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2002 MAY 20 P 3:19

Secretary of State's Office  
Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

*State of West Virginia*  
*Joe Manchin, III*  
*Secretary of State*

OFFICE WEST VIRGINIA  
SECRETARY OF STATE  
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May 3, 2002

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Motor Vehicles

RULE: 91CSR6, amendments, Motor Vehicle Dealers, Wrecker/Dismantler/  
Rebuilders & License Services, Auto Auctions, Vehicle Leasing, etc...

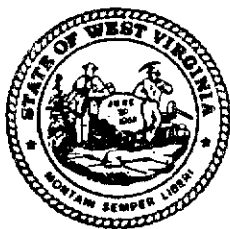
DATE FILED AS AN EMERGENCY RULE: April 18, 2002

DECISION NO. 7-02

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

  
JOE MANCHIN, III  
Secretary of State

SCANNED



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Charleston, WV 25305-0770

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EMERGENCY RULE DECISION  
(ERD 7-02)

AGENCY: Division of Motor Vehicles  
RULE: 91CSR6, Amendments, Motor Vehicle Dealers, Wrecker/Dismantler/  
Rebuilders & License Services, Auto Auctions, Vehicle Leasing, etc.  
FILED AS AN EMERGENCY RULE: April 18, 2002

- par. 1 The Division of Motor Vehicles (DMV) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 W. Va. Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The DMV filed this emergency rule with supporting documents with the Secretary of State April 18, 2002 and with the LRMRC April 18, 2002.

par. 7 It is the determination of the Secretary of State that the DMV has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- W. Va. Code §17A-2-9 reads in part:

*(b) The commissioner may adopt & enforce any rules that are necessary to carry out the provisions of this chapter & any other laws the enforcement & administration of which are vested in the department.*

par. 9 It is the determination of the Secretary of State that the DMV has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

*(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the DMV are as follows:

This emergency rule filing was recommended by the Motor Vehicle Dealer Advisory Board (WV Code §17A-6-18a) in order to prevent substantial harm to the public interest. Motor vehicle dealers have found themselves using more temporary license plates because of the creation of "super dealerships" acquiring & combining several small dealerships, but still limited in many cases to the original quantities of temporary license plates available to one dealership. Under the present restricted quantities, dealers have found themselves with 50 plates on hand on a Friday afternoon, (too many to request an additional supply) but running out of plates by Saturday afternoon.

The lack of temporary plates results in sale transaction delays that may cause the loss of potential customers to a competing dealership. Sometimes this competition is located out of state resulting in a sale lost to a business in another state.

The promulgation of this rule on an emergency basis is necessary to prevent substantial harm to the public interest, that public interest being borne by dealers is solely the result of DMV procedures that have not kept pace with the changing

nature of the motor vehicle retailing business. This rule updates those procedures pending the promulgation of a replacement permanent rule.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "to prevent substantial harm to the public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 7-02 or ERD 7-02 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Motor Vehicles, the Attorney General and the Legislative Rule Making Review Committee.

  
\_\_\_\_\_  
JOE MANCHIN, III  
Secretary of State

Entered \_\_\_\_\_



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

1800 Kanawha Boulevard East • Building Three  
Charleston, West Virginia 25317-0010

Bob Wise  
Governor

Fred VanKirk, P. E.  
Secretary

Roger Pritt  
Commissioner

April 22, 2002

The Honorable Joe Manchin  
Secretary of State  
State Capitol Building  
Charleston, WV 25305

Dear Mr. Secretary:

Thank you for the opportunity to provide additional information concerning the importance of emergency rule-making related to increasing the number of temporary registration plates available to motor vehicle dealers.

This emergency rule increases the number of temporary registration plates that may be issued to dealers regulated and licensed by the Division of Motor Vehicles. The current rule limits the quantity of temporary license plates that may be issued to dealers to 200 plates. The current rule also stipulates that no additional temporary registration plates may be issued if the dealer has 50 or more license plates on hand. This rule will increase the issuance quantity of temporary registration plates to dealers to 400 and increase the reorder threshold to 100.

Temporary registration plates are cardboard indices of registration valid for a maximum period of sixty days, issued by dealers to customers who do not have regular permanent registration plates available to transfer to a newly purchased motor vehicle. The Division of Motor Vehicles tightly monitors the issuance and use of these documents through strict application and accounting procedures. Dealers are required to account for each issued plate and are subject to field audits as well. Dealers pay in advance, for a block of consecutively numbered plates at a fee of \$3.00 for each plate.

This emergency rule filing was recommended by the Motor Vehicle Dealer Advisory Board in order to prevent substantial harm to the public interest. The Motor Vehicle Dealer Advisory Board, consisting of persons appointed by the Governor to represent various types of dealers, consumer protection interests and the Attorney General, is a statutory body (W. Va. Code §17A-6-18a) created to:

*...advise the Commissioner on the administration of laws regulating the motor vehicle industry, to work with the Commissioner in developing new laws, rules or policies regarding the motor vehicle industry and to give the*

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2002 APR 22 PM 3:07  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

The Honorable Joe Manchin

April 22, 2002

Page 2

*Commissioner such further advise and assistance as he or she may from time to time require.*

Motor vehicle dealers have found themselves using more temporary registration plates over shorter periods of time. The creation of "super dealerships" through the acquisition and combining of several small dealerships, have created situations where these large volume dealerships are selling many more vehicles but still limited in many cases to the original quantities of temporary license plates available to one dealership. Marketing practices of dealers have also changed, resulting in sales of over 200 vehicles over a weekend sale event. Recent manufacturer incentives and reduced interest rate programs have also changed the nature of motor vehicle sales patterns. Under the present overly restricted quantities, dealers have found themselves with 50 plates on hand on a Friday afternoon, (too many to request an additional supply under current rule) but running out of plates by Saturday afternoon.

The lack of these temporary registration plates causes dealerships to lose sales to competing dealerships under certain circumstances. Sometimes this competition is located out of state resulting in sales lost to an out of state business which does not pay West Virginia business taxes. These lost sales constitute reduced business and occupation taxes and directly affect the local economy. Over fifty-five percent of motor vehicle dealers are located in our border counties.

The promulgation of this rule on an emergency basis is necessary to prevent substantial harm to the public interest, that public interest being the economic wellbeing of motor vehicle dealers which constitute a substantial employer and taxpayer in many areas of this state. The current economic hardship being borne by dealers is solely the result of DMV procedures that have not kept pace with the changing nature of the motor vehicle retailing business. This rule updates those procedures pending the promulgation of a replacement permanent rule.

Thank you for your consideration of this request for promulgation of an emergency rule in this situation. Your approval will allow the Division of Motor Vehicles to immediately alleviate the current adverse situation.

Sincerely



Roger Pritt  
Commissioner

Cc: Motor Vehicle Dealer Advisory Board  
Jill Bissett, DMV General Counsel  
Ruth Lemmon, WV Automobile and Truck Dealers Association

facsimile  
TRANSMITTAL

WEST VIRGINIA DIVISION OF MOTOR VEHICLES  
OFFICE OF THE COMMISSIONER  
1800 Kanawha Boulevard East - Building Three - Room 113  
Charleston, West Virginia 25317-0010  
304-558-2723  
304-558-1987 FAX

TO: The Honorable Joe Manchin

Organization: Secretary of State

Fax: 558-0900

Phone: \_\_\_\_\_

From: Roger Pratt

Date: \_\_\_\_\_

Subject: Rs: Emergency Rule Filing

Pages Including Cover Sheet: \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

**Division of Motor Vehicles**

1800 Kanawha Boulevard East • Building Three  
Charleston, West Virginia 25317-0010

Bob Wise  
Governor

Fred VanKirk, P. E.  
Secretary

Summary of Rule and Circumstances of Emergency Filing

91 CSR 6

Roger Pritt  
Commissioner

**Motor Vehicle Dealers, Wrecker/Dismantler/Rebuilders and License Services, Automobile Auctions, Vehicle Leasing Companies, Daily Passenger Rental Car Businesses and Administrative Due Process**

Summary of Content

This emergency rule increases the number of temporary registration plates that may be issued to dealers regulated and licensed by the Division of Motor Vehicles. The current rule limits the quantity of temporary license plates that may be issued to dealers to 200 plates. The current rule also stipulates that no additional temporary license plates may be issued if the dealer has 50 or more license plates on hand. This rule will increase the issuance quantity of temporary registration plates to dealers to 400 and increase the reorder threshold to 100.

Statement of Circumstances Constituting Emergency

This emergency rule filing was recommended by the Motor Vehicle Dealer Advisory Board (WV Code §17A-6-18a) in order to prevent substantial harm to the public interest. Motor vehicle dealers have found themselves using more temporary license plates because of the creation of "super dealerships" acquiring and combining several small dealerships, but still limited in many cases to the original quantities of temporary license plates available to one dealership. Under the present restricted quantities, dealers have found themselves with 50 plates on hand on a Friday afternoon, (too many to request an additional supply) but running out of plates by Saturday afternoon.

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\_\_\_\_\_  
Roger Pritt  
Commissioner





WEST VIRGINIA DEPARTMENT OF TRANSPORTATION  
**Division of Motor Vehicles**

1800 Kanawha Boulevard East • Building Three  
Charleston, West Virginia 25317-0010

Bob Wise  
Governor

Fred VanKirk, P. E.  
Secretary

Roger Pritt  
Commissioner

April 22, 2002

The Honorable Joe Manchin  
Secretary of State  
State Capitol Building  
Charleston, WV 25305

STATE OF WEST VIRGINIA  
SECRETARY OF STATE

2002 APR 22 P 3:56

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Dear Mr. Secretary:

Thank you for the opportunity to provide additional information concerning the importance of emergency rule-making related to increasing the number of temporary registration plates available to motor vehicle dealers.

This emergency rule increases the number of temporary registration plates that may be issued to dealers regulated and licensed by the Division of Motor Vehicles. The current rule limits the quantity of temporary license plates that may be issued to dealers to 200 plates. The current rule also stipulates that no additional temporary registration plates may be issued if the dealer has 50 or more license plates on hand. This rule will increase the issuance quantity of temporary registration plates to dealers to 400 and increase the reorder threshold to 100.

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The Honorable Joe Manchin

April 22, 2002

Page 2

*Commissioner such further advise and assistance as he or she may from time to time require.*

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Thank you for your consideration of this request for promulgation of an emergency rule in this situation. Your approval will allow the Division of Motor Vehicles to immediately alleviate the current adverse situation.

Sincerely



Roger Pritt  
Commissioner

Cc: Motor Vehicle Dealer Advisory Board  
Jill Bissett, DMV General Counsel  
Ruth Lemmon, WV Automobile and Truck Dealers Association



**WEST VIRGINIA DEPARTMENT OF TRANSPORTATION  
Division of Motor Vehicles**

1800 Kanawha Boulevard East • Building Three  
Charleston, West Virginia 25317-0010

Bob Wise  
Governor

Fred VunKirk, P. E.  
Secretary

March 8, 2002

Roger Pritt  
Commissioner

Ramey Motors, Inc.  
P.O. Box 1755  
Princeton, WV 24740

Re: Temporary Plates

Dear Mr. Gande:

I have received your letter of March 5, 2002 regarding the request for additional temporary plates due to the new locations.

Please be advised we are unable to process any request for more plates. Current Legislative Rules 91CSR6 Rules sections 2.14.2 and 2.14.4 state that licensees may apply for a maximum of two hundred plates at one time and the Division shall not issue any additional plates to the licensee if the dealership has more than fifty on hand.

The Division is aware of the imposition these rules have placed upon dealerships and I will be making recommendations to update and change the requirements.

If you have any questions, please feel free to contact me at 304-558-3584.

Sincerely,

*Michael Griffin*  
Michael Griffin  
Manager Dealer Services

2002 MAY 20 A 9:19  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

1800 Kanawha Boulevard East • Building Three  
Charleston, West Virginia 25317-0010

Bob Wise  
Governor

Fred VanKirk, P. E.  
Secretary

Roger Pritt  
Commissioner

May 10, 2002

Ramey Motors, Inc.  
P.O. Box 1755  
Princeton, WV 24740

Re: Temporary Plates

Dear Mr. Gandee;

Please be advised that the additional plates issued to your dealership on May 8, 2002 were processed in error. Although it was our mistake, do not construe this incident as a change in policy regarding the issuance of temporary plates.

Enclosed you will find a copy of my previous letter I had forwarded to your attention regarding this same issue.

If you have any questions, please feel free to contact me at 304-558-3584.

Sincerely,

*Michael Griffin*  
Michael Griffin  
Manager Dealer Services

2002 MAY 20 2:09:19  
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SECRETARY STATE

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# RAMEY MOTORS, INC.

P.O. Box 1755

Princeton, WV 24740

Telephone 425-2134 327-2418



SUBARU

May 16, 2002

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

2002 MAY 23 A 9:48

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Mr. Joe Manchin  
West Virginia Secretary of State  
Building 1 Suite 157-K  
1900 Kanawha Blvd. E  
Charleston, WV 25305-0770

Dear Mr. Manchin:

I'm in need of your help to insure that Ramey Motors and the State of West Virginia does not lose money to the State of Virginia.

As you are probably aware, the Department of Motor Vehicles limits the number of temporary tags issued to a motor vehicle dealer to 250 at any one time and will not reissue another 250 until a dealer has issued 200 of these, leaving only 50 available to be used.

Our problem is that we operate ten (10) locations throughout Southern West Virginia and at times on Fridays we have not reached the reorder level and go into a weekend with only 51 or 52 temporary tags available. As you can see, that's only 5 tags per lot and on an average weekend we will sell 75-100 vehicles. This means not only do we have to try and figure out which lots are going to sell what, but also at times we will completely run out of tags.

When we do run out, it basically means we cannot sell vehicles not only for the remainder of the weekend, but also most of the day on Monday while we send a driver to Charleston to pick up Temporary tags.

Several times we have lost sales to our competitors not only in West Virginia, but also Virginia because the customer would not wait until we could issue a tag. I hate losing sales to anyone but I would think the State of West Virginia would not want West Virginia customer going to Virginia.

I would propose the limit be raised to 400 tags and reorder at 100. Thanks for any help you can provide.

Roger Gandee  
General Manager



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

1800 Kanawha Boulevard East • Building Three  
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Roger Pritt  
Commissioner

April 22, 2002

The Honorable Joe Manchin  
Secretary of State  
State Capitol Building  
Charleston, WV 25305

Dear Mr. Secretary:

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2002 APR 22 8:57  
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SECRETARY OF STATE

The Honorable Joe Manchin

April 22, 2002

Page 2

*Commissioner such further advise and assistance as he or she may from time to time require.*

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Thank you for your consideration of this request for promulgation of an emergency rule in this situation. Your approval will allow the Division of Motor Vehicles to immediately alleviate the current adverse situation.

Sincerely



Roger Pritt  
Commissioner

Cc: Motor Vehicle Dealer Advisory Board  
Jill Bissett, DMV General Counsel  
Ruth Lemmon, WV Automobile and Truck Dealers Association