

**NEW JERSEY MOTOR VEHICLE COMMISSION
REGULAR MEETING OF THE BOARD MEMBERS**

2:00 p.m., Thursday, April 18, 2024

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PROPOSED AGENDA

1. CALL TO ORDER
2. OPEN PUBLIC MEETINGS ACT STATEMENT
3. APPROVAL OF AGENDA
4. CHAIR'S REPORT
5. APPROVAL OF MINUTES of – August 31, 2023
6. APPROVAL OF ITEM 2404-01 – Designation of Vice-Chair
7. APPROVAL OF ITEM 2404-02 – Designation of Board Secretary
8. APPROVAL OF ITEM 2404-03 – Final Adoption - Licensed Motor Vehicle Dealers Rules Amendments
9. APPROVAL OF ITEM 2404-04 – Final Adoption – Zone of Rate Freedom 2024
10. ADJOURNMENT

***Anyone wishing to provide testimony on an agenda item email your name, phone number, and organization to
MVCBoard.Secretary@mvc.nj.gov***

Approval: Minutes of August 31, 2023

BENEFITS

The Motor Vehicle Security and Customer Service Act, P.L. 2003, c.13, as the enabling statute that created MVC, and as amended by P.L. 2007, c. 335 and by P. L. 2009, c.298, provides at section 17 that the actions taken at MVC Board meetings do not become effective until approved by the Governor. Thereafter, the Minutes are presented to the Board Members for approval consistent with the MVC Board Bylaws.

PURPOSE

The Act at section 17 states that “A true copy of the minutes of every meeting of the Board shall be delivered by and under the certification of the Secretary of the Board, without delay, to the Governor. No action taken at the meeting shall have force or effect until ten days, Saturday, Sundays, and public holidays excepted, after the minutes are delivered, unless during the ten-day period the Governor approves the Minutes, in which case the action shall become effective upon approval. If, in that ten-day period, the Governor returns copies of the minutes with a veto of any action taken by the Board or any Member, the action shall be null and void and of no effect.”

The August 31, 2023 Minutes were delivered on August 31, 2023 to the Governor and became effective upon expiration of the ten-day period on, September 15, 2023.

ACTION

Approval of this item by the Board Members indicates acceptance of the August 31, 2023 Minutes.

FISCAL IMPACTS

None.

RESOLUTION

WHEREAS, consistent with the Bylaws the Minutes of actions taken at meetings of the New Jersey Motor Vehicle Commission Board are to be approved by the Board Members; and

WHEREAS, pursuant to section 17 of The Motor Vehicle Security and Customer Service Act, P.L. 2003, c.13, as the enabling statute that created MVC, and as amended by P.L. 2007, c. 335 and by P. L. 2009, c.298, a true copy of the Minutes of the actions taken at the New Jersey Motor Vehicle Commission Board meeting of August 31, 2023 were delivered without delay to the Governor on August 31, 2023; and

WHEREAS, those Minutes do not become effective until expiration of the ten day review period or otherwise approved by the Governor; and

WHEREAS, Minutes of the August 31, 2023 Board Meeting were effective as of September 15, 2023; and

NOW, THEREFORE, BE IT RESOLVED that the Minutes of actions taken at the August 31, 2023 New Jersey Motor Vehicle Commission Board meeting are hereby approved.

NEW JERSEY MOTOR VEHICLE COMMISSION

Minutes by Board Secretary Chris Hillmann of actions taken at the Open Session of the Regular Board meeting of the New Jersey Motor Vehicle Commission (MVC) Board via TEAMS and conference call on Thursday, August 31, 2023.

Present:

Diane Scaccetti-Gutierrez, DOT Commissioner
Board Member Steve Scaturro
Board Member Walter Orcutt
Board Member Diane Legreide
Jenna Rodriguez (Treasurer designee)
Director, NJ Division of Highway Traffic Safety – Michael Rizol, Jr. (Attorney General designee)
Associate Counsel, Dorian Smith, Governor’s Authorities Unit
Acting Chair Latrecia Littles-Floyd

Deputy Attorney General Jennifer Jaremback participated.

Latrecia Littles-Floyd convened the Open Session at 2:01 p.m. in accordance with the Open Public Meetings Act.

Agenda Approval. Board Member Diane Legreide moved to accept the proposed agenda, Commissioner Diane Scaccetti-Gutierrez seconded the motion, and it was unanimously adopted.

Chair Remarks 8/31/2023

Board members, members of the public, and staff, thank you for joining us today and welcome to this virtual meeting of the Board of the New Jersey Motor Vehicle Commission.

I certainly hope everyone enjoyed a safe and healthy Summer and will continue to enjoy what’s remaining.

We last met on May 18th when we designated both our Vice-Chair and our Board Secretary. We also adopted Licensed Motor Vehicle Dealers Rules Amendments, and the Readoption of Bus Safety Compliance Oversight, Enforcement and out of Service Violations and Penalties.

Today, we will consider a proposal to Amend the Zone of Rate Freedom regulations pertaining to commercial driver licensing.

We will have more on that in a moment from our Legal Affairs Unit.

Thanks again for taking time out of your busy schedules to join us today...

Minutes: May 18, 2023. This item is to fulfill the requirements of The Motor Vehicle Security and Customer Service Act and of the Bylaws to approve the Minutes of each MVC Board Meeting, by approving the Minutes of the MVC Board Meeting of May 18, 2023.

Board Member Walter Orcutt moved the resolution, Board Member Steve Scatturo seconded it.

2308-01 Proposal to Amend the Zone of Rate Freedom (ZORF)

The Motor Vehicle Commission (Commission) proposes to amend the provisions at N.J.A.C. 16:53D, Zone of Rate Freedom to fulfill its statutory responsibility to establish an annual Zone of Rate Freedom (ZORF) for regular route private autobus carriers providing service within the State, pursuant to N.J.S.A. 48:4-2.21. The ZORF is the maximum permitted percentage increase adjustment and the maximum permitted percentage decrease adjustment that a private autobus carrier may make to its rate, fare, or charge for intrastate regular route service without first having to petition the Commission for approval. If the autobus carrier's fare adjustments remain within the designated ZORF percentage range, the carrier need only give notice to the Commission and the bus-riding public of the rate, fare, or charge adjustment. However, should a regular route private autobus carrier seek a percentage fare adjustment other than that allowed by the ZORF, the carrier will be required to file a petition with the Commission and comply with the notice procedures set forth at N.J.A.C. 16:51-3.10 and 3.11. In proposing the ZORF for calendar year 2024 the Commission took into account several factors relevant to changes in the average costs of operating bus services, fares charged by public transportation, and the interests of the public who use private regular route bus services.

Board Member Steve Scatturo moved the resolution, Board Member Diane Legriede seconded it.

Public Comments: None at this time

Board Comments:

- **Scaccetti-Gutierrez - No comments**
- **Legreide – Congratulated Steve Scatturo on 20 years as a Commissioner of the MVC and noted he has done a great job.**
- **Scatturo – Thanks to Diane, being a part of MVC is a great enjoyment of life.**
- **Orcutt – Hope all had a happy summer, look forward to a great fall and winter. Keep up the good work.**
- **Rodriguez – Happy to join the MVC, look forward to working with you all.**
- **Rizol – no comments**

Adjournment:

Since there was no further business, a motion to adjourn was made Board member Diane Legriede and seconded by Vice Chair Diane Scaccetti Gutierrez and unanimously adopted at 2:09 p.m.

Item 2404-01– Designation of Vice-Chair

BENEFITS

The Motor Vehicle Security and Customer Service Act, P.L. 2003, c.13 (“The Act”), is the enabling statute that created MVC, as amended by P.L. 2007, c.335 and by P.L. 2009, Chapter 298, and, pursuant to section 14 the Vice-Chair shall be elected annually by a majority of the full membership of the Board from among its Members. The Vice-Chair holds office until January 1st of the next year, as stated in Article II, Section 5 of the MVC Board Bylaws.

Purpose

The effect of this item is to fulfill the statutory and Bylaw requirements of the annual designation of the Vice-Chair of MVC.

Action

Approval of this item will designate Acting Department of Transportation Commissioner Francis K. O’Connor to serve as Vice-Chair of the New Jersey Motor Vehicle Commission Board until January 1, 2025.

Fiscal Impacts

None.

Resolution

Whereas, section 14 of the Motor Vehicle Security and Customer Service Act, P.L. 2003, c.13("The Act"), as the enabling statute that created MVC, and as amended by P.L. 2007 c.335 and P.L. 2009, c.298 requires the annual designation by the New Jersey Motor Vehicle Commission Board of a Vice-Chair; and

Whereas, Article II, Section 5 of the MVC Board Bylaws also provides that the Vice-Chair be designated annually;

Now, Therefore, be it resolved that Acting Department of Transportation Commissioner Francis K. O'Connor is designated as the Vice-Chair of the New Jersey Motor Vehicle Commission to serve a term through January 1, 2025.

ITEM 2404-02 – Designation of Secretary

Benefits

The New Jersey Motor Vehicle Commission (MVC) Board is governed by its statutes, regulations, and Bylaws. The Motor Vehicle Security and Customer Service Act, P.L. 2003, c.13 (“The Act”), is the enabling statute that created MVC, as amended by P.L. 2007, c.335 and by P.L. 2009, Chapter 298, at Section 12b provides that the Board may elect a Secretary “who need not be” a Board Member.

The Secretary shall keep the minutes of each Board meeting, ensure the minutes reflect those Board Members who are in attendance, provide a true copy of the minutes without delay to the Governor’s Office, be the custodian of the records and seal of the Board, permit the inspection, examination, and copying of Board records in accordance with N.J.S.A. 47:1A-1 et seq., and perform such other duties as may be assigned to him by the Chair and Members of the Board, as stated in Article II, Section 6 of the MVC Bylaws.

Purpose

The effect of this item is to fulfill the statutory and Bylaw authorization for the designation of the Secretary.

Action

Approval of this item will designate Christopher Hillmann, a full-time employee of the MVC, to serve as Secretary of the New Jersey Motor Vehicle Commission until the next ensuing Annual Reorganization Meeting of the MVC.

Fiscal Impacts

None.

Resolution

Whereas, section 12b of the Motor Vehicle Security and Customer Service Act, P.L. 2003, c.13 (“The Act”), as the enabling statute that created MVC, and as amended by P.L. 2007 c.335 and P.L. 2009, c.298 authorizes the annual designation by the New Jersey Motor Vehicle Commission Board of a Secretary “who need not be” a Board Member; and

Whereas, Article II, Section 6 of the MVC Board Bylaws also provides for the election of a Secretary;

Now, Therefore, be it resolved that Christopher Hillmann, a full-time employee of the MVC, is designated as Secretary of the New Jersey Motor Vehicle Commission to serve a term until the Annual Reorganization of the MVC Board next ensuing.

New Jersey Licensed Motor Vehicle Dealers and Leasing Dealers

Proposed: July 17, 2023 at 55 N.J.R. 1367(a).

Adopted: Date by the Motor Vehicle Commission, Latrecia Littles-Floyd, Acting Chair.

Filed: Date, R.2024 d. , **with non-substantial changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-6.3).

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

Effective Date:

Expiration Date: September 9, 2027

Summary of Hearing Officer's Recommendations and Agency Responses:

The New Jersey Motor Vehicle Commission (Commission) held a public hearing on October 5, 2023, to provide interested parties the opportunity to ask questions and present comments concerning these proposed amendments. See 55 N.J.R. 1367(a). Timely notice of the hearing was provided in a media advisory issued by the Commission on September 21, 2023, and was posted on the Commission's website and in the main lobby of the Commission's office at 225 East State Street, Trenton, New Jersey on September 21, 2023. Subsequently, hearing officer, Elaine Schwartz, Deputy Director of Legal Affairs, New Jersey Motor Vehicle Commission recommended that the proposal be adopted with amendments clarifying certain provisions pertaining to leasing dealers, brokering of motor vehicles, insurance liability limits, persons with controlling interests, established place of business requirements, and permitted off-site sales, and correcting typographical errors. That recommendation was accepted. The hearing record may be reviewed by contacting the Office of the Chief Administrator, New Jersey Motor Vehicle Commission, 225 East State Street, 9th Floor, Trenton, New Jersey.

Summary of Public Comments and Agency Responses:

The written comments received by the Commission regarding its July 17, 2023, proposal at 55 N.J.R. 1367(a) are available for inspection at the Office of the Chief Administrator, New Jersey Motor Vehicle Commission, 225 East State Street, 9th Floor, Trenton, New Jersey. The following individuals submitted timely written comments to the Commission regarding the proposal:

1. Dave Thom
2. Mark Binder, Copart
3. The Honorable Vin Gopal, New Jersey Senate
4. Paul Lips, National Auto Auction Association
5. Carling Dinkler, Carvana Adesa

6. James B. Appleton, New Jersey Coalition of Automotive Retailers
7. Paula Frendel, New Jersey Independent Auto Dealers Association
8. Michael DeLoreto, Esq., Gibbons P.C.
9. Donald Dinsmore, Esq., Casha, Casha & Evans, LLC
10. Thomas G. Russomano, Esq., Schiller, Pittenger & Galvin, P.C.
11. Peter Slocum, Esq., Lowenstein Sandler LLP
12. Anthony E. Bush, Esq., Eckert Seamans Cherin & Mellott, LLC

The following individuals submitted oral comments regarding this proposal at the public hearing held on October 5, 2023.

13. David Bolan, Maxum Auto Group
14. Piotr Daniel, Contact Auto Sales
15. Thomas J. D'Arrigo, TJD Architects and Engineers
16. Dan DiCarlo
17. Kevin Ginsberg, Ambassador Automobile, LLC
18. Naheed Clendaniel, City of Bridgeton
19. Chris Petersen, Statewide Leasing Corp.
20. Peter Slocum, Esq., Lowenstein Sandler LLP
21. Ed Velky, Esq., Bressler, Amery & Ross, P.C.
22. Donald Dinsmore, Esq., Casha, Casha & Evans, LLC
23. Paula Frendel, New Jersey Independent Auto Dealers Association
24. Thomas G. Russomano, Esq., Schiller, Pittenger & Galvin, P.C.

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

1. COMMENT: Three commenters stated that the proposal does not contain a proper social impact statement, a job impact statement, or a regulatory flexibility analysis. The commenters believe that the import of the proposed amendments is to close used motor vehicle dealers who operate from multi-dealer facilities and the Commission ignored any potential social and economic impacts from anticipated closures. (9, 10, 21)

RESPONSE: The Commission disagrees with the commenters' statements. The proposal at 55 N.J.R. 1367(a) contains a proper social impact statement, an economic impact statement, jobs impact statement, and regulatory flexibility statement that correctly address how the proposal is expected to impact each area addressed. The commenters are incorrect that the aim of the proposed amendments is to close used motor vehicle dealers who operate from multi-dealer facilities. The proposal makes no substantive changes to the current used motor vehicle dealer licensing landscape.

The proposed amendments implement the statutory changes in P.L. 2021, c. 462, and P.L. 2021, c. 484, both effective January 18, 2022. The proposed amendments of N.J.A.C. 13:21-15.4 implement the statutory change requiring new motor vehicle dealers to occupy a permanent building of not less than 1,000 square feet in floor space and the prohibition on occupying multi-dealer facilities or sharing space with another business entity. The proposed amendments of N.J.A.C. 13:21-15.4 also confirm the Commission's longstanding requirement for used motor vehicle dealers operating from multi-dealer facilities to have compliant firewalls between business entities which has been in place since 2006.

2. COMMENT: One commenter lent their support to the proposed amendments to the automobile dealer regulations but stated that they do not go far enough and called for the ban on paper temporary vehicle registrations. (1)

RESPONSE: The Commission acknowledges this commenter's support for the proposed amendments. However, a ban on paper temporary vehicle registrations is beyond the scope of this rulemaking.

3. COMMENT: Three commenters opposed the proposal on the basis that it is a blanket policy that would hurt all good dealers that are playing by the rules and doing the right things. The commenters believed the amendments in the proposal will put them out of business. The commenters stated that the Commission should go after the dealers that are doing the wrong things, the bad players, instead of dealers that are following the rules. (13, 14, 19)

RESPONSE: The Commission disagrees that these rules will put any legitimate dealers out of business.

4. COMMENT: One commenter expressed concerns regarding the Commission's proposed definition of "brokering" in N.J.A.C. 13:21-15.1, stating that the proposed definition would apply to licensed used motor vehicle dealers whose primary business is to auction vehicles for another

entity. The commenter believes that the inclusion of auctioned vehicles in the proposal was unintended by the Commission. The commenter states that the entire auction industry should be exempted from the proposed requirement because of the unique nature of its business operations. The commenter wished the Commission to consider that it does not sell directly to private individuals and provided an amended definition of “brokering” for the Commission’s consideration. (2)

RESPONSE: The commenter misunderstands the intent of the Commission’s definition of “brokering” in the proposed amendment to N.J.A.C. 13:21-15.1. The auctioning and brokerage of motor vehicles has long been included in the Commission’s definition of the “business of buying, selling, or dealing in motor vehicles.” Entities engaged in the “business of buying, selling, or dealing in motor vehicles” are required to be licensed dealers. The Commission’s proposed definition of “brokering” has no effect on motor vehicle auctions where the auctioneer is not a party to the transaction involving the transfer of title or of legal or beneficial ownership of a motor vehicle and does not act on behalf of a party to the transaction involving the transfer of title or of legal or beneficial ownership of a motor vehicle, other than to handle any necessary paperwork. However, to fully address the commenter’s concerns, the Commission has decided to amend the proposed definition of “brokering” to mean “arranging, negotiating, facilitating, acting as an agent in, assisting in, or effectuating the purchase, sale, or lease of a motor vehicle to the general public for a fee,” which clarifies that wholesale-only auctions are not included in the Commission’s proposed definition of “brokering.” Retail auctions to the general public continue to be prohibited under the proposed amendments as they would constitute off-site sales, unless conducted online pursuant to N.J.S.A. 39:10-19.5.

5. COMMENT: Three commenters stated that the proposed definition of “brokering” in N.J.A.C. 13:21-15.1 is unclear, vague, and ripe for misinterpretation. The commenter believed that the proposed definition of “brokering” could be read to include activity by not just wholesale motor vehicle auctions, but also advertisers, classified listing agents, and any other service provider that touches the sale or wholesale of a motor vehicle. The commenter also stated that the proposed definition runs afoul of New Jersey’s Uniform Commercial Code which provides for consignment and entrustment. The commenter suggested the Commission remove the definition of “brokering” from the proposal or, in the alternative, amend the proposed definition to exempt licensed used motor vehicle dealers whose primary business is to auction vehicles for another entity, wholesale motor vehicle auctions, and consignments and entrustments. (4, 5, 7)

RESPONSE: The commenters’ statements regarding the definition of “brokering” are addressed in Response to Comment 4. As to the commenters’ concerns about over-inclusivity of the proposed definition of “brokering,” N.J.S.A. 39:10-19 requires any person who is engaged in the business of buying, selling, or dealing in motor vehicles to have a dealer license. Entities that are merely providing a platform for motor vehicle sales to occur and are not parties to the transaction, or agents for parties to the transaction, involving the transfer of title or of legal or beneficial ownership of a motor vehicle, such as advertisers, classified listing agents, and wholesale auction services, are not intended for inclusion in the proposed definition of “brokering.”

6. COMMENT: One commenter stated that reciting statutory definitions within N.J.A.C. 13:21-15.1 could cause confusion due to slight nuances of word usage or subsequent statutory changes to definitions. The commenter suggested that definitions refer to the appropriate statutory citation and that a definition should only be provided if the statute does not already provide for the definition. (5)

RESPONSE: The Commission disagrees that reciting statutory definitions within N.J.A.C. 13:21-15.1 could cause confusion due to slight nuances of word usage. Additionally, these rules require periodic readoption which would allow for amendment due to any subsequent statutory changes to a definition. Numerous other Commission regulations include definitions which are recited statutory definitions, and the Commission wishes these regulations to be consistent with its other regulations.

7. COMMENT: One commenter requested clarification of the proposed definition of the “business of buying, selling or dealing in motor vehicles” as it relates to licensed leasing dealers. The commenter stated that the last sentence of the proposed definition as it related to leasing dealers is inconsistent with New Jersey statutes in that it imposes upon licensed lessors the requirement that off-lease sales be strictly either to the lessee or to hold the vehicle. The commenter stated that N.J.S.A. 39:10-19 and N.J.S.A. 56:8-67.1 anticipate wholesale transactions by a licensed lessor as well as the potential to sell off-lease vehicles to a retail lessee’s employees or a lessee’s family member. The commenter suggested amending the last sentence of the proposed definition to remove the effective prohibition on licensed lessors from liquidating or disposing of their collateral upon lease termination. (12).

RESPONSE: The commenter misunderstands the last sentence of the definition of the “business of buying, selling, or dealing in motor vehicles” as it relates to leasing dealers. The last sentence merely recites the exemption of 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 from the dealer licensing framework as stated in N.J.S.A. 39:10-19. Leasing dealers who wish to engage in the business of buying, selling, or dealing in motor vehicles by selling any vehicle at the end of a lease term to a consumer other than the lessee must obtain a used motor vehicle dealer license pursuant to N.J.S.A. 39:10-19. Leasing dealers are not prohibited from liquidating or disposing of their collateral upon lease termination, they may sell a motor vehicle at the termination of the lease to the lessee without a used motor vehicle dealer license, or if they wish to sell a motor vehicle at the termination of the lease to any other consumer other than the lessee, they are required to obtain a used motor vehicle dealer license.

8. COMMENT: One commenter opposed the proposed amendment of N.J.A.C. 13:21-15.2(h) to require submission of “photographs and plans” during an initial or renewal license application. The commenter stated that the Commission required the submission of either photographs or plans for decades and requiring both may complicate the initial and renewal license process, especially for longstanding dealership facilities that were built many years ago. The commenter stated that a requirement to submit plans would require a significant expenditure for renewal applications where plans do not already exist, and photographs had previously been submitted. (6)

RESPONSE: The commenter misunderstands the proposed amendment of N.J.A.C. 13:21-15.2(h) as it relates to renewal license applications. The proposed amendment states that, among other things, photographs and plans that clearly depict the exterior and interior of the proposed place of business shall be submitted with the initial application for a dealer license. The Commission does not intend to require photographs and plans with a renewal license application for an established place of business.

9. COMMENT: One commenter requested clarification on the proposed amendment of N.J.A.C. 13:21-15.2(i) requiring certification of documents. The commenter requested to know what level of certification is required. (6)

RESPONSE: The proposed amendment requires applicants to submit a certified copy of a deed, contract for purchase, or lease, as applicable. Certified copies of land records such as deeds and leases can generally be obtained for a nominal fee from the County Clerk's Office where the deed or lease was recorded. A notary public can certify a copy of a contract for purchase or any other document the applicant is required to submit.

10. COMMENT: One commenter stated that the current insurance requirements in N.J.A.C. 13:21-15.2(l) are insufficient and use outdated terminology. The commenter proposed that the insurance limits in the current regulation are too low and should be increased to a minimum of \$250,000 or \$300,000 for each accident. The commenter also stated that the regulation should not use the term "personal injury" to describe the insurance coverage required. "Bodily injury" should be substituted for "personal injury" as "personal injury" has a different meaning within insurance regulations. The commenter also stated that motor vehicle dealers are often insured through garage liability policies and not automobile policy forms. The commenter stated that the garage liability policy is sufficient to address the Commission's concerns. Lastly, the commenter requested that the amended proposal include a time frame in which a dealer is able to provide evidence of insurance coverage. The commenter stated that many prospective dealers were securing insurance coverage and paying 3-6 months of premiums prior to approval by the Commission without the ability to conduct business and generate sales, with some ultimately being denied licensure. The commenter stated these dealers are spending thousands of dollars unnecessarily on insurance premiums. (7, 23)

RESPONSE: The Commission agrees with the commenter that the use of "personal injury" in N.J.A.C. 13:21-15.2(l) is inconsistent with the remainder of the section which references "bodily injury" insurance limits and could cause confusion as "personal injury" in insurance policies can include advertising injury and other types of losses not contemplated under an automobile liability policy. The Commission will substitute the word "bodily" for the word "personal" in the second sentence of the provision. The Commission appreciates the commenter's suggestion to increase the split limit insurance requirements; however, increasing the required insurance limits is beyond the scope of this rulemaking. The Commission may choose to take up the commenter's suggestion in a future rulemaking. Lastly, the Commission did include a time frame for the provision of insurance coverage in the proposed amendment. The proposed amendment requires an applicant to provide a certificate of insurance prior to licensure. The Commission often issues notices of preliminary approval to applicants which provides a 14-day timeframe for applicants to provide a

certificate of insurance. The Commission believes the timeframe provided in the preliminary approval notices is sufficient and declines to adopt the amendment suggested by the commenter.

11. COMMENT: One commenter opposed the proposed amendment of N.J.A.C. 13:21-15.2(n) and requested clarification as to whether the Commission intended to have active licensees submit new license applications every time an officer is added or removed. The commenter stated that they support the Commission's current process of requiring an Application to Amend a Business License, Registration or Permit when there is an officer change for an active licensee. The commenter stated that the current process was sufficient and the other requirements for issuing a new license are not necessary when adding or removing officers. The commenter stated the proposed amendment would burden the Commission with unnecessary work and require dealers to comply with unnecessary procedures. (6)

RESPONSE: The Commission does not intend to have active licensees submit a new license application when there is a change in officer, director, or person with a controlling interest in or of the licensed dealer. The proposed amendment only requires that licensees must notify the Commission immediately, in writing, when there is a change in officers. The proposed amendments require a new license application whenever there is a change in ownership of the licensed dealer. Changes in ownership are described as adding or removing a partner, forming a new partnership, changing the corporate structure, or selling or transferring more than 20 percent ownership interest.

12. COMMENT: One commenter stated that the proposed amendment to N.J.A.C. 13:21-15.2(n) regarding notifying the Commission of a change in any officer, director, or person with a controlling interest in or of the licensed dealer should be changed from "immediately" to 30 days. (7, 23)

RESPONSE: The Commission disagrees with the commenter's suggestion that the requirement that licensed dealers notify the Commission of a change in any officer, director, or person with a controlling interest in or of the licensed dealer be changed from "immediately" to 30 days. Legitimate dealers should have no problems reporting changes in personnel to the Commission immediately.

13. COMMENT: One commenter requested clarification regarding the proposed amendment to N.J.A.C. 13:21-15.2(n)(1) requiring a new license application when there is a change in ownership of a dealer. The commenter requested to know whether the new applicant would need fingerprints and a background check. (7, 23)

RESPONSE: Applicants under this provision would need to comply with the same application procedures as applicants that had not previously been licensed. The intent of this provision is for the Commission to issue a new dealer license to entities that have experienced a change in ownership as defined in the proposed amendment. As such, applicants would need to comply with all application procedures, including a fingerprint background check.

14. COMMENT: One commenter, which has long relied on the business premises exemptions contained in N.J.A.C. 13:21-15.4, requested confirmation that the exemptions for businesses and

premises licensed prior to March 6, 2006, remain intact with this proposal. The commenter states that although there are no amendments to N.J.A.C. 13:21-15.4(d)(1)(i) through (d)(1)(iii) in the proposal, there could be confusion about the Commission's intent based on a statement in the proposal summary that proposed amendments to N.J.A.C. 13:21-15.4 are "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." The commenter stated that the Commission's statement could be misconstrued and lead to the denial of applications for businesses already located at, or to be located at, facilities licensed prior to March 6, 2006. The commenter also requested the Commission confirm that dealers who were licensed prior to March 6, 2006, and have maintained their businesses continuously since that time, are exempted from the parameters that delineate minimum square footage and display requirements. The commenter also commended the Commission for its efforts to remove bad actors from the used car business, including those operating unscrupulous multi-dealer locations. (8)

RESPONSE: The Commission would first like to acknowledge this commenter's support for the Commission's efforts to remove bad actors from the used car business. The Commission did not propose any amendment to N.J.A.C. 13:21-15.4(d)(1)(i) through (d)(1)(iii). Similarly, the Commission did not propose to amend the substance of N.J.A.C. 13:21-15.4(a)(4). The Commission has no intent to deny applications for businesses licensed prior to March 6, 2006, provided they meet the requirements for continued licensure. It should be noted that N.J.S.A. 39:10-19 requires any licensee who relocates its business on or after the effective date of the statutory amendment (January 18, 2022) to meet the requirements for an established place of business for a used motor vehicle dealer set forth in the Commission's regulations.

15. COMMENT: One commenter stated that the Commission's proposed amendments are unnecessary, illogical, and *ultra vires*. The commenter stated that the statutory amendment to N.J.S.A. 39:10-19 did not prescribe any material new location or place-of-business requirements for used motor vehicle dealers and suggested that the Commission used the statutory amendment as a "cover to make sweeping changes to the regulations governing used-car dealers that have nothing to do with the statute." The commenter stated that the Commission is acting outside of its statutory authority, usurping the authority of the New Jersey Department of Community Affairs ("DCA") to promulgate and enforce building code requirements. The commenter stated that the Commission has no authority to dictate building requirements for exterior walls or fire suppression that are within the DCA's exclusive province. The commenter stated that the Commission has proposed to adopt provisions of the International Building Code related to exterior walls and firewalls that the DCA has not adopted in full. The commenter further stated that the State Uniform Construction Code, N.J.S.A. 52:27D-119, *et seq.* ("UCC") expressly preempts any rule or regulation that is inconsistent with the statute. The commenter stated that the Building Subcode, which does not adopt the exterior wall and firewall requirements in the proposed amendments, preempts the proposed amendments. The commenter also stated that the proposed amendments are inconsistent with the statutory amendment to N.J.S.A. 39:10-19. The commenter stated the Legislature declared that an established place of business for a used car dealer must consist of a minimum office space of 72 square feet within a permanent, enclosed building located within the State; therefore, the proposed amendments requiring that there be no other business entities present

in the same building violates the Motor Vehicle Certificate of Ownership Law, N.J.S.A. 39:10-1, *et seq.* (“MVCOL”). (11, 20)

RESPONSE: The statutory amendment prescribes that a new applicant for a used motor vehicle dealer license, or a licensee that relocates its established place of business after the effective date of the statutory amendment, must meet the requirements for an established place of business for a used motor vehicle dealer, which are established in the Commission’s regulations. The proposed amendments make no material changes to the established place of business requirements for used motor vehicle dealers. The Commission has also clarified the proposed amendment to N.J.A.C. 13:21-15.4(d)(1) updating the International Building Code reference to the 2021 International Building Code (“IBC/2021”) and included language specifying that the IBC/2021 as adopted by the DCA as the Building Subcode of the UCC pursuant to N.J.A.C. 5:23-3.14 is the applicable standard.

N.J.S.A. 39:10-4 authorizes the Commission to make rules and regulations necessary for the enforcement of the chapter, of which N.J.S.A. 39:10-19, requiring the establishment of a place of business, is a part. The Commission’s statutory authority is further made clear by the provision in N.J.S.A. 39:10-20 giving the Commission the authority to adopt rules and regulations implementing the provisions for dealer licensing and imposing fines for violations of the rules. Clarifying what constitutes an established place of business is clearly necessary for the enforcement of that statute. Rules governing a dealer’s established place of business have been in place without Legislative changes for several decades, which is persuasive evidence of the Legislature’s intent that the Commission regulate in this regard. See, for example, Cedar Cove, Inc. v. Stanzione, 122 N.J. 202, 212-13 (1991); Matturri v. Bd. of Trs., Judicial Ret. Sys., 173 N.J. 368, 382 (2002). Indeed, the statutory amendment that the proposed amendments implement, in part, codified a Commission rule related to established places of business for used motor vehicle dealers.

16. COMMENT: One commenter stated that the proposed amendments seek to impose a separate exterior entrance requirement for multi-dealer location tenants in violation of the MVCOL. The commenter stated that there is no reason why a used-car dealer must have an exterior door to operate a legitimate business and the requirement demonstrates the Commission’s arbitrariness and capriciousness. (11)

RESPONSE: The Commission has deleted the word “exterior” from the proposed amendment of N.J.A.C. 13:21-15.4(d)(2) because of its inadvertent inclusion in the proposal. The Commission will clarify N.J.A.C. 13:21-15.4(d)(2), if necessary, in a future rulemaking. The provisions at N.J.A.C. 13:21-15.4(d)(1) through (5) are factors that the Commission uses to determine whether a used motor vehicle dealer is deemed to occupy the same building as another business. Should a used motor vehicle dealer applicant occupy the same building as another business, its proposed place of business must be separated from other business entities by either an exterior wall or a fire wall as defined in N.J.A.C. 13:21-15.1 and section 202 of the IBC/2021, as adopted by the DCA, unless the fire wall exemption in N.J.A.C. 13:21-15.4(d)(1)(i) applies.

17. COMMENT: Two commenters stated that the multi-dealer location business model has existed in New Jersey for decades and employs thousands of people in startup businesses as they establish themselves in the used-car industry. The commenters stated that the proposed amendments would jeopardize thousands of businesses and the millions of annual tax and other revenue dollars generated. The commenters stated that the Commission dissimulates when it claims in the proposal summary that there will be no economic impact or no impact on jobs. The commenters requested the Commission confirm that it is not intending to shutter many long-standing businesses with the proposed amendments. (11, 16, 20)

RESPONSE: The Commission disagrees with the commenters assertion that the proposed amendment will have any impact on jobs or the economy as it relates to used motor vehicle dealers operating from multi-dealer locations. The Commission's proposed amendments are not intended to shutter long-standing businesses, but merely to implement the statutory amendment of N.J.S.A. 39:10-19. The proposed amendments make no material changes to the established place of business requirements for used motor vehicle dealers that operate within multi-dealer locations.

18. COMMENT: One commenter, an owner of a multi-dealer location for 21 years, opposed the proposed amendments to the extent they impact multi-dealer locations. The commenter stated that his property serves as an incubator for small businesses, where a significant number qualify as minority- and/or women-owned businesses, and he has built a reputation over the years for running a good, clean operation that supports its dealer tenants and works hard to promote their success. The commenter stated the proposed amendments will have a significant economic impact and will force or most likely force all dealers to abandon the business. The commenter stated that he would participate in oversight or enter reforms to stop dishonest players, but the proposed amendments do not do that. (16)

RESPONSE: The Commission disagrees with the commenter's assertion that the proposed amendments will have a significant economic impact and will force all dealers to abandon the business. The proposed amendments make no material changes to the established place of business requirements for used motor vehicle dealers that operate within multi-dealer locations.

19. COMMENT: One commenter, a tenant of another commenter's multi-dealer location, stated that he has been in business for ten years and deals with the collector car world. The commenter stated that his business is his sole livelihood to support his family. The commenter stated that his landlord's building is a model and supports its dealers and tenants. The commenter stated that the Commission is really stepping out of its box in a sense to control something that isn't theirs to control. The commenter stated that he brings revenue to the State and to local businesses and the proposed amendments will hurt a lot of people in the State and hurt a lot of people that may not want to stay in the State because it will be too hard for them to do business. (17)

RESPONSE: The commenter misunderstands the intent of the proposed amendments. The proposed amendments make no material changes to the established place of business requirements for used motor vehicle dealers that operate within multi-dealer locations.

The commenters' statements questioning the statutory authority of the Commission to promulgate the amendment are addressed in Response to Comment 15.

20. COMMENT: Two commenters stated that N.J.S.A. 39:10-3, 39:10-4 and 39:10-19 did not authorize the Commission to determine what an established place of business is or how a dealer is to conduct business, but only to promulgate an application for the determination of a proper person for licensure and to regulate and control titles to motor vehicles and prevent the sale of motor vehicles with fraudulent titles. The commenter also claimed that the Commission is not a State regulatory board enacted under the licensing law to educate and regulate the practice of licensed individuals such as cosmetologists, dentists, physicians, optometrists, et cetera; nevertheless, the proposed regulations are more onerous than those proposed by any of the regulatory boards. Motor vehicle dealers are different from the other regulated businesses and are dealt with differently by the licensing boards. If the Commission's authority were as broad as other regulatory boards, they would have been included in the licensing law. (9, 10)

RESPONSE: The commenters' statements questioning the statutory authority of the Commission to promulgate the amendment are addressed in Response to Comment 15.

To the extent that the commenters' statements concern provisions that the Commission is not proposing to amend, the statements are outside the scope of the rulemaking.

21. COMMENT: Three commenters stated that the amendment of N.J.A.C. 13:21-15.4(d), setting forth requirements for compliance with the IBC and firewall regulations, is arbitrary and capricious. The commenters contend that the rule is beyond the scope of the Commission's authority and is unconstitutional because it does not bear a real and substantial relation to the general welfare, it imposes an arbitrary restriction on the use of land and interferes with property rights, and it interferes with the conduct of business. The commenters stated that the exterior wall, firewall, and exterior entrance requirements in the proposed amendments violate the New Jersey Uniform Construction Code because they are contrary. The commenters stated that the requirements for a firewall are unnecessary because all multi-dealership facilities are already compliant with existing building ordinances and regulations. The commenters contend that the amendments encroach on the authority of the DCA and are void. The commenters requested clarification on the authority of the Commission to require a firewall, exterior walls, and exterior entrances, whether the exterior entrance requirement applies to licensees who meet the requirements of N.J.A.C. 13:21-15.4(d)(1)(i), the authority of the Commission to curtail licensees' personal rights, including the manner in which they conduct business, the authority of the Commission to curtail licensees' property rights, including the manner in which they are to use their property, and how the proposed requirements are reasonably adapted to meet the Commission's requirements. (9, 10, 22, 24)

RESPONSE: The Commission rejects the commenters' argument that the rule or the proposed amendment is arbitrary and capricious. The proposed amendment only seeks to update the reference to the 2009 International Building Code, New Jersey Edition, adopted by the State in the New Jersey Uniform Construction Code (N.J.A.C. 5:23-3.14), to the IBC/2021. To this end, the Commission has added clarifying language to the proposed amendment to N.J.A.C. 13:21-15.4(d)(1) updating the International Building Code reference to the IBC/2021 specifying that the IBC/2021 as adopted by the DCA as the Building Subcode of the UCC pursuant to N.J.A.C. 5:23-3.14 is the applicable standard. As to the rule itself, N.J.S.A. 39:10-19 requires a permanent place

of business, and Title 39 grants the Commission the authority to promulgate rules to implement the governing statutes. This includes the dealer facilities. If a dealer's location is not in a permanently enclosed building or separated from other occupants by a substantial, permanent wall like a firewall, it is not suitable for conducting a motor vehicle sales business. The requirement of a firewall would be unnecessary only if the premises in question were an accommodation address in which the licensee never conducted business. In the absence of business premises located in a permanently enclosed building in which there were no other tenants, a firewall is necessary to protect documents and individuals, both dealers and customers, who are on the premises at the time.

The commenters' statements questioning the statutory authority of the Commission to promulgate the amendment are addressed in Response to Comment 15.

Without the separation of a firewall, the premises would be suitable only for use as an accommodation address, a business location on paper only, and could not support an established place of business, as contemplated by N.J.S.A. 39:10-19, *et seq.*

22. COMMENT: One commenter, writing on behalf of a constituent, requested clarification on whether the proposed amendments impact the requirement that a dealer cannot have an office in a building with another dealer, the requirement for an exterior entrance, and whether the proposed definition of a firewall is the same as the prior firewall requirement. (3)

RESPONSE: The proposed amendments do not contain any material impact to the existing requirements for used motor vehicle dealers. The provisions at N.J.A.C. 13:21-15.4(d)(1) through (5) are factors that the Commission uses to determine whether a used motor vehicle dealer is deemed to occupy the same building as another business. Should a used motor vehicle dealer applicant occupy the same building as another business, its proposed place of business must be separated from other business entities by either an exterior wall or a firewall as defined in N.J.A.C. 13:21-15.1 and section 202 of the IBC/2021, as adopted by the DCA, unless the firewall exemption in N.J.A.C. 13:21-15.4(d)(1)(i) applies.

The commenter's statements questioning the requirement for an exterior entrance are addressed in Response to Comment 16.

23. COMMENT: One commenter stated that the physical facility requirements and limitations that are proposed contradict the established building construction code standards. The commenter stated that the Commission is attempting to expand its authority into areas that it really has no business regulating, specifically building code standards for multi-dealer facilities and multi-tenant buildings. The commenter stated that the proposed amendments exemplified an administrative state that wants to expand its authority to control rather than responding to public welfare and the common good of the populace. The commenter stated that the proposed regulations are simply for the sake of power and are a naked example of an administrative state continuing to grow its authority for the sake of its own authority. The commenter did not see any reason why the Commission should be attempting to regulate multi-dealer facilities that are legitimately compliant with standing construction code regulations. (15)

RESPONSE: The Commission disagrees with the commenter's understanding of the proposed amendments. The proposed amendments do not contain any material impact to the existing requirements for used motor vehicle dealers. The commenter's statements questioning the statutory authority of the Commission to promulgate the amendment are addressed in Response to Comment 15.

24. COMMENT: One commenter, commenting on behalf of Mayor Albert Kelly of the City of Bridgeton, opposed the proposed amendments that add additional criteria to the definitions including the established place of business, exterior wall license location, and other similar definitions pertaining to facilities. The commenter stated that the Commission should enact rules as necessary to regulate and control titles to motor vehicles and to prevent the sale of motor vehicles with fraudulent titles, and the Commission should refrain from doing what is essentially the work of zoning boards, planning boards, and construction officials at the local level. The commenter stated that the proposed amendments will adversely impact the New Jersey Dealers Auto Mall ("NJDAM"), a Bridgeton based multi-dealer location that has operated for almost two decades. The commenter stated that NJDAM contributes to the tax base, contributes through permit fees, and supports local programs and activities. The commentor stated that NJDAM has complied with the Commission's requirements since 2007 and the Commission has approved NJDAM's facilities. The commenter stated that in 2015, the Commission attempted to move the goal post by requiring a wall certification but was not successful. The commenter stated that the proposed amendments appear to be moving the goal post yet again and have less to do with protecting consumers and more with shutting down NJDAM and similar operations around the State. (18)

RESPONSE: The commenter is incorrect in their understanding of the proposed amendments. The Commission is not making any material changes to the requirements for used motor vehicle dealers operating within the State. The definitions included in the proposed amendment to N.J.A.C. 13:21-15.1 are verbatim from section 202 of the IBC/2021, as adopted by DCA. The commenter's statements questioning the requirement for an exterior entrance are addressed in Response to Comment 16.

The commenter's statements questioning the statutory authority of the Commission to promulgate the amendment are addressed in Response to Comment 15.

The commenter's statements suggesting that the proposed amendments will adversely affect NJDAM are incorrect. The Commission does not promulgate regulations to target any specific motor vehicle dealer or group of motor vehicle dealers.

25. COMMENT: One commenter stated that the proposed amendments do not address the On-Line Sales Act or the Motor Vehicle Transaction Modernization Act, but instead appear to focus on prohibiting used motor vehicle dealers from operating from multi-dealer facilities, considering the proposed requirements for exterior walls and exterior entrances. The commenter stated that the Commission is an administrative agency with limited power and that it cannot enforce regulations designed to unnecessarily curtail legal businesses. (21)

RESPONSE: The proposed amendments do address the statutory amendments made in the Motor Vehicle Transaction Modernization Act, P.L. 2021, c. 462, and P.L. 2021, c. 484, in that they include added definitions of “electronic” and “online sales” in N.J.A.C. 13:21-15.1 and remove the prohibition on conducting negotiations or sales activity in other than a licensed location over the Internet or otherwise in N.J.A.C. 13:21-15.5(a). Additionally, N.J.A.C. 13:21-15.4(b) implements the intent of the statutory amendment to prohibit new motor vehicle dealers from occupying the same building as other licensed dealers or business entities.

The commenter’s statements questioning the statutory authority of the Commission to promulgate the amendment are addressed in Response to Comment 15. The commenter’s statements questioning the requirement for an exterior entrance are addressed in Response to Comment 16.

26. COMMENT: One commenter requested the Commission define the term “controlling person” included in N.J.A.C. 13:21-15.5(a)(4). (7, 23)

RESPONSE: The Commission acknowledges that “controlling person” is not defined within the regulations; however, the Commission has used the phrase “person with a controlling interest” throughout the proposal. “Controlling interest” is a defined term in N.J.A.C. 13:21-15.1. The Commission will amend the proposal to include the phrase “person with a controlling interest” in N.J.A.C. 13:21-15.5(a)(4), which is consistent with the remainder of the proposal.

27. COMMENT: Three commenters requested clarification on proposed amendments to N.J.A.C. 13:21-15.5(a)(14), which allows the Commission to reject, suspend, or revoke a dealer license of a licensee that engaged in buying, selling, or dealer in motor vehicles from a location other than the licensed location. The commenter stated that the majority of new and used car inventory is acquired by motor vehicle dealers at locations other than their licensed places of business. The commenter also pointed out that N.J.S.A. 39:10-19.1 allows the sale of vehicles at auctions at which only wholesale purchases are permitted and are excluded from the definition of an “off-site sale.” The commenter requested the Commission clarify that the proposed amendment to N.J.A.C. 13:21-15.5(a)(14) does not apply to activity specifically permitted by N.J.S.A. 39:10-19.1. (4, 5, 7, 23)

RESPONSE: The Commission has not made any substantive changes in the proposed amendment to N.J.A.C. 13:21-15.5(a)(14). The proposed amendment merely makes language changes to enhance the clarity of the section. The Commission has included additional clarifying language at the end of the first sentence of the proposed amendment to N.J.A.C. 13:21-15.5(a)(14) to further evidence its intent.

When read in context, the regulations and statutes do not prohibit a motor vehicle dealer from buying wholesale motor vehicles away from the dealer’s licensed location. Within New Jersey, sales at other than a licensed location have been used to commit fraud both in the sale of vehicles and in the use of Commission documents, as well as to evade law enforcement and regulatory personnel. However, the Commission does not intend the proposed amendment to apply to activity specifically permitted under N.J.S.A. 39:10-19.1.

28. COMMENT: One commenter expressed support for the prohibition against brokering by New Jersey licensed motor vehicle dealers evidenced in the proposed amendment to N.J.A.C. 13:21-15.5(a)(15). The commenter stated that the practice of brokering has been driven by manufacturer programs which reward high volume sales and has led to many New Jersey dealers utilizing brokers which ultimately diminishes the Commission's oversight of these sales activities. (6)

RESPONSE: The Commission acknowledges this commenter's support.

29. COMMENT: One commenter stated that the proposed amendment to N.J.A.C. 13:21-15.10(h) should allow dealers to issue a second 30-day non-resident temporary registration extension when the Commission is the source of the delay. The commenter stated that consumers and dealers are harmed by mistakes on the titles, time delays, and mileage errors because the current regulations do not allow a second extension. The commenter also suggested that a third extension should be issued in some circumstances. (7, 23)

RESPONSE: The Commission's proposed amendment to N.J.A.C. 13:21-15.10(h) allows for the issuance of one 30-day extension to the non-resident temporary vehicle registration when either the original title is lost, or the lienholder has delayed in providing the original title in accordance with N.J.S.A. 39:3-4c. This amendment is also consistent with the regulation allowing a single 30-day extension for a resident temporary vehicle registration at N.J.A.C. 13:21-15.9(h). N.J.S.A. 39:3-4c allows for one 30-day extension and does not authorize a second 30-day extension under any circumstances. The Commission is unable to promulgate regulations that are outside its statutory authority and because additional extensions are not contemplated by N.J.S.A. 39:3-4c, the Commission could not propose additional extensions in its regulations regardless of the source of the delay.

30. COMMENT: Three commenters stated that the proposed amendment to N.J.A.C. 13:21-15.14(c) requiring the postmarking of hearing requests no later than the 25th day after the date of the Notice is not aligned with the Uniform Electronic Transaction Act, N.J.S.A. 12A:12-1, et seq. and N.J.S.A. 39:2-3.8, both of which allow the Commission to accept documents electronically even if a law, rule, or regulation requires documents or information to be written or submitted in writing. (7, 9, 10, 23)

RESPONSE: The Commission does not agree with the commenter that the proposed amendment to N.J.A.C. 13:21-15.14(c) is misaligned with the Uniform Electronic Transaction Act, N.J.S.A. 12A:12-1, et seq. or N.J.S.A. 39:2-3.8. The Commission points out that both statutes that the commenter cited are discretionary and do not require the submission of documents electronically. The Commission retains the discretion to require certain documents and information be submitted in writing and has exercised that discretion in this provision.

31. COMMENT: One commenter objected to the term "in the Chief Administrator's discretion" in the proposed amendment to N.J.A.C. 13:21-15.15(a). The commenter stated the term was not defined. (7, 23)

RESPONSE: The Commission's regulations at N.J.A.C. 13:21-15.1 through 15.15 contain references to "the Chief Administrator's discretion," which phrase is derived from the provisions

of N.J.S.A. 39:10-20 that authorize the Chief Administrator to impose fines and suspend or revoke a motor vehicle dealer license for statutory or regulatory violations. The discretionary powers of the Commission and the Chief Administrator are reviewed under an arbitrary and capricious standard. See Zimmerman v. Sussex Cnty. Educ. Servs. Comm'n, 237 N.J. 465, 475 (2019); In re Stallworth, 208 N.J. 182, 194 (2011); Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980); Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963).

32. COMMENT: Two commenters noted that with regard to the Commission's search powers, other professional organizations throughout the State would require administrative search subpoenas like orthopedists and dentists, but the Commission has blanket investigatory powers. The commenters requested clarification on what books and records the Commission is entitled to inspect, whether the Commission intends to examine books and records beyond those required in N.J.S.A. 39:10-6, 10-19.5, and 10-21, the authority and necessity of the Commission to examine books and records, what other state licenses are permitted to be audited, how the Commission will address a situation where a licensee refuses to permit an audit of banking or employment records, the authority of the Commission to curtail licensees' personal rights, including the manner in which they are to conduct business, and how the proposed requirements are reasonably adapted to meet the Commission's requirements. (9, 10, 22)

RESPONSE: The authority of the Chief Administrator to conduct a compliance inspection is set forth in N.J.A.C. 13:21-15.13(b) pursuant to the Commission's authority to enforce N.J.S.A. 39:10-19, as set forth in N.J.S.A. 39:10-4, as is the authority of the Commission to promulgate the regulation. That inspection of necessity must include all records necessary to demonstrate compliance with the law governing the dealership, which go beyond the rules and regulations for vehicles in the dealer's possession as set forth in N.J.S.A. 39:10-6. The Commission disagrees with the commenters that checkbooks and corporate books belonging to the dealership do not relate to the motor vehicle dealer's business.

Refusal to provide records pursuant to N.J.A.C. 13:21-15.13(b) subjects the dealer to disciplinary action pursuant to N.J.A.C. 13:21-15.13(d). Listing of other State licensees subject to audits is beyond the scope of this rule.

The commenter's statements questioning the statutory authority of the Commission to promulgate the amendment are addressed in Response to Comment 15.

33. COMMENT: Two commenters stated that the proposed amendments to N.J.A.C. 13:21-15.14(c) and 15.14(d) alter the language of four statutes: N.J.S.A. 39:10-20, 52:14B-2, 52:14B-9, and 52:14B-11 in that they permit the Commission to bypass the constitutional safeguards set forth in N.J.S.A. 39:10-20 and 52:14B-11 and violate licensees' right to due process. The commenters request clarification on the authority of the Commission to alter the terms of the statutes, the necessity of the Commission to first determine whether there exists a material issue before granting a hearing; the number of hearings requested by licensees for the past six years, the number of matters resolved preliminarily by means of a pre-hearing conference with Commission personnel, the number of matters which actually go to trial and/or are heard by an Administrative Law Judge, the aggregate dollar cost for the trials and/or hearings, the authority of the Commission to curtail

licensees' personal rights, including the manner in which they are to conduct business, and how the proposed requirements are reasonably adapted to meet the Commission's requirements. (9, 10, 24)

RESPONSE: The commenters are correct that both N.J.S.A. 39:10-20 and 52:14B-11 require that the Commission offer the licensee an opportunity for a hearing, which is precisely what the proposed amendments to N.J.A.C. 13:21-15.14 accomplish. It is a matter of settled law that a trial-type hearing is unnecessary when there are no material facts at issue. See, for example, Frank v. Ivy Club, 120 N.J. 73, 98 (1990). An unnecessary hearing would squander State resources and engender excessive delay. Further, the proposed amendments to N.J.A.C. 13:21-15.14(c) and N.J.A.C. 13:21-15.4(d) merely set out the timeframe for which hearing requests must be received and clarify that matters requiring a hearing will be referred to the Office of Administrative Law for a hearing.

The commenters' statements questioning the statutory authority of the Commission to promulgate the amendment are addressed in Response to Comment 15.

As to the supplying of the number of hearings requested by licensees, matters resolved preliminarily by means of a pre-hearing conference, matters which actually go to trial and/or are heard by an Administrative Law Judge, and the aggregate dollar cost for the trials and/or hearings, this forum is inappropriate for that purpose. The commenter is welcome to submit a request pursuant to the Open Public Records Act (N.J.S.A. 47:1A-1 et seq.).

34. COMMENT: Two commenters stated that the proposed amendment to N.J.A.C. 13:21-15.15 alters the language of N.J.S.A. 39:10-20 and 52:14B-11 in that it permits the Commission to bypass the constitutional safeguards set forth in N.J.S.A. 39:10-20 and 52:14B-11 and violate licensees' right to due process. The commenters request clarification on the authority of the Commission to alter the terms of the statutes, the necessity for the Commission to have the ability to cause an emergent suspension, the authority of the Commission to curtail licensees' personal rights, including the manner in which they are to conduct business, and how the proposed requirements are reasonably adapted to meet the Commission's requirements. The commenters proposed that the Commission issue cease and desist orders to licensees that engage in ongoing fraud, lack insurance, or to prevent traffic in stolen or fraudulently titled motor vehicles instead of preliminary suspensions. (9, 10, 24)

RESPONSE: N.J.S.A. 39:10-20 refers to the procedure for a final determination of the Chief Administrator. The procedure herein is adopted pursuant to the principle, as recognized by the provision in N.J.S.A. 52:14B-11 dealing with emergent matters, that administrative agencies possess the ability to be flexible and responsive to changing conditions, including the ability to select those procedures most appropriate to enable the agency to implement Legislative policy. The rights of the dealers are protected by the furnishing of an expeditious preliminary hearing conducted within ten (10) days in the event of a preliminary suspension. The circumstances that require such emergent action are explicitly set forth in N.J.A.C. 13:21-15.15(a), and the process is set forth with specificity and is strictly circumscribed to ensure that the affected dealer receives all

of the process that the dealer is due. N.J.A.C. 13:21-15.15(b)(1) explains the requirements for the continued imposition of a preliminary suspension after the preliminary hearing has occurred.

Summary of Agency-Initiated Changes:

The Commission deleted the definition of “leasing dealer,” as the Commission has deemed the definition unnecessary and redundant, in light of the fact that “leasing dealer” is already defined by statute, in N.J.S.A. 56:12-61, as referenced in N.J.S.A. 39:10-19. The Commission amended N.J.A.C. 13:21-15.2(l) to reflect that applicants can provide liability insurance with split liability limits or a policy with a combined single liability.

The Commission deleted the term “controlling person” throughout N.J.A.C. 13:21-15.5(a)(4) and added “person with a controlling interest” so as to remain consistent with the rest of the proposal and in response to a public comment.

The Commission amended N.J.A.C. 13:21-15.5(a)(14) to clarify its intent that off-site sales permitted by statute are not grounds for suspension, revocation, or refusal to issue or renew a license.

Federal Standards Statement

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

Full text of the adoption follows (additions indicated in boldface with asterisks ***thus***; deletions from the proposal 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 ***to the general public*** 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 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 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]* ***adopted by the New Jersey Department of Community Affairs as the building subcode of the Uniform Construction Code pursuant to N.J.A.C. 5:23-3.14*.**

[“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” means any person who is licensed to buy, sell, 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 an initial or renewal of a new motor vehicle dealer, a used motor vehicle dealer, or leasing dealer license required to be obtained pursuant to the provisions 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 shall undergo a criminal background check by submitting the fingerprints in the manner prescribed in the application of each officer, director, 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 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 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 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 plans that clearly depict the exterior and interior of the proposed place of business, including proposed signage, from which 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 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 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 certified copy of the deed to the proposed place of business in the name of the applicant or, if the applicant does not own the proposed place of business, a certified copy of the contract for purchase of the proposed place of business enforceable by the applicant or a certified copy of a lease or an enforceable contract to lease the proposed place of business for a term of at least one year in favor of the applicant.

(j)–(k) (No change.)

(l) 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]* ***or*** \$250,000 combined *[personal]* ***bodily*** 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.

(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 shall maintain a permanent, properly identified 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 at N.J.S.A. 39:10-6, all payroll records, including, but not limited to, IRS Form W-4 and W-2 records, and all records required 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 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.

(b) All new motor vehicle dealers shall establish and maintain a place of business in this State consisting of a permanent building of not less than 1,000 square feet 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.

(c) All used motor vehicle dealers shall maintain a permanent, properly identified 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.

(d) A proposed place of business for a used motor vehicle dealer will not be considered suitable for approval if there already exist*s* one or more licenses issued for, or other business entities present in, the same building. A proposed place of business of a used motor vehicle dealer is deemed to occupy the same building as another business if the two entities:

1. Are not completely separated by exterior walls or a firewall as defined by and conforming to sections 202 and 706 of the 2021 International Building Code, known as the “IBC/2021,” as *[amended and supplemented]* ***adopted by the New Jersey Department of Community Affairs as the building subcode of the Uniform Construction Code pursuant to N.J.A.C. 5:23-3.14***. 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.

(i) Any licensee who intends to change the location of the licensee's established place of business or to open a branch 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 site, the licensee's notification to the Commission shall include a description of the proposed new place of business, which description shall contain sufficient information to demonstrate that the proposed new place of business will meet all the criteria set forth in this section.

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

(k) All business records including, but not limited to, those set forth at (a) and (f) above, shall be maintained for three years at the 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 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 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, suspend, or refuse to renew a license after it has been granted, issue fines as provided 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 ***person with a controlling interest*** ***[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 ***persons with a controlling interest*** ***[controlling persons]***, or employees of

the applicant or licensee was a partner, officer, director, other ***person with a controlling interest*** ***[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 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 ***at*** N.J.A.C. 13:21-15.4;

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

14. The licensee has engaged in buying, selling, or dealing in motor vehicles from a location other than the licensed location*, **except as authorized by law***. The assertion by the licensee as a defense in any action that the licensee has engaged in buying, selling, or dealing in motor vehicles from a location other than the licensed location shall constitute conclusive proof of that fact;

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;

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

19. The licensee has violated 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 license pursuant to (b) above, each document presented or reassigned shall constitute a separate violation. For a first violation the dealer's license may be suspended for a period less than the unexpired period of the license or 15 days, whichever period is shorter. For subsequent violations the 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 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 to enter the 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

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 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 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 to enter the 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 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 at the dealer's or leasing dealer's 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 the 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 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 at N.J.A.C. 13:21-15.15, prior to revoking, suspending, declining to renew a dealer license, denying 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 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 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 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. 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 1:13.

(e) Prior to referring the matter for a 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 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 proposed administrative action based on a failure to respond to a Notice that the licensee or applicant was not present at the business address provided to the Commission.

(h) Nothing in this subchapter shall prevent the Chief Administrator from seeking to resolve any administrative matters through informal means at any stage of 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 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 license.

(b)–(d) (No change.)

TRANSPORTATION

MOTOR VEHICLE COMMISSION

Zone of Rate Freedom

Adopted Amendment: N.J.A.C. 16:53D-1.1

Proposed: November 6, 2023, at 55 N.J.R. 2243(a).

Adopted: (insert date), by the Motor Vehicle Commission, Latrecia Littles-Floyd, Acting Chair and Chief Administrator.

Filed: (insert date), as R.2024..., without change

Authority: N.J.S.A. 39:2-3, 39:2A-21, 39:2A-28, 48:4-2.21, and 48:4-2.25.

Effective Date: _____, 2024

Expiration Date: October 27, 2025

Summary of Public Comments and Agency Responses:

No comments were received.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments are dictated by State statutes and are not subject to Federal requirements or standards.

Full text of the adoption follows:

TEXT