

“Authorized signatory” is an employee of the applicant who the applying entity has indicated, in writing, may transact business on its behalf, including applying for an Entity Identification Number.

“Business organizational documents” are documents verifying the identity of the applying entity and the legitimacy of its existence. Such documents include, but are not be limited to, proof of Federal Employer Identification Number (FEIN) from the Internal Revenue Service; Certificate of Incorporation, Formation or Trade Name, as applicable; a Business Registration Certificate, and a Certificate of Authority from a state that displays the state tax identification number.

“Chief Administrator” means the Chief Administrator of the New Jersey Motor Vehicle Commission.

“Commission” means the New Jersey Motor Vehicle Commission established by section 4 of P.L. 2003, c. 13 (N.J.S.A. 39:2A-4).

“Entity” means any form of business, government, or organization, including, but not limited to, a corporation, limited liability corporation, partnership, limited partnership, sole proprietorship, trust, non-profit, or not-for-profit that is legally registered to conduct business in New Jersey, and any local, state, or Federal agency, government, or governmental department, but does not mean an individual.

“Entity Identification Number” is an alpha-numeric identifier, sometimes referred to as a “Corporation Code” or “MVC Issued Identification Number for an entity,” assigned to an approved entity under which it may identify itself and conduct business with the Commission in the State of New Jersey.

“Person” means an individual or entity, including, but not limited to, a corporation, limited liability corporation, partnership, limited partnership, sole proprietorship, trust, non-profit, or not-for-profit that is legally registered to conduct business in New Jersey, and any local, state, or Federal agency, government, or governmental departments.

13:21-25.3 Requirements for issuance of an Entity Identification Number

(a) Every applicant seeking an Entity Identification Number shall submit an application for approval by the Chief Administrator. Only upon submission of a properly completed application, and thereupon receiving notice of approval, shall an applicant be deemed an approved entity and receive an Entity Identification Number.

(b) The application shall include, but not be limited to, the following information:

1. A completed and executed Corcode Request Form (Form BA-8);
2. The following business organizational documents:
 - i. A document from the Internal Revenue Service displaying the entity’s Federal Employer Identification Number (FEIN);
 - ii. Certificate of Formation, Incorporation, or Trade Name, as applicable;
 - iii. A Business Registration Certificate;
 - iv. A Certificate of Authority from any state which displays the state tax identification number; and
 - v. Any other documentation the Chief Administrator deems necessary to verify the identity and legitimate existence of the applicant;
3. An original letter, or certified copy, of authorization or power of attorney, or, for licensed motor vehicle dealers, an authorized signatory card, indicating that the person applying for the Entity Identification Number is an authorized signatory of the entity; and
4. If the applicant is an out-of-State entity, a color photocopy of the driver’s license or other proof of photo identification, mailing address, fax number, and telephone number of the authorized signatory submitting the application on behalf of the entity. The authorized signatory must accept notices and other communications from and respond to inquiries from the Commission and its representatives concerning the application.

13:21-25.4 Number of Entity Identification Numbers allowed for each entity

(a) Approved entities may hold only one Entity Identification Number for each Federal Employer Identification Number (FEIN) assigned to the entity. If an entity has multiple New Jersey Tax Identification Numbers for a single FEIN, the entity may receive an Entity Identification Number for each New Jersey Tax Identification Number corresponding to a single FEIN.

(b) Entities that were previously issued two or more Entity Identification Numbers under a single FEIN and do not operate under separate State Tax Identification Numbers will receive notification from the Commission of consolidation into one Entity Identification Number.

13:21-25.5 Change of ownership, contact information or entity information

(a) It is the responsibility of each entity to update the contact and authorization information for the entity by submitting a new Corcode Request Form (Form BA-8) with the necessary proof of the change. Upon receipt and approval, the Commission will amend the entity’s information.

(b) If the information being amended includes a different FEIN, the entity will be assigned a new Entity Identification Number.

13:21-25.6 Grounds for rejection or revocation

(a) The Chief Administrator or his or her designee may deny, suspend, revoke, or refuse to issue an Entity Identification Number for any of the following reasons:

1. Failure to comply with the requirements of this subchapter;
2. Upon notification that the entity has a suspended status with the New Jersey Department of the Treasury, Division of Revenue and Enterprise Services, Status and Certification Unit;
3. The entity records with the New Jersey Department of the Treasury, Division of Revenue and Enterprise Services have either been cancelled or purged;
4. The entity is not currently registered with the New Jersey Department of the Treasury, Division of Revenue and Enterprise Services to do business in New Jersey;
5. The applicant or approved entity made a willful misrepresentation or omission in the application or any other documentation provided to the Commission to obtain an Entity Identification Number or to complete a motor vehicle transaction using the assigned Entity Identification Number; or
6. Violations of any statute or regulation.

13:21-25.7 Inactivation of an Entity Identification Number

(a) The Commission may inactivate any Entity Identification Number that has not been used for three or more years. Prior to inactivation, the Commission will notify the entity of its intent to inactivate the number. To prevent the Entity Identification Number from inactivation, the entity must respond to the notification by written request within 90 days of the date of notification to keep the number active.

(b) An entity assigned an Entity Identification Number that becomes inactivated may re-activate that number by submitting an application for the Entity Identification Number to the Commission, pursuant to this subchapter.

(a)

MOTOR VEHICLE COMMISSION

Driving Schools

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

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

Authority: N.J.S.A. 39:2-3, 39:2A-28, and 39:12-4.

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

Proposal Number: PRN 2017-056.

Submit comments by June 16, 2017, to:

Kate Tasch, Administrative Practice Officer
 Regulatory and Legislative Affairs
 Motor Vehicle Commission
 225 East State Street
 PO Box 160
 Trenton, NJ 08666-0160
 or via e-mail to: rulecomments@mvc.nj.gov

The agency proposal follows:

Summary

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

The Motor Vehicle Commission (hereinafter "the Commission") proposes to readopt with amendments the provisions of N.J.A.C. 13:23, Driving Schools, which was scheduled to expire on May 3, 2017, pursuant to N.J.S.A. 52:14B-5.1. As the Motor Vehicle Commission submitted this notice of proposal to the Office of Administrative Law prior to that date the expiration date is extended 180 days to October 30, 2017, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Commission has reviewed these rules pursuant to Executive Order No. 66 (1978) and has found them to be necessary and required for the purpose for which they were promulgated.

This chapter implements 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. This chapter implements 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 and setting forth guidelines for transactions between a driving school and persons seeking driving instruction.

N.J.A.C. 13:23 contains five subchapters. The rules proposed for readoption with amendments 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.

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. 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) 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 motor vehicles 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. Proposed new (c) and (d) provide that licensed driving schools shall maintain and provide records to the Commission of the number of behind-the-wheel instruction hours

provided by an instructor for classification as a qualified supervising instructor upon the request of the instructor.

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. 13:23-2.23 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 section 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 section also provides 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).

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. Subsection (c) requires 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. Subsection (d) includes 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 section. 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 sets forth standards for the issuance of a driving school instructor's license.

N.J.A.C. 13:23-3.4 specifies the application procedure for licensure as a driving school instructor. 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. The rule also 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 further 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.

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. This section makes 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 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. 13:23-5.3 sets forth the definitions of "State-approved eye examination" and "State-approved written drivers' examination" as those terms are used in the subchapter.

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. 13:23-5.11 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 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) includes 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. N.J.A.C. 13:23-5.15(c) includes 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 rules.

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 proposed for readoption with amendments benefit the public by promoting fairness in dealings between a driving school, its driving instructors, and prospective students. A driving instructor will be ensured of receiving proper credit for the number of behind-the-wheel instruction hours provided under the proposed amendments. 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 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. 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. 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. 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).

N.J.A.C. 13:23-3.12, which states the point total at which the Chief Administrator may deny, suspend, or revoke an instructor's license, will have no economic impact upon the State, the public, or driving schools. The requirement may have an economic impact upon licensed driving school instructors whose instructor licenses may be suspended, 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.

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.

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.

The proposed amendments ensure that driving schools report to the Commission the behind-the-wheel hourly instruction provided by instructors at the instructor's request. This facilitates the Commission's ability to issue a timely determination of a driving instructor's classification as a qualified supervising instructor in the processing of applications for new driving school licenses.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption 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 readoption with amendments.

Agriculture Industry Impact

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

Regulatory Flexibility Analysis

The rules proposed for readoption 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.

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. The proposed amendments impose upon driving schools a minor additional reporting and recordkeeping requirement currently required by N.J.A.C. 13:23. Presently, driving schools are required by N.J.A.C. 13:23-2.19(b) to maintain in the student record the instructor's name in addition to the duration and type of all lessons provided. The amendments require that the driving schools also maintain a record for the instructor of the number of behind-the-wheel hours of instruction provided. The amendments also require that driving schools report the instructor's behind-the-wheel instructional hours to the Commission at the request of the instructor. This amendment does not require the driving schools to obtain any additional information than they are already collecting for the student records.

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. 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. N.J.A.C. 13:23-2.22 also imposes a compliance requirement on driving schools. N.J.A.C. 13:23-2.22 makes the issuance of a service agreement mandatory. The rule also requires that the service agreement be signed by a parent or legal guardian if the student is under 18 years of age. N.J.A.C. 13:23-2.22 further requires 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.

N.J.A.C. 13:23-2.28, pertaining to insurance and equipment requirements, imposes a compliance requirement on driving schools. 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 and imposes a compliance requirement on driving schools. 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 also provides 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. 13:23-2.32 states 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 rules proposed for readoption impose 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 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. The rules proposed for readoption 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.

N.J.A.C. 13:23-3.3 and 3.4 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.

N.J.A.C. 13:23-3.9 requires 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.

N.J.A.C. 13:23-3.12, which states the point total at which the Chief Administrator may deny, suspend, or revoke an instructor's license, imposes a 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 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. The rules proposed for readoption 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 impose compliance requirements on driving schools. The rules clarify 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), requires 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. N.J.A.C. 13:23-5.14(a) further requires that the written driver's 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.

N.J.A.C. 13:23-5.14 also includes a 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 compliance requirement on small businesses licensed as driving schools.

N.J.A.C. 13:23-5.15 contains a 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 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 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.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have no impact on the affordability of housing and there is an extreme unlikelihood that the rules would evoke a change in average costs associated with housing because they pertain solely to the licensing and oversight of driving schools and instructors.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will have no impact on smart growth and are extremely unlikely to 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 solely to the licensing and oversight of motor vehicle driving schools.

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 2. DRIVING SCHOOLS

13:23-2.19 Recordkeeping **and reporting** requirements

(a)-(b) (No change.)

(c) For every instructor, a file shall be maintained containing the instructor record, which shall include the instructor's name, license number, dates of employment, position held, and the number of behind-the-wheel hours of instruction provided while employed by the driving school.

(d) Upon receipt of written request by the instructor, the driving school shall provide to the Commission, within 30 days, the following information on company letterhead: the driving school name and address; the driving school license number; the instructor's name and license number; the dates of employment of the instructor; the position held by instructor; the number of behind-the-wheel hours of instruction provided by the instructor while in the employ of the driving school; and the name, title, and signature of the authorized officer of the driving school providing the information.

Recodify existing (c)-(e) as (e)-(g) (No change in text.)

(a)

**MOTOR VEHICLE COMMISSION
REGULATORY AFFAIRS (COMMERCIAL
PASSENGER TRANSPORTATION)**

Zone of Rate Freedom

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

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 48:2-21, and 48:4-2.20 through 2.25.

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

Proposal Number: PRN 2017-055.

Submit written comments by June 16, 2017, to:

Kate Tasch, APO
Attention: Regulatory and Legislative Affairs
New Jersey Motor Vehicle Commission
225 East State Street
PO Box 162
Trenton, NJ 08666-0162
or via e-mail to rulecomments@mvc.nj.gov

The agency proposal follows:

Summary

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

The Motor Vehicle Commission (hereinafter "the Commission") proposes to readopt with amendments N.J.A.C. 16:53D, Zone of Rate Freedom, which was scheduled to expire on September 21, 2017, pursuant to N.J.S.A. 52:14B-5.1. As the Motor Vehicle Commission submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date is extended 180 days to March 20, 2018, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Commission has reviewed the rules and has determined that they are necessary, reasonable, and proper for the purpose for which they were promulgated.

The Commission is statutorily obligated to establish, for each calendar year, a Zone of Rate Freedom (ZORF) for regular route private autobus carriers providing service within the State. See N.J.S.A. 48:4-2.21, as amended by P.L. 2003, c. 13, § 98. See also N.J.S.A. 48:4-2.20 through 2.25. The ZORF is the maximum permitted percentage increase adjustment and the maximum permitted percentage decrease adjustment that a private autobus carrier may make to its rate, fare, or charge for intrastate regular route service without first having to petition the Commission for approval. The maximum ZORF percentage amounts for increases and decreases take into account the varying fares currently charged by intrastate regular route private autobus operators. In accordance with N.J.S.A. 48:4-2.21, relevant factors that must be considered by the Commission in setting the ZORF percentages include, but are not limited to, the availability of alternative means of transportation; fluctuations in operational bus costs; and rates, fares, and

charges existing in the bus industry and in other related transportation services, as well as the interests of the users of bus service in this State.

As long as the autobus carrier's fare adjustments remain within the designated ZORF percentage range, the carrier need only give notice to the Commission and the bus-riding public of the rate, fare, or charge adjustment. However, should a regular route private autobus carrier need a percentage fare adjustment greater than that allowed by the ZORF, the carrier will be required to comply with the petitioning procedures set forth in N.J.S.A. 48:2-21 and 48:2-21.1.

The ZORF percentage limitations set forth in N.J.A.C. 16:53D-1.1 apply only to regular route private autobus carriers. N.J.S.A. 48:4-2.25 authorizes the Commission to exempt rates, fares, and charges for regular route in the nature of special (casino bus operations), charter, and special autobus operations from this chapter, upon determination of the Chief Administrator.

N.J.A.C. 16:53D-1.1 consists of general provisions and standards that regular route private autobus carriers must follow, and specifies the maximum ZORF percentages for rate, fare, or charge increases and decreases for the calendar year and exempts student, senior, transfer, interline, and other unique rates, fares, or charges for a regular route from the requirements of this chapter provided they remain less than the current or adjusted regular route fare applicable to the route. The Commission proposes to amend N.J.A.C. 16:53D-1.1, given the Commission's statutory obligation to establish, for each calendar year, a ZORF for regular route private autobus carriers providing service within the State, by deleting references to 2016 and inserting 2017. However, no amendment is proposed at this time to the percentage limitations that are currently 10 percent.

N.J.A.C. 16:53D-1.2 sets forth the requirements with which regular route private autobus carriers must comply if they seek a fare adjustment pursuant to the ZORF.

N.J.A.C. 16:53D-1.3 sets forth the types and categories of autobus operations that are exempt from the ZORF requirements.

Social Impact

The rules proposed for readoption with amendments have a positive social impact in that they enable private autobus carriers to increase or decrease regular route fares marginally within established limits without having to undertake costly and time-consuming formal administrative proceedings. Since the ZORF fare adjustment mechanism allows autobus carriers to effectuate minor changes to their regular route fares without the necessity of making a complex, formal tariff filing with the Commission, the ZORF fare adjustment procedures result in cost and time savings for both the regulated industry and the Commission. The ZORF-controlled fare increases also encourage autobus carriers to invest in new buses and in the servicing and maintenance of their existing fleet of buses, while at the same time protecting the public from unreasonable fare increases. The ZORF percentage limit for fare decreases discourages predatory fare-reducing tactics designed to reduce or eliminate competition. In sum, the ZORF fare adjustment mechanism has a positive impact upon the autobus industry and the Commission while also benefiting the public interest.

Economic Impact

The rules proposed for readoption with amendments offer privately owned autobus companies a measure of flexibility in effectuating marginal adjustments to their regular route fares. Such companies can avoid the rate increase petition process set forth in N.J.S.A. 48:2-21 and 48:2-21.1, which is costly and time consuming, provided the fare adjustment that is sought remains within the percentage limits set forth in the ZORF rules. Although the ZORF provides a mechanism for regular route private autobus carriers to increase rates, fares, or charges, any adverse impact of such fare increases upon the public will be mitigated by the percentage limitations set forth in N.J.A.C. 16:53D-1.1. The ZORF percentage limitations are intended to ensure that only reasonable rate, fare, or charge increases will occur. The exemption of charter, casino, and special bus operations from the ZORF rules will have no adverse economic impact on the public because the competitive nature of these markets due in large part to their elastic demand, protects consumers from unreasonable rate, fare, or charge adjustments.