

"I personally performed a comprehensive evaluation by history and physical examination within the scope of my podiatric practice as a specialist." or

"This consultation utilized 60 or more minutes of my personal time."

8. The HCPCS codes 99241, 99242, 99243, 99251, 99252, and 99253, shall be utilized for Limited consultation. The area being covered for reimbursement purposes is "limited" in the sense that it requires less than the requirements designated as comprehensive consultation as noted above.

Recodify existing 10.-12. as 9.-11. (No change in text.)

APPENDIX A

FISCAL AGENT BILLING SUPPLEMENT

AGENCY NOTE: The Fiscal Agent Billing Supplement is appended as a part of this chapter but is not reproduced in the New Jersey Administrative Code. When revisions are made to the Fiscal Agent Billing Supplement, replacement pages will be distributed to providers and copies will be filed with the Office of Administrative Law. For a copy of the Fiscal Agent Billing Supplement, write to:

DXC Technology
PO Box 4801
Trenton, New Jersey 08619-4801
or contact
Office of Administrative Law
Quakerbridge Plaza, Building 9
PO Box 049
Trenton, New Jersey 08625-0049

TRANSPORTATION

(a)

MOTOR VEHICLE COMMISSION

Information Searches

Adopted Amendment: N.J.A.C. 13:18-11.4

Proposed: October 5, 2020, at 52 N.J.R. 1814(a).

Adopted: April 13, 2021, by the Motor Vehicle Commission, B. Sue Fulton, Chair and Chief Administrator.

Filed: May 12, 2021, as R.2021 d.059, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 39:2-3.4, 39:2A-21, and 39:2A-28.

Effective Date: June 7, 2021.

Expiration Date: August 30, 2025.

Summary of Public Comments and Agency Responses:

The written comments received by the Motor Vehicle Commission ("Commission" or "MVC") regarding its October 5, 2020, notice of proposal at 52 N.J.R. 1814(a), are available for inspection at the Office of the Chief Administrator, Legal and Regulatory Affairs, Motor Vehicle Commission, 225 East State Street, 9th Floor, Trenton, New Jersey.

The following individuals, on behalf of the following organizations, submitted timely written comments to the Commission regarding the notice of proposal: Michael Sassano Jr., on behalf of Recovery Title Solutions (Recovery); John Tumino, President, on behalf of Tumino's Towing Inc. (Tumino's); John H. Glass, President, on behalf of Garden State Towing Association, Inc. (GSTA); Julie Bradley, on behalf of American Civil Liberties Union of New Jersey (ACLU-NJ); and, Katherine M. Sastre, on behalf of New Jersey Alliance for Immigrant Justice (NJAIJ).

1. COMMENT: Recovery, Tumino's, and GSTA (collectively "towing commenters") state that towing companies in New Jersey are bearing the burden of paying for corrected owner and lienholder searches related to tows initiated by public agencies as opposed to private/commercial entities, when the information supplied to them by the public agencies is incorrect or delayed. The towing commenters recommend that they be permitted to retrieve owner and lienholder information for free within the

CAIR system, in order for the towing companies to satisfy statutory notification requirements. The towing commenters recommend they be given CAIR searches for free, or alternately a discounted rate of \$2.00 per search, under these circumstances.

RESPONSE: The Commission acknowledges the towing commenters' comments regarding CAIR fees. The Commission charges all commercial businesses and individuals a standard rate for use of the CAIR system for owner and lienholder searches, and without a legal or other compelling basis for the reduction of the fees to towing companies, in particular, it would not be appropriate for the Commission to discount the rate to towing companies above other commercial enterprises. Other commercial businesses, which utilize the CAIR system, are also required by rules and other requirements imposed by governmental and quasi-governmental entities to conduct owner and lienholder searches for a multitude of reasons, and those searches are accomplished under CAIR's standard cost structure. There is no legal or equitable basis to favor towing companies over other commercial enterprises. The Commission has determined that the CAIR fees are justified and do not require any change to the final adoption related to this comment.

2. COMMENT: The ACLU-NJ and NJAIJ raise concerns about prevention of the misuse of personal information and suggest that the rules should contain further clarification that there are no acceptable surveillance purposes for which the program participants may use the Commission information beyond the exceptions contained in the New Jersey Driver Privacy Protection Act (NJ DPPA). Specifically, these entities comment that the Commission should amend paragraphs (h)13, (j)4, (k)13, and (m)4 to include the words "or take any other action" in order to clarify that program participants may not use Commission records for any reasons not specifically related to motor vehicle activity.

RESPONSE: The Commission acknowledges this comment of the ACLU-NJ and NJAIJ. The Commission agrees that protection and security of personal information are of paramount concern and that the misuse of information in the context of surveillance is never acceptable. The Commission believes that the language in the Commission's final adoption is sufficiently clear and strong to accomplish the objectives of securing its information and limiting uses to those specified in the NJ DPPA. The Commission has determined that the language contained in the final adoption is appropriate and will protect against the misuse of its information, and that the requested change suggested in this comment does not further the protection and security of personal information.

3. COMMENT: The ACLU-NJ and NJAIJ recommend and request that the Commission remove the language providing that program participants "must submit an individual request for the evaluation and consideration of the Commission" for "any other purpose involving surveillance" at paragraph (j)4 and (m)4, in order to clarify that there is no acceptable surveillance purpose for which program participants may use Commission information beyond the exceptions contained in the NJDPPA.

RESPONSE: The Commission acknowledges this comment of the ACLU-NJ and NJAIJ and believes that the language contained in the final adoption is clear and unequivocal. Specifically, the final adoption already requires that any use of the Commission's information be consistent with prevailing law, specifically the NJ DPPA. The Commission only permits its information to be used in compliance with the NJ DPPA and for the specific permitted purposes identified thereunder. Accordingly, the Commission has determined that the language contained in the final adoption is strong enough to protect the use of its information and the requested change in this comment is neither necessary nor required.

4. COMMENT: The ACLU-NJ and NJAIJ comment that the Commission should include language requiring public reporting of its data-sharing practices, specifically including the following: disclosure of mechanisms by which the U.S. Department of Homeland Security has obtained, or can obtain, personal information, and what information is provided; monthly records of the identities of CAIR requesters and the number of requests by each requestor; and an annual audit of existing program participants' accounts in the CAIR database.

RESPONSE: The Commission acknowledges the comments of the ACLU-NJ and NJAIJ and their request for mandatory reporting. The request that a requirement for mandatory disclosure of the information indicated be added to this final adoption is not supported by any applicable law, and under the circumstances, the Commission cannot justify

including a mandate that its limited resources be used in this manner, particularly when the information is, or may be available by other less intrusive means. Requests for information, including those regarding data-sharing and the CAIR system may be made pursuant to New Jersey's Open Public Records Act and will be evaluated individually upon submission. Accordingly, the Commission has determined that no change to the final adoption is required in response to this comment.

5. COMMENT: The ACLU-NJ and NJAIJ comment that the Commission should amend paragraphs (h)13, (i)13, and (k)13 to add the words "or redisclosure," "or redisclosing," and "or redisclosed," to ensure throughout its regulations that the CAIR program requirements regarding disclosure apply not only to applicants that are reselling information, but to those redisclosing information, as well.

RESPONSE: The Commission acknowledges this comment by the ACLU-NJ and NJAIJ in which they suggest the addition of the words "or redisclosure," "or redisclosing," and "or redisclosed" for clarity. The Commission agrees that the suggested change would be helpful to further clarify the requirements and, accordingly, will include the requested additions in the final adoption.

Summary of Agency-Initiated Changes:

In the notice of proposal, at recodified N.J.A.C. 13:18-11.4(e), the term "governmental agencies" was deleted and replaced with the newly defined term "governmental entities." Inadvertently, the word "governmental" was dropped from the addition of "governmental entities." Accordingly, an agency-initiated change is made to reinsert the word "governmental," in accordance with the Commission's original intent.

Federal Standards Analysis

In compliance with N.J.S.A. 52:14B-23, notice is hereby given that the subject matter of the adopted amendments pertaining to provision of personal information is subject to the Federal DPPA, 18 U.S.C. §§ 2721 et seq. The adopted amendments exceed the minimum standards of the Federal DPPA, but are not in conflict with it, which is permissible. The adopted amendments exceed the minimum standards of the Federal DPPA by including standards for participation in the Commission's Limited Online Access Program and Standard Data Files Program, standards for denial of access, and grounds for suspension and revocation of access. Additionally, the adopted amendments exceed the minimum standards by including security requirements that address the use, disclosure, and security of the Commission's data and information by requiring, among other things, compliance with the Commission's Information and Technology policies, standards, guidelines, and implementation of a cybersecurity program. The Commission concludes that the adopted amendments provide additional necessary protection to the health, safety, and welfare of New Jersey citizens, and the minimal costs are outweighed by the benefits to the public.

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

SUBCHAPTER 11. ORGANIZATION OF THE MOTOR VEHICLE COMMISSION

13:18-11.4 Definitions; fees; information search; exemptions; access; security

(a) Definitions. The following terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

"Agreement" means the agreement between the New Jersey Motor Vehicle Commission and a commercial Program participant or a nonprofit organization or not-for-profit organization.

"Applicant" means a person, governmental entity, or nonprofit organization or not-for-profit organization that is requesting access to a motor vehicle record or records.

"Application" means the application for the Commission's Limited Online Access Program or Standard Data Files Program.

"Authorized recipient" as provided at N.J.S.A. 39:2-3.4(d), means a person authorized to receive personal information from the Commission pursuant to N.J.S.A. 39:2-3.4(c).

"Commercial Program participant" means a Program participant that is not a governmental entity, nonprofit or not-for-profit entity.

"Commission" means the New Jersey Motor Vehicle Commission.

"Employee and agent list" means a list of all proposed authorized employees or agents that the Program participant seeks to allow to use any electronic communications established for the Limited Online Access Program and any data or information obtained therefrom.

"End user" means any person or entity for whose use information is requested from the Commission's database. An end user may be either the person requesting the information or another person on whose behalf the information is requested.

"Governmental entity" means the State, Federal government, county, municipality, or any subdivision thereof.

"Limited Online Access Program" means a process in which a Program participant establishes electronic communications with the Commission to receive motor vehicle record information on a per record basis.

"MOU" means a memorandum of understanding between the Commission and a governmental entity.

"Nonprofit organization" or "not-for-profit organization" means an organization that presents proof, acceptable to the Chief Administrator, of its status as a nonprofit or not-for-profit organization, and that is exempt from taxation pursuant to Internal Revenue Code 501(c) and N.J.S.A. 54:32B-9(b) or 9(f)(1), and has presented to the Commission the organization's certificate or articles of incorporation or other satisfactory proof of nonprofit or not-for-profit status that is acceptable to the Chief Administrator.

"Permitted purposes" means one or more of the uses of personal information permitted by the Federal Driver's Privacy Protection Act of 1984, 18 U.S.C. §§ 2721 et seq. (Federal DPPA), and the New Jersey Driver's Privacy Protection Act, N.J.S.A. 39:2-3.3 et seq. (New Jersey DPPA), and that is explicitly set forth by the Program participant on the applicant's application and approved by the Commission; political and commercial solicitation and marketing shall not constitute permitted purposes.

"Person" means an individual, organization, or entity, but does not include the State, or a political subdivision thereof, consistent with N.J.S.A. 39:2-3.3.

"Personal information" means information that identifies an individual, including an individual's photograph; Social Security number; driver identification number; name; address other than the five-digit zip code; telephone number; and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status.

"Program" means the Limited Online Access Program and Standard Data Files Program.

"Program participant" means any persons, governmental entities, or nonprofit organization or not-for-profit organization approved for participation in the Limited Online Access Program or the Standard Data Files Program, including all officers, owners with an interest of 10 percent or more, managers, and all employees, agents, or subcontractors thereof.

"Standard Data Files Program" means a process by which motor vehicle records are provided by the Commission, based on a set of criteria and assembled into a file and provided to the Program participant either on a one-time basis or according to a regular schedule.

(b) Persons requesting to purchase a government record shall pay the fee established by the Motor Vehicle Commission as set forth in this section.

(c) (No change in text.)

(d) Payment shall be made by check or money order payable to the New Jersey Motor Vehicle Commission, or by any other method approved by the Chief Administrator.

(e) Except as otherwise provided at ***(f) and*** (g) ***[and (h)]*** below, ***governmental*** entities within and outside the State, and nonprofit and not-for-profit organizations within and outside the State are exempt from the fees set forth in this section.

(f) Notwithstanding the fees set forth in this section, the Chief Administrator shall collect from Limited Online Access Program participants, and a fee of \$12.00 for each driver history record requested online; a fee of \$12.00 for each vehicle registration record or each title record requested online; a fee of \$12.00 for each title history requested

online; and a fee of \$2.00 for each abbreviated driver history record, known as a driver status record, requested online. Governmental entities and nonprofit and not-for-profit organizations shall pay an administrative fee of \$150.00 for every 5,000 records, or part thereof, per calendar year.

(g) Notwithstanding the fees set forth in this section, the Chief Administrator shall collect a fee of \$.05 per individual registration record and individual title record from users of the Standard Data Files Program, which provides for the electronic transmittal of registration and title records. The Chief Administrator may, in accordance with the New Jersey Driver's Privacy Protection Act (N.J.S.A. 39:2-3.3 et seq.), redact personal information from the registration and title records made available through the Standard Data Files Program. In all cases, the social security number shall be redacted from the registration and title records made available through the Standard Data Files Program. A business user's utilization of personal information contained in the registration and title records that are made available through the Standard Data Files Program shall be subject to the disclosure limitations set forth in the New Jersey Driver's Privacy Protection Act (N.J.S.A. 39:2-3.4). In addition to the per record fee set forth above, the Chief Administrator shall collect from users of the Standard Data Files Program a fee for data processing costs incurred in formatting the registration and title records requested by the user. The Commission will consider custom or ad hoc records requests on a case-by-case basis. The fee for a custom or ad hoc request shall be calculated on a case-by-case basis, and based on the costs, both direct and indirect, to the Commission of supplying the requested information. In lieu of the fee of \$.05 per record, governmental entities and nonprofit and not-for-profit organizations shall pay an administrative fee of \$100.00 per file.

(h) Application for participation in the Commission's Limited Online Access Program. Applicants for participation in the Commission's Limited Online Access Program must complete an application on a form to be provided by the Commission. At a minimum, the applicant must provide the following information:

1. The applicant's full name and tax identification number;
2. Whether any parent companies, subsidiary companies, or related companies or entities purchase information from the Commission, and, if so, the name of the company or entity, the relationship to the applicant, and whether the company or entity has ever been suspended or permanently revoked from purchasing information from the Commission;
3. Any other names under which the applicant has done or does business;
4. Whether the owners or principals of the applicant have ever had their ability to obtain records from the Commission, State, or any other state or jurisdiction suspended or revoked;
5. Whether the owners, principals, partners, officers, employees, or agents of the applicant have ever been convicted of a crime arising out of fraud; violence against another person; improper use/release of personal information; or relating to fraud in connection with the sale of a motor vehicle, in this State or any other state or jurisdiction;
6. The nature of the applicant's business activity;
7. Contact information for the applicant's representative, including a driver license number and a valid email address;
8. The type of access requested, including whether requests will be individual or batch requests, the type of information requested, identification of all employees that will have access to the online system, and whether applicant will be reselling or redisclosing the Commission records;
9. If the applicant will be reselling or redisclosing Commission records, the applicant must submit a list of clients and a separate document detailing the procedures and methods applicant will use to monitor the use of the information to ensure that applicant's clients comply with the New Jersey DPPA;
10. A completed Motor Vehicle Commission Technology Questionnaire;
11. The applicant shall submit a list of all proposed authorized individuals, including owners, principals, partners, officers of the applicant, and employees or agents, who will have access to Motor Vehicle Commission records and information. The applicant shall also submit a signed statement certifying that criminal history record background checks were performed on all owners, principals, partners, officers of the applicant, and employees or agents of the applicant that will

have access to Motor Vehicle Commission records and information. The applicant shall also maintain a signed statement from all owners, principals, partners, officers of the applicant, and employees or agents of the applicant that will have access to Motor Vehicle Commission records and information certifying that they do not have any record of criminal history as specified at (h)5 above. Any principal, partner, officer of the applicant, or employee or agent of the applicant who has any record of criminal history as specified at (h)5 above shall be prohibited from access to Motor Vehicle Commission records and information. The applicant shall have an ongoing duty to the Motor Vehicle Commission to provide an updated certified statement and list of users who will have access to Motor Vehicle Commission records and information;

12. A certification of applicant agreeing to limit its use of all information obtained from the Commission to the specific permitted purposes set forth by applicant in its approved application, the agreement or MOU with the Commission, and pursuant to the terms of the New Jersey DPPA;

13. The Program participant is strictly prohibited from using Commission records to conduct surveillance or to investigate or locate an individual for reasons not specifically related to motor vehicle activity, including, but not limited to, immigration enforcement, divorce or domestic disputes, and matchmaking services. If reselling ***or redisclosing*** the data and/or information, the Program participant shall require the third-parties/end-users to represent in writing to the Program participant that they agree not to use Commission records to conduct surveillance or to investigate or locate an individual for reasons not specifically related to motor vehicle activity, including, but not limited to, immigration enforcement, divorce disputes, and matchmaking services; and

14. Any additional information the Chief Administrator may deem necessary.

(i) Program participant agreement or MOU for the Commission's Limited Online Access Program. If the applicant's application is approved, the applicant must execute an agreement or MOU with the Commission, to be reviewed by a member of the Commission's executive staff, and in a form to be provided by the Commission, to be accepted into the Commission's Limited Online Access Program and become a Program participant. The agreement or MOU may contain such terms and conditions as deemed necessary by the Commission for the protection of data and information provided by the Commission. The agreement or MOU shall contain, at a minimum, provisions addressing the following:

1. A description of the permitted purposes;
2. A description of the information and data to be provided pursuant to the agreement or MOU;
3. Restrictions upon use of the information provided pursuant to the agreement or MOU;
4. Confidentiality agreements between the Commission and applicant;
5. Identification of persons authorized to access data and information;
6. Security standards covering data supplied by the Commission, applicant's hardware, applicant's software, applicant's system, applicant's data transmission, applicant's network, and applicant's physical location;
7. Recordkeeping requirements;
8. Records retention requirements;
9. Storage of information and data;
10. Audit requirements;
11. Payment;
12. Termination;
13. If the applicant is reselling ***or redisclosing*** Commission information, the terms under which that information may be resold ***or redisclosed*** and used by third parties, and any restrictions on the resale ***or redisclosure*** of information to third parties; and
14. Such other conditions as deemed necessary by the Chief Administrator.

(j) Denial, suspension, or revocation of a Program participant's access to Limited Online Access Program.

1. The Commission may deny, suspend, or revoke a Program participant's online access for any of the following reasons:

- i. The application is incomplete;

ii. The applicant requests access to residence address information when not authorized to obtain such access pursuant to statute, rule, or rule of court;

iii. Based on the applicant's stated purpose for requesting information, the Commission determines that the public interest in withholding the information outweighs the public interest in releasing the information;

iv. The information on the application is incorrect, false, misleading, or identifies an intended use of the information requested that is not an approved use;

v. The applicant, or a representative of the applicant, was previously a Program participant or a managerial employee of a Program participant whose online access was revoked for cause and never reissued by the Commission, or was suspended for cause and the terms of the suspension are not fulfilled. For the purposes of this ^{*}[subparagrah]^{*} ***subparagraph***, a representative means an owner, principal, proprietor, limited or general partner, a managerial employee, or a director or officer active in the management, direction, or control of the business of the Program participant, or a parent, subsidiary, or related entity to the Program participant. A managerial employee is any person who exercises managerial control over the business of a Program participant;

vi. The Program participant, or any employee or agent of the Program participant, used information received from the Commission for a purpose other than the purpose stated in the application of the Program participant or approved by the Commission;

vii. The Program participant, or any employee or agent of the Program participant, used information received from the Commission in violation of the New Jersey DPPA;

viii. The Program participant submitted a check, draft, money order, or other means of payment to the Commission, that was thereafter dishonored when presented for payment;

ix. The Program participant sold or otherwise delivered information obtained from the Commission to a person other than the person or entity for whom the information was obtained;

x. The Program participant failed to pay for information received from the Commission;

xi. The Program participant or any representative of the Program participant represented to any person that the Program participant or such representative was an officer, agent, or employee of, or otherwise affiliated with, the Commission;

xii. The Program participant published any false or misleading advertising related to the purchase of information from the Commission;

xiii. The Program participant used the Commission logo in any advertising or other materials used in the business of the Program participant. The Program participant may not use the Commission logo in any advertising;

xiv. The Program participant violated any of the provisions contained in applicable rules;

xv. The Program participant has been convicted of a crime arising out of fraud in connection with the sale of a motor vehicle in any state, a felony in any state, or a crime involving violence against another person in any state, or the Program participant is affiliated with any other Program participant or other requester whose access to Commission data and information has been, or was suspended or revoked, and not reinstated;

xvi. The agreement or MOU between the Commission and the Program participant has expired; or

xvii. For any other reason determined to be appropriate by the Commission.

2. The Commission may terminate any Program participant's access to the Limited Online Access Program, and any agreement or MOU with a Program participant in its sole discretion, upon 10 days notice to the Program participant.

3. The Commission may terminate a Program participant's access to the Limited Online Access Program, and any agreement or MOU with a Program participant immediately and in its sole discretion, if it believes the individual or public health or individual or public safety may be at risk.

4. The Commission may terminate a Program participant's access to the Limited Online Access Program, and any agreement or MOU with a Program participant if the Program participant or end users are found to

be using Commission records to conduct surveillance or to investigate or locate an individual, unless pursuant to N.J.S.A. 39:2-3.4(c)(6), for use by an insurer or insurance support organization, its agents, employees or contractors, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, ratings, or underwriting. For any other purpose involving surveillance, the Program participant must submit an individual request for the evaluation and consideration of the Commission.

5. The Commission may cancel or amend a Program participant's access to the Limited Online Access Program, and any agreement or MOU with a Program participant, if such cancellation or amendment is deemed necessary by the Commission due to any changed requirement in the law or Commission policy that would prohibit such access or agreement, or upon a determination by the Commission that there has been a breach of the integrity or security of the data or information provided to the Program participant, or a failure of the Program participant to comply with established procedures or legal requirements relating to the Limited Online Access Program.

6. The Program participant is required to ensure that all end users comply with all the terms, conditions, and limitations of the Program participant's agreement or MOU with the Commission and is required to ensure that its end users use any and all data and information solely for the permitted purposes set forth in the Program participant's agreement or MOU with the Commission. A violation of the terms of the agreement between the Program participant and the end users to whom the Program participant sells or discloses, or has sold or disclosed, Commission data or information, will result in termination of participation in the Limited Online Access Program, but the Chief Administrator may, in the Chief Administrator's sole discretion, allow remediation of the violation by permitting the Program participant to provide to the Commission a remediation plan, which the Chief Administrator may accept, modify, or reject, in the Chief Administrator's sole discretion.

7. The Commission's decision to terminate participation in the Limited Online Access Program for any violation of the terms and conditions of a Limited Online Access Program Agreement or MOU between the Commission and any subsidiary, related entity, or parent company of the Program participant shall automatically terminate the Program participant's agreement or MOU with the Commission.

8. If a Limited Online Access Program Agreement or MOU between the Commission and any subsidiary, related entity, or parent company of the Program participant is suspended or terminated for violation of the terms of that agreement by the end users to whom the subsidiary, related entity or parent company sells or discloses, or has sold or disclosed, Commission data and information, the Program participant's participation in the Limited Online Access Program shall be indefinitely suspended. The Chief Administrator may, in the Chief Administrator's sole discretion, allow remediation of the violation by permitting the subsidiary, related entity, or parent company to provide to the Commission a remediation plan, which the Chief Administrator may accept, modify, or reject, in the Chief Administrator's sole discretion.

9. If any combination of the Program participant's subsidiaries, related entities, parent companies, or end users violates the terms of the end users' agreements or their agreement with the Commission or the Program participant, the Commission may terminate the Program participant's participation in the Limited Online Access Program permanently with no opportunity for reinstatement. Additionally, if the Program participant's participation in the Limited Online Access Program was suspended for a violation or violations by end users of subsidiaries, related entities, or parent companies to the Program participant, and thereafter reinstated, a subsequent violation may result in the Program participant's participation in the Limited Online Access Program being terminated with no opportunity for reinstatement.

(k) Application for participation in Commission's Standard Data Files Program. Applicants for participation in the Commission's Standard Data Files Program must submit a written request to the Commission that, at a minimum, must include:

1. The applicant's full name and tax identification number;

2. Whether any parent companies, subsidiary companies, or related companies or entities purchase information from the Commission, and, if so, the name of the company or entity, the relationship to applicant, and

whether the company or entity has ever been suspended or permanently revoked from purchasing information from the Commission;

3. Any other names under which the applicant has done or does business;

4. Whether the owners or principals of the applicant have ever had their ability to obtain records from the Commission, State, or any other state or jurisdiction suspended or revoked;

5. Whether the owners, principals, partners, officers, employees, or agents of the applicant have ever been convicted of a crime arising out of fraud; violence against another person; improper use/release of personal information; or relating to fraud in connection with the sale of a motor vehicle, in this State or any other state or jurisdiction;

6. The nature of the applicant's business activity;

7. Contact information for the applicant;

8. The type of information requested, identification of all employees that will have access to the requested information, and whether the applicant will be reselling or redisclosing the Commission records;

9. If the applicant will be reselling or redisclosing Commission records, the applicant must submit a list of clients and a separate document detailing the procedures and methods applicant will use to monitor the use of the information to ensure that the applicant's clients comply with the New Jersey DPPA;

10. A completed Motor Vehicle Commission Technology Questionnaire;

11. The applicant shall submit a list of all proposed authorized individuals, including owners, principals, partners, officers of the applicant, and employees or agents, who will have access to Motor Vehicle Commission records and information. Applicants shall also submit a signed statement certifying that criminal history record background checks were performed on all owners, principals, partners, officers of the applicant, and employees or agents of the applicant that will have access to Motor Vehicle Commission records and information. The applicant shall also maintain a signed statement from all owners, principals, partners, officers of the applicant, and employees or agents of the applicant that will have access to Motor Vehicle Commission records and information certifying that they do not have any record of criminal history as specified at (k)5 above. Any principal, partner, officer of the applicant, or employee or agent of the applicant who has any record of criminal history as specified at (k)5 above shall be prohibited from access to Motor Vehicle Commission records and information. The applicant shall have an ongoing duty to the Motor Vehicle Commission to provide an updated certified statement and list of users who will have access to Motor Vehicle Commission records and information;

12. A certification of the applicant agreeing to limit its use of all information obtained from the Commission to the specific permitted purposes set forth by the applicant in its approved application, the agreement or MOU with the Commission, and pursuant to the terms of the New Jersey DPPA;

13. The Program participant is strictly prohibited from using Commission records to conduct surveillance or to investigate or locate an individual for reasons not specifically related to motor vehicle activity, including, but not limited to, immigration enforcement, divorce or domestic disputes, and matchmaking services. If reselling ***or redisclosing*** the data and/or information, the Program participant shall require the third-parties/end-users to represent in writing to the Program participant that they agree not to use Commission records to conduct surveillance or to investigate or locate an individual for reasons not specifically related to motor vehicle activity, including, but not limited to, immigration enforcement, divorce disputes, and matchmaking services; and

14. Any additional information the Chief Administrator may deem necessary.

(l) Program participant agreement or MOU for the Commission's Standard Data Files Program. If the applicant's application is approved, the applicant must execute an agreement or MOU with the Commission, to be reviewed by a member of the Commission's executive staff, and in a form to be provided by the Commission to be accepted into the Commission's Standard Data Files Program and become a Program participant. The agreement or MOU may contain such terms and conditions as deemed necessary by the Commission for the protection of data and information provided by the Commission. The applicant's

agreement or MOU shall contain, at a minimum, provisions addressing the following:

1. A description of the information and data to be provided pursuant to the agreement or MOU;

2. Restrictions upon use of the information provided pursuant to the agreement or MOU;

3. Confidentiality agreements between the Commission and the applicant;

4. Security standards covering data supplied by the Commission, applicant's hardware, applicant's software, applicant's systems, applicant's data transmission, applicant's network, and applicant's physical location;

5. Recordkeeping requirements;

6. Records retention requirements;

7. Storage of information and data;

8. Audit requirements;

9. Payment terms;

10. Modification and termination conditions;

11. If the applicant will be reselling or redisclosing Commission information, the terms under which that information may be resold, redisclosed, and used by third-parties, and any restrictions on the resale or redisclosure of information to third parties; and

12. Such other conditions as deemed necessary by the Chief Administrator.

(m) Denial, suspension, or revocation of a Program participant's approval for the Standard Data Files Program shall be as follows:

1. The Commission may deny, suspend, or revoke a Program participant's approval to participate in the Standard Data Files Program for any of the following reasons:

i. The request is incomplete;

ii. The applicant requests residence address information when not authorized to obtain such information pursuant to statute, rule, or rule of court;

iii. Based on the applicant's stated purpose for requesting information, the Commission determines that the public interest in withholding the information outweighs the public interest in releasing the information;

iv. The information contained in the applicant's request is incorrect, false, misleading, or identifies an intended misuse of the information requested;

v. The applicant, or a representative of the applicant, was previously a Program participant or a managerial employee of a Program participant whose approval for participation in the Standard Data Files Program was revoked for cause and never reissued by the Commission, or was suspended for cause, and the terms of the suspension are not fulfilled. For the purposes of this ***[subparagraph]* *subparagraph***, a representative means an owner, principal, proprietor, limited or general partner, a managerial employee, or a director or officer active in the management, direction, or control of the business of the Program participant or a parent, subsidiary or related entity to the Program participant. A managerial employee is any person who exercises managerial control over the business of a Program participant;

vi. The Program participant, or any employee or agent of the Program participant, used information received from the Commission for a purpose other than the purpose stated in the request of the Program participant or approved by the Commission;

vii. The Program participant, or any employee or agent of the Program participant, used information received from the Commission in violation of the New Jersey DPPA;

viii. The Program participant submitted a check, draft, money order, or other means of payment to the Commission, that was thereafter dishonored when presented for payment;

ix. The Program participant failed to pay for information received from the Commission;

x. The Program participant or any representative of the Program participant represented to any person that the Program participant, or such representative, was an officer, agent, or employee of or otherwise affiliated with the Commission;

xi. The Program participant published any false or misleading advertising related to the purchase of information from the Commission;

xii. The Program participant used the Commission logo in any advertising or other materials used in the business of the Program

participant. The Program participant may not use the Commission logo in any advertising;

xiii. The Program participant violated any of the provisions contained in the applicable rules;

xiv. The Program participant has been convicted of a crime arising out of fraud in connection with the sale of a motor vehicle in any state, a felony in any state, or a crime involving violence against another person in any state, or the Program participant is affiliated with any other Program participant or other requester whose access to Commission data and information has been, or was, suspended or revoked, and not reinstated;

xv. The agreement or MOU between the Commission and the Program participant has expired; or

xvi. For any other reason determined to be appropriate by the Commission.

2. The Commission may terminate any Program participant’s approval for the Standard Data Files Program, and any agreement or MOU with a Program participant in its sole discretion upon 10 days notice to the Program participant.

3. The Commission may terminate a Program participant’s approval for the Standard Data Files Program, and any agreement or MOU with a Program participant immediately and in its sole discretion, if it believes an individual or public health or individual or public safety may be at risk.

4. The Commission may terminate a Program participant’s approval for the Standard Data Files Program, and any agreement or MOU with a Program participant if the Program participant or end users are found to be using Commission records to conduct surveillance or to investigate or locate an individual, unless pursuant to N.J.S.A. 39:2-3.4(c)(6), for use by an insurer or insurance support organization, its agents, employees, or contractors, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, ratings, or underwriting. For any other purpose involving surveillance, the Program participant must submit an individual request for the evaluation and consideration of the Commission.

5. The Commission may cancel or amend a Program participant’s approval for the Standard Data Files Program, and any agreement or MOU with a Program participant, if such cancellation or amendment is deemed necessary by the Commission due to any changed requirement in the law or Commission policy that would prohibit such access or agreement, or upon a determination by the Commission that there has been a breach of the integrity or security of the data or information provided to the Program participant or a failure of the Program participant to comply with established procedures or legal requirements relating to the Standard Data Files Program.

6. The Program participant is required to ensure that all end users comply with all the terms, conditions, and limitations of the Program participant’s agreement or MOU with the Commission and is required to ensure that its end users use any and all data and information solely for the permitted purposes set forth in the Program participant’s agreement or MOU with the Commission. A violation of the terms of the agreement between the Program participant and end users to whom the Program participant sells or discloses, or has sold or disclosed, Commission data or information, will result in termination of participation in the Standard Data Files Program, but the Chief Administrator may, in the Chief Administrator’s sole discretion, allow remediation of the violation by permitting the Program participant to provide to the Commission a remediation plan, which the Chief Administrator may accept, modify, or reject, in the Chief Administrator’s sole discretion.

7. The Commission’s decision to terminate participation in the Standard Data Files Program for any violation of the terms and conditions of a Standard Data Files Program Agreement or MOU between the Commission and any subsidiary, related entity, or parent company of the Program participant shall automatically terminate the Program participant’s agreement or MOU with the Commission.

8. If a Standard Data Files Program Agreement or MOU between the Commission and any subsidiary, related entity, or parent company of the Program participant is suspended or terminated for violation of the terms of that agreement or MOU by end users to whom the subsidiary, related entity, or parent company sells or discloses, or has sold or disclosed, Commission data and information, the Program participant’s participation in the Standard Data Files Program shall be indefinitely suspended. The

Chief Administrator may, in the Chief Administrator’s sole discretion, allow remediation of the violation by permitting the subsidiary, related entity, or parent company to provide to the Commission a remediation plan, which the Chief Administrator may accept, modify, or reject, in the Chief Administrator’s sole discretion.

9. If any combination of the Program participant’s subsidiaries, related entities, parent companies, or end users violates the terms of the end users’ agreements or their agreement with the Commission or the Program participant, the Commission may terminate the Program participant’s participation in the Standard Data Files Program permanently with no opportunity for reinstatement. Additionally, if the Program participant’s participation in the Standard Data Files Program was suspended for a violation or violations by end users of subsidiaries, related entities, or parent companies to the Program participant, and thereafter reinstated, a subsequent violation may result in the Program participant’s participation in the Standard Data Files Program being terminated with no opportunity for reinstatement.

(n) Program participants enrolled in the Limited Online Access or Standard Data Files programs shall at all times maintain compliance with N.J.S.A. 56:8-163, Disclosure of breach of security to customers.

(o) Program participants enrolled in the Limited Online Access or Standard Data Files programs shall develop and implement a cybersecurity program, that reasonably conforms to the current version of an industry-recognized cybersecurity framework, such as any of the following, or any combination of the following, subject to required revisions, if applicable:

1. The Framework for Improving Critical Infrastructure Cybersecurity developed by the National Institute of Standards and Technology (NIST);

2. The Center for Internet Security Critical Security Controls for Effective Cyber Defense publication; or

3. The International Organization for Standardization and International Electrotechnical Commission 27000 family—information security management systems.

(p) When updates or changes in the form of a final revision to a framework listed *[in]* *at* (o) above is published, a Program participant shall reasonably conform to the revised framework not later than one year after the publication date stated in the revision.

(a)

MOTOR VEHICLE COMMISSION

Licensing Services

Title to Vehicles Abandoned at Repair Facilities

Adopted New Rules: N.J.A.C. 13:21-11A

Proposed: October 19, 2020, at 52 N.J.R. 1905(a).

Adopted: April 22, 2021, by the Motor Vehicle Commission, B. Sue Fulton, Chair and Chief Administrator.

Filed: May 11, 2021, as R.2021 d.058, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3), and **with proposed new N.J.A.C. 13:21-11A.8 not adopted.**

Authority: N.J.S.A. 39:2-3, 39:2A-21, 39:2A-28, 39:10-4, and 39:10A-19.

Effective Date: June 7, 2021.

Expiration Date: September 9, 2027.

Summary of Public Comments and Agency Responses:

The written comments received by the Motor Vehicle Commission (“Commission” or “MVC”), regarding its October 19, 2020, proposed new rules at 52 N.J.R. 1905(a), are available for inspection by contacting the Office of Legal and Regulatory Affairs, at rule.comments@mvc.nj.gov or Motor Vehicle Commission, 225 East State Street, PO Box 162, Trenton, New Jersey, 08666.

The following individuals submitted timely written comments to the Commission regarding the notice of proposed new rules, which comments are addressed below: Anthony E. Bush, Esq., of Eckert Seamans Attorneys at Law on behalf of NextGear Capital, Inc., and Les Cravens,