

West Virginia Automobile Dealers Association



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July 23, 2021

To: Division of Motor Vehicles

Attention: Adam Holley, Deputy Commissioner

Re: Comments for 91 CSR 6 Dealer Licensing Rule

Via: Email – adam.holley@wv.gov

First, thank you for the opportunity to allow the West Virginia Automobile Dealers Association (WVADA) the ability to comment on 91 CSR 6, the Dealer Licensing Rule. WVADA represents all new car franchise dealers and some used dealers throughout WV.

Let me start off by saying I appreciate the effort to try and re-organize this rule, but I think the reorganization has made it difficult to understand. Specifically, under §91-5-5. Dealership Premises. It appears that the rule continues to build on basic requirements, then certain Class DUC requirements, then Class D requirements. I believe this makes it very difficult for dealers or the general public to be able to read and understand this rule. This issue arises on page 22, 5.1; and page 24, section 5.3.

Also, I understand that current statute, §17A-6-1 Established Place of Business, states a lot of what you have in this rule; however, I do not see the need to repeat current statute, especially if current code is amended then making 91 CSR 6 outdated.

WVADA Requested Changes:

- Page 1, section 2.1, states:
2.1 "Class D" refers to a dealership in the business of selling new motor vehicles.

We would suggest including the following language so the sentence would read:

2.1 "Class D" refers to a dealership in the business of selling and leasing new and used motor vehicles.

RESPONSE: The Division agrees to adopt this change.

- Page 1, under the definitions section, there are definitions for Class DTR, DRV, F, and WDR, however, there are sections that outline the requirements for the certain classes.
- Page 2, section 3.1. the last sentenced states:

An inspection of the proposed location will be performed and any other investigation the **commissioner considers necessary** before a license will be approved.

We would suggest striking the language after the word “performed” and inserting “to determine if the location meets the requirements herein”

We worry that language that states “commissioner considers necessary” is extremely broad and worrisome.

The sentence would read as follows:

An inspection of the proposed location will be performed to determine if the location meets the requirements herein.

RESPONSE: The Division agrees to rewording this section, however this language is in W. Va. Code § 17A-6-4(g) and it furthers the legislative public policy set forth in W. Va. Code § 17A-6-2.

- Page 2, section 3.2. states:
3.2. If an applicant wishes to engage in more than one class of dealership, a separate license certificate must be obtained for each type of dealership and **no more than one type of dealership may exist on the same physical premises.**

However, section 3.2 is contradicted on page 23, section 5.2.i. which states: 5.2.i. If licensee also possesses a Class DTR or F license, house trailers, trailers or motorcycles maybe sold on the same premises.

In regard to new car dealers, manufacturer agreements are very specific as to what a dealer is allowed to have on their lot in addition to their franchise brand. I believe that it should be up to the individual dealer and their manufacturer as to what all types of dealerships may exist on the same physical premise.

RESPONSE: The Division agrees to adopt this change.

- On page 18, section 4.6.1 allows the DMV Commissioner to grant authority for license services to be able to issue temporary plates. We applaud this decision and feel like it is a good change.
- Page 22, section 5.1.b and 5.1.c states:
5.1.b Easily accessible to the public and free of items or conditions that would pose a hazard to the public;
5.1.c. In compliance with all state laws and municipal ordinances;

We would suggest combining 5.1.b and 5.1.c and adding language that would read as follows:

5.1.b Easily accessible to the public and in compliance with all state laws and municipal ordinances;

We believe that language regarding “free of items or conditions that would pose a hazard to the public” is very vague and unnecessary language. I would imagine that a place of business would keep their premises free of “hazardous issues” if they wanted to continue to stay in business. The general public would NOT choose to purchase a vehicle from a dealer if they believed the premise(s) to be hazardous.

In addition, this language also appears on page 23, in section 5.2.p. and page 25 section 5.3.17.

RESPONSE: The Division agrees to adopt this proposal.

- On page 22, section 5.1.d. states:
5.1.d Have a permanent sign which clearly states the nature of the business conducted on that site with letters at four (4) inches high and clearly visible from the nearest principle street or roadway; and

We have dealers that transfer ownership or build new facilities and utilize a temporary sign while the permanent sign is being constructed. Also, to mandate that something must be clearly visible from the nearest street seems to be an overreach. I would think that most business owners would place their sign in an obvious visible manner for the public to see.

RESPONSE: The Division does not object to this change, but notes this language exists in statute at W. Va. Code § 17A-6-1(17).

- Page, 22 section 5.1.e state:
5.1.e. Have adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on the business and in such a way as to be available for inspections by the commissioner at all reasonable times.

Several dealers now maintain their records electronically. We would suggest adding language that allows for dealers to keep documents either on site or electronically.

RESPONSE: The DMV agrees to adopt this proposal.

- Page 22, section 5.2.b states:
5.2.b. Space and facilities adequate to service and repair in keeping with all representations, warranties and agreements made by the dealer to the buyer of at least one motor vehicle at a time;

Several dealers contract with local mechanics for service. We would suggest incorporating language from page 23, section 5.2.h. This will clarify that dealers have the authority to contract with an off-site service facility if they so choose. This issue also arises on page 24, section 5.3.9

RESPONSE: The Division does not object to this change, but notes this language exists in statute at W. Va. Code § 17A-6-1(17).

- On page 23, section 5.2.d states:
5.2.d. Office space of at least one hundred forty-four (144) square feet with a desk, chair, computer, and filing cabinet, and chair, electricity, heat, and telephone and internet services, however, a dealership located in an area that does not have reliable internet service available will not be penalized for failing to have internet service;

This seems to be an overreach. Again, the general public can choose what dealership they purchase vehicles from. If a dealership does not have a file cabinet or desk chair that does not harm the public in any way.

RESPONSE: The Division does not object to this change, but notes this language exists in the current rule at 91 W. Va. Code St. R. §6.2.4.

- On page 23, section 5.2.l states:
5.2.l. A residential unit with a separate entrance and occupied by one who has no financial interest in the business may be on the premises if the dealership has space under roof for the display of at least three motor vehicles and facilities and space therewith for the concurrent servicing and repair of at least two (2) motor vehicles.

This states that a dealer could potentially rent out the upstairs of their dealership, but they themselves could not live there. This is extremely specific. I realize that this language is in current code under §17A-6-1 under “Established Place of Business”; however, this needs to be cleaned up in statute and I would recommend removing this language from the rule.

RESPONSE: The Division does not object to this change, but notes this language exists in the current rule at 91 W. Va. Code St. R. §6.2.4.

- On page 23, section 5.2.m states:
5.2.m. The license certificate, insurance certificate, and surety bond shall be **prominently** displayed in the dealership office.

Prominently could be defined differently by different DMV inspectors. We would suggest removing the word “prominently”. This same language also appears on page 25, section 5.3.14.

RESPONSE: The Division agrees to reword this provision by removing “prominently” and add “in a manner that is plainly visible to the public” at the end of the sentence.

- On page 23, section 5.2.o states:
5.2.o. The display area shall have a covering of concrete, blacktop, gravel **or other type material** making it suitable for vehicle display under all weather conditions.

“Other type of material” is broad. There are some dealers that have grass and sand displays for their vehicles. We would suggest removing section 5.2.o in its entirety. Again, if a dealership has

an all dirt lot, it would be the conscious decision of the consumer to visit the dirt lot if it was raining and muddy. This language also appears on page 25, section 5.3.16.

RESPONSE: The Division does not object to this change, but notes this language exists in the current rule at 91 W. Va. Code St. R. §6.2.4.

- On page 24, section 5.2.t. states:
5.2.t. A licensee may obtain a permit to display and sell motor vehicles off premises and may only display and sell motor vehicles off premises with such a permit.

Language that pertains to off site permits is struck on page 3, section 2.3. I was informed by the DMV that that was a mistake and that language would be coming back into the rule. Currently, the rule that is in place states that an off-premise permit is good for 10 days and may not be issues more than 4 times a year.

If that language is coming back into the promulgated rule, we would request that an off-premise permit be good for 10 business days and may not be issued more than 8 times a year. A dealer's manufacturer generally lays out the requirements as to where a dealer is allowed to have an off-site temporary sale based on the dealer's market share area.

The stricken language would also need to be incorporated in on page 25, sections 5.3.20 and 5.3.21.

RESPONSE: The Division agrees to adopt this change.

- On page 24, section 5.3.2. states:
5.3.2. Must have space under roof for the display of at least one (1) new motor vehicle;

Manufacturers require dealers to build facilities to certain specs. I realize that this language currently exists in §17A-6-1, however we do not believe it is needed in this rule and hope to change this requirement in current code. For example, we currently have a dealer that has had to maneuver through red tape in order to establish a car buying center. This center does not sell vehicles to consumers, only purchases vehicles from consumers. The buying center should not have to meet the requirement of being able to have space for 1 motor vehicle to be displayed inside.

RESPONSE: The Division does not object to this change, but notes this language exists in the current rule at 91 W. Va. Code St. R. §6.2.4.

- On page 24, section 5.3.3. states:
5.3.3. Space and facilities adequate to service and repair in keeping with all representations, warranties and agreements made by the dealer to the buyer of at least one motor vehicle at a time;

We believe there are some words missing in this sentence. Not sure what this means or what the DMV is stating.

RESPONSE: The Division does not object to this change, but notes this language exists in the current rule at 91 W. Va. Code St. R. §6.2.4.

- On page 24, section 5.3.4 states:
5.3.4. A display area, outside or inside, or a combination thereof, of at least one thousand two hundred (1,200) square feet to be used exclusively for the display of vehicles offered for sale by licensee;

Again, this is an overreach and dealers must abide by the manufacturer requirements in their dealer/manufacturer agreement. We do not believe this section is necessary and should be eliminated in its entirety. Furthermore, within practically every showroom in a new motor vehicle dealer's premises is a showroom that contain tables and chairs for customers and salespersons, and offices to conduct business with the buying public. Consequently, it does not comport with the reality of business.

RESPONSE: The Division does not object to this change, but notes this language exists in the current rule at 91 W. Va. Code St. R. §6.2.4.

- On page 24, section 5.3.5. states:
5.3.5. Office space of at least one hundred forty-four (144) square feet with a desk, chair, computer, and filing cabinet, and chair, electricity, heat, and internet and telephone service;

If a dealership does not have a file cabinet or desk chair that does not harm the public in any way. We do not believe there should be such specific requirements regarding a dealer's office space.

RESPONSE: The Division does not object to this change, but notes this language exists in the current rule at 91 W. Va. Code St. R. §6.2.4.

- On page 24 and 25, section 5.3.13 states:
5.3.13. A residential unit with a separate entrance and occupied by one who has no financial interest in the business may be on the premises if the dealership has space under roof for the display of at least three motor vehicles and facilities and space therewith for the concurrent servicing and repair of at least two (2) motor vehicles.

We echo the same concerns as previously mentioned on page 23, section 5.2.I. A dealership is required to have 2 service bays and 3 vehicles in their showroom before they can rent out the upstairs. Again, I realize that this language is in current code under §17A-6-1 under "Established Place of Business"; however, this needs to be cleaned up in statute and I would recommend removing this language from the rule.

RESPONSE: The Division does not object to this change, but notes this language exists in the statute at W. Va. Code § 17A-6-1(17).

- On page 25, section 5.3.18 states:
5.3.18. If a licensee fails to maintain posted hours of operation on a regular basis thereby preventing the division from inspecting their records, and is not reachable by telephone, and fails to maintain they display lot and place of business in such a way that by all appearances the business is not active, it shall be considered abandoned and the license certificate may be revoked.

We do not believe this would be an issue for our members, however this seems harsh and the DMV should remove this from the rule.

RESPONSE: The Division agrees to rewrite this provision to say, “The division may cancel or revoke the license of any licensee that abandons the place of business. There is a rebuttable presumption that the licensee has abandoned the place of business if the dealership is regularly closed during the posted hours of operation thereby preventing the division from inspecting their records, the licensee is not reachable by telephone, the display lot and place of business are not maintained in such a way that by all appearances the business is not active.”

- On page 25, section 6.3 states:
6.3. Failure to properly affix the stickers described above will result in a citation upon a first offense, and if the sticker is not properly affixed to the plate(s) within ten (10) days, may result in additional action in accordance with W.Va. Code §17A-6-18.

There was some delay this year with the DMV sending stickers to dealers. We would recommend adding language that gives the dealer 10 days to affix stickers to the plates upon receipt of receiving the stickers from the DMV.

RESPONSE: The Division agrees to adopt this change.

- On page 27, sections 8.1, 8.2, 8.3 and 8.4 reflect the old method for temporary registration plates. All dealers are now required to print temporary plates and the information for these temp plates is kept electronically. These sections need to be removed.

RESPONSE: The Division agrees to adopt this change.

- On page 27, section 8.8 states:
8.8. The licensee shall not issue a second temporary registration plate on a vehicle previously assigned a West Virginia temporary registration plate. A licensee shall not extend the time for which a temporary plate is valid.

Sometimes it is necessary for a dealership to have to assign a second temporary registration plate for one reason or another. We suggest adding language to allow for dealerships to be able to extend a temporary plate for certain reasons.

RESPONSE: The Division objects to this proposal because it is contrary to W. Va. Code § 17A-6-16(g), and it would thwart the legislative public policy set forth in W. Va. Code § 17A-6-2.

- On page 27, section 8.9 states:
8.9. The licensee shall not issue a temporary registration plate containing any misstatement of fact.

We suggest inserting the word “intentionally” after the word not to read:

8.9. The licensee shall not **intentionally** issue a temporary registration plate containing any misstatement of fact.

RESPONSE: The Division agrees to adopt this change.

- On page 28, section §91-6-9 Dealer Franchise Agreement states:
§ 91-6-9. Dealer Franchise Agreement.

9.1. Each licensee conducting a business in new motor vehicles or house trailers shall obtain a franchise from the manufacturer to sell a particular brand of motor vehicle or house trailer.

9.2. The licensee shall submit on any original or renewal application, or upon the request of the Division, a copy of the franchise or sales agreement the licensee has with the manufacturer.

This requirement is one of our larger concerns and it is not in statute and we do not believe it should be in this rule. We request that this section is removed in its entirety. These agreements contain sensitive and confidential information that should not be shared with the DMV. This information should only be shared with the manufacturer and a specific dealer.

RESPONSE: The Division objects to the removal of this section. This language exists in the current rule. In 1982, the West Virginia Legislature found it necessary to protect independent motor vehicle dealers from manufacturers in W. Va. Code § 17A-6A-1 et seq. One of those protections include prohibitions against a manufacturer owning or operating a dealership found at W. Va. Code § 17A-6A-10(i). If the Legislature expects that manufacturers not be able to sell vehicles directly to the public, it should be incumbent on the applicant to show eligibility for a Class D license.

- On page 36, section §91-6-15 states:
§ 91-6-15. Dealer Conduct on Division Premises and Engaging with Division Employees.

15.1. Every motor vehicle dealer and employee therefor, shall conduct themselves in a professional manner on division premises and shall treat division employees, including field inspectors, with professional courtesy and respect.

15.2. Any motor vehicle dealer, or employee thereof, who intentionally disrupts the peaceful conduct of division business in any way, or verbally abuses a division employee, including shouting, cursing, name-calling, or in any other way harasses a division employee, shall be refused service and may also be banned from division premises, have his or her dealership license suspended or revoked and be levied civil penalties, at the discretion of the commissioner.

We believe that this section is not needed. Upon completion of the rule-making and legislative process a final file rule has the force and effect of law. We do not believe this to be appropriate or good policy; however, I would defer to the elected officials in regard to this suggested language.

RESPONSE: The Division objects to removing this language. While we agree this language should not be necessary, unfortunately indecorous acts are prevalent in all levels of society. Civil servants should not be subjected to abuse and harassment simply because a licensee objects to the regulation. The Division proposes adding this language because of actual incidents in the recent years.

Again, thank you for allowing WVADA the opportunity to comment on this rule. I am happy to further discuss should you have any questions or concerns.

Sincerely,

Jared Wyrick, President WVADA