will be assessed based on the total number of N.J.S.A. 39:4-97.3 violations for which an individual has been convicted. In cases where a third time offender’s second offense occurred more than 10 years prior to the third offense, no motor vehicle points shall be assessed. Third offender status will apply where fewer than 10 years have elapsed between the second and third offenses, even if more than 10 years have elapsed between the first and second offenses. Points shall be assessed for all convictions subsequent to the third conviction even if the individual previously benefited from the limited step down provision for a previous conviction.*

TREASURY — GENERAL

(a)

**DIVISION OF PENSIONS AND BENEFITS
TEACHERS’ PENSION AND ANNUITY FUND
Teachers’ Pension and Annuity Fund**

Proposed Readoption and Amendments: N.J.A.C. 17:3

Proposed Repeal and New Rule: N.J.A.C. 17:3-6.11

Proposed Repeals: N.J.A.C. 17:3-1.8 and 6.15

Proposed New Rule: N.J.A.C. 17:3-4.14

Authorized By: Teachers’ Pension and Annuity Fund Board of Trustees, Mary Ellen Rathbun, Secretary.

Authority: N.J.S.A. 18A:66-56.

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

Proposal Number: PRN 2015-055.

Submit comments by July 31, 2015, to:

Susanne Culliton
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The agency proposal follows: