

## **Amendments to DMV Regulations (15 NYCRR 131.3, 131.4, 136.5, and 136.6) in Context**

### **Section 131.1. Introduction<sup>1</sup>**

Paragraph (d) of subdivision 3 of section 510 of the Vehicle and Traffic Law provides that a license, registration or privilege of operating may be suspended or revoked for habitual or persistent violation of any of the provisions of the Vehicle and Traffic Law or of any lawful ordinance, rule or regulation made by local authorities in relation to traffic. Section 523-a of the Vehicle and Traffic Law provides that the commissioner shall establish criteria, based on driving record, for requiring attendance at a driver improvement clinic. The following criteria are established to identify driving records which shall be presumptively deemed to constitute habitual or persistent violation of traffic laws under such statutory provisions.

### **Section 131.2. Point system<sup>2</sup>**

Every violation of the Vehicle and Traffic Law or of any local law, ordinance, rule or regulation may be assigned a point value by the commissioner. The point value assigned to such violation shall be added to the violator's driving record upon receipt by the commissioner of a certificate of conviction or a certificate of bail forfeiture. Administrative action shall be taken by the commissioner based upon a motorist's point total as specified in this Part.

### **15 NYCRR 131.3. Point values**

(a) All traffic violations shall be assigned a point value of two points, except as otherwise prescribed in subdivision (b) of this section.

(b) Exceptions.

(1) The following violations shall be assigned a point value of 11 points:

(i) any violation involving speeding more than 40 miles per hour over the speed limit~~[-];~~

(ii) any violation involving operation of a motor vehicle while such person's license or privilege is suspended or revoked, including conviction of section 511 of the Vehicle and Traffic Law, and for any other incident of driving during a period of license suspension or revocation; and

(iii) any alcohol- or drug-related driving conviction or incident, as such term is defined by 15 NYCRR § 136.5(a)(1).

(2) The following violations shall be assigned a point value of eight points:

(i) any violation involving speeding more than 30 but no more than 40 miles per hour over the speed limit~~[-];~~

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<sup>1</sup> 15 NYCRR 131.1 has not been amended but is included to provide context to the amended sections.

<sup>2</sup> 15 NYCRR 131.2 has not been amended but is included to provide context to the amended sections.

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(ii) any violation involving overtaking or passing a stopped school bus;

(iii) any violation involving the operation or movement of a vehicle or a combination of vehicles exceeding height limitations over, under, on, or through highways, bridges or highway structures, or the striking of a bridge or highway structure, pursuant to subdivisions (2) or (14) of section 385 of the Vehicle and Traffic Law; and

(iv) any violation involving driving through a highway construction or maintenance work area at a speed in excess of the posted work area speed limit, pursuant to subdivision (f) of section 1180 of the Vehicle and Traffic Law.

(3) The following violations shall be assigned a point value of six points:

(i) any violation involving speeding more than 20 but not more than 30 miles per hour over the speed limit.

(4) The following violations shall be assigned a point value of five points:

(i) reckless driving;

(ii) ~~any violation involving overtaking or passing a stopped school bus;~~ (iii) any violation involving the use of a mobile telephone or portable electronic device;

~~(iv)~~ (iii) any violation involving a railroad crossing;

(iv) any violation involving facilitating aggravated unlicensed operation of a motor vehicle pursuant to section 511-a of the Vehicle and Traffic Law;

(v) any violation involving failure to exercise due care pursuant to section 1146 of the Vehicle and Traffic Law;

(vi) any violation involving a speed contest or race pursuant to section 1182 of the Vehicle and Traffic Law; and

(vii) any violation involving leaving the scene of a personal injury accident without reporting.

(5) The following violations shall be assigned a point value of four points:

(i) any violation involving speeding more than 10 but not more than 20 miles per hour over the speed limit;

(ii) following too closely; and

(iii) inadequate service brakes, except for such a violation committed by an employed driver during the course of ~~his~~ their employment, which shall be subject to the provisions of subdivision (a) of this section.

(6) The following violations shall be assigned a point value of three points:

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- (i) any violation involving speed except where a different point value has been assigned;
- (ii) any violation constituting a failure to yield the right-of-way;
- (iii) any violation involving disobeying a traffic control signal or a stop or yield sign;
- (iv) any violation involving improper passing, changing lanes unsafely, driving to left of center of roadway, or driving in the wrong direction;
- (v) leaving the scene of a property damage incident or injury to an animal without reporting; and

(vi) any violation involving use of safety belts or seats by a child under the age of 16.

(7) The following violations shall not be assigned any point value:

- (i) any violation relating to vehicle registration, licensing or insurance;
- (ii) any violation relating to motor vehicle inspection, vehicle weights or dimensions or vehicle equipment other than inadequate service brakes;
- (iii) ~~any violation, other than a violation set forth in paragraphs (1) through (6) of this subdivision, for which suspension or revocation action is mandated upon conviction;~~
- ~~(iv)~~ any parking violation;

~~(v)~~ **(iv)** any pedestrian or bicycle violation;

~~(vi)~~ **(v)** any violation relating to a business or the sale of goods established in the Vehicle and Traffic Law or any local law;

~~(vii)~~ **(vi)** any other violation not resulting from the operation of a motor vehicle; **and**

~~(viii)~~ **(vii)** any violation of section 1110(a) of the Vehicle and Traffic Law relative to the improper use of high occupancy vehicle lanes in Suffolk County, between exits 49 and 57 of the Long Island Expressway.

(8) Point values for violations committed on or after July 1, 1988, shall be assigned in accordance with the provisions of this section which became effective on October 12, 1988.

**\*The proposed regulations will not be enforceable until the thirtieth day following publication in the State Register of notice to the public that the Commissioner has determined that the Department's systems are prepared to implement the proposed regulatory changes.**

(c) Point values assessed shall be assessed as of the date of violation.

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### 15 NYCRR 131.4. Administrative action

(a) A motorist may be mailed a letter advising ~~[him]~~ **them** of the status of ~~[his]~~ **their** driving record and any possible future action which may be taken in the event of his accumulation of additional points when a motorist has accumulated between four and six points within ~~[an 18]~~ **a 24**-month period.

(b) A motorist may be required to attend a driver improvement clinic when ~~[he has]~~ **they have** accumulated between 7 and 10 points within ~~[an 18]~~ **a 24**-month period. Failure to attend a driver improvement clinic when required may result in the suspension of the motorist's license as prescribed in Part 132 of this Title.

(c) A motorist may be required to attend a formal hearing to investigate habitual or persistent violation of the provisions of the Vehicle and Traffic Law or of any lawful ordinance, rule or regulation made by local authorities in relation to traffic at which suspension or revocation action may be taken against their license when they have accumulated:

(1) eleven or more points within ~~[an 18]~~ **a 24**-month period, **except when (i) all such points result from a single alcohol- or drug-related driving conviction or incident as defined by paragraph (1) of subdivision (a) of section 136.5 of this Title, or (ii) all such points result from a single violation of section 511 of the Vehicle and Traffic Law;**

(2) nine or more points resulting from speeding violations within ~~[an 18]~~ **a 24**-month period; or

(3) four or more additional points within a 12-month period after having attended a formal hearing.

**\*The proposed regulations will not be enforceable until the thirtieth day following publication in the State Register of notice to the public that the Commissioner has determined that the Department's systems are prepared to implement the proposed regulatory changes.**

(d) A motorist may be required to attend a formal hearing to investigate habitual or persistent violation of the provisions of the Vehicle and Traffic Law or of any lawful ordinance, rule or regulation made by local authorities in relation to traffic at which suspension or revocation action may be taken against his license even though the motorist has not reached a point total specified in subdivision (c) of this section if he has been charged with three or more violations for which points are assessed within an unusually short period of time, which driving record, in the discretion of the commissioner, would tend to indicate that such person may be a persistent violator of traffic laws or regulations.

(e) If a motorist is required to attend a hearing based upon a single violation which is assigned a point value of 11 points, the hearing will be to investigate the specific

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violation involved, pursuant to paragraph (a) of subdivision 3 of section 510 of the Vehicle and Traffic Law, rather than to investigate habitual or persistent violations of law.

### **15 NYCRR 131.5. Point reduction<sup>3</sup>**

(a) Upon receipt of a notice from a motor vehicle accident prevention course approved by the commissioner that a person has satisfactorily completed such course, the department shall reduce a total of up to four points on such person's driving record. Such credit shall be considered in computing the total points accumulated by such person as a result of violations which occurred prior to, and within 18 months preceding, the completion of such course. Such credit will not affect any suspension or revocation action which has already been placed in effect against such person at or prior to the time the notice has been recorded on the person's driving record.

(b) No person can receive a point reduction more than once in any 18-month period.

(c) Entry into an approved motor vehicle accident prevention program is voluntary on the part of the motorist, and any charge for such program is in the discretion of the delivery agency administering the course.

(d) The approved sponsoring agency shall pay to the department a fee as provided in Part 138 of this Title for the recording of a notice of successful completion of a motor vehicle accident prevention course and administrative costs relating thereto.

### **15 NYCRR 131.6. Exclusiveness of procedure**

The point system, including provisions for point reduction, established by this Part applies only to administrative action taken under the provisions of law specified in section 131.1 of this Part. It in no way affects any administrative action taken under any other provision of the Vehicle and Traffic Law.

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<sup>3</sup> 15 NYCRR 131.5 has not been amended but is included to provide context to the amended sections.

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### **15 NYCRR 136.1. Introduction<sup>4</sup>**

(a) Intent. Section 510 of the Vehicle and Traffic Law provides that a license may be issued after revocation in the discretion of the commissioner. In exercising such discretion and in keeping with his responsibility to provide meaningful safeguards for the general public who are users of the highways, it is the purpose of the commissioner to utilize departmental driver improvement programs in order to rehabilitate problem drivers through the use of education and explanation. It is the further purpose of the commissioner to take disciplinary action in order to force a change in the attitude and driving habits of problem drivers, where the Department's review indicates that such action is necessary for the protection of the applicant and the public alike. This Part is intended to implement such purposes by establishing criteria to identify individual problem drivers, the application of which shall result in a presumption, in certain cases, that the involved driver would present a potential danger to himself or other users of the highway if allowed to be licensed or relicensed.

(b) Definitions.

(1) Problem driver. A problem driver is an applicant for a driver's license or privilege who has had a series of convictions, incidents and/or accidents or has a medical or mental condition, which in the judgment of the commissioner or his or her designated agent, upon review of the applicant's entire driving history, establishes that the person would be an unusual and immediate risk upon the highways. The commissioner or his or her designated agent shall set forth in writing the basis for the determination that an applicant is a problem driver.

(2) Disability. A disability is any condition, whether mental, emotional or physiological, which is likely to diminish the ability of an individual to safely control or operate a motor vehicle.

(3) History of abuse of alcohol or drugs. A history of abuse of alcohol or drugs shall consist of a record of two or more incidents, within a 25 year period, of operating a motor vehicle while under the influence of alcoholic beverages and/or drugs or of refusing to submit to a chemical test not arising out of the same incident, whether such incident was committed within or outside of this state.

(4) Rehabilitative effort. Rehabilitative effort shall consist of referral of an individual with a history of abuse of alcohol or drugs to any agency certified by the Office of Alcoholism and Substance Abuse and/or agents authorized by professional license or professional certification, such as that granted by a board of examiners of the State Education Department, for evaluation of the extent of alcohol and/or drug use and satisfactory participation in any treatment recommended by such agency, and/or evidence of

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<sup>4</sup> Section 136.1 has not been amended but is included to provide context for the amendments to sections 136.5 and 136.6.

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abstinence from, or controlled use of, alcohol and/ or drugs for a period of time sufficient to indicate that such person no longer constitutes a danger to other users of the highway.

(5) Safety factor. A safety factor is a conviction for, or a finding by a departmental hearing officer of, any violation of the Vehicle and Traffic Law or of any local law, ordinance, order, rule or regulation relating to traffic, except violations relating to parking, standing or stopping; an accident with conviction involvement; an accident where a finding of gross negligence in the operation of a motor vehicle or operating a motor vehicle in a manner showing a reckless disregard for the life or property of others is made by a departmental hearing officer; and a finding of a chemical test refusal. A bail forfeiture shall be considered a conviction for purposes of this Part.

(c) The provisions of this Part shall apply to an application for restoration of a driver's license or driving privilege.

### **15 NYCRR 136.2. Approval of application<sup>5</sup>**

Except as provided in sections 136.3, 136.4 and 136.5 of this Part, an application for a driver's license shall be approved. In addition, an application for re-licensure shall be waived under the following circumstances:

(a) If the licensee holds a commercial driver's license and a conviction results in the revocation of both the commercial and non-commercial portion of his or her driver's license, the commercial portion of the driver's license shall be automatically restored after the minimum one-year revocation period is served, if the non-commercial portion of the license has been restored as the result of either completion of the alcohol and drug rehabilitation program or approval for re-licensure pursuant to this Part.

(b) If the licensee holds a commercial driver's license and such license is revoked as the result of a conviction that results solely in the revocation of the commercial portion of such license, then such license shall be automatically restored after the one-year minimum revocation period is served.

(c) Subdivisions (a) and (b) shall not be applicable to a person whose license is suspended or revoked for an independent violation or violations at the time at which such person would be eligible for restoration of the commercial portion of his or her license pursuant to such subdivisions.

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<sup>5</sup> Section 136.2 has not been amended but is included to provide context for the amendments to sections 136.5 and 136.6.

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### **15 NYCRR 136.3. Grounds for immediate denial of application<sup>6</sup>**

An application for a driver's license shall be denied without further review if:

- (a) the minimum waiting period provided by statute has not expired; and/or
- (b) there is evidence of an open suspension or suspensions which have not been fully complied with; and/or
- (c) the applicant fails to furnish any requested document or information required by the commissioner as part of the record review.

### **15 NYCRR 136.4. Denial of application following record review<sup>7</sup>**

(a) An application for a driver's license shall be denied if:

(1) a disability, as defined in section 136.1(b)(2) of this Part, is found, unless evidence shall be presented to satisfy the commissioner, that such individual may safely operate a motor vehicle; and/or

(2) there is a history of abuse of alcohol or drugs, as defined in section 136.1(b)(3) of this Part, with insufficient evidence of rehabilitative effort; and/or

(3) There is a combination of safety factors, as defined in section 136.1(b)(5) of this part, resulting in 25 or more negative units, as set forth in section 136.6(a) of this Part.

(b)

(1) An application for a driver's license may be denied if a review of the entire driving history provides evidence that the applicant constitutes a problem driver, as defined in section 136.1(b)(1) of this Part. If an application is denied pursuant to this paragraph, no application shall be considered for a minimum of one year from the date of denial. In lieu of such denial, the applicant may be issued a license or permit with a problem driver restriction, as set forth in section 3.2(c)(4) of this Title and paragraph (2) of this subdivision.

(2) Upon the approval of an application for relicensing of a person who is deemed a problem driver under this subdivision, the Commissioner may impose a problem driver restriction on such person's license or permit, as set forth in section 3.2(c)(4) of this Title. As a component of this restriction, the Commissioner may require such person to

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<sup>6</sup> Section 136.3 has not been amended but is included to provide context for the amendments to sections 136.5 and 136.6.

<sup>7</sup> Section 136.4 has not been amended but is included to provide context for the amendments to sections 136.5 and 136.6.

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install an ignition interlock device in any motor vehicle owned or operated by such person. The ignition interlock requirement will be noted on the attachment to the driver license or permit held by such person. Such attachment must be carried at all times with the driver license or permit.

(3)

(i) Revocation of license or permit with problem driver restriction. A license or permit that contains a problem driver restriction shall be revoked:

(a) upon the holder's conviction of a traffic violation or combination of violations, committed while such restriction is in effect, which the Commissioner deems serious in nature; or

(b) for the holder's failure to install and maintain an ignition interlock device in motor vehicles owned or operated by the holder, when required to do so under such restriction.

The attachment, provided for in paragraph (2) of this subdivision, shall set forth the violation or violations that will result in such a revocation. A revocation for any of the above reasons shall be issued without a hearing based upon receipt of a certificate or certificates of conviction. The Commissioner may also revoke a license or permit with a problem driver restriction, without a hearing, upon receipt of a certificate of conviction that indicates that the applicant has driven in violation of the conditions of such restriction.

(ii) Application for relicensure after revocation of license or permit with problem driver restriction.

(a) Except as provided in section 136.5(b)(3)(i) of this Part, if the applicant held a license or permit with a problem driver restriction and such restriction was for a period of five years, and such person's license or permit is revoked pursuant to this paragraph, the Commissioner shall deny the application for at least five years, in addition to any revocation period imposed pursuant to the Vehicle and Traffic Law. After such waiting period, the Commissioner may approve the application, provided that upon such approval the Commissioner shall impose the problem driver restriction on such person's license for a period of five years and may require the installation of an ignition interlock device in any motor vehicle owned or operated by such person for a period of no less than two but no more than five years. Such period shall be based, in part, on the period of time the applicant had installed an ignition interlock device pursuant to section 136.5(b)(3)(i) of this Part. Notwithstanding any other provision of this subdivision, if such applicant's license or permit with a problem driver restriction was previously revoked pursuant to the provisions of this paragraph, no new license or permit shall be issued, except that the Commissioner shall not be foreclosed from consideration of unusual, extenuating and compelling circumstances that may be presented for review and which

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may form a valid basis to deviate from the general policy, as set forth above, in the exercise of discretionary authority granted under section 510 of the Vehicle and Traffic Law. If an application is approved based upon the exercise of such discretionary authority, the reasons for approval shall be set forth in writing and recorded.

(b) Except as provided in section 136.5(b)(4)(i) of this Part, if the applicant held a license or permit with a problem driver restriction and such restriction was for a period of two years, and such person's license or permit is revoked pursuant to this paragraph, the Commissioner shall deny the application for at least two years, in addition to any minimum revocation period imposed pursuant to the Vehicle and Traffic Law. After such waiting period, the Commissioner may approve the application, provided that upon such approval the Commissioner shall impose the problem driver restriction on such person's license for a period of two years. Notwithstanding any other provision of this subdivision, if such applicant's license or permit with a problem driver restriction was previously revoked pursuant to the provisions of this paragraph, no new license or permit shall be issued, except that the Commissioner shall not be foreclosed from consideration of unusual, extenuating and compelling circumstances that may be presented for review and which may form a valid basis to deviate from the general policy, as set forth above, in the exercise of discretionary authority granted under section 510 of the Vehicle and Traffic Law. If an application is approved based upon the exercise of such discretionary authority, the reasons for approval shall be set forth in writing and recorded.

(4) Employer vehicle. A person required to operate a motor vehicle owned by such person's employer in the course and scope of his or her employment may operate that vehicle without installation of an ignition interlock device only in the course and scope of such employment and only if such person carries in the motor vehicle written documentation indicating the employer has knowledge of the restriction imposed and has granted permission for the person to operate the employer's vehicle without the device only for business purposes. Such documentation shall display the employer's letterhead and have an authorized signature of the employer. A motor vehicle owned by a business entity that is wholly or partly owned or controlled by a person subject to the problem driver restriction is not a motor vehicle owned by the employer for purposes of the exemption provided in this paragraph and shall be deemed to be owned by the person subject to the problem driver restriction.

(c) An application for a driver's license may be denied if the applicant has been convicted of a violation of section 125.10, 125.12, 125.13, 125.14, 125.15, 125.20, 125.22, 125.25, 125.26 or 125.27 of the Penal Law arising out of the operation of a motor vehicle, or if the applicant has been convicted of a violation of section 1192 of the Vehicle and Traffic Law where death or serious physical injury, as defined in section 10.00 of the Penal Law, has resulted from such offense.

(d) An application for a driver's license may be denied if the applicant is currently revoked pursuant to:

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(1) a determination of a department of motor vehicles' administrative law judge following a hearing:

(i) to investigate a fatal accident; or

(ii) held under Article 2-A of the vehicle and traffic law where the applicant was convicted of a violation and such violation resulted in the death of, or serious physical injury to, a person other than the applicant.

(2) a judgment of conviction certified by a court of competent jurisdiction, where the violation resulted in the death of, or serious injury to, a person other than the applicant.

(e) [Reserved]

(f) While it is the Commissioner's general policy to deny an application based on those elements cited in subdivisions (a), (b), (c) and (d) of this section, the commissioner shall not be foreclosed from consideration of unusual, extenuating or compelling circumstances which may be presented for review, which form a valid basis to deviate from the general policy, as set forth above, in the exercise of the discretionary authority granted under section 510 of the Vehicle and Traffic Law. If an application is approved based upon the exercise of such discretionary authority, the reasons for approval shall be stated in writing and recorded. If an application is approved under such circumstances, the Commissioner may impose a problem driver restriction on such person's license or permit for a period of three years, as set forth in section 3.2(c)(4) of this Title, and may require the installation of an ignition interlock device in any motor vehicle owned or operated by such person for such three-year period.

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### 15 NYCRR 136.5. Special rules for applicants with multiple alcohol- or drug-related driving convictions or incidents and for applicants with an alcohol-related conviction related to a fatal accident

(a) For the purposes of this section:

(1) Alcohol- or drug-related driving conviction or incident means any of the following, not arising out of the same incident:

(i) a conviction **or a youthful offender adjudication** of a violation of section 1192 of the Vehicle and Traffic Law or an out-of-state conviction for operating a motor vehicle while under the influence of alcohol or drugs;

(ii) a finding of a violation of section 1192-a of the Vehicle and Traffic Law or a finding of a refusal to submit to a chemical test under section 1194-a of the Vehicle and Traffic Law; provided, however, that no such findings shall be considered after the expiration of the retention period contained in paragraph (k) of subdivision 1 of section 201 of the Vehicle and Traffic Law;

(iii) a conviction of an offense under the Penal Law for which a violation of section 1192 of the Vehicle and Traffic Law is an essential element; or

(iv) a finding of refusal to submit to a chemical test under section 1194 of the Vehicle and Traffic Law, where such finding does not arise out of an incident that resulted in a conviction of a violation of section 1192 of the Vehicle and Traffic Law.

(2) Serious driving offense means:

(i) a fatal accident;

(ii) a driving-related Penal Law conviction;

(iii) conviction of two or more violations **other than as defined in paragraph (1) of this subdivision**, for which five or more points are assessed on a violator's driving record pursuant to section 131.3 of this Title; or

(iv) 20 or more points from any violations **other than as defined in paragraph (1) of this subdivision**.

(3) 25 year look back period means the period commencing upon the date that is 25 years before the date of the revocable offense and ending on and including the date of the revocable offense.

(4) Revocable offense means the violation, incident or accident that results in the revocation of the person's drivers license and which is the basis of the application for relicensing. Upon reviewing an application for relicensing, the Commissioner shall review the applicant's entire driving record and evaluate any offense committed between the date of the revocable offense and the date the application is reviewed by

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the Commissioner as if it had been committed immediately prior to the date of the revocable offense. For purposes of this section, date of the revocable offense means the date of the earliest revocable offense that resulted in a license revocation for which the revocation has not been terminated by the Commissioner's subsequent approval of an application for relicensing.

(b) Upon receipt of a person's application for relicensing, the Commissioner shall conduct a lifetime review of such person's driving record. If the record review shows that:

(1) the person has ~~[five]~~four or more alcohol- or drug-related driving convictions or incidents in any combination within ~~[his or her]~~their lifetime, then the commissioner shall deny the application.

(2) the person has three ~~[or four]~~ alcohol- or drug-related driving convictions or incidents in any combination within the 25 year look back period and, in addition, has one or more serious driving offenses within the 25 year look back period, then the commissioner shall deny the application;

(3)

(i) the person has three ~~[or four]~~ alcohol- or drug-related driving convictions or incidents in any combination within the 25 year look back period but no serious driving offenses within the 25 year look back period; and

(ii) the person is currently revoked for an alcohol- or drug-related driving conviction or incident, then the Commissioner shall deny the application for at least five years after which time the person may submit an application for relicensing. Such waiting period shall be in addition to the revocation period imposed pursuant to the Vehicle and Traffic Law. After such waiting period, the Commissioner may in his or her discretion approve the application, provided that upon such approval, the Commissioner shall impose the A2 restriction on such person's license for a period of five years and shall require the installation of an ignition interlock device in any motor vehicle owned or operated by such person for such five-year period. Such waiting period shall be extended for an additional five years if the Commissioner finds that the person has any incidents of driving during the waiting period, as indicated by accidents, convictions or pending tickets or adjudications. If such license with an A2 restriction is later revoked for a subsequent alcohol- or drug-related driving conviction or incident or for a conviction which arises out of a fatal accident, such person shall thereafter be ineligible for any kind of license to operate a motor vehicle.

(4)

(i) the person has three ~~[or four]~~ alcohol- or drug-related driving convictions or incidents in any combination within the 25 year look back period but no serious driving offenses within the 25 year look back period; and

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(ii) the person is not currently revoked as the result of an alcohol- or drug-related driving conviction or incident, then the Commissioner shall deny the application for at least two years, after which time the person may submit an application for relicensing. Such waiting period shall be in addition to the revocation period imposed pursuant to the Vehicle and Traffic Law.

After such waiting period, the Commissioner may in his or her discretion approve the application, provided that upon such approval, the Commissioner shall impose an A2 restriction, with no ignition interlock requirement, for a period of two years. Such waiting period shall be extended for an additional two years if the Commissioner finds that the person has any incidents of driving during the waiting period, as indicated by accidents, convictions or pending tickets or adjudications. If such license with an A2 restriction is later revoked for a subsequent alcohol- or drug-related driving conviction or incident or for a conviction which arises out of a fatal accident, such person shall thereafter be ineligible for any kind of license to operate a motor vehicle;

(5) the person has two alcohol- or drug-related driving convictions or incidents in any combination within the 25 year look back period, then the Commissioner may in his or her discretion approve the application after the minimum statutory revocation period is served.

(6) the person has been twice convicted of a violation of subdivision 3, 4 or 4-a of section 1192 of the Vehicle and Traffic Law or of driving while intoxicated or of driving while ability is impaired by the use of a drug or of driving while ability is impaired by the combined influence of drugs or of alcohol and any drug or drugs where physical injury, as defined in section 10.00 of the Penal law, has resulted from such offense in each instance, then the commissioner shall deny the application;

(7) the person is otherwise eligible for relicensing under this section, but is applying for relicensing due to revocation arising out of an alcohol-related conviction involving a fatal accident, the Commissioner may approve the application after the minimum revocation period is served, provided that upon such approval, the Commissioner shall impose the A2 restriction on such person's license for a period of three years and shall require the installation of an ignition interlock device in any motor vehicle owned or operated by such person for such period. For the purpose of this paragraph, alcohol-related conviction shall mean:

(i) a conviction of a violation of section 1192 of the Vehicle and Traffic Law; or

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(ii) a conviction of an offense under the Penal Law for which a violation of section 1192 of the Vehicle and Traffic Law is an essential element.

(c) The grounds for any denial shall be set forth in writing and a copy shall be made available to the person making the application for relicensing.

(d) While it is the Commissioner's general policy to act on applications in accordance with this section, the Commissioner shall not be foreclosed from consideration of unusual, extenuating and compelling circumstances that may be presented for review and which may form a valid basis to deviate from the general policy, as set forth above, in the exercise of discretionary authority granted under sections 510 and 1193 of the Vehicle and Traffic Law. If an application is approved based upon the exercise of such discretionary authority, the reasons for approval shall be set forth in writing and recorded. If an approval is granted based upon unusual, extenuating and compelling circumstances, the applicant may be issued a license or permit with a problem driver restriction, as set forth in section 3.2(c)(4) of this Title, and may be required to install an ignition interlock device in any motor vehicle owned or operated by such person for a period of five years. The provisions of this subdivision shall not apply to denials under paragraph (b)(6) of this section.

(e) If there are two alcohol or drug- related driving convictions or incidents on an applicant's driving record, the consideration of an application for relicensing shall be held in abeyance if the applicant has at least one ticket pending for alcohol or drug-related driving offenses where the pending ticket or tickets, if disposed of as a conviction of the original charge, would result in the denial of the application. In addition, if, after an application for relicensing is approved, the Commissioner receives information that indicates that such application should have been denied or that the applicant operated a motor vehicle prior to approval or after approval of such application but prior to obtaining a valid permit or license, the Commissioner shall rescind such approval and the license or privilege granted shall be revoked.

### 15 NYCRR 136.6. Weighing of safety factors

(a) There shall be assigned to each safety factor a negative unit as follows:

<i>Safety factor</i>	<i>Assigned Negative Units</i>	
	<b>over one year to [three] <b>four</b> years of application</b>	<b>within one year of application</b>
(1) for each reportable accident of record with a finding by the referee of gross negligence in the operation of a	-5	-8

Deleted language is in brackets and struck through; new language is highlighted in yellow. Produced by the New York State Defenders Association from the DMV's announcement of the [amendments](#) and the official text of [15 NYCRR Parts 131 and 136](#).

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motor vehicle in a manner showing a reckless disregard for the life and property of others

(2) for each reportable accident of record with conviction involvement or with a finding by the referee of a violation of the Vehicle and Traffic Law	-3	-4
(3) for the first and second speeding conviction of record**	-3	-4
(4) for the third and subsequent speeding conviction*	-5	-8
(5) for reckless driving, speed contest, <del>overtaking</del> or passing a stopped school bus, <del>any violation involving the use of a mobile telephone or portable electronic device, or operation or movement of a vehicle exceeding height limitations on highways, bridges, or highway structures, or striking bridges or highway structures, pursuant to Vehicle and Traffic Law § 385(2) or (14), or speeding in a work zone in excess of the posted speed limit pursuant to Vehicle and Traffic Law § 1180(f)</del>	<del>[-5]</del> -8	<del>[-8]</del> -11
(6) for each conviction of record for leaving the scene of a personal injury accident of record	-8	-11
(7) for each alcohol-related offense of record as follows:		
(i) conviction for violation of subdivision (1) of section 1192 of the Vehicle and Traffic Law:		
first offense	<del>[-5]</del> -8	<del>[-8]</del> -11
second offense	<del>[-8]</del> -11	<del>[-11]</del> -14
third offense	<del>[-11]</del> -14	<del>[-14]</del> -17
(ii) conviction for violation of subdivision (2), (2-a), (3), (4), or (4-a) of section 1192 of the Vehicle and Traffic Law:		
first offense	<del>[-8]</del> -11	<del>[-11]</del> -14
second or subsequent offense	<del>[-11]</del> -14	<del>[-14]</del> -17
(iii) chemical test refusal	<del>[-6]</del> -9	<del>[-11]</del> -14

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(8) for each conviction of homicide, criminally negligent ~~homicide, or assault arising out of the operation of a motor vehicle~~ ~~[-41]-14~~ ~~[-14]-17~~

(9)(i) for each incident of driving during a period of alcohol- related license suspension or revocation ~~[-40]-13~~ ~~[-12]-15~~

(ii) for each other incident of driving during a period of license suspension or revocation ~~[-8]-11~~ ~~[-40]-13~~

(10) for each conviction or finding by the commissioner's referee of a violation of section 392 of the Vehicle and Traffic Law -3 -4

(11) for each other conviction of record for a moving violation -2 -3

\*\* For each speeding violation of 25 miles per hour or more over the posted speed limit, add one ~~[point]~~ ~~unit~~.

\* The proposed regulations will not be enforceable until the thirtieth day following publication in the State Register of notice to the public that the Commissioner has determined that the Department's systems are prepared to implement the proposed regulatory changes.

(b) The point reduction program shall not apply to any of the negative units listed in subdivision (a) of this section.

(c) For the purpose of this Part, the time periods for the computation of safety factors shall commence as of the date on which the incident occurred.

(d) In any case where two or more safety factors which are not independent of each other arise out of a single incident, only one of these safety factors shall be taken into consideration. The safety factor which shall be taken into consideration in these cases shall be the safety factor having the greater weight, except that where two safety factors are of equal weight, either one may be taken into consideration.

### Examples:

(1) Where an accident and a conviction for reckless driving arise out of the same incident, only the reckless driving conviction, which is the safety factor having the greater weight, is considered, because these safety factors are not independent of each other.

(2) Where a conviction of any subdivision of Section 1192 of the Vehicle and Traffic Law and a finding of a chemical test refusal arise out of the same incident, only one of

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these two safety factors having equal weight is considered, because these safety factors are not independent of each other.

(3) Where a person is convicted of reckless driving and the incident occurred during a period of license revocation, both of these safety factors shall be taken into consideration because these safety factors are independent of each other.

(4) Where a person is convicted of speeding and failure to keep right, where both violations occurred at the same time, both of these safety factors shall be taken into consideration, because these safety factors are independent of each other.

(e) Where a person is convicted of or adjudicated for an offense committed outside of this state, and where such offense has been made part of the person's New York State driving record, such offense shall carry the equivalent safety factor assigned under subdivision (a) of this section, as if the offense was committed in this state.