

TRANSPORTATION

MOTOR VEHICLE COMMISSION

Licensing Service

Adopted Amendments: N.J.A.C. 13:21-15.2, 15.3, 15.4, 15.5, 15.6, 15.7, 15.9, 15.10, 15.11, 15.12, 15.14, and 15.15

Proposed: October 7, 2013 at 45 N.J.R. 2178(a)

Adopted: ___, 2014 by the Motor Vehicle Commission, Raymond P. Martinez, Chairman

Filed: _____, 2013 as R. 2014 d. ____

Authority: N.J.S.A. 39:10-4 and 39:10-19 et seq.

Effective Date: ___, 2014

Expiration Date: December 4, 2020

Summary of Public Comments and Agency Responses:

1. COMMENT: James B. Appleton, President, New Jersey Coalition of Automotive Retailers, Inc. (NJ CAR), expressed NJ CAR's support for the proposed amendments and the Commission's commitment to bringing its regulations into conformance with existing law pertaining to the sale of new motor vehicles.

RESPONSE: The Commission appreciates the favorable comment to the proposed amendments and thanks NJ CAR for its support.

2. COMMENT: Mr. Appleton suggests that proposed N.J.A.C. 13:21-15.2(m), pertaining to initial applications, be amended to conform to the statutory definition of "motor vehicle franchisor," as set forth at N.J.S.A. 56:10-26, to include a

person engaged in the business of “manufacturing, assembling or distributing,” or importing new motor vehicles.

RESPONSE: The Commission agrees that the proposed rule should be changed to make it consistent with the definition of “motor vehicle franchisor” found at N.J.S.A. 56:10-26. However, the suggested change is outside the scope of this rulemaking. Accordingly, the Commission will propose, in a future rulemaking, to amend N.J.A.C. 13:21-15.2(m) to conform to the statutory definition of “motor vehicle franchisor,” as set forth at N.J.S.A. 56:10-26, to include a person engaged in the business of “manufacturing, assembling or distributing,” or importing new motor vehicles.

3. COMMENT: Mr. Appleton suggests that proposed N.J.A.C. 13:21-15.2(m)1, pertaining to renewal applications, be changed to conform to the statutory definition of “motor vehicle franchisor,” found at N.J.S.A. 56:10-26, to include a person engaged in the business of “manufacturing, assembling or distributing,” or importing new motor vehicles.

RESPONSE: The Commission agrees that the proposed rule should be changed to make it consistent with the definition of “motor vehicle franchisor” found at N.J.S.A. 56:10-26. However, the suggested change is outside the scope of this rulemaking. Accordingly, the Commission will propose, in a future rulemaking, to amend N.J.A.C. 13:21-15.2(m)1 to conform to the statutory definition of “motor vehicle franchisor,” as set forth at N.J.S.A. 56:10-26, to include a person engaged in the business of “manufacturing, assembling or distributing,” or importing new motor vehicles.

4. COMMENT: James C. Chen, Vice President, Regulatory Affairs, and Associate General Counsel, Tesla Motors, Inc. (Tesla), objects to the proposed requirement at N.J.A.C. 13:21-15.2(m), that an applicant for an initial license, and on renewal, submit “a copy of the applicant’s franchise agreement(s) with the motor vehicle manufacturer(s) whose makes and models the applicant is franchised to sell.” Mr. Chen states that the proposed amendments would force the closure of Tesla’s existing sales operations in New Jersey, requiring the layoff of 27 employees, because Tesla does not operate through franchised dealers. Mr. Chen further states that the proposed amendments are inconsistent with Commission practice, in that the Commission has previously licensed Tesla in two locations in New Jersey despite the fact that Tesla does not operate through franchised dealers.

RESPONSE: The Commission appreciates the commenter’s concerns regarding existing business operations in New Jersey and the proposed amendments’ potential effect on them. However, the proposed amendments requiring the submission of a franchise agreement ensure that existing statutory requirements pertaining to the sales of new motor vehicles are met. The prior issuance of a dealer license to Tesla does not negate the fact that the Franchise Practices Act, N.J.S.A. 56:10-1, et seq., requires that the sale of new motor vehicles be conducted through a franchised dealer.

5. COMMENT: Mr. Chen objects to the proposed amendment to N.J.A.C. 13:21-15.4(a), which requires that all new car dealers “maintain a permanent, properly identified location of not less than a total of 1,000 square feet...and where there are included or immediately contiguous, clearly identified, fixed facilities to

display at least two automobiles and equipment to service motor vehicles as required by N.J.S.A. 39:10-19.” Mr. Chen states that, “[d]epending on the type of dealership, [such as Tesla, a “small line-make”] displaying two vehicles is unnecessary.” Mr. Chen also argues that “an adjacent or attached service center does not meet any genuine customer need or State goal, provided that proper service facilities and customer service are otherwise available for every line-make.” Finally, Mr. Chen states that Tesla’s store locations in New Jersey malls do not provide sufficient space for the display of two automobiles and cannot accommodate the servicing of motor vehicles. Instead, Tesla has “separately established” service centers elsewhere, including a mobile service that provides house calls.

RESPONSE: The Commission appreciates the commenter’s concerns regarding existing business operations in New Jersey and the proposed amendments’ potential effect on them. However, the proposed amendments pertaining to minimum square footage, display area, and service equipment are statutory requirements, pursuant to N.J.S.A. 39:10-19. Although it had been Commission practice to apply the existing 72 square foot requirement (N.J.A.C. 13:21-15.4) to both used and new car dealers, that practice was based on an inapposite Chancery Court decision that applied to used car dealers. The Commission has determined that it is obligated to enforce the statutory requirements pertaining to minimum square footage, display area, and service equipment as they pertain to new car dealers. Again, the Commission’s previous issuance of a dealer license to Tesla does not negate the fact that New Jersey law requires the minimum

square footage, display area, and service equipment included in the proposed amendments.

6. COMMENT: Mr. Chen states that the proposed amendments are inconsistent with statutory intent and that the Franchise Practices Act “does not and cannot apply to companies that do not have any franchisees, such as Tesla....”

RESPONSE: The Commission disagrees. The Franchise Practices Act, N.J.S.A. 56:10-1, et seq., was established not only to protect franchisees in their relationships with franchisors, but also to establish a fair system for the sale of new motor vehicles, which system, in New Jersey, involves the sale of new motor vehicles through franchised dealers. N.J.S.A. 56:10-26 defines a “motor vehicle franchisor” as “a person engaged in the business of manufacturing, assembling or distributing new motor vehicles, or importing into the United States new motor vehicles manufactured or assembled in a foreign country, who will under normal business conditions during the year, manufacture, assemble, distribute or import at least 10 new motor vehicles.” This definition applies to Tesla, notwithstanding Tesla’s business model. The Franchise Practices Act further prohibits the sale of motor vehicles by a “motor vehicle franchisor” such as Tesla to a consumer, except through a motor vehicle franchisee. N.J.S.A. 56:10-27. Motor vehicle franchisors are also prohibited from operating a place of business as a motor vehicle franchisee, except under very limited conditions, which are not applicable to Tesla. N.J.S.A. 56:10-28.

7. COMMENT: Mr. Chen argues that the proposed amendments will have an adverse social impact because the proposed amendments requiring motor vehicle dealers to sell through franchised dealers are contrary to the governing

statutes and are “blocking a legitimate and successful business model, decreasing competition, establishing a monopoly, stifling innovation, increasing pollution and dependency on oil and are at odds with the desires of NJ consumers....”

RESPONSE: The Commission disagrees. Please see responses 4 – 6, above. Additionally, there is no evidence that the franchise system results in a monopoly, the stifling of innovation, an increase in pollution, or dependency on oil. The protections of the Franchise Practices Act result in fair competition among new car dealers and prevent manufacturers from creating a monopoly, which ultimately results in a benefit to consumers.

8. COMMENT: Mr. Chen argues that the proposed amendments will have a negative economic impact because the proposed amendments would impose “new and unnecessary standards on dealers and facilities” and that “blocking a new entrant to the motor vehicle market will preclude investment into the State, impede and restrict commerce and inconvenience New Jersey consumers.”

RESPONSE: Please see responses 4 – 7, above. Additionally, it is noted that most, if not all, new car dealers in the State already comply with the proposed amendments. Further, Tesla is not being precluded from entering the new car market in New Jersey. As long as Tesla meets New Jersey’s statutory and regulatory requirements for operation of a new car dealership, Tesla is qualified for a New Jersey motor vehicle dealer license.

9. COMMENT: Mr. Chen argues that the proposed amendments will have an adverse impact on jobs, in that the closure of Tesla’s existing operations in New Jersey will result in the loss of 27 jobs, and eliminate 20 new positions.

RESPONSE: Please see response 4, above.

10.COMMENT: Mr. Chen argues that the proposed amendments violate due process and equal protection rights, and implicate the dormant commerce clause and Federal antitrust laws.

RESPONSE: The Commission disagrees. The proposed amendments enforce existing State law pertaining to the sale of new motor vehicles. All manufacturers, distributors and dealers are treated the same as similarly situated manufacturers, distributors and dealers under the existing and proposed regulations pertaining to motor vehicle dealers. Tesla, as a manufacturer, receives the same treatment as any other manufacturer seeking to sell new motor vehicles without selling those vehicles through a franchised dealer. Additionally, Tesla has presented no foundation for its argument that the proposed amendments would burden interstate commerce or “create a monopoly in favor of the traditional automotive dealers that sell vehicles through franchise arrangements.” Tesla has the same opportunities to sell new motor vehicles as other dealers in the State, subject to New Jersey law and regulations.

11.COMMENT: Mr. Chen states that the proposed amendments requiring the submission of a franchise agreement are more than administrative in nature, “would require entirely restructuring both the Company and its way of doing business” and would impose “major regulatory burdens” on Tesla.

RESPONSE: The Commission disagrees. The requirement to have a franchise agreement is based on existing law. The submission of a copy of the franchise agreement is administrative in nature and will not result in more than de minimis cost or the need for professional services.

12.COMMENT: Mr. Chen argues that the proposed amendments exceed the Commission's rulemaking authority because the proposed amendments benefit few at the expense of the public.

RESPONSE: The Commission disagrees, based on responses 4 – 11, above. Additionally, the Commission has statutory authority to promulgate regulations enforcing the laws of New Jersey pertaining to the buying and selling of motor vehicles, and the proposed rules are based on those existing laws.

Federal Standards Statement

A Federal standards analysis is not required because the amendments contained in this adoption do not exceed applicable Federal standards.