

MOTOR VEHICLE COMMISSION

EXHIBIT A

LICENSING SERVICE

NEW JERSEY LICENSED MOTOR VEHICLE DEALERS

Proposed Amendments: N.J.A.C.13:21-15

Authorized By: Motor Vehicle Commission Board, Raymond P. Martinez, Chair.

Authority: N.J.S.A. 39:10-4, 39:10-19, 39:10-20

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

Proposal Number:

Submit comments by to:

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Motor Vehicle Commission
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The agency proposal follows:

Summary

This notice of proposal is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5. Since this notice is not listed in the agency rulemaking calendar, the public comment period for this notice will be 60 days.

The proposed amendments clarify that, to be a “proper person” under N.J.S.A. 39:10-19, any applicant intending to sell new motor vehicles must meet the requirements of N.J.S.A. 56:10-27 and -28 by submitting a copy of the applicant’s franchise agreement(s) with the motor vehicle manufacturer(s) whose makes and models the applicant is franchised to sell. Such applicants also must meet the

requirements of N.J.S.A. 39:10-19 with respect to their place of business. The proposed amendments also clarify portions of N.J.A.C. 13:21-15 by correcting grammatical and typographical errors and replacing obsolete references to the Director and to the Division of Motor Vehicles, respectively, with references to the Chief Administrator, who has assumed most of the powers and duties of the Director, and the Commission, which has assumed the powers and duties of the Division of Motor Vehicles.

N.J.A.C. 13:21-15.2, Application, subsection (d), is proposed for amendment to substitute “his or her” for “his,” and in subsection (f) to reflect that the Chief Administrator has replaced the Director (of the former Division of Motor Vehicles) and to substitute “Commission” for “MVC.” Subsection (l) is proposed for amendment to substitute “his or her” for “his.” A new subsection (m) is proposed, which requires the sellers of new motor vehicles to submit a copy of his, her or its franchise agreement to the Commission, to bring motor vehicle dealers into compliance with N.J.S.A. 56:10-27 and -28, which require the sellers of new motor vehicles to sell new motor vehicles through franchisees only, except as otherwise stated in the statute. Existing subsection (m) will also be recodified as subsection (n).

N.J.A.C. 13:21-15.3, Proper Person, is proposed for amendment at subsection (a)2, to substitute “he or she” for “he,” and at subsection (a)4 to require that an applicant for a license to sell new motor vehicles be a franchisee under N.J.S.A 56:10-26(d), for the reasons stated with respect to the proposed amendment of N.J.A.C. 13:21-15.2(m). Existing subsection (a)4 will be recodified as subsection (b).

N.J.A.C. 13:21-15.4, Established place of business, is proposed for amendment at subsection (a)1 to require that sellers of new motor vehicles conform to the requirements of N.J.S.A. 39:10-19, which requires a minimum of 1,000 square feet in which to display motor vehicles, and space (either included in the 1,000 square feet or immediately contiguous thereto) to maintain equipment for the servicing of motor vehicles. Subsection (g) is proposed for amendment to correct a clerical error.

N.J.A.C. 13:21-15.5, Grounds for rejection, suspension or revocation of a dealer license or issuance of a cease and desist order, is proposed for amendment to correct clerical and grammatical errors, to substitute the Chief Administrator for the former Director, and to substitute “his or her” for “his.”

N.J.A.C. 13:21-15.7, Responsibilities of licensee, is proposed for amendment at subsection (b) to substitute “his or her” for “his” and to substitute “the Commission” for “Commission personnel.”

N.J.A.C. 13:21-15.9, Temporary registrations issued by licensed motor vehicle dealers for vehicles that are to be permanently registered in New Jersey, is proposed for amendment at subsection (b) to substitute “his or her” for “its” and to correct a grammatical error. Subsection (h) is proposed for amendment to correct grammatical errors. Subsection (s) is proposed for amendment to delete “of the Commission.”

N.J.A.C. 13:21-15.10, Nonresident temporary registrations issued by licensed motor vehicle dealers, is proposed for amendment at subsections (b) and (d) to substitute “his or her” for “its” and “his.” Subsection (h) is proposed for amendment to

correct grammatical errors. Subsection (r) is proposed for amendment to correct grammatical errors.

N.J.A.C. 13:21-15.11, Dealer plates, is proposed for amendment to correct grammatical and clerical errors.

N.J.A.C. 13:21-15.12, New motor vehicle inspection stickers, is proposed for amendment to correct grammatical and clerical errors.

N.J.A.C. 13:21-15.14, Hearings, is proposed for amendment to correct grammatical and clerical errors.

N.J.A.C. 13:21-15.15, Emergency disciplinary action, is proposed for amendment to correct grammatical and clerical errors.

Social Impact

The proposed amendments will have a positive social impact in that they will clarify the intent of the governing statutes and rules to the regulated community and thereby increase compliance with the statutes and rules.

Economic Impact

By clarifying the intent of the governing statutes and rules, applicants and licensees will find it easier to comply with the rules and be less likely to submit applications for non-franchised dealerships and non-conforming premises; thus, these amendments will save effort and thus costs on the part of prospective motor vehicle dealers and on the part of the Commission.

Jobs Impact

It is unlikely that these proposed amendments will have any effect on jobs, whether in the public or private sector, since these proposed amendments merely clarify existing statutory requirements.

Federal Standards Statement

A Federal standards analysis is not required because the rules governing the licensing of motor vehicle dealers are dictated by State statutes and are not subject to Federal requirements or standards.

Agriculture Industry Impact Statement

The proposed amendments are not expected to have any impact on the agriculture industry.

Regulatory Flexibility Analysis

The overwhelming majority of applicants and licensees affected by the proposed amendments are small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments require applicants and licensees to submit a copy of their franchise agreement(s) if they intend to sell new cars. The cost of compliance with this requirement will be administrative in nature and will not require professional services. This requirement must be uniform for all applicants and licensees in order to ensure adherence to statutory requirements. Accordingly, an exemption from the reporting and recordkeeping requirement of the proposed amendments is not warranted.

Housing Affordability Impact

The proposed amendments will have no impact on housing affordability because they pertain solely to the licensing of motor vehicle dealers.

Smart Growth Development Impact

The proposed amendments will have an insignificant impact on smart growth and are extremely unlikely to evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the rules pertain to the licensing of motor vehicle dealers.

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

13:21-15.2 Application

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

(d) The applicant for an initial license, or at least one officer, director, or controlling person, if the applicant is other than a natural person, shall attend a prelicensure interview as scheduled by the [Motor Vehicle] Commission, at which time the applicant will be examined as to his **or her** knowledge of the lawful conduct of the business of buying, selling or dealing in motor vehicles in New Jersey; in the event that the applicant cannot demonstrate adequate knowledge thereof, the Commission may require the applicant to attend a training program.

(e) (No change.)

(f) At the time of initial application, the applicant shall submit a list of all proposed authorized signatories to be listed on the license application and the licensee shall notify the Commission within 10 days of any change in that list on forms prescribed by the Commission; every application shall include an affidavit by each authorized signatory that he or she has not been convicted of a crime arising out of fraud or misrepresentation nor previously held a license issued by the [Director] **Chief Administrator** or the [MVC] **Commission**, which license was revoked and not reissued.

(g)-(k) (No change.)

(l) At some time during the application process prior to licensure, the applicant shall submit a certificate of insurance demonstrating liability insurance covering all vehicles owned or operated by the dealer, at his **or her** request or with his **or her** consent. This insurance shall be in the amount of \$ 100,000 per person per incident up to \$ 250,000 per incident for bodily injury or death, \$ 25,000 per incident for property damage and \$ 250,000 combined personal injury and property damage per incident. This insurance shall be renewed as necessary to ensure that it remains valid for the entire prospective license term.

(m) **At the time of initial application, an applicant who intends to sell new motor vehicles shall submit a copy of the applicant's franchise agreement(s) with the**

motor vehicle manufacturer(s) whose makes and models the applicant is franchised to sell.

1. An applicant for renewal shall submit a copy of the applicant's franchise agreement(s) with the motor vehicle manufacturer(s) whose makes and models the applicant is franchised to sell.

(n) Misrepresentation of any facts or failure to fulfill any of the commitments made in the license application, including, but not limited to, commitments concerning the establishment of a place of business, shall be grounds for denial, suspension or revocation of the license.

13:21-15.3 Proper person

(a) In order to be considered a proper person, an applicant must:

1. (No change.)

2. Be of sufficient good character, in the Chief Administrator's discretion, to warrant consideration as a proper person to be licensed as a dealer. To assist the Chief Administrator in making this determination, he **or she** may consider an applicant's financial responsibility, as well as whether or not the applicant has been involved in any illegal activities prior to [his] applying for a license;

3. Not have been convicted of a crime arising out of fraud or misrepresentation; **and**

4. **Be a motor vehicle franchisee under N.J.S.A. 56:10-26(d), as evidenced by the franchise agreement(s) referenced in N.J.A.C. 13:21-15.2(m).**

(b) The [Motor Vehicle] Commission will request the New Jersey Division of State Police to place a State Bureau of Investigation Number flag pursuant to N.J.A.C. 13:59 on the fingerprint record of each person required to undergo a criminal background check pursuant to N.J.A.C. 13:21-15.2.

13:21-15.4 Established place of business

(a) All licensees shall maintain a permanent, properly identified location, **as follows, and at which place of business shall be kept and maintained the books, records and files necessary to conduct the business, including, but not limited to, all documents required by N.J.S.A. 39:10-6, all payroll records, checkbooks and ledgers for business accounts and trust accounts, all unissued temporary registrations, dealer reassignments, corporate authorities and licenses, dealer plates, and ledgers listing all issued and unissued temporary registrations, dealer assignments and dealer plates:**

1. All licensees selling new motor vehicles shall maintain a permanent, properly identified location of not less than a total of 1,000 square feet, on one or more than one floor, within a permanent, enclosed building and where there are included or immediately contiguous, clearly identified, fixed facilities to display at least two automobiles and equipment to service motor vehicles as required by N.J.S.A. 39:10-19.

2. All licensees selling used motor vehicles exclusively shall maintain a permanent, properly identified location with a minimum office space of 72 square feet within a permanent, enclosed building and where there are included or immediately contiguous, clearly identified, fixed facilities to display at least two automobiles [and at which place of business shall be kept and maintained the books, records and files necessary to conduct the business, including, but not limited to, all documents required by N.J.S.A. 39:10-6, all payroll records, checkbooks and ledgers for business accounts and trust accounts, all unissued temporary registrations, dealer reassignments, corporate authorities and licenses, dealer plates, and ledgers listing all issued and unissued temporary registrations, dealer assignments and dealer plates].

[1.] **3.** Failure to comply with all requirements of this section at a follow-up compliance inspection (to be held any time after 90 days after licensing) will result in revocation of the license.

[2.] 4. A dealer licensed prior to March 6, 2006 may continue to maintain a place of business that does not meet the square footage and display space requirements of this subsection, as amended; provided, that the premises meet[s] and continue[s] to meet the requirements of this section prior to March 6, 2006.

(b) The established place of business shall display an exterior sign permanently affixed to the land or building, which sign is consistent with local ordinances and [which] has letters easily readable from the major avenues of traffic. Said sign must reflect the dealer name or trade name, providing such trade name has been previously disclosed to the Commission.

(c)-(f) (No change.)

(g) All business records, including, but not limited to, those set forth in (d) above, shall be maintained for three years on the licensed premises and shall be made available to **the** Commission [personnel] during normal business hours on request.

1. (No change.)

(h)-(j) (No change.)

13:21-15.5 Grounds for rejection, suspension or revocation of a dealer license or issuance of a cease and desist order

(a) The Chief Administrator may deny an application for a license, revoke or suspend a license after it has been granted or issue a cease and desist order to a licensee or to an unlicensed person or entity engaged in activities for which a license is required pursuant to N.J.S.A. 39:10-19 et seq. for any of the following reasons:

1. **The** [Applicant] **applicant** or licensee is not a proper person as defined in N.J.A.C. 13:21-15.3;

2. **The** [Applicant] **applicant** has made a willful misrepresentation or omission in an application for a dealer license or renewal thereof under the provisions of this [rule] **section**;

3. **The** [Applicant] **applicant** was a previous holder of a license that was suspended or revoked for cause by the [Director or the] Chief Administrator and the terms of such suspension have not been satisfied and/or the license has not been reissued;

4. One or more of the partners, officers, directors, other controlling persons, or employees of the applicant previously held a license issued under the authority of the [Division or the] Commission, which license was revoked for cause and never reissued or was suspended for cause and terms of suspension have not been satisfied, or have willfully violated a cease and desist order issued by the Chief Administrator;

5. (No change.)

6. **The** [Applicant] **applicant** or licensee seeks or has obtained a dealer license for the benefit of one who is not a proper person within the meaning of this [rule] **section**;

7. The **applicant or** licensee [or applicant] knew or should have known that any employee, partner, officer, director, owner of a controlling interest or agent of the **applicant or** licensee [or applicant] is an individual who has been convicted of a crime arising out of fraud or misrepresentation or previously held a license issued by the [Director] **Chief Administrator** or the Commission, which license was suspended or revoked for cause and not reissued;

8. The [dealer] **licensee** fails to comply with the requirements of existing law governing the standards for used motor vehicles. (N.J.S.A. 39:10-26 [thru] **through** 39:10-30);

9. It is found by an administrative determination of the Commission that the subject **applicant or** licensee [or applicant] has engaged in the unlawful act of altering the true reading of an odometer (the mileage recording instrument of a motor vehicle). Evidence that such alteration was made while the vehicle was in the possession of the **applicant or** licensee [or applicant] shall be prima facie proof that such alteration was performed by the **applicant or** licensee [or applicant] or with his or her consent;

10. It is found by an administrative determination of the Commission that the subject **applicant or** licensee [or applicant] has engaged in the unlawful act of altering a vehicle identification number (VIN). Evidence that such alteration was made while the vehicle was in the possession of the **applicant or** licensee [or applicant] shall be prima facie proof that such alteration was performed by the **applicant or** licensee [or applicant] or with the **applicant's or** licensee's [or applicant's] consent;

11. (No change.)

12. The licensee has failed to maintain any of the qualifications for a license [herein] set forth **in this subchapter** or otherwise set forth by law, including, but not limited to, failure to maintain an established place of business as set forth in N.J.A.C. 13:21-15.4.

13. (No change.)

14. The licensee engaged in selling, displaying for sale or lease, or dealing in motor vehicles at a location other than that at which the licensed business is permanently established. The assertion by the licensee as a defense in any action that he **or she** has conducted sales activity at other than the premises where the business is permanently established shall constitute conclusive proof of that fact;

15. (No change.)

16. The licensee has failed to satisfy a valid, collectible judgment within 90 days of its entry against him **or her**;

17.-18. (No change.)

(b) Upon suspension, revocation or denial of renewal of a license, or upon voluntary relinquishment of the license or dissolution of the dealership, the licensee shall forthwith return all Commission property, including, but not limited to, the dealer license, dealer plates, dealer reassignments and temporary registrations, and shall account for all those not returned without refund for unused stock; failure to do so may result in suspension or revocation of the privilege to reapply for any business license within the jurisdiction of the [Motor Vehicle] Commission.

13:21-15.6 Transfer of ownership without title; presentation or reassignment of altered title documents; suspension; period of suspension; refusal to renew license

(a) No motor vehicle dealer licensed pursuant to N.J.S.A. 39:10-19, nor any person on his **or her** behalf, shall present to the Commission or reassign to a subsequent purchaser a motor vehicle title issued by this or any other state, province or jurisdiction or any other title document that contains any erasure, obliteration, correction or any other alteration where said alteration was reasonably detectable by a person of ordinary intelligence from a routine review of the motor vehicle title or any other title document.

(b)-(e) (No change.)

(f) The Chief Administrator may revoke or refuse to renew a dealer license where the applicant has had two or more violations of (a) and/or (b) above, which violations resulted in a suspension pursuant to (d) above.

13:21-15.7 Responsibilities of licensee

(a) (No change.)

(b) The dealer shall be responsible for the disposition of all reassignments in his **or her** possession.

1. (No change.)

2. All dealer reassignments shall be accounted for upon request of **the** Commission [personnel].

3. (No change.)

(c)-(d) (No change.)

13:21-15.9 Temporary registrations issued by licensed motor vehicle dealers for vehicles that are to be permanently registered in New Jersey

(a) (No change.)

(b) A temporary registration shall not be issued pursuant to this section if the motor vehicle dealer does not have in [its] **his or her** possession a valid manufacturer's[] statement of origin or title for the vehicle and, if applicable, a valid dealer reassignment certificate for the vehicle.

(c)-(g) (No change.)

(h) A temporary registration is not transferable from one motor vehicle dealer to another, nor from one vehicle to another. A temporary registration shall not be lent by a motor vehicle dealer to a customer, [to] another motor vehicle dealer, [nor] **or** [to] any other person or entity. A temporary registration shall not be issued for vehicles titled in the name of the motor vehicle dealer, or for vehicles covered solely by the dealer's insurance policy.

(i)-(r) (No change.)

(s) A motor vehicle dealer who violates any provision of this section shall, upon notice and an opportunity to be heard, have the privilege of issuing temporary registrations

suspended. In addition, a motor vehicle dealer who commits such a violation may, upon, notice and an opportunity to be heard, have the motor vehicle dealer's license suspended or revoked, or renewal thereof refused, by the Chief Administrator [of the Commission] pursuant to N.J.S.A. 39:10-20.

(t) (No change.)

13:21-15.10 Nonresident temporary registrations issued by licensed motor vehicle dealers

(a) (No change.)

(b) A nonresident temporary registration shall not be issued pursuant to this section if the motor vehicle dealer does not have in [its] **his or her** possession a valid manufacturer's statement of origin or title for the vehicle and, if applicable, a valid dealer reassignment certificate for the vehicle.

(c) (No change.)

(d) An applicant for a nonresident temporary registration pursuant to this section shall present proof to the motor vehicle dealer or authorized signatory of his **or her** out-of-State residence and of the name of the insurance company that is providing liability

insurance coverage for the vehicle and the insurance policy number or binder number; such proofs shall be retained with the dealer's copy of the temporary registration.

(e)-(g) (No change.)

(h) A nonresident temporary registration is not transferable from one motor vehicle dealer to another, nor from one vehicle to another. A nonresident temporary registration shall not be lent by a motor vehicle dealer to a customer, [to] another motor vehicle dealer, [nor] **or** [to] any other person or entity. A nonresident temporary registration shall not be issued for vehicles titled in the name of the motor vehicle dealer [nor] **or** for vehicles covered solely by the dealer's insurance policy.

(i)-(q) (No change.)

(r) A motor vehicle dealer who violates any provision of this section shall, upon notice and an opportunity to be heard, have the privilege of issuing temporary registrations suspended. In addition, a motor vehicle dealer who commits such a violation may, upon notice and an opportunity to be heard, have the motor vehicle dealer's license suspended or revoked or renewal thereof refused by the Chief Administrator [of the Commission] pursuant to N.J.S.A. 39:10-20.

(s) (No change.)

13:21-15.11 Dealer plates

(a) All dealer plates shall be accounted for in a logbook or ledger, for which the following information is listed for each dealer plate:

1. (No change.)

2. [Vehicle identification numbers (JVINs[])] of all vehicles to which the plate was assigned, along with dates of assignment; and

3. The location at which the vehicle to which the plate is assigned is garaged (if not on **the** dealer's premises).

(b) The log**book** or ledger [in] **required pursuant to** (a) above shall be maintained for at least three years.

(c) A motor vehicle dealer who fails upon the demand of the Commission to produce the log**book** or ledger required pursuant to (a) above shall, upon notice and opportunity to be heard, be subject to suspension or revocation of the motor vehicle dealer's license or the suspension or revocation of the privilege of retaining dealer plates heretofore issued or purchasing additional plates.

(d)-(g) (No change.)

13:21-15.12 New motor vehicle inspection stickers

(a) All new motor vehicle inspection stickers shall be accounted for in consecutive order in a logbook or ledger, for which the following information is listed for each sticker:

1.-2. (No change.)

3. The year, make and VIN of **the** vehicle to which the sticker was affixed, if applicable;
and

4. (No change.)

(b) The log**book** or ledger [in] **required pursuant to** (a) above shall be maintained for at least five years.

(c)-(d) (No change.)

(e) A motor vehicle dealer who fails upon the demand of the Commission to produce the log**book** or ledger required pursuant to (a) above or voided stickers retained pursuant to (c) above or who fails to report, or falsely reports, the loss or theft of stickers, as required by (d) above, shall, upon notice and opportunity to be heard, be subject to suspension or revocation of the motor vehicle dealer's license.

13:21-15.14 Hearings

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

(c) The hearing request must be in writing, must list all contested issues of material fact, issues of law, and mitigating circumstances that the licensee **or applicant** intends to demonstrate.

(d)-(f) (No change.)

(g) Except in the case of extraordinary circumstances, it shall not be a defense to disciplinary action based on a failure to respond to a Notice of Proposed Disciplinary Action that the licensee or applicant was not present at the business address listed in the [MVC] **Commission's** records.

(h) Nothing [herein] **in this subchapter** shall prevent the Chief Administrator from seeking to resolve any disciplinary matters through informal means at any stage of disciplinary proceedings described in this section.

13:21-15.15 Emergency disciplinary action

(a) In the event of an emergent situation, in which ongoing fraud, lack of insurance, destruction or vacation of premises or other circumstances [that] would jeopardize the integrity of the Commission's title records and the ability to prevent traffic in stolen or fraudulently titled motor vehicles, the Commission may immediately issue a preliminary suspension of the dealer's license.

(b)-(d) (No change.)