

policies concerning juveniles and adults in the State. Accordingly, no further analysis is required.

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

SUBCHAPTER 50B. BODY STANDARDS FOR SCHOOL BUSES

13:20-50B.32 Seat belts for driver and passengers

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

(c) Every school bus **as defined in N.J.S.A. 39:1-1 with a manufacturer date of October 1, 1992 through February 20, 2019**, shall be equipped with **either** passenger **Type 1** lap safety belts or **Type 2** lap and shoulder safety belts, **as defined in FMVSS (Federal Motor Vehicle Safety Standards) No. 209 (49 CFR 571.209)** for each seat position [that]. **All school buses as defined in N.J.S.A. 39:1-1 manufactured on or after February 21, 2019, shall be equipped with a Type 2 lap and shoulder safety belt or other child restraint system that is in conformity with applicable Federal standards for each seat position. All seat belts and installation shall conform to FMVSS Nos. 208, 209, [and] 210, and 222 (49 CFR [§§] 571.208, 571.209, [and] 571.210, and 571.222),** incorporated herein by reference, as amended and supplemented. If safety belt floor installation is used, attachment hardware shall be designed to prevent attaching bolts and other parts from becoming inadvertently disengaged from the floor of the school bus.

(d) (No change.)

(a)

MOTOR VEHICLE COMMISSION

Licensing Service

Title to Vehicles Abandoned on Private Property

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

Authorized By: Motor Vehicle Commission, B. Sue Fulton, Chair and Chief Administrator.

Authority: N.J.S.A. 39:2A-21, 39:2A-28, 39:4-56.6, and 39:10-4.

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

Proposal Number: PRN 2019-020.

Submit written comments by April 5, 2019, to:

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

The agency reproposal follows:

Summary

The Motor Vehicle Commission (“MVC” or “Commission”) has provided a 60-day comment period for this notice of reproposal. Therefore, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The MVC is reproposing new rules that will set forth the procedure to sell a vehicle abandoned on private property at public auction and subsequently transfer the title of the abandoned vehicle pursuant to N.J.S.A. 39:4-56.6. These reproposed new rules also allow title to the abandoned vehicle to be issued in the applicant’s name if the vehicle cannot be sold at auction.

The reproposed new rules were originally proposed in the New Jersey Register on October 2, 2017, at 49 N.J.R. 3350(a). During the public comment period for the original notice of proposal, the MVC received written comments from three entities: (1) American Insurance Association; (2) Insurance Council of New Jersey; and (3) Eckert Seamans, Attorneys at Law on behalf of Manheim Remarketing, Inc., and its sister company NextGear Capital, Inc. MVC staff engaged in lengthy and thorough analysis of the comments submitted. The MVC determined

that the issues raised by the commenters did not warrant any changes to the proposed rules. Accordingly, the new rules are reproposed as originally published.

The comments submitted are summarized below and followed by the Commission’s responses thereto. The numbers in parentheses after each comment correspond to the commenter’s number above to indicate the source of the comment.

1. COMMENT: The commenters recommend that N.J.A.C. 13:21-11.6 require the applicant to also verify with the National Insurance Crime Bureau (NICB) that the vehicle is not listed as stolen in the NICB database to ensure that the interests of all parties are protected, including insurers. Additionally, the commenters recommend that the applicant search the Insurance Service Organization (ISO) for the insurer of record and to ascertain if the vehicle is related to an open claim or, in the alternative, have the Commission cross-reference the vehicle identification number (VIN) with the insurer of record and notify the insurer that the vehicle has been reported abandoned. (1 and 2)

RESPONSE: The Commission declines to change the proposed new rules as requested because the requirement is overly burdensome, would require an additional expense, and is unlikely to result in any additional claims being asserted regarding the abandoned vehicle. A vehicle that has been reported stolen will appear in a national search of the vehicle identification number pursuant to reproposed new N.J.A.C. 13:21-11.8. Additionally, if during the application process it is revealed that the vehicle has been stolen, N.J.A.C. 13:21-11.8 allows the Commission to reject the application.

It is very likely that the majority of applicants do not have access to the ISO database, which can only be searched for a fee. Requiring the MVC to match all applications’ VINs to the vehicle insurance of record and to notify the insured that the vehicle has been reported abandoned would be overly burdensome, as the Commission does not maintain an individual driver insurance policy database. The duty to notify the insurance company that a vehicle is stolen or damaged lies with the insured and not the Commission. The abandoned on private property process will reveal the owner and lienholder who will be notified as to the vehicle’s whereabouts and the intent that the vehicle will be sold at auction. The identified owner and lien holder may then notify the insurance company, should the vehicle be the subject of an insurance claim. Additionally, insurance companies can monitor the required newspaper advertisements, which contain the vehicle’s vehicle identification number, to ascertain if a vehicle that is to be sold at auction is the subject of an insurance claim.

2. COMMENT: The commenters recommend that the proposed regulations contain a requirement that the applicant act on the application within a reasonable period of time in order to reduce excessive storage fees, and if the applicant does not provide notice within a reasonable time, that storage fees be capped at 30 days. (1 and 2)

RESPONSE: The Commission does not have the authority to impose time frames outside of those required by statute or to cap storage fees and, therefore, declines to include the provisions requested. Under N.J.S.A. 39:4-56.6, Abandonment of vehicle on private property; removal by owner of property; costs; sale of vehicle, a vehicle is not considered abandoned until the vehicle remains unclaimed for 90 days. This statute also requires the vehicle to be sold pursuant to N.J.S.A. 2A:44-20 through 31. These statutes also require that certain notices regarding the sale of the vehicle be sent and/or posted and that the auction be advertised in newspaper publications, all of which are in addition to the 90-day waiting period. Neither statute requires an applicant to act within a reasonable time frame or places a cap on storage fees.

3. COMMENT: The commenters request that the proposed regulations contain language to require an applicant to exercise good faith in choosing an auction venue that is likely to garner the highest proceeds. (1 and 2)

RESPONSE: The Commission does not have the authority to require an applicant to choose an auction venue that is likely to garner the highest proceeds nor the expertise to determine what auction venue will likely garner the highest proceeds, and, therefore, declines to change the new rules as requested. N.J.S.A. 2A:44-29 only requires the vehicle to “be sold at public auction.”

4. COMMENT: A commenter requests the proposed regulations codify that wholesale auctions are deemed an appropriate place to sell an abandoned vehicle consistent with decades long practice and consistent

with the Uniform Commercial Code (UCC) as adopted in New Jersey, as long as the sale is commercially reasonable. (3)

RESPONSE: The Commission declines to change the proposed new rules as requested. N.J.S.A. 2A:44-29 only requires the vehicle “be sold at public auction” and whether a wholesale auction is a public auction pursuant to the statute is beyond the scope of this rulemaking.

5. COMMENT: A commenter requests the proposed regulations be amended to recognize that a lien perfected by a financing statement or otherwise on an abandoned vehicle would be superior to a garage keeper’s lien for any expenses incurred for storage and sale of the vehicle and that said holder take priority to proceeds as required by existing statutes and case law. (3)

RESPONSE: The Commission declines to change the proposed new rules as requested because it is unnecessary. As the commenter states in his comments, “the lien holder takes priority to proceeds as required by existing statutes and case law” and “the statute is clear that any such garage keeper or mechanic lien is inferior to a lien, title or interest of a prior perfected security interest in accordance with Chapter 9 of the UCC.” Additionally, the Commission will not release a security interest properly recorded in the Commission database without a required lien release from the lien holder or a court order.

6. COMMENT: A commenter requests that the Commission amend the proposed definition of “abandoned vehicle” to specifically exclude vehicles abandoned on public property. (3)

RESPONSE: The Commission declines to change the proposed definition of “abandoned vehicle” as requested because it is unnecessary. The proposed definition of “abandoned vehicle,” for the purposes of this notice of proposal, is “a motor vehicle that has been unattended on the **private property** of another ...” (Emphasis added) As the commenter duly notes, it is implicit that this is not public property. Additionally, the sale of vehicles abandoned on public property is governed by N.J.S.A. 39:10A-1 et seq.

The following is a summary of the new rules that the MVC is reproposing at this time.

N.J.A.C. 13:21-11.1, Purpose and scope, establishes the purpose and scope of the reproposed new rules.

N.J.A.C. 13:21-11.2, Definitions, provides the definitions of various pertinent terms, including “abandoned vehicle,” “applicant,” “Commission,” and “person.”

N.J.A.C. 13:21-11.3, Application forms, provides information to applicants so that they may properly complete the procedure for issuance of a title to an abandoned vehicle after public auction.

N.J.A.C. 13:21-11.4, Power of attorney, allows a property owner, or other person in control or possession of the property on which the vehicle was abandoned, to have another person submit the application and required documents for the vehicle to be sold at public auction on their behalf.

N.J.A.C. 13:21-11.5, Transfer of interest in abandoned vehicle, allows a property owner, or other person in control or possession of the property on which the vehicle was abandoned, to release his or her interest in the abandoned vehicle to a towing facility dispatched to remove the vehicle from the property on which the vehicle was abandoned.

N.J.A.C. 13:21-11.6, Application for Certificate of Title, provides the requirements for obtaining an Application for Certificate of Title, which is the document used to transfer title to the abandoned vehicle after public auction

N.J.A.C. 13:21-11.7, Public auction of abandoned vehicle, sets forth the requirements an applicant must meet in order to sell the abandoned vehicle at public auction.

N.J.A.C. 13:21-11.8, Submission of completed Application for Certificate of Title, provides the documents that must be submitted, after the public auction of the abandoned vehicle, in order for title to be issued to the purchaser.

N.J.A.C. 13:21-11.9, Auction proceeds, provides that the proceeds from the sale of the abandoned vehicle first be applied to pay any perfected liens, storage expenses, and sale expenses. Any remaining proceeds must be transferred to the abandoned vehicle’s owner identified in any lien searches. If the owner cannot be located, the proceeds must be held in escrow for 60 days and then submitted to the municipality in which the vehicle was sold at auction.

Social Impact

The Commission anticipates that the reproposed new rules will have a positive social impact on New Jersey private property owners or other persons in control or possession of property where vehicles are abandoned, towing and storage companies, vehicle owners, vehicle lienholders, and purchasers of abandoned vehicles at public auctions. The Commission receives approximately 1,000 requests annually for property owners or other persons in control or possession of property to sell and transfer title to vehicles abandoned on their property. The reproposed new rules codify the procedure that will allow applicants to sell a vehicle abandoned on private property at auction and provide for the transfer of title to the purchaser. The reproposed new rules also allow those property owners to be reimbursed for costs incurred for the removal, storage, and sale of abandoned vehicles. The reproposed new rules also allow property owners and other persons in control or possession of property to release their interest in the abandoned vehicles to the towing and/or storage company that removed and stored the abandoned vehicle, thereby allowing towing and storage companies to also sell abandoned vehicles and to be reimbursed for the cost of removal, storage, and sale.

The reproposed new rules also protect owners and lienholders of vehicles that are abandoned on private property. The reproposed new rules require applicants to perform lien searches on the abandoned vehicle in New Jersey, and where appropriate, in surrounding states, to identify possible owners and lienholders. The reproposed new rules also require the vehicle’s identification number to be verified through a national search, which may further reveal an ownership interest not previously identified. The reproposed new rules will protect owners and lienholders that may be unaware a vehicle has been abandoned. The owners and lienholders will receive ample notice the vehicle is deemed abandoned and of the intent to sell the vehicle at auction. Owners and lienholders are provided with an opportunity to object to the auctions, to protect their ownership interest or lien and to have any liens satisfied from the auction proceeds.

The reproposed new rules will also protect purchasers of abandoned vehicles at auctions. A purchaser can only obtain title to an abandoned vehicle sold at auction by purchasing the vehicle from an applicant who has complied with the reproposed new rules, reducing the risk purchasers at auction will take title to a vehicle with an undisclosed lien or ownership interest.

Economic Impact

The reproposed new rules will have a positive economic impact. The reproposed new rules provide private property owners or persons in control or possession of property with a codified procedure to be reimbursed for costs associated with the removal, storage, and sale of vehicles abandoned on their property. Under the reproposed new rules, the applicant and the Commission will also identify abandoned vehicle owners and lienholders, and provide them with notice of the intent to sell the abandoned vehicle. The reproposed new rules provide an opportunity for the abandoned vehicle’s owner(s) and lienholder(s) to protect their lien(s) or interest and to object to the auction of the vehicle if the vehicle was not truly abandoned, and receive proceeds from the auction to satisfy their lien.

Federal Standards Statement

The reproposed new rules have no comparable Federal standard that can be applied; therefore, a Federal standards analysis is not required for this rulemaking.

Jobs Impact

The Commission anticipates no job impact in relation to the reproposed new rules. The reproposed new rules codify a Commission procedure that allows property owners or other persons in control or possession of property where vehicles are abandoned to sell abandoned vehicles at auction.

Agriculture Industry Impact

The reproposed new rules will have no impact on the agriculture industry in New Jersey because the reproposed new rules deal exclusively with vehicles abandoned on private property.

Regulatory Flexibility Analysis

The repropoed new rules will affect some property owners and other persons in control or possession of property, including small business owners, if vehicles are abandoned on their property. Additionally, towing and storage companies removing and storing abandoned vehicles may also fall under the small business designation. Finally, there are entities that property owners or other persons in control or possession of property will hire to comply with the requirements of the repropoed new rules that will also be considered small businesses. The Commission receives approximately 1,000 requests annually for the appropriate forms and directions to be followed to hold these auctions. However, the repropoed rules do not require any specific reporting or recordkeeping requirements that small businesses would be required to maintain.

The repropoed new rules codify a procedure applicants must follow to sell an abandoned vehicle at auction. The repropoed new rules require an applicant to provide notices by certified mail to known owners and lienholders and to provide notice of the auction in a local newspaper where the vehicle was abandoned before the auction can be held. Compliance with the repropoed new rules requires minimal notice costs for mailing and newspaper publications. The repropoed new rules strike a balance between the cost and time an applicant must expend to provide adequate notice to known/unknown owners and lienholders, and the protection that notice and time provides to owners and lienholders to object to the vehicle's sale and protect their interests. Additionally, applicants are able to be reimbursed for costs associated with the removal, storage, and sale of the abandoned vehicle from the proceeds at auction.

The Commission anticipates a very small impact on small businesses. The cost of compliance with the repropoed new rules is administrative in nature and will not require any additional professional services. This requirement must be uniform for all applicants in order to ensure adherence to statutory and regulatory requirements. Accordingly, an exemption from the compliance requirements of the repropoed new rules is not warranted.

Housing Affordability Impact Analysis

The repropoed new rules will not have any impact on the affordability of housing in New Jersey and will not evoke a change in the average costs associated with housing because the repropoed new rules deal exclusively with vehicles abandoned on private property.

Smart Growth Development Impact Analysis

The repropoed new rules will have no impact on smart growth and will not 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 repropoed new rules deal with vehicles abandoned on private property.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commission has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the repropoed new rules follows:

SUBCHAPTER 11. VEHICLES ABANDONED ON PRIVATE PROPERTY

13:21-11.1 Purpose and scope

This subchapter sets forth the procedure an applicant must follow to dispose of a vehicle abandoned on private property, pursuant to N.J.S.A. 39:4-56.6. This subchapter shall not apply to manufactured or mobile homes left unattended and for which there exists or existed a rental agreement to occupy a space on the property.

13:21-11.2 Definitions

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

"Abandoned vehicle" means a motor vehicle that has been left unattended on the private property of another without the consent of the owner or other person in control or possession of the property or for a

period in excess of that for which consent was given, except in the case of emergency or disablement of the vehicle.

"Applicant" means the property owner or person in control or possession of the property where the vehicle was abandoned, or in a case where the interest in such a vehicle has been properly released, pursuant to the requirements in this subchapter, to the towing company dispatched by the property owner or person in control or possession of the property to remove the abandoned vehicle.

"Commission" means the New Jersey Motor Vehicle Commission.

"Person" means a natural person, or association, corporation, partnership, sole proprietorship, trust, non-profit or not-for-profit legally registered to conduct business in New Jersey, or any other legal entity.

13:21-11.3 Application forms

The applicant must contact the Commission to obtain the required forms and procedures that must be followed to allow the vehicle's title to be transferred after public auction. Forms may be obtained by contacting the Special Title—Foreign Title Department, New Jersey Motor Vehicle Commission, PO Box 017, Trenton, New Jersey 08666.

13:21-11.4 Power of attorney

If another person is completing any of the forms prescribed in this subchapter on behalf of the applicant, the applicant or attorney-in-fact must submit a properly executed and notarized original or certified copy of a power of attorney to the Commission at the address provided by the Commission. The power of attorney must list the abandoned vehicle's make, model, and vehicle identification number.

13:21-11.5 Transfer of interest in abandoned vehicle

(a) The property owner or other person in control or possession of the property may release his or her interest in a vehicle abandoned on his or her property to the towing facility dispatched to remove the vehicle or the storage facility where the vehicle is being stored after being removed from the property.

(b) If an applicant releases his or her interest in a vehicle abandoned on his or her property to the towing facility dispatched to remove the vehicle or the storage facility where the vehicle is being stored after being removed from the property, the applicant must complete and execute an Authority to Transfer Interest, which form must be submitted to the Commission with all other required documents pursuant to this subchapter.

13:21-11.6 Application for Certificate of Title

(a) Prior to conducting an auction for the sale of the abandoned vehicle, the applicant must first obtain an Application for Certificate of Title from the Commission. In order to obtain an Application for Certificate of Title from the Commission, the applicant must submit the following to the Commission:

1. Proof of ownership and lienholder information. A lien search request must be obtained from the Commission and returned to the Commission properly executed and accompanied by the appropriate fee for the lien search;

i. If there is no record of ownership of the abandoned vehicle in New Jersey, the applicant must perform a lien search in each of the following states and return the lien search results to the Commission: New York, Delaware, Pennsylvania, Connecticut, and Maryland.

ii. The Commission may also require an applicant to perform a lien search in any state where the abandoned vehicle is titled, registered, or primarily operated in, and submit the lien search results to the Commission;

2. A detailed, notarized affidavit stating the following:

i. How the abandoned vehicle came into the applicant's possession;

ii. The address where the vehicle was abandoned;

iii. How long the abandoned vehicle has been in the applicant's possession;

iv. The abandoned vehicle's year, make, and vehicle identification number;

v. The applicant's name, address, and daytime telephone number; and

vi. The steps taken by the applicant to locate the abandoned vehicle's owner;

3. A copy of the completed Abandoned Vehicle 90-Day Notice and the original proof of mailing. The Abandoned Vehicle 90-Day Notice must

be sent by certified mail, return receipt requested, to the owner(s) and any lienholders reported on any lien searches required pursuant to this subchapter. If the certified mail is undeliverable or unclaimed, the notice must be sent by regular mail. If the Abandoned Vehicle on Private Property-90 Day Notice is returned to the applicant, the original unopened, undelivered envelope showing the U.S. Postal Service notation indicating the reason(s) for non-delivery must be submitted to the Commission;

4. A pencil tracing or a photograph of the abandoned vehicle's vehicle identification number; and

5. One photograph each of the front, back, passenger, and driver's side of the abandoned vehicle.

13:21-11.7 Public auction of abandoned vehicle

(a) Upon receipt from the Commission of the Application for Certificate of Title, the applicant may sell the abandoned vehicle at public auction, pursuant to the requirements of this section.

1. The applicant must publish a notice in a newspaper of general circulation in the municipality where the vehicle was abandoned for two weeks, at least once each week, prior to the vehicle being sold at public auction. The second publication must appear not less than five business days prior to the date of the public auction. The publication must state that the applicant has applied to the Chief Administrator of the Commission for authority to sell the vehicle at public auction and if anyone desires to be heard in opposition, he or she may do so by contacting the Chief Administrator prior to the date of the public auction. The publication must also include the year, make, and model of the vehicle and a full and correct vehicle identification number or, if applicable, hull identification number.

i. For an abandoned vehicle on private property, the five-day notice must be posted at the location where the vehicle was left abandoned, not less than five days prior to the date of the public auction.

13:21-11.8 Submission of completed Application for Certificate of Title

(a) To obtain title to the abandoned vehicle in the purchaser's name following public auction, the applicant must submit the following to the Commission:

1. The original or certified copy of the notarized affidavit of newspaper publication for the two publications required by this subchapter;

2. A copy of the abandoned vehicle on private property five-day notice required by this subchapter;

3. A notarized affidavit of public auction identifying all persons who attended the public auction, including an accounting of the auction proceeds and costs incurred. If no persons attended the public auction or no bids were received, the applicant must state that a public auction was held but that no bids were received and/or no persons attended. The applicant must also describe any liens placed on the vehicle as a result of

the sale of the vehicle at the public auction. If the applicant is a business, the affidavit must be on the business's letterhead;

4. A completed Application for Certificate of Ownership for a vehicle abandoned on private property, with the applicable title fee and sales tax due; and

5. A copy of the purchaser's driver's license or, if the purchaser is not an individual, the entity's corporation code (entity identification number assigned by the Commission).

(b) If the documents submitted are not satisfactory to the Chief Administrator, the Chief Administrator may, in his or her sole discretion, require the applicant to submit additional documents supporting the request for title to the abandoned vehicle.

(c) A \$25.00 fee will be assessed if the completed Application for Certificate of Title to the abandoned vehicle is not submitted to the Commission within 10 days of the date of the public auction.

(d) Upon the Commission's receipt of all required documents set forth in this section, the Chief Administrator will conduct a national search to verify the abandoned vehicle's vehicle identification number. If the national search reveals an ownership interest not previously disclosed, the application for title will be rejected and the Commission will notify the applicant that the process set forth in this subchapter must be repeated, including the public auction.

(e) When the Commission has received all required documents and the Chief Administrator is satisfied that title should be issued to the purchaser at public auction, the Chief Administrator will issue a certificate of title, which will be mailed to the purchaser as indicated on the Application for Certificate of Title. If there is a lien as a result of the sale at public auction, title will be mailed to the lienholder.

(f) If a sale through public auction cannot be accomplished pursuant to this subchapter, the applicant may apply for a title in his or her name or business name, provided the applicant has complied with the requirements of this subchapter.

13:21-11.9 Auction proceeds

(a) The proceeds from the public auction of the abandoned vehicle shall be applied to pay any liens and expenses incurred for storage and sale of the vehicle.

(b) Any remaining proceeds shall be remitted to the owner of the abandoned vehicle identified in the lien search(es) performed pursuant to this subchapter.

(c) If the owner of record cannot be located, the applicant must hold the balance of the proceeds in escrow for 60 days after the public auction of the abandoned vehicle. If the owner of the abandoned vehicle does not claim the balance within 60 days of the date of the public auction, the applicant must remit the balance of the proceeds to the municipality in which the vehicle was abandoned.