

regulations as required by OSHA. The Board, however, will continue to recognize only up to three continuing education credit hours in a biennial licensing period for these courses or programs. Because OSHA requires annual training on applicable OSHA laws and regulations, licensees are confused by the biennial continuing education requirement set forth in N.J.A.C. 13:36-10.3(b)4. The Board believes the proposed amendments resolve any such confusion.

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

Social Impact

The Board believes that the proposed amendments will have a positive impact on the practitioners and the public to which they provide services. The proposed amendment to N.J.A.C. 13:36-5.6 requiring funeral establishments to have clear, white, or flesh-colored adhesive tape available to use in the preparation of a deceased person is sensitive to the needs of the bereaved. The proposed amendment to N.J.A.C. 13:36-10.3 will eliminate any confusion licensees have regarding OSHA and the Board's requirements.

Economic Impact

The Board believes that the proposed amendment to N.J.A.C. 13:36-5.6 will have an insignificant economic impact on licensees as the cost of adhesive tape is minimal. The Board believes that the proposed amendment to N.J.A.C. 13:36-10.3 will have no economic impact.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are governed by N.J.S.A. 45:7-72.2 and the proposed amendment to N.J.A.C. 13:36-10.3 does not exceed any Federal requirements or standards. The proposed amendment to N.J.A.C. 13:36-10.3 is consistent with OSHA's requirement for licensees to complete annual training on applicable OSHA laws and regulations, and the credits for continuing education are not subject to any Federal requirements or standards.

Jobs Impact

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

Agriculture Industry Impact

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

Regulatory Flexibility Analysis

Currently, the Board licenses approximately 1,700 practitioners of mortuary science and registers approximately 730 mortuaries. Because practitioners of mortuary science are individually licensed, under the Regulatory Flexibility Act (the Act), N.J.S.A. 52:14B-16 et seq., they may be considered "small businesses" for the purposes of the Act.

The proposed amendments may impose an insignificant increase in costs as discussed in the Economic Impact above. The practitioners will not need to employ any professional services to comply with the requirements of the proposed amendments. The proposed amendments impose no recordkeeping or reporting requirements, but impose compliance requirements as detailed in the Summary above.

The Board believes the proposed amendments should apply to all members of the regulated community in order to ensure the health, safety, and welfare of the general public in the provision of mortuary services. Therefore, no differing compliance requirements are imposed upon any licensees or registrants based upon their size.

Housing Affordability Impact Analysis

The proposed amendments will have an insignificant impact on affordability of housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the proposed amendments concern minimum equipment requirements for funeral establishments and continuing education for funeral directors.

Smart Growth Development Impact Analysis

The proposed amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a

change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendments concern minimum equipment requirements for funeral establishments and continuing education for funeral directors.

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

SUBCHAPTER 5. MORTUARIES

13:36-5.6 Equipment requirements

(a) Every funeral establishment in the State shall have in its preparation or embalming room and shall be equipped with, at a minimum, the following:

- 1.-23. (No change.)
24. Suture thread; [and]
25. An electrically-powered embalming machine[.]; **and**
26. **Clear, white, or flesh-colored adhesive tape.**
- (b) (No change.)

SUBCHAPTER 10. CONTINUING EDUCATION

13:36-10.3 Minimum credit hours for biennial license renewal

(a) (No change.)

(b) A licensee shall obtain 10 credit hours of continuing education in courses or programs approved by the Board, consistent with the following requirements:

1.-3. (No change.)

4. A licensee shall complete a course or program in applicable Occupational Safety and Health Administration (OSHA) laws and regulations [in each biennial licensing period, but] **as required by OSHA. Licensees may not [obtain] count towards the biennial continuing education requirement** more than three credit hours in such courses or programs in each biennial licensing period; and

5. (No change.)

(c) (No change.)

TRANSPORTATION

(a)

MOTOR VEHICLE COMMISSION

Executive and Administrative Service Waiver from Rules

Proposed New Rule: N.J.A.C. 13:18-11.9

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

Authority: N.J.S.A. 39:2A-21.

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

Proposal Number: PRN 2015-125.

Submit written comments by December 4, 2015, to:

Kate Tasch, APO
Regulatory and Legislative Affairs
Motor Vehicle Commission
225 East State Street
PO Box 162
Trenton, NJ 08666-0162

or electronically at: 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, therefore, excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The purpose of the proposed new rule by the Motor Vehicle Commission (Commission) is to implement paragraph 1(c) of Governor

Christie’s Executive Order No. 2 (2010) (Executive Order). The proposed new rule allows any person or entity to seek a waiver from any of the Commission’s rules or part thereof upon a good faith showing of hardship in complying with the rule. The proposed new rule requires a person or entity to submit a written request stating the rule or part thereof for which the waiver is requested, specifying the reason for the waiver, stating the hardship that will be caused by having to comply with the rule, submitting all supporting documentation along with a statement addressing how the purpose of the rule will still be fulfilled by issuance of the waiver, and that the public safety and welfare will not be endangered by issuance of the waiver.

The proposed new rule further provides that the Chief Administrator may waive the application of any rule upon the Chief Administrator’s own motion and revoke any waiver(s) previously issued should the Chief Administrator determine the waiver(s) no longer fulfills the intent of the rule or would jeopardize public safety and welfare.

Social Impact

The Commission anticipates that the proposed new rule will have a positive social impact on New Jersey citizens. The proposed new rule is necessary to execute the Executive Order. Paragraph 1(c) of the Executive Order requires all executive branch agencies to have in place a waiver process from all of the agency’s rules. The Executive Order acknowledges that in certain circumstances compliance with an agency’s rule in whole or in part may place an undue hardship on a person or entity and the purpose of the rule may still be achieved through a less burdensome process without placing public safety or welfare in jeopardy. The Commission expects that regulated persons or entities will have a positive reaction to the proposed new rule as they will be provided greater flexibility to comply with the Commission’s rules in whole or in part.

Economic Impact

The proposed new rules should have a positive economic impact on the persons and entities regulated by the Commission such as car dealers, driving schools, driving school instructors, private inspection facilities, motorcycle instruction schools, and window tinting businesses, just to name a few. As stated above, the proposed new rule provides regulated persons and entities with additional flexibility in complying with the Commission’s rules. This in turn should save those regulated persons and entities both time and expense in compliance costs. Additionally, the Commission’s ability to waive all or part of a rule, upon the satisfaction of certain criteria, will assist in reducing compliance costs, thereby encouraging additional persons and entities to participate in business regulated by the Commission.

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal standards applicable to the proposed new rule.

Jobs Impact

The Commission does not anticipate a change in the number of jobs based on the proposed new rule. The proposed new rule set forth a process by which the Commission may permit a regulated person or entity to request a waiver of all or part of any of the Commission’s rules.

Agriculture Industry Impact

The proposed new rule will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed new rule allows for a regulated person or entity to request a waiver from all or part of the Commission’s rule(s). The regulated person or entity must submit a formal request for waiver in writing and provide supporting documentation. The proposed rule only apply to persons and entities regulated by the Commission, such as car dealers, driving schools, driving school instructors, private inspection facilities, motorcycle instruction schools, and window tinting businesses, just to name a few. A regulated person or entity requesting a waiver will not be required to employ professional services to request the waiver. The documentation that must be submitted to support the waiver request should be documentation already in the possession of the regulated person or entity. The proposed new rule is designed to provide regulated

persons or entities with additional flexibility to comply with the Commission’s rules and accordingly should minimize any economic impact on the regulated person or entity.

Every waiver request will be evaluated on a case-by-case basis based upon facts unique to the regulated person or entity. Before granting a waiver requested by a regulated person or entity, the Chief Administrator must determine whether the person or entity has set forth sufficient proof that the waiver should be granted. The scope of the documentation required to be submitted to meet this burden of proof is within the discretion of the Chief Administrator.

Housing Affordability Impact Analysis

The proposed new rule will not have any impact on the average costs associated with housing or on affordability housing in New Jersey, and it is extremely unlikely to evoke a change in the average costs associated with housing because the proposed new rule involves granting waivers to Commission primarily pertaining to regulation of transportation related issues.

Smart Growth Development Impact Analysis

The proposed new rule will have no impact on smart growth and is 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 proposed new rule involves granting waivers to Commission rules primarily pertaining to regulation of transportation related issues.

Full text of the proposed new rule follows:

13:18-11.9 Waiver from rules

(a) Any person or entity may seek a waiver from one or more provisions of the Motor Vehicle Commission’s rules, provided the person or entity demonstrates that compliance represents an undue hardship and the Chief Administrator, or his or her designee, determines that such waiver is consistent with the general purpose and intent of the Motor Vehicle Commission’s enabling statutes, rules, and mission.

(b) A person or entity seeking a waiver shall submit the request in writing to the Office of the Chief Administrator at the address set forth in N.J.A.C. 13:18-11.2 and shall include the following:

1. The specific rule(s) or part(s) of the rule for which a waiver is requested;
2. The specific reason(s) justifying the waiver, including a statement of the type and degree of hardship that would result if the waiver were not granted;
3. An alternative proposal to ensure the safety and welfare of the public;
4. Documentation that supports the waiver request and all assertions made in the request, if applicable;
5. A statement addressing how the waiver would fulfill the purpose and intent of the Motor Vehicle Commission’s enabling statutes, rules, and missions; and
6. Such other additional documentation that the Chief Administrator, or his or her designee, determines necessary and appropriate for evaluation and review of the waiver request.

(c) The Chief Administrator, or his or her designee, may waive application of any rule in an individual circumstance or on his or her own motion upon finding that such relief is warranted based upon the provisions set forth in (a) above.

(d) The Chief Administrator, or his or her designee, shall not grant a waiver of the Motor Vehicle Commission’s rules where to do so would be contrary to or inconsistent with Federal laws, the Motor Vehicle Commission’s enabling statutes, rules, and mission, or if the waiver would jeopardize public safety or welfare.

(e) The Chief Administrator, or his or her designee, may revoke a waiver at any time if the Chief Administrator determines that the waiver no longer fulfills the purpose and intent of the Motor Vehicle Commission’s enabling statutes, rules, and mission or that continuing the waiver would jeopardize public safety or welfare.