

**Take notice** that the Division of Gaming Enforcement shall, pursuant to N.J.S.A. 5:12-69.e, conduct an experiment for the purpose of determining whether a new procedure for changing decks of cards used in the game of poker is acceptable.

The experiment will be conducted in accordance with temporary rules, which shall be available in each casino participating in the experiment, and shall also be available from the Division upon request.

The test would allow a casino licensee which wishes to participate in the experiment, and which meets all the terms and conditions established by the Division, to implement the new game in its casino.

This experiment could begin on or after September 9, 2014, and continue for a maximum of 270 days from that date, unless otherwise terminated by the Division or any of the participating casino licensees prior to that time, pursuant to the terms and conditions of the experiment.

Should the temporary amendments prove successful, in the judgment of the Division, the Division will propose them for final adoption, in accordance with the public notice and comment requirements of the Administrative Procedure Act and N.J.A.C. 1:30.

## TRANSPORTATION

### (a)

#### MOTOR VEHICLE COMMISSION

##### Electronic Lien and Titling Program

##### Adopted New Rules: N.J.A.C. 13:21-3

Proposed: August 5, 2013, at 45 N.J.R. 1900(a).

Adopted: July 21, 2014, by the Motor Vehicle Commission, Raymond P Martinez, Chairman.

Filed: August 5, 2014, as R.2014 d.136, **with substantial and technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A 39:10-1 et seq.; 39:2-3.8; and 39:2-3.3 et seq.

Effective Date: September 2, 2014.

Expiration Date: December 4, 2020.

#### Summary of Public Comments and Agency Responses:

The written comments received by the Motor Vehicle Commission (Commission) regarding its August 5, 2013, notice of proposal at 45 N.J.R. 1900(a) are available for inspection at the Office of the Chief Administrator, Regulatory and Legislative Affairs, Motor Vehicle Commission, 225 East State Street, 9th Floor, Trenton, New Jersey.

The Motor Vehicle Commission received the following written comments from the New Jersey Manufactured Housing Association (NJMHA), Decision Dynamics, Inc. (DDI), PDP Group, Inc. (PDP Group), Assurant, and Dealertrack Technologies (DT).

1. COMMENT: Assurant commented that “the proposed rules are well thought out and designed to allow all ‘providers’ equal access to the Motor Vehicle Commission’s electronic lien and titling system while assuring the confidentiality of consumer and lender data.”

RESPONSE: The Commission thanks the commenter for its support.

2. COMMENT: PDP Group commented that the Electronic Lien and Titling Program will have a positive economic effect as a result of fewer paper titles and reduction in postage for mailing paper titles.

RESPONSE: The Commission appreciates this comment from PDP Group, but cannot wholly agree. Though the titles will remain electronic until the security interest has been satisfied, upon satisfaction a paper title will be printed and mailed to the owner per current New Jersey statute, N.J.S.A. 39:10-10.

3. COMMENT: PDP Group and DT commented that the Commission should recognize, as part of the social impact, that the Electronic Lien and Titling Program will increase fraud prevention because electronic titles reduce the opportunity for fraud.

RESPONSE: The Commission appreciates the commenters’ support and agrees that the potential for reduction in fraud is an added benefit of the Electronic Lien and Titling Program.

4. COMMENT: DT suggested that the Commission change the terminology from “provider” to “service provider” as the latter is the terminology currently used in other electronic lien and titling programs.

RESPONSE: The Commission agrees with this comment and has revised the new rules throughout to replace the term “provider” with the phrase “service provider.”

5. COMMENT: DT suggested that the Commission remove the phrase “and or participating lien holder” from N.J.A.C. 13:21-3.2, which would effectively delegate responsibility for the review and approval of participating lien holders to Electronic Lien and Titling Program service providers.

RESPONSE: The review and approval of participating lien holders pertains to the security and effectiveness of the entire program, thus the Commission will retain the ability to review and approve participating lien holders. However, it is noted that service providers will be responsible for “taking on” participating lien holders and referring them to the Commission for review and approval. In that sense, service providers will have the ability to choose which lien holders they refer to the Commission.

6. COMMENT: Assurant, PDP Group, DT, and DDI commented that the information required on electronic titles in N.J.A.C. 13:21-3.6 should be the same as that required on paper titles, instead of setting forth each of the requirements individually. NJMHA also commented that electronic titles for manufactured homes should be required to contain the same information that is required on paper titles for manufactured homes.

RESPONSE: The information requirements for electronic titles submitted in the proposed new rules reflected such information as is required for a Certificate of Origin under N.J.S.A. 39:10-8. Based on the comments submitted and an independent review of the applicable statutes, the Commission acknowledges that this portion of the proposed new rules was proposed in error. As the requirements for paper titles, which is what the Commission intended to include, expand beyond what was originally proposed, correction of the error cannot be achieved upon adoption. The Commission intends to propose correct language in a later notice of proposal.

7. COMMENT: PDP Group and DT requested that under N.J.A.C. 13:21-3.3, the definitions of “applicant lien holder,” “participating lien holder,” and “secured party” be consolidated into one definition defined as a financial institution, bank, credit union, finance company, or an established lender.

RESPONSE: The Commission has removed the term and definition of “applicant lien holder” from N.J.A.C. 13:21-3.3, but retained the definition of and reference to “participating lien holder” and “secured party” in this chapter. “Participating lien holder” allows for differentiation between secured parties approved for participation in the Electronic Lien and Titling Program and those who are not. The definition of “secured party” remains in the rule as it is directly incorporated from the definition of “secured party” found at N.J.S.A. 39:10-2. Removal of the term “applicant lien holder” has no impact on the scope or applicability of the rule as the term is not used in the chapter.

8. COMMENT: PDP Group and DT requested that the Commission remove the term “applicant” from N.J.A.C. 13:21-3.5(a), as it has not been defined in the rulemaking and could cause confusion with “applicant lien holder.” DT further suggested that the Commission substitute the term “entity” for applicant.

RESPONSE: The Commission has removed the term “applicant lien holder” from N.J.A.C. 13:21-3.3, as discussed in the Response to Comment 7 above, therefore, the term “applicant,” as commonly defined, when used in the context of seeking to become service providers, should no longer create confusion in the rule. The term “applicant” provides clarity to the description of the status of service providers specifically differentiating between those seeking to participate and those approved to participate in the Electronic Lien and Titling Program.

9. COMMENT: PDP Group, DT, and DDI inquired as to the specific requirements of the “formal business plan” required to be submitted by service providers pursuant to N.J.A.C. 13:21-3.5(a)4. DT indicated it was concerned that certain intellectual property may be subject to public record requirements if such information is required under the paragraph, while PDP Group commented that service providers may be hesitant to communicate their marketing methods. PDP Group suggested that the

Commission substitute a plan setting forth how service providers service other jurisdictions, each service provider's security plan and each service provider's description of its capability to provide electronic lien and titling services in New Jersey instead of a formal business plan. DT suggested proof of industry experience as a substitute to the requirement of a formal business plan, while DDI suggested the Commission substitute "a business development plan for New Jersey's ELT program" in lieu of a formal business plan.

RESPONSE: The contents of the "formal business plan" required pursuant to N.J.A.C. 13:21-3.5(a)4 are expected to provide information that will demonstrate the applicant service provider's capability to successfully participate in the Electronic Lien and Titling Program. The Commission acknowledges the concern of the commenter regarding portions of the submission that may be proprietary. Portions of a formal business plan submitted to the Commission that are proprietary commercial or financial information would not be released to the public and their disclosure is prohibited under the New Jersey Open Public Records Act pursuant to N.J.S.A. 47:1A-1 et seq.

10. COMMENT: PDP Group commented that the rules seem to imply that security interests will take place electronically at the time of sale and inquired as to whether it is the intent of N.J.A.C. 13:21-3.7(a) to allow for direct loans from banks and/or financial institutions to be filed electronically. The commenter stated that it "agree[s] that liens could and should be filed electronically, the use of the term 'certificate of origin' infers that the origination of the lien is going to be electronic."

RESPONSE: The Commission will allow participating service providers to electronically transmit notification of the creation of a security interest in a motor vehicle at the time of sale as is now permitted by submitting paper notifications. This subsection is intended to allow electronic notifications of security interests that are currently accepted with paper titles. Upon further review, the Commission notes the reference to "certificate of origin" in N.J.A.C. 13:21-3.6(a)1 may suggest to some that the Electronic Lien and Titling Program will issue electronic certificates of origin, which it will not. As stated in N.J.A.C. 13:21-3.6(a), the program is for the "issuance and use of electronic titles." To alleviate any confusion, reference to "certificate of origin" has been removed from N.J.A.C. 13:21-3.6(a)1 and 3.7(a).

11. COMMENT: NJMHA requested that the Commission include a definition of "manufactured home" in the rule that would expand upon the definition of manufactured home found at N.J.S.A. 52:27D-121 by adding: "'Manufactured home' also means and includes any unit of housing manufactured before the effective date of the standards promulgated by the secretary or, as appropriate, by the commissioner, but which otherwise meets the criteria set forth in this subsection."

RESPONSE: The Commission will continue to utilize the definition of manufactured home found at N.J.S.A. 52:27D-121 and declines to expand on that definition as suggested by the commenter. For the purposes of the Electronic Lien and Titling Program, the definition of manufactured home found at N.J.S.A. 52:27D-121 and the definition of a motor vehicle found at N.J.S.A. 39:1-1 are sufficient to support the Commission's intent to include all manufactured homes, which meet the criteria described in the definition above, in the Electronic Lien and Titling Program.

12. COMMENT: Assurant requested that the Commission add "email address" instead of, or as an alternative to, a fax number for communication with the Commission pursuant to N.J.A.C. 13:21-3.5(a)2.

RESPONSE: The Commission agrees with this comment and has added "email address" to the rule as an additional medium for contacting the Commission pursuant to N.J.A.C. 13:21-3.5(a)2.

13. COMMENT: Assurant and DDI requested that the Commission provide for the owner to designate another person, place, or entity to receive the paper title created subsequent to the satisfaction of a security interest under N.J.A.C. 13:21-3.8.

RESPONSE: The Electronic Lien and Titling Program is not intended to change the Commission's current policy to issue titles, upon satisfaction of a security interest, exclusively to the registered owner(s), as required by law, thus, the Commission believes it is not appropriate to change the proposed language.

14. COMMENT: Assurant requested that the Commission provide for an electronic error correction method to correct errors on electronic titles

created pursuant to the Electronic Lien and Titling Program as set forth by this rulemaking.

RESPONSE: The Commission notes that provision for error correction is set forth at N.J.S.A. 39:10-16 and that the Electronic Lien and Titling Program will allow for electronic error correction by service providers.

15. COMMENT: Assurant requested that the Commission revise N.J.A.C. 13:21-3.8 to allow for the issuance of paper titles to a participating lien holder, service provider, owner, or owner's designee prior to the satisfaction of any security interest.

RESPONSE: In order to prevent fraud and confusion between electronic and paper title documents, and to avoid the risk of multiple titles existing for the same vehicle, only participating lien holders, through the service provider, will be permitted to request the issuance of paper titles prior to the satisfaction of any security interest while participating in the Electronic Lien and Titling Program. Upon receipt of the paper title, the vehicle will no longer be a part of the Electronic Lien and Titling Program.

16. COMMENT: DT and DDI requested that the proposed regulations, specifically N.J.A.C. 13:21-3.8, be amended to allow the Commission the ability to maintain vehicle titles in electronic format even after the security interest has been satisfied, until and unless it is requested by the owner, thereby allowing for the Commission to transition to electronic titling independent of lien notation.

RESPONSE: Under current New Jersey statute, N.J.S.A. 39:10-10, it is required that the Commission be notified upon satisfaction of a security interest and that the certificate of ownership be delivered to the owner (buyer) by the secured party. For vehicles titled under the Electronic Lien and Titling Program, the secured party will notify the Commission that the security interest has been satisfied and the Commission will cause the title to be delivered to the owner as required by statute. Also, the Electronic Lien and Titling Program is currently intended for use by service providers only, and as such is not structured for direct service to the general public, as would be required if the Commission allowed for electronic titling after satisfaction of a security interest has occurred. Because of restrictions imposed by New Jersey statutes and the structure of the Electronic Lien and Titling Program, the Commission cannot change the rules to allow for electronic titling after the satisfaction of a security interest.

#### Federal Standards Statement

No comparable Federal law or regulation exists, therefore, a Federal standards analysis is not required for this rulemaking.

Full text of adopted new rules follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions indicated in brackets with asterisks \*[thus]\*):

### SUBCHAPTER 3. ELECTRONIC LIENS AND TITLES

#### 13:21-3.1 Purpose

This subchapter is designed to allow for the use of electronic titles independent from and in conjunction with traditional paper certificates of ownership, to regulate and control the possession, transfer, and notation of security interests on electronic titles to motor vehicles, so as to prevent the sale, purchase, disposal, possession, use, or operation of stolen motor vehicles, or motor vehicles with fraudulent titles, within this State.

#### 13:21-3.2 Scope

(a) The rules contained in this subchapter are designed to allow the Chief Administrator to establish an Electronic Lien and Titling Program pursuant to the Chief Administrators' authority granted by N.J.S.A. 39:10-1 et seq., and 39:2-3.8. The rules set forth in this subchapter establish the form and use of electronic titles, including, but not limited to, the manner of notation of the creation, satisfaction, and transfer of security interests, in addition to the requirements for participation in the Electronic Lien and Titling **\*[program]\*** **\*Program\*** by any **\*service\*** provider **\*[and or]\*** **\*and/or\*** participating lien holder, as approved by the Chief Administrator pursuant to this subchapter.

(b) Nothing in this subchapter shall apply to security interests in motor vehicles that constitute inventory held for sale, but such interests shall be subject to chapter 9 of Title 12A of the New Jersey Statutes.

## 13:21-3.3 Definitions

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

\*[“Applicant lien holder” means a secured party seeking approval from the Commission to participate in the Electronic Lien and Titling Program through a provider.]\*

“Buyer” includes purchaser, debtor, lessee, bailee, transferee, and any person buying, attempting to buy, or receiving a motor vehicle subject to a security interest, lease, bailment, or transfer agreement, and their legal successors in interest.

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

“Electronic title” means an electronic version of a certificate of ownership or title document issued pursuant to N.J.S.A. 39:10-1 et seq., and 39:2-3.8 and this subchapter.

“Lien” means a charge or encumbrance on a motor vehicle for the satisfaction of a debt or other duty.

“Motor Vehicle Commission” or “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).

“Participating lien holder” means a secured party participating in the Electronic Lien and Titling Program through a **\*service\*** provider.

“Person” includes natural persons, firms or co-partnerships, corporations, associations, or other artificial bodies, receivers, trustees, common law or statutory assignees, executors, administrators, sheriffs, constables, marshals, or other persons in representative or official capacity, and members, officers, agents, employees, or other representatives of those enumerated in this definition.

\*[“Provider” means an entity approved by the Commission to provide electronic lien and titling services to participating lien holders.]\*

**\*“Secured party” means a lender, seller, or other person in whose favor there is a security interest.\***

“Security agreement” means an agreement that creates or provides for a security interest in a motor vehicle.

“Security interest” means an interest in a motor vehicle that secures payment or other performance of an obligation.

\*[“Secured party” means a lender, seller, or other person in whose favor there is a security interest.]\*

“Seller” means manufacturer, dealer, lessor, bailor, transferor with or without a security interest, and any other person selling, attempting to sell, or delivering a motor vehicle, and their legal successors in interest.

**\*“Service provider” means an entity approved by the Commission to provide electronic lien and titling services to participating lien holders.\***

## 13:21-3.4 Use contrary to subchapter unlawful

No person, **\*service\*** provider, or participating lien holder shall possess, transfer, or cause to be made or removed any title or notation of ownership or security interest on any electronic title, except in the manner and subject to the conditions provided in N.J.S.A. 39:10-1 et seq., and 39:2-3.8 or this subchapter.

13:21-3.5 Approval and participation of **\*service\*** providers

(a) Every applicant seeking to become a **\*service\*** provider within the Electronic Lien and Titling Program must complete an application, which shall be supplied by the Motor Vehicle Commission. The application shall, include, but not be limited to, the following information:

1. The identity of the applicant;
2. The name, mailing address, fax number, **\*e-mail address,\*** and telephone number of a representative who is authorized to accept notices and other communications from and respond to inquiries from the Commission and its representatives concerning the application;
3. Ownership information and associated forms, including a description of financial capability to participate in the Electronic Lien and Titling Program;
4. A formal business plan;
5. A security plan setting forth the protections the applicant will have in place to protect the confidentiality of personal information; and
6. Additional information as required.

(b) Every applicant seeking to become a **\*service\*** provider within the Electronic Lien and Titling Program shall submit the application described in (a) above for the approval of the Chief Administrator. Only upon submission of a properly completed application and receiving notice of the approval of the Chief Administrator shall an applicant be permitted to participate as a **\*service\*** provider in the Electronic Lien and Titling Program. Upon establishment of the Electronic Lien and Titling Program, a list of providers approved by the Chief **\*[Administrative]\* Administrator\*** will be made available at [www.state.nj.us/mvc/Vehicle/elt.htm](http://www.state.nj.us/mvc/Vehicle/elt.htm).

## 13:21-3.6 Form of the Electronic Lien and Titling Program

(a) Pursuant to the authority granted under N.J.S.A. 39:10-1 et seq., and 39:2-3.8, the Chief Administrator may establish an Electronic Lien and Titling Program for the issuance and use of electronic titles.

1. Electronic titles issued by the Commission shall be considered the equivalent of **\*[paper certificates of origin,]\*** traditional paper certificates of ownership**\*[,]\*** and/or title documents issued by the Commission, as provided for and subject to the conditions in this subchapter.

2. Electronic titles shall contain the manufacturer’s vehicle identification number and the motor number, when used, of the motor sold, name of the manufacturer, the manufacturer’s shipping weight, a general description of the body, if any, the type and model, and gross vehicle weight rating.

3. In every sale or transfer, involving an electronic title, of a used motor vehicle that has been used as a police patrol car, whether said patrol car bore markings identifying it as such or not, the electronic title shall state that said motor vehicle was used as a patrol car, and shall continue to so state on each subsequent sale or transfer in accordance with N.J.S.A. 39:10-9.1 and 9.2.

4. In every sale or transfer of a motor vehicle returned to the manufacturer under the provisions of P.L. 1988, c. 123 (N.J.S.A. 56:12-29 et seq.), a similar statute of another state, or as the result of a legal action or an informal dispute settlement procedure, the certificate of ownership shall indicate, in a conspicuous and understandable manner, that the motor vehicle was returned to the manufacturer because it did not conform to the manufacturer’s warranty and the nonconformity was not corrected within a reasonable time as provided by law. The notice required under the provisions of this paragraph shall continue to appear on each electronic title issued as a result of any subsequent sale or transfer of that motor vehicle pursuant to N.J.S.A. 39:10-9.3.

## 13:21-3.7 Notation of security interest at time of sale

(a) When a new motor vehicle is sold in this State, if in connection with such sale, a security interest is taken or retained by the seller to secure all or a part of the purchase price of the motor vehicle, or is taken by a person who, by making an advance or incurring an obligation, gives value to enable the purchaser to acquire rights in the motor vehicle, and that seller retaining a security interest or person making an advance or incurring an obligation giving value to enable the purchaser to acquire rights in the motor vehicle is a participating lien holder in the Electronic Lien and Titling Program, **\*[a certificate of origin or]\* \*an\*** electronic notification, with the name and business address of the secured party noted, shall be transmitted to the Commission. Upon notification of the creation of a security interest, the Chief Administrator shall make notation of the security interest and an electronic title shall be sent through a **\*service\*** provider to the participating lien holder.

(b) When a used motor vehicle is sold in this State, if a security interest exists at the time of such sale and will continue in effect afterwards or if, in connection with such sale, a security interest is taken or retained by the seller to secure all or a part of the purchase price of the motor vehicle, or is taken by a person who by making an advance or incurring an obligation gives value to enable the purchaser to acquire rights in the motor vehicle, and that seller retaining a security interest or person making an advance or incurring an obligation giving value to enable the purchaser to acquire rights in the motor vehicle is a participating lien holder in the Electronic Lien and Titling Program, the name and the business or **\*[residence]\* \*residential\*** address of the secured party or his or her assignee shall be noted on the title and a copy of the electronic title shall be sent through a **\*service\*** provider to the participating lien holder.

**ADOPTIONS**

**TRANSPORTATION**

13:21-3.8 Notice of satisfaction of contract or termination of security interest; delivery of paper certificate of ownership

When the contract or terms of the security agreement noted on the electronic title have been performed, and the secured party is a participating lien holder in the Electronic Lien and Titling Program, the seller or secured party participating lien holder shall deliver proper evidence of satisfaction of the contract or termination of the security interest to the Commission, in an electronic format, containing evidence of such performance or termination within 15 days after the performance of the contract or termination of the security interest. The Chief Administrator shall thereupon cause a notation to be made on his or her records of electronic title or certificate of ownership of the motor vehicle that the contract has been satisfied or the security interest terminated and deliver to the owner of record a paper certificate of ownership at the address provided to the Commission for the registration of the vehicle pursuant to N.J.S.A. 39:3-4.

13:21-3.9 Electronic title; perfection of a security interest

The notation of the name and business or residence address of a secured party or his or her assignee, on the electronic title, as provided in N.J.S.A. 39:10-8 and 39:10-9, and the presentation to the Chief Administrator, in accordance with N.J.S.A. 39:10-11, of the electronic title so noted, and the compliance with the requirements of sections C. and D. of N.J.S.A. 39:10-11 shall be in lieu of all filing requirements imposed by chapter 9 of Title 12A of the New Jersey Statutes and shall constitute the perfection of a security interest in the motor vehicle, and the rights and remedies of the debtors and the secured parties in respect to such security interest shall, except as otherwise expressly provided for by N.J.S.A. 39:10-1 et seq., or in this subchapter, be subject to and governed by chapter 9 of Title 12A of the New Jersey Statutes.

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