

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Special Hearing Rules

Motor Vehicle Commission Cases

Proposed Readoption with Amendments: N.J.A.C. 1:13

Proposed Repeals: N.J.A.C. 1:13-14.1 and 14.2

Authorized By: Laura Sanders, Acting Director, Office of Administrative Law.

Authority: N.J.S.A. 52:14F-5(e), (f), and (g).

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

Proposal Number: PRN 2015-001.

Submit comments by March 6, 2015, to:

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1.c, the special rules for matters transmitted to the Office of Administrative Law (OAL) by the Motor Vehicle Commission (Commission) will expire on November 20, 2014. In accordance with N.J.S.A. 52:14B-5.1.c(2), submission of this proposal to the Office of Administrative Law extends that expiration date 180 days to May 19, 2015. The Office of Administrative Law (OAL) in consultation with the Commission has reviewed these rules and has found them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The last amendments to the rules were effective in 2007. Therefore, the Office of Administrative Law proposes to readopt these rules. There are proposed amendments and repeals to the rules which are discussed below.

The OAL proposes to repeal the rules regarding proceeding on the papers because the process was cumbersome in the implementation and confusing to litigants. Additionally, the process deprived litigants of the opportunity to settle their disputes with the Commission at the time of hearing. The OAL proposes to eliminate provisions regarding surcharges cases because the Commission has ceased to transmit cases concerning surcharges associated with motor vehicle violations. Therefore, the rules should no longer address this type of case. The proposed amendments

and repeals reflect the elimination of these practices. Additionally, other amendments are technical to avoid references to language previously repealed or proposed for deletion.

Specifically, N.J.A.C. 1:13-14.1 is proposed for repeal. This section allows hearings to proceed on the papers. In repealing this section, other changes to related sections are necessary. Therefore, N.J.A.C. 1:13-14.2 is also proposed for repeal since it describes, for cases specifically heard on the papers, the necessary contents and how to submit the required Certification. Also proposed for deletion is N.J.A.C. 1:13-14.5(a), which states that, in cases proceeding on the papers, a licensee will have failed to appear if the required Certification is not submitted.

Additionally, all language referring to surcharge cases in N.J.A.C. 1:13-10.1 and 14.3 is proposed for deletion since these cases are no longer transmitted to the OAL. Specifically, the last sentence of N.J.A.C. 1:13-10.1(a) and all of N.J.A.C. 1:13-14.3(b) are proposed for deletion.

The technical change proposed in N.J.A.C. 1:13-1.1 corrects the reference to N.J.A.C. 1:13-14.4(b) to N.J.A.C. 1:13-14.5, which addresses the conduct of fatal accident cases. The referenced N.J.A.C. 1:13-14.4 was recodified as N.J.A.C. 1:13-14.5 in 2002. In N.J.A.C. 1:13-4.1(d), the reference to subsections (b) and (c) of N.J.A.C. 1:13-14.3(b) and (c) are proposed for deletion, since N.J.A.C. 1:13-14.3(b) is proposed for deletion in this proposal and subsection (c) was previously deleted. The deletion of "(b) and (c)" will alter the reference to be to the entire N.J.A.C. 1:13-14.3.

The summary of the subchapters proposed for readoption follows:

Subchapter 1 sets forth the applicability of these rules. The proposed amendment is a technical correction to eliminate a reference to a previously repealed section and reference the correct section that addresses the conduct of fatal accident cases.

Subchapter 4 outlines the process of the agency settlement conference and determines at what point the Commission may transmit the matter to the OAL. Additionally, it states what information should be gathered at the settlement conference. The proposed amendment updates a rule cross-reference.

Subchapter 10 sets forth that the documents available in discovery are limited to the Commission records. The Commission will provide certain documents in excessive points and violator cases. The Commission will provide a copy of the records to the licensee and the licensee may make any discovery request as part of the hearing request or at a pretransmission conference conducted by the Commission. The proposed amendment deletes references to surcharge cases in this subchapter since they are no longer transmitted to the OAL.

Subchapter 14 sets forth the documents that will be used by the Commission in excessive points and persistent violator cases. It states that the judge shall issue an immediate suspension or continued suspension of the licensee's driving privileges where the licensee has failed to appear after he or she was provided with appropriate notice at a preliminary fatal accident hearing. The proposed amendment deletes all references to proceedings on the papers and surcharge matters in this

section since the Commission no longer requests or transmits these types of matters to the OAL.

As the Office of Administrative Law has provided a 60-day comment period in this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments and repeals permit the fair and efficient hearing process for resolution of issues arising at the Motor Vehicle Commission. Eliminating extraneous information that is no longer relevant to the actual practice of Motor Vehicle hearings better informs the public and the legal community about the conduct of these cases at the OAL. The proposed amendments and repeals will accurately reflect the current practices of Motor Vehicle cases transmitted and occurring at the OAL.

Economic Impact

The rules proposed for readoption with amendments are not anticipated to have any substantial economic impact. These rules are designed to provide for efficient and effective hearings on contested Motor Vehicle matters before the OAL and, therefore, do not have a significant economic impact. Eliminating certain aspects of the chapter that no longer apply to the process of transmitting cases to the OAL will not create an adverse economic impact. In fact, with the proposed amendments, the practices that occur in motor vehicle cases at the OAL will be made clear to the public and the legal community and this could save employee time taken to address extraneous inquiries regarding proceedings on the papers and surcharge cases.

Federal Standards Statement

A Federal standards analysis is not required because the contested case hearing procedures, of which the rules proposed for readoption and the proposed amendments and repeals are a part, are promulgated in implementation of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1 et seq., and are not subject to any Federal standards or requirements.

Jobs Impact

The rules proposed for readoption and the proposed amendments and repeals will not generate or cause the loss of any jobs.

Agriculture Industry Impact

The rules proposed for readoption and the proposed amendments and repeals will not impact on the agriculture industry.

Regulatory Flexibility Statement

The rules proposed for readoption and the proposed amendments and repeals impose no reporting or recordkeeping requirements. There are no greater or lesser requirements provided for small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since these rules only apply to cases against individual licensees of motor vehicles.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments and repeals will have no impact on housing affordability, as the rules concern contested case hearings arising before the Motor Vehicle Commission.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments and repeals will have no impact on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan, as the rules concern contested case hearings arising before the Motor Vehicle Commission.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 1:13.

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

1:13-1.1 Applicability

(a) The rules of this chapter shall apply to hearings transmitted by the Motor Vehicle Commission (MVC) except fatal accident cases, which shall be conducted in accordance with N.J.S.A. 39:5-30(b) and (e) and N.J.A.C. 1:13-[14.4(b)]**14.5**.

(b) (No change.)

1:13-4.1 Agency conference; failure to reach settlement

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

(d) If settlement is not reached, MVC shall transmit the case to the Office of Administrative Law, including the documents set forth in N.J.A.C. 1:13-14.3[(b) and (c)].

1:13-10.1 Discovery in excessive points[,] **and** persistent violator [and surcharge] cases

(a) Discovery in excessive points[,] **and** persistent violator [and surcharge] cases shall be limited to the records of MVC with respect to the case. The records shall include a certified copy of the licensee's driving record abstract, relevant notices and orders of suspension, and certified proof of relevant mailings to the licensee. [In surcharge cases, when the licensee is contesting the validity of and conviction or administrative suspension entered on the surcharge bill, the records shall also include any documentary evidence in the possession of MVC which supports the contested entry.]

(b)-(c) (No change.)

[1:13-14.1 Proceeding on the papers

MVC excessive points, persistent violator and surcharge cases may be conducted as proceedings on the papers, in accordance with N.J.A.C. 1:1-14.8.

1:13-14.2 Certification

(a) The licensee shall return a completed certification to the Clerk pursuant to N.J.A.C. 1:1-14.8.

(b) In excessive points and persistent violator cases, the licensee shall indicate in the certification whether he or she disputes the facts recorded on the licensee's driving abstract issued by MVC or disputes the severity of the sanction proposed by MVC, or both, or wants to raise any other relative issues.

(c) In surcharge cases, the licensee shall explain in the certification why the surcharge is not required or is inaccurately calculated.]

1:13-14.1 and 14.2 (Reserved)

1:13-14.3 Agency case

[(a)] In excessive points and persistent violator cases, MVC's case will be based on the licensee's driving record, a prehearing conference report, relevant notices and orders of suspension, certified proof of relevant mailings to the licensee, and any other documentary evidence or legal briefs necessary.

[(b)] In surcharge cases, MVC's case will be based on the documents in (a) above, and shall also include the surcharge bill and, if the licensee is contesting the validity of any conviction or administrative suspension entered on the surcharge bill, documentary evidence in the possession of MVC which supports the contested entry.]

1:13-14.5 Failure to appear

[(a)] If the licensee fails to submit the certification required by N.J.A.C. 1:13-14.2, the provisions of N.J.A.C. 1:1-14.4 shall apply.]

[(b)] If, after appropriate notice, the licensee fails to appear at a preliminary fatal accident hearing scheduled pursuant to N.J.S.A. 39:5-30, the judge shall issue an order immediately suspending or continuing the suspension of the licensee's driving privileges. Thereafter, the provisions of N.J.A.C. 1:1-14.4 shall apply.