

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.]

Statement of Basis: The statutory basis for the regulations is C.R.S. 12-6-104(3) (a).

Regulation 12-6-101(11)

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 12-6-102 (12).

A new motor vehicle, is defined as "any motor vehicle being transferred for the first time from a manufacturer or importer, or dealer or agent or agent of a manufacturer or importer, and which motor vehicle has heretofore not been used, and is what is commonly known as a 'new motor vehicle'"

For the purpose of administration of the Motor Vehicle Dealers and Salesperson Licensing Law, a "new" motor vehicle shall be deemed to be a motor vehicle sold by a Colorado licensed motor vehicle dealer, as defined in the Act, who is franchised by the manufacturer of that make of motor vehicle to sell such motor vehicles. Said motor vehicle shall not have been used as a demonstrator or for private use, or for any other purpose which would indicate "use" in the strict definition of the word "used." A motor vehicle which has been used by a dealer solely for the purpose of demonstration to prospective customers shall be considered a "new vehicle", unless such demonstration use has been for more than Fifteen Hundred (1500) miles.

New motor vehicles may be exchanged between dealers enfranchised to sell the same make of vehicle by a proper assignment of the Manufacturer's Certificate of Origin.

Only wholesalers or "new" motor vehicle dealers franchised by manufacturers to sell their motor vehicles will be allowed to sell "new" motor vehicles, and only then if they have not previously been sold except by the manufacturer to such dealer.

A "used motor vehicle" is defined as any motor vehicle which has been sold, bargained, exchanged, given away, or the title thereto transferred from the person who first took title thereto from the manufacturer or importer, dealer or agent of the manufacturer or importer, or so used as to have become what is commonly known as a 'secondhand motor vehicle'." In the event of transfer on the certificate of origin, from the original franchised dealer to any other dealer or individual other than a franchised dealer of the same make of vehicle, the vehicle shall be considered a "used" motor vehicle, and must be titled in the new owner's name. Vehicles with more Than Fifteen Hundred (1500) miles of demonstration use shall be considered used' vehicles. Such "demonstrators" and other motor vehicles which have been used by a dealer prior to their sale shall be titled in the dealer's name and sold as "used" motor vehicles.

All vehicles which do not qualify as "new" motor vehicles shall be deemed to be "used" motor vehicles for the purpose of administration of this Act.

Regulation 12-6-102(13)

“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 12-6-102 (16)

1. A motor vehicle dealer or used motor vehicle dealer shall obtain an off-premise permit to offer, display and sell motor vehicles away from the dealer's place of business. A request for an off-premise permit shall be made in writing prior to the event and shall list the location and the date(s) of the sale. The permit shall be posted for inspection at the sale.
2. No off-premise sale shall exceed six days except for the National Western Stock Show, the Colorado State Fair, and the Metro Denver Auto Dealers Association annual Denver Auto Show, which shall not exceed twenty days. Consecutive permits for the same location are not allowed.
3. 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.
4. 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.

Regulation 12-6-102 (17)

See Regulation 12-6-102 (13).

Regulation 12-6-102 (18)

No person may hold both a wholesaler license and a motor vehicle salesperson license at the same time.

A wholesaler may not employ a motor vehicle salesperson.

For discussion of profit or gain, see Regulation 12-6-102 (13).

Wholesalers shall use a name other than their personal name on all business documents for the purchase and sale of motor vehicles to differentiate between a wholesaler and a Regulation 12-6-104 (3)(a)The executive director and his agents or employees shall have the authority to carry out ministerial acts

involving the enforcement of rules and regulations as specifically delegated by the Motor Vehicle Dealer Board.

Regulation 12-6-104 (3)(a)

The executive director and his agents or employees shall have the authority to carry out ministerial acts involving the enforcement of rules and regulations as specifically delegated by the Motor Vehicle Dealer Board.

Regulation 12-6-104 (3)(d)(II) Delegation of authority.

The Board delegates to the Executive Secretary and the Auto Industry Division, the authority to approve and issue all licenses within the authority of the Board in accordance with guidelines established by the Board.

Regulation 12-6-104(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.

DEALER BOARD Regulation 12-6-104 (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 12-6-119, 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 and 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 12-6-104(3)(f)(I), Investigations.

The Board delegates to the Executive Director or the Executive Director's designee the authority to initiate investigations of complaints filed under the jurisdiction of the Board with the Auto Industry Division, or initiated by the Board, pursuant to and in accordance with guidelines approved by the Board.

REGULATION 12-6-104 (3)(g) Application requirements

1. No application will be considered which is not complete in every material detail, nor which is not accompanied by a remittance in full for the whole amount of the annual license fee, nor by the appropriate bond. An application received by the 15th day of the month will be reviewed for approval at the next regularly scheduled monthly business meeting of the Motor Vehicle Dealer Board.
2. If the applicant is a partnership, it shall submit with the application a certificate of partnership.
3. If the applicant is a corporation, it shall submit with the application a copy of its articles of incorporation, and if a foreign corporation, evidence of its qualification to do business within the state. In addition, each corporation applicant shall submit the names and addresses of all persons holding outstanding and issued capital stock of said corporation.
4. If the applicant is a limited liability company, it shall submit with the application a copy of its articles of organization.
5. If the applicant is a limited liability partnership, it shall submit with the application a copy of its articles of association.
6. Any transfer of any percentage amount of the ownership or membership interest of any corporation, limited liability company, or limited liability partnership, holding a license under the provisions of this article shall be reported to the Board within ten days of such transfer. Reporting requirements on stock transfers apply if the corporation is not subject to the reporting requirements of the Securities and Exchange Act of 1934, as amended (public corporations).
7. All such transfers shall be made on business organization letterhead and signed by an officer of the corporation, manager of a limited liability company, or a partner of a limited liability partnership, and shall include the name, address, social security number and employment of any new

stockholder or partner.

8. Upon request of the Board, each applicant for a license shall provide suitable additional evidence of his residence, good character and reputation. Applicants and licensees shall also submit upon request by the Board all required information concerning financial and management associations and interests of other persons in the business, and the deed, lease, contract, or other documents governing the terms and conditions of occupancy of the place or places of business licensed or proposed to be licensed.
9. No licensee shall change the name or trade name of the business without submitting written notice to the Board, not less than ten days prior to the change.
10. 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.
11. The Board will conduct a criminal history inquiry of all applicants for a license issued by the Board.
12. 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 of the principal location as herein provided, and if other than a storage lot only, must provide adequate office facilities and the required sanitary facilities. Locations contiguous to the principal place of business will not be considered additional locations. The books and records of the additional location may be maintained at the principal place of business.
13. Additional places of business carried under a different name from those of the principal locations must be issued separate licenses, necessitating the filing of completed applications, bonds, and fees.
14. A change in the operating entity in a dealer's business shall require a new application, fee and bond, and approval by the Board, prior to the licensee operating under the new entity.
15. Licensees may conduct business only under their licensed name(s), Except that dealers holding multiple franchises with common ownership may advertise under a name that reflects the common ownership. For example, "John doe dealerships", "joe's automotive group", or similar such designations which clearly reflect the common ownership of the dealer.

Regulation 12-6-104 (3)(i)

The principal place of business and other locations of the dealer shall display a permanent sign thereon with letters at least six (6) inches in height, clearly visible to the major avenue of traffic, which sign shall clearly designate the name of the business for which the license application is made or under which such business is conducted.

Regulation 12-6-104 (3)(j) License examination procedures.

1. Applicants may use the information provided by the Auto Industry Division to complete the examination. One hundred percent (100%) shall be the passing grade on all examinations.
2. Any applicant or licensee who is found to have falsified the examination affidavit or provided answers to any applicant prior to or during the examination may be subject to disciplinary action for a violation of section 12-6-118 (3)(b), 12-6-118(3)(c), 12-6-118(5)(b), 12-6-118(5)(c), or 12-6-118(6)(a), C.R.S.
3. If an applicant is not licensed within one year of passing the examination, the score is removed from

the record and the examination must be retaken and passed.

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.

BOARD REGULATION 12-6-104 (3)(k) - DISCLOSURES REQUIRED AS PART OF A MOTOR VEHICLE SALES CONTRACT

1. Disclosures in the following language, in order and sequence, must be used in all contracts for the sale of any motor vehicle unless excluded by these regulations:

DISCLOSURES REQUIRED AS PART OF A MOTOR VEHICLES SALES CONTRACT

These disclosures are required by Colorado Law unless the buyer has already been given a copy of a completed retail installment sales contract that includes all disclosures required by federal and state laws. Initialing the provisions below incorporates them into your contract to purchase a motor vehicle.

- A. IMPORTANT NOTICE: The papers you are signing as part of this motor vehicle sale are legal documents. You should read them carefully and if there is anything you do not understand, you should seek legal assistance.
- B. WARNING: Only the terms and conditions written into these documents are part of the contract. Be sure that any oral representations are also written into these documents; otherwise they cannot be enforced.
- C. Any fraud or misrepresentation in a motor vehicle sale is punishable under Colorado State Law.
- D. The contract is for cash. It requires you to pay the dealer \$_____, the total balance due after your trade-in and/or deposit(s) are deducted. Failure to pay this amount by may result in the loss of any deposit(s) you have paid and/or your trade vehicle.

OR

Dealer has agreed to arrange financing for you and you agree to buy the motor vehicle if financing can be arranged at an interest rate that does not exceed % annual percentage rate. At this percentage rate your monthly payments would be _____ per month for ____ months, until paid in full, assuming a down payment or trade worth _____. This annual percentage rate must be agreed upon by both you and the dealer. Also, you are entitled by law to a complete, written disclosure of all the loan terms and the contract is not binding until you receive such a disclosure and accept the loan terms disclosed.

- E. You and the dealer have agreed that the vehicle will be delivered to you prior to the purchase price being paid in full. If financing cannot be arranged at the terms stated in the contract, and the contract is canceled, you agree to pay the dealer \$__ dollars per day and ____ cents per mile for your use of the vehicle from the date of delivery until the vehicle is returned to the dealer. If the contract is canceled, it may require you to immediately return the vehicle to the dealer and to pay the cost of repair for any damage occurring to the vehicle while it is in your possession along with the agreed upon daily and mileage charges. The contract may also give the dealer the right to take the vehicle from you 24 hours after cancellation and demand for the vehicle's return. You may also be required by

the contract to pay any costs the dealer may have to pay in regaining possession of the vehicle. If you owe any money from daily and mileage charges, damage repair costs or repossession costs to the dealer when the vehicle is returned, the dealer may keep your deposit(s) up to the amount owed. Otherwise, the deposit must be returned unless you have agreed that it is nonrefundable.

I hereby certify that I
have received a copy of
this disclosure.

I hereby certify that I
have given the buyer a
copy of this disclosure.

Buyer's Signature

Dealer's or Agent's
Signature

2. These disclosures may be included in a written contract or may be in a form which is incorporated by reference in a written contract.
3. The language which appears in paragraphs A, B, C, D, and E of the required disclosures above must appear in 12 point bold face type or a size at least 3 points larger than the smallest type appearing in the contract or form.
4. A copy of all disclosures must be given to the purchaser at the time of the consummation of the sale.
5. The following transactions are excluded from the application of this regulation:
 - a) Sales between dealers and/or wholesalers.
 - b) Sales in which a retail installment sales contract with all disclosures required by law has been executed at the time the purchaser becomes contractually obligated to purchase the vehicle.
6. When a purchase order or agreement is "subject to dealer's acceptance," the order or agreement shall state this in a conspicuous manner.

DEALER BOARD REGULATION 12-6-104(3)(m)(i)(A) - HEARING PROCEDURES BEFORE A HEARING OFFICER.

1. Hearings conducted before a single board member pursuant to section 12-6-104 (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 12-6-104(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 12-6-108 (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 12-6-104(3)(o)

When considering whether to impose a fine and the amount of the fine, or other administrative penalty, the Board will consider aggravating and mitigating circumstances, the degree of harm to a motor vehicle purchaser, severity of offense, and whether there is a pattern of violations or repeat offenses.

Dealer Board Regulation 12-6-105 (1)(b) POWERS AND DUTIES OF THE EXECUTIVE SECRETARY.

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

- (I) The board permits its Executive Secretary to 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.
- (II) Board orders and correspondence may be written, signed and issued by the Executive Secretary on behalf of the board consistent with the board's action or direction. Notices of charges may be signed and issued by the Executive Secretary after the board has referred the matter for a hearing pursuant to section 12-6-104 (3)(f)(II), C.R.S., and after drafting and review by the office of the Attorney General.
- (III) The Executive Secretary is delegated the authority to conduct informal fact-finding conferences and make recommendations to the board for the granting or denying of an application for a motor vehicle salesperson license.

Regulation 12-6-105(1)(c)

All applications for licenses must be approved by the administrator before they can be issued.

An application for a new license shall be acted upon promptly and written notice of the action taken by the administrator sent to the applicant either by personal service upon him or by certified mail sent to the last address furnished to the administrator by the applicant. If the applicant becomes subject to denial, the grounds therefor shall be given to the applicant and an opportunity for a hearing provided within 30 days after notice is given to the applicant. Such hearings shall be held in accordance with and in the same manner as those hearings which involve a suspension or revocation of a license. Failure to appear for the hearing without good cause shown shall be grounds for automatic denial of the application.

Regulation 12-6-105(1)(d)

The administrator, on his own motion or upon the sworn complaint of any person, charging any licensee with a violation of any provision of the law or any rule or regulation promulgated by the administrator concerned with the sale and distribution of motor vehicles shall determine through an investigation conducted by him and his agents and representatives, the probable truth of such charge or charges.

Regulation 12-6-105(1)(e)

1. All applications for licenses shall be made upon forms prescribed by the administrator. No application will be considered which is not complete in every material detail, nor which is not accompanied by a remittance in full for the whole amount of the annual license fee.

If the applicant is a partnership, it shall submit with the application a certificate of partnership.

If the applicant is a corporation, it shall submit with the application a copy of its articles of incorporation, and if a foreign corporation, evidence of its qualification to do business within the state. In addition, each corporation applicant shall submit the names and addresses of all persons holding over ten percent of the outstanding and issued capital stock of said corporation. Any transfer of ten percent or more of the capital stock of any corporation holding a license under the provisions of this article shall be reported to the administrator not less than ten days prior to such transfer. All such reports shall be made on forms supplied by the administrator.

Upon request of the administrator, each applicant for a license shall provide suitable additional evidence of their residence, good character and reputation. Applicants and licensees shall also submit upon request by the administrator all required information concerning financial and management associations and interests of other persons in the business.

No licensee shall change the name or trade name of the business, his place of business or business address without submitting written notice to the administrator, not less than ten days prior to the change.

All information submitted to the administrator, 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 administrator shall be grounds for the suspension, revocation, or denial of the license.

2. A change in the operating entity of a licensee's business shall be cause for the revocation of the license and shall require a new application and fee.

Regulation 12-6-105(1)(f)

If it shall appear from an investigation by the administrator and his agents and representatives, or shall otherwise come to the attention of the administrator that there is probable cause to believe that a licensee has violated any provision set forth in this article or any rule or regulation promulgated in accordance therewith, the administrator shall issue and cause to be served upon such licensee either by certified mail at the last address furnished the executive director by the licensee, or by personal service upon the licensee, a notice of hearing.

A hearing shall be held at a place and time designated by the administrator on the day stated in the notice, or upon such other day as may be set for good cause shown. Evidence in support of the charges shall be given first, followed by cross-examination of those testifying thereto. The licensee, in person or by counsel, shall then be permitted to give evidence in defense and explanation, and shall be allowed to give evidence and statements in mitigation of the charges. In the event the licensee is found to have committed the violation charged, evidence and statements in aggravation of the offense shall also be permitted.

After considering all the evidence and arguments presented at the hearing, the administrator will make a final determination either at the hearing or within a reasonable time thereafter, and send the licensee by certified mail at the last address furnished the administrator by the licensee or by personal service upon him a notice of final determination. In the event the licensee is found not to have violated any law, rule or regulation, the charges against him will be dismissed. If the licensee is found to have violated some law, rule or regulation, a cease and desist order shall be issued by the administrator, and in the proper case his license suspended or revoked on such terms and conditions and for such period of time as to the administrator shall appear fair and just. The decision of the administrator shall include a statement of findings and conclusions upon all the material issues of fact, law, or discretion presented by the record.

and the appropriate rule, order, sanction, relief or denial thereof. Failure to appear for the hearing without good cause shown shall be grounds for automatic suspension or revocation of the license.

Cease and desist orders shall be issued by the administrator, after due notice and hearing in accordance with this article and the rules and regulations promulgated therewith for any unlawful acts engaged in by a licensee as enumerated in Section 12-6-120 (2), C.R.S., as amended.

REGULATION 12-6-108(1)(b) Compensation Disclosures.

1. *Whenever a used motor vehicle dealer negotiates the sale, exchange, or lease of a motor vehicle or used motor vehicle not owned by the used motor vehicle dealer, the following form will be deemed adequate to satisfy the disclosure requirements of section 12-6-108(1)(b), C.R.S., for the used motor vehicle dealer. This form is an example of adequate disclosure; nothing herein shall be construed to limit permissible disclosure to the information shown.*

COMPENSATION DISCLOSURES

Pursuant to Colorado law, _____ hereby discloses to
_____ (used m.v. dealer) (consumer)

1. My dealership will receive compensation from the consumer. (Check one)
_____ Yes _____ No
2. My dealership will receive compensation from the owner of the vehicle if a sale, exchange or lease is concluded. (Check one) _____ Yes _____ No
_____ (NAME OF OWNER) _____

Used Motor Vehicle Dealer Dealer # Authorized Dealer Signature Date I have been provided a copy of the above disclosure prior to completion of such sale, exchange or lease of a motor vehicle not owned by the licensee. _____

Name Date Signature of Consumer Printed

REGULATION 12-6-108 (1)(c). Temporary salesperson license requirements.

- 1). A temporary license shall not issue, and a salesperson shall not be allowed to offer, negotiate or sell vehicles unless a signed application, complete in every respect, bond, fees, and an examination affidavit have been submitted to the Board. Postmark or date/time stamp shall be evidence of submission. 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 12-6-118 (5) or (6), 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 12-6-109 C.R.S.

Regulation 12-6-108(1)(e)

All wholesalers must have a place of business or business address which place or address must contain an office wherein the wholesaler shall keep business books and other records. Such books and other records, 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. All records, including financial records and tax returns shall be provided upon subpoena by the Board.

Regulation 12-6-108(1)(h)(I)

Each wholesale motor vehicle auction dealer or applicant shall report to the Board in writing whether such dealer or applicant is providing a check and title insurance policy or written guarantees of titles to its customers. A copy of such policy or guarantee shall be included with the report. Any change shall be reported to the Board in writing in one business day.

Regulation 12-6-108.5(2)

Applicants for an out-of-state temporary dealer license shall submit completed application, bond, and license fee. Specifically identified events shall include the Colorado State Fair, National Western Stock Show, and the annual Denver RV, Sports, Boat and Travel Show. Such out-of-state dealer shall provide evidence that the manufacturer has authorized the dealer to do business at such location in Colorado. No more than three out-of-state dealer licenses shall be issued to any one dealer per license year.

Regulation 12-6-109

Each salesperson's license shall be posted in a conspicuous place in the dealer's place or places of business.

Regulation 12-6-110 (3)(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 12-6-113. See Regulation 12-6-104(3)(j).

Regulation 12-6-114.

The administrator, by accepting the filing of written warranties, is not authorized to mediate disputes between manufacturers, dealers and retail purchasers of motor vehicles.

If the manufacturer provides no written warranty on any motor vehicle or parts thereof, written notice of this fact shall be given to the administrator and placed on file with him. The filing of such disclaimer of warranty shall not exempt such manufacturer from possible claims against him under this article.

Regulation 12-6-115(5)

Agreement means contract or franchise or any other terminology used to describe the contractual relationship between manufacturers, distributors and motor vehicle dealers.

Manufacturers and distributors shall notify the administrator immediately of the appointment of any additional dealers, of any revisions or additions to the typical written agreement on file, or of any supplements to such agreement. Agreements are deemed to be continuing unless the manufacturer or distributor has notified the administrator of the discontinuation or cancellation of the agreement of any of its dealers.

If a manufacturer or distributor does not enter into any formal written agreement with its dealers, written notice to this effect shall be given to the administrator and placed on file by him.

The administrator may be appointed as the agent for service of process in the state of Colorado. In any case wherein a licensee or licensees are served with process by service thereof upon the administrator, the administrator shall no later than two days after the service of said process upon him mail a copy thereof to each such licensee addressed to the licensee at the last address furnished to the administrator by the licensee, by certified mail with request for return receipt.

Regulation 12-6-115 (6)

In any case wherein a licensee or licensees are served with process by service upon the secretary of the Board, the secretary shall, no later than two days after the service of said process upon him, mail a copy thereof to each such licensee addressed to the licensee at the last address furnished to the Board by the licensee, by certified mail with request for return receipt. A copy shall also be mailed to the surety on the licensee's bond at the address of the surety given in said bond, by certified mail with request for return receipt.

REGULATION 12-6-117

1. *"Adequate sanitary facilities " means a permanent sewer hookup, cesspool or septic tank with leaching field, or portable chemical toilet..*
2. *A dealer's license shall not be issued to a person located at a principal place of business or other additional locations unless such place of business or additional locations are owned or leased by and actually occupied by the applicant. A motor vehicle dealer's license shall be suspended or revoked if the dealer's principal place of business or other additional locations are not owned or leased by and not actually occupied by the licensee. (1 C.C.R. 205-1)*

Regulation 12-6-118(l)(b)

No license shall be issued to or held by any person, unless he is with respect to his character, record and reputation, satisfactory to the administrator.

Regulation 12-6-118 (3)(b)

"Material misstatement" means any material false or misleading statement, omission, or misrepresentation by the applicant or a 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, regarding personal identification information, employment history, personal or business entity financial information, prior occupational licensing history, whether regarding a license issued by the Board or any other licensing/regulatory agency, criminal background and history including arrests, criminal information filings, indictments, municipal, misdemeanor, and/or felony convictions, and deferred judgments, civil judgments, assurances of discontinuance, consent order/decrees, and/or stipulation arising from the operation of a business in this state or any other engaged in the sale, lease, or distribution of motor vehicles. 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.

Regulation 12-6-118 (3)(d)

A dealer, wholesaler, wholesale auction dealer, or officer, director or stockholder of corporations licensed as such, who is convicted of any felony or any crime pursuant to Article 3, of Title 18 Article 4, of Title 18 Article 5, of Title 18, C.R.S., or like crime pursuant to federal law or the law of any other state, must give the Board written notice of such conviction within thirty days after receiving final judgment. Licensee is responsible for providing complete information including copies of final judgments and pre-sentence reports.

Regulation 12-6-118 (3)(i)

A copy of the completed contract form shall be given to the purchaser when signed by both parties.

A dealer, wholesaler, or auction dealer shall disclose on the contract form when a motor vehicle is known by the dealer, wholesaler or auction dealer to be a salvage vehicle as defined in C.R.S. 42-6-102(10.6), or when a motor vehicle is known to have sustained material damage at any one time from any one incident.

ADVERTISING

The statutory basis for this regulation is 12-6-118(3)(k), C.R.S.

REGULATION 12-6-118 (3)(k)

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. Advertising used motor vehicles to create the impression that they are new or using the word 'new' when advertising used vehicles, such as 'new, used cars'. Any vehicle of the current model or the previous model year which is a used vehicle shall be so identified in any advertisement for said vehicle.

Rule 7. Advertising motor vehicles which are known by the dealer to be salvage or rebuilt from salvage, taxi cabs, flooded vehicles or police 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, 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.

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.

Regulation 12-6-118(3)(m)

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 12-6-118(3)(v).

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 12-6-118 (5)(b) .

“Material misstatement” in an application for a salesperson license means any material false or misleading statement, omission, or misrepresentation regarding personal identification information, employment history, prior occupational licensing history, whether regarding a license issued by the Board or any other licensing/regulatory agency, criminal background and history including arrests, criminal information filings, indictments, municipal, misdemeanor, and/or felony convictions, and deferred

judgments.

REGULATION 12-6-118 (5) (g). Reissue of salesperson licenses.

1. Salespersons who change employment during their license year shall notify the Auto Industry Division, on the form prescribed by the Board, of the identity of the new employer prior to commencing employment at the new dealership.
2. Upon the submission of the notification, acknowledged by the new employing dealer, the salesperson may begin working as a salesperson at the new employing dealership.
3. After receipt of notification, the Auto Industry Division shall issue a new license to the salesperson for the remainder of the license term.
4. Any salesperson who fails to provide timely notification may be subject to disciplinary action.

Regulation 12-6-118(5)(j)

A salesperson who is convicted of any felony or any crime pursuant to article 3, of title 18 article 4, of title 18 article 5, of title 18, C.R.S., or like crime pursuant to federal law or the law of any other state, must give the Board written notice of such conviction within thirty days after receiving final judgment. Licensee is responsible for providing complete information including copies of final judgments and pre-sentence reports.

REGULATION 12-6-118 (6)

- (a) The Board, in determining whether a licensee has demonstrated unfitness of licensing character or record, will consider whether the applicant or any 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, has had a license fined, denied, suspended or revoked, the nature and extent of any complaints, and any 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. 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 base on the factors herein and the applicant's concept of operation for the business to assess the potential for harm to retail customers.
 - (l) 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 12-6-120

- (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.

Editor's Notes

History

--