



New Jersey Motor Vehicle Commission

P.O. Box 160
Trenton, New Jersey 08666-0160

STATE OF NEW JERSEY

Philip D. Murphy
Governor

Sheila Y. Oliver
Lt. Governor

B. Sue Fulton
Chair and Chief Administrator

October 26, 2018

To:

Licensed New Jersey Motor Vehicle Dealers

LIMITED WAIVER

Subject Rule: N.J.A.C. 13:21-15.11 – Dealer and Leasing Dealer Plates

I. Background

The Motor Vehicle Commission (“Commission”) issues motor vehicle dealer licenses to qualified applicants pursuant to N.J.S.A. 39:10-19 and N.J.A.C. 13:21-15. Dealer privileges include the issuance of dealer plates pursuant to N.J.S.A. 39:3-18, which provides, in pertinent part:

A bona fide dealer in motor vehicles, motor-drawn vehicles or motorcycles doing business in this State and having a license to do business as such issued by the chief administrator may, with regard to motor or motor-drawn vehicles or cycles owned by him, obtain general registration and registration plates therefor of the style and kind provided for in this subtitle, with the letter “D” stated thereon. Such plates shall only be placed on any vehicle or cycle owned by such dealer; and provided, such vehicle is not used for hire. Such vehicles may be assigned to dealership principals or employees for product familiarization or compensation purposes, and may be used for any lawful purpose, including personal use, and personal use by persons authorized by those dealership employees or principals. Any person who shall be convicted of a violation of this paragraph shall be subject to a fine not exceeding \$1000.

To curb the improper use of dealer plates, the Commission proposed amendments to its motor vehicle dealer regulations at N.J.A.C. 13:21-15.11, to ensure that only **bona fide** dealers are issued dealer plates. See rule proposal at 48 N.J.R. 1052(a), published June 20, 2016. The proposed amendments were adopted effective June 5, 2017, following a 60-day comment period. See rule adoption at 49 N.J.R. 1443(b).

On June 5, 2017, the amended rules went into effect. The rules now require that, to be eligible for dealer plates, licensed New Jersey motor vehicle dealers must sell, through retail sale, or lease, at least four motor vehicles permanently registered in New Jersey in the dealer’s first 12 months of operation and for every 12-month period thereafter. N.J.A.C. 13:21-15.11(a). The rules further provide that “Licensees not meeting the required minimum of four retail sales or leases per year may be required to forfeit their dealer or leasing dealer plates.” N.J.A.C. 13:21-15.11(a)1.

numerous inquiries from dealers who have sold at least four vehicles within the previous 12-month period, but those vehicles were not necessarily permanently registered in New Jersey; the sales may have been wholesale (dealer-to-dealer); or to out-of-state purchasers. These inquiries have been reviewed by the Commission and, after consideration of the concerns raised, the Commission has determined to issue this Limited Waiver, as set forth below.

II. Applicable Rule

The Commission's motor vehicle dealer rules, at N.J.A.C. 13:21-15, *et seq.*, govern the licensing of dealers and include dealer plate eligibility requirements. N.J.A.C. 13:21-15.11(a)1 provides, in pertinent part:

Licensees selling or leasing fewer than four vehicles permanently registered in New Jersey through a retail sale or lease in their first 12 months of operation or any 12-month period thereafter are not authorized to obtain or retain dealer or leasing dealer plates.

1. Upon request from the Commission, a licensee shall provide documentation of its previous year's retail sales and/or leases, as applicable, and New Jersey registration records. Licensees not meeting the required minimum of four retail sales or leases per year may be required to forfeit their dealer or leasing dealer plates.

III. Waiver Evaluation Criteria

The Chief Administrator is authorized to "waive application of any rule in an individual circumstance or on his or her own motion upon finding that such relief is warranted based upon the provisions set forth in (a) above." N.J.A.C. 13:18-11.9(c). Subsection (a) states:

Any person or entity may seek a waiver from one or more provisions of the Motor Vehicle Commission's rules, provided the person or entity demonstrates that compliance represents an undue hardship and the Chief Administrator, or his or her designee, determines that such waiver is consistent with the general purpose and intent of the Motor Vehicle Commission's enabling statutes, rules, and mission.

N.J.A.C. 13:18-11.9(e) provides that "The Chief Administrator, or his or her designee, may revoke a waiver at any time if the Chief Administrator determines that the waiver no longer fulfills the purpose and intent of the Motor Vehicle Commission's enabling statutes, rules, and mission or that continuing the waiver would jeopardize public safety or welfare."

IV. Discussion and Findings

The rule at issue requires licensed motor vehicle dealers to sell a minimum of four motor vehicles permanently registered in New Jersey in the dealer's first 12 months of operation and any 12-month period thereafter to be eligible for dealer plates. N.J.A.C. 13:21-15.11(a). Numerous dealers selling wholesale only, or selling to out-of-state purchasers, have raised the concern that denying them dealer plates would be an undue hardship. They contend that they are *bona fide* dealers selling at least four vehicles per 12-month period, and that they need dealer plates for the purposes permitted by N.J.S.A. 39:3-18. Under the recent regulatory amendments, these dealers, although selling the minimum number of vehicles, would not be eligible for dealer plates and this would pose an undue hardship on their business operations.

The Commission has reviewed the business practices of several wholesale dealers and those dealers selling to out-of-state customers and has concluded that it would pose an undue hardship to require certain dealers to sell four cars at retail and permanently registered in New Jersey, every year, and that a Limited Waiver would not be inconsistent with the Commission's

enabling statutes, rules or mission or jeopardize public safety or welfare. The intent of the applicable statute and regulation is not to impose an undue burden on legitimate, *bona fide* dealers selling motor vehicles, but to curb the misuse and abuse of dealer plates where dealers are not selling at least four vehicles per year whatsoever or using dealer plates for unauthorized purposes.

V. **Conclusion**

Based on the above findings, the Commission hereby issues a Limited Waiver of the requirements of N.J.A.C. 13:21-15.11, as set forth below:

1. The retail sale and New Jersey permanent registration requirements of N.J.A.C. 13:21-15.11(a) are temporarily waived. New Jersey motor vehicle dealers selling at least four vehicles through wholesale or retail in their first 12 months of operation and every 12-month period thereafter are authorized to obtain dealer plates subject to the remaining provisions of N.J.A.C. 13:21-15.11;
2. Licensed New Jersey motor vehicle dealers may satisfy the documentation requirements of N.J.A.C. 13:21-15.11(a)1 with wholesale sales or sales to out-of-state customers. Proof of permanent New Jersey registration is not required;
3. The requirements of N.J.A.C. 13:21-15.11(e)1 – 3, specifically pertaining to permanent registration in New Jersey, are temporarily waived;
4. All other requirements of N.J.A.C. 13:21-15.11 remain in effect; and
5. This Limited Waiver shall expire April 1, 2020, unless revoked by the Chief Administrator earlier pursuant to N.J.A.C. 13:18-11.9(e).



B. Sue Fulton
Chair and Chief Administrator