

## **DEPARTMENT OF REVENUE**

### **Motor Vehicle Dealer Board**

#### **DEALING IN MOTOR VEHICLES**

##### **1 CCR 205-1**

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

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Statement of Basis: The statutory basis for the regulations is 44-20-104(3)(a), C.R.S.

##### **REGULATION 44-20-102(1)**

The term, "Computer Display," means any electronic device capable of presenting a commercial message.

##### **REGULATION 44-20-102(14)**

All manufacturers doing business in the state of Colorado, irrespective of whether they maintain or have places of business herein, must be licensed as such.

The sale of any new and unused motor vehicles, either directly or indirectly in the state of Colorado shall constitute doing business in the state by the manufacturer and shall subject such manufacturer to the requirements of this article.

##### **REGULATION 44-20-102(18)**

"Profit" may be "gain, benefit or advantage," but "gain, benefit or advantage" does not necessarily mean only "profit."

Profit may be defined as the difference between the price paid and the market value of the vehicle after deduction of the expenses incurred in the sale thereof.

Gain of money or other thing of value includes but is not limited to any increase or addition to what one has of that which is of profit, advantage or benefit.

A profit or gain does not necessarily mean a direct return; and therefore, a saving of expense which would otherwise be incurred is also a profit or gain to the person benefited.

##### **REGULATION 44-20-102(20)**

1. This regulation applies solely to matters within the jurisdiction of the Motor Vehicle Dealer Board.
2. For all motor vehicles except those classified as a "motor home," as defined in section 24-32-902(7), C.R.S., a "new motor vehicle" is a motor vehicle that has been transferred on a manufacturer's statement of origin and has less than one thousand five hundred miles on its odometer.
3. For a motor vehicle classified as a "motor home," as defined in section 24-32-902(7), C.R.S., a "new motor vehicle" is a motor vehicle that has been transferred on a manufacturer's statement of origin and has less than five thousand miles on its odometer.

4. A “used motor vehicle” is a motor vehicle that is not a “new motor vehicle.”
5. For purposes of this regulation, the following apply:
  - a. “manufacturer’s statement of origin” includes “manufacturer’s certificate of origin”; and,
  - b. “transferred” includes an exchange of a motor vehicle by means of an appropriate written assignment of the manufacturer’s statement of origin between two dealers enfranchised to sell the same make of vehicle.

**REGULATION 44-20-102(22)**

1. As used in this regulation, a “motor vehicle dealer” means either a licensed motor vehicle dealer or licensed used motor vehicle dealer.
2. A motor vehicle dealer may sell motor vehicles at special sales events, shows, or other organized events, including, for example, at the National Western Stock Show, the Colorado State Fair, the Greeley Stampede, or the Denver Auto Show. In order to sell motor vehicles at a location away from the dealership, a motor vehicle dealer must apply for the appropriate off-premise permit. A motor vehicle dealer must not engage in any sales activity at an off-premise location until the board approves the appropriate off-premise permit.
3. The board recognizes two classes of off-premise permit based upon specific sales-related conditions and restrictions. These are:
  - a. Class One --- a Limited Sales Activity Off-premise Permit. The following conditions and restrictions apply to this permit:
    - 1) Licensed salespersons or owners authorized to sell must be present at the off-premise location at all times when the public is present; and,
    - 2) Licensed salespersons or owners authorized to sell may negotiate the terms of a sale at the off-premise location; and,
    - 3) The parties shall not execute sales-related documents at the off-premise location, but must return to the dealership to execute any sales-related documents.
  - b. Class Two --- a Full Sales Activity Off-premise Permit. The following conditions and restrictions apply to this permit:
    - 1) Licensed salespersons or owners authorized to sell must be present at the off-premise location at all times when the public is present; and,
    - 2) Licensed salespersons or owners authorized to sell may negotiate the terms of a sale at the off-premise location; and,
    - 3) The parties may execute sales documents at the off-premise location.
4. The board issues an off-premise permit for a restricted number of days, as follows:
  - a. Up to six calendar days from start to finish is allowed for an off-premise permit, except as provided below;

- b. Up to twenty calendar days from start to finish is allowed for an off-premise permit for the National Western Stock Show, the Colorado State Fair, the Greeley Stampede, or the Denver Auto Show.
  - c. The board may, in its informed discretion, approve consecutive off-premise permits for a recurring special event at the same location for a limited period of time.
5. A motor vehicle dealer must make an off-premise permit readily-available for inspection by any person at the off-premise location during the entire period that the permit is valid.
6. A motor vehicle dealer must ensure that every person it uses for sales activity at an off-premise sales event has been issued a Colorado motor vehicle salesperson's license by no later than fourteen calendar days prior to the off-premise event.
7. By no later than fourteen calendar days prior to the off-premise event, a motor vehicle dealer must submit a completed application form for an off-premise permit. The board shall reject for filing any application for an off-premise permit that is not accompanied by a remittance in the full amount of the fee for the permit. The board may reject for filing any application that does not completely satisfy the requirements of the application form and its instructions.
8. A motor vehicle dealer may occasionally display vehicles without an off-premise permit at an event or location away from the dealership. Sales activity is prohibited. However, a person may be present to provide security or to distribute information about the dealership and its vehicles.
9. The books and records of each dealer, excluding financial statements and tax returns, shall be open to inspection Monday through Friday between 9AM and 5PM by the Board and its agents and representatives with cause, including ongoing investigation, compliance audit, sworn complaint, order of the Board. All records, including financial records and tax returns shall be provided upon subpoena by the Board. However, all records provided by a Dealer to the Board or its agents or representatives, either voluntarily or pursuant to a subpoena, shall be made available to the Dealer for testing, inspection, or copying, under direct supervision by the Auto Industry Division staff, upon a request by the Dealer.
10. Additional locations which are immediately adjacent to the principal place of business of the licensed dealer shall be considered contiguous for the purpose of this statute. "Immediately adjacent" shall mean either next to or directly or diagonally across from the dealership even if a public road or thoroughfare is between the additional location and the dealer's principal place of business. Subject to any applicable local zoning or sign requirements, the additional location shall not have any signage which identifies the additional location as being operated under any name other than the name or tradename of the licensee's principal place of business. The additional location may not advertise under a different name than that under which the dealership is licensed.

**Emergency Regulation 44-20-102(22)-COVID: Motor Vehicle Transactions During "Safer at Home" and "Protect Our Neighbors" Phases of COVID-19 Pandemic**

- (1) As used in this emergency regulation, "dealers" refers to either licensed motor vehicle dealers or licensed used motor vehicle dealers.
- (2) The Board hereby incorporates by reference the following public health orders as part of this emergency regulation:

- (a) *Ninth Amended Public Health Order 20-28 Safer At Home and In the Vast, Great Outdoors* dated July 30, 2020 issued by the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246. This rule does not incorporate any later amendments or editions of the *Ninth Amended Public Health Order 20-28 Safer At Home and In the Vast, Great Outdoors*.

Copies of the complete text of the *Ninth Amended Public Health Order 20-28 Safer At Home and In the Vast, Great Outdoors* are maintained at the Colorado Department of Revenue, Auto Industry Division, 1697 Cole Boulevard, Suite 200A, Lakewood, Colorado, 80401, and may be inspected online at [https://drive.google.com/file/d/1Nue6DdpQ1fpO8VUtt\\_lhQVwjVwwN4aN\\_/view](https://drive.google.com/file/d/1Nue6DdpQ1fpO8VUtt_lhQVwjVwwN4aN_/view) or at the offices of the Auto Industry Division, once reopened, during normal business hours. Copies are available from Auto Industry Division at a reasonable charge. Copies are also available online at: [https://drive.google.com/file/d/1Nue6DdpQ1fpO8VUtt\\_lhQVwjVwwN4aN\\_/view](https://drive.google.com/file/d/1Nue6DdpQ1fpO8VUtt_lhQVwjVwwN4aN_/view). Certified copies may be obtained from the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246, 303-692-2060.

- (b) Public Health Order 20-32 *Protect Our Neighbors* dated July 10, 2020 issued by the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246. This rule does not incorporate any later amendments or editions of the Public Health Order 20-32 *Protect Our Neighbors*.

Copies of the complete text of the Public Health Order 20-32 *Protect Our Neighbors* are maintained at the Colorado Department of Revenue, Auto Industry Division, 1697 Cole Boulevard, Suite 200A, Lakewood, Colorado, 80401, and may be inspected online at [https://drive.google.com/file/d/11F0Gd7DfVONN4p4yNa5h6\\_00xJB34SZm/view](https://drive.google.com/file/d/11F0Gd7DfVONN4p4yNa5h6_00xJB34SZm/view) or at the offices of the Auto Industry Division, once reopened, during normal business hours. Copies are available from Auto Industry Division at a reasonable charge. Copies are also available online at: [https://drive.google.com/file/d/11F0Gdp4yNa5h6\\_00xJB34SZm/view](https://drive.google.com/file/d/11F0Gdp4yNa5h6_00xJB34SZm/view). Certified copies may be obtained from the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246, 303-692-2060.

- (3) Licensed dealers shall comply with state and local (county and/or municipality) public health orders applicable to the county in which the dealership is located. These include, but are not limited to:
- a) Public Health Order 20-28, *Safer At Home and In the Vast, Great Outdoors*, last updated July 30, 2020, issued by the Colorado Department of Public Health and Environment, unless the local county in which a specific dealer location is located has received a variance from the State or CDPHE as provided under Section V of Ninth Amended Public Health Order 20-28.
- b) Public Health Order 20-32, *Protect Our Neighbors*, dated July 10, 2020, issued by the Colorado Department of Public Health and Environment.
- (4) Licensed dealers should consult the county in which the dealership is located to determine what State and local (county and/or municipality) public health orders are applicable and in effect for their specific county.

**REGULATION 44-20-102(26)**

See Regulation 44-20-102(18).

**REGULATION 44-20-102(28) [Repealed eff. 12/15/2018]**

**Regulation 44-20-104(3)(a)**

The board delegates to the board's executive secretary and his or her agents the authority to assist the board in rule-making under the State Administrative Procedure Act, part 1 of article 4 of title 24, by performing all administrative acts.

**Regulation 44-20-104(3)(d)(II)**

The board authorizes the director, the executive director, and the agents of the director or executive director, to issue, according to the board's rules, any license within the board's authority.

**REGULATION 44-20-104(3)(e)**

The executive secretary is delegated the authority to enter a default against a licensee who fails to file a written answer as required by 24-4-105(2)(b), C.R.S. Upon entering the default, the executive secretary shall vacate the scheduled hearing and send notice by first class mail to the licensee of the default, and, that the Board will consider appropriate sanction at its next meeting. The licensee shall also be given notice of the right to have the default set aside upon a showing of good cause. If the licensee fails to demonstrate good cause to set aside the default within ten days of the date of the default, the Board's order will become final.

**REGULATION 44-20-104(3)(f) HEARING PROCEDURES**

- (I) The board president will normally preside at hearings before the full board, or in the president's absence, such board member as may be designated by a majority of the board members present, may preside and conduct the hearing.
- (II) The presiding officer shall rule on all evidentiary and procedural matters during the course of the hearing. Rulings on motions prior to or after the hearing, and the findings, conclusions, and order shall be determined by a majority of board members present. In the event a motion is filed requesting relief from a board order, the effects of which will occur prior to the next scheduled meeting of the board, the board president may rule on said motion, and the executive secretary shall issue the written order on behalf of the board. In the absence of the president, the first vice president or second vice president may rule on any motion.
- (III) Prehearing discovery before a single hearing officer will normally be limited to the exchange of the name, address, and telephone number of witnesses expected to testify, a brief summary of their expected testimony, and documents intended to be introduced into evidence at hearing. The identity of witnesses and documents shall be provided by each party, and received by the other, not later than 9 calendar days prior to the hearing. Failure to comply may result, at the sole discretion of the hearing officer, in the exclusion of the witnesses and/or documents not disclosed. Any party may, at their own expense, interview identified witnesses prior to the hearing.
- (IV) Discovery in hearings before the full board shall be governed by the provisions of section 44-20-122, C.R.S.
- (V) An original and 10 copies of all documents intended to be introduced into evidence at hearings before the full board shall be provided for distribution to the board and the opposing party. Respondent's and applicant's exhibits shall be marked alphabetically. The Department of Revenue's exhibits shall be marked numerically. For hearings before a single board member, each party shall provide an original and copies for the opposing side and the hearing officer.

- (VI) License applicants shall have the burden of proof to demonstrate to the board that they meet all the qualifications for licensure. If denied a license by the board, applicants shall have the burden of proof to demonstrate that the specific reasons given in the notice of denial, should not preclude the issuance of a license. Salesperson license applicants shall provide written proof that the employing dealer is aware of the grounds giving rise to the initial license denial, and, that said dealer shall be responsible for the actions of the salesperson in the course of employment in the event that a restricted license is approved by the board.
- (VII) Motions shall be served on the board through its executive secretary with proof of service on the opposing party. Except in the most extraordinary circumstances, motions shall be filed not later than 30 calendar days prior to the hearing. A response to any motion shall be filed within 5 business days of the filing of the initial motion. Failure to timely comply may result in the motion being denied. Motions will be considered by the board at its next opportunity. The pendency of motions shall not be cause to continue a scheduled hearing.
- (VIII) Continuances will not be granted unless timely filed and with good cause shown. Unreasonable delay in securing legal counsel or failing to timely exercise discovery rights may not constitute "good cause", except in the most extraordinary circumstances.

**Regulation 44-20-104(3)(f)(I) [Repealed eff. 11/14/2018]**

**Regulation 44-20-104(3)(f)(II)**

Whenever the division refers evidence of a licensee's alleged violations to the board in the form of an affidavit of probable cause, the board shall respond to the affidavit in the following manner:

- (a) If the board does not find probable cause based upon its examination of the affidavit, the board shall do one of the following:
  - (1) suspend its consideration of the matter with a request to the division to bring the matter back to the board with additional information; or,
  - (2) inform the division that the board declines to prosecute the case.
- (b) If the board does find probable cause based upon its examination of the affidavit, it may:
  - (1) decline to prosecute the case; or,
  - (2) prosecute the case in the appropriate venue as follows:
    - (i) if the license class of the respondent is a salesperson, the board shall assign the executive director or his or her appointee to hear the case; or,
    - (ii) if the license class of the respondent is other than a salesperson, the board shall assign the case for hearing either to the board, itself, or to the Office of Administrative Courts.
- (c) Whenever the board has decided to prosecute the case, it shall do the following:
  - (1) turn the case over to the attorney general to begin prosecuting the case; or,
  - (2) authorize the executive secretary to (i) attempt to negotiate a settlement of the case without a hearing and, (ii) if the settlement process is unsuccessful, turn the case over to the attorney general to begin prosecuting the case.

- (d) Whether the board does or does not find probable cause based upon its examination of the affidavit, it may, if appropriate, refer the matter to another agency.

**REGULATION 44-20-104(3)(h)**

1. An applicant for a license issued by the board must complete and submit the appropriate application form. The board shall reject for filing any application that is defective in any one or more of the following ways: a) the application is not accompanied by a remittance in the full amount of the fee for the specific license; and, b) the application does not include a copy of the required bond in the correct amount. The board may reject for filing any application that does not completely satisfy the requirements of the application form and its instructions.
2. An applicant whose license application has been accepted for filing must respond to every request for additional information within the time allowed and in the manner required by the requestor.
3. An applicant must include with an application the full name of, date of birth of, current residence address for, and other required identifying information related to each natural person who possesses one or more of the following characteristics:
  - a. an ownership, financial, or equity interest in the applicant; or,
  - b. an ability to control the applicant or to exercise significant financial or operational influence over the applicant.

An applicant that is subject to the reporting requirements of the "Securities Exchange Act of 1934," as amended, 15 U.S.C. § 78a et seq., need not include the identifying information in this paragraph 3 for any stockholder.

4. All information submitted to the board, by application for license or otherwise, shall be given fully, faithfully, truthfully and fairly. The failure of an applicant or licensee to so inform the board shall be grounds for suspension, revocation or denial of the license.
5. The board may deny a license for any one of or any combination of the following reasons:
  - a. the application is incomplete; or,
  - b. the information provided in the application does not fulfill a requirement of any one of or any combination of the following: 1) the application form; 2) the instructions for the application; 3) this regulation; or, 4) other relevant law or regulation; or,
  - c. the applicant either did not respond to a request for additional information or provided an inadequate response, or both; or,
  - d. the information contained in the application or the associated background investigation, or both, establishes a separate basis in relevant law or regulation to deny the license.
6. Not less than ten calendar days prior to changing the trade name of a licensed business, the licensee must submit a written application to the board seeking approval for the change.

7. Additional places of business are allowed in the name of the principal place of business, but they must display a sign with the same name as that required by the board for the principal location, and, if the additional place of business is more than just a storage lot, the licensee must provide adequate office and sanitary facilities. Locations contiguous to the principal place of business are not considered additional locations. The books and records of an additional location may be maintained at the principal place of business.
8. Prior to a licensee's doing business under a different name at an additional place of business, the licensee must submit for the board's approval a new, complete application, together with the appropriate fee, and the correct bond.
9. Prior to a licensee's making a material change to the operating entity under which the licensee does business, the licensee must submit for the board's approval a new, complete application, together with the appropriate fee, and the correct bond.
10. A licensee must conduct business solely under its licensed name. However, if a licensee is one of several dealers with common ownership, the licensee may advertise under a name that reflects the common ownership. Designations like the following, which clearly reflect common ownership, are acceptable solely for advertising purposes: "John Doe Dealerships" or "Joe's Automotive Group."

**REGULATION 44-20-104(3)(j)**

A licensed motor vehicle dealer must display a permanent sign or device at its principal place of business and at every other approved business location. The sign or device must identify the dealer by its licensed name and be clearly visible to the public from outside the building that houses the dealership or from the public entry area of the building that houses the dealership.

**REGULATION 44-20-104(3)(k)**

- 1). Applicants may use the information provided by the Auto Industry Division to study for the examination. The following examination criteria shall apply to the examination process and the examination results: 1) the numerical percentage that will constitute a passing score on the examination, as determined from the ratio of questions correctly answered to questions asked shall be eighty-five percent (85%); 2) the number of times in a calendar day that an applicant may take the examination before being timed out prior to attempting the examination again shall be two (2); 3) the manner in which an applicant and others shall certify both the applicant's compliance with the required examination process and the authenticity of the examination results shall be by submission of an examination affidavit on the form approved by the Board.
- 2). An applicant shall neither request nor permit any other person, including but not limited to any person administering the examination, to take the examination on his behalf or otherwise to assist him or to participate in the taking of the examination. An applicant shall neither request nor accept answers to examination questions from any other person, including but not limited to any person administering the examination, either before or during the examination. An applicant who violates this rule is subject to denial, suspension, or revocation of his license. Any licensee who either 1) assists an applicant in violating this rule, 2) conspires with others in violating this rule, 3) falsifies information regarding the results of an applicant's licensing examination, or 4) otherwise falsely declares to the Board or its representatives the manner in which an applicant took an examination, is subject to disciplinary action to the limits of the Board's jurisdiction.
- 3). If an applicant is not licensed within one year of passing the examination, the score is removed from the record and the person must retake and pass the examination again, in accordance with the Board's examination criteria, before a license can be issued.



- 4). The employing dealer or designated manager of the employing dealer, the Auto Industry Division, or a third party approved by the Board, may administer examinations.
- 5). If an applicant has held a license during the previous twelve months, the applicant shall not be required to retake the examination.

**REGULATION 44-20-104(3)(I) MANDATORY DISCLOSURES**

**A. DISCLOSURE FORM**

1. The Board will prescribe a disclosure form consistent with the provisions of this regulation.
2. The name of the disclosure form will be: "Disclosures Required as Part of a Motor Vehicle/Powersports Vehicle Sale."
3. The Board may, at any time, reexamine and make revisions to the disclosure form, consistent with the provisions of this regulation.
4. The disclosure form in effect prior to the passage of this regulation shall remain in effect until the effective date of the initial edition of the disclosure form prescribed by the Board pursuant to this regulation.

**B. DEFINITIONS**

1. Contract - For purposes of this regulation, contract means any written agreement, such as a purchase agreement, buyer order or invoice, between a dealer and a buyer for the sale of a motor vehicle, excluding the Retail Installment Sales Contract ("RISC").
2. Dealer - For purposes of this regulation, dealer means a motor vehicle dealer or a used motor vehicle dealer or a representative of the dealership.
3. Deposit – Money or other thing of value accepted by a Dealer as consideration for that Dealer's agreement to hold a motor vehicle for a buyer.
4. Down Payment – Money, trade-in, or money and trade-in made as partial payment towards the purchase of a motor vehicle.
5. Guarantee - For purposes of this regulation, guarantee means a written document or oral representation that would lead a buyer to have a reasonable good faith belief that the financing of a vehicle is certain.

**C. APPLICATION**

1. The disclosure form is not required for a sale solely between Dealers, between Wholesalers, or, between a Dealer and a Wholesaler.
2. At the time that the buyer signs a Contract, the disclosure form must be read, initialed and signed by the buyer and the Dealer.
3. The completed and signed disclosure form is a separate document that is part of the Contract.
4. The Dealer and buyer must complete only one disclosure form at the time of the signing of a Contract.

5. At the time of the signing of a Contract, a copy of the Contract, including a completed and signed disclosure form, must be given to the buyer.
6. The disclosures in the Credit Sale section of the disclosure form do not apply when the Contract is not contingent upon financing provided by or through the Dealer. In that event, the Credit Sale section should be crossed out.
7. A Dealer must complete a disclosure form with an interest rate that the Dealer reasonably believes can be obtained based on the creditworthiness of that prospective buyer.
8. The interest rate in the disclosure form must be the same as the interest rate in any Retail Installment Sale Contract signed by the buyer for the same vehicle.

**D. USAGE FEE AND MILEAGE CHARGE**

1. The Dealer must notify the buyer within ten (10) calendar days of the date the Contract is signed by the buyer, in the event financing cannot be arranged as originally agreed upon.
2. If the Dealer and buyer agree that the Dealer will continue to attempt to arrange financing after ten calendar days, the Dealer must remind the buyer in writing that daily usage and mileage rates stated in the disclosure form, apply in the event financing cannot be arranged as originally agreed upon.
3. The Dealer and buyer must complete and sign a new disclosure form that reflects the new interest rate if:
  - a) funding cannot be arranged at or below the interest rate set forth in the preceding disclosure form; and
  - b) the Dealer and the buyer agree that the Dealer will attempt to arrange financing at an interest rate different than previously agreed upon.
4. The Dealer must retain a copy of all previously executed disclosure forms.
5. The Dealer must write in "NA" for "not applicable" or "Zero" in the dollar and cents fields, if the Dealer does not charge usage and mileage fees.

**REGULATION 44-20-104(3)(m)(I)(A) HEARING PROCEDURES BEFORE A HEARING OFFICER**

1. Hearings conducted before a single board member pursuant to section 44-20-104(3)(M)(I)(A), C.R.S., shall be conducted in accordance with the Colorado Administrative Procedure act, sections 24-4-104 and 105, C.R.S., and board 44-20-104(3)(f).
2. The executive secretary may, on behalf of the board, assign the individual board member on a rotating basis, taking into consideration the following factors:
  - (A) Applicants for a salesperson license will normally be given expedited processing. The board member assigned will be that individual who is available and willing to conduct the hearing. Geographic location of the board member and the applicant shall have primary consideration.

- (B) Any issue involving a complaint which may be classified as arising from a business competition issue between motor vehicle dealers, used motor vehicle dealers, or wholesalers, or, a dispute involving an alleged violation of section 44-20-108(1)(b), C.R.S., shall not be heard by a member of the board who is a party to a dispute, or who has a pecuniary interest in the outcome of the matter.
- (C) "Business competition issue" is defined as a dispute or complaint arising from or directly related to market share matters, or the alleged failure to comply with regulatory or statutory requirements by any one licensee of the board, or said licensee's agent, against another licensee.
- (D) Initial decisions of a single board member hearing shall be processed in accordance with the Colorado Administrative Procedure Act, sections 24-4-105 (13) - (16), C.R.S.

**Regulation 44-20-104(3)(n) [Repealed eff. 11/14/2018]**

**Regulation 44-20-104(4)**

The board shall use the following criteria to determine the appropriate sanctions for a licensee in a disciplinary case:

- (a) Whenever a provision of part 1 of article 20 of title 44 mandates a specific sanction for either (1) a specific type of violation or (2) a specific circumstance related to a specific violation, the board shall apply the mandatory sanction when the findings of fact and conclusions of law establish the legal basis.
- (b) Whenever the legal basis for a mandatory sanction does not exist, the board shall exercise its discretion to determine the appropriate sanctions based not only upon the findings of fact and conclusions of law in the case but also upon a standardized approach that takes the following factors into account:
  - (1) the nature of the violation;
  - (2) the severity of the violation;
  - (3) the characteristics of the harm that the violation produced;
  - (4) the monetary harm that the violation produced;
  - (5) the licensee's history of violations;
  - (6) the licensee's compliance with prior board orders;
  - (7) any additional aggravating information; and,
  - (8) any additional mitigating information, including, but not limited to the licensee's voluntary, monetary remuneration to a victim.
- (c) Whenever the board considers a fine to be an appropriate sanction, it shall follow these restrictions:
  - (1) the fine must be punitive, not compensatory; and,
  - (2) the fine must not exceed any relevant limitations on the amount of a fine as set out in part 1 of article 20 of title 44.

**REGULATION 44-20-105(2)(b)**

In addition to any other duties delegated to the Executive Secretary of the Motor Vehicle Dealer Board contained in the board's regulations, the board delegates to the Executive Secretary the authority to perform the following ministerial acts:

- (I) The Executive Secretary may set and maintain the board's docket, grant motions for continuances and motions for enlargements of time, issue subpoenas, and issue final agency orders pursuant to the board's action. The Executive Secretary may honor, within a reasonable time, a written request from an interested person to appear before the board at a regularly scheduled board meeting.
- (II) The Executive Secretary may write, sign, and issue board orders and correspondence on behalf of the board consistent with the board's action or direction. The Executive Secretary may sign and issue notices of charges after the board has referred the matter for a hearing pursuant to section 44-20-104(3)(f), C.R.S., and after drafting and review by the office of the Attorney General.
- (III) The board delegates to the Executive Secretary the authority to conduct informal fact-finding conferences and make recommendations to the board for the granting or denying of an application.

**REGULATION 44-20-105(2)(c) [Recodified as 1 CCR 210-2]**

**REGULATION 44-20-105(2)(d) [Recodified as 1 CCR 210-2]**

**REGULATION 44-20-105(2)(e) [Recodified as 1 CCR 210-2]**

**REGULATION 44-20-105(3)(a)(II) [Recodified as 1 CCR 210-2]**

**Regulation 44-20-108(1)(b)      COMPENSATION DISCLOSURES**

1. When, on behalf of a consumer, a used motor vehicle dealer negotiates the sale, exchange, or lease of a used or new motor vehicle that the negotiating dealer does not own, the negotiating dealer:
  - a. shall, prior to the completion of the sale, exchange, or lease of a motor vehicle, provide to the consumer for his or her review and signature the original copy of a "Compensation Disclosures" document that must include all of the information on the example form, below, but may include additional information; and,
  - b. shall retain the original of the completed and fully-executed "Compensation Disclosures" document in its records related to the subject vehicle, and shall also provide a copy of that document to the consumer.
2. The current owner of a vehicle covered by this regulation shall not be a wholesaler.
3. The "Compensation Disclosures" form, below, is an example format which a negotiating dealer may use to provide the required information to satisfy the disclosure requirements.

### COMPENSATION DISCLOSURES

On \_\_\_\_\_, pursuant to Colorado Law,  
Date the Disclosure document was prepared

\_\_\_\_\_, hereby discloses to  
License Name of Negotiating Used Motor Vehicle Dealer License Number

\_\_\_\_\_ that \_\_\_\_\_ will receive  
Full Printed Legal Name(s) of Consumer(s) Negotiating Used Motor Vehicle Dealer

compensation from: [mark each box that applies] ☐ the Consumer(s)  
☐ the Current Motor Vehicle Owner

in the event that a sale, exchange, or lease is concluded for the following motor vehicle:

\_\_\_\_\_, owned by  
Year Make Model VIN

\_\_\_\_\_  
Printed Full Legal Name of Current Owner

\_\_\_\_\_  
Signature of Authorized Representative of Used Motor Vehicle Dealer

\_\_\_\_\_  
Printed Name of Authorized Representative of Used Motor Vehicle Dealer

\_\_\_\_\_  
Title of Authorized Representative of Used Motor Vehicle Dealer

\_\_\_\_\_  
Signature(s) of Consumer(s) Printed Full Legal Name(s) of Consumer(s)

\_\_\_\_\_  
Date of the Consumer(s) Signature(s)

**A completed copy of this Compensation Disclosures document must be provided to the Consumer(s).**

**NOTE: A WHOLESALER CANNOT BE THE OWNER OF A MOTOR VEHICLE IN THIS NEGOTIATION.**

**REGULATION 44-20-108(1)(c)**

- 1). A temporary license shall not issue, and a salesperson shall not be allowed to offer, negotiate or sell vehicles unless the Board has received and date stamped at the main office of the Auto Industry Division a signed application, completed in every respect, with all required details and attachments, including bond, fees, and the licensing examination affidavit required by Regulation 44-20-104(3)(k). Dealers' payrolls and other evidence will be checked to ascertain that all salespersons for such dealers are licensed.
- 2). All original applicants shall have a criminal history background investigation conducted prior to the issuance of a permanent license.
- 3). No temporary license shall issue to any person who has been the subject of disciplinary proceedings before the Board within the past 5 years, unless such disciplinary proceedings resulted in dismissal of all charges. Such person's application shall require prior Board review and approval of a license before said person shall be permitted to engage in activities requiring a salesperson license.
- 4). Any salesperson applicant who has been notified by the Auto Industry Division that additional documentation is required by the Board before a license can be approved, and who fails to timely comply with the request for information, shall be deemed not to have submitted a complete application and may not engage in activities requiring a motor vehicle salesperson license until the Board has reviewed and approved the application.
- 5). The Executive Secretary may issue a notice of denial to any applicant who fails to provide documentation as requested, if the application discloses, on its face, grounds for denial under section 44-20-121(6) or (7), C.R.S.
- 6). Any person who allows such applicant to engage in activities requiring a motor vehicle salesperson license may be subject to disciplinary action for violation of section 44-20-110, C.R.S.

**REGULATION 44-20-108(1)(e)**

A wholesaler shall conduct business according to each of the following:

1. A person shall not simultaneously hold a motor vehicle salesperson license and also have an ownership interest in a licensed wholesale business.
2. A wholesaler shall not employ a licensed motor vehicle salesperson.
3. A wholesaler shall have a place of business with a business office. The wholesaler's business books and records shall be kept at that business office.
4. A wholesaler shall maintain written records of all business transactions involving the sale, exchange, or offer of any interest in a motor vehicle.

5. A wholesaler shall transact all business, including but not limited to the purchase and sale of motor vehicles, exclusively in its licensed wholesale business name, and not in the name of another person, whether that other person is or is not associated with the wholesaler license. However, in order to prevent confusion between the wholesale business transactions of a sole proprietor and the personal transactions of the natural person of the same name, a sole proprietor wholesaler shall transact all wholesale business using the sole proprietor's name coupled with the word, "wholesaler" (for example, "Wholesaler Joe Smith," "Joe Smith, Wholesaler," or "Joe Smith --- Wholesaler").
6. A wholesaler shall permit the board and its agents and representatives to inspect, with cause, including ongoing investigation, compliance audit, sworn complaint, or order of the board, the wholesaler's books and records, excluding financial statements and tax returns, any time from Monday through Friday between 9 AM and 5 PM. Upon receipt of a subpoena from the board or the director, the wholesaler shall provide all records, including financial records and tax returns, to the board, the director, or to the agents or representatives of the board or the director. Upon the wholesaler's written request, auto industry division staff shall, under their direct supervision, make available to the wholesaler, all of the records that the wholesaler provides voluntarily or under subpoena, in order for the wholesaler to test, inspect, or copy the records.
7. See Regulation 44-20-102(18) for the definitions of "profit" and "gain of money."

**REGULATION 44-20-108(1)(h)(I) [Repealed eff.12/15/2018]**

**REGULATION 44-20-109(1)**

Evidence of a passing test score shall be as required by Regulation 44-20-104(3)(k).

**REGULATION 44-20-109(2)**

1. For purposes of this regulation, "out-of-state motor vehicle dealer" means a motor vehicle dealer or used motor vehicle dealer that is not a resident of Colorado and that is not licensed in Colorado as a motor vehicle dealer or used motor vehicle dealer.
2. This regulation does not apply to an out-of-state motor vehicle dealer that buys or sells a motor vehicle at an auction conducted by a licensed Wholesale Motor Vehicle Auction Dealer in Colorado.
3. An out-of-state motor vehicle dealer may sell a motor vehicle to a consumer only at the following specific events: A) the Colorado State Fair; B) the National Western Stock Show; and, C) the annual Colorado RV, Sports and Travel Show.
4. If an out-of-state motor vehicle dealer intends to sell a motor vehicle to a consumer at a specific event other than those listed above, then the out-of-state motor vehicle dealer must obtain the board's permission to apply for a temporary license for that specific event. To obtain the board's permission, the out-of-state motor vehicle dealer must submit a written petition to the executive secretary of the board at least ninety days prior to the specific event so that the executive secretary can docket the board's review of the petition. At the review, the board will consider only the written petition.
5. An out-of-state motor vehicle dealer temporary license is issued for thirty consecutive calendar days related to the specific event designated in the application for an out-of-state motor vehicle temporary license.
6. An out-of-state motor vehicle dealer may not obtain more than three out-of-state motor vehicle dealer temporary licenses in a calendar year.

7. In order to sell a motor vehicle to a consumer at a specific event, an out-of-state motor vehicle dealer must apply for an out-of-state motor vehicle dealer temporary license. An out-of-state motor vehicle dealer must not engage in any sales activity at a specific event until the board approves the out-of-state motor vehicle dealer temporary license.
8. By no later than fourteen calendar days prior to the specific event designated in the application, an out-of-state motor vehicle dealer must submit a completed application form for an out-of-state motor vehicle dealer temporary license related to the specific event. The board shall reject for filing any application for an out-of-state motor vehicle dealer temporary license that is not accompanied by both a remittance in the full amount of the fee for the license and by the bond required for the license. The board may reject for filing any application that does not completely satisfy the requirements of the application form and its instructions.
9. In the event that an out-of-state motor vehicle dealer intends to sell a new motor vehicle to a consumer in Colorado, then an out-of-state motor vehicle dealer shall provide written evidence that each manufacturer, whose vehicles the out-of-state motor vehicle dealer intends to sell at the specific event, has authorized the out-of-state motor vehicle dealer to sell the manufacturer's vehicles at the specific event.
10. An out-of-state motor vehicle dealer must make an out-of-state motor vehicle dealer temporary license readily-available for inspection by any person at the specific event during the entire time that the out-of-state motor vehicle dealer is present at the event.
11. An out-of-state motor vehicle dealer operating in Colorado pursuant to an out-of-state motor vehicle dealer temporary license has agreed to do business under applicable Colorado law and regulations. Therefore, an out-of-state motor vehicle dealer has both the same rights and the same responsibilities as a licensed Colorado motor vehicle dealer.

**Regulation 44-20-110**

1. All current and active licenses, including temporary licenses, of any class issued by the board must be conspicuously displayed in an area that is in public view at the motor vehicle dealer's or used motor vehicle dealer's place or places of business.
2. When the board issues a salesperson's license that is not a temporary license, the dealer associated with the salesperson's license shall do the following upon receipt of the license document: (a) take charge of the actual license portion in order to display that portion in accordance with this regulation; and, (b) hand over the "Change of Employer Notification" portion of the license document to the salesperson.
3. Within ten calendar days of the end of a salesperson's working relationship with a dealer, both the dealer and the salesperson shall, independently, notify the board, in writing, of the date the relationship ended, and the dealer shall also return to the board the actual license portion of the salesperson's license.
4. If a salesperson chooses to transfer his or her working relationship to a new dealer for the remainder of the salesperson's license year, he or she must submit a "Change of Employer Notification" to the board, along with any other required documents and a remittance to cover the license-reissue fee. Because the former dealer may cancel the bond associated with the remainder of the salesperson's license year, the salesperson must take any necessary steps to ensure that a valid salesperson's bond will be in effect.
5. A salesperson shall not engage in sales activities until the dealer conspicuously displays the license of the salesperson in accordance with this regulation.



**REGULATION 44-20-111(4)(a) RENEWAL OF LICENSES**

Any renewal application submitted after the expiration date of the license may be assessed a late fee as permitted by law.

**REGULATION 44-20-116**

See Regulation 44-20-104(3)(k).

**REGULATION 44-20-117 [Recodified as 1 CCR 210-2]**

**REGULATION 44-20-118(5) [Recodified as 1 CCR 210-2]**

**REGULATION 44-20-118(6)**

If the executive secretary of the board is served with process for a licensee, the executive secretary shall, no later than seven calendar days after receipt of the process, mail a copy of the served documents, by certified mail with return receipt request, to the licensee at the licensee's address last furnished to the board by the licensee and to the surety on the licensee's bond at the surety's address on the bond.

**REGULATION 44-20-118(7)(d)**

1. The board hereby delegates to the board's executive secretary the authority to execute all actions within the authority of the board respective to the Pre-licensing Education Program.
2. The executive secretary shall provide public notice a) immediately after the effective date of these rules, and b) once every year thereafter, by means of publication on the board's website, which public notice shall contain a general description of the Pre-licensing Education Program requirements and shall indicate the procedures by which interested persons may apply to obtain approval from the executive secretary to provide a Pre-licensing Education Program.
3. The executive secretary shall evaluate each Pre-licensing Education Program application for compliance with the requirements of the relevant statutes and rules.
4. An approval of a Pre-licensing Education Program is for a period of one year from the date of approval.
5. A Pre-licensing Education Program Provider can reapply by means of an updated application for an approval of its program in subsequent years.
6. The executive secretary shall, by means of a Letter of Approval, within thirty (30) days of the executive secretary's receipt of either 1) an initial application for an approval of a prospective Pre-licensing Education Program Provider or 2) a subsequent application for a renewal of an existing approval of a Pre-licensing Education Program Provider, notify any applicant, whose Pre-licensing Education Program has been approved in its initial or a subsequent term, of the specific dates of the one-year term of the approval and of the procedures to apply to renew the approval for subsequent one-year terms.
7. The executive secretary shall, by means of a Letter of Denial, within thirty (30) days of the executive secretary's receipt of either 1) an initial application for an approval of a prospective Pre-licensing Education Program Provider or 2) a subsequent application for a renewal of an existing approval of a Pre-licensing Education Program Provider, notify any applicant, whose Pre-licensing Education Program has been denied in its initial or a subsequent term, of the basis and reasons for the denial and the procedure to follow to appeal the denial to the board.

8. Any recipient of a Letter of Denial shall have the right to appeal that denial to the board by means of a request for a hearing in writing within sixty (60) days after notice of the denial.
9. Any approved Pre-licensing Education Program Provider or prior approved Pre-licensing Education Program Provider may bring to the board a complaint or concern about the administration of the program application and approval process. The Provider must first seek to resolve the matter with the executive secretary. The Provider may bring its complaint or concern to the board by means of a request in writing within thirty (30) days of the failure of the Provider's efforts to resolve the matter with the executive secretary.
10. The executive secretary shall provide to the board the name of each approved Pre-licensing Education Program Provider and the term of approval for that Provider.
11. The executive secretary shall post on the board's website a list of the names, addresses, and contact information, as provided to the executive secretary, for each approved Pre-licensing Education Program Provider, showing the term of approval for each Provider and the geographic scope of each Provider's program.
12. An approved Pre-licensing Education Program Provider that intends to cease operations, must provide the executive secretary with a written notice of cessation of its Pre-licensing Education Program at least 180 days in advance of the last date on which the Pre-licensing Education Program Provider will provide instruction in its Pre-licensing Education Program.
13. An approved Pre-licensing Education Program Provider shall maintain a place of business in the state of Colorado.
14. An approved Pre-licensing Education Program Provider shall maintain the following records at its Colorado place of business for a period of at least three (3) years from the date of the instruction of any participant: 1) the specific curriculum administered; 2) the specific handouts or other ancillary teaching materials provided or available to the participant; 3) the specific validation test or tests used; 4) the registration data for each participant, showing the participant's name, business association, date of participation, and means by which the participant was identified; 5) the specific validation test result(s) for the given participant; 6) the name of the instructor or other program authority who administered the program to the participant; and, 7) a copy of the completion certificate provided to the participant.
15. The executive secretary shall have the authority as a matter of routine compliance investigation, or upon the receipt of a specific complaint, to perform an investigation of the activities of a Pre-licensing Education Program Provider.
16. The executive secretary shall have the authority to obtain copies at no cost to the State of all materials utilized in or related to a Pre-licensing Education Program, including, but not limited to, the records of a Pre-licensing Education Program Provider respective to any or all persons who have participated in the Provider's program.
17. Procedures for the suspension or revocation of the approval of a Pre-licensing Education Program Provider shall be in accordance with sections 24-4-104 and 24-4-105, C.R.S.

**REGULATION 44-20-118(7)(f)(I)**

The Pre-Licensing Education Program shall include in its content, federal and Colorado state laws and federal and Colorado state regulations governing motor vehicle dealers. The education curriculum shall contain without limitation titles 4, 5, 6, 18, 39, 42, and 44 of the Colorado Revised Statutes applicable to motor vehicle dealers and motor vehicle sales and Federal Laws and Rules applicable to motor vehicle dealers and motor vehicle sales.

**REGULATION 44-20-118(7)(f)(II)**

1. An application from a prospective Pre-licensing Education Program Provider or a renewal application of a prior-approved Pre-licensing Education Program Provider must contain each of the following items:
  - a. Identifying information, to include the applicant's full legal name, the mailing address of its Colorado place of business, telephone number(s), email address(es), if any, and website addresses, if any. Addresses in addition to that of the Colorado place of business may also be provided, although communications will go to the Colorado place of business only.
  - b. Contact information, to include the name and title of any individual(s) who have authority to speak on behalf of the applicant.
  - c. A Pre-licensing Education Program Proposal for the delivery of the required education. The Proposal must include each of the following items, but may include additional items: 1) the manner of completing the eight (8) required hours of classroom instruction; 2) a detailed outline of curriculum (or full course materials, if available); 3) the full legal names and dates of birth of all instructors, teachers, and curriculum preparers, and their respective educational credentials (faculty additions and changes may later be made, subject to approval by the executive secretary); 4) routine educational materials, if any, which will be made available to program participants as part of the pre-licensing education program either prior to, during, or subsequent to the classroom attendance time; 5) optional educational materials, if any, which will be made available to program participants as supplements, enhancements, or enrichments in addition to routine educational materials; 6) the testing protocols and baselines of achievement that will be used to ensure that a program participant has learned what the program is required by law to teach; and, 7) the methods that the Pre-licensing Education Program Provider will consistently use a) to establish the identity of each participant in the Pre-licensing Education Program and b) to verify that any test or examination validating achievement in the Pre-licensing Education Program is taken by the individual participant whose identity had been established and not by another person.
2. The provider of a Pre-licensing Education Program must have a minimum of three (3) years experience in the regulation and enforcement of state and federal laws governing motor vehicle dealers and motor vehicle sales, or have three (3) years experience as an instructor working for an approved Pre-licensing Education Program provider.
3. The executive secretary shall require additional information from any applicant, in the event that the application is deficient with regard to any of the noted materials, or in the event that more information is needed to reach a decision on the application.

**REGULATION 44-20-118(7)(f)(III)**

1. A Pre-licensing Education Program Provider must maintain an educational site, or sites, appropriate to classroom instruction.
2. A Pre-licensing Education Program Provider must ensure the integrity of its educational materials and the instructional records of its participants, each being subject to inspection by the executive secretary.
3. The executive secretary will evaluate each prospective Pre-licensing Education Program Provider and each prior-approved Pre-licensing Education Program Provider reapplying for program approval with regard to the above criteria.

**REGULATION 44-20-118(7)(f)(IV)**

1. The methods of instruction may vary according to the approved Pre-licensing Education Program approved for any given Pre-licensing Education Program Provider, and may include within the eight-hour classroom instruction limitation: 1) traditional or non-traditional classroom instruction geared to adult learners, with testing validation; and, 2) CD or DVD instruction, with provisions for testing validation.
2. The methods of instruction actually used must match those that were approved through the application process.

**REGULATION 44-20-118(7)(g)**

An approved Pre-licensing Education Program Provider shall issue a Program-completion Certificate to each person who successfully completes an approved Pre-licensing Education Program. The Certificate shall be on a form approved by the Executive Secretary and shall be issued within ten (10) days of successful completion of the Pre-licensing Education Program.

**REGULATION 44-20-118(7)(h)**

An approved Pre-licensing Education Program Provider shall submit to the executive secretary a copy of the Program-completion Certificate for each person, who has successfully completed the approved Pre-licensing Education Program within the approved program standards, within ten (10) days of the completion of the approved program. The copy of the Program-completion Certificate may be sent by mail, by fax, or by email.

**REGULATION 44-20-120**

1. An applicant for a motor vehicle dealer license or a used motor vehicle dealer license shall document each of the following, as part of the license application submitted to the board:
  - a. the existence of adequate sanitary facilities at the principal place of business;
  - b. proof that the applicant either owns or has leased the principal place of business; and,
  - c. proof that the applicant is in possession of the principal place of business.
2. A licensee applying for an additional location for a licensee's motor vehicle business or a used motor vehicle business, shall document each of the following, as part of the additional location application submitted to the board:
  - a. the existence of adequate sanitary facilities at the additional location, unless the additional location will be used by the licensee solely as a motor vehicle storage site;
  - b. proof that the licensee either owns or has leased the additional location; and,
  - c. proof that the licensee is in possession of the additional location.
3. During the entire active period of a motor vehicle dealer's license or a used motor vehicle dealer's license, the licensee shall:
  - a. maintain adequate sanitary facilities at its principal place of business and at each additional location associated with the license at any given time, unless the additional location is used by the licensee solely as a motor vehicle storage site;

- b. maintain, through ownership or lease, the licensee's right to occupy its principal place of business and each additional location approved by the board, unless the licensee has notified the board that it relinquished a previously authorized additional location; and,
  - c. continue to be in possession of the principal place of business and each additional location approved by the board, unless the licensee has notified the board that it relinquished a previously authorized additional location.
- 4. As used in this regulation, "adequate sanitary facilities" means a publicly-accessible, private bathroom with either 1) a functioning portable chemical toilet or, 2) a functioning permanent flush toilet with either a permanent sewer hookup, cesspool, or septic tank with leaching field.

**Regulation 44-20-121**

- 1. This regulation applies only to licenses issued by the Board under part 1 of article 20 of title 44.
- 2. The reporting requirement of this regulation applies both (a) to a natural person with a motor vehicle salesperson's license, and, (b) to any other natural person (1) who is associated with a licensee with any other class of license issued by the board and (2) who has an ownership, financial or equity interest in the licensee (unless the natural person is a stockholder of a licensee that is subject to the reporting requirements of the "Securities Exchange Act of 1934," as amended, 15 U.S.C. § 78a, et seq.).
- 3. With respect to a natural person specified above, a licensee is responsible to ensure that the board receives written notice of any criminal case brought in any United States court (federal, state, territorial, or the District of Columbia) that resulted in:
  - a. a conviction, plea, or deferment of a felony;
  - b. a conviction, plea, or deferment of either a felony or a misdemeanor pursuant to article 3, 4, or 5 of title 18, C.R.S. or a like crime pursuant to federal law or the law of any other state; or,
  - c. a crime involving odometer fraud, salvage fraud, vehicle title fraud, or the defrauding of a retail consumer in a vehicle sale or lease transaction.
- 4. A licensee:
  - a. must ensure that the board receives the written notice no later than thirty calendar days after a conviction, plea, or deferment; and,
  - b. must enclose certified copies of court documents with the licensee's written notice, including, but not limited to the charging document (an indictment, information, or other notice of charges), a pre-sentencing investigation report (if available), and, documents that reveal the resolution of the case (for example, a plea agreement, a conviction, a deferment, or a sentence of the court).

**REGULATION 44-20-121(1)(b) [Recodified as 1 CCR 210-2]**

**Regulation 44-20-121(3)(a)**

“Material Misstatement in an Application for a License” means (a) either a written statement, a responsive mark (for example, a mark in a checkbox), or, an omission, (b) for which the applicant is responsible, (c) that is false or misleading, and (d) that is made in support of an application either (1) by a natural person who has an ownership, financial, or equity interest in an applicant for a class of license other than a business disposer’s license or a salesperson’s license (except for a natural person whose sole relationship to the applicant is as a stockholder of a corporation that is subject to the reporting requirements of the “Securities Exchange Act of 1934,” as amended, 15 U.S.C. § 78a, et seq.), or, (2) by a natural person who has the ability to control or to exercise significant financial or operational influence over an applicant for a class of license other than a business disposer’s or a salesperson’s license. For purposes of this rule, “material” means reasonably significant enough to affect the outcome of the Board’s review of an application.

**Regulation 44-20-121(3)(c) [Repealed eff. 11/30/2019]**

**REGULATION 44-20-121(3)(h)**

**A. DEFINITIONS FOR PURPOSES OF THIS REGULATION**

1. “Contract” means any written agreement, such as a purchase agreement, buyer order or invoice, between a Dealer and a Buyer for the sale of a motor vehicle, excluding the Retail Installment Sales Contract (“RISC”).
2. “Dealer” means a motor vehicle dealer, used motor vehicle dealer, wholesaler, wholesale motor vehicle auction dealer, motor vehicle auctioneer, or a representative of the dealership.
3. “Seller” means Dealer.
4. “Buyer” means a retail consumer or a Dealer.
5. “Material Particulars” means those details concerning a vehicle for sale that are essential or necessary for a reasonable prospective Buyer to know prior to making the decision to buy or not to buy a vehicle.

**B. DISCLOSURE PROCESS**

Prior to the signing of the Contract, the Seller shall produce a written document disclosing all known Material Particulars. Both the Seller and Buyer must sign the document. The document is deemed to be part of the Contract. A signed copy of the Contract and the disclosure document shall be provided to the Buyer at the time of sale. The Seller shall retain a copy of the Contract and the disclosure document.

**C. “AS IS” STATEMENT**

A statement by the Seller to the Buyer that a vehicle is sold “as-is” does not relieve the Seller of the disclosure obligations imposed by this regulation, nor does it relieve the Seller of any other disclosure obligations otherwise required by state or federal law. An “as-is” statement solely disclaims implied warranties under provisions of the “Colorado Uniform Commercial Code,” Title 4, C.R.S.

**D. NON-EXCLUSIVE LIST OF “MATERIAL PARTICULARS”**

Material Particulars include but are not limited to any of the following:

1. The motor vehicle is a “Salvage vehicle” as that term is defined in the Colorado “Certificate of Title Act,” part 1 of article 6 of title 42, C.R.S.
2. The motor vehicle has sustained damage, whether repaired or not repaired, of the following types:
  - a. Frame or unibody damage of any grade or type; or
  - b. Flood, fire or hail damage; or
  - c. Accident or collision damage.
3. The motor vehicle has been modified in a way that impacts warranty coverage.
4. The motor vehicle had been declared a “total loss” by an insurance company.
5. The motor vehicle had been stolen.
6. The motor vehicle had been used as a police vehicle, vehicle for hire, rental vehicle, or a loaner or courtesy vehicle, if such use is clearly ascertainable from a title brand, from information obtained from a prior owner, from a Vehicle Identification Number (VIN), from a State-issued Identification Number, or from any other source.
7. The motor vehicle had been put to a use or had been altered in such a way that a reasonable person would consider unusual or extraordinary, such as use as a racing vehicle.

**E. MATTERS GENERALLY NOT CONSIDERED “MATERIAL PARTICULARS”**

This list is not intended to be all-inclusive. Material Particulars do not generally include the items on the following list:

1. Normal wear and tear.
2. Completed or prior mechanical repair.
3. General maintenance.
4. Repair or replacement of tires, wheels, glass, handlebars, moldings, radios, in-dash audio equipment, or the like, provided that the repair or replacement was completed in a manner reasonably comparable to manufacturer’s specifications and provided that any repaired or replaced item is functioning at the time of sale in the manner that a reasonable person would expect.
5. Touch-up paint for minor scratches, dents, or dings.
6. Completed recall repair, provided the repair was done by a dealer authorized by the manufacturer to perform such repairs.

## **ADVERTISING**

The statutory basis for this regulation is 44-20-121(3)(i), C.R.S.

### **REGULATION 44-20-121(3)(i)**

Advertising shall be construed to be misleading or inaccurate in the following particulars:

Rule 1. Advertising a motor vehicle which is not in operable condition unless specifically disclosed.

Rule 2. Advertising which would imply the dealer is going out of business when such is not the case.

Rule 3. Advertising a specific motor vehicle for sale or lease with price or terms quoted, without fully identifying the vehicle as to year, make, model and dealer stock number. Such vehicle shall be willfully shown and sold at the advertised price and/or terms while such vehicle remains unsold or unleased, for a period of five days following the last date the ad was published, unless the ad states that the advertised price and terms are good only for a specific time and such time has elapsed. If a specific number of motor vehicles is advertised, such vehicles must have been invoiced to the dealer.

Rule 4. Using a picture or photograph of a vehicle in advertising when the picture or photograph is not the same make, year and equipment actually being offered for the price or terms advertised.

Rule 5. Advertising in such a manner which utilizes an asterisk or other reference symbols to contradict or materially change the meaning of any advertising statements.

Rule 6. A used vehicle shall not be advertised in any manner that creates the impression that it is new.

Rule 7. Advertising motor vehicles which are known by the dealer to be salvage, rebuilt from salvage, or flood vehicles, which are not so identified in the advertisement.

Rule 8. Advertising in any manner to imply that a purchaser will be receiving benefits of any existing loan on a vehicle when no such benefit exists.

Rule 9. Advertising or making statements that are not true or that cannot or will not be honored. Advertising which creates the false impression that the purchaser will determine the terms, price or conditions of a sale, such as "write your own deal," "name your own price," "no reasonable offer refused," and "we will not be undersold." Advertising any item as "free" which is associated with or conditioned upon the negotiated sale of a motor vehicle.

Rule 10. Advertising sales prices for used motor vehicles which claim or imply a specific savings or discount without clearly and accurately documenting the basis for the savings or discount.

Rule 11. Advertising any reference to "dealer cost" or "invoice" price. Advertising the word "wholesale" in connection with the retail offering of motor vehicles.

Rule 12. Advertising a specific trade-in amount or range of amounts without, in fact, offering such a trade-in amount and, failing to disclose or advertise the M.S.R.P., sale price, or capitalized cost of the vehicle from which the trade-in will be deducted.

Rule 13. Advertising the price of a vehicle without including all costs to the purchaser at the time of delivery, except sales tax, finance charges, cost of emissions test, other governmental fees or taxes, and transportation costs, incurred after sale, to deliver the vehicle to the purchaser at the purchaser's request.



- Rule 14. Advertising any specific discount or rebate on new motor vehicles without the manufacturer's suggested retail price conspicuously stated in the ad. When advertising rebates, incentives, or other offers, a dealer shall not combine such offers or give the impression that such offers are obtainable, when in fact they are not.
- Rule 15. Advertising any qualifying statement or disclosure which is not clear, conspicuous, and readable, and which is not adjacent to the offer or terms it qualifies, and in less than eight-point type.
- Rule 16. Advertising any contest that offers to prospective participants the opportunity to receive or compete for gifts or prizes without such advertisement containing the words "no purchase or payment of any kind is necessary to enter or win this contest" in bold-faced type and at least ten-point type.
- Rule 17. If any advertisement relates to a lease, the advertisement shall clearly and conspicuously disclose that the advertisement is for the lease of a vehicle.
- Rule 18. Statements, such as "Everybody Financed," "No Credit Rejected," "We Finance Anyone," and other statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit, are prohibited, unless such statements are true.
- Rule 19. Bait advertising, as defined in § 18-5-303, C.R.S., is not allowed.

**REGULATION 44-20-121(3)(k)**

All motor vehicle dealers and all used motor vehicle dealers must be open for business at least three (3) days per week for a continuous period of time not less than four (4) hours per day between the hours of 8 a.m. and 9 p.m.

Any dealership open less than forty (40) hours a week must post a clear and legible sign on its place of business indicating the days and hours that it is open for business. In addition such dealerships shall notify the Board in writing of any subsequent change in such periods of time.

Any dealership which will not be open for business for a period of at least two (2) weeks must post a clear and legible sign on its place of business indicating this fact as well as notifying the Board in writing of such fact.

A dealer's principal place of business shall be made available to inspection by the Board or its agents and employees at any reasonable time even if such time is outside the usual business hours posted by the dealer.

**REGULATION 44-20-121(3)(r)**

A dealer shall give notice of rejection of financing to the prospective buyer within ten (10) calendar days from the date of the purchase order or agreement on a finance or consignment sale.

**Regulation 44-20-121(6)(a)**

"Material Misstatement in an Application for a License" means (a) either a written statement, a responsive mark (for example, a mark in a checkbox), or, an omission, (b) for which the applicant is responsible, (c) that is false or misleading, and, (d) that is made by the applicant in support of an application for a salesperson's license. For purposes of this rule, "material" means reasonably significant enough to affect the outcome of the Board's review of an application.

**Regulation 44-20-121(6)(f) REISSUE OF SALESPERSON LICENSES [Repealed eff. 11/30/2019]**

**Regulation 44-20-121(6)(h) [Repealed eff. 11/30/2019]**

**Regulation 44-20-121(6.5)(a)**

“Material Misstatement in an Application for a License” means (a) either a written statement, a responsive mark (for example, a mark in a checkbox), or, an omission, (b) for which the applicant is responsible, (c) that is false or misleading, and (d) that is made in support of an application either (1) by a natural person who has an ownership, financial, or equity interest in an applicant for a business disposer’s license (except for a natural person whose sole relationship to the applicant is as a stockholder of a corporation that is subject to the reporting requirements of the “Securities Exchange Act of 1934,” as amended, 15 U.S.C. § 78a, et seq.), or, (2) by a natural person who has the ability to control or to exercise significant financial or operational influence over an applicant for a business disposer’s license. For purposes of this rule, “material” means reasonably significant enough to affect the outcome of the Board’s review of an application.

**REGULATION 44-20-121(7)**

- (a) The Board, in determining whether a licensee or license applicant has demonstrated unfitness of licensing character or record, will consider whether the licensee or license applicant or the licensee’s or license applicant’s partner, officer, director, or shareholder of any corporation, limited liability company, limited liability partnership or any other business entity authorized under law to hold a license: 1) has had a license fined, denied, suspended or revoked; 2) has been determined to have violated the licensing examination procedures of Regulation 44-20-104(3)(k); or, 3) has had any complaints, civil judgments, injunctions, consent orders/decrees, or stipulations, arising from the operation of a business in this state or any other state, engaged in the sale, lease or distribution of motor vehicles, and, if so, the nature, severity, and extent of these legal matters. This Regulation does not apply to shareholders of corporations that are subject to the reporting requirements of the Securities and Exchange Act of 1934, as amended.
- (b) The Board, in determining whether a licensee or applicant has demonstrated unfitness of criminal character or record, will consider the nature and date of the convictions; parole or probation status; including whether the licensee or applicant has maintained satisfactory compliance; and/or restitution. A pattern of convictions which, individually may not constitute grounds for denial or disciplinary action, may, taken together, constitute unfitness.
- (c) The Board, in determining whether a licensee or applicant has demonstrated unfitness of financial character or record, will consider net worth, liquid assets including cash, lines of credit, marketable securities, credit reports, unpaid judgments and/or tax liens, delinquent debts, and bankruptcy status. Applications for a motor vehicle dealer or used motor vehicle license will be closely evaluated based on the factors herein and the applicant’s concept of operation for the business to assess the potential for harm to retail customers.
  - (I) Failure to timely pay any fine imposed by the Board, or the submission of a draft or check for the payment of any fee required by the Board which is dishonored shall be deemed to demonstrate unfitness of financial character or record.

**REGULATION 44-20-124(2)**

The Board will entertain any petition for declaratory orders to terminate a controversy or to remove the uncertainty as to the applicability to any person of any statutory provisions, or of any rule or order of the Board concerned with this Article.

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**Editor's Notes**

Regulations 12-6-105(1)(c), 12-6-101(1)(d), 12-6-105(1)(e), 12-6-105(1)(f), 12-6-114, 12-6-115(5), 12-6-118(l)(b) were recodified as 1 CCR 210-2 on 08/20/2014.

**History**

Regulations 12-6-104(3)(k), 12-6-104(4), 12-6-118(3)(d), 12-6-118(5)(b), 12-6-118(5)(j) eff. 01/01/2008.

Regulations 12-6-115(7)(d) through 12-6-115(7)(h) emer. rules eff. 08/05/2008; expired 10/10/2008.

Regulations 12-6-115(7)(d) through 12-6-115(7)(h) emer. rules eff. 10/23/2008.

Regulations 12-6-115(7)(d) through 12-6-115(7)(h) eff. 12/31/2008.

Regulations 12-6-104(3)(j), 12-6-108(1)(c), 12-6-108.5(1), 12-6-113, 12-6-118(6) eff. 08/30/2010.

Regulations 12-6-102(1.5), 12-6-118(3)(k) eff. 12/30/2014.

Regulation 12-6-104(3)(k) eff. 08/14/2015.

Regulation 12-6-118(3)(i) eff. 04/15/2016.

Regulations 12-6-102(16), 12-6-104(3)(g), 12-6-104(3)(i), 12-6-105(1)(b), 12-6-115(6) eff. 01/30/2018.

Regulations 44-20-104(3)(a), 44-20-104(3)(d)(II), 44-20-104(3)(f)(II), 44-20-104(4) eff. 11/14/2018.

Regulations 44-20-104(3)(f)(I), 44-20-104(3)(n) repealed eff. 11/14/2018.

Regulations 44-20-102(20), 44-20-108(1)(e), 44-20-109(2), 44-20-110, 44-20-120 eff. 12/15/2018.

Regulations 44-20-102(28), 44-20-108(1)(h)(I) repealed eff. 12/15/2018.

Regulations 44-20-108(1)(b), 44-20-110, 44-20-121, 44-20-121(3)(a), 44-20-121(6)(a), 44-20-121(6.5)(a) eff. 11/30/2019. Regulations 44-20-121(3)(c), 44-20-121(6)(f), 44-20-121(6)(h) repealed eff. 11/30/2019.

Regulation 44-20-102(22)-E emer. rule eff. 04/03/2020.

Regulation 44-20-102(22)-E emer. rule eff. 05/01/2020.

Regulation 44-20-102(22)-COVID emer. rule eff. 08/05/2020.