

Superseded

by
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TITLE 91
LEGISLATIVE RULES
DEPARTMENT OF MOTOR VEHICLES

SERIES 6
MOTOR VEHICLE DEALERS

§91-6-1. General

1.1. Scope - These legislative rules establish requirements to be followed by motor vehicle dealers

1.2. Authority - W. Va. Code §17A-2-9.

1.3. Filing Date. - March 7, 1973.

1.4. Effective Date - April 6, 1973.

§91-6-2. Application and Enforcement

2.1. Application - These legislative rules apply to motor vehicle dealers.

2.2. Enforcement - Enforcement of these legislative rules is vested with the Commissioner of Motor Vehicles or lawful designee.

§91-6-3. Dealers - Licensing Requirements

3.1. No dealer in motor vehicles, motorcycles, house trailers, trailers, or semi-trailers, of a type subject to registration in the State of West Virginia, all hereinafter referred to in this section as vehicles, shall be entitled to obtain an initial or renewal dealer's license certificate and registration from the Department of Motor Vehicles under the provisions of Chapter 17A, Article 6 of the Motor Vehicle Code unless the applicant meets the requirements contained herein.

3.2. Dealer's Location

A. Each dealer location must meet the "Established Place of Business" requirements for the class of dealership that is to be operated at such location as defined in Chapter 17A, Article 6, Section 1 of the Motor Vehicle Code.

B. Each dealer location shall be subject to

inspection by an authorized representative of the Department of Motor Vehicles before approval of application for dealer license certificate and registration.

C. Only one (1) dealership of the same class will be permitted at any one (1) location.

D. Two (2) separate corporations will not be permitted to operate from the same location. This would apply even if both corporations were owned by the same officers and directors.

E. No business that is not related to or operated by the dealer in the furtherance of such dealer's business shall be permitted to operate from the location of the dealership.

F. Additional Locations.

1. Vehicles owned by a licensed dealer can only be displayed and offered for sale to the public at the additional locations designated on the dealer license certificate.

2. Each additional location must be inspected and approved by the Department of Motor Vehicles.

3. Each additional location must meet the same minimum standards required of the primary location.

4. Registration plates issued to the primary location may be used at the approved additional locations provided the trade name and ownership is identical to that of the primary location.

G. Display Lot.

1. The display lot must be laid out in such a manner as to allow the public free access to the

premises.

2. The lot must not have any hazardous conditions thereon that would endanger the safety of the public.

3. Junked vehicles, scrap iron, trash and litter of all types will not be permitted on the display lot.

4. The lot must be of such dimensions and so situated as to provide ample and reasonable display of the vehicles being offered for sale.

5. The display lot must have a covering of concrete, black top, gravel or some other type of material that would make the lot suitable for the display of vehicles to the public in all weather conditions.

6. A vacant lot or front or backyard of a place of residence will not be considered to be an "Established Place of Business".

7. No location in an area properly zoned against the business of a dealer in such vehicles shall be considered an "Established Place of Business".

H. Dealership Office.

1. The office must be housed at the dealer's fixed location and in a substantial building with the necessary heating and lighting facilities and shall be adequate and appropriate for the type of business to be conducted thereat.

2. The office must be equipped with office furniture; i.e., desk, chairs, filing cabinets and all other equipment necessary to reasonably conduct the dealership business.

3. The books of account and sales records must be maintained and kept on the premises and be available for inspection during regular business hours by authorized representatives of the Department of Motor Vehicles and all law enforcement officers.

I. Dealership Sign.

1. An appropriate sign must be permanently

affixed on the premises of the dealership.

2. The sign must be of letters at least four (4) inches in height and of such size as to make it reasonably legible from the street or highway.

3. The sign must specifically and clearly identify the business conducted thereat.

J. State and Municipal License.

1. If application is for renewal of a dealer's license certificate, a current state and municipal license issued by the State Tax Department and the city or municipality must be issued for each dealer location.

2. The license must be displayed in the office of the dealer in a conspicuous place.

K. Exemptions.

1. Applicants for a boat trailer, utility trailer, and motorcycle dealer's license certificate and registration who are doing business at a location that is a department store, sporting goods store, or any other similar type of business would be exempt from the dealer's location requirements outlined in Rule E of Section 1; Rule F, Sub-sections 1 through 4 of Section 1; Rule G, Sub-sections 1 through 7 of Section 1; and Rule I, Sub-sections 1 through 3 of Section 1. However, they would be subject to the "Established Place of Business" requirements for this type of business as defined in Chapter 17A, Article 6, Section 1, Sub-section 20 of the Motor Vehicle Code.

3.3. Notice of Change of Dealership.

Every new motor vehicle dealer, used motor vehicle dealer, and house trailer dealer shall notify the Commissioner of the Department of Motor Vehicles of any changes in the dealership as outlined in Chapter 17A, Article 6, Section 9 of the Motor Vehicle Code. Form MV-126-TR-K, Notice of Change in Dealership, shall be used to notify the Department of Motor Vehicles of such changes.

3.4. Dealer's Liability Insurance.

A. Dealer Liability Insurance must be secured from an insurance company licensed to do business in

the State of West Virginia.

1. A certificate of insurance, as provided in Chapter 17A, Article 6, Section 4 of the Motor Vehicle Code, properly executed by the insurance company issuing the policy must accompany the application for a dealer's license certificate. Department Form MV-126-TR-J, Certificate of Insurance, shall be the only form of certification acceptable to the Department of Motor Vehicles.

2. The liability insurance shall run concurrently with the license year. A new certificate of insurance must be filed with each renewal application. The license year shall be from July 1 through June 30 of each fiscal year.

3. The liability insurance must be issued in the trade name that the dealership is to be operated under whether it be an individual, co-partnership, or corporation.

4. The insurance company must give the Department of Motor Vehicles immediate notice of cancellation of any dealer's liability insurance. Upon cancellation and without proper replacement thereof, the license certificate and registration of the dealer shall become null and void. Department Form Number MV-126-TR-K, Notice of Cancellation of Dealer Liability Insurance, is the only form of cancellation acceptable to the Department of Motor Vehicles.

3.5. Dealer Surety Bond.

A. Must be secured from a bonding company licensed to do business in the State of West Virginia.

1. The bond as provided in Chapter 17A, Article 6, Section 2 of the Motor Vehicle Code shall be effective as of July 1 of each fiscal year or on the date the license certificate is issued and must accompany the application for dealer's license certificate.

2. The bond must be issued in the trade name that the dealership is to be operated under whether it be and individual, co-partnership, or corporation.

B. Cancellation of Bond.

1. The bonding company must give the Department of Motor Vehicles immediate notice, by

mail, of the cancellation of the bond, otherwise the bond is to be considered as being in full force until such notice is received by the Department of Motor Vehicles.

2. Upon the cancellation of the bond and without proper replacement thereof, the license and registration of the dealer shall become null and void.

C. Period Bond Shall Be Valid.

1. The bond shall run concurrently from the date the dealer's license certificate is issued or renewed to the expiration of the license period. A new bond must be filed with each renewal application. The license period for renewal applications shall be from July 1 through June 30 of each fiscal year.

D. Change In The Information.

1. The dealer must notify the Department of Motor Vehicles and the bonding company of any changes in the factual or material matters represented and/or set forth in the application for bond.

E. Form Of Bond.

1. The only form of bond acceptable to the Department of Motor Vehicles will be form Number MV-126-TR-P, Surety Bond for New and Used Motor Vehicles and House Trailer Dealers.

3.6. Dealer License Certificate.

A. Display of Dealer License Certificate.

1. The dealer license certificate must be displayed conspicuously in the office of the dealer's place of business.

2. A certified copy of a dealer license certificate issued for approved additional locations must be conspicuously displayed in the respective office of each additional location.

3. If a dealer license certificate becomes lost or mutilated, the dealer shall make prompt application to the Department of Motor Vehicles for the issuance of a duplicate certificate.

B. Use of Dealer License Certificate Number.

1. The dealer must use his dealer license certificate number on all departmental forms which are forwarded to the Department of Motor Vehicles in the space designated on the form for such number.

C. Cancellation of Dealer License Certificate.

1. Failure to comply with the provisions of Chapter 17A, Articles 6, and 7 of the West Virginia Motor Vehicle Code or the rules and regulations promulgated hereunder by the Department of Motor Vehicles may be cause to suspend or revoke a dealer license certificate after due hearing. If the hearing results in a suspension or revocation of the dealer license certificates the dealer license shall immediately return all license certificate, dealer plates, registration cards and all unused temporary registration plates to the Department of Motor Vehicles for cancellation.

2. Or, upon voluntary cancellation on the part of the dealer, in which event the dealer shall immediately return all license certificates, dealer license plates, registration cards and all unused temporary registration plates to the Department of Motor Vehicles for cancellation. However, the Department of Motor Vehicles in its discretion, may grant an extension to such dealer of not more than thirty (30) days for the purpose of disposing of such vehicles as he may have on hand and/or for the purpose of concluding any other business of the dealership regarding the sale, titling and/or registration of motor vehicles disposed of.

3.7. Record Requirements.

A. Inspection of Dealership Records.

1. Dealership records regarding purchases, sales, transfers of ownership, transfer of license, collection of privilege tax, titling and registration fees, issuance of twenty (20) day temporary registration plates, and a listing of employees using special plates assigned to the dealer must be open for inspection by authorized representatives of the Department of Motor Vehicles and all law enforcement officers during normal business hours.

3.8. Dealer Franchise.

A. In order to be classified as dealer in new motor vehicles or house trailers, a dealer must have a franchise from the manufacturer authorizing the

dealer to sell new motor vehicles or house trailers produced by the manufacturer and act as an agent for the manufacturer.

B. The Commissioner of Motor Vehicles may require on any original or renewal application for a new motor vehicle dealer or house trailer dealer license certificate and registration, a copy of the franchise or sales agreement the applicant has with the manufacturer.

3.9. Financial Statement.

A. After investigation of any original or renewal application for any class of dealership, the Commissioner of the Department of Motor Vehicles is not satisfied as to the financial status of the applicant, he may require a financial statement to be submitted with the application for consideration.

3.10. Photograph.

A. Photograph of a dealer's place of business must be attached to the application for a dealer license certificate in the space provided on the application for such photograph.

3.11. Execution of Forms of Application Used by Dealers and Mailing Instructions.

A. All dealer applications for a license certificate must be typewritten. Questions and information requested in the application must be answered in detail, if the question applies to the type of dealership for which application is being made. Failure to comply will result in the return of the application and will delay issuance of license.

B. The new dealer law requires that all applications for renewal of a dealers license certificate be filed with the Commissioner of the Department of Motor Vehicles at least thirty (30) days before expiration of the dealer license certificate. In order to comply with this provision of the Code, on or about May 1 of each fiscal year, the Department of Motor Vehicles will mail to each registered dealer the proper form of application and all other forms that must accompany and be part of the application for a dealer license certificate. This will give the dealer ample time to file the application before June 1.

C. The detailed application Form Number MV-126-TR for a new or used motor vehicle dealer license

certificate must be completed the first time that application is made by such applicant for a dealer license certificate after December 31, 1967.

Thereafter, an abbreviated application Form MV-126-TR-1 for renewal of a new or used motor vehicle dealer license certificate will be required. All other classes of dealers shall file the same form of application for renewal as required on the original application filed after December 31, 1967.

D. The applicant as defined in all dealer applications shall have the following meaning: an individual operating in his own name or under a trade name; two (2) or more partners operating under a co-partnership name or under a trade name; the officers and directors of a corporation operating under the corporate name.

E. All applications for a dealers license certificate or requests for forms used by a dealer should be directed to: Dealer License Clerk; Department of Motor Vehicles; Title and Registration Division; 1800 Washington Street, East; Charleston, West Virginia 25305.

**§91-6-4. Issuance, Use, and Records Of
Temporary Registration Plates Issued By
Registered Dealers**

4.1. All applications for temporary registration plates submitted to the Department of Motor Vehicles on or after January 1, 1968, must be made on Form Number MV-126-TR-F. The new form is designed to comply with the new dealer law which is effective as of this date.

4.2. No applications for temporary registration plates will be accepted for more than two hundred (200) plates.

4.3. Applications for additional temporary registration plates will not be accepted if the application shows fifty (50) or more temporary registration plates on hand from the previous allotment assigned to the dealer by the Department of Motor Vehicles.

4.4. All temporary plates shown as on hand on the previous application must be issued and accounted for before any application for additional temporary registration plates will be approved.

4.5. Temporary registration plates must be issued

in the order they are received from the Department of Motor Vehicles. The entire number received on any application should be issued and copies of the temporary registration certificates submitted to the Department of Motor Vehicles.

4.6. Every dealer issuing temporary registration plates shall insert clearly and indelibly in the space provided on the temporary registration plates, the date of issuance, the date of expiration, the manufacturer's make, year, model and serial number of the vehicle for which the plate was issued. This information must be written with a magic marker or a similar type writing pen. Under no circumstances should a pencil be used to insert this information on the temporary plate.

4.7. The temporary registration certificate executed by the dealer when a temporary plate is issued to the purchaser, shall be made in triplicate. Each copy shall be clear and legible. The original shall go to the purchaser, the second copy shall be forwarded to the Department of Motor Vehicles within three (3) days from the date of issuance and the third copy shall be retained by the dealer for his record files of temporary registration plates issued. No application for temporary registration plates shall be honored by the Department of Motor Vehicles if the dealer has submitted temporary registration certificates to the Department of Motor Vehicles that are not legible.

4.8. Every dealer who has made application and received temporary registration plates shall maintain in permanent form of all temporary registration plates delivered to him by the Department of Motor Vehicles. A record of all temporary registration certificates issued by him shall be kept and maintained for a period of three (3) years from the date of issuance.

4.9. If the Department of Motor Vehicles' records of temporary registration certificates do not correspond with the number of certificates that the dealer application for temporary registration plates shows as issued from the last shipment received from the Department, no further temporary plates will be issued to the dealer until such certificates are submitted to the Department of Motor Vehicles.

4.10. A dealer shall not issue, assign, transfer or deliver a temporary registration plate or marker to anyone other than the bonafide purchaser of the

vehicle to be registered. The vehicle must have been purchased from the dealer issuing the temporary plate.

4.11. A dealer shall not lend to any person or use on any vehicle which he may own a temporary plate.

4.12. It shall be unlawful for any dealer to issue any temporary registration plate knowingly containing any misstatement of fact or knowingly to insert any false information upon the face thereof.

4.13. On and after January 1, 1968, no temporary plates or markers shall be issued to a dealer in house trailers only, and no such temporary plates shall be issued for or used on any house trailer for any purpose. However, a Class D-TR plate issued to a house trailer dealer may be used in moving a house trailer sold by a dealer to a customer for one (1) trip only from the house trailer dealer's established place of business to a location designated by such customer. Such D-TR plates cannot be used on any house trailer or other trailer owned by a dealer that is leased or operated for hire as provided in Chapter 17A, Article 6, Section 13B of the new dealer law.

4.14. If it is determined that the provisions of the Motor Vehicle Code and the Department's Regulations relative to temporary plated are not being complied with by a dealer, the Commissioner of the Department of Motor Vehicles may suspend the right of such dealer to issue temporary registration plates.

§91-6-5. Proper Execution Of Application For A Certificate Of Title For A Vehicle By A Licensed Dealer

5.1. Audits of dealer's sales records and applications for certificates of title executed by the dealers have revealed many irregular practices that are contrary to the provisions of the Motor Vehicle Code and the Department's Administrative Regulations. In many instances, such practices are designed to avoid the payment of taxes and fees that are rightfully due the state. The problem is such that it requires administrative regulations outlining the responsibility of a licensed dealer for the proper execution of an application for a certificate of title.

5.2. It is the sole responsibility of a licensed dealer in new motor vehicles to execute MVD Form No. 1, Application for a Certificate of Title for a Vehicle, in

every detail, where the information required is applicable to the sale. The name and address of the purchaser or applicant should be inserted in the proper space if only one (1) address is required by the purchaser. If the purchaser operates a business at a different location, then both addresses should be shown on the application.

5.3. In the space designated as "Description of Vehicle, Trailer, or Semi-Trailer," all information requested on lines one (1) and two (2) should be inserted therein by the dealer. In this section of the application where the weight of a passenger vehicle is required, the actual weight of the vehicle must be inserted in this space. In the event the actual weight cannot be determined from the manufacturer's invoice, the weight can be obtained from the manual that is furnished to every dealer by the manufacturer or the NADA official guide book. The weight shown in all of these documents is the basic shipping weight. If any additional equipment is installed on the vehicle by a dealer, the weight of such equipment shall be added to the basic shipping weight and should be the weight shown on the application for a certificate of title. If the vehicle is a truck, truck tractor, or trailer, the empty weight must be shown in pounds in the proper space provided on the application. If the application is for a truck or truck tractor, the gross vehicle weight should be shown in the space provided on the application. Also, the distance in feet between the first and last axles of the vehicle or combination of vehicles should be inserted in the space provided thereon, if such information can be obtained from the purchaser.

5.4. The purchase price of the vehicle should be inserted in the space provided on the application and, in all cases, should be the same price as shown on the dealer's sales instrument or invoice. The actual amount the dealer allowed the purchaser for a vehicle traded in should be inserted in the space provided on the application only when the vehicle traded in at the time of the sale was titled in this state in the purchaser's name. In all cases, the amount inserted therein should be the same as that shown on the dealer's sales instrument or invoice.

5.5. Purchasers having a certificate of title for a vehicle issued by a foreign jurisdiction and accepted by a dealer as a trade-in shall be shown as such on the dealer's sales instrument or invoice. However, no tax credit will be allowed for the trade-in unless such vehicle has been titled in this state in the purchaser's

name prior to being titled in such foreign jurisdiction in which the vehicle is now titled, and provided further, that the ownership by the purchaser must have been continuous since the original West Virginia certificate of title was issued.

5.6. Under no circumstances shall a dealer show a vehicle as a trade-in that was involved in an accident and the insurance company totaled the vehicle and paid a claim to the owner. When the claim was paid, the insurance company actually became the owner of the vehicle and no credit can be allowed as a trade-in. If it is determined that a dealer has allowed credit for a vehicle on which a claim had been paid, such dealer would be liable for the privilege tax allowed on the vehicle traded in.

5.7. In the event the vehicle traded in is titled in a foreign jurisdiction and has never been titled in this state in the purchaser's name, no trade-in should be shown on the application for a certificate of title and the word "None" shall be inserted in the space so provided. The privilege tax shall be assessed on the full purchase price of the new vehicle.

5.8. If a trade-in is allowed in accordance with the provisions of this administrative regulation, the actual amount allowed by the dealer shall be deducted from the purchase price and the difference shall be inserted in the net cost section as shown on the application for a certificate of title. The five percent (5%) privilege tax shall be assessed on the net cost of the vehicle purchased.

5.9. In the event no vehicle was traded in at the time of sale, the word "None" shall be inserted in the trade-in space provided on the application.

5.10. If a vehicle was traded in as provided in this administrative regulation, the information requested shall be inserted in the space designated as Description of Vehicle Traded In. If no vehicle was traded in, the word "None" shall be typed in the first section of this line.

5.11. If the purchaser desires to transfer or exchange a license plate, the information requested shall be inserted in the space designated as Registration Plates Transferred From. If there is no transfer or exchange of license, the word "None" shall be typed in the first section of this line.

5.12. In answer to the question "Has Your

Operator's, Chauffeur's or Vehicle License Been Revoked?", this should be "Yes" or "No" as the case may be.

5.13. If there is a lien to be recorded on the certificate of title, the information requested in the lien section of the application should be inserted therein. If no lien is to be recorded, the word "None" shall be typed in the first section of line one (1) in the first lien section of the application.

5.14. If the purchaser is an individual, the application must be signed by the purchaser which shall be same name that appears on line one (1) of the application. If the application for a certificate of title shows co-owners, then the application must be signed by all co-owners. If the application for certificate of title shows a business or trade name that is being operated as a partnership, such name must be typed on the first line of the signature section and signed by one of the partners. If the purchaser is a corporation, the name of the corporation must be typed on the first line of the signature section and signed by an officer of the corporation. In all cases, the signature of the person or persons signing the application must be acknowledged by a notary public.

5.15. The Dealer's Statement of Source of title for a New Vehicle should be executed properly in every detail. Under no circumstances should this section of the application be executed before all prior information requested on the application has been executed properly by the dealer or an employee authorized to execute the application for the dealer.

5.16. In certain sections of this administrative regulation, there is a requirement that the word "None" be inserted in certain spaces normally requiring specific information. It has been the practice of many dealers to leave these spaces blank if the sale of a vehicle did not require the information requested. By inserting the word "None" in these spaces, we hope it will be a deterrent for any person to insert spurious information in these spaces after the dealer has executed the application in accordance with this administrative regulation. If it is determined that the information inserted on an application for a certificate of title properly executed by a dealer has been altered or changed in any manner, it would be sufficient reason for the department to refuse the application as provided in Chapter 17A, Article 3, Section 7 of the Code.

5.17. Any dealer failing to execute an application for a certificate of title in accordance with this administrative regulation would be reason enough for the Department of Motor Vehicles to refuse the application as provided by statute.

5.18. With the exception of the description of the vehicle, the provisions of this administrative regulation would apply to individuals and all classes of dealers when transferring a certificate of title to a new owner.

5.19. The provisions of this administrative

regulation are authorized under Chapter 17A, Article 2, Section 12, which authorizes the Commissioner to prescribe forms to carry out the provisions of the code; Chapter 17A, Article 3, Section 4, which authorizes the Commissioner to require certain information on an application for a certificate of title; and Chapter 17A, Article 3, Section 7, which outlines grounds for refusing applications for a certificate of title and authorizes the department to require any additional information it may deem necessary to carry out the provisions of the Code entered as a Department Administrative Regulation this 31st day of January, 1973