

6A:4-3.5 Emergency relief in matters on appeal

(a) Applications for emergency relief shall be made by motion conforming to the requirements [of] at N.J.A.C. 6A:4-3.1. Opposing parties shall be given reasonable opportunity under the circumstances to file papers in response to an application for emergency relief.

(b) (No change.)

6A:4-3.6 Motion for clarification and/or reconsideration of a decision of the Commissioner on appeal

(a) A motion for clarification and/or reconsideration of a Commissioner’s decision rendered pursuant to this chapter shall be served and filed within 10 days after the Commissioner files [his or her] the decision. The motion shall conform to the requirements [of] at N.J.A.C. 6A:4-3.1 and shall include a copy of the decision for which clarification and/or reconsideration is sought.

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

SUBCHAPTER 4. REVIEW AND DECISION

6A:4-4.3 Commissioner’s decision

(a) (No change.)

(b) The Commissioner’s decision shall be mailed to all parties or their representatives of record [and shall be deemed filed three days after the date of such mailing].

6A:4-4.4 Relaxation of rules

(a) The rules of this chapter shall be construed to secure a just determination, simplicity of procedure, fairness in administration, and elimination of unnecessary delay. Unless otherwise stated, **the Commissioner may relax** any rule not reflecting a statutory requirement or an applicable rule of administrative procedure [may be relaxed by the Commissioner, in his or her discretion,] if strict adherence to the rule is deemed inappropriate or unnecessary or would result in injustice.

(b) Briefing on appeals and motions shall be in accordance with this chapter. If the Commissioner deems it necessary to expedite proceedings or protect the interests of the parties, the Commissioner may modify time schedules or direct additional submissions [at his or her discretion] or by leave upon motion of a party.

TRANSPORTATION

(a)

MOTOR VEHICLE COMMISSION

New Jersey Licensed Motor Vehicle Dealers and Leasing Dealers

Proposed Amendments: N.J.A.C. 13:21-15.1 through 15.7, 15.9, 15.10, 15.11, 15.13, 15.14, and 15.15

Authorized By: Latrecia Littles-Floyd, Acting Chair and Chief Administrator, Motor Vehicle Commission.

Authority: N.J.S.A. 39:2A-21, 39:2A-28, 39:10-19, and 39:10-20.

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

Proposal Number: PRN 2023-064.

Submit written comments by September 15, 2023, to:

Emily Armstrong, APO
 Attn: Legal Affairs
 Motor Vehicle Commission
 225 East State Street
 PO Box 162
 Trenton, NJ 08666-0162
 or through email to: MVC.rulecomments@mvc.nj.gov

The agency proposal follows:

Summary

The New Jersey Motor Vehicle Commission (Commission) proposes amendments to the rules pertaining to licensed motor vehicle dealers, to implement recent statutory amendments, specifically P.L. 2021, c. 462,

and P.L. 2021, c. 484, both effective January 18, 2022. The statutory amendments relevant to these rules expanded permitted dealer sales activity to online sales, amended the requirements related to the physical location of new and used motor vehicle dealers, and created separate licenses for new motor vehicle dealers and used motor vehicle dealers. The proposed amendments implement these statutory changes and, in addition, clarify the application and intent of certain rules.

N.J.A.C. 13:21-15.1 is proposed for amendment to include additional definitions, including “brokering,” “building,” “electronic,” “established place of business,” “exterior wall,” “firewall,” “leasing dealer,” “licensed location,” “new motor vehicle dealer,” “online sale,” “person,” and “used motor vehicle dealer.” In addition, amendments are proposed at “business of buying, selling, or dealing in motor vehicles”; “dealer” or “motor vehicle dealer”; and “licensee” to define the terms to reflect the statutory changes at N.J.S.A. 39:10-19 establishing categories of motor vehicles.

N.J.A.C. 13:21-15.2 is proposed for amendment to reflect statutory changes at N.J.S.A. 39:10-19 establishing categories of motor vehicles. Additionally, the proposed amendment clarifies the Commission’s intent and meaning of the term “premises” and codifies the Commission’s practice of requiring a new license application upon change of ownership.

N.J.A.C. 13:21-15.3 is proposed for amendment to clarify that the proper person requirements continue past the application stage.

N.J.A.C. 13:21-15.4 is proposed for amendment to conform the established place of business requirements for new and used motor vehicle dealers to the recently amended N.J.S.A. 39:10-19 and to confirm the Commission’s intent to continue the longstanding firewall requirement for used car dealers that share space in a building with another business or other businesses.

N.J.A.C. 13:21-15.5 is proposed for amendment to address a potential loophole in eligibility for licensure if a partner, officer, director, owner of a controlling interest, or employee was previously involved in a licensed dealership whose license was revoked for cause and never reissued, or whose privilege to reapply has been revoked. N.J.A.C. 13:21-15.5 is also proposed for amendment to clarify prohibited activities, such as selling through an unrelated third-party, sometimes referred to in the industry as “birdogging.” Additionally, N.J.A.C. 13:21-15.5(a)18 is added to specify that the Commission may take administrative action against licensed motor vehicle dealers for failure to comply with N.J.S.A. 39:10-9 and 49 U.S.C. § 32705, which require disclosure of information regarding outstanding liens on used motor vehicles and mileage on all transferred motor vehicles. New N.J.A.C. 13:21-15.5(a)19 is proposed to amend former N.J.A.C. 13:21-15.5(a)18 to include as a basis for the Commission to take administrative action against a licensed motor vehicle dealer, the violation of any statutes applicable to the licensing of motor vehicle dealers and the sale or lease of motor vehicles.

N.J.A.C. 13:21-15.6 and 15.7 are proposed for amendment to delete the references to “leasing dealer.”

N.J.A.C. 13:21-15.9 is proposed for amendment to replace the term “premises” with “established place of business” and to clarify the Chief Administrator’s authority to examine a licensee’s temporary registration records on demand.

N.J.A.C. 13:21-15.10 is proposed for amendment to conform to statutory changes at N.J.S.A. 39:3-4b, which increase the period of validity of a non-resident temporary registration from 20 to 30 days, and that allow the issuance of a second 30-day temporary registration in the event permanent registration is delayed due to a lost title or a lien holder’s delay in providing title. The proposed amendments also clarify the Chief Administrator’s authority to examine a licensee’s nonresident temporary registration records on demand. There are also technical changes to terminology in this section.

N.J.A.C. 13:21-15.11 is proposed for amendment to replace the term “premises” with “established place of business.”

N.J.A.C. 13:21-15.13 is proposed for amendment to clarify the Chief Administrator’s authority to investigate statutory or regulatory violations and audit a licensee’s books and records on demand.

N.J.A.C. 13:21-15.14 is proposed for amendment to clarify that hearings in cases involving administrative action against a licensee take place after referral to the Office of Administrative Law and that the Commission may conduct a pre-hearing conference before referring the

matter to the Office of Administrative Law for a plenary hearing. The amendments also set a timeframe for a hearing request.

N.J.A.C. 13:21-15.15 is proposed for amendment for clarity and to update terminology.

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

Social Impact

The proposed rulemaking will have no direct social impact. The proposed rulemaking merely implements the recent amendments to New Jersey law set forth at P.L. 2021, c. 462, and P.L. 2021, c. 484, as required for compliance with the underlying legislation. The proposed amendments, together with the underlying legislation, will provide clarity to the regulated community and ensure that all dealers in the State can be located should a complaint arise, and that all records will be made available to the Commission upon demand, so the Commission can fulfill its statutory mission.

Economic Impact

The Commission anticipates no economic impact on the general public, and it is anticipated that licensed dealers will experience no economic impact related to the proposed amendments.

Jobs Impact

The Commission does not anticipate that the proposed amendments will have any impact on jobs.

Federal Standards Statement

A Federal standards analysis is not required because the subject matter of the proposed amendments is authorized pursuant to State law and is not subject to Federal requirements or standards.

Agriculture Industry Impact

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

Regulatory Flexibility Statement

Some new motor vehicle dealers may be small businesses within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., in that they employ fewer than 100 full-time employees. The proposed reporting and recordkeeping requirements are not substantially different from the current reporting and recordkeeping requirements and are not likely to require motor vehicle dealers to retain additional professional services to comply.

An estimate of the initial compliance costs on new motor vehicle dealer applicants that may be small businesses, and the need for those applicants to retain professional services, is variable because initial costs are subject to fluctuations in the commercial real estate market and may depend on factors including, but not limited to, the location of the proposed place of business, the size of the proposed place of business, and any labor that may be required to prepare the proposed place of business for occupancy. The proposed amendments do not impose significant annual compliance costs on small businesses.

The Commission has given careful consideration to the impact on small businesses and has determined that the amendments, as proposed, are necessary in order to comply with statutory mandates and to promote the dual purposes of security and consumer protection. A waiver or other special accommodation for small businesses can, therefore, not be accomplished without jeopardizing those objectives.

Housing Affordability Impact Analysis

The proposed amendments will have no impact on the affordability of housing and there is an extreme unlikelihood that the proposed amendments would evoke a change in the average costs associated with housing, since the proposed amendments pertain to the operation of licensed New Jersey motor vehicle dealers.

Smart Growth Development Impact Analysis

The Commission does not anticipate that the proposed amendments will have an impact on smart growth as there is an extreme unlikelihood that they would evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development

and Redevelopment Plan, since the proposed amendments pertain to the operation of licensed New Jersey motor vehicle dealers.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed amendments will have no impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State, as the rules pertain solely to the operations of licensed New Jersey motor vehicle dealers. Accordingly, no further analysis is required.

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

SUBCHAPTER 15. NEW JERSEY LICENSED MOTOR VEHICLE DEALERS AND LEASING DEALERS

13:21-15.1 Definitions

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

...
“Brokering” means arranging, negotiating, facilitating, acting as an agent in, assisting in, or effectuating the purchase, sale, or lease of a motor vehicle for a fee.

“Building” means a structure enclosed with exterior walls, built, erected, and framed of component structural parts, designed for the housing, shelter, enclosure, and support of individuals, or property of any kind.

“Business of buying, selling, or dealing in motor vehicles” means engaging in the business of buying or selling motor vehicles on one’s own account or on behalf of another, **offering or displaying motor vehicles for sale, attempting directly or indirectly to sell,** or participating in any transaction, including the [brokerage] **brokering** or auctioning of motor vehicles, which transaction involves the transfer of title or of legal or beneficial ownership of a motor vehicle. **A leasing dealer or an assignee of a leasing dealer whose leasing activities are limited to buying motor vehicles for the purpose of leasing them and selling motor vehicles at the termination of a lease to the lessee shall not be deemed to be engaged in the business of buying, selling, or dealing in motor vehicles.**

...
 [“Dealer” or “motor vehicle dealer” means any natural person or entity that is engaged in the business of buying, selling, or dealing in motor vehicles. Such person or entity is required to hold a dealer license pursuant to N.J.S.A. 39:10-19 et seq.]

“Dealer” or “motor vehicle dealer” means a new car dealer, a used car dealer, or a leasing dealer.

“Electronic” means relating to technology having electrical, digital, magnetic, optical, electromagnetic, or similar capabilities.

...
“Established place of business” means a permanent, properly identified location within the State where the books, records, and files necessary to buy, sell, deal in, or lease motor vehicles are kept and maintained, including, but not limited to, all documents required at N.J.S.A. 39:10-6, title papers, manufacturers’ or importers’ certificates of origin, motor vehicle registration records, contracts, security agreements, all payroll records, including, but not limited to, IRS Form W-2 and IRS Form W-4 records, checkbooks, ledgers for business accounts and trust accounts, corporate authorities and licenses, dealer plates, ledgers listing all issued and unissued dealer assignments, and dealer plates.

“Exterior wall” means a wall, bearing or nonbearing, that is used as an enclosing wall for a building, other than a firewall, and that has a slope of 60 degrees or greater with the horizontal plane.

“Firewall” means a fire-resistance-rated wall having protected openings, which restricts the spread of fire and extends continuously from the foundation to or through the roof, with sufficient structural stability under fire conditions to allow collapse of construction on either side without collapse of the wall, as defined by sections 202 and 706 of the 2021 International Building Code, known as the “IBC/2021,” as amended, supplemented, or updated.

“Leasing dealer” means a person who, in the ordinary course of business, offers or enters into motor vehicle leases or who in the course of any 12-month period offers or enters into four or more motor vehicle leases. The term “leasing dealer” shall not include a person to whom a lease is assigned by a leasing dealer.

“Licensed location” means the established place of business licensed by the Chief Administrator, pursuant to N.J.S.A. 39:10-19.

“Licensee[.]” or “licensed dealer[.]” [or “person”] means any [natural] person [or entity that] who is licensed to buy, sell, [or] deal in, or lease[.] motor vehicles, pursuant to N.J.S.A. 39:10-19 et[.] seq.

“New motor vehicle dealer” means the agent, distributor, or authorized dealer of the manufacturer of a new motor vehicle who has an established place of business and who sells a minimum of four or more new motor vehicles within a 12-month timeframe.

“Online sales” means buying, selling, or dealing in motor vehicles in this State through the Internet using electronic means pursuant to N.J.S.A. 39:10-19.5.

“Person” includes natural persons, firms or co-partnerships, corporations, associations, or other artificial bodies, receivers, trustees, common law or statutory assignees, executors, administrators, sheriffs, constables, marshals, or other persons in representative or official capacity, and members, officers, agents, employees, or other representatives of those hereinbefore enumerated.

“Used motor vehicle dealer” means a person engaged in the business of buying, selling, or dealing in four or more used motor vehicles per year at an established place of business, but who is not a licensed new motor vehicle dealer. “Used motor vehicle dealer” includes all leasing dealers who are required to be licensed as used motor vehicle dealers pursuant to N.J.S.A. 39:10-19.

13:21-15.2 Application

(a) An application for [a] **an initial or renewal of a new motor vehicle dealer, a used motor vehicle dealer,** or leasing dealer license required to be obtained [under] **pursuant to** the provisions [of] at N.J.S.A. 39:10-19 shall be verified by an oath or affirmation of the applicant and shall be on forms prescribed by the Commission and furnished to such applicants.

(b) (No change.)

(c) The initial applicant[, if a business entity other than a natural person,] shall undergo a criminal background check by submitting the fingerprints in the manner prescribed in the application of each officer, director, [controlling] person **with a controlling interest,** or partner.

1. An applicant for renewal, if a business entity that first received a license pursuant to this subchapter prior to June 1, 2002, **is** other than a natural person, shall submit the fingerprints of each officer, director, or [controlling] person **with a controlling interest** or partner in the manner prescribed in the application with the first renewal application submitted after March 6, 2006.

(d) The applicant for an initial license, or at least one officer, director, or [controlling] person **with a controlling interest,** if the applicant is other than a natural person, shall attend a prelicensure interview as scheduled by the Commission, at which time the applicant will be examined as to his or her knowledge [of the lawful conduct of] **regarding** 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)-(g) (No change.)

(h) Photographs [and/or] **and** plans that clearly depict the [complete premises] **exterior and interior of the proposed place of business,** including proposed signage, from which [premises] **location a new motor vehicle or used motor vehicle** dealer intends to do business, shall be submitted with the initial application for a dealer license along with proof that the [premises comply] **proposed place of business complies** with all zoning, planning, use, and environmental laws, rules, and ordinances and that all activities permitted by the license will be permitted therein. In no event will an application for a license be approved until the [premises are] **proposed place of business is** suitable for use as a dealership at the time of the initial compliance inspection by the Commission.

(i) The applicant shall submit a [true] **certified** copy of the deed to the [premises] **proposed place of business** in the name of the applicant or, if the applicant does not own the [premises] **proposed place of business,** a **certified copy of the** contract for purchase of the [premises] **proposed place of business** enforceable by the applicant or a **certified copy of a** lease or an enforceable contract to lease the [premises] **proposed place of business** for a term of at least one year in favor of the applicant.

(j)-(k) (No change.)

(l) [At some time during the application process prior] **Prior** to licensure, the applicant shall submit a certificate of insurance demonstrating liability insurance covering all vehicles owned or operated by the applicant, 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) (No change.)

(n) **All licensees must notify the Commission immediately, in writing, if there is a change in any officer, director, or person with a controlling interest in or of the licensed dealer. Notification shall include the name and residence address of the new officer, director, or person with a controlling interest and the officer, director, or person with a controlling interest who has been succeeded. Notification must be on forms prescribed by the Commission and sent to the Commission at the address shown on the forms.**

1. **A new license application must be submitted and approved whenever there is a change in ownership of the licensed dealer by adding a partner, removing a partner, forming a new partnership, changing the corporate structure, or the sale or transfer of more than 20 percent ownership interest. Applicants, pursuant to this section, must submit an application to the Commission for approval within 30 days of any change in ownership. Failure to apply for a new dealer license upon any change of ownership shall result in the immediate suspension of the existing dealer license pursuant to N.J.A.C. 13:21-15.15 and all property of the Commission must be immediately surrendered to the Commission.**

[n] (o) (No change in text.)

13:21-15.3 Proper person

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

1.-4. (No change.)

(b) (No change.)

13:21-15.4 Established place of business

(a) All licensees[, except leasing dealers,] shall maintain a permanent, properly identified [location, as set forth at (a)1 and 2 below] **place of business,** 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] at N.J.S.A. 39:10-6, all payroll records, including, but not limited to, [W4 or W2] **IRS Form W-4 and W-2** records, and all records required [under] **pursuant to** N.J.A.C. 12:56-4, 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. In the event that a dealership maintains branches or a licensee operates multiple licensed dealerships under common ownership or control (a dealership group), and the remaining requirements of this subsection are met at each dealership branch site or each individual dealership site within a dealership group, records that are not immediately necessary for the conduct of current business at a dealership branch site, or an individual dealership site within a dealership group may be maintained at the main or principal [location] **place of business** of the dealership or dealership group or at a centralized recordkeeping facility. **Licensees conducting online sales may keep and maintain non-physical, electronic records of online sales of motor vehicles and shall have a stable internet connection in the licensee's office. A stable**

internet connection shall be a high-speed internet connection provided by an internet service provider at the place of business.

[1.] (b) All [licensees selling] new motor vehicle[s] dealers shall establish and maintain a [permanent, properly identified location] place of business in this State consisting of a permanent building 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.] in floor space, to be used principally for the servicing and display of at least two motor vehicles with such equipment installed therein as shall be requisite for the servicing of motor vehicles in such manner as to make them comply with the laws of this State and with any rules promulgated by the Commission governing the equipment, use, and operation of motor vehicles within the State. A new motor vehicle dealer's proposed place of business will not be considered suitable for approval if there already exists one or more licenses issued for, or other business entities present in, the same building, except where there is absolute common identity of ownership or where an affiliated motor vehicle leasing company is licensed as a leasing dealer and in such cases a record of the transactions of each licensee shall be separately maintained.

[2.] (c) All [licensees selling] used motor vehicle[s] exclusively] dealers shall maintain a permanent, properly identified [location] place of business in this State 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.

[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.

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 meets and continues to meet the requirements of this section prior to March 6, 2006.

5. A leasing dealer must have a permanent business location at the address submitted in the leasing dealer's application, at which place shall be kept and maintained the books, records, and files necessary to conduct the business. In the event the leasing dealer maintains branches or operates multiple licensed locations under common ownership or control, records not immediately necessary for the conduct of current business at a leasing dealership branch site or an individual leasing dealership site may be maintained at the main or principal location of the leasing dealership or at a centralized recordkeeping facility, provided the records are available to the Commission upon the Commission's request.

(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 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) The licensee or an authorized signatory shall be present at the dealership or leasing dealership at all times during the business hours set forth in the application for licensure, which schedule shall be conspicuously posted along with the dealer's or leasing dealer's license on the licensee's premises in an area readily accessible to the public.

1. If the licensee was not required to submit a schedule of business hours pursuant to N.J.A.C. 13:21-15.2(j), no schedule need be posted.

2. An authorized signatory shall not simultaneously represent more than one licensee at any given time during the business hours set forth in the licensee's application for licensure, for purposes of this section.]

(d) A proposed place of business for a used motor vehicle dealer will not be considered suitable for approval if there already exist one or more licenses issued for, or other business entities present [at] in, the same [premises, except where there is absolutely common identity of ownership or where an affiliated motor vehicle leasing company is also licensed as a motor vehicle dealer and in such cases a record of the transactions of each licensed dealer shall be separately maintained] building. A proposed place of business of a used motor vehicle dealer is deemed to occupy the

same [premises] building as another [dealership] business if the two [facilities] entities:

1. Are not completely separated by exterior walls or a firewall as defined by and conforming to [Section 706 of the 2009 International Building Code, New Jersey Edition requirements, as adopted by the New Jersey Department of Community Affairs as the Uniform Construction Code pursuant to N.J.A.C. 5:23-3.14] sections 202 and 706 of the 2021 International Building Code, known as the "IBC/2021," as amended and supplemented. Applicants and licensees shall submit proof of compliance with the exterior wall or firewall requirement certified by a New Jersey-licensed engineer, New Jersey-licensed architect, or municipal code official, and subject to inspection and approval by the Chief Administrator, or designee.

i.-iii. (No change.)

2. Do not have separate exterior entrances;

3. Do not have separate, fixed, clearly identified display facilities for motor vehicles;

4.-5. (No change.)

(e) A used motor vehicle 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 section, as amended, provided that the established place of business meets and continues to meet the requirements of this section prior to March 6, 2006.

(f) A leasing dealer, who is not engaged in the business of buying, selling, or dealing in motor vehicles in this State, must have an established place of business in this State at the address submitted in the leasing dealer's application, at which place shall be kept and maintained the books, records, and files necessary to conduct the business. In the event the leasing dealer maintains branches or operates multiple licensed locations under common ownership or control, records not immediately necessary for the conduct of current business at a leasing dealership branch site or an individual leasing dealership site may be maintained at the main or principal location of the leasing dealership or at a centralized recordkeeping facility, provided the records are available to the Commission upon the Commission's request.

(g) The established place of business of new motor vehicle dealers and used motor vehicle dealers shall display an exterior sign permanently affixed to the land or building, which sign is consistent with local ordinances and has letters easily readable from the major avenues of traffic. The sign must reflect the dealer name or trade name, provided that such trade name has been previously disclosed to the Commission.

(h) The licensee or an authorized signatory shall be present at the established place of business at all times during the business hours set forth in the application for licensure, which schedule shall be conspicuously posted along with the dealer's license on the licensee's established place of business in an area readily accessible to the public.

1. If the licensee was not required to submit a schedule of business hours pursuant to N.J.A.C. 13:21-15.2(j), no schedule need be posted.

2. An authorized signatory shall not simultaneously represent more than one licensee at any given time during the business hours set forth in the licensee's application for licensure, for the purposes of this section.

(e) (i) Any [licensed dealer or leasing dealer] licensee who intends to change [his or her] the location of the licensee's established place of business [location] or to open a branch [operation] site must notify the Dealer Licensing Section of the Commission, in writing, at least 30 days prior to doing so.

1. In order to obtain approval of a new place of business or a branch [location] site, the licensee's notification to the Commission shall include a description of the proposed [location] new place of business, which description shall contain sufficient information to demonstrate that the [premises] proposed new place of business will meet all the criteria set forth in this section.

(f) (j) No licensee may relocate [his or her business location] an established place of business or open a branch [location] site until after written notification that the site is approved by the Commission.

[(g)] (k) All business records including, but not limited to, those set forth [in] at (a) and [(d)] (f) above, shall be maintained for three years [on] at the [licensed premises] **established place of business** and shall be made available to the Commission during normal business hours on request. Records may be kept in either paper or electronic format.

1. In the event that a [dealership] **licensee** maintains branches or a licensee operates multiple licensed dealerships under common ownership or control (a dealership group), and that the remaining requirements of this subsection are met at each dealership branch site or each individual dealership site within a dealership group, records that are not immediately necessary for the conduct of current business at a dealership branch site or an individual dealership site within a dealership group may be maintained at the main or principal [location] **established place of business** of a dealership or at a centralized recordkeeping facility.

Recodify existing (h)-(j) as (l)-(n) (No change in text.)

(o) **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.**

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

(a) The Chief Administrator may deny an application for a license, revoke, [or] suspend, **or refuse to renew** a license after it has been granted, issue fines as provided [in] at N.J.S.A. 39:10-20, 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.-2. (No change.)

3. The applicant **or licensee** was a previous holder of a license that was suspended or revoked for cause or was subject to a fine by the Chief Administrator and the terms of such suspension have not been satisfied, the fine imposed has 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 **or licensee** previously held a license issued under the authority of the Commission, **or one or more of the partners, officers, directors, other controlling persons, or employees of the applicant or licensee was a partner, officer, director, other controlling person, or employee of an entity that previously held a license issued under the authority of the Commission**, which license was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been satisfied, **or whose privilege to reapply for any business license within the jurisdiction of the Commission was suspended or revoked**, or [have] **who has willfully violated a cease and desist order issued by the Chief Administrator;**

5.-11. (No change.)

12. The licensee has failed to maintain any of the qualifications for a license set forth in this subchapter or otherwise set forth by law, including, but not limited to, **the application requirements, as set forth at N.J.A.C. 13:21-15.2, and failure to maintain an established place of business as set forth [in] at N.J.A.C. 13:21-15.4[.];**

13. The licensee [employs] **has employed** call forwarding, telephone answering services, and/or mail forwarding services during scheduled business hours or otherwise **buys, sells, [buys] or deals in motor vehicles from a remote or otherwise unlicensed location;**

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

[15. The licensee has conducted negotiations or sales activity in other than a licensed location over the internet or otherwise;]

15. The licensee has engaged in selling, leasing, or dealing in motor vehicles through a third-party engaged in the brokering of motor vehicles;

16. (No change.)

17. The **applicant or licensee** has issued a check that was subsequently dishonored for insufficient funds or other reason caused by or within the control of the **applicant or licensee**; [or]

18. The licensee has failed to comply with the requirements at N.J.S.A. 39:10-9 or 49 U.S.C. § 32705 and the rules promulgated thereunder; or

[18.] **19.** The licensee has violated [any of the rules set forth in] this subchapter, **or any statutes applicable to the licensing of dealers and the sale or lease of motor vehicles.**

(b) (No change.)

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)-(d) (No change)

(e) For the purpose of suspending a dealer's [or leasing dealer's] license pursuant to (b) above, each document presented or reassigned shall constitute a separate violation. For a first violation the dealer's [or leasing dealer's] license may be suspended for a period less than the unexpired period of the license or 15 days, whichever period is [lesser] **shorter**. For subsequent violations the dealer's [or leasing dealer's] license shall be suspended for a period of not less than 15 days or more than 90 days.

(f) (No change.)

13:21-15.7 Responsibilities of licensee

(a) All documents, including, but not limited to, title papers, reassignments, temporary registrations, and applications for registration and applications for licensure, shall be executed in the name of the dealer only by the dealer [or leasing dealer] or an authorized signatory.

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

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

(a)-(n) (No change.)

(o) Any voided temporary registrations shall be kept in the possession of the licensee for three years from the issue date or void date, and shall be made available by the licensee for examination by authorized representatives of the Commission at any time during regular business hours. A licensee shall permit authorized Commission representatives [on] **to enter** the [premises] **established place of business** of the licensee **at any time** during regular business hours for the purpose of conducting such an examination of temporary registration records. In the event that a dealership maintains branches or a licensee operates multiple licensed dealerships under common ownership or control (a dealership group), and the remaining requirements of this subsection are met at each dealership branch site or each individual dealership site within a dealership group, records that are not immediately necessary for the conduct of current business at a dealership branch site or an individual dealership site within a dealership group may be maintained at the main or principal [location] **established place of business** of the dealership or dealership group or at a centralized recordkeeping facility.

(p)-(t) (No change.)

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

(a)-(f) (No change.)

(g) A nonresident temporary registration issued pursuant to this section shall expire at the end of [20] **30** days or as soon as the permanent registration for the vehicle has been received by the registrant from his or her state or Federal district of residence, whichever occurs first. The nonresident temporary registration shall be destroyed by the registrant at the time of expiration.

(h) [A licensee shall not extend the expiration date of a nonresident temporary registration, nor issue another nonresident temporary registration to the same registrant for the same vehicle.] A licensee shall not in any way alter a previously issued nonresident temporary registration. **A second temporary registration, valid for a 30-day period beyond the original temporary registration, may be issued only when permanent registration of a vehicle is delayed because the:**

1. Original title is lost; or

2. Lien holder has delayed in providing the original title.

(i)-(m) (No change.)

(n) Any voided nonresident temporary registrations shall be kept in the possession of the licensee for three years from the issue date or void date, and shall be made available by the licensee for examination by authorized representatives of the Commission at any time during regular business hours. A licensee shall permit authorized Commission representatives [on] to enter the [premises] **established place of business** of the licensee **at any time** during regular business hours for the purpose of conducting such an examination of nonresident temporary registration records. In the event that a dealership maintains branches or a licensee operates multiple licensed dealerships under common ownership or control (a dealership group), and the remaining requirements of this subsection are met at each dealership branch site or each individual dealership site within a dealership group, records that are not immediately necessary for the conduct of current business at a dealership branch site or an individual dealership site within a dealership group may be maintained at the main or principal [location] **established place of business** of the dealership or dealership group or at a centralized recordkeeping facility.

(o)-(s) (No change.)

13:21-15.11 Dealer and leasing dealer plates

(a)-(f) (No change.)

(g) All dealer and leasing dealer plates shall be accounted for in an electronic or written record, for which the following information is listed for each dealer or leasing dealer plate:

1.-2. (No change.)

3. The location at which the vehicle to which the plate is assigned is garaged (if not [on] **at the dealer's or leasing dealer's [premises] established place of business**).

(h)-(o) (No change.)

13:21-15.13 Investigations and audits

(a) (No change.)

(b) The Chief Administrator, or designee, shall have the authority to enter [onto] the [premises] **building, immediately upon demand**, of any individual or entity engaged in the business of buying, selling, or dealing in motor vehicles, any licensed motor vehicle dealer, or any licensed leasing dealer, for the purpose of surveying the [premises] **established place of business**, examining the books and records, and otherwise ascertaining that the business is in compliance with the applicable law. **All records of online sales shall be kept and maintained in a format that allows immediate inspection and examination by the Chief Administrator, or designee.**

(c) (No change.)

(d) If a licensee or applicant fails to cooperate in an investigation or to comply with a subpoena or order to produce documents or appear at a hearing, **or a licensee fails to cooperate with an audit**, the Chief Administrator may suspend, revoke, or decline to issue or to renew the **applicant's, dealer's, or leasing dealer's license** or issue a fine pursuant to N.J.S.A. 39:10-20 **and this subchapter**.

13:21-15.14 Hearings

(a) Except as provided [in] **at N.J.A.C. 13:21-15.15**, prior to revoking, suspending, declining to renew **a dealer license**, [or] denying [a motor vehicle dealer's] **an application for a dealer license**, or prohibiting any activity for which a **dealer license** is required, the Chief Administrator will send a Notice of Proposed [Disciplinary] **Administrative Action (Notice)** to the licensee's or applicant's business address **provided to the Commission**.

(b) Within 25 days of the date of the Notice, the licensee or applicant may request a hearing concerning the proposed [disciplinary] **administrative action**.

(c) The hearing request must be, in writing, **and** must list all contested issues of material fact, issues of law, and mitigating circumstances that the **licensee or applicant [or licensee] intends to demonstrate**. **The hearing request must be postmarked no later than the 25th day of the date of the Notice**.

(d) If the Chief Administrator finds that there exist issues of material fact or potentially mitigating circumstances, the matter will be referred for a hearing **at the Office of Administrative Law**. [The hearing] **Hearings on matters that have been referred to the Office of Administrative**

Law shall be **conducted** in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., **and 52:14F-1 et seq.**, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 and [N.J.A.C.] 1:13.

(e) Prior to [scheduling] **referring the matter for a [formal] hearing at the Office of Administrative Law**, the Chief Administrator may, in his or her sole discretion, elect to conduct a prehearing conference **at the Commission**.

(f) If there are no material facts in dispute or specific mitigating circumstances subject to proof or if the licensee does not respond to the Notice [of Proposed Disciplinary Action] within 25 days from the date of the notice, the Chief Administrator shall issue a Final Administrative Determination appealable only to the Appellate Division of the Superior Court.

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

(h) Nothing in this subchapter shall prevent the Chief Administrator from seeking to resolve any [disciplinary] **administrative** matters through informal means at any stage of [disciplinary] **administrative** 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] **the licensed location**, or other circumstances would, **in the Chief Administrator's discretion**, jeopardize the integrity of the Commission's title records and the ability to prevent traffic in stolen or fraudulently titled motor vehicles **or stolen or fraudulently issued temporary registrations**, the Commission may immediately issue a preliminary suspension of the dealer's [or leasing dealer's] license.

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

(a)

DIVISION OF OPERATIONS

Charitable Solicitation on Roadways

Proposed Readoption with Amendments: N.J.A.C. 16:40

Authorized By: Diane Gutierrez-Scaccetti, Commissioner,
Department of Transportation.

Authority: N.J.S.A. 27:1A-6, 27:1A-7, and 39:4-60.

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

Proposal Number: PRN 2023-066.

Submit written comments by September 15, 2023, to:

Alexander C. Owen
Administrative Practice Officer
New Jersey Department of Transportation
PO Box 600
Trenton, NJ 08625-0600
Fax: (609) 530-4638

Submit electronically at NJDOTRules@dot.nj.gov

This notice may be viewed or downloaded from the Department's website at <http://www.nj.gov/transportation/about/rules/proposals.shtml>.

The agency proposal follows:

Summary

In accordance with N.J.S.A. 52:14B-5.1.c, N.J.A.C. 16:40 was scheduled to expire on August 11, 2023. As the Department of Transportation (Department) submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date was extended 180 days to February 7, 2024, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Department has reviewed the rules and determined that they remain necessary, reasonable, and proper for the purposes for which they were originally promulgated. The Department proposes to readopt this