

Auto Industry Division

State and Federal Statutes & Regulations related to the Auto Industry and Mastery Exam Study Guide



*****DISCLAIMER*****

This document has been created as a study guide for the “Mastery Exam” as referenced in C.R.S. 44-20-116 and C.R.S. 44-20-415. The Colorado Department of Revenue Auto Industry Division (AID) has made every effort to verify the accuracy of the information contained within this document as of **March 29, 2022**; however, the information contained within this document may be out of date. For the most current information please refer to <http://leg.colorado.gov/laws> for the most current Colorado Statutes and <https://www.sos.state.co.us/CCR/Welcome.do> for the most current Colorado Regulations. Unless otherwise noted the Colorado Regulations listed in this document refer to 1 CCR 205-1 for Part 1 (Motor Vehicles) and 1 CCR 205-2 for Part 4 (Powersports). Please refer to <https://www.usa.gov/laws-and-regs> for Federal Statutes and Regulations.

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Article 20. Sale Of Self-Propelled Vehicles

Part 1. Motor Vehicle Dealers

44-20-101. Legislative declaration

(1) The general assembly hereby declares that:

- (a) The sale and distribution of motor vehicles affects the public interest, and a significant factor of inducement in making a sale of a motor vehicle is the trust and confidence of the purchaser in the retail dealer from whom the purchase is made and the expectancy that the dealer will remain in business to provide service for the motor vehicle purchased;
- (b) Proper motor vehicle service is important to highway safety and the manufacturers and distributors of motor vehicles have an obligation to the public not to terminate or refuse to continue their franchise agreements with retail dealers unless the manufacturer or distributor has first established good cause for termination or noncontinuance of the agreement, to the end that there shall be no diminution of locally available service;
- (c) The licensing and supervision of motor vehicle dealers by the motor vehicle dealer board are necessary for the protection of consumers, and therefore, the sale of motor vehicles by unlicensed dealers or salespersons, or by licensed dealers or salespersons who have demonstrated unfitness, should be prevented;
- (d) Consumer education concerning the rules of the motor vehicle industry, the considerations when purchasing a motor vehicle, and the role, functions, and actions of the motor vehicle dealer board are necessary for the protection of the public and for maintaining the trust and confidence of the public in the motor vehicle dealer board; and
- (e) Subject to the United States constitution and the Colorado constitution, this article 20 applies to each sales, service, and parts agreement in effect, regardless of when the agreement was adopted.

44-20-102. Definitions

As used in this part 1, and in part 4 of this article 20, unless the context or section 44-20-402 otherwise requires:

- (1) "Advertise" or "advertisement" means any commercial message in any newspaper, magazine, leaflet, flyer, or catalog, on radio, television, or a public address system, in

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direct mail literature or other printed material, on any interior or exterior sign or display, in any window display, on a computer display, or in any point-of-transaction literature or price tag that is delivered or made available to a customer or prospective customer in any manner; except that the term does not include materials required to be displayed by federal or state law.

Regulation 44-20-102(1)

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

- (2) "Board" means the motor vehicle dealer board.
- (3) "Business incidental thereto" means a business owned by the motor vehicle dealer or used motor vehicle dealer related to the sale of motor vehicles, including motor vehicle part sales, motor vehicle repair, motor vehicle recycling, motor vehicle security interest assignment, and motor vehicle towing.
- (4)
 - (a) "Buyer agent" means any person required to be licensed pursuant to this part 1 who is retained or hired by a consumer for a fee or other thing of value to assist, represent, or act on behalf of the consumer in connection with the purchase or lease of a motor vehicle.
 - (b)
 - (I) "Buyer agent" does not include a person whose business includes the purchase of motor vehicles primarily for resale or lease; except that nothing in this subsection (4) prohibits a buyer agent from assisting a consumer regarding the disposal of a trade-in motor vehicle that is incident to the purchase or lease of a vehicle if the buyer agent does not advertise the sale of, or sell, the vehicle to the general public, directs interested dealers and wholesalers to communicate their offers directly to the consumer or to the consumer via the buyer agent, does not handle or transfer titles or funds between the consumer and the purchaser, receives no compensation from a dealer or wholesaler purchasing a consumer's vehicle, and identifies himself or herself as a buyer agent to dealers and wholesalers interested in the consumer's vehicle.
 - (II) A "buyer agent" licensed under this part 1 shall not be employed by or receive a fee from a person whose business includes the purchase of motor vehicles primarily for resale or lease, a motor vehicle manufacturer, a motor vehicle dealer, or a used motor vehicle dealer.
- (5) "Coerce" means to compel or attempt to compel by threatening, retaliating, or exerting economic force or by not performing or complying with any terms or provisions of the franchise or agreement; except that recommendation, exposition, persuasion, urging, or argument do not constitute coercion.

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- (6) "Consumer" means a purchaser or lessee of a motor vehicle used for business, personal, family, or household purposes. "Consumer" does not include a purchaser of motor vehicles primarily for resale.
- (7)
 - (a) "Custom trailer" means any motor vehicle that is not driven or propelled by its own power and is designed to be attached to, become a part of, or be drawn by a motor vehicle and that is uniquely designed and manufactured for a specific purpose or customer.
 - (b) "Custom trailer" does not include manufactured housing, farm tractors, and other machines and tools used in the production, harvest, and care of farm products.
- (8) "Director" means the director of the auto industry division created in section 44-20-105.
- (9) "Distributor" means a person, resident or nonresident, who, in whole or in part, sells or distributes new motor vehicles to motor vehicle dealers or who maintains distributor representatives.
- (10) "Fire truck" means a vehicle intended for use in the extermination of fires, with features that may include a fire pump, a water tank, an aerial ladder, an elevated platform, or any combination thereof.
- (11) "Franchise" means the authority to sell or service and repair motor vehicles of a designated line-make granted through a sales, service, and parts agreement with a manufacturer, distributor, or manufacturer representative.
- (12) "Good faith" means the duty of each party to any franchise and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party. Recommendation, endorsement, exposition, persuasion, urging, or argument shall not be deemed to constitute a lack of good faith.
- (13) "Line-make" means a group or series of motor vehicles that have the same brand identification or brand name, based upon the manufacturer's trademark, trade name, or logo.
- (14) "Manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new and unused motor vehicles; except that "manufacturer" does not include:
 - (a) A person who only manufactures utility trailers that weigh less than two thousand pounds and does not manufacture any other type of motor vehicle; and
 - (b) A person, other than a manufacturer operating a motor vehicle dealer in accordance with section 44-20-126, who is a licensed dealer selling motor vehicles that the person has manufactured.

Regulation 44-20-102(14)

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

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

- (15) "Manufacturer representative" means a representative employed by a person who manufactures or assembles motor vehicles for the purpose of making or promoting the sale of its motor vehicles or for supervising or contacting its dealers or prospective dealers.
- (16) "Motor vehicle" means every vehicle intended primarily for use on the public highways that is self-propelled and every vehicle intended primarily for operation on the public highways that is not self-propelled but is designed to be attached to, become a part of, or be drawn by a self-propelled vehicle, not including farm tractors and other machines and tools used in the production, harvesting, and care of farm products. "Motor vehicle" includes a low-power scooter or auto cycle as either is defined in section 42-1-102.
- (17) "Motor vehicle auctioneer" means any person, not otherwise required to be licensed pursuant to this part 1, who is engaged in the business of offering to sell, or selling, used motor vehicles owned by persons other than the auctioneer at public auction only. Any auctioning of motor vehicles by an auctioneer must be incidental to the primary business of auctioning goods.
- (18) "Motor vehicle dealer" means a person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, leases, exchanges, rents with option to purchase, offers, or attempts to negotiate a sale, lease, or exchange of an interest in new or new and used motor vehicles or who is engaged wholly or in part in the business of selling or leasing new or new and used motor vehicles, whether or not the motor vehicles are owned by the person. The sale or lease of three or more new or new and used motor vehicles or the offering for sale or lease of more than three new or new and used motor vehicles at the same address or telephone number in any one calendar year is prima facie evidence that a person is engaged in the business of selling or leasing new or new and used motor vehicles. "Motor vehicle dealer" includes an owner of real property who allows more than three new or new and used motor vehicles to be offered for sale or lease on the property during one calendar year unless the property is leased to a licensed motor vehicle dealer. "Motor vehicle dealer" does not include:
 - (a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court;
 - (b) Public officers while performing their official duties;

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- (c) Employees of a motor vehicle dealer when engaged in the specific performance of their duties as employees;
- (d) A wholesaler or anyone selling motor vehicles solely to wholesalers;
- (e) Any person engaged in the selling of a fire truck; or
- (f) A motor vehicle auctioneer.

Regulation 44-20-102(18)

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

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

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

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

- (19) "Motor vehicle salesperson" means a natural person who, for a salary, commission, or compensation of any kind, is employed either directly or indirectly, regularly or occasionally, by a motor vehicle dealer or used motor vehicle dealer to sell, lease, purchase, or exchange or to negotiate for the sale, lease, purchase, or exchange of motor vehicles.
- (20) "New motor vehicle" means a motor vehicle that has been transferred on a manufacturer's statement of origin and that has sufficiently low mileage to be considered new, as determined by the board.

Regulation 44-20-102(20)

- 1. *This regulation applies solely to matters within the jurisdiction of the Motor Vehicle Dealer Board.*
- 2. *For all motor vehicles except those classified as a "motor home," as defined in section 24-32-902(7), C.R.S., a "new motor vehicle" is a motor vehicle that has been transferred on a manufacturer's statement of origin and has less than one thousand five hundred miles on its odometer.*
- 3. *For a motor vehicle classified as a "motor home," as defined in section 24-32-902(7), C.R.S., a "new motor vehicle" is a motor vehicle that has been transferred on a manufacturer's statement of origin and has less than five thousand miles on its odometer.*
- 4. *A "used motor vehicle" is a motor vehicle that is not a "new motor vehicle."*
- 5. *For purposes of this regulation, the following apply:*
 - a. *"manufacturer's statement of origin" includes "manufacturer's certificate of origin"; and,*

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- b. "transferred" includes an exchange of a motor vehicle by means of an appropriate written assignment of the manufacturer's statement of origin between two dealers enfranchised to sell the same make of vehicle.*
- (21) "Person" means any natural person, estate, trust, Limited Liability Company, partnership, association, corporation, or other legal entity, including a registered limited liability partnership.
- (22) "Principal place of business" means a site or location devoted exclusively to the business for which the motor vehicle dealer or used motor vehicle dealer is licensed, and businesses incidental thereto, sufficiently designated to admit of definite description, with adequate contiguous space to permit the display of one or more new or used motor vehicles, with a permanent enclosed building or structure large enough to accommodate the office of the dealer and to provide a safe place to keep the books and other records of the business of the dealer, at which site or location the principal portion of the dealer's business shall be conducted and the books and records thereof kept and maintained; except that a dealer may keep its books and records at an off-site location in Colorado after notifying the board in writing of the location at least thirty days in advance.

Regulation 44-20-102(22)

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

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

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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 trade name 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.

- (23) "Recreational vehicle" means a camping trailer, fifth wheel trailer, motor home, recreational park trailer, travel trailer, or truck camper, all as defined in section 24-32-902, or multipurpose trailer, as defined in section 42-1-102.
- (24) "Sales, service, and parts agreement" means an agreement between a manufacturer, distributor, or manufacturer representative and a motor vehicle or powersports dealer authorizing the dealer to sell and service a line-make of motor or powersports vehicles or imposing any duty on the dealer in consideration for the right to have or competitively operate a franchise, including any amendments or additional related agreements thereto. Each amendment, modification, or addendum that materially affects the rights, responsibilities, or obligations of the contracting parties creates a new sales, service, and parts agreement.
- (25) "Site control provision" means an agreement that applies to real property owned or leased by a franchisee and that gives a motor vehicle or powersports vehicle manufacturer, distributor, or manufacturer representative the right to:
 - (a) Control the use and development of the real property;
 - (b) Require the franchisee to establish or maintain an exclusive dealership facility at the real property; or
 - (c) Restrict the franchisee from transferring, selling, leasing, developing, or changing the use of the real property.
- (26) "Used motor vehicle dealer" means a person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, exchanges, leases, or offers an interest in used motor vehicles, or attempts to negotiate a sale, exchange, or lease of used motor vehicles, or who is engaged wholly or in part in the business of selling used motor vehicles, whether or not the motor vehicles are owned by the person. The sale of three or more used motor vehicles or the offering for sale of more than three used motor vehicles at the same address or telephone number in any one calendar year is prima facie evidence that a person is engaged in the business of selling used motor vehicles. "Used motor vehicle dealer" includes an owner of real property who allows more than three used motor vehicles to be offered for sale on the property during one calendar year unless the property is leased to a licensed used motor vehicle dealer. "Used motor vehicle dealer" does not include:
 - (a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court;

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- (b) Public officers while performing their official duties;
- (c) Employees of a used motor vehicle dealer when engaged in the specific performance of their duties as employees;
- (d) A wholesaler or anyone selling motor vehicles solely to wholesalers;
- (e) Mortgagees or secured parties as to sales in any one year of not more than twelve motor vehicles constituting collateral on a mortgage or security agreement, if the mortgagees or secured parties do not realize for their own account any money in excess of the outstanding balance secured by the mortgage or security agreement, plus costs of collection;
- (f) A person who only sells or exchanges no more than four motor vehicles that are collector's items under part 3 or 4 of article 12 of title 42;
- (g) A motor vehicle auctioneer; or
- (h) An operator, as defined in section 42-4-2102 (5), who sells a motor vehicle pursuant to section 42-4-2104.

Regulation 44-20-102(26)

See Regulation 44-20-102(18).

- (27) "Wholesale motor vehicle auction dealer" means a person or firm that provides auction services in wholesale transactions in which the purchasers are motor vehicle dealers licensed by this state or any other jurisdiction or in consumer transactions of government vehicles at a time and place that does not conflict with a wholesale motor vehicle auction conducted by that licensee.
- (28) "Wholesaler" means a person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, exchanges, or offers or attempts to negotiate a sale, lease, or exchange of an interest in new or new and used motor vehicles solely to motor vehicle dealers or used motor vehicle dealers.

Regulation 44-20-102(28) [Repealed eff. 12/15/18]

44-20-103. Motor vehicle dealer board – creation

- (1) There is hereby created and established the motor vehicle dealer board, consisting of nine members who have been residents of this state for at least five years, three of whom shall be licensed motor vehicle dealers, three of whom shall be licensed used motor vehicle dealers, and three of whom shall be members from the public at large. The members representing the public at large shall not have a present or past financial interest in a motor vehicle dealership. The terms of office of the board members shall be three years. Any vacancies shall be filled by appointment for the unexpired term.
- (2) All board members shall be appointed by the governor.

- (3) Each board member shall be reimbursed for actual and necessary expenses incurred while engaged in the discharge of official duties.

44-20-104. Board - oath - meetings - powers and duties – rules

- (1) Each member of the board, before entering on the discharge of the member's duties and within thirty days after the effective date of the member's appointment, shall subscribe an oath for the faithful performance of the member's duties before any officer authorized to administer oaths in this state and shall file the same with the secretary of state.
- (2) The board shall annually in the month of July elect from the membership thereof a president, a first vice-president, and a second vice-president. The board shall meet at such times as it deems necessary. A majority of the board shall constitute a quorum at any meeting or hearing.
- (3) The board is authorized and empowered:
 - (a) To promulgate, amend, and repeal rules reasonably necessary to implement this part 1, including the administration, enforcement, issuance, and denial of licenses to motor vehicle dealers, motor vehicle salespersons, used motor vehicle dealers, wholesale motor vehicle auction dealers, business disposers and wholesalers, and the laws of the state of Colorado;

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

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

- (b) To delegate to the board's executive secretary, employed pursuant to section 44-20-105(2)(b), the authority to execute all actions within the power of the board, carry out the directives of the board, and make recommendations to the board on all matters within the authority of the board;
- (c) To issue through the department a temporary license to any person applying for any license issued by the board. The temporary license shall permit the applicant to operate for a period not to exceed one hundred twenty days while the board is completing its investigation and determination of all facts relative to the qualifications of the applicant for the license. A temporary license is terminated when the applicant's license is issued or denied.
- (d)
 - (I) To issue through the department and, for reasonable cause shown or upon satisfactory proof of the unfitness of the applicant under standards established and set forth in this part 1, to refuse to issue to any applicant any license the board is authorized to issue by this part 1;
 - (II) To permit the executive director or the director to issue licenses pursuant to rules adopted by the board pursuant to subsection (3)(a) of this section;

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

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

- (e) (I) After due notice and a hearing, to review the findings of an administrative law judge or a hearing officer from a hearing conducted pursuant to this part 1 to revoke and suspend or to order the director to issue or to reinstate, on such terms and conditions and for such period of time as to the board appear fair and just, any license issued under this part 1. The board may direct a letter of admonition for minor violations or may issue a letter of reprimand to any licensee for a violation of this part 1. A letter of admonition does not become a part of the licensee's record with the board. A letter of reprimand is a part of the licensee's record with the board for a period of two years after issuance and may be considered in aggravation of any subsequent violation by the licensee. When a letter of reprimand is sent to a licensee of the board, the licensee shall be notified in writing regarding the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated against the licensee to adjudicate the propriety of the conduct upon which the letter of reprimand is based. If a request is made within the twenty-day period, the letter of reprimand is deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.
- (II) The findings of the board pursuant to subsection (3)(e)(I) of this section shall be final.

Regulation 44-20-104(3)(e)

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

- (f) (I) To investigate through the director, on its own motion or upon the written and signed complaint of any person, any suspected or alleged violation by a motor vehicle dealer, motor vehicle salesperson, used motor vehicle dealer, wholesale motor vehicle auction dealer, business disposer or wholesaler of any of the terms and provisions of this part 1 or of any rule promulgated by the board under the authority conferred upon it in this section. The board shall order an investigation of all written and signed complaints, may issue subpoenas, and may delegate the authority to issue

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subpoenas to the director, and the director shall make an investigation of all complaints transmitted by the board pursuant to section 44-20-105 (3). The board may seek to resolve disputes before beginning an investigation or hearing through its own action or by direction to the director.

Regulation 44-20-104(3)(f) Hearing Procedures

- (I) The board president will normally preside at hearings before the full board, or in the president's absence, such board member as may be designated by a majority of the board members present, may preside and conduct the hearing.*
- (II) The presiding officer shall rule on all evidentiary and procedural matters during the course of the hearing. Rulings on motions prior to or after the hearing, and the findings, conclusions, and order shall be determined by a majority of board members present. In the event a motion is filed requesting relief from a board order, the effects of which will occur prior to the next scheduled meeting of the board, the board president may rule on said motion, and the executive secretary shall issue the written order on behalf of the board. In the absence of the president, the first vice president or second vice president may rule on any motion.*
- (III) Prehearing discovery before a single hearing officer will normally be limited to the exchange of the name, address, and telephone number of witnesses expected to testify, a brief summary of their expected testimony, and documents intended to be introduced into evidence at hearing. The identity of witnesses and documents shall be provided by each party, and received by the other, not later than 9 calendar days prior to the hearing. Failure to comply may result, at the sole discretion of the hearing officer, in the exclusion of the witnesses and/or documents not disclosed. Any party may, at their own expense, interview identified witnesses prior to the hearing.*
- (IV) Discovery in hearings before the full board shall be governed by the provisions of section 44-20-122, C.R.S.*
- (V) An original and 10 copies of all documents intended to be introduced into evidence at hearings before the full board shall be provided for distribution to the board and the opposing party. Respondent's and applicant's exhibits shall be marked alphabetically. The Department of Revenue's exhibits shall be marked numerically. For hearings before a single board member, each party shall provide an original and copies for the opposing side and the hearing officer.*
- (VI) License applicants shall have the burden of proof to demonstrate to the board that they meet all the qualifications for licensure. If denied a license by the board, applicants shall have the burden of proof to demonstrate that the specific reasons given in the notice of denial, should not preclude the issuance of a license. Salesperson license applicants shall provide written proof that the employing dealer is aware of the grounds giving rise to the initial license denial, and, that said dealer shall be responsible for the actions of the salesperson in the course of employment in the event that a restricted license is approved by the board.*
- (VII) Motions shall be served on the board through its executive secretary with proof of service on the opposing party. Except in the most extraordinary circumstances, motions shall be filed not later than 30 calendar days prior to the hearing. A response to any motion shall*

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be filed within 5 business days of the filing of the initial motion. Failure to timely comply may result in the motion being denied. Motions will be considered by the board at its next opportunity. The pendency of motions shall not be cause to continue a scheduled hearing.

- (VIII) Continuances will not be granted unless timely filed and with good cause shown. Unreasonable delay in securing legal counsel or failing to timely exercise discovery rights may not constitute "good cause", except in the most extraordinary circumstances.*

Regulation 44-20-104(3)(f)(I) [Repealed eff. 11/14/18]

- (II)** After an investigation by the director or the director's designee, if the board determines that there is probable cause to believe a violation of this article 6 article 20 has occurred, it may order that an administrative hearing be held pursuant to section 24-4-105.

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

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

- (a)** *If the board does not find probable cause based upon its examination of the affidavit, the board shall do one of the following:*
- (1)** *suspend its consideration of the matter with a request to the division to bring the matter back to the board with additional information; or,*
 - (2)** *inform the division that the board declines to prosecute the case.*
- (b)** *If the board does find probable cause based upon its examination of the affidavit, it may:*
- (1)** *decline to prosecute the case; or,*
 - (2)** *prosecute the case in the appropriate venue as follows:*
 - (i)** *if the license class of the respondent is a salesperson, the board shall assign the executive director or his or her appointee to hear the case; or,*
 - (ii)** *if the license class of the respondent is other than a salesperson, the board shall assign the case for hearing either to the board, itself, or to the Office of Administrative Courts.*
- (c)** *Whenever the board has decided to prosecute the case, it shall do the following:*
- (1)** *turn the case over to the attorney general to begin prosecuting the case; or,*
 - (2)** *authorize the executive secretary to (i) attempt to negotiate a settlement of the case without a hearing and, (ii) if the settlement process is unsuccessful, turn the case over to the attorney general to begin prosecuting the case.*
- (d)** *Whether the board does or does not find probable cause based upon its examination of the affidavit, it may, if appropriate, refer the matter to another agency.*
- (g)** To summarily issue cease-and-desist orders on such terms and conditions and for such period of time as to the board appears fair and just to any person who is

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licensed by the board pursuant to this part 1 if the orders are followed by notice and a hearing pursuant to section 44-20-122;

- (h) To prescribe the forms to be used for applications for motor vehicle dealers', motor vehicle salespersons', used motor vehicle dealers', wholesale motor vehicle auction dealers', business disposal, and wholesalers' licenses to be issued and to require of the applicants, as a condition precedent to the issuance of the licenses, such information concerning their fitness to be licensed under this part 1 as it may consider necessary. Every application for a motor vehicle dealer's license or used motor vehicle dealer's license shall contain, in addition to such information as the board may require, a statement of the following facts:
 - (I) The name and residence address of the applicant and the trade name, if any, under which the applicant intends to conduct the applicant's business and, if the applicant is a copartnership, the name and residence address of each member thereof, whether a limited or general partner, and the name under which the partnership business is to be conducted and, if the applicant is a corporation, the name of the corporation and the name and address of each of its principal officers and directors;
 - (II) A complete description, including the city, town, or village, the street and number, if any, of the principal place of business, and such other and additional places of business as shall be operated and maintained by the applicant in conjunction with the principal place of business;
 - (III) If the application is for a motor vehicle dealer's license, the names of the new motor vehicles that the applicant has been enfranchised to sell or exchange and the name and address of the manufacturer or distributor who has enfranchised the applicant;
 - (IV) The names and addresses of the persons who shall act as salespersons under the authority of the license, if issued.

Regulation 44-20-104(3)(h)

1. *An applicant for a license issued by the board must complete and submit the appropriate application form. The board shall reject for filing any application that is defective in any one or more of the following ways: a) the application is not accompanied by a remittance in the full amount of the fee for the specific license; and, b) the application does not include a copy of the required bond in the correct amount. The board may reject for filing any application that does not completely satisfy the requirements of the application form and its instructions.*
2. *An applicant whose license application has been accepted for filing must respond to every request for additional information within the time allowed and in the manner required by the requestor.*

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3. *An applicant must include with an application the full name of, date of birth of, current residence address for, and other required identifying information related to each natural person who possesses one or more of the following characteristics:*

- a. an ownership, financial, or equity interest in the applicant; or,*
- b. an ability to control the applicant or to exercise significant financial or operational influence over the applicant.*

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

4. *All information submitted to the board, by application for license or otherwise, shall be given fully, faithfully, truthfully and fairly. The failure of an applicant or licensee to so inform the board shall be grounds for suspension, revocation or denial of the license.*
5. *The board may deny a license for any one of or any combination of the following reasons:*
- a. the application is incomplete; or,*
 - b. the information provided in the application does not fulfill a requirement of any one of or any combination of the following: 1) the application form; 2) the instructions for the application; 3) this regulation; or, 4) other relevant law or regulation; or,*
 - c. the applicant either did not respond to a request for additional information or provided an inadequate response, or both; or,*
 - d. the information contained in the application or the associated background investigation, or both, establishes a separate basis in relevant law or regulation to deny the license.*
6. *Not less than ten calendar days prior to changing the trade name of a licensed business, the licensee must submit a written application to the board seeking approval for the change.*
7. *Additional places of business are allowed in the name of the principal place of business, but they must display a sign with the same name as that required by the board for the principal location, and, if the additional place of business is more than just a storage lot, the licensee must provide adequate office and sanitary facilities. Locations contiguous to the principal place of business are not considered additional locations. The books and records of an additional location may be maintained at the principal place of business.*
8. *Prior to a licensee's doing business under a different name at an additional place of business, the licensee must submit for the board's approval a new, complete application, together with the appropriate fee, and the correct bond.*
9. *Prior to a licensee's making a material change to the operating entity under which the licensee does business, the licensee must submit for the board's approval a new, complete application, together with the appropriate fee, and the correct bond.*
10. *A licensee must conduct business solely under its licensed name. However, if a licensee is one of several dealers with common ownership, the licensee may advertise under a name*

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that reflects the common ownership. Designations like the following, which clearly reflect common ownership, are acceptable solely for advertising purposes: "John Doe Dealerships" or "Joe's Automotive Group."

- (i) To adopt a seal with the words "motor vehicle dealer board" and such other devices as the board may desire engraved thereon by which it shall authenticate the acts of its office;

Regulation 44-20-104(3)(j)

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

- (j) To require that a motor vehicle dealer's or used motor vehicle dealer's principal place of business and such other sites or locations as may be operated and maintained by the dealers in conjunction with their principal place of business have erected or posted thereon the signs or devices providing information relating to the dealer's name, the location and address of the dealer's principal place of business, the type of license held by the dealer, and the number thereof, as the board shall consider necessary to enable any person doing business with the dealer to identify the dealer properly, and for this purpose to determine the size and shape of the signs or devices, the lettering thereon, and other details thereof and to prescribe rules for the location thereof;
- (k) To conduct or cause to be conducted written examinations as prescribed by the board testing the competency of all first-time applicants for a motor vehicle dealer's license, motor vehicle salesperson's license, used motor vehicle dealer's license, wholesale motor vehicle auction dealer's license, or wholesaler's license;

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

- 1). *Applicants may use the information provided by the Auto Industry Division to study for the examination. The following examination criteria shall apply to the examination process and the examination results: 1) the numerical percentage that will constitute a passing score on the examination, as determined from the ratio of questions correctly answered to questions asked shall be eighty-five percent (85%); 2) the number of times in a calendar day that an applicant may take the examination before being timed out prior to attempting the examination again shall be two (2); 3) the manner in which an applicant and others shall certify both the applicant's compliance with the required examination process and the authenticity of the examination results shall be by submission of an examination affidavit on the form approved by the Board.*
- 2). *An applicant shall neither request nor permit any other person, including but not limited to any person administering the examination, to take the examination on his behalf or otherwise to assist him or to participate in the taking of the examination. An applicant shall neither request nor accept answers to examination questions from any other person, including but not limited to any person administering the examination, either before or*

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during the examination. An applicant who violates this rule is subject to denial, suspension, or revocation of his license. Any licensee who either 1) assists an applicant in violating this rule, 2) conspires with others in violating this rule, 3) falsifies information regarding the results of an applicant's licensing examination, or 4) otherwise falsely declares to the Board or its representatives the manner in which an applicant took an examination, is subject to disciplinary action to the limits of the Board's jurisdiction.

- 3). If an applicant is not licensed within one year of passing the examination, the score is removed from the record and the person must retake and pass the examination again, in accordance with the Board's examination criteria, before a license can be issued.*
- 4). The employing dealer or designated manager of the employing dealer, the Auto Industry Division, or a third party approved by the Board, may administer examinations.*
- 5). If an applicant has held a license during the previous twelve months, the applicant shall not be required to retake the examination.*

- (I) (I)** To prescribe a form or forms to be used as a part of a contract for the sale of a motor vehicle by any motor vehicle dealer, business disposer, or motor vehicle salesperson, other than a retail installment sales contract subject to the provisions of the "Uniform Consumer Credit Code", articles 1 to 9 of title 5, which shall include the following information in addition to any other disclosures or information required by state or federal law:
 - (A)** In twelve-point bold-faced type or a size at least three points larger than the smallest type appearing in the contract, an instruction that the form is a legal instrument and that, if the purchaser of the motor vehicle does not understand the form, the purchaser should seek legal assistance;
 - (B)** In bold-faced type, of the size specified in subsection (3)(I)(I)(A) of this section, an instruction that only those terms in written form embody the contract for sale of a motor vehicle and that any conflicting oral representations made to the purchaser are void;
 - (C)** In bold-faced type, of the size specified in subsection (3)(I)(I)(A) of this section, a notice that fraud or misrepresentation in the sale of a motor vehicle is punishable under the laws of this state;
 - (D)** In bold-faced type, of the size specified in subsection (3)(I)(I)(A) of this section, if the contract for the sale of a motor vehicle requires a single lump sum payment of the purchase price, a clear disclosure to the purchaser of that fact or, if the contract is contingent upon the approval of credit financing for the purchaser arranged by or through the motor vehicle dealer, in bold-faced type, a statement that the purchaser shall agree to purchase the motor vehicle that is the subject of the sale from the motor vehicle

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dealer at not greater than a certain annual percentage rate of financing, which annual percentage rate of financing shall be agreed upon by the parties and entered in writing on the contract;

- (E) Except as otherwise provided under part 1 of article 1 of title 6, where the purchase price of the motor vehicle is not paid to the motor vehicle dealer in full at the time of consummation of the sale and the purchaser and motor vehicle dealer elect that the motor vehicle dealer shall deliver and the purchaser shall take possession of the motor vehicle at such time, in bold-faced type, a statement that in the event financing cannot be arranged in accordance with the provisions stated in the contract, and the sale is not consummated, the purchaser shall agree to pay a daily rate and a mileage rate for use of the motor vehicle until such time as financing of the purchase price of the motor vehicle is arranged for the obligor by or through the authorized motor vehicle dealer or until the purchase price is paid to the authorized motor vehicle dealer in full by or through the obligor, which daily rate and mileage rate shall be specified and agreed upon by the parties and entered in writing on the contract.
- (II) The information required by subsection (3)(l)(I) of this section shall be read and initialed by both parties at the time of the consummation of the sale of a motor vehicle.
- (III) The use of the contract form required by subsection (3)(l)(I) of this section shall be mandatory for the sale of any motor vehicle.
- (IV) The board may require a licensee to include with a consumer sales contract a written notice that provides to the consumer the contact information of the board and information about the board's authority over consumer motor vehicle sales.

Regulation 44-20-104(3)(I) MANDATORY DISCLOSURES

A. Disclosure Form

- 1. The Board will prescribe a disclosure form consistent with the provisions of this regulation.*
- 2. The name of the disclosure form will be: "Disclosures Required as Part of a Motor Vehicle/Powersports Vehicle Sale."*
- 3. The Board may, at any time, reexamine and make revisions to the disclosure form, consistent with the provisions of this regulation.*

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4. *The disclosure form in effect prior to the passage of this regulation shall remain in effect until the effective date of the initial edition of the disclosure form prescribed by the Board pursuant to this regulation.*

B. Definitions

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

C. Application

1. *The disclosure form is not required for a sale solely between Dealers, between Wholesalers, or, between a Dealer and a Wholesaler.*
2. *At the time that the buyer signs a Contract, the disclosure form must be read, initialed and signed by the buyer and the Dealer.*
3. *The completed and signed disclosure form is a separate document that is part of the Contract.*
4. *The Dealer and buyer must complete only one disclosure form at the time of the signing of a Contract.*
5. *At the time of the signing of a Contract, a copy of the Contract, including a completed and signed disclosure form, must be given to the buyer.*
6. *The disclosures in the Credit Sale section of the disclosure form do not apply when the Contract is not contingent upon financing provided by or through the Dealer. In that event, the Credit Sale section should be crossed out.*
7. *A Dealer must complete a disclosure form with an interest rate that the Dealer reasonably believes can be obtained based on the creditworthiness of that prospective buyer.*
8. *The interest rate in the disclosure form must be the same as the interest rate in any Retail Installment Sale Contract signed by the buyer for the same vehicle.*

D. Usage Fee and Mileage Charge

1. *The Dealer must notify the buyer within ten (10) calendar days of the date the Contract is signed by the buyer, in the event financing cannot be arranged as originally agreed upon.*

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2. *If the Dealer and buyer agree that the Dealer will continue to attempt to arrange financing after ten calendar days, the Dealer must remind the buyer in writing that daily usage and mileage rates stated in the disclosure form, apply in the event financing cannot be arranged as originally agreed upon.*
 3. *The Dealer and buyer must complete and sign a new disclosure form that reflects the new interest rate if:*
 - a) *funding cannot be arranged at or below the interest rate set forth in the preceding disclosure form; and*
 - b) *the Dealer and the buyer agree that the Dealer will attempt to arrange financing at an interest rate different than previously agreed upon.*
 4. *The Dealer must retain a copy of all previously executed disclosure forms.*
 5. *The Dealer must write in "NA" for "not applicable" or "Zero" in the dollar and cents fields, if the Dealer does not charge usage and mileage fees.*
- (m) (I) (A)** After final action is taken on a hearing held before an administrative law judge or a hearing officer, to review the findings of law and fact and the fairness of any fine imposed and to uphold the fine, to impose an administrative fine upon its own initiative, not to exceed ten thousand dollars for each offense by any licensee, or to vacate the fine imposed by the judge or hearing officer; except that, for motor vehicle dealers who sell primarily motor vehicles that weigh under one thousand five hundred pounds, the fine for each offense must not exceed one thousand dollars. Whenever a hearing is heard by an administrative law judge, the maximum fine that may be imposed is ten thousand dollars for each offense by any person licensed by the board under this part 1; except that, for motor vehicle dealers who sell primarily vehicles that weigh under one thousand five hundred pounds, the fine for each offense must not exceed one thousand dollars. Whenever a licensing hearing is conducted by a hearing officer, the sanctions that may be recommended by the hearing officer are limited to the denial or grant of an unrestricted license or a restricted license under such terms as the hearing officer deems appropriate. Whenever a disciplinary hearing is conducted by a hearing officer, the hearing officer may only recommend a probationary period of no more than twelve months, a fine of no more than five hundred dollars, or both a probationary period and fine for each violation committed by a person licensed by the board.

Regulation 44-20-104(3)(m)(I)(A) Hearing Procedures Before A Hearing Officer

1. *Hearings conducted before a single board member pursuant to section 44-20-104 (3)(m)(I)(a), C.R.S., shall be conducted in accordance with the Colorado Administrative Procedure act, sections 24-4-104 and 105, C.R.S., and board 44-20-104(3)(f).*
2. *The executive secretary may, on behalf of the board, assign the individual board member on a rotating basis, taking into consideration the following factors:*
 - (A) *Applicants for a salesperson license will normally be given expedited processing. The board member assigned will be that individual who is available and willing to conduct the hearing. Geographic location of the board member and the applicant shall have primary consideration.*
 - (B) *Any issue involving a complaint which may be classified as arising from a business competition issue between motor vehicle dealers, used motor vehicle dealers, or wholesalers, or, a dispute involving an alleged violation of section 44-20-108(1)(b), C.R.S, shall not be heard by a member of the board who is a party to a dispute, or who has a pecuniary interest in the outcome of the matter.*
 - (C) *“Business competition issue” is defined as a dispute or complaint arising from or directly related to market share matters, or the alleged failure to comply with regulatory or statutory requirements by any one licensee of the board, or said licensee's agent, against another licensee.*
 - (D) *Initial decisions of a single board member hearing shall be processed in accordance with the Colorado Administrative Procedure Act, sections 24-4-105 (13) - (16), C.R.S.*
 - (B) The board shall promulgate rules regarding circumstances in which a board member should not act as a hearing officer in a particular matter before the board because of business competition issues connected with the parties involved in the matter.
- (n) (I) To impose a fine of up to one thousand dollars per day per violation for any person found, after notice and hearing pursuant to section 24-4-105, to have violated the provisions of section 44-20-124 (2). For the purposes of this subsection (3)(n), the address for the notice to be given under section 4-4-105 is the last-known address for the person as indicated in the state motor vehicle records; the last-known address for the owner of the real property upon which motor vehicles are displayed in violation of section 44-20-124 (2) as indicated in the records of the county assessor's office; or an address for service of process in accordance with rule 4 of the Colorado rules of civil procedure.
- (II) Any person who fails to pay a fine ordered by the board for a violation of section 44-20-124 (2) under this subsection (3)(n) shall be subject to

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enforcement proceedings, by the board through the attorney general, in the county or district court pursuant to the Colorado rules of civil procedure. Any fines collected under the provisions of this subsection (3)(n) shall be disposed of pursuant to section 44-20-133.

Regulation 44-20-104(3)(n) [Repealed eff. 11/14/18]

- (4) The board shall promulgate rules by January 1, 2008, establishing enforcement and compliance standards to ensure that administrative penalties are equitably assessed and commensurate with the seriousness of the violation.

Regulation 44-20-104(4)

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

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

44-20-105. Auto industry division - creation - powers and duties of executive director and director

- (1) There is hereby created in the department the auto industry division, the head of which is the director of the division. The director is appointed by the executive director and serves at the pleasure of the executive director. The division shall exercise its powers and perform its duties and functions under the department as if the division were transferred to the department by a type 2 transfer as described in section 24-1-105.
- (2) The executive director is hereby charged with the administration, enforcement, and issuance or denial of the licensing of buyer agents, distributors, manufacturer representatives, and manufacturers, and has the following powers and duties:
 - (a) To promulgate, amend, and repeal reasonable rules relating to those functions the executive director is mandated to carry out pursuant to this part 1 and the laws of the state of Colorado that the executive director deems necessary to implement this part 1;
 - (b) To employ, subject to the laws of the state of Colorado and after consultation with the board, an executive secretary for the board, who is accountable to the board and shall, pursuant to delegation by the board, discharge the responsibilities of the board under this part 1;

Regulation 44-20-105(2)(b)

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

- (I) *The Executive Secretary may set and maintain the board's docket, grant motions for continuances and motions for enlargements of time, issue subpoenas, and issue final agency orders pursuant to the board's action. The Executive Secretary may honor, within a reasonable time, a written request from an interested person to appear before the board at a regularly scheduled board meeting.*
- (II) *The Executive Secretary may write, sign, and issue board orders and correspondence on behalf of the board consistent with the board's action or direction. The Executive Secretary may sign and issue notices of charges after the board has referred the matter for a hearing pursuant to section 44-20-104(3)(f), C.R.S., and after drafting and review by the office of the Attorney General.*
- (III) *The board delegates to the Executive Secretary the authority to conduct informal fact-finding conferences and make recommendations to the board for the granting or denying of an application.*
 - (c) To issue and, for reasonable cause shown or upon satisfactory proof of the unfitness of the applicant under standards established and set forth in this part 1, to refuse to issue to any applicant any license the executive director is authorized to issue by this part 1;

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

1 CCR 210-2 Regulation 44-20-105(2)(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.

- (d) To prescribe the forms to be used for applications for licenses to be issued by the executive director under this part 1 and to require of the applicants, as a condition precedent to the issuance of the licenses, such information concerning the applicant's fitness to be licensed under this part 1 as the executive director considers necessary;

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

1 CCR 210-2 Regulation 44-20-105(2)(d)

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

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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*

- (e) (I) To summarily issue cease-and-desist orders on such terms and conditions and for such period of time as to the executive director appears fair and just to any person who is licensed by the executive director pursuant to this part 1 if the orders are followed by notice and a hearing pursuant to section 44-20-104 (3)(e)(I);
- (II) To issue cease-and-desist orders to persons acting as manufacturers without the manufacturer's license required by this part 1; and
- (III) To impose a fine, not to exceed one thousand dollars per day, for each violation of section 44-20-124 (1) after a notice and hearing subject to section 24-4-105.

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

1 CCR 210-2 Regulation 44-20-105(2)(e)

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.

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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 44-20-124(2), C.R.S., as amended.

- (3) (a) The director may:
- (I) Employ such clerks, deputies, and assistants as the director considers necessary to discharge the duties imposed upon the director or executive director by this part 1 and to designate the duties of the clerks, deputies, and assistants;
 - (II) Investigate, upon the director's own initiative, upon the written and signed complaint of any person, or upon request by the board under section 44-20-104 (3)(f)(I), any suspected or alleged violation by a person licensed under this part 1 or of any rule promulgated under this article 20.

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

1 CCR 210-2 Regulation 44-20-105(3)(a)(II)

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.

- (b) The investigators and their supervisors utilized by the director, while actually engaged in performing their duties, have the authority as delegated by the director

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to issue subpoenas in relation to performance of their duties enforcing this part 1 and the authority as delegated by the director to issue summonses for violations of sections 44-20-124 (2) and 42-6-142, to issue misdemeanor summonses for violations of section 44-20-123 (1)(a), and to procure criminal records during an investigation.

- (4) If any person fails to comply with a cease-and-desist order issued pursuant to this section, the executive director may bring a suit for injunction to prevent any further and continued violation of the order. In any such suit, the final proceedings of the executive director, based upon evidence in record, are prima facie evidence of the facts found therein.

44-20-106. Records as evidence

Copies of all records and papers in the office of the board, director, or executive director, duly authenticated under the hand and seal of the board, director, or executive director, shall be received in evidence in all cases equally and with like effect as the original thereof.

44-20-107. Attorney general to advise and represent

- (1) The attorney general of this state shall represent the board, director, and executive director and shall give opinions on all questions of law relating to the interpretation of this part 1 or arising out of the administration thereof and shall appear for and in behalf of the board, director, and executive director in all actions brought by or against them, whether under this part 1 or otherwise.
- (2) The board may request the attorney general to make civil investigations and enforce rules of the board in cases of civil violations and to bring and defend civil suits and proceedings for any of the purposes necessary and proper for carrying out the functions of the board.

44-20-108. Classes of licenses

- (1) The following classes of licenses are issued under this part 1:
 - (a) Motor vehicle dealer's license shall permit the licensee to engage in the business of selling, exchanging, leasing, or offering new and used motor vehicles, and this form of license shall permit not more than two persons named therein who shall be owners or part owners of the business of the licensee to act as motor vehicle salespersons.
 - (b) Used motor vehicle dealer's license shall permit the licensee to engage in the business of selling, exchanging, leasing, or offering used motor vehicles only. The license shall also permit a licensee to negotiate for a consumer the sale, exchange, or lease of used and new motor vehicles not owned by the licensee, except those vehicles defined in section 42-1-102 (55) as motorcycles and section 33-14.5-101 (3) as off-highway vehicles; however, prior to completion of the sale, exchange,

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or lease of a motor vehicle not owned by the licensee, the licensee shall disclose in writing to the consumer whether the licensee will receive any compensation from the consumer and whether the licensee will receive any compensation from the owner of the motor vehicle as a result of the transaction. If the licensee receives compensation from the owner of the motor vehicle as a result of the transaction, the licensee shall include in the written disclosure the name of the owner from whom the licensee will receive compensation. This form of license shall permit not more than two persons named therein who shall be owners or part owners of the business of the licensee to act as motor vehicle salespersons.

Regulation 44-20-108(1)(b) Compensation Disclosures

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

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COMPENSATION DISCLOSURES

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

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

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

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

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

_____, owned by
Year Make Model VIN

Printed Full Legal Name of Current Owner

Signature of Authorized Representative of Used Motor Vehicle Dealer

Printed Name of Authorized Representative of Used Motor Vehicle Dealer

Title of Authorized Representative of Used Motor Vehicle Dealer

Signature(s) of Consumer(s)

Printed Full Legal Name(s) of Consumer(s)

Date of the Consumer(s) Signature(s)

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

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

- (c) A motor vehicle salesperson's license permits the licensee to engage in the activities of a motor vehicle salesperson while employed by a licensed motor vehicle dealer or used motor vehicle dealer.

Regulation 44-20-108(1)(c)

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

- (d) Manufacturer's or distributor's license shall permit the licensee to engage in the activities of a manufacturer, distributor, factory branch, or distributor branch and to sell fire trucks.

- (e) Wholesaler's license shall permit the licensee to engage in the activities of a wholesaler.

Regulation 44-20-108(1)(e)

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

1. *A person shall not simultaneously hold a motor vehicle salesperson license and also have an ownership interest in a licensed wholesale business.*
2. *A wholesaler shall not employ a licensed motor vehicle salesperson.*
3. *A wholesaler shall have a place of business with a business office. The wholesaler's business books and records shall be kept at that business office.*

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4. *A wholesaler shall maintain written records of all business transactions involving the sale, exchange, or offer of any interest in a motor vehicle.*
5. *A wholesaler shall transact all business, including but not limited to the purchase and sale of motor vehicles, exclusively in its licensed wholesale business name, and not in the name of another person, whether that other person is or is not associated with the wholesaler license. However, in order to prevent confusion between the wholesale business transactions of a sole proprietor and the personal transactions of the natural person of the same name, a sole proprietor wholesaler shall transact all wholesale business using the sole proprietor's name coupled with the word, "wholesaler" (for example, "Wholesaler Joe Smith," "Joe Smith, Wholesaler," or "Joe Smith --- Wholesaler").*
6. *A wholesaler shall permit the board and its agents and representatives to inspect, with cause, including ongoing investigation, compliance audit, sworn complaint, or order of the board, the wholesaler's books and records, excluding financial statements and tax returns, any time from Monday through Friday between 9 AM and 5 PM. Upon receipt of a subpoena from the board or the director, the wholesaler shall provide all records, including financial records and tax returns, to the board, the director, or to the agents or representatives of the board or the director. Upon the wholesaler's written request, auto industry division staff shall, under their direct supervision, make available to the wholesaler, all of the records that the wholesaler provides voluntarily or under subpoena, in order for the wholesaler to test, inspect, or copy the records.*
7. *See Regulation 44-20-102(18) for the definitions of "profit" and "gain of money."*
 - (f) Manufacturer representative's license shall permit the licensee to engage in the activities of a manufacturer representative.
 - (g) Buyer agent's license shall permit the licensee to engage in the activities of a buyer agent.
 - (h) (I) Wholesale motor vehicle auction dealer's license shall permit a licensee to engage in the activities of a wholesale motor vehicle auction dealer if the licensee provides auction services solely in connection with wholesale transactions in which the purchasers are motor vehicle dealers licensed by this state or any other jurisdiction or in connection with the sale of government vehicles to consumers at a time and place that does not conflict with a wholesale motor vehicle auction conducted by that licensee. A wholesale motor vehicle auction dealer shall abide by all laws and rules of the state of Colorado.

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

- (II) A wholesale motor vehicle auction dealer shall maintain a check and title insurance policy for the benefit of the dealer's customers or, alternatively, a wholesale motor vehicle auction dealer shall provide written guarantees of title to the dealer's purchasing customers and written guarantees of

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payment to the dealer's selling dealers with coverage and exclusions that are customary in check and title insurance policies available to wholesale motor vehicle auction dealers.

- (i) If the sales value of all the motor vehicles sold does not exceed twenty percent of the business's gross revenue, the business disposal license permits a business to sell used motor vehicles that:
 - (I) Have been owned for more than one year'
 - (II) Have been used exclusively for business purposes;
 - (III) Are titled in the name of the business;
 - (IV) For which all related taxes have been paid; and
 - (V) Are not designed or used primarily to carry passengers, not including:
 - (A) A vehicle designed primarily for transporting more than ten individuals; or
 - (B) A truck having an enclosed cab and open cargo area.
- (2) Any license issued by the executive director pursuant to law in effect prior to July 1, 1992, shall be valid for the period for which issued.
- (3) The licensing requirements of this part 1 do not apply to banks, savings banks, savings and loan associations, building and loan associations, or credit unions or an affiliate or subsidiary of the entities in offering to sell, or in the sale of, a motor vehicle that was subject to a lease or that has been repossessed or foreclosed upon if the repossession or foreclosure is in connection with a loan made or originated in Colorado.
- (4) The licensing requirements of this part 1 shall not apply to an insurance company selling or offering to sell a motor vehicle through a motor vehicle dealer or used motor vehicle dealer if the vehicle is obtained by the company as a result of an insurance claim.

44-20-109. Temporary motor vehicle dealer license

- (1) (a) If a licensed motor vehicle dealer has entered into a written agreement to sell a dealership to a purchaser and the purchaser has been awarded a new dealership franchise, the board may issue a temporary motor vehicle dealer's license to the purchaser or prospective purchaser. The director shall issue the temporary license only after the board has received the applications for both a temporary motor vehicle dealer's license and a motor vehicle dealer's license, the appropriate application fee for the motor vehicle dealer's application, evidence of a passing test score, and evidence that the franchise has been awarded to the applicant by the manufacturer.

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- (b) A temporary motor vehicle dealer's license authorizes the licensee to act as a motor vehicle dealer. Temporary licensees are subject to this article 20 and to all applicable rules adopted by the executive director or the board. A temporary motor vehicle dealer's license is effective for up to sixty days or until the board acts on the licensee's application for a motor vehicle dealer's license, whichever is sooner.

Regulation 44-20-109(1)

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

- (2) For the purpose of enabling an out-of-state dealer to sell vehicles on a temporary basis during specifically identified events, the director may issue, upon direction by the board, a temporary motor vehicle dealer's license, which is effective for thirty days. The temporary licensee is subject to the rules adopted by the executive director or the board.

Regulation 44-20-109(2)

1. *For purposes of this regulation, "out-of-state motor vehicle dealer" means a motor vehicle dealer or used motor vehicle dealer that is not a resident of Colorado and that is not licensed in Colorado as a motor vehicle dealer or used motor vehicle dealer.*
2. *This regulation does not apply to an out-of-state motor vehicle dealer that buys or sells a motor vehicle at an auction conducted by a licensed Wholesale Motor Vehicle Auction Dealer in Colorado.*
3. *An out-of-state motor vehicle dealer may sell a motor vehicle to a consumer only at the following specific events: A) the Colorado State Fair; B) the National Western Stock Show; and, C) the annual Colorado RV, Sports and Travel Show.*
4. *If an out-of-state motor vehicle dealer intends to sell a motor vehicle to a consumer at a specific event other than those listed above, then the out-of-state motor vehicle dealer must obtain the board's permission to apply for a temporary license for that specific event. To obtain the board's permission, the out-of-state motor vehicle dealer must submit a written petition to the executive secretary of the board at least ninety days prior to the specific event so that the executive secretary can docket the board's review of the petition. At the review, the board will consider only the written petition.*
5. *An out-of-state motor vehicle dealer temporary license is issued for thirty consecutive calendar days related to the specific event designated in the application for an out-of-state motor vehicle temporary license.*
6. *An out-of-state motor vehicle dealer may not obtain more than three out-of-state motor vehicle dealer temporary licenses in a calendar year.*
7. *In order to sell a motor vehicle to a consumer at a specific event, an out-of-state motor vehicle dealer must apply for an out-of-state motor vehicle dealer temporary license. An out-of-state motor vehicle dealer must not engage in any sales activity at a specific event until the board approves the out-of-state motor vehicle dealer temporary license.*
8. *By no later than fourteen calendar days prior to the specific event designated in the application, an out-of-state motor vehicle dealer must submit a completed application*

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form for an out-of-state motor vehicle dealer temporary license related to the specific event. The board shall reject for filing any application for an out-of-state motor vehicle dealer temporary license that is not accompanied by both a remittance in the full amount of the fee for the license and by the bond required for the license. The board may reject for filing any application that does not completely satisfy the requirements of the application form and its instructions.

9. *In the event that an out-of-state motor vehicle dealer intends to sell a new motor vehicle to a consumer in Colorado, then an out-of-state motor vehicle dealer shall provide written evidence that each manufacturer, whose vehicles the out-of-state motor vehicle dealer intends to sell at the specific event, has authorized the out-of-state motor vehicle dealer to sell the manufacturer's vehicles at the specific event.*
10. *An out-of-state motor vehicle dealer must make an out-of-state motor vehicle dealer temporary license readily-available for inspection by any person at the specific event during the entire time that the out-of-state motor vehicle dealer is present at the event.*
11. *An out-of-state motor vehicle dealer operating in Colorado pursuant to an out-of-state motor vehicle dealer temporary license has agreed to do business under applicable Colorado law and regulations. Therefore, an out-of-state motor vehicle dealer has both the same rights and the same responsibilities as a licensed Colorado motor vehicle dealer.*

44-20-110. Display, form, custody, and use of licenses

- (1) The board and the executive director shall prescribe the form of the license to be issued by the executive director and shall imprint on each license the seal of their offices. The executive director shall mail the license to the business address where the motor vehicle salesperson is licensed. Each motor vehicle salesperson shall keep a copy of the license at the salesperson's place of employment for inspection by employers, consumers, the director, the executive director, or the board. Each motor vehicle dealer, manufacturer, distributor, wholesaler, manufacturer representative, wholesale motor vehicle auction dealer, or used motor vehicle dealer shall display conspicuously each person's license at the place of business for which the license was issued.
- (2) Each license issued under this part 1 is separate and distinct. It is a violation of this part 1 for a person to exercise any of the privileges granted under a license that the person does not hold, or for a licensee to knowingly allow such an exercise of privileges.

Regulation 44-20-110

1. *All current and active licenses, including temporary licenses, of any class issued by the board must be conspicuously displayed in an area that is in public view at the motor vehicle dealer's or used motor vehicle dealer's place or places of business.*
2. *When the board issues a salesperson's license that is not a temporary license, the dealer associated with the salesperson's license shall do the following upon receipt of the license document: (a) take charge of the actual license portion in order to display that portion in accordance with this regulation; and, (b) hand over the "Change of Employer Notification" portion of the license document to the salesperson.*

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3. *Within ten calendar days of the end of a salesperson's working relationship with a dealer, both the dealer and the salesperson shall, independently, notify the board, in writing, of the date the relationship ended, and the dealer shall also return to the board the actual license portion of the salesperson's license.*
4. *If a salesperson chooses to transfer his or her working relationship to a new dealer for the remainder of the salesperson's license year, he or she must submit a "Change of Employer Notification" to the board, along with any other required documents and a remittance to cover the license-reissue fee. Because the former dealer may cancel the bond associated with the remainder of the salesperson's license year, the salesperson must take any necessary steps to ensure that a valid salesperson's bond will be in effect.*
5. *A salesperson shall not engage in sales activities until the dealer conspicuously displays the license of the salesperson in accordance with this regulation.*

44-20-111. Fees - disposition - expenses - expiration of licenses

- (1) Each application must be accompanied by the fee established in subsection (5) of this section for each of the following licenses:
 - (a)
 - (I) Motor vehicle dealer's or used motor vehicle dealer's license;
 - (II) Motor vehicle dealer's or used motor vehicle dealer's license, for each place of business in addition to the principal place of business;
 - (III) Renewal or reissue of motor vehicle dealer's or used motor vehicle dealer's license after change in location or lapse in principal place of business;
 - (b) Manufacturer's license;
 - (c) Distributor's license;
 - (d) Wholesaler's license;
 - (e) Manufacturer representative's license;
 - (f) Motor vehicle salesperson's license including, but not limited to, reissuing a license;
 - (g) Buyer agent's license;
 - (h) Wholesale motor vehicle auction dealer's license; or
 - (i) Business disposal license.
- (2) All fees shall be paid to the state treasurer, who shall credit the fees to the auto dealers license fund created in section 44-20-133.
- (3) If an application for a buyer agent's, motor vehicle dealers, used motor vehicle dealers, wholesalers, business disposer's, or motor vehicle salesperson's license is withdrawn by the applicant prior to issuance of the license, the director shall refund one-half of the license fee.

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- (4) (a) Licenses, if the same have not been suspended or revoked as provided in this part 1, shall be valid until one year following the month of issuance thereof and shall then expire; except that any license issued under this part 1 shall expire upon the voluntary surrender thereof or upon the abandonment of the licensee's place of business for a period of more than thirty days.

Regulation 44-20-111(4)(a) Renewal of Licenses

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

- (b) Thirty days before the expiration of a license, the director shall mail to the licensee's business address of record a notice stating when the person's license is due to expire and the fee necessary to renew the license. For a salesperson or manufacturer representative, the notice shall be mailed to the address of the dealer or manufacturer where the person is licensed.
- (c) Upon the expiration of the license, unless suspended or revoked, the same may be renewed upon the payment of the fees specified in this section, that accompany applications, and the renewal may be made from year to year as a matter of right; except that, if a motor vehicle dealer, used motor vehicle dealer, business disposer, or wholesaler voluntarily surrenders its license or abandons its place of business for a period of more than thirty days, the licensee is required to file a new application to renew its license.
- (d) Notwithstanding subsection (4)(a) of this section, a person has a thirty-day grace period after his or her license expires, and the person may renew the license within thirty days pursuant to subsection (4)(c) of this section, so long as the person has a bond in full force and effect that complies with the applicable bonding requirements of section 44-20-112, 44-20-113, or 44-20-114 during the thirty-day period. A person applying during the thirty-day grace period shall pay a late fee established pursuant to subsection (5) of this section.
- (5) (a) The board shall propose, as part of its annual budget request, an adjustment in the amount of each fee that the board is authorized by law to collect. The budget request and the adjusted fees for the board shall reflect direct and indirect costs.
- (b) Based upon the appropriation made and subject to the approval of the executive director, the board shall adjust the fees collected by the executive director so that the revenue generated from the fees covers the direct and indirect costs of administering this article 20. The fees shall remain in effect for the fiscal year for which the appropriation is made.
- (c) Whenever money appropriated to the board for its activities for the prior fiscal year is unexpended, the money shall be made a part of the appropriation to the board for the next fiscal year, and the amount shall not be raised from fees

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collected by the board or the executive director. If a supplemental appropriation is made to the board for its activities, the fees of the board and the executive director, when adjusted for the fiscal year next following that in which the supplemental appropriation was made, shall be adjusted by an additional amount that is sufficient to compensate for the supplemental appropriation. Money appropriated to the board in the annual general appropriation bill shall be from the fund provided in section 44-20-133.

44-20-112. Bond of licensee

- (1) Before any motor vehicle dealer's, wholesaler's, wholesale motor vehicle auction dealer's, business disposal, or used motor vehicle dealer's license is issued by the board through the executive director to an applicant, the applicant must procure and file with the board evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101 or a good and sufficient bond with corporate surety duly licensed to do business within the state, approved as to form by the attorney general of the state, and conditioned that the applicant must not practice fraud or violate any provision of this part 1 related to fraud that is designated by the board by rule in conducting the business for which the applicant is licensed. A motor vehicle dealer, business disposer, or used motor vehicle dealer need not furnish an additional bond, savings account, deposit, or certificate of deposit under this section if the dealer furnishes a bond, savings account, deposit, or certificate of deposit under section 44-20-412.
- (2) (a) The purpose of the bond procured by the applicant in accordance with subsection (1) of this section and section 44-20-114 (1) is to provide for the reimbursement for any loss or damage suffered by any retail consumer caused by fraud or a violation of this part 1 related to fraud by a motor vehicle dealer, used motor vehicle dealer, wholesale motor vehicle auction dealer, business disposer, or wholesaler. For a wholesale transaction, the bond is available to each party to the transaction; except that, if a retail consumer is involved, the consumer has priority to recover from the bond. The amount of the bond must be fifty thousand dollars for a motor vehicle dealer applicant, used motor vehicle dealer applicant, wholesale motor vehicle auction dealer applicant, business disposal applicant, or wholesaler applicant; except that the amount of the bond must be five thousand dollars for those dealers who sell only small utility trailers that weigh less than two thousand pounds. The aggregate liability of the surety for all transactions is limited to the amount of the bond, regardless of the number of claims or claimants.

(b) No corporate surety shall be required to make any payment to any person claiming under the bond until a final determination of fraud has been made by the board or by a court of competent jurisdiction.

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- (3) All bonds required pursuant to this section shall be renewed annually at such time as the bondholder's license is renewed. The renewal may be done through a continuation certificate issued by the surety.
- (4) Nothing in this part 1 shall interfere with the authority of the courts to administer and conduct an interpleader action for claims against a licensee's bond.

44-20-113. Motor vehicle salesperson's bond

- (1) Before a motor vehicle salesperson's license is issued by the board through the executive director to any applicant, the applicant must procure and file with the board evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101 or a good and sufficient bond in the amount of fifteen thousand dollars with corporate surety duly licensed to do business within the state, approved as to form by the attorney general of the state, and conditioned that the applicant must perform in good faith as a motor vehicle salesperson without fraud and without the violation of any provision of this part 1 related to fraud that is designated by the board by rule. A motor vehicle salesperson need not furnish an additional bond, savings account, deposit, or certificate of deposit under this section if the dealer furnishes a bond, savings account, deposit, or certificate of deposit under section 44-20-413.
- (2) No corporate surety shall be required to make any payment to any person claiming under the bond until a final determination of fraud has been made by the board or by a court of competent jurisdiction.
- (3) All bonds required pursuant to this section shall be renewed annually at such time as the bondholder's license is renewed. The renewal may be done through a continuation certificate issued by the surety.

44-20-114. Buyer agent bonds

- (1) To be issued a buyer agent's license, an applicant must procure and file with the executive director evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101 or a good and sufficient bond in the amount of five thousand dollars with a corporate surety duly licensed to do business within the state and approved as to form by the attorney general. The bond shall be available to ensure that the applicant shall perform in good faith as a buyer agent without fraud and without violating any provision of this part 1 related to fraud that is designated by the executive director by rule.
- (2) All bonds required pursuant to this section shall be renewed annually at such time as the bondholder's license is renewed. The renewal may be done through a continuation certificate issued by the surety.

- (3) No corporate surety shall be required to make any payment to any person claiming under the bond until a final determination of fraud has been made by the executive director or by a court of competent jurisdiction.

44-20-115. Notice of claims honored against bond

- (1) A corporate surety that has provided a bond to a licensee pursuant to section 44-20-112, 44-20-113, or 44-20-114 shall provide notice to the board and executive director of any claim that is honored against the bond within thirty days after the claim is honored.
- (2) A notice provided by a corporate surety pursuant to subsection (1) of this section must be in the form required by the director, subject to approval by the board, and must include the name of the licensee, the name and address of the claimant, the amount of the honored claim, and the nature of the claim against the licensee.

44-20-116. Testing licensees

Persons applying for a motor vehicle dealer's, used motor vehicle dealer's, wholesaler's, wholesale motor vehicle auction dealer's, or motor vehicle salesperson's license under this part 1 shall be examined for their knowledge of the motor vehicle laws of the state of Colorado and the rules promulgated pursuant to this part 1. If the applicant is a corporation, the managing officer shall take the examination, and, if the applicant is a partnership, all the general partners shall take the examination. No license shall be issued except upon successful passing of the examination. The board shall implement by January 1, 2008, a psychometrically valid and reliable salesperson examination that measures the minimum level of competence necessary to practice. This section shall not apply to a powersports vehicle dealer, used powersports vehicle dealer, or powersports salesperson licensed pursuant to part 4 of this article 20.

Regulation 44-20-116

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

44-20-117. Filing of written warranties

Each licensed manufacturer shall file with the director all written warranties and changes in written warranties that the manufacturer makes on any motor vehicle or parts thereof. Each licensed manufacturer shall file with the director a copy of the delivery and preparation obligations of its dealers. These warranties and obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer.

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

1 CCR 210-2 Regulation 44-20-117

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.

44-20-118. Application - prelicensing education - fingerprint-based background check - rules

- (1) Application for a motor vehicle dealer's, motor vehicle salespersons, used motor vehicle dealers, wholesale motor vehicle auction dealers, ~~or~~ wholesaler's license, or business disposal shall be made to the board.
- (2) Application for distributor's, manufacturer representatives, or manufacturer's licenses shall be made to the executive director.
- (3) All fees for licenses shall be paid at the time of the filing of application for license.
- (4) To be licensed as a motor vehicle dealer, a person must file with the board a certified copy of a certificate of appointment as a dealer from a manufacturer.
- (5) (a) Each person applying for a manufacturer's or distributor's license must:
 - (I) File with the director a certified copy of a typical sales, service, and parts agreement with all motor vehicle dealers; and
 - (II) File evidence of the appointment of an agent for process in the state of Colorado.
- (b) Within sixty days after amending or modifying or adding an addendum to the sales, service, or parts agreement of more than one motor vehicle dealer, a licensed manufacturer or distributor shall file a certified copy of the new sales, service, and parts agreement, including the changes, with the director if the amendment, modification, or addendum materially alters the rights and obligations of the contracting parties.

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

1 CCR 210-2 Regulation 44-20-118(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.

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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.

- (6) All persons applying for a motor vehicle dealer's license, a used motor vehicle dealer's license, a wholesaler's license, a motor vehicle auctioneer's license, a motor vehicle salesperson's license, or a business disposal license must file with the board a good and sufficient instrument in writing in which the applicant appoints the secretary of the board as the true and lawful agent of the applicant upon whom all process may be served in any action commenced against the applicant arising out of any claim for damages suffered by person, by reason of a violation by the applicant of this part 1 or any condition of the applicant's bond.

Regulation 44-20-118(6)

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

- (7) (a) A person applying for a used motor vehicle dealer's license, a wholesale motor vehicle auction dealer's license, or a wholesaler's license shall file with the board a certification that the applicant has met the educational requirements for licensure under this subsection (7). This subsection (7) shall not apply to a person who has held a license within the last three years as a motor vehicle dealer, used motor vehicle dealer, wholesaler, wholesale motor vehicle auction dealer, powersports vehicle dealer, or used powersports vehicle dealer under this part 1 or part 4 of this article 20.
- (b) An applicant for a used motor vehicle dealer's license, a wholesale motor vehicle auction dealer's license, or a wholesaler's license shall not be licensed unless one of the following persons has completed an eight-hour preclicensing education program:
- (I) The managing officer if the applicant is a corporation or limited liability company;
 - (II) All of the general partners if the applicant is any form of partnership; or
 - (III) The owner or managing officer if the applicant is a sole proprietorship.

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- (c) The prelicensing education program shall include, without limitation, state and federal statutes and rules governing the sale of motor vehicles.
- (d) A prelicensing education program shall not fulfill the requirements of this section unless approved by the board. The board shall approve any program with a curriculum that reasonably covers the material required by this section within eight hours.

Regulation 44-20-118(7)(d)

1. *The board hereby delegates to the board's executive secretary the authority to execute all actions within the authority of the board respective to the Pre-licensing Education Program.*
2. *The executive secretary shall provide public notice a) immediately after the effective date of these rules, and b) once every year thereafter, by means of publication on the board's website, which public notice shall contain a general description of the Pre-licensing Education Program requirements and shall indicate the procedures by which interested persons may apply to obtain approval from the executive secretary to provide a Pre-licensing Education Program.*
3. *The executive secretary shall evaluate each Pre-licensing Education Program application for compliance with the requirements of the relevant statutes and rules.*
4. *An approval of a Pre-licensing Education Program is for a period of one year from the date of approval.*
5. *A Pre-licensing Education Program Provider can reapply by means of an updated application for an approval of its program in subsequent years.*
6. *The executive secretary shall, by means of a Letter of Approval, within thirty (30) days of the executive secretary's receipt of either 1) an initial application for an approval of a prospective Pre-licensing Education Program Provider or 2) a subsequent application for a renewal of an existing approval of a Pre-licensing Education Program Provider, notify any applicant, whose Pre-licensing Education Program has been approved in its initial or a subsequent term, of the specific dates of the one-year term of the approval and of the procedures to apply to renew the approval for subsequent one-year terms.*
7. *The executive secretary shall, by means of a Letter of Denial, within thirty (30) days of the executive secretary's receipt of either 1) an initial application for an approval of a prospective Pre-licensing Education Program Provider or 2) a subsequent application for a renewal of an existing approval of a Pre-licensing Education Program Provider, notify any applicant, whose Pre-licensing Education Program has been denied in its initial or a subsequent term, of the basis and reasons for the denial and the procedure to follow to appeal the denial to the board.*
8. *Any recipient of a Letter of Denial shall have the right to appeal that denial to the board by means of a request for a hearing in writing within sixty (60) days after notice of the denial.*
9. *Any approved Pre-licensing Education Program Provider or prior approved Pre-licensing Education Program Provider may bring to the board a complaint or concern*

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about the administration of the program application and approval process. The Provider must first seek to resolve the matter with the executive secretary. The Provider may bring its complaint or concern to the board by means of a request in writing within thirty (30) days of the failure of the Provider's efforts to resolve the matter with the executive secretary.

- 10. The executive secretary shall provide to the board the name of each approved Pre-licensing Education Program Provider and the term of approval for that Provider.*
- 11. The executive secretary shall post on the board's website a list of the names, addresses, and contact information, as provided to the executive secretary, for each approved Pre-licensing Education Program Provider, showing the term of approval for each Provider and the geographic scope of each Provider's program.*
- 12. An approved Pre-licensing Education Program Provider that intends to cease operations, must provide the executive secretary with a written notice of cessation of its Pre-licensing Education Program at least 180 days in advance of the last date on which the Pre-licensing Education Program Provider will provide instruction in its Pre-licensing Education Program.*
- 13. An approved Pre-licensing Education Program Provider shall maintain a place of business in the state of Colorado.*
- 14. An approved Pre-licensing Education Program Provider shall maintain the following records at its Colorado place of business for a period of at least three (3) years from the date of the instruction of any participant: 1) the specific curriculum administered; 2) the specific handouts or other ancillary teaching materials provided or available to the participant; 3) the specific validation test or tests used; 4) the registration data for each participant, showing the participant's name, business association, date of participation, and means by which the participant was identified; 5) the specific validation test result(s) for the given participant; 6) the name of the instructor or other program authority who administered the program to the participant; and, 7) a copy of the completion certificate provided to the participant.*
- 15. The executive secretary shall have the authority as a matter of routine compliance investigation, or upon the receipt of a specific complaint, to perform an investigation of the activities of a Pre-licensing Education Program Provider.*
- 16. The executive secretary shall have the authority to obtain copies at no cost to the State of all materials utilized in or related to a Pre-licensing Education Program, including, but not limited to, the records of a Pre-licensing Education Program Provider respective to any or all persons who have participated in the Provider's program.*
- 17. Procedures for the suspension or revocation of the approval of a Pre-licensing Education Program Provider shall be in accordance with sections 24-4-104 and 24-4-105, C.R.S.*
 - (e)** The board may adopt rules establishing reasonable fees to be charged for the prelicensing education program.
 - (f)** The board may adopt reasonable rules to implement this section, including, without limitation, rules that govern:
 - (I)** The content and subject matter of education;

Regulation 44-20-118(7)(f)(I)

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

- (II)** The criteria, standards, and procedures for the approval of courses and course instructors;

Regulation 44-20-118(7)(f)(II)

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

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3. *The executive secretary shall require additional information from any applicant, in the event that the application is deficient with regard to any of the noted materials, or in the event that more information is needed to reach a decision on the application.*

(III) The training facility requirements; and

Regulation 44-20-118(7)(f)(III)

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

(IV) The methods of instruction.

Regulation 44-20-118(7)(f)(IV)

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

- (g) An approved prelicensing program provider shall issue a certificate to a person who successfully completes the approved prelicensing education program. The current certificate of completion, or a copy of the certificate, shall be posted conspicuously at the dealership's principal place of business.

Regulation 44-20-118(7)(g)

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

- (h) An approved prelicensing program provider shall submit a certificate to the director for each person who successfully completes the prelicensing education program. The certificate may be transmitted electronically.

Regulation 44-20-118(7)(h)

An approved Pre-licensing Education Program Provider shall submit to the executive secretary a copy of the Program-completion Certificate for each person, who has successfully completed the approved Pre-licensing Education Program within the approved program standards, within

ten (10) days of the completion of the approved program. The copy of the Program-completion Certificate may be sent by mail, by fax, or by email.

- (8) (a) With the submission of an application for any license issued under this part 1, each applicant shall submit a complete set of fingerprints to the Colorado bureau of investigation or the auto industry division for the purpose of conducting fingerprint-based criminal history record checks. The Colorado bureau of investigation shall forward the fingerprints to the federal bureau of investigation for the purpose of conducting fingerprint-based criminal history record checks. The board or the executive director shall use the information resulting from the fingerprint based criminal history record check to investigate and determine whether an applicant is qualified to be licensed. The board or the executive director may verify the information an applicant is required to submit. The applicant shall pay the costs associated with the fingerprint based criminal history record check to the Colorado bureau of investigation.
- (b) This subsection (8) does not apply to a publicly traded company or the company's subsidiary.

44-20-119. Notice of change of address or status

- (1) The board, through the executive director, shall not issue a motor vehicle dealer's license or used motor vehicle dealer's license to any applicant therefor who has no principal place of business as is defined in this part 1. Should the motor vehicle dealer or used motor vehicle dealer change the site or location of the dealer's principal place of business, the dealer shall immediately upon making the change so notify the board in writing, and thereupon a new license shall be granted for the unexpired portion of the term of the license at a fee established pursuant to section 44-20-111. Should a motor vehicle dealer or used motor vehicle dealer, for any reason whatsoever, cease to possess a principal place of business, as defined in this part 1, from and on which the dealer conducts the business for which the dealer is licensed, the dealer shall immediately so notify in writing the board and, upon demand therefor by the board, shall deliver to it the dealer's license, which shall be held and retained until it appears to the board that the licensee again possesses a principal place of business; whereupon, the dealer's license shall be reissued. Nothing in this part 1 shall be construed to prevent a motor vehicle dealer or used motor vehicle dealer from conducting the business for which the dealer is licensed at one or more sites or locations not contiguous to the dealer's principal place of business but operated and maintained in conjunction therewith.
- (2) (a) If a motor vehicle dealer changes to a new line-make of motor vehicles, adds another franchise for the sale of new motor vehicles, or cancels or, for any cause whatever, otherwise loses a franchise for the sale of new motor vehicles, the dealer shall immediately so notify the board. In the case of a cancellation or loss

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of franchise, the board shall determine whether the dealer who lost the franchise should be licensed as a used motor vehicle dealer.

- (b) If the motor vehicle dealer no longer possesses a franchise to sell new motor vehicles, the board shall take up, and the motor vehicle dealer shall deliver to the board, the dealer's license, and the board shall direct the director to issue the dealer a used motor vehicle dealer's license.
- (c) Upon the cancellation or loss of a franchise to sell new motor vehicles and the relicensing of a dealer as a used motor vehicle dealer, the dealer may continue in the business of a motor vehicle dealer for a time, not exceeding six months after the date of the relicensing of the dealer, to enable the dealer to dispose of the stock of new motor vehicles on hand at the time of relicensing, but not otherwise.
- (3) If a motor vehicle salesperson is discharged, leaves an employer, or changes a place of employment, the motor vehicle dealer or used motor vehicle dealer who last employed the salesperson shall confiscate and return the salesperson's license to the board. Upon being reemployed as a motor vehicle salesperson, the motor vehicle salesperson shall notify the board. Upon receiving the notification, the board shall issue a new license for the unexpired portion of the returned license after collecting a fee set pursuant to section 44-20-111 (5). It shall be unlawful for the salesperson to act as a motor vehicle salesperson until a new license is procured.
- (4) Should a wholesaler, for any reason whatsoever, change the wholesaler's place of business or business address during any license year, the wholesaler shall immediately so notify the board.
- (5) Any wholesale motor vehicle auction dealer who changes a place of business or business address during any license year shall notify the board immediately of the dealer's new business address.
- (6) (a) Except as specified in subsection (6)(d) of this section:

 - (I) A person holding an ownership interest in a licensed corporation, limited liability company, limited liability partnership, or other business entity shall not sell the interest to a person who does not already own an interest in the business entity until the owner applies to the board to be approved to hold an ownership interest in the business entity and the board approves the person to hold the interest.
 - (II) A licensed corporation, limited liability Company, limited liability partnership, or other business entity shall notify the board within ten days after a transfer, other than a sale, of any ownership that results in a new person holding an interest in the business entity. To continue to hold ownership in the business, the transferee shall apply to the board for approval to continue holding an ownership interest in the business entity.

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- (b) To be approved by the board to hold an ownership interest in a licensed business entity, the new owner must demonstrate the qualifications necessary for licensing, including a fingerprint-based criminal history record check, in accordance with this part 1.
- (c)
 - (I) If the board does not approve a person to hold an ownership interest in a licensed business entity, the person shall transfer the interest within six months after acquiring the ownership interest.
 - (II) This subsection (6)(c) does not authorize a person to hold an interest in a licensed business entity when the person acquired the interest as the result of a sale that violates subsection (6)(a)(I) of this section.
- (d)
 - (I) This subsection (6) does not apply to the sale or transfer of an interest in a publicly traded company.
 - (II) This subsection (6) does not apply to the sale of an interest to an institutional investor of a business entity that is subject to the reporting requirements of the "Securities Exchange Act of 1934", 15 U.S.C. sec. 78a et seq., as amended. For the purposes of this subsection (6)(d) (II), "institutional investor" means an entity, such as a pension fund, endowment fund, insurance company, commercial bank, or mutual fund, that invests money on behalf of its members or clients and that is required by the United States securities and exchange commission to file a form 13F, or its successor form, to report quarterly holdings.

44-20-120. Principal place of business – requirements

- (1) The building or structure required to be located on a principal place of business shall have electrical service and adequate sanitary facilities.
- (2)
 - (a) In no event shall a room in a hotel, rooming house, or apartment house building or a part of any single or multiple unit dwelling house be considered a "principal place of business" within the terms and provisions of this part 1, unless the entire ground floor of the hotel, apartment house, or rooming house building or the dwelling house is devoted principally to and occupied for commercial purposes and the office of the dealer is located on the ground floor thereof.
 - (b) A motor vehicle dealer who operates the motor vehicle dealer's business from his or her primary residence and who has been a resident of Colorado for the immediately preceding twelve-month period and is a motor vehicle dealer only because the dealer sells custom trailers for one or more manufacturers and maintains an inventory of fewer than four vehicles at all times shall be exempt from subsection (2)(a) of this section. Any motor vehicle dealer who is issued

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dealer plates in accordance with this subsection (2)(b) and section 42-3-116 shall only use the plates on trailers.

- (3) Nothing in this section shall be construed to exempt a motor vehicle dealer from local zoning ordinances.

Regulation 44-20-120

1. *An applicant for a motor vehicle dealer license or a used motor vehicle dealer license shall document each of the following, as part of the license application submitted to the board:*
 - a. *the existence of adequate sanitary facilities at the principal place of business;*
 - b. *proof that the applicant either owns or has leased the principal place of business; and,*
 - c. *proof that the applicant is in possession of the principal place of business.*
2. *A licensee applying for an additional location for a licensee's motor vehicle business or a used motor vehicle business, shall document each of the following, as part of the additional location application submitted to the board:*
 - a. *the existence of adequate sanitary facilities at the additional location, unless the additional location will be used by the licensee solely as a motor vehicle storage site;*
 - b. *proof that the licensee either owns or has leased the additional location; and,*
 - c. *proof that the licensee is in possession of the additional location.*
3. *During the entire active period of a motor vehicle dealer's license or a used motor vehicle dealer's license, the licensee shall:*
 - a. *maintain adequate sanitary facilities at its principal place of business and at each additional location associated with the license at any given time, unless the additional location is used by the licensee solely as a motor vehicle storage site;*
 - b. *maintain, through ownership or lease, the licensee's right to occupy its principal place of business and each additional location approved by the board, unless the licensee has notified the board that it relinquished a previously authorized additional location; and,*
 - c. *continue to be in possession of the principal place of business and each additional location approved by the board, unless the licensee has notified the board that it relinquished a previously authorized additional location.*
4. *As used in this regulation, "adequate sanitary facilities" means a publicly-accessible, private bathroom with either 1) a functioning portable chemical toilet or, 2) a functioning permanent flush toilet with either a permanent sewer hookup, cesspool, or septic tank with leaching field.*

44-20-121. Licenses - grounds for denial, suspension, or revocation

Regulation 44-20-121

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

Regulation 44-20-121(l)(b)[Recodified as 1 CCR 210-2]

1 CCR 210-2 Regulation 44-20-121(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.

- (c) Engaging, in the past or present, in any illegal business practice.
- (2) A manufacturer representative's license may be denied, suspended, or revoked on the following grounds:
 - (a) Material misstatement in an application for a license;
 - (b) Willful failure to comply with any provision of this part 1 or any rule promulgated by the executive director under this part 1;
 - (c) Having indulged in any unconscionable business practice pursuant to title 4;
 - (d) Having coerced or attempted to coerce any motor vehicle dealer to accept delivery of any motor vehicle, parts or accessories therefor, or any other commodities or services that have not been ordered by the dealer;
 - (e) Having coerced or attempted to coerce any motor vehicle dealer to enter into any agreement to do any act unfair to the dealer by threatening to cause the cancellation of the franchise of the dealer;
 - (f) Having withheld, threatened to withhold, reduced, or delayed without just cause an order for motor vehicles, parts or accessories therefor, or any other commodities or services that have been ordered by a motor vehicle dealer;
 - (g) Engaging, in the past or present, in any illegal business practice.
- (3) A motor vehicle dealer's, wholesale motor vehicle auction dealers, wholesalers, buyer agents, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds:
 - (a) Material misstatement in an application for a license;

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

“Material misstatement in an Application for a License” means

- (a) *either a written statement, a responsive mark (for example, a mark in a checkbox), or, an omission,*
- (b) *for which the applicant is responsible,*
- (c) *that is false or misleading, and*
- (d) *that is made in support of an application either*
 - (1) *by a natural person who has ownership, financial, or equity interest in an applicant for a class of license other than a business disposer’s license or a salesperson’s license (except for a natural person whose sole relationship to the applicant is as a stockholder*

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of a corporation that is subject to the reporting requirements of the "Securities Exchange Act of 1934," as amended, 15 U.S.C. § 78a, et seq.), or,

(2) by a natural person who has the ability to control or to exercise significant financial or operational influence over an applicant for a class of license other than a business disposer's or a salesperson's license. For purposes of this rule, "material" means reasonably significant enough to affect the outcome of the Board's review of an application.

- (b) Violation of any of the terms and provisions of this part 1 or any rule promulgated by the board under this part 1;
- (c) Having been convicted of or pled nolo contendere to any felony, or any crime pursuant to article 3, 4, or 5 of title 18, or any like crime pursuant to federal law or the law of any other state. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be conclusive evidence of the conviction in any hearing held pursuant to this article 20.

Regulation 40-20-121(3)(c) [Repealed eff. 11/30/2019]

- (d) Defrauding any buyer, seller, motor vehicle salesperson, or financial institution to the person's damage;
- (e) Intentional or negligent failure to perform any written agreement with any buyer or seller;
- (f) Failure or refusal to furnish and keep in force any bond required under this part 1;
- (g) Having made a fraudulent or illegal sale, transaction, or repossession;
- (h) Willful misrepresentation, circumvention, or concealment of or failure to disclose, through whatsoever subterfuge or device, any of the material particulars or the nature thereof required to be stated or furnished to the buyer;

Regulation 44-20-121(3)(h)

A. Definitions for Purposes of this Regulation

- 1. *"Contract" means any written agreement, such as a purchase agreement, buyer order or invoice, between a Dealer and a Buyer for the sale of a motor vehicle, excluding the Retail Installment Sales Contract ("RISC").*
- 2. *"Dealer" means a motor vehicle dealer, used motor vehicle dealer, wholesaler, wholesale motor vehicle auction dealer, motor vehicle auctioneer, or a representative of the dealership.*
- 3. *"Seller" means Dealer.*
- 4. *"Buyer" means a retail consumer or a Dealer.*

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5. *“Material Particulars” means those details concerning a vehicle for sale that are essential or necessary for a reasonable prospective Buyer to know prior to making the decision to buy or not to buy a vehicle.*

B. *Disclosure Process*

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

C. *“As Is” Statement*

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

D. *Non-Exclusive List of “Material Particulars”*

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

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

E. *Matters Generally Not Considered “Material Particulars”*

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

1. *Normal wear and tear.*

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2. *Completed or prior mechanical repair.*
 3. *General maintenance.*
 4. *Repair or replacement of tires, wheels, glass, handlebars, moldings, radios, in-dash audio equipment, or the like, provided that the repair or replacement was completed in a manner reasonably comparable to manufacturer's specifications and provided that any repaired or replaced item is functioning at the time of sale in the manner that a reasonable person would expect.*
 5. *Touch-up paint for minor scratches, dents, or dings.*
 6. *Completed recall repair, provided the repair was done by a dealer authorized by the manufacturer to perform such repairs.*
- (i) To intentionally publish or circulate any advertising that is misleading or inaccurate in any material particular or that misrepresents any of the products sold or furnished by a licensed dealer;

Advertising

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

Regulation 44-20-121(3)(i)

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

- Rule 1.** *Advertising a motor vehicle which is not in operable condition unless specifically disclosed.*
- Rule 2.** *Advertising which would imply the dealer is going out of business when such is not the case.*
- Rule 3.** *Advertising a specific motor vehicle for sale or lease with price or terms quoted, without fully identifying the vehicle as to year, make, model, and dealer stock number.*
- a. Motor vehicles shall be willfully shown and sold at the advertised price and/or terms while such vehicle remains unsold or unleased, for a period of three 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.*
- b. If a motor vehicle is not available for immediate delivery, the advertisement must clearly and conspicuously state the motor vehicle's availability, such as it is in transit, on order, or otherwise in a specified location, and that it is not in stock.*
- c. Utility trailers, as defined by section 42-1-102(111), C.R.S., do not need to include the year if the trailer is less than three model years old.*

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d. Utility trailers, as defined by section 42-1-102(111), C.R.S., may use a stock keeping unit (SKU) in lieu of a dealer stock number. For the purposes of this regulation the material particulars of all trailers advertised under the same SKU will be the same except the year of manufacture (see 1 CCR 205-1 Regulation 44-20-121(3)(h) for the definition of Material Particular).

e. Any motor vehicle may use a complete 17-digit VIN number in lieu of a dealer stock number.

- Rule 4.** *Using a picture or photograph of a vehicle in advertising when the picture or photograph is not the same make, year and equipment actually being offered for the price or terms advertised.*
- Rule 5.** *Advertising in such a manner which utilizes an asterisk or other reference symbols to contradict or materially change the meaning of any advertising statements.*
- Rule 6.** *A used vehicle shall not be advertised in any manner that creates the impression that it is new.*
- Rule 7.** *Advertising motor vehicles which are known by the dealer to be salvage, rebuilt from salvage, or flood vehicles, which are not so identified in the advertisement.*
- Rule 8.** *Advertising in any manner to imply that a purchaser will be receiving benefits of any existing loan on a vehicle when no such benefit exists.*
- Rule 9.** *Advertising or making statements that are not true or that cannot or will not be honored. Advertising which creates the false impression that the purchaser will determine the terms, price or conditions of a sale, such as "write your own deal," "name your own price," "no reasonable offer refused," and "we will not be undersold." Advertising any item as "free" which is associated with or conditioned upon the negotiated sale of a motor vehicle.*
- Rule 10.** *Advertising sales prices for used motor vehicles which claim or imply a specific savings or discount without clearly and accurately documenting the basis for the savings or discount.*
- Rule 11.** *Advertising any reference to "dealer cost" or "invoice" price. Advertising the word "wholesale" in connection with the retail offering of motor vehicles.*
- Rule 12.** *Advertising a specific trade-in amount or range of amounts without, in fact, offering such a trade-in amount and, failing to disclose or advertise the M.S.R.P., sale price, or capitalized cost of the vehicle from which the trade-in will be deducted.*
- Rule 13.** *Advertising the price of a vehicle without including all costs to the purchaser at the time of delivery, except sales tax, finance charges, cost of emissions test, other governmental fees or taxes, and transportation costs, incurred after sale, to deliver the vehicle to the purchaser at the purchaser's request.*

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- Rule 14.** *Advertising any specific discount or rebate on new motor vehicles without the manufacturer's suggested retail price conspicuously stated in the ad. When advertising rebates, incentives, or other offers, a dealer shall not combine such offers or give the impression that such offers are obtainable, when in fact they are not.*
- Rule 15.** *Advertising any qualifying statement or disclosure which is not clear, conspicuous, and readable, and which is not adjacent to the offer or terms it qualifies, and in less than eight-point type.*
- Rule 16.** *Advertising any contest that offers to prospective participants the opportunity to receive or compete for gifts or prizes without such advertisement containing the words "no purchase or payment of any kind is necessary to enter or win this contest" in bold-faced type and at least tenpoint type.*
- Rule 17.** *If any advertisement relates to a lease, the advertisement shall clearly and conspicuously disclose that the advertisement is for the lease of a vehicle.*
- Rule 18.** *Statements, such as "Everybody Financed," "No Credit Rejected," "We Finance Anyone," and other statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit, are prohibited, unless such statements are true.*
- Rule 19.** *Bait advertising, as defined in § 18-5-303, C.R.S., is not allowed.*
- (j) To knowingly purchase, sell, or otherwise acquire or dispose of a stolen motor vehicle;
 - (k) For any licensed motor vehicle dealer or used motor vehicle dealer, to engage in the business for which the dealer is licensed without at all times maintaining a principal place of business as required by this part 1 during reasonable business hours;

Regulation 44-20-121(3)(k)

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

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

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

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

- (l) Engaging in the business through employment of an unlicensed motor vehicle salesperson;

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- (m) To willfully violate any state or federal law respecting commerce or motor vehicles, or any lawful rule respecting commerce or motor vehicles promulgated by any licensing or regulating authority pertaining to motor vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or motor vehicles;
- (n) Representing or selling as a new and unused motor vehicle any motor vehicle that the dealer or salesperson knows has been used and operated for demonstration purposes or which the dealer or salesperson knows is otherwise a used motor vehicle;
- (o) Violating any state or federal statute or regulation issued thereunder dealing with odometers;
- (p) Selling to a retail customer a motor vehicle that is not equipped or in proper condition and adjustment as required by part 2 of article 4 of title 42 unless the vehicle is sold as a tow away, not to be driven;
- (q) Committing a fraudulent insurance act pursuant to section 10-1-128;
- (r) Failure to give notice to a prospective buyer of the acceptance or rejection of a motor vehicle purchase order agreement within a reasonable time period, as determined by the board, when the licensee is working with the prospective buyer on a finance sale or a consignment sale.

Regulation 44-20-121(3)(r)

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

- (4) A wholesaler's or wholesale motor vehicle auction dealer's license may be denied, suspended, or revoked for the selling, leasing, or offering or attempting to negotiate the sale, lease, or exchange of an interest in motor vehicles by the wholesaler or wholesale motor vehicle auction dealer to persons other than motor vehicle dealers, used motor vehicle dealers, or other wholesalers or wholesale motor vehicle auction dealers.
- (5) The license of a motor vehicle dealer may be denied, revoked, suspended, or otherwise subject to discipline imposed under this part 1 if an owner is acting as a salesperson without a motor vehicle salesperson license and the owner commits any of the acts or omissions that subject a salesperson's license to denial, revocation, or suspension under subsection (6) of this section.
- (6) The license of a motor vehicle salesperson may be denied, revoked, or suspended on the following grounds:
 - (a) Material misstatement in an application for a license;

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

“Material Misstatement in an Application for a License” means

- (a) either a written statement, a responsive mark (for example, a mark in a checkbox), or, an omission,*
- (b) for which the applicant is responsible,*
- (c) that is false or misleading, and,*
- (d) that is made by the applicant in support of an application for a salesperson’s license.*

For purposes of this rule, “material” means reasonably significant enough to affect the outcome of the Board’s review of an application.

- (b)** Failure to comply with any provision of this part 1 or any rule promulgated by the board or executive director under this part 1;
- (c)** To engage in the business for which the licensee is licensed without having in force and effect a good and sufficient bond with corporate surety as provided in this part 1;
- (d)** To intentionally publish or circulate any advertising that is misleading or inaccurate in any material particular or that misrepresents any motor vehicle products sold or attempted to be sold by the salesperson;
- (e)** Having indulged in any fraudulent business practice;
- (f)** Selling, offering, or attempting to negotiate the sale, exchange, or lease of motor vehicles for any motor vehicle dealer or used motor vehicle dealer for which the salesperson is not licensed; except that negotiation with a motor vehicle dealer for the sale, exchange, or lease of new and used motor vehicles, except those vehicles defined in section 42-1-102 (55) as motorcycles and section 33-14.5-101 (3) as off-highway vehicles, by a salesperson compensated for the negotiation by the used motor vehicle dealer for which the salesperson is licensed shall not be grounds for denial, revocation, or suspension;

Regulation 44-20-121(6)(f) Reissue of Salesperson Licenses [Repealed eff. 11/30/2019]

- (g)** Representing oneself as a salesperson for any motor vehicle dealer or used motor vehicle dealer when the salesperson is not so employed and licensed;
- (h)** Having been convicted of or pled nolo contendere to any felony, or any crime pursuant to article 3, 4, or 5 of title 18, or any like crime pursuant to federal law or the law of any other state. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be conclusive evidence of the conviction in any hearing held pursuant to this article 20.

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

- (i) Having knowingly purchased, sold, or otherwise acquired or disposed of a stolen motor vehicle;
 - (j) Employing an unlicensed motor vehicle salesperson;
 - (k) Violating any state or federal statute or regulation issued thereunder dealing with odometers;
 - (l) Defrauding any retail buyer to the person's damage;
 - (m) Representing or selling as a new and unused motor vehicle any motor vehicle that the salesperson knows has been used and operated for demonstration purposes or that the salesperson knows is otherwise a used motor vehicle;
 - (n) Selling to a retail customer a motor vehicle that is not equipped or in proper condition and adjustment as required by part 2 of article 4 of title 42 unless the vehicle is sold as a tow away, not to be driven;
 - (o) Willfully violating any state or federal law respecting commerce or motor vehicles, or any lawful rule respecting commerce or motor vehicles promulgated by any licensing or regulating authority pertaining to motor vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or motor vehicles;
 - (p) Improperly withholding, misappropriating, or converting to the salesperson's own use any money belonging to customers or other persons, received in the course of employment as a motor vehicle salesperson.
- (6.5) A business disposal license may be denied, suspended, or revoked on the following grounds:
- (a) Making a material misstatement in an application for a license;

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

“Material Misstatement in an Application for a License” means

- (a) *either a written statement, a responsive mark (for example, a mark in a checkbox), or, an omission,*
- (b) *for which the applicant is responsible,*
- (c) *that is false or misleading, and*
- (d) *that is made in support of an application either*
 - (1) *by a natural person who has an ownership, financial, or equity interest in an applicant for a business disposer’s license (except for a natural person whose sole relationship to the applicant is as a stockholder of a corporation that is subject to the reporting requirements of the “Securities Exchange Act of 1934,” as amended, 15 U.S.C. § 78a, et seq.), or,*

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- (2) *by a natural person who has the ability to control or to exercise significant financial or operational influence over an applicant for a business disposer's license. For purposes of this rule, "material" means reasonably significant enough to affect the outcome of the Board's review of an application.*
- (b) Violating this part 1 or a rule promulgated by the board under this part 1;
 - (c) Having been convicted of or pled nolo contendere to a felony, a crime under article 3, 4, or 5 of title 18, or any like crime under federal law or the law of another state. A certified copy of the judgment of conviction by a court of competent jurisdiction is conclusive evidence of the conviction in a hearing held under this article 20.
 - (d) Defrauding a buyer, seller motor vehicle salesperson, or financial institution to the person's damage;
 - (e) Intentional or negligent failure to perform any written agreement with a buyer or seller;
 - (f) Making a fraudulent or illegal sale, transaction, or repossession;
 - (g) Willful misrepresentation of circumvention of, concealment of, or failure to disclose any of the material particulars required to be stated or furnished to the buyer;
 - (h) Intentionally publishing or circulating an advertisement that is misleading or inaccurate in any material particular or that misrepresents a product sold by or furnished by a licensed dealer;
 - (i) Knowingly selling, acquiring, or disposing of a stolen motor vehicle;
 - (j) Willfully violating a state or federal law governing commerce or motor vehicles or a rule governing commerce or motor vehicles promulgated by any licensing or regulating authority governing motor vehicles if the act constituting the violation directly and necessarily involves commerce or motor vehicles;
 - (k) Representing or selling as new a motor vehicle that the dealer or salesperson knows:
 - (I) Has been used for and operated for demonstration purposes; or
 - (II) Is a used motor vehicle;
 - (l) Violating a state or federal statute, rule, or regulation dealing with odometers;
 - (m) Selling to a retail customer a motor vehicle that is not equipped as required by or in proper condition and adjustment as required by part 2 of article 4 of title 42 unless the vehicle is sold as a tow-away and not to be driven;

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- (n) Committing a fraudulent insurance act under section 10-1-128;
- (o) Failing to notify a prospective buyer of the acceptance or rejection of a motor vehicle purchase order agreement within a reasonable period, as determined by the board, when the licensee is working with the prospective buyer on a finance sales or a consignment sale;
- (p) Failing to maintain in Colorado, when the business disposer is licensed, a place of business that:
 - (I) Is maintained by the business disposer and is located at a fixed address, other than solely a post office box or an electronic address; and
 - (II) Employs one or more individuals on a full-time basis.
- (7) Any license issued pursuant to this part 1 may be denied, revoked, or suspended if unfitness of the licensee or licensee applicant is shown in the following:
 - (a) The licensing character or record of the licensee or licensee applicant;
 - (b) The criminal character or record of the licensee or licensee applicant;
 - (c) The financial character or record of the licensee or licensee applicant;
 - (d) Violation of any lawful order of the board.

Regulation 44-20-121(7)

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

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motor vehicle license will be closely evaluated based on the factors herein and the applicant's concept of operation for the business to assess the potential for harm to retail customers.

- (I)** *Failure to timely pay any fine imposed by the Board, or the submission of a draft or check for the payment of any fee required by the Board which is dishonored shall be deemed to demonstrate unfitness of financial character or record.*
- (8) (a)** Any license issued or for which an application has been made pursuant to this part 1 shall be revoked or denied if the licensee or applicant has been convicted of or pleaded no contest to any of the following offenses in this state or any other jurisdiction during the previous ten years:

 - (I)** A felony in violation of article 3, 4, or 5 of title 18 or any similar crime under federal law or the law of any other state; or
 - (II)** A crime involving odometer fraud, salvage fraud, motor vehicle title fraud, or the defrauding of a retail consumer in a motor vehicle sale or lease transaction.
- (b)** A certified copy of a judgment of conviction by a court of competent jurisdiction of an offense under subsection (8)(a) of this section is conclusive evidence of the conviction in any hearing held pursuant to this article 20.
- (9)** In any disciplinary hearing, action, or order of the board involving a violation of section 42-6-112 or 42-6-119 (3), it is an affirmative defense that the dealer has taken every reasonable action necessary to deliver or facilitate the delivery of the certificate of title within thirty days. To qualify as having taken every reasonable action to deliver or facilitate the delivery of the certificate of title, the dealer must have, at a minimum:

 - (a)** Processed and mailed any required loan payoffs in a reasonable amount of time;
 - (b)** Contacted the prior lender and taken any actions necessary to obtain a certificate of title or duplicate certificate of title, either of which must be free of liens;
 - (c)** Taken any action necessary to obtain information or signatures from the prior owner necessary to have a new certificate of title issued for the motor vehicle;
 - (d)** Submitted all paperwork that the dealer has obtained to the authorized agent and that is necessary to have a new certificate of title issued for the motor vehicle; and
 - (e)** Corrected any errors in any filings with the department in a reasonable amount of time.
- (10)** A person whose license issued under this part 1 is revoked or who surrenders a license to avoid discipline is ineligible to apply for a new license under this part 1 for one year after the date of revocation or surrender of the license.

44-20-122. Procedure for denial, suspension, or revocation of license -judicial review

- (1) The denial, suspension, or revocation of licenses issued under this part 1 shall be in accordance with the provisions of sections 24-4-104 and 24-4-105; except that the discovery available under rule 26 (b)(2) of the Colorado rules of civil procedure is available in any proceeding.
- (2)
 - (a)
 - (I) The board shall appoint an administrative law judge pursuant to part 10 of article 30 of title 24 to conduct any hearing concerning the licensing or discipline of a motor vehicle dealer, used motor vehicle dealer, wholesaler, buyer's agent, business disposer, or wholesale motor vehicle auction dealer; except that the board may, upon a unanimous vote of the members present when the vote is taken, conduct the hearing in lieu of appointing an administrative law judge.
 - (II) Beginning July 1, 2008, the board shall issue an annual report to the executive director detailing the number of hearings held pursuant to this subsection (2)(a) and the number of the hearings conducted by the board. If the board conducts greater than forty percent of the hearings, the executive director shall analyze the hearing procedures and acts and issue a report to the general assembly, which shall include any recommendations of the executive director.
 - (b) The board shall assign a hearing concerning the licensing or discipline of a motor vehicle salesperson to the executive director who shall appoint an officer to conduct a hearing.
- (3) Hearings conducted before an administrative law judge shall be in accordance with the rules of procedure of the office of administrative courts. Hearings conducted before an officer appointed by the executive director shall be in accordance with the rules of procedure established by the executive director.
- (4) The board may summarily suspend a licensee required to post a bond under this article 20 if the licensee does not have a bond in full force and effect as required by this article 20. The suspension shall become effective upon the earlier of the licensee receiving notice of the suspension or within three days after the notice of suspension is mailed to a licensee's last known address on file with the board. The notice may be effected by certified mail or personal delivery.
- (5) The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the board. The proceedings shall be conducted in accordance with section 24-4-106 (11).

44-20-123. Sales activity following license denial, suspension, or revocation - unlawful act - penalty.

- (1)
 - (a) It shall be unlawful and a violation of this part 1 for any person whose motor vehicle dealer's, used motor vehicle dealer's, motor vehicle wholesaler's, or motor vehicle salesperson's license has been denied, suspended, or revoked to exercise any of the privileges of the license that was denied, suspended, or revoked.
 - (b) A violation of subsection (1)(a) of this section shall be punishable in accordance with section 44-20-128; except that a second or subsequent violation of subsection (1)(a) of this section shall be a class 6 felony.
 - (c) In any trial for a violation of subsection (1)(a) of this section:
 - (I) A duly authenticated copy of the board's order of denial, suspension, or revocation shall constitute prima facie evidence of the denial, suspension, or revocation;
 - (II) A duly authenticated invoice, buyer's order, or other customary, written sales or purchase document or instrument proven to be signed by the defendant and indicating the defendant's role in the purchase or sale of a motor vehicle at any motor vehicle auction, wholesale motor vehicle sales location, or retail motor vehicle sales location, as applicable, shall constitute prima facie evidence of the defendant's exercise of a privilege of licensure;
 - (III) It shall be an affirmative defense that the defendant bought or sold a motor vehicle that was, at all relevant times, intended for the defendant's own use and not bought or sold for the purpose of profit or gain; and
 - (IV) The fact that the defendant has a motor vehicle dealer's, used motor vehicle dealer's, motor vehicle wholesaler's, or motor vehicle salesperson's license, or any other license to buy and sell motor vehicles, that is issued by a state or jurisdiction other than Colorado shall not constitute a defense.
- (2) Upon the defendant's conviction by entry of a plea of guilty or nolo contendere or judgment or verdict of guilt in connection with a violation of subsection (1)(a) of this section or of section 44-20-124 (2) or 42-6-142 (1), the court shall immediately give the executive director written notice of the conviction. In addition, the court shall forward to the executive director copies of documentation of any conviction on a lesser included offense and any amended charge, plea bargain, deferred prosecution, deferred sentence, or deferred judgment in connection with the original charge.
- (3) Upon receiving notice of a conviction or other disposition pursuant to subsection (2) of this section, the executive director or his or her designee shall forward the notice to the board, which shall immediately examine its files to determine whether in fact the defendant's license was denied, suspended, or revoked at the time of the offense to which

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the conviction or other disposition relates. If in fact the defendant's license was denied, suspended, or revoked at the time of the offense, the board:

- (a) Shall not issue or reinstate any license to the defendant until one year after the time the defendant would otherwise have been eligible to receive a new or reinstated license; and
- (b) Shall revoke or suspend any other licenses held by the defendant until at least one year after the date of the conviction or other disposition.

44-20-124. Unlawful acts

- (1) It is unlawful and a violation of this part 1 for any manufacturer, distributor, or manufacturer representative:
 - (a) To willfully fail to perform or cause to be performed any written warranties made with respect to any motor vehicle or parts thereof;
 - (b) To coerce or attempt to coerce any motor vehicle dealer to perform or allow to be performed any act that could be financially detrimental to the dealer or that would impair the dealer's goodwill or to enter into any agreement with a manufacturer or distributor that would be financially detrimental to the dealer or impair the dealer's goodwill, by threatening to cancel or not renew any franchise between a manufacturer or distributor and the dealer;
 - (c) To coerce or attempt to coerce any motor vehicle dealer to accept delivery of any motor vehicle, parts or accessories therefor, or any commodities or services that have not been ordered by the dealer;
 - (d)
 - (I) To cancel or cause to be canceled, directly or indirectly, without just cause, the franchise of any motor vehicle dealer, and the nonrenewal of a franchise or selling agreement without just cause is a violation of this subsection (1)(d) and shall constitute an unfair cancellation.
 - (II) As used in this subsection (1)(d), "just cause" shall be determined in the context of all circumstances surrounding the cancellation or nonrenewal, including but not limited to:
 - (A) The amount of business transacted by the motor vehicle dealer;
 - (B) The investments necessarily made and obligations incurred by the motor vehicle dealer, including but not limited to goodwill, in the performance of its duties under the franchise agreement, together with the duration and permanency of the investments and obligations;
 - (C) The potential for harm to consumers as a result of disruption of the business of the motor vehicle dealer;

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- (D)** The motor vehicle dealer's failure to provide adequate service of facilities, equipment, parts, and qualified service personnel;
 - (E)** The motor vehicle dealer's failure to perform warranty work on behalf of the manufacturer, subject to reimbursement by the manufacturer; and
 - (F)** The motor vehicle dealer's failure to substantially comply, in good faith, with requirements of the franchise that are determined to be reasonable and material.
 - (III)** The following conduct by a motor vehicle dealer shall constitute just cause for termination without consideration of other factors:
 - (A)** Conviction of, or a plea of guilty or nolo contendere to, a felony;
 - (B)** A continuing pattern of fraudulent conduct against the manufacturer or consumers; or
 - (C)** Continuing failure to operate for ten days or longer.
- (e)** To withhold, reduce, or delay unreasonably or without just cause delivery of motor vehicles, motor vehicle parts and accessories, commodities, or money due motor vehicle dealers for warranty work done by any motor vehicle dealer;
- (f)** To withhold, reduce, or delay unreasonably or without just cause services contracted for by motor vehicle dealers;
- (g)** To coerce any motor vehicle dealer to provide installment financing with a specified financial institution;
- (h)** To violate any duty imposed by, or fail to comply with, any provision of section 44-20-125, 44-20-126, or 44-20-127;
- (i)**
 - (I)** To fail to provide to the motor vehicle dealer, within twenty days after receipt of a notice of intent from a motor vehicle dealer, the list of documents and information necessary to approve the sale or transfer of the ownership of a dealership by sale of the business or by stock transfer or the change in executive management of the dealership;
- (III)** To refuse to approve, unreasonably, the sale or transfer of the ownership of a dealership by sale of the business or by stock transfer within sixty days after the manufacturer has received all documents and information necessary to approve the sale or transfer of ownership, or to refuse to approve, unreasonably, the change in executive management of the dealership within sixty days after the manufacturer has received all information necessary to approve the change in management; except that

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nothing in this part 1 shall authorize the sale, transfer, or assignment of a franchise or a change of the principal operator without the approval of the manufacturer or distributor unless the manufacturer or distributor fails to send notice of the disapproval within sixty days after receiving all documents and information necessary to approve the sale or transfer of ownership; or

(IV) To condition the sale, transfer, relocation, or renewal of a franchise agreement, or to condition sales, services, parts, or finance incentives, upon site control or an agreement to renovate or make improvements to a facility; except that voluntary acceptance of the conditions by the dealer shall not constitute a violation;

- (j)** **(I)** **(A)** To fail or refuse to offer to its same line-make franchised dealers all models manufactured for that line-make except as a result of a strike or labor difficulty, lack of manufacturing capacity, shortage of materials, freight embargo, or other cause over which the manufacturer has no control; or
- (B)** To require a dealer to pay an unreasonable fee, purchase unreasonable advertising displays or other materials, or comply with unreasonable training or facilities requirements as a prerequisite to receiving any particular model of that same line-make. For purposes of this subsection (1)(j)(I)(B), reasonableness shall be judged based on the circumstances of the individual dealer and the conditions of the market served by the dealer.
- (II)** This subsection (1)(j) shall not apply to manufacturers of recreational vehicles nor to manufacturers of vehicles with a passenger capacity of thirty-two or more.
- (k)** To require, coerce, or attempt to coerce any motor vehicle dealer to refrain from participation in the management of, investment in, or acquisition of any other line-make of new motor vehicles or related products; except that this subsection (1)(k) shall not apply unless the motor vehicle dealer:
- (I)** Maintains a reasonable line of credit for each make or line of new motor vehicle;
- (II)** Remains in compliance with reasonable capital standards and reasonable facilities requirements specified by the manufacturer; except that "reasonable facilities requirements" shall not include a requirement that a motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space; and

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- (III)** Provides written notice to the manufacturer, distributor, or manufacturer's representative, no less than ninety days prior to the dealer's intent to participate in the management of, investment in, or acquisition of another line-make of new motor vehicles or related products;
- (l)** **(I)** To fail to pay to a motor vehicle dealer, within ninety days after the termination, cancellation, or nonrenewal of a franchise, all of the following:

 - (A)** The dealer cost, plus any charges made by the manufacturer for distribution, delivery, and taxes, less all allowances paid or credited to the motor vehicle dealer by the manufacturer, of unused, undamaged, and unsold motor vehicles in the motor vehicle dealer's inventory that were acquired from the manufacturer or from another motor vehicle dealer of the same line make in the ordinary course of business within the previous twelve months;
 - (B)** The dealer cost, less all allowances paid or credited to the motor vehicle dealer by the manufacturer, for all unused, undamaged, and unsold supplies, parts, and accessories in original packaging and listed in the manufacturer's current parts catalog;
 - (C)** The fair market value of each undamaged sign owned by the motor vehicle dealer and bearing a common name, trade name, or trademark of the manufacturer if acquisition of the sign was required by the manufacturer;
 - (D)** The fair market value of all special tools and equipment that were acquired from the manufacturer or from sources approved and required by the manufacturer and that are in good and usable condition, excluding normal wear and tear; and
 - (E)** The cost of transporting, handling, packing, and loading the motor vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings described in this subsection (1)(l).
- (II)** This subsection (1)(l) shall only apply to manufacturers of recreational vehicles in cases where the manufacturer terminates, cancels, or fails to renew the recreational vehicle dealer franchise; and this subsection (1)(l) shall not apply to manufacturers of vehicles with a passenger capacity of thirty-two or more.
- (m)** To require, coerce, or attempt to coerce any motor vehicle dealer to close or change the location of the motor vehicle dealer, or to make any substantial alterations to the dealer premises or facilities when doing so would be

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unreasonable or without written assurance of a sufficient supply of motor vehicles so as to justify the changes, in light of the current market and economic conditions;

- (n) (I)** To authorize or permit a person to perform warranty service repairs on motor vehicles unless the person is:

 - (A)** A motor vehicle dealer with whom the manufacturer has entered into a franchise agreement for the sale and service of the manufacturer's motor vehicles; or
 - (B)** A person or government entity that has purchased new motor vehicles pursuant to a manufacturer's fleet discount program and is performing the warranty service repairs only on vehicles owned by the person or entity.
- (II)** This subsection (1)(n) shall not apply to manufacturers of recreational vehicles nor to manufacturers of vehicles with a passenger capacity of thirty-two or more.
- (o)** To require, coerce, or attempt to coerce any motor vehicle dealer to prospectively agree to a release, assignment, novation, waiver, or estoppel that would relieve any person of a duty or liability imposed under this article 20 except in settlement of a bona fide dispute;
- (p)** To discriminate between or refuse to offer to its same line-make franchised dealers all models manufactured for that line-make based upon unreasonable sales and service standards;
- (q)** To fail to make practically available any incentive, rebate, bonus, or other similar benefit to a motor vehicle dealer that is offered to another motor vehicle dealer of the same line-make within this state;
- (r)** To fail to pay to a motor vehicle dealer:

 - (I)** Within ninety days after the termination, cancellation, or nonrenewal of a franchise for the failure of a dealer to meet performance sales and service obligations or after the termination, elimination, or cessation of a line-make, the cost of the lease for the facilities used for the franchise or line-make for the unexpired term of the lease, not to exceed one year; except that:

 - (A)** If the motor vehicle dealer owns the facilities, the value of renting the facilities for one year, prorated for each line-make based upon total sales volume for the previous twelve months before the involuntary termination;

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- (B) If the dealer sells recreational vehicles and a subsequent manufacturer or distributor that manufactures or distributes recreational vehicles replaces any portion of the vacated facilities, the lease or rental value shall be prorated on a monthly basis unless the dealer sells motor vehicles that are not recreational vehicles;
- (C) Nothing in this subsection (1)(r)(I) shall be construed to limit the application of subsection (1)(d) of this section;
- (II) Within ninety days after the termination, elimination, or cessation of a line-make or the termination of a franchise due to the insolvency of the manufacturer or distributor, the fair market value of the motor vehicle dealer's goodwill for the line-make as of the date the manufacturer or distributor announces the action that results in the termination, elimination, or cessation, not including any amounts paid under subsections (1)(l)(I)(A) to (1)(l)(I)(E) of this section;
- (s) To condition a franchise agreement on improvements to a facility unless reasonably required by the technology of a motor vehicle being sold at the facility;
- (t) To sell or offer for sale a low-speed electric vehicle, as defined by section 42-1-102, for use on a roadway unless the vehicle complies with part 2 of article 4 of title 42;
- (u) To charge back, deny motor vehicle allocation, withhold payments, or take other actions against a motor vehicle dealer if a motor vehicle sold by the motor vehicle dealer is exported from Colorado unless the manufacturer, distributor, or manufacturer representative proves that the motor vehicle dealer knew or reasonably should have known a motor vehicle was intended to be exported, which shall operate as a rebuttable presumption that the motor vehicle dealer did not have the knowledge;
- (v) Within ninety days after the termination, elimination, or cessation of a line-make or the termination, cancellation, or nonrenewal of a franchise by the manufacturer, distributor, or manufacturer representative, for any reason other than that the motor vehicle dealer commits fraud, makes a misrepresentation, or commits any other crime within the scope of the franchise agreement or in the operation of the dealership, to fail to reimburse a motor vehicle dealer for the cost depreciated by five percent per year of any upgrades or alterations to the motor vehicle dealer's facilities required by the manufacturer, distributor, or manufacturer representative within the previous five years;
- (w) To fail to notify a motor vehicle dealer at least ninety days before the following and to provide the specific reasons for the following:

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- (I) Directly or indirectly terminating, cancelling, or not renewing a franchise agreement; or
 - (II) Modifying, replacing, or attempting to modify or replace the franchise or selling agreement of a motor vehicle dealer, including a change in the dealer's geographic area upon which sales or service performance is measured, if the modification would substantially and adversely alter the rights or obligations of the dealer under the current franchise or selling agreement or would substantially impair the sales or service obligations or the dealer's investment;
- (x) To require, coerce, or attempt to coerce a motor vehicle dealer to substantially alter a facility or premises if:
 - (I) The facility or premises has been altered within the last ten years at a cost of more than two hundred fifty thousand dollars and the alteration was required and approved by the manufacturer, distributor, or manufacturer representative unless subsection (1)(x)(II) of this section applies to the dealer; except that this subsection (1)(x) does not apply to improvements made to comply with health or safety laws, to improvements made to accommodate the technology requirements necessary to sell or service a line-make, to technological improvements related to electric, automated, compressed natural gas, and fuel-cell motor vehicles, or to improvements made to install or upgrade electric vehicle charging equipment; or
 - (II) The motor vehicle dealer sells only motorcycles or motorcycles and powersports vehicles, the facility or premises has been altered within the last ten years at a cost of more than twenty five thousand dollars, and the alteration was required and approved by the manufacturer, distributor, or manufacturer representative; except that this subsection (1)(x) does not apply to improvements made to comply with health or safety laws, to improvements made to accommodate the technology requirements necessary to sell or service a line-make, to technological improvements related to electric, automated, compressed natural gas, and fuel cell motorcycles and powersports vehicles, or to improvements made to install or upgrade electric vehicle charging equipment;
- (y)
 - (I) To sell or offer to sell new motor vehicles to a franchised motor vehicle dealer with whom the manufacturer has a franchise agreement at a lower actual price than the actual price offered to any other motor vehicle dealer with whom the manufacturer has a franchise agreement for the same motor vehicle similarly equipped; except that this subsection (1)(y) does not apply to:
 - (A) Resale to any government;

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- (B) Donation or use by the dealer in a driver education program; or
 - (C) A price change made in the ordinary course of business if made available to all motor vehicle dealers when the price changes.
 - (II) This subsection (1)(y) does not prohibit a manufacturer, distributor, or manufacturer representative from offering incentive programs, sales-promotion plans, or other discounts if the incentives or discounts are reasonably available to all motor vehicle dealers with whom the manufacturer has a franchise agreement.
- (z) To require a motor vehicle dealer to grant a manufacturer, distributor, or manufacturer representative the following or to enforce the following if the exercise of the contractual right would stop the transfer of the motor vehicle dealer ownership from an owner to an immediate family member of the owner:
 - (I) A right of first refusal to purchase the motor vehicle dealer; or
 - (II) An option to purchase the motor vehicle dealer; and
- (aa)
 - (I) To use an unreasonable, arbitrary, or unfair performance standard in determining a motor vehicle dealer's compliance with a franchise agreement;
 - (II) To fail to communicate, upon the request of the dealer, any performance standard in a clear and concise writing to a motor vehicle dealer before applying the standard to the motor vehicle dealer.
- (2) It is unlawful for any person to act as a motor vehicle dealer, manufacturer, distributor, wholesaler, manufacturer representative, used motor vehicle dealer, buyer agent, wholesale motor vehicle auction dealer, or motor vehicle salesperson unless the person has been duly licensed under this part 1, except for:
 - (a) Persons exempt from licensure as a manufacturer under section 44-20-102 (14); however, manufacturers exempt from licensing shall comply with all other applicable requirements for manufacturers, including those pertaining to vehicle identification numbers and manufacturers' statements of origin; and
 - (b) Business owners selling a vehicle if the vehicle has been owned for more than one year, the vehicle has been used exclusively for business purposes, the vehicle is titled in the name of the business, all applicable taxes related to the vehicle have been paid, and the total number of vehicles sold by a business owner over a two-year period does not exceed twenty vehicles.

Regulation 44-20-124(2)

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

- (3) It is unlawful and a violation of this part 1 for a buyer's agent to engage in the following:
- (a) To make a material misstatement in an application for a license;
 - (b) To willfully fail to perform or cause to be performed any written agreement with respect to any motor vehicle or parts thereof;
 - (c) To defraud any buyer, seller, motor vehicle salesperson, or financial institution;
 - (d) To intentionally enter into a financial agreement with a seller of a motor vehicle for the buyer agents own benefit;
 - (e) To coerce any motor vehicle dealer into providing installment financing with a specified financial institution.

44-20-125. New, reopened, or relocated dealer - notice required - grounds for refusal of dealer license - definitions - rules

- (1) No manufacturer shall establish an additional motor vehicle dealer, reopen a previously existing motor vehicle dealer, or authorize an existing motor vehicle dealer to relocate without first providing at least sixty days' notice to all of its franchised dealers within whose relevant market area the new, reopened, or relocated dealer would be located. The notice must state:
- (a) The specific location at which the additional, reopened, or relocated motor vehicle dealer will be established;
 - (b) The date on or after which the manufacturer intends to be engaged in business with the additional, reopened, or relocated motor vehicle dealer at the proposed location; and
 - (c) The identity of all motor vehicle dealers who are franchised to sell the same line-make of vehicles with licensed locations in the relevant market area where the additional, reopened, or relocated motor vehicle dealer is proposed to be located.
- (2) A manufacturer shall approve or disapprove of a motor vehicle dealer facility initial site location, relocation, or reopening request within sixty days after the request or after sending the notice required by subsection (1) of this section to all of its franchised dealers, whichever is later.
- (3) Subsection (1) of this section shall not apply to:
- (a) The relocation of an existing dealer within two miles of its current location; or
 - (b) The establishment of a replacement dealer, within two years, either at the former location or within two miles of the former location.
- (4) As used in this section:

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- (a) "Manufacturer" means a motor vehicle manufacturer, distributor, or manufacturer representative.
 - (b) "Relevant market area" means the greater of the following:
 - (I) The geographic area of responsibility defined in the franchise agreement of an existing dealer; or
 - (II) The geographic area within a radius of ten miles of any existing dealer of the same line make of vehicle as the proposed additional motor vehicle dealer.
- (5)
 - (a) An existing motor vehicle dealer adversely affected by a reopening or relocation of an existing same line-make motor vehicle dealer or the addition of a same line-make motor vehicle dealer may, within ninety days after receipt of the notice required in subsection (1) of this section, file a legal action in a district court of competent jurisdiction or file an administrative complaint with the executive director to prevent or enjoin the relocation, reopening, or addition of the proposed motor vehicle dealer. An existing motor vehicle dealer is adversely impacted if:
 - (I) The dealer is located within the relevant market area of the proposed relocated, reopened, or additional dealership described in the notice required in subsection (1) of this section; or
 - (II) The existing dealer or dealers of the same line-make show that, during any twelve-month period of the thirty-six months preceding the receipt of the notice required in subsection (1) of this section, the dealer or dealers, or a dealer's predecessor, made at least twenty-five percent of the dealer's retail sales of new motor vehicles to persons whose addresses are located within ten miles of the location of the proposed relocated, reopened, or additional dealership.
 - (b) The executive director shall refer a complaint filed under this section to an administrative law judge with the office of administrative courts for final agency action.
 - (c) In any court or administrative action, the manufacturer has the burden of proof on each of the following issues:
 - (I) The change in population;
 - (II) The relevant vehicle buyer profiles;
 - (III) The relevant historical new motor vehicle registrations for the line-make of vehicles versus the manufacturer's actual competitors in the relevant market area;

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- (IV) Whether the opening of the proposed additional, reopened, or relocated motor vehicle dealer is materially beneficial to the public interest or the consumers in the relevant market area;
 - (V) Whether the motor vehicle dealers of the same line-make in the relevant market area are providing adequate representation and convenient customer care, including the adequacy of sales and service facilities, equipment, parts, and qualified service personnel, for motor vehicles of the same line-make in the relevant market area;
 - (VI) The reasonably expected market penetration of the line-make, given the factors affecting penetration; and
 - (VII) Whether the additional, reopened, or relocated dealership is reasonable and justifiable based on expected economic and market conditions within the relevant market area.
- (d) In any court or administrative action, the motor vehicle dealer has the burden of proof on each of the following issues:
 - (I) Whether the manufacturer has engaged in any action or omission that, directly or indirectly, denied the existing motor vehicle dealer of the same line-make the opportunity for reasonable growth or market expansion;
 - (II) Whether the manufacturer has coerced or attempted to coerce any existing motor vehicle dealer or dealers into consenting to additional or relocated franchises of the same line-make in the community or territory or relevant market area; and
 - (III) The size and permanency of the investment of and obligations incurred by the existing motor vehicle dealers of the same line-make located in the relevant market area.
- (e)
 - (I) In a legal or administrative action challenging the relocating, reopening, or addition of a motor vehicle dealer, the district court or administrative law judge shall make a determination of whether the relocation, reopening, or addition of a motor vehicle dealer is, based on the factors identified in subsections (5)(c) and (5)(d) of this section:
 - (A) In the public interest; and
 - (B) Fair and equitable to the existing motor vehicle dealers.
 - (II) The district court or the executive director shall deny any proposed relocating, reopening, or addition of a motor vehicle dealer unless the manufacturer shows by a preponderance of the evidence that the existing motor vehicle dealer or dealers of the same line-make in the relevant market area of the proposed dealership are not providing adequate

representation of the line make motor vehicles. A determination to deny, prevent, or enjoin the relocating, reopening, or addition of a motor vehicle dealer is effective for at least eighteen months.

44-20-126. Independent control of dealer – definitions

- (1) Except as otherwise provided in this section, no manufacturer shall own, operate, or control any motor vehicle dealer or used motor vehicle dealer in Colorado.
- (2) Notwithstanding subsection (1) of this section, the following activities are not prohibited:
 - (a)
 - (I) Except as provided in subsection (2)(a)(II) of this section, operation of a dealer for a temporary period, not to exceed twelve months, during the transition from one owner or operator to another independent owner or operator; except that the executive director may extend the period, not to exceed twenty-four months, upon showing by the manufacturer or distributor of the need to operate the dealership for such time to achieve a transition from an owner or operator to another independent third-party owner or operator;
 - (II) Operation of a dealer that sells recreational vehicles for not more than eighteen months during the transition from one owner or operator to another independent owner or operator;
 - (b) Ownership or control of a dealer while the dealer is being sold under a bona fide contract or purchase option to the operator of the dealer;
 - (c) Participation in the ownership of the dealer solely for the purpose of providing financing or a capital loan that will enable the dealer to become the majority owner of the dealer in less than seven years;
 - (d) Operation of a motor vehicle dealer if the manufacturer has no other dealers of the same line-make in this state; or
 - (e) Repealed
 - (f) Repealed
 - (g) Ownership, operation, or control of one or more motor vehicle dealers if the manufacturer manufactures only electric vehicles and has no franchised dealers of the same line-make in this state.
- (3) As used in this section:
 - (a) "Control" means to possess, directly, the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise; except that "control" does not include the relationship between a manufacturer and a motor vehicle dealer under a franchise agreement.

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- (b) "Manufacturer" means a motor vehicle manufacturer, distributor, or manufacturer representative.
 - (c) "Operate" means to directly or indirectly manage a motor vehicle dealer.
 - (d) "Own" means to hold any beneficial ownership interest of one percent or more of any class of equity interest in a dealer, whether as a shareholder, partner, limited liability company member, or otherwise. To "hold" an ownership interest means to have possession of, title to, or control of the ownership interest, either directly or through a fiduciary or agent.
- (4) This section shall not apply to manufacturers of vehicles with a passenger capacity of thirty-two or more.

44-20-127. Successor under existing franchise agreement - duties of manufacturer.

- (1) If a licensed motor vehicle dealer under franchise by a manufacturer dies or becomes incapacitated, the manufacturer shall act in good faith to allow a successor, which may include a family member, designated by the deceased or incapacitated motor vehicle dealer to succeed to ownership and operation of the dealer under the existing franchise agreement if:
- (a) Within ninety days after the motor vehicle dealer's death or incapacity, the designated successor gives the manufacturer written notice of an intent to succeed to the rights of the deceased or incapacitated motor vehicle dealer in the franchise agreement;
 - (b) The designated successor agrees to be bound by all of the terms and conditions of the existing franchise agreement; and
 - (c) The designated successor meets the criteria generally applied by the manufacturer in qualifying motor vehicle dealers.
- (2) A manufacturer may refuse to honor the existing franchise agreement with the designated successor only for good cause. The manufacturer may request in writing from a designated successor the personal and financial data that is reasonably necessary to determine whether the existing franchise agreement should be honored, and the designated successor shall supply the data promptly upon request.
- (3) (a) If a manufacturer believes that good cause exists for refusing to honor the requested succession, the manufacturer shall send the designated successor, by certified or overnight mail, notice of its refusal to approve the succession within sixty days after the later of:
- (I) Receipt of the notice of the designated successor's intent to succeed the motor vehicle dealer in the ownership and operation of the dealer; or
 - (II) The receipt of the requested personal and financial data.

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- (b) Failure to serve the notice pursuant to subsection (3)(a) of this section shall be considered approval of the designated successor, and the franchise agreement is considered amended to reflect the approval of the succession the day following the last day of the notice period specified in subsection (3)(a) of this section.
- (c) If the manufacturer gives notice of refusal to approve the succession, the notice shall state the specific grounds for the refusal and shall state that the franchise agreement shall be discontinued not less than ninety days after the date the notice of refusal is served unless the proposed successor files an action in the district court to enjoin the action.
- (4) This section shall not be construed to prohibit a motor vehicle dealer from designating a person as the successor in advance, by written instrument filed with the manufacturer. If the motor vehicle dealer files such an instrument, that instrument governs the succession rights to the management and operation of the dealer subject to the designated successor satisfying the manufacturer's qualification requirements as described in this section.
- (5) This section shall not apply to manufacturers of vehicles with a passenger capacity of thirty-two or more.

44-20-128. Penalty

- (1) Except as provided in subsection (2) of this section, any person who willfully violates this part 1 or who willfully commits any offense in this part 1 declared to be unlawful commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501.
- (2)
 - (a) Any person who willfully violates section 44-20-124 (2) by acting as a manufacturer, distributor, or manufacturer representative without proper authorization commits a class 3 misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars or more than one thousand dollars for each separate offense; except that, if the violator is a corporation, the fine shall be not less than five hundred dollars or more than two thousand five hundred dollars for each separate offense. A second conviction shall be punished by a fine of two thousand five hundred dollars.
 - (b) Any person who willfully violates section 44-20-124 (2) by acting as a motor vehicle dealer, wholesaler, used motor vehicle dealer, buyer agent, wholesale motor vehicle auction dealer, or motor vehicle salesperson without proper authorization commits a class 3 misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one thousand dollars and a penalty of twenty-five hours of useful public service, neither of which the court may suspend, for each separate offense; except that, if the violator is a corporation, the corporation shall be punished by a fine of not less than five thousand dollars nor more than twenty-five thousand dollars for each separate offense. A second conviction for an individual shall be punished by a fine of not less than five

thousand dollars nor more than twenty-five thousand dollars for each separate offense, which the court may not suspend.

44-20-129. Fines - disposition - unlicensed sales

Of any fine collected for a violation of section 44-20-124 (2), half shall be awarded to the law enforcement agency that investigated and issued the citation for the violation and half shall be credited to the auto dealers license fund created in section 44-20-133.

44-20-130. Drafts not honored for payment – penalties

- (1) If a motor vehicle dealer, wholesaler, or used motor vehicle dealer issues a draft or check to a motor vehicle dealer, wholesaler, used motor vehicle dealer, motor vehicle auction house, or consignor and fails to honor the draft or check, then the license of the licensee shall be subject to suspension pursuant to section 44-20-104 (3)(e)(I). The license suspension shall be effective upon the date of any final decision against the licensee based upon the unpaid draft or check. A licensee whose license has been suspended pursuant to the provisions of this subsection (1) shall not be eligible for reinstatement of the license and shall not be eligible to apply for any other license issued under this part 1 unless it is demonstrated to the board that the unpaid draft or check has been paid in full and that any fine imposed on the licensee pursuant to subsection (2) of this section has been paid in full.
- (2) Any motor vehicle dealer, wholesaler, or used motor vehicle dealer that issues a draft or check to a motor vehicle dealer, wholesaler, used motor vehicle dealer, motor vehicle auction house, or consignor and who fails to honor the draft or check, causing loss to a third party, commits a misdemeanor and shall be punished by a fine of two thousand five hundred dollars. Any fine collected for a violation of this subsection (2) shall be awarded to the law enforcement agency that investigated and issued the citation for the violation.

44-20-131. Right of action for loss

- (1)
 - (a) If a person suffers loss or damage by reason of fraud practiced on the person by a licensed dealer or one of the dealer's salespersons acting on the dealer's behalf or within the scope of the employment of the salesperson, or if a person suffers any loss or damage by reason of the violation by the dealer or salesperson of any provision of this part 1 related to fraud that is designated by the board by rule, whether or not the violation is the basis for denial, suspension, or revocation of a license, the person suffering loss or damages has a right of action against the dealer or the dealer's motor vehicle salespersons. The right of a person to recover for loss or damage as provided in this subsection (1) against the dealer or salesperson is not limited to the amount of their respective bonds.
 - (b) A person suffering loss or damages has a right of action against a licensed business disposer if:

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- (I) The loss or damage is caused by fraud practiced on the person by the disposer or the disposer's agent within the scope of employment; or
 - (II) The loss or damage is caused by the disposer violating any provision of this part 1 related to fraud and the violation is designated by the board by rule, whether or not the violation is the basis for denial, suspension, or revocation of the license.
- (2) If any person suffers any loss or damage by reason of any unlawful act as provided in section 44-20-124 (1)(a), the person shall have a right of action against the manufacturer, distributor, or manufacturer representative. In any court action wherein a manufacturer, distributor, or manufacturer representative has been found liable in damages to any person under this part 1, the amount of damages so determined shall be trebled and shall be recoverable by the person so damaged. Any person so damaged shall also be entitled to recover reasonable attorney fees as part of his or her damages.
- (3) If any licensee suffers any loss or damage because of a violation of section 44-20-124 (1), the licensee shall have a right of action against the manufacturer, distributor, or manufacturer representative. In any court action wherein a manufacturer, distributor, or manufacturer representative has been found liable in damages to any licensee under this part 1, any licensee so damaged shall also be entitled to recover reasonable attorney fees and costs as part of his or her damages.
- (4)
 - (a) The licensed dealer, disposer, buyer agent, or salesperson has not reimbursed the person for the loss or damages; and
 - (b) After either:
 - (I) The board issued a final agency order with a finding of fraud by a licensed dealer, disposer, buyer agent, or salesperson; or
 - (II) A court entered judgment upon a claim of fraud by a licensed dealer, disposer, buyer agent, or salesperson.

44-20-132. Contract disputes - venue - choice of law

- (1) In the event of a dispute between a motor vehicle dealer and a manufacturer under a franchise agreement, notwithstanding any provision of the agreement to the contrary:
 - (a) At the option of the motor vehicle dealer, venue shall be proper in the county or judicial district where the dealer resides or has its principal place of business; and
 - (b) Colorado law shall govern, both substantively and procedurally.

44-20-133. Disposition of fees - auto dealers license fund - created

- (1) The department shall deposit all money received under this part 1 with the state treasurer, subject to section 24-35-101, together with a detailed statement of the receipts, and the

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money deposited with the state treasurer constitutes a fund to be known as the auto dealers license fund, which fund is hereby created; except that the department shall deposit fines imposed under sections 44-20-129 and 44-20-130 (2) in accordance with sections 44-20-129 and 44-20-130 (2). The fund shall be used under the direction of the board in the following manner:

- (a) (I) For the payment of the expenses of the administration of the board as the general assembly deems necessary by making an appropriation therefor on an annual fiscal-year basis commencing July 1, 1971, and thereafter.
- (II) Any money remaining in the fund on December 31, 1971, and at the close of each calendar year thereafter, after costs of administration of the law as provided in this part 1, shall remain in the auto dealers license fund to be used for educational and enforcement purposes as appropriated by the general assembly.
- (b) To pay the department for the administration of actions or proceedings brought before the executive director pursuant to section 44-20-124;
- (c) To enforce section 44-20-124 (2);
- (d) To implement part 4 of this article 20;
- (e) To enforce section 44-20-423 (2).

44-20-134. Advertisement - inclusion of dealer name

A motor vehicle dealer or used motor vehicle dealer or any agent of the dealers shall not advertise any offer for the sale, lease, or purchase of a motor vehicle or a used motor vehicle that creates the false impression that the vehicle is being offered by a private party or by a buyer's agent or that does not contain the name of the dealer or the word "dealer" or, if the name is contained in the offer and does not clearly reflect that the business is a dealer, both the name of the dealer and the word "dealer".

44-20-135. Audit reimbursement limitations - dealer claims

- (1) (a) A manufacturer, distributor, or manufacturer representative shall have the right to audit warranty, sales, or incentive claims of a motor vehicle dealer for nine months after the date the claim was submitted.
- (b) A manufacturer, distributor, or manufacturer representative shall not require documentation for warranty, sales, or incentive claims or audit warranty, sales, or incentive claims of a motor vehicle dealer more than fifteen months after the date the claim was submitted, nor shall the manufacturer require a charge back, reimbursement, or credit against a future transaction arising out of an audit or request for documentation arising more than nine months after the date the claim was submitted.

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- (2) The motor vehicle dealer shall have nine months after making a sale or providing service to submit warranty, sales, or incentive claims to the manufacturer, distributor, or manufacturer representative.
- (3) Subsection (1) of this section shall not limit any action for fraud instituted in a court of competent jurisdiction.
- (4) A motor vehicle dealer may request a determination from the executive director, within thirty days, that a charge back, reimbursement, or credit required violates subsection (1) of this section. If a determination is requested within the thirty-day period, then the charge back, reimbursement, or credit shall be stayed pending the decision of the executive director. If the executive director determines after a hearing that the charge back, reimbursement, or credit violates subsection (1) of this section, the charge back, reimbursement, or credit shall be void.

44-20-136. Reimbursement for right of first refusal

A manufacturer or distributor shall pay reasonable attorney fees, not to exceed the usual and customary fees charged for the transfer of a franchise, and reasonable expenses that are incurred by the proposed owner or transferee before the manufacturer or distributor exercised its right of first refusal in negotiating and implementing the contract for the proposed change of ownership or the transfer of assets. Payment of attorney fees and expenses is not required if the claimant has failed to submit an accounting of attorney fees and expenses within twenty days after the receipt of the manufacturer's or dealer's written request for an accounting. An expense accounting may be requested by the manufacturer or distributor before exercising its right of first refusal.

44-20-137. Payout exemption to execution

A motor vehicle dealer's right to receive payments from a manufacturer or distributor required by section 44-20-124 (1)(l) and (1)(r) is not liable to attachment or execution and may not otherwise be seized, taken, appropriated, or applied in a legal or equitable process or by operation of law to pay the debts or liabilities of the manufacturer or distributor. This section shall not prohibit a secured creditor from exercising rights accrued pursuant to a security agreement if the right arose as a result of the manufacturer or distributor voluntarily creating a security interest before paying existing debts or liabilities of the manufacturer or distributor. This section shall not prohibit a manufacturer or distributor from withholding a portion of the payments necessary to cover an amount of money owed to the manufacturer or distributor as an offset to the payments if the manufacturer or distributor provides the motor vehicle dealer written notice thereof.

44-20-138. Site control extinguishes

If a manufacturer, distributor, or manufacturer representative has terminated, eliminated, or not renewed a franchise agreement containing a site control provision, the motor vehicle dealer may void a site control provision of a franchise agreement by returning any money the dealer has accepted in exchange for site control prorated by the time remaining before the agreement

expires over the time period between the agreement being signed and the agreement expiring. This section does not apply if the termination, elimination, or nonrenewal is for just cause in accordance with section 44-20-124 (1)(d).

44-20-139. Modification voidable

If a manufacturer, distributor, or manufacturer representative fails to comply with section 44-20-124 (1)(w)(II), the motor vehicle dealer may void the modification or replacement of the franchise agreement.

44-20-140. Termination appeal

- (1) A motor vehicle dealer who has reason to believe that a manufacturer, distributor, or manufacturer representative has violated section 44-20-124 (1)(d) or (1)(w) may appeal to the board by filing a complaint with:
 - (a) The executive director; or
 - (b) A district court if neither the executive director nor the administrative law judge, appointed in accordance with this section, holds a hearing concerning the complaint within sixty days after the complaint was filed.
- (2) Upon filing of a verified complaint alleging with specific facts that a violation has occurred under this section, the termination, elimination, modification, or nonrenewal of the franchise agreement is automatically stayed, without the motor vehicle dealer posting a bond, until a final determination is made on each issue raised in the complaint; except that the executive director, administrative law judge, or court may cancel the stay upon finding that the cancellation, termination, or nonrenewal of the franchise agreement was for any of the reasons specified in section 44-20-124 (1)(d)(III). The automatic stay maintains all rights under the franchise agreement until the final determination of the issues raised in the verified complaint. The manufacturer, distributor, or manufacturer representative shall not name a replacement motor vehicle dealer for the market or location until a final order is entered.
- (3) If a verified complaint is filed with the executive director, the executive director shall refer the complaint to an administrative law judge with the office of administrative courts for final agency action.
- (4) In resolving a termination complaint, the manufacturer, distributor, or manufacturer representative has the burden of proving any claim made that the factors listed in section 44-20-124 (1)(d)(II) apply to the termination, cancellation, or nonrenewal.
- (5) The prevailing party in a claim that a termination, cancellation, or nonrenewal violates section 44-20-124 (1)(d) or (1)(w) is entitled to recover attorney fees and costs, including expert witness fees, incurred in the termination protest.

44-20-141. Stop-sale directives - used motor vehicles – definitions

- (1) As used in this section, unless the context otherwise requires:
 - (a) "Average trade-in value" means the value of a used motor vehicle as established by a generally accepted, published, third-party used vehicle resource.
 - (b) "Stop-sale directive" means an unconditional directive from a manufacturer or distributor to a motor vehicle dealer to stop selling a type of motor vehicle manufactured by the manufacturer or distributed by the distributor because of a safety defect.
- (2) A manufacturer or distributor shall reimburse a motor vehicle dealer in accordance with subsection (3) of this section if:
 - (a) The manufacturer or distributor issues a stop-sale directive for a motor vehicle manufactured or distributed by the issuer of the stop-sale directive;
 - (b) The motor vehicle dealer holds an active sales, service, and parts agreement with the manufacturer or distributor for the line-make of the used motor vehicle covered by the stop sale directive;
 - (c) The used motor vehicle covered by the stop-sale directive is held in the inventory of the motor vehicle dealer on the date the stop-sale directive is issued or taken by the dealer as a trade-in vehicle on a consumer purchase of the same line-make; and
 - (d) The manufacturer or distributor has not provided a remedy procedure or made parts available to repair the used motor vehicle for more than thirty days after the stop-sale directive is issued.
- (3) If the conditions in subsection (2) of this section are met, the manufacturer or distributor shall, upon application by the motor vehicle dealer, pay or credit the dealer one and one-half percent per month of the average trade-in value of the used motor vehicle's model prorated from thirty days after the stop-sale directive was issued to the earlier of:
 - (a) The date when the manufacturer or distributor provides the motor vehicle dealer with a remedy procedure and any necessary parts for ordering to repair the used motor vehicle; or
 - (b) The date the motor vehicle dealer transfers the motor vehicle.
- (4) A manufacturer or distributor may determine a reasonable manner and method required for a motor vehicle dealer to demonstrate the inventory status of a used motor vehicle to determine eligibility for reimbursement.
- (5)
 - (a) This section applies only to used motor vehicles.
 - (b) This section is not intended to prevent a manufacturer or distributor from requiring that a motor vehicle not be subject to an open recall or stop-sale

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directive for the motor vehicle to be qualified or sold as a certified pre-owned vehicle or substantially similar designation.

- (c) This section does not require a manufacturer or distributor to provide total compensation to a motor vehicle dealer that would exceed the total average trade-in valuation of the affected used motor vehicle.
- (d) This section does not preclude a motor vehicle dealer and a manufacturer or distributor from agreeing to reimbursement terms that differ from those specified in this section.
- (e) Compensation provided to a motor vehicle dealer under this section is exclusive and may not be combined with any other remedy under state or federal law.

44-20-141.5. Fulfillment and compensation for warranty and recall obligations – definitions

(1) As used in this section:

- (a) "Manufacturer" includes a manufacturer, a distributor, and a manufacturer representative.
- (b) "Nonwarranty repair" means a diagnosis, repair, labor, or part for which payment was made by a person other than a manufacturer and that was not a warranty obligation. "Nonwarranty repair" also means customer-pay repairs, labor, or parts.
- (c) "Part" means an accessory, a part, or a component used to repair a motor vehicle. "Part" includes engine and transmission parts and all motor vehicle assemblies.
- (d) "Repair" means diagnosing, work, and labor performed by a motor vehicle dealer for which the motor vehicle dealer is making a claim for compensation.
- (e) "Retail labor rate" means the rate for labor calculated by the motor vehicle dealer in accordance with subsection (4) of this section that a manufacturer is required to pay a motor vehicle dealer in accordance with subsection (2) of this section.
- (f) "Retail parts markup percentage" means the percentage markup on parts calculated by the motor vehicle dealer in accordance with subsection (4) of this section that a manufacturer is required to pay a motor vehicle dealer in accordance with subsection (2) of this section.
- (g) "Warranty obligation" means diagnosing and repairing a motor vehicle in accordance with any warranty, recall, or certified pre-owned warranty, under which a manufacturer makes a repair commitment to a consumer or motor vehicle dealer.

(2) At a motor vehicle dealer's request, a manufacturer shall timely compensate the motor vehicle dealer at the retail labor rate and the retail parts markup percentage in accordance with subsection (3) of this section for all labor performed and parts used by the motor

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vehicle dealer for covered repairs performed in accordance with the warranty obligation, if the retail labor rate and retail parts markup percentage are reasonably consistent with the requirements of this section that concern the retail labor rate and parts markup percentage.

- (3) (a)** A motor vehicle dealer may establish the retail labor rate and the retail parts markup percentage by submitting to the manufacturer either of the following as decided by the motor vehicle dealer:

 - (I)** One hundred sequential repair orders containing nonwarranty repairs, which may include a nonwarranty repair that is included in a repair order with a warranty obligation repair, that have been paid by a consumer and closed by the time of submission; or
 - (II)** All repair orders for nonwarranty repairs, which may include a nonwarranty repair that is included in a repair order with warranty obligation repair, that have been paid by a consumer and closed by the time of submission for a period of ninety consecutive days.
- (b)** A manufacturer shall not disqualify a repair order under this subsection (3) because the repair order contains both warranty and nonwarranty repairs, but only nonwarranty repairs are used in the calculation of the retail labor rate and the retail parts markup percentage.
- (c)** A motor vehicle dealer may submit one set of repair orders for the purpose of calculating both its retail labor rate and the retail parts markup percentage or may submit separate sets of repair orders for purposes of calculating only its retail labor rate or for purposes of calculating only its retail parts markup percentage. If the rates from the calculation are ten percent higher or lower than the current rates, the manufacturer may request additional repair orders for the ninety days before or after the submitted repair orders for purposes of alteration.
- (d)** Except with regard to a request for additional repair orders as provided in subsection (3)(c) of this section, the repair orders submitted under this subsection (3) to determine the retail labor rate must contain only repair orders from the last ninety days before the date the submission is sent to the manufacturer.
- (e)** Except with regard to a request for additional repair orders as provided in subsection (3)(c) of this section, the repair orders submitted under this subsection (3) to determine the retail parts markup percentage must contain only repair orders from the last ninety days before the date the submission is sent to the manufacturer.
- (4) (a)** Except as provided in subsection (4)(c) of this section, to calculate the retail labor rate, the motor vehicle dealer must divide the motor vehicle dealer's total nonwarranty labor sales generated from the nonwarranty repairs submitted under

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subsection (3) of this section by the total number of labor hours that generated those total labor sales.

- (b)** Except as provided in subsection (4)(c) of this section, to calculate the retail parts markup percentage, the motor vehicle dealer must divide the motor vehicle dealer's total parts sales generated from nonwarranty repairs submitted under subsection (3) of this section by the amount of the motor vehicle dealer's total cost for those parts, subtracting one from this amount, and then multiplying the amount by one hundred.
- (c)** The calculation of the retail labor rate in subsection (4)(a) of this section and of the retail parts markup percentage in subsection (4)(b) of this section do not include parts used or labor performed:

 - (I)** For manufacturer or motor vehicle dealer special events, one-time specials, express service, and quoted-price promotional discounts, but this exclusion from the calculation does not include broadly applicable discounts offered by the dealer, such as percentage-off coupons, that apply to repairs and parts;
 - (II)** For parts sold at wholesale;
 - (III)** For routine maintenance, including replacement fluids, filters, batteries, bulbs, nuts, bolts, fasteners, tires, and belts;
 - (IV)** That do not have individual part numbers;
 - (V)** For the repairs of a motor vehicle owned by the motor vehicle dealer, an affiliate of the motor vehicle dealer, or an employee of either the motor vehicle dealer or the affiliate;
 - (VI)** For motor vehicle dealer reconditioning;
 - (VII)** For window tint, protective film, masking products, or window replacement labor;
 - (VIII)** For manufacturer approved and reimbursed goodwill repairs or replacements;
 - (IX)** For emission inspections required by law;
 - (X)** For safety inspections required by law;
 - (XI)** For which a volume discount was negotiated with a third-party payer, including government agencies, insurance carriers, and fleet operators, but not including third-party warranty companies or service contract companies.
- (5) (a)** Notwithstanding any manufacturer requirement, policy, procedure, guideline, or standard, a motor vehicle dealer may submit to the manufacturer the retail labor

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rate or retail parts markup percentage as each is calculated in accordance with subsection (4) of this section.

- (b) A motor vehicle dealer may request in writing, not more often than once annually, an increase in compensation for labor at the retail labor rate for warranty obligations.
- (c) A motor vehicle dealer may request in writing, not more often than once annually, an increase in compensation for parts at the retail parts markup percentage for warranty obligations.
- (d) (I) A manufacturer may conduct a periodic review of a motor vehicle dealer's service records to verify the continuing accuracy of the retail labor rate or retail parts markup percentage proposed by or in effect for the dealer.

(II) A manufacturer shall not conduct a periodic review more than once per calendar year. This periodic review is not an audit in accordance with section 44-20-135.
- (6) (a) (I) If the submitted calculation of the retail labor rate or retail parts markup percentage is materially inaccurate or is substantially different than the rate of or percentage of other similarly situated same line-make dealers within the state, a manufacturer may contest the motor vehicle dealer's submitted calculations of the retail labor rate or retail parts markup percentage by delivering a notice to the motor vehicle dealer within forty-five days after receiving the submission in accordance with subsection (3) of this section from the motor vehicle dealer. To comply with this subsection (6), the notice must:

 - (A) Include an explanation of the reasons that the manufacturer believes the calculation is subject to contest;
 - (B) Provide evidence substantiating the manufacturer's position; and
 - (C) Propose an adjustment of the contested retail labor rate or retail parts markup percentage.

(II) Upon the discovery of new relevant information by the manufacturer, the manufacturer may modify the grounds for contesting the retail labor rate or retail parts markup percentage after delivering the notice to the motor vehicle dealer under this subsection (6), but the modification does not change the timing requirements in this section.
- (b) If the manufacturer does not timely contest the motor vehicle dealer's calculation of the retail labor rate or retail parts markup percentage in accordance with this subsection (6), the uncontested retail labor rate or retail parts markup percentage becomes effective forty-five days after the manufacturer has received the

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submission from the motor vehicle dealer, and thereafter, the manufacturer shall use the motor vehicle dealer's increased retail labor rate and retail parts markup percentage in calculating compensation for warranty obligations until a subsequent calculation of the motor vehicle dealer's retail labor rate or retail parts markup percentage is established in accordance with this section.

- (c)
 - (I) If the manufacturer timely contests the motor vehicle dealer's calculation of the retail labor rate or retail parts markup percentage and the manufacturer and motor vehicle dealer are unable to resolve the disagreement, the motor vehicle complaint with a court of competent jurisdiction or the executive director no later than sixty days after the new motor vehicle dealer receives the manufacturer's challenge to the determined retail labor rate or retail parts markup percentage.
 - (II) In a court proceeding, the court shall determine, in accordance with this section, the proper retail labor rate or retail parts markup percentage.
 - (III) Any retail labor rate or retail parts markup percentage established through the proceeding applies retroactively to calculate reimbursement for any labor and part beginning thirty days after the manufacturer received the submission required by subsection (3) of this section.
 - (IV) If the manufacturer contests the motor vehicle dealer's calculation of the retail labor rate or retail parts markup percentage, the manufacturer shall continue to reimburse the motor vehicle dealer for warranty obligation repairs at the retail labor rate and retail parts markup percentage as both existed before the motor vehicle dealer submitted a request for an increase under subsection (5) of this section. When the manufacturer and motor vehicle dealer agree on the retail labor rate or retail parts markup percentage, the manufacturer shall pay any difference between the amount the manufacturer compensated the dealer and the amount agreed to by the motor vehicle dealer and manufacturer as of thirty days after the manufacturer received the submission required by subsection (3) of this section.
 - (d) In the court proceeding, the court shall award the prevailing party reasonable attorney fees and costs. If the motor vehicle dealer prevails, the court shall award as damages the full amount of reimbursement that should have been paid to the motor vehicle dealer.
- (7) When calculating the retail labor rate and the retail parts markup percentage, the manufacturer:
 - (a) Shall not establish an unreasonable flat-rate time, nor establish unreasonable flat-rate labor times for new line-makes that are inconsistent with the existing rates;

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- (b) Shall, if the manufacturer furnishes a part to a motor vehicle dealer at no cost for use in performing a repair under a warranty obligation, compensate the motor vehicle dealer for the authorized repair part by paying the dealer an amount equal to the retail parts markup percentage multiplied by the cost the dealer would have paid for the authorized part as listed in the manufacturer's price schedule;
 - (c) Shall not establish a different part number for repairs made in accordance with a warranty obligation than the part number established for nonwarranty repairs solely to provide a lower compensation to a motor vehicle dealer;
 - (d) Shall not recover or attempt to recover, directly or indirectly, in whole or in part, any of its costs from the motor vehicle dealer for compensating the motor vehicle dealer under this section;
 - (e) Shall not, directly or indirectly, in whole or in part, assess penalties or surcharges to the motor vehicle dealer, limit allocation of motor vehicles or parts to the motor vehicle dealer, or take any adverse action based on the motor vehicle dealer's exercise of the dealer's rights under this section;
 - (f) Shall not require from a motor vehicle dealer any information that is unduly burdensome or time consuming to obtain, including any part-by-part or transaction-by-transaction calculations.
- (8) Nothing in this section prohibits a manufacturer from increasing the price of a motor vehicle or motor vehicle part in the normal course of business.
- (9) This section does not apply to any of the following that are involved in the manufacturing of or selling of recreational vehicles:
- (a) A motor vehicle dealer;
 - (b) A manufacturer or component manufacturer;
 - (c) A distributor; or
 - (d) A manufacturer representative

44-20-141.6. Fulfillment of warranty and recall obligations – recreational vehicles – definitions

- (1) Definitions. As used in this section:
- (a) "Dealer" means a person licensed or required to be licensed as a motor vehicle dealer that sells recreational vehicles.
 - (b) "Recreational vehicle" means the category of vehicle primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.

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- (c) "Warrantor" means a person that gives a warranty in connection with a new recreational vehicle or parts, accessories, or components of a recreational vehicle. The term does not include a person who offers or performs service contracts, insurance, or extended warranties sold for separate consideration by a person who is not:
 - (I) The manufacturer, distributor, or manufacturer representative; or
 - (II) Controlled by a manufacturer, distributor, or manufacturer representative.
- (2) Warranty obligations of recreational vehicle warrantors. Each warrantor shall:
 - (a) Compensate the dealer for warranty service, including diagnostic work;
 - (b) Provide the dealer a schedule of compensation to be paid that must be in a flat-rate manual or other written guide;
 - (c) Provide the dealer a schedule of the time allowances for warranty service that must provide adequate and reasonable time to complete service work and that must be in a flat-rate manual or other written guide;
 - (d) Reimburse the dealer for warranty service and warranty parts in accordance with the schedule of compensation that is required in subsection (2)(b) of this section;
 - (e) If the schedule of compensation required in subsection (2)(b) of this section does not include a particular repair, reimburse the dealer for warranty service for the actual time expended if reasonable, and the manufacturer bears the burden to prove that the actual time expended was unreasonable;
 - (f) Reimburse the dealer for warranty service at not less than the lowest retail labor rate actually charged by the dealer for comparable nonwarranty labor if the rate is reasonable; and
 - (g) Reimburse the dealer for warranty parts at wholesale price plus:
 - (I) A minimum thirty percent handling charge; and
 - (II) Any cost of freight to return warranty parts to the warrantor.
- (3) The warrantor shall not deny a dealer's claims for warranty compensation without cause, which may include performance of nonwarranty repairs, material noncompliance with the warrantor's published policies and procedures, lack of material documentation, fraud, or misrepresentation.
- (4) A warrantor shall not:
 - (a) Fail to compensate a dealer for warranty repairs made to a recreational vehicle or component of a recreational vehicle made by the dealer of merchandise:
 - (I) Damaged during delivery to the dealer or during manufacturing; or

- (II)** Defectively built or designed;
- (b)** Send replacement parts to a dealer at no charge without paying the parts markup required by subsection (2)(g) of this section times the dealer cost of the part;
 - (c)** Fail to fulfill parts orders when parts are available;
 - (d)** Retaliate against a dealer for exercising the dealer's rights under this section; or
 - (e)** Attempt to coerce a dealer to not exercise its rights under this section.
- (5)** The dealer may submit warranty claims involving any component used in the manufacturing of a recreational vehicle to the manufacturer that:
 - (a)** Completes the manufacturing of the recreational vehicle; and
 - (b)** Issues the manufacturer's certificate of origin.
- (6)** Notwithstanding the terms of any manufacturer and dealer agreement:
 - (a)** A warrantor shall indemnify and defend a dealer against any claim for or lawsuit for losses, liability, or damages, including defense costs and attorney fees, to the extent the loss, liability, or damage is caused by the negligence or willful misconduct of the warrantor or any component warrantor whose product is incorporated in the warrantor's product. The warrantor shall not deny the dealer indemnification or defense for failing to discover, disclose, or remedy a defect in the design or manufacturing of a recreational vehicle. To be indemnified or defended, the dealer must provide to the warrantor a copy of any claim in which allegations are made that fall under this subsection (6)(a) within ten days after receiving the claim or suit.
 - (b)** A dealer shall indemnify and defend its warrantor against any claim for or lawsuit for losses, liability, or damages to the extent the loss, liability, or damage is caused by the negligence or willful misconduct of the dealer independent of any manufacturing or design defect. To be indemnified or defended, the warrantor must provide to the dealer a copy of any claim in which allegations are made that fall under this subsection (6)(b) within ten days after receiving the claim or suit.
- (7)** Dispute resolution for recreational dealers and manufacturers. **(a)** A dealer or warrantor injured by another party's violation of this section may bring a civil action in state court to recover actual damages. The court shall award attorney fees and costs to the prevailing party in the action. Venue for a civil action authorized by this section must exclusively be in the county where the dealer is located. In an action involving more than one dealer, venue may be in any county where a dealer who is party to the action is located.
 - (b)** **(I)** To bring an action under this subsection (7):
 - (A)** A person must serve a written demand for mediation upon the alleged violator;

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- (B) The demand for mediation must be served upon the alleged violator by certified mail at the address stated within the sales, service, and parts agreement between the parties unless subsection (7)(b)(I)(C) of this section applies to the action;
 - (C) If a civil action is between two dealers, the demand must be mailed to the address on the dealer's license filed with the director;
 - (D) The demand for mediation must contain a brief statement of the dispute and the relief sought by the party filing the demand.
- (II) Within twenty days after the demand for mediation is served, the parties shall mutually select an independent certified mediator and meet with the mediator for the purpose of attempting to resolve the dispute. The meeting place must be in this state in a location selected by the mediator. The mediator may extend the date of the meeting for good cause shown by either party or upon stipulation of both parties.
- (III) The service of a demand for mediation under this subsection (7) stays the time for the filing of an action under this subsection (7) until representatives of both parties have met with a mutually selected mediator to attempt to resolve the dispute. If an action is filed before that meeting, the court shall enter an order suspending the proceedings until the meeting has occurred and may, upon written stipulation of all parties to the proceeding that they wish to continue to mediate under this subsection (7), enter an order suspending the proceeding or action for as long a period as the court considers appropriate. A suspension order issued under this subsection (7)(b)(III) may be revoked by the court.
- (IV) In mediation, the parties to the mediation bear their own costs for attorney fees and divide equally the cost of the mediator.
- (c) In addition to the remedies provided in this subsection (7) and notwithstanding the existence of any additional remedy at law, a dealer or manufacturer may apply to a state court for the grant, upon a hearing and for cause shown, of a temporary or permanent injunction restraining a person from violating or continuing to violate this section. The moving party need not post a bond for the injunction to be issued. Mediation is not required prior to seeking injunctive relief. A single act in violation of this section is sufficient to authorize the issuance of an injunction.

44-20-142. Repeal of part

This part 1 is repealed, effective September 1, 2027. Before its repeal, this part 1 is scheduled for review in accordance with section 24-34-104.

Part 2. Antimonopoly Financing Law

44-20-201. Definitions

As used in this part 2, unless the context otherwise requires:

- (1) "Person" means any individual, firm, corporation, partnership, association, trustee, receiver, or assignee for the benefit of creditors.
- (2) "Sell", "sold", "buy", and "purchase" include exchange, barter, gift, and offer or contract to sell or buy.

44-20-202. Exclusive finance agreements void - when

It is unlawful for any person who is engaged, either directly or indirectly, in the manufacture or distribution of motor vehicles, to sell or enter into contract to sell motor vehicles, whether patented or unpatented, to any person who is engaged or intends to engage in the business of selling the motor vehicles at retail in this state, on the condition or with an agreement or understanding, either express or implied, that the person so engaged in selling motor vehicles at retail in any manner shall finance the purchase or sale of any one or number of motor vehicles only with or through a designated person or class of persons or shall sell and assign the conditional sales contracts, chattel mortgages, or leases arising from the sale of motor vehicles or any one or number thereof only to a designated person or class of persons, when the effect of the condition, agreement, or understanding so entered into may be to lessen or eliminate competition, or create or tend to create a monopoly in the person or class of persons who are designated, by virtue of the condition, agreement, or understanding to finance the purchase or sale of motor vehicles or to purchase conditional sales contracts, chattel mortgages, or leases. Any such condition, agreement, or understanding is declared to be void and against the public policy of this state.

44-20-203. Threat prima facie evidence of violation

Any threat, expressed or implied, made directly or indirectly to any person engaged in the business of selling motor vehicles at retail in this state by any person engaged, either directly or indirectly, in the manufacture or distribution of motor vehicles, that the person will discontinue or cease to sell, or refuse to enter into a contract to sell, or will terminate a contract to sell motor vehicles, whether patented or unpatented, to the person who is so engaged in the business of selling motor vehicles at retail, unless the person finances the purchase or sale of any one or number of motor vehicles only with or through a designated person or class of persons or sells and assigns the conditional sales contracts, chattel mortgages, or leases arising from his or her retail sales of motor vehicles or any one or number thereof only to a designated person or class of persons shall be prima facie evidence of the fact that the person so engaged in the manufacture or

distribution of motor vehicles has sold or intends to sell the same on the condition or with the agreement or understanding prohibited in section 44-20-202.

44-20-204. Threat by agent as evidence of violation

Any threat, expressed or implied, made directly or indirectly to any person engaged in the business of selling motor vehicles at retail in this state by any person, or any agent of the person, who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages, or leases on motor vehicles in this state and is affiliated with or controlled by any person engaged, directly or indirectly, in the manufacture or distribution of motor vehicles, that the person so engaged in the manufacture or distribution shall terminate his or her contract with or cease to sell motor vehicles to the person engaged in the sale of motor vehicles at retail in this state unless the person finances the purchase or sale of any one or number of motor vehicles only or through a designated person or class of persons or sells and assigns the conditional sales contracts, chattel mortgages, or leases arising from his or her retail sale of motor vehicles or any one or any number thereof only to the person so engaged in financing the purchase or sale of motor vehicles or in buying conditional sales contracts, chattel mortgages, or leases on motor vehicles, shall be presumed to be made at the direction of and with the authority of the person so engaged in the manufacture or distribution of motor vehicles, and shall be prima facie evidence of the fact that the person so engaged in the manufacture or distribution of motor vehicles has sold or intends to sell the same on the condition or with the agreement or understanding prohibited in section 44-20-202.

44-20-205. Offering consideration to eliminate competition

It is unlawful for any person who is engaged, directly or indirectly, in the manufacture or wholesale distribution only of motor vehicles, whether patented or unpatented, to pay or give, or contract to pay or give, anything or service of value to any person who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages, or leases on motor vehicles sold at retail within this state if the effect of any such payment or the giving of any such thing or service of value may be to lessen or eliminate competition, or tend to create or create a monopoly in the person or class of persons who receive or accept the thing or service of value.

44-20-206. Accepting consideration to eliminate competition

It is unlawful for any person who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages, or leases on motor vehicles sold at retail within this state to accept or receive, or contract or agree to accept or receive, either directly or indirectly, any payment, thing, or service of value from any person who is engaged, either directly or indirectly, in the manufacture of or wholesale distribution only of motor vehicles, whether patented or unpatented, if the effect of the acceptance or receipt of any such payment, thing, or service of value may be to lessen or eliminate competition, or to

create or tend to create a monopoly in the person who accepts or receives such payment, thing, or service of value or contracts or agrees to accept or receive the same.

44-20-207. Recipient of consideration shall not buy mortgages

It is unlawful for any person who hereafter so accepts or receives, either directly or indirectly, any payment, thing, or service of value, as set forth in section 44-20-206, or contracts, either directly or indirectly, to receive any such payment, or thing, or service of value to thereafter finance or attempt to finance the purchase or sale of any motor vehicle or buy or attempt to buy any conditional sales contracts, chattel mortgages, or leases on motor vehicles sold at retail in this state.

44-20-208. Quo warranto action

For a violation of any of the provisions of this part 2 by any corporation or association mentioned in this part 2, it is the duty of the attorney general or the district attorney of the proper county to institute proper suits or an action in the nature of quo warranto in any court of competent jurisdiction for the forfeiture of its charter rights, franchises, or privileges and powers exercised by such corporation or association, and for the dissolution of the same under the general statutes of the state.

44-20-209. Violation by foreign corporation – penalty

Every foreign corporation and every foreign association exercising any of the powers, franchises, or functions of a corporation in this state violating any of the provisions of this part 2 is denied the right and prohibited from doing any business in this state, and it is the duty of the attorney general to enforce this provision by bringing proper proceedings by injunction or otherwise. The secretary of state is authorized to revoke the license of any such corporation or association heretofore authorized to do business in this state.

44-20-210. Penalty

Any person who violates any of the provisions of this part 2, any person who is a party to any agreement or understanding, or to any contract prescribing any condition, prohibited by this part 2, and any employee, agent, or officer of any such person who participates, in any manner, in making, executing, enforcing, or performing, or in urging, aiding, or abetting in the performance of, any such contract, condition, agreement, or understanding and any person who pays or gives or contracts to pay or give anything or service of value prohibited by this part 2, and any person who receives or accepts or contracts to receive or accept anything or service of value prohibited by this part 2 commits a class 6 felony and shall be punished as provided in section 18-1.3-401. Each day's violation of this provision shall constitute a separate offense.

44-20-211. Contract void

Any contract or agreement in violation of the provisions of this part 2 shall be absolutely void and shall not be enforceable either in law or equity.

44-20-212. Provisions cumulative

The provisions of this part 2 shall be held cumulative of each other and of all other laws in any way affecting them now in force in this state.

44-20-213. Damages

In addition to the criminal and civil penalties provided in this part 2, any person who is injured in his or her business or property by any other person or corporation or association or partnership, by reason of anything forbidden or declared to be unlawful by this part 2, may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount of controversy, and to recover twofold the damages sustained by him or her, and the costs of suit. When it appears to the court before which any proceedings under this part 2 are pending that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending or not.

44-20-214. Repeal of part

This part 2 is repealed, effective September 1, 2027. Before its repeal, this part 2 is scheduled for review in accordance with section 24-34-104.

Part 3. Sunday Closing Law

44-20-301. Definitions

As used in this part 3, unless the context otherwise requires:

- (1) "Motor vehicle" means every self-propelled vehicle intended primarily for use and operation on the public highways and every vehicle intended primarily for operation on the public highways that is not driven or propelled by its own power, but which is designed either to be attached to or become a part of a self-propelled vehicle; it does not include farm tractors and other machines and tools used in the production, harvesting, and care of farm products.

44-20-302. Sunday closing

No person, firm, or corporation, whether owner, proprietor, agent, or employee, shall keep open, operate, or assist in keeping open or operating any place or premises or residences, whether open or closed, for the purpose of selling, bartering, or exchanging or offering for sale, barter, or exchange any motor vehicle, whether new, used, or secondhand, on the first day of the week commonly called Sunday. This part 3 shall not apply to the opening of an establishment or place of business on the first day of the week for other purposes, such as the sale of petroleum products, tires, or automobile accessories, or for the purpose of operating and conducting a motor vehicle repair shop, or for the purpose of supplying such services as towing or wrecking. The provisions of this part 3 shall not apply to the opening of an establishment or place of business on the first day of the week for the purpose of selling, bartering, or exchanging or offering for sale, barter, or exchange any boat, boat trailer, snowmobile, or snowmobile trailer.

44-20-303. Penalties

Any person, firm, partnership, or corporation who violates any of the provisions of this part 3 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than seventy-five dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or the court, in its discretion, may suspend or revoke the Colorado motor vehicle dealer's license issued under the provisions of part 1 of this article 20, or by such fine and imprisonment and suspension or revocation.

44-20-304. Repeal of part

This part 3 is repealed, effective September 1, 2027. Before its repeal, this part 3 is scheduled for review in accordance with section 24-34-104.

Part 4. Powersports Vehicles

44-20-401. Legislative declaration

- (1) The general assembly hereby declares that:
- (a) The sale and distribution of powersports vehicles affects the public interest, and a significant factor of inducement in making a sale of a powersports vehicle is the trust and confidence of the purchaser in the dealer from whom the purchase is made and the expectancy that the dealer will remain in business to provide service for the vehicle;
 - (b) The proper sale and service of a powersports vehicle are important to consumer safety, and the manufacturers and distributors of powersports vehicles have an obligation to the public not to terminate or refuse to continue their franchise agreements with retail powersports vehicle dealers unless the powersports vehicle manufacturer or distributor has first established good cause for termination of any such agreement, to the end that there shall be no diminution of locally available service;
 - (c) The licensing and supervision of powersports vehicle dealers by the motor vehicle dealer board are necessary for the protection of consumers, and therefore, the sale of powersports vehicles by unlicensed dealers or salespersons, or by licensed dealers or salespersons who have demonstrated unfitness, should be prevented; and
 - (d) Consumer education concerning the rules of the powersports vehicle industry, the considerations when purchasing a powersports vehicle, and the role, functions, and actions of the motor vehicle dealer board are necessary for the protection of the public and for maintaining the trust and confidence of the public in the motor vehicle dealer board.

44-20-402. Definitions

As used in this part 4, unless the context otherwise requires:

- (1) "ANSI/SVIA-1-2001" means the American national standards institutes, or its successor organizations, provisions for four-wheel all-terrain vehicles, equipment configuration, and performance requirements, developed by the specialty vehicle institute of America, or its successor organization.
- (2) "Board" means the motor vehicle dealer board.
- (3) "Consumer" means a purchaser, renter, or lessee of a powersports vehicle that is primarily used for business, personal, family, or household purposes. "Consumer" does not include a purchaser of powersports vehicles primarily for resale.

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- (4) "Custom trailer" means a vehicle that is not driven or propelled by its own power and is designed to be attached to, become a part of, or be drawn by a motor vehicle and that is uniquely designed and manufactured for a specific purpose or customer. "Custom trailer" does not include manufactured housing, farm tractors, and other machines and tools used in the production, harvest, and care of farm products.
- (5) "Director" means the director of the auto industry division created in section 44-20-105.
- (6) "Franchise" means the authority to sell or service and repair powersports vehicles of a designated line-make granted through a sales, service, and parts agreement with a manufacturer, distributor, or manufacturer representative.
- (7) "Line-make" means a group or series of powersports vehicles that have the same brand identification or brand name, based upon the powersports vehicle manufacturer's trademark, trade name, or logo.
- (8) "New powersports vehicle" mean a powersports vehicle that has been transferred on a manufacturer's statement of origin and for which an ownership registration card has been submitted by the original owner to the powersports vehicle manufacturer.

Regulation 44-20-402(8)

- 1. *This regulation applies solely to matters within the jurisdiction of the Motor Vehicle Dealer Board.*
- 2. *For purposes of this regulation, the following apply:*
 - a. *"manufacturer's statement of origin" includes "manufacturer's certificate of origin"; and,*
 - b. *"transferred" includes an exchange of a powersports vehicle by means of an appropriate written assignment of the manufacturer's statement of origin between two dealers enfranchised to sell the same make of vehicle.*
- (9) "Off-highway vehicle" means any self-propelled vehicle that is designed to travel on wheels or tracks in contact with the ground, designed primarily for use off of the public highways, and generally and commonly used to transport persons for recreational purposes. "Off-highway vehicle" does not include the following:
 - (a) Military vehicles;
 - (b) Golf carts;
 - (c) Vehicles designed and used to carry persons with disabilities; and
 - (d) Vehicles designed and used specifically for agricultural, logging, or mining purposes.
- (10) "Personal watercraft" means a motorboat that is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting

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or standing inside the vessel, and that is designed primarily for use off of the public highways, and that uses either of the following as the primary source of motive power:

- (a) An inboard motor powering a water jet pump; or
 - (b) An outboard motor-driven propeller.
- (11) "Powersports vehicle" means any of the following:
- (a) An off-highway vehicle;
 - (b) A personal watercraft; or
 - (c) A snowmobile.
- (12) "Powersports vehicle dealer" means a person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, leases, exchanges, rents with option to purchase, offers, or attempts to negotiate a sale, lease, or exchange of an interest in new or new and used powersports vehicles or who is engaged wholly or in part in the business of selling or leasing new or new and used powersports vehicles, whether or not the powersports vehicles are owned by the person. The sale or lease of ten or more new or new and used powersports vehicles or the offering for sale or lease of more than ten new or new and used powersports vehicles at the same address or telephone number in any one calendar year shall be prima facie evidence that a person is engaged in the business of selling or leasing new or new and used powersports vehicles. "Powersports vehicle dealer" includes an owner of real property who allows more than ten new or new and used powersports vehicles to be offered for sale or lease on the property during one calendar year unless the property is leased to a licensed powersports vehicle dealer. "Powersports vehicle dealer" does not include:
- (a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court;
 - (b) Public officers while performing their official duties;
 - (c) Employees of persons enumerated in the definition of "powersports vehicle dealer" when engaged in the specific performance of their duties as employees;
 - (d) A wholesaler or anyone selling powersports vehicles solely to wholesalers; or
 - (e) A wholesale motor vehicle auctioneer.

[Regulation 44-20-402\(12\)](#)

Profit or gain of money or other thing of value means:

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 benefitted.

- (13) "Powersports vehicle distributor" means a person, resident or nonresident, who, in whole or in part, sells or distributes new powersports vehicles to powersports vehicle dealers or who maintains powersports vehicle distributor representatives.
- (14) "Powersports vehicle manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new powersports vehicles.
- (15) "Powersports vehicle manufacturer representative" means a representative employed by a person who manufactures or assembles powersports vehicles for the purpose of making or promoting the sale of the person's powersports vehicles or for supervising or contacting its dealers or prospective dealers.
- (16) "Powersports vehicle salesperson" means a natural person who, for a salary, commission, or compensation of any kind, is employed either directly or indirectly, regularly or occasionally, by a powersports vehicle dealer to sell, lease, purchase, or exchange or to negotiate for the sale, lease, purchase, or exchange of powersports vehicles.
- (17) "Principal place of business" means a site or location for which the powersports vehicle dealer is licensed, sufficiently designated to admit of definite description, with space thereon or contiguous thereto adequate to permit the display of one or more new or used powersports vehicles, and including a permanent enclosed building or structure to accommodate the office of the dealer and to provide a safe place to keep the books and other records of the business of the dealer, at which site or location the principal portion of the dealer's business shall be conducted and the books and records thereof kept and maintained; except that a dealer may keep its books and records at an off-site location in Colorado after notifying the board in writing of the location at least thirty days in advance. Motor vehicle and used motor vehicle dealers shall be authorized to offer both motor vehicles and powersports vehicles from the same principal place of business. In the case of motor vehicle dealers, the principal place of business shall be at the address set forth in the dealer's sales agreement.

Regulation 44-20-402(17)

- 1. *As used in this regulation, a "powersports vehicle dealer" means either a licensed powersports vehicle dealer or licensed used powersports vehicle dealer.*
- 2. *A powersports vehicle dealer may sell powersports vehicles at special sales events, shows, or other organized events, including, for example, at the National Western Stock Show, the Colorado State Fair, the Greeley Stampede, or the Denver Auto Show. In order to sell powersports vehicles at a location away from the dealership, a powersports vehicle dealer must apply for the appropriate off-premise permit. A powersports vehicle dealer must not engage in any sales activity at an off-premise location until the board approves the appropriate off-premise permit.*

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3. *The board recognizes two classes of off-premise permit based upon specific sales-related conditions and restrictions. These are:*
 - a. *Class One --- a Limited Sales Activity Off-premise Permit. The following conditions and restrictions apply to this permit:*
 - 1) *Licensed salespersons or owners authorized to sell must be present at the off- premise location at all times when the public is present; and,*
 - 2) *Licensed salespersons or owners authorized to sell may negotiate the terms of a sale at the off-premise location; and,*
 - 3) *The parties shall not execute sales-related documents at the off-premise location, but must return to the dealership to execute any sales-related documents.*
 - b. *Class Two --- a Full Sales Activity Off-premise Permit. The following conditions and restrictions apply to this permit:*
 - 1) *Licensed salespersons or owners authorized to sell must be present at the off- premise location at all times when the public is present; and,*
 - 2) *Licensed salespersons or owners authorized to sell may negotiate the terms of a sale at the off-premise location; and,*
 - 3) *The parties may execute sales documents at the off-premise location.*
4. *The board issues an off-premise permit for a restricted number of days, as follows:*
 - a. *Up to six calendar days from start to finish is allowed for an off-premise permit, except as provided below;*
 - b. *Up to twenty calendar days from start to finish is allowed for an off-premise permit for the National Western Stock Show, the Colorado State Fair, the Greeley Stampede, or the Denver Auto Show.*
 - c. *The board may, in its informed discretion, approve consecutive off-premise permits for a recurring special event at the same location for a limited period of time.*
5. *A powersports vehicle dealer must make an off-premise permit readily-available for inspection by any person at the off-premise location during the entire period that the permit is valid.*
6. *A powersports vehicle dealer must ensure that every person it uses for sales activity at an off- premise sales event has been issued a Colorado powersports vehicle salesperson's license by no later than fourteen calendar days prior to the off-premise event.*
7. *By no later than fourteen calendar days prior to the off-premise event, a powersports vehicle dealer must submit a completed application form for an off-premise permit. The*

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board shall reject for filing any application for an off-premise permit that is not accompanied by a remittance in the full amount of the fee for the permit. The board may reject for filing any application that does not completely satisfy the requirements of the application form and its instructions.

8. *A powersports vehicle dealer may occasionally display vehicles without an off-premise permit at an event or location away from the dealership. Sales activity is prohibited. However, a person may be present to provide security or to distribute information about the dealership and its vehicles.*
9. *The books and records of each dealer, excluding financial statements and tax returns, shall be open to inspection Monday through Friday between 9AM and 5PM by the Board and its agents and representatives with cause, including ongoing investigation, compliance audit, sworn complaint, order of the Board. All records, including financial records and tax returns shall be provided upon subpoena by the Board. However, all records provided by a Dealer to the Board or its agents or representatives, either voluntarily or pursuant to a subpoena, shall be made available to the Dealer for testing, inspection, or copying, under direct supervision by the Auto Industry Division staff, upon a request by the Dealer.*
10. *Additional locations which are immediately adjacent to the principal place of business of the licensed dealer shall be considered contiguous for the purpose of this statute. "Immediately adjacent" shall mean either next to or directly or diagonally across from the dealership even if a public road or thoroughfare is between the additional location and the dealer's principal place of business. Subject to any applicable local zoning or sign requirements, the additional location shall not have any signage which identifies the additional location as being operated under any name other than the name or tradename of the licensee's principal place of business. The additional location may not advertise under a different name than that under which the dealership is licensed.*
- (18) "Snowmobile" means a self-propelled vehicle primarily designed or altered for travel on snow or ice when supported in part by skis, belts, or cleats and designed primarily for use off of the public highways. "Snowmobile" shall not include machinery used strictly for the grooming of snowmobile trails or ski slopes.
- (19) "Used powersports vehicle" means a powersports vehicle that is not a new powersports vehicle.
- (20) "Used powersports vehicle dealer" means any person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, exchanges, leases, or offers an interest in used powersports vehicles, or attempts to negotiate a sale or lease of new and used powersports vehicles or who is engaged wholly or in part in the business of selling used powersports vehicles, whether or not the used powersports vehicles are owned by the person. The sale of ten or more used powersports vehicles or the offering for sale of more than ten used powersports vehicles at the same address or telephone

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number in any one calendar year shall be prima facie evidence that a person is engaged in the business of selling used powersports vehicles. "Used powersports vehicle dealer" includes an owner of real property who allows more than ten used powersports vehicles to be offered for sale on the property during one calendar year unless the property is leased to a licensed used powersports vehicle dealer. "Used powersports vehicle dealer" does not include:

- (a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court;
 - (b) Public officers while performing their official duties;
 - (c) Employees of used powersports vehicle dealers when engaged in the specific performance of their duties;
 - (d) Anyone selling powersports vehicles solely to wholesalers;
 - (e) Mortgagees or secured parties as to powersports vehicles constituting collateral on a mortgage or security agreement, if the mortgagees or secured parties shall not realize for their own account from the sales any money in excess of the outstanding balance secured by the mortgage or security agreement, plus costs of collection; or
 - (f) A motor vehicle auctioneer.
- (21) "Wholesaler" means a person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, exchanges, or offers or attempts to negotiate a sale, lease, or exchange of an interest in a new or new and used powersports vehicle solely to powersports vehicle dealers or used powersports vehicle dealers.

44-20-403. Motor vehicle dealer board

Powersports vehicle dealers, used powersports vehicle dealers, powersports vehicle manufacturers, distributors, and manufacturer representatives, and powersports vehicle salespersons shall be subject to the jurisdiction of the board.

44-20-404. Board - powers and duties - rules

- (1) In addition to the duties and powers of the board under section 44-20-104, the board may:

Regulation 44-20-404(1)

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

- (a) *Whenever a provision of part 4 of article 20 of title 44 mandates a specific sanction for either (1) a specific type of violation or (2) a specific circumstance related to a specific violation, the board shall apply the mandatory sanction when the findings of fact and conclusions of law establish the legal basis.*

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- (b) *Whenever the legal basis for a mandatory sanction does not exist, the board shall exercise its discretion to determine the appropriate sanctions based not only upon the findings of fact and conclusions of law in the case but also upon a standardized approach that takes the following factors into account:*
- (1) *the nature of the violation;*
 - (2) *the severity of the violation;*
 - (3) *the characteristics of the harm that the violation produced;*
 - (4) *the monetary harm that the violation produced;*
 - (5) *the licensee's history of violations;*
 - (6) *the licensee's compliance with prior board orders;*
 - (7) *any additional aggravating information; and,*
 - (8) *any additional mitigating information, including, but not limited to the licensee's voluntary, monetary remuneration to a victim.*
- (c) *Whenever the board considers a fine to be an appropriate sanction, it shall follow these restrictions:*
- (1) *the fine must be punitive, not compensatory; and,*
 - (2) *the fine must not exceed any relevant limitations on the amount of a fine as set out in part 4 of article 20 of title 44.*
- (a) Promulgate, amend, and repeal rules reasonably necessary to implement this part 4, including, without limitation, the administration, enforcement, issuance, and denial of licenses to wholesalers, powersports vehicle dealers, powersports vehicle salespersons, and used powersports vehicle dealers;

Regulation 44-20-404(1)(a)

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

- (b) Delegate to the board's executive secretary, employed pursuant to section 44-20-405 (1)(b), the authority to execute all actions within the power of the board, carry out the directives of the board, and make recommendations to the board on all matters within the authority of the board;

Regulation 44-20-404(1)(b)

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

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- (I) *The Executive Secretary may set and maintain the board's docket, grant motions for continuances and motions for enlargements of time, issue subpoenas, and issue final agency orders pursuant to the board's action. The Executive Secretary may honor, within a reasonable time, a written request from an interested person to appear before the board at a regularly scheduled board meeting.*
 - (II) *The Executive Secretary may write, sign, and issue board orders and correspondence on behalf of the board consistent with the board's action or direction. The Executive Secretary may sign and issue notices of charges after the board has referred the matter for a hearing pursuant to section 44-20-404(1)(f)(V), C.R.S., and after drafting and review by the office of the Attorney General.*
 - (III) *The board delegates to the Executive Secretary the authority to conduct informal fact-finding conferences and make recommendations to the board for the granting or denying of an application.*
- (c) Issue through the department a temporary license to an applicant seeking a license issued by the board, which temporary license shall permit the applicant to operate for not more than one hundred twenty days, during which time the board may complete its investigation and determination of all facts relative to the qualifications of the applicant for the license;

Regulation 44-20-404(1)(c)

- 1) *A temporary license shall not issue, and a salesperson shall not be allowed to offer, negotiate or sell vehicles unless the Board has received and date stamped at the main office of the Auto Industry Division a signed application, completed in every respect, with all required details and attachments, including bond, fees, and the licensing examination affidavit required by regulation 44-20-404(1)(k). Dealers' payrolls and other evidence will be checked to ascertain that all salespersons for such dealers are licensed.*
- 2) *All original applicants shall have a criminal history background investigation conducted prior to the issuance of a permanent license.*
- 3) *No temporary license shall issue to any person who has been the subject of disciplinary proceedings before the Board within the past 5 years, unless such disciplinary proceedings resulted in dismissal of all charges. Such person's application shall require prior Board review and approval of a license before said person shall be permitted to engage in activities requiring a salesperson license.*
- 4) *Any salesperson applicant who has been notified by the Auto Industry Division that additional documentation is required by the Board before a license can be approved, and who fails to comply by the date specified with the request for information, shall be deemed not to have submitted a complete application and may not engage in activities requiring a powersports vehicle salesperson license until the Board has reviewed and approved the application.*

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- 5) *The Executive Secretary may issue a notice of denial to any applicant who fails to provide documentation as requested, if the application discloses, on its face, grounds for denial under section 44-20-420, C.R.S.*
- 6) *Any person who allows such applicant to engage in activities requiring a powersports vehicle salesperson license may be subject to disciplinary action for violation of section 44-20-409, C.R.S.*
 - (d)
 - (I) Issue through the department and, for reasonable cause shown or upon satisfactory proof of the unfitness of the applicant under this part 4, refuse to issue to any applicant any license the board is authorized to issue by this part 4;
 - (II) Permit the director to issue licenses pursuant to rules adopted by the board under subsection (1)(a) of this section;

Regulation 44-20-404(1)(d)(II)

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

- (e)
 - (I) After due notice and a hearing:
 - (A) Review the findings of an administrative law judge or hearing officer from a hearing conducted pursuant to this part 4; or
 - (B) Revoke and suspend or order the director to issue or to reinstate, on such terms and conditions and for such period of time as the board deems fair and just, any license issued pursuant to this part 4;

Regulation 44-20-404(1)(e)(I)

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.

- (II) Issue a letter of admonition for a minor violation of this part 4 that does not become a part of the licensee's record with the board;
- (III) Issue a letter of reprimand and a notice of the right to request formal disciplinary proceedings, in writing within twenty days, to a licensee for a violation of this part 4, which letter is a part of the licensee's record with

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the board for a period of two years after issuance and may be considered in aggravation of any subsequent violation by the licensee; except that the letter shall be vacated and a formal disciplinary proceeding shall be instituted upon a written request within twenty days after the letter is issued;

- (f) (I) Investigate, with the assistance of the director, on its own motion or upon a written and signed complaint from any person, a suspected or alleged violation by a wholesaler, powersports vehicle dealer, used powersports vehicle dealer, or powersports vehicle salesperson of this part 4 or a rule promulgated by the board;
- (II) Issue subpoenas or delegate the authority to issue subpoenas to the director;
- (III) Require the director to investigate complaints transmitted by the board pursuant to section 44-20-405 (3)(b) and (3)(c);
- (IV) Seek to resolve disputes before beginning an investigation or hearing through its own action or by direction of the director;
- (V) If the board determines that there is probable cause to believe a violation of this article 20 has occurred after an investigation by the director, order an administrative hearing be held pursuant to section 24-4-105.

Regulation 44-20-404(1)(f)(V)

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

- (a) *If the board does not find probable cause based upon its examination of the affidavit, the board shall do one of the following:*
 - (1) *suspend its consideration of the matter with a request to the division to bring the matter back to the board with additional information; or,*
 - (2) *inform the division that the board declines to prosecute the case.*
- (b) *If the board does find probable cause based upon its examination of the affidavit, it may:*
 - (1) *decline to prosecute the case; or,*
 - (2) *prosecute the case in the appropriate venue as follows:*
 - (i) *if the license class of the respondent is a salesperson, the board shall assign the executive director or his or her appointee to hear the case; or,*

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- (ii) *if the license class of the respondent is other than a salesperson, the board shall assign the case for hearing either to the board, itself, or to the Office of Administrative Courts.*
- (c) *Whenever the board has decided to prosecute the case, it shall do the following:*
 - (1) *turn the case over to the attorney general to begin prosecuting the case; or,*
 - (2) *authorize the executive secretary to (i) attempt to negotiate a settlement of the case without a hearing and, (ii) if the settlement process is unsuccessful, turn the case over to the attorney general to begin prosecuting the case.*
- (d) *Whether the board does or does not find probable cause based upon its examination of the affidavit, it may, if appropriate, refer the matter to another agency.*
- (g) Summarily issue to any person who is licensed by the board pursuant to this part 4 cease and-desist orders on such terms and conditions and for such time as the board deems fair and just, if the orders are followed by notice and a hearing pursuant to this section;
- (h)
 - (I) Prescribe the forms to be used for applications for persons licensed under this part 4;
 - (II) Require of an applicant, as a requisite to the issuance of a license, information concerning the applicant's fitness to be licensed under this part 4 as the board considers necessary;
- (i) Adopt a seal with the words "motor vehicle dealer board" and such other devices as the board may desire engraved thereon by which it shall authenticate the acts of its office;
- (j) Require that a powersports vehicle dealer's or used powersports vehicle dealer's principal place of business and such other sites or locations operated by the dealer have signs or devices giving notice of the dealer's name, the location and address of the dealer's principal place of business, and the type and number of license held by the dealer, as the board considers necessary to notify any person doing business with the dealer to identify the dealer, and for this purpose to promulgate rules determining the size, shape, lettering, and location of the signs or devices;

Regulation 44-20-404(1)(j)

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

- (k) Cause to be conducted written examinations, as prescribed by the board, to test the competency of all first-time applicants for a wholesaler's license, powersports vehicle

dealer's license, used powersports vehicle dealer's license, or powersports vehicle salesperson's license;

Regulation 44-20-404(1)(k)

- 1) *Applicants may use the information provided by the Auto Industry Division to study for the examination. The following examination criteria shall apply to the examination process and the examination results: 1) the numerical percentage that will constitute a passing score on the examination, as determined from the ratio of questions correctly answered to questions asked shall be eighty-five percent (85%); 2) the number of times in a calendar day that an applicant may take the examination before being timed out prior to attempting the examination again shall be two (2); 3) the manner in which an applicant and others shall certify both the applicant's compliance with the required examination process and the authenticity of the examination results shall be by submission of an examination affidavit on the form approved by the Board.*
 - 2) *Any applicant or licensee who is found to have falsified the examination affidavit or provided answers to an applicant prior to or during the examination may be subject to disciplinary action. An applicant shall neither request nor permit any other person, including but not limited to any person administering the examination, to take the examination on his behalf or otherwise to assist him or to participate in the taking of the examination. An applicant shall neither request nor accept answers to examination questions from any other person, including but not limited to any person administering the examination, either before or during the examination. An applicant who violates this rule is subject to denial, suspension, or revocation of his license. Any licensee who either 1) assists an applicant in violating this rule, 2) conspires with others in violating this rule, 3) falsifies information regarding the results of an applicant's licensing examination, or 4) otherwise falsely declares to the Board or its representatives the manner in which an applicant took an examination, is subject to disciplinary action to the limits of the Board's jurisdiction.*
 - 3) *If an applicant is not licensed within one year of passing the examination, the score is removed from the record and the person must retake and pass the examination again, in accordance with the Board's examination criteria, before a license can be issued.*
 - 4) *The examination may be administered by the employing dealer or designated manager of the employing dealer, the Auto Industry Division, or a third party approved by the Board.*
 - 5) *If an applicant has held a license during the previous twelve months, the applicant shall not be required to retake the examination.*
- (l) Promulgate rules requiring off-highway vehicles sold by persons licensed under this part 4 to comply with ANSI/SVIA-1-2001 or a successor standard promulgated by the American national standards institute or its successor

organization if the rules do not conflict with the ANSI standards or set standards more stringent than those set by ANSI;

Regulation 44-20-404(1)(I) – (ANSI REQUIREMENTS)

1. *The board incorporates by reference each of the following versions of the “American National Standard for Four-Wheel All-Terrain Vehicles Equipment Configuration, and Performance Requirements, developed by the Specialty Vehicle Institute of America” (ANSI/SVIA standards) to apply, according to the vehicle model year and date of manufacture, to each four-wheel all-terrain vehicle:*
 - a. *The ANSI/SVIA-1-2001 Standard to apply to all model year vehicles manufactured from 2001 through April 12, 2009;*
 - b. *The ANSI/SVIA-1-2007 Standard to apply to all model year vehicles manufactured from April 13, 2009 to April 29, 2012;*
 - c. *The ANSI/SVIA-1-2010 Standard to apply to all model year vehicles manufactured from April 30, 2012 through 2018;*
 - d. *The ANSI/SVIA-1-2017 Standard to apply to all model year vehicles manufactured in 2019 and to those vehicles manufactured subsequent to 2019 until such time as the board approves an ANSI/SVIA standard developed to replace the ANSI/SVIA-1-2017 Standard.*
 2. *A person licensed by the board under this part 4 must sell a four-wheel all-terrain vehicle in full compliance with the appropriate ANSI/SVIA Standard based upon the vehicle’s model year and date of manufacture, except that a person is not required to comply with the ANSI/SVIA-1-2001 Standard, an Industry-initiated voluntary standard, never mandated in law.*
 3. *The Specialty Vehicle Institute of America is the author, publisher and copyright-holder of each ANSI/SVIA standard. A certified copy of each published Standard is available for inspection during normal business hours at the Colorado Department of Revenue, Auto Industry Division, 1697 Cole Blvd., Suite 200-A, Lakewood, Colorado 80401. For a reasonable charge as set by the Specialty Vehicle Institute of America, a person can obtain a copy of an ANSI/SVIA standard either from the Auto Industry Division or directly from Specialty Vehicle Institute of America on line at <https://svia.org/>. Also for a reasonable charge, a person can obtain a certified copy of an ANSI/SVIA standard from the Specialty Vehicle Institute of America, 2 Jenner, Suite 150, Irvine, CA 92618 (949-727-3727).*
 4. *This regulation does not include any later amendments or editions following the ANSI/SVIA-1- 2017 Standard.*
- (m) (I)** Prescribe forms to be used as a part of a contract for the sale of a powersports vehicle by a powersports vehicle dealer or powersports vehicle salesperson, other than a

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retail installment sales contract subject to the provisions of the "Uniform Consumer Credit Code", articles 1 to 9 of title 5, that shall include the following information in addition to any other disclosures or information required by state or federal law:

- (A) In twelve-point, bold-faced type, or at least three points larger than the smallest type appearing in the contract, an instruction that the form is a legal instrument and that, if the purchaser of the powersports vehicle does not understand the form, the purchaser should seek legal assistance;
- (B) In the type and size specified in subsection (1)(m)(I)(A) of this section, an instruction that only those terms in written form embody the contract for sale of a powersports vehicle and that any conflicting oral representations made to the purchaser are void;
- (C) In the type and size specified in subsection (1)(m)(I)(A) of this section, a notice that fraud or misrepresentation in the sale of a powersports vehicle is punishable under the laws of this state;
- (D) In the type and size specified in subsection (1)(m)(I)(A) of this section, if the contract for the sale of a powersports vehicle requires a single, lump sum payment of the purchase price, a clear disclosure to the purchaser of this fact or, if the contract is contingent upon the approval of credit financing for the purchaser arranged by or through the powersports vehicle dealer, a statement that the purchaser shall agree to purchase the powersports vehicle that is the subject of the sale from the powersports vehicle dealer at not greater than a certain annual percentage rate of financing that shall be agreed upon by the parties and entered in writing on the contract;
- (E) Except as otherwise provided under this part 4, if the purchase price of the powersports vehicle is not paid to the powersports vehicle dealer in full at the time of consummation of the sale and the vehicle dealer delivers and the purchaser takes possession of the vehicle at such time, a statement in bold-faced type that, if financing cannot be arranged in accordance with the contract and the sale is not consummated, the purchaser shall agree to pay a daily rate for use of the vehicle until financing of the purchase price of the vehicle is arranged for the obligor by or through the authorized powersports vehicle dealer or until the purchase price is paid in full by or through the obligor, which daily rate shall be agreed upon in writing on the contract.

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- (II) The information required by subsection (1)(m)(I) of this section shall be read and initialed by both parties at the time of the sale of a powersports vehicle.
- (III) The use of the contract form required by subsection (1)(m)(I) of this section shall be mandatory for the sale of a powersports vehicle.

Regulation 44-20-404(1)(m)

A. Disclosure Form

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

B. Definitions

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

C. Application

- 1. The disclosure form is not required for a sale solely between Dealers, between Wholesalers, or, between a Dealer and a Wholesaler.*
- 2. At the time that the buyer signs a Contract, the disclosure form must be read, initialed and signed by the buyer and the Dealer.*

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

D. *Usage Fee and Mileage Charge*

1. *The Dealer must notify the buyer within ten (10) calendar days of the date the Contract is signed by the buyer, in the event financing cannot be arranged as originally agreed-upon.*
 2. *If the Dealer and buyer agree that the Dealer will continue to attempt to arrange financing after ten calendar days, the Dealer must remind the buyer in writing that daily usage and mileage rates stated in the disclosure form, apply in the event financing cannot be arranged as originally agreed upon.*
 3. *The Dealer and buyer must complete and sign a new disclosure form that reflects the new interest rate if:*
 - a) *Funding cannot be arranged at or below the interest rate set forth in the preceding disclosure form; and*
 - b) *The Dealer and the buyer agree that the Dealer will attempt to arrange financing at an interest rate different than previously agreed upon.*
 4. *The Dealer must retain a copy of all previously executed disclosure forms.*
 5. *The Dealer must write in "NA" for "not applicable" or "Zero" in the dollar and cents fields, if the Dealer does not charge usage and mileage fees.*
- (n)** After final action is taken on a hearing held before an administrative law judge or a hearing officer designated by the board from within the board's membership, review the findings of law and fact and the fairness of any fine imposed and uphold the fine, impose an administrative fine upon its own initiative that shall not exceed ten thousand dollars for each separate offense by any licensee, or

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vacate the fine imposed by the judge or hearing officer; except that, for powersports vehicle dealers who sell primarily vehicles that weigh under one thousand five hundred pounds, the fine for each separate offense shall not exceed one thousand dollars; and

- (o) Impose a fine of up to one thousand dollars per day per violation for any person found, after notice and hearing pursuant to section 24-4-105, to have violated the provisions of section 44-20-423 (2).

Regulation 44-20-404(1)(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 powersports vehicle purchaser, severity of offense, and whether there is a pattern of violations or repeat offenses.

- (2) The board shall:

- (a) Order an investigation of all written and signed complaints;
- (b) Require an application for a powersports vehicle dealer's license or used powersports vehicle dealer's license to contain, in addition to such information as the board may require, a statement of the following facts:
 - (I) The name and residence address of the applicant and any trade name under which the applicant intends to conduct business;
 - (II) If the applicant is a partnership, the name and residence address of each member, whether a limited or general partner, and the name under which the partnership business is to be conducted;
 - (III) If the applicant is a corporation, the name of the corporation and the name and address of each of its principal officers and directors;
 - (IV) A complete description, including the municipality, street, and number, if any, of the principal place of business, and any other additional places of business as shall be operated and maintained by the applicant;
 - (V) If the application is for a powersports vehicle dealer's license, the names of the new powersports vehicles that the applicant has been enfranchised to sell or exchange and the name and address of the powersports manufacturer or distributor who has enfranchised the applicant; and
 - (VI) The name and address of any person who will act as a salesperson under the authority of the license, if issued.

Regulation 44-20-404(2)(b)

1. *An applicant for a license issued by the board must complete and submit the appropriate application form. The board shall reject for filing any application that is defective in any*

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one or more of the following ways: a) the application is not accompanied by a remittance in the full amount of the fee for the specific license; and, b) the application does not include a copy of the required bond in the correct amount. The board may reject for filing any application that does not completely satisfy the requirements of the application form and its instructions.

2. *An applicant whose license application has been accepted for filing must respond to every request for additional information within the time allowed and in the manner required by the requestor.*
3. *An applicant must include with an application the full name of, date of birth of, current residence address for, and other required identifying information related to each natural person who possesses one or more of the following characteristics:*
 - a. *an ownership, financial, or equity interest in the applicant; or,*
 - b. *an ability to control the applicant or to exercise significant financial or operational influence over the applicant.*

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

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

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7. *Additional places of business are allowed in the name of the principal place of business, but they must display a sign with the same name as that required by the board for the principal location, and, if the additional place of business is more than just a storage lot, the licensee must provide adequate office and sanitary facilities. Locations contiguous to the principal place of business are not considered additional locations. The books and records of an additional location may be maintained at the principal place of business.*
 8. *Prior to a licensee's doing business under a different name at an additional place of business, the licensee must submit for the board's approval a new, complete application, together with the appropriate fee, and the correct bond.*
 9. *Prior to a licensee's making a material change to the operating entity under which the licensee does business, the licensee must submit for the board's approval a new, complete application, together with the appropriate fee, and the correct bond.*
 10. *A licensee must conduct business solely under its licensed name. However, if a licensee is one of several dealers with common ownership, the licensee may advertise under a name that reflects the common ownership. Designations like the following, which clearly reflect common ownership, are acceptable solely for advertising purposes: "John Doe Dealerships" or "Joe's Powersports Group."*
- (3) The findings of the board under subsection (1) of this section shall be final.
 - (4)
 - (a) For the purposes of subsections (1)(e) and (1)(g) of this section, the address for the notice to be given under section 24-4-105 is the last-known address for the person as indicated in the state motor vehicle records; the last-known address for the owner of the real property upon which powersports vehicles are displayed in violation of section 44-20-423 (2), as indicated in the records of the county assessor's office; or any address for service of process in accordance with rule 4 of the Colorado rules of civil procedure.
 - (b) A person who fails to pay a fine ordered by the board for a violation of section 44-20-423(2) under subsection (1)(o) of this section shall be subject to enforcement proceedings, by the board through the attorney general, in the county or district court pursuant to the Colorado rules of civil procedure. Fines collected under this subsection (4) shall be disposed of pursuant to section 44-20-430.
 - (5)
 - (a) If a hearing is conducted by an administrative law judge, the maximum fine that may be imposed is ten thousand dollars for each separate offense by any person licensed by the board pursuant to this part 4; except that, for a powersports vehicle dealer who sells primarily vehicles that weigh under one thousand five hundred pounds, the fine for each separate offense may not exceed one thousand dollars.
 - (b)
 - (I) If a licensing hearing is conducted by a hearing officer, the sanctions that may be recommended by the hearing officer are limited to the denial or

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grant of an unrestricted license or a restricted license under such terms as the hearing officer deems appropriate.

- (II) If a disciplinary hearing is conducted by a hearing officer, the hearing officer may only recommend a probationary period of no more than twelve months, a fine of no more than five hundred dollars, or both such probationary period and fine for each separate violation committed by a person licensed by the board.

44-20-405. Powers and duties of executive director and director

- (1) The executive director is hereby charged with the administration, enforcement, and issuance or denial of the licensing of powersports vehicle distributors, powersports vehicle manufacturer representatives, and powersports vehicle manufacturers, and has the following powers and duties:

Regulation 44-20-405(1)[Recodified as 1 CCR 210-2]

1 CCR 210-2 Regulation 44-20-405(1)

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 powersports 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.

- (a) To promulgate, amend, and repeal rules reasonably necessary to undertake the functions the executive director is mandated to carry out pursuant to this part 4 and to administer the laws of this state that the executive director deems necessary to carry out the duties of the office of the executive director pursuant to this part 4;
- (b) To employ, subject to the laws of this state and after consultation with the board, an executive secretary for the board, who shall be accountable to the board and shall, pursuant to delegation by the board, discharge the responsibilities of the board under this part 4;
- (c) To issue and, for reasonable cause shown or upon satisfactory proof of the unfitness of the applicant under this part 4, to refuse to issue to an applicant any license the executive director is authorized to issue by this part 4;
- (d) To prescribe the forms to be used for applications for licenses to be issued by the executive director under this part 4 and to require of applicants, as a condition precedent to the issuance of a license, such information concerning the applicant's fitness to be licensed under this part 4 as the executive director considers necessary;

Regulation 44-20-405(1)(d)[Recodified as 1 CCR 210-2]

1 CCR 210-2 Regulation 44-20-405(1)(d)

1. *All applications for licenses shall be made upon forms prescribed by the executive director. 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 ten percent or more 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 executive director not less than ten days prior to such transfer. All such reports shall be made on forms supplied by the executive director.

Upon request of the executive director, applicants for a license shall provide suitable additional evidence of residence, good character and reputation. Applicants and licensees shall also submit upon request by the executive director 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, the place of business or business address without submitting written notice to the executive director, not less than ten days prior to the change. All information submitted to the executive director, 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 executive director shall be grounds for the suspension, revocation, or denial of the license.

2. *A change in the nature of the legal structure of a licensee's business shall be cause for the revocation of the license and shall require a new application and fee.*

- (e) (I) To summarily issue cease-and-desist orders on such terms and conditions, and for such period of time as the executive director deems fair and just, to any person who is licensed by the executive director pursuant to this part 4

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if the orders are followed by notice and a hearing pursuant to section 44-20-421;

- (II) To issue cease-and-desist orders to persons acting as powersports vehicle manufacturers without the powersports vehicle manufacturer's license required by this part 4; and
- (III) To impose a fine, not to exceed one thousand dollars per day, for each violation of section 44-20-423 (1), after a notice and hearing subject to section 24-4-105.

Regulation 44-20-405(1)(e)[Recodified as 1 CCR 210-2]

1 CCR 210-2 Regulation 44-20-405(1)(e)

If it shall appear from an investigation by the executive director and executive director agents and representatives, or shall otherwise come to the attention of the executive director 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, executive director 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 executive director 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 executive director 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 executive director by the licensee or by personal service upon the licensee a notice of final determination. In the event the licensee is found not to have violated any law, rule or regulation, the charges against the licensee 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 executive director, and in the proper case the licensee's license suspended or revoked on such terms and conditions and for such period of time as to the executive director shall appear fair and just. The decision of the executive director 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.

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- (2) If a person fails to comply with a cease-and-desist order issued pursuant to this section, the executive director may bring a suit for injunction to prevent any further violation of the order. In any such suit, the final proceedings of the executive director, based upon evidence in record, shall be prima facie evidence of the facts found therein.
- (3) The director may:
 - (a) Employ such clerks, deputies, and assistants as the director considers necessary to discharge the duties imposed upon the director or executive director by this part 4 and to designate the duties of the clerks, deputies, and assistants;
 - (b) Investigate, upon the director's own initiative, upon the written and signed complaint of any person, or upon request by the board under section 44-20-404 (1)(f)(I), any suspected or alleged violation of this part 4 or of any rule promulgated under this article 20;
 - (c) Delegate authority to persons for the purpose of investigating alleged or suspected violations of this part 4. The investigators and their supervisors utilized by the director, while actually engaged in performing their duties, have the authority as delegated by the director:
 - (I) To issue subpoenas, in accordance with the performance of their duties, to licensees who are under the jurisdiction of the executive director or the board;
 - (II) To issue summonses for violations of section 44-20-423 (2);
 - (III) To issue misdemeanor summonses for violations of section 44-20-422 (1)(a); and
 - (IV) To procure criminal records during an investigation.

44-20-406. Records as evidence

Copies of all records and papers in the office of the board, director, or executive director, duly authenticated under the hand and seal of the board, director, or executive director, shall be received in evidence in all cases equally and with like effect as the original.

44-20-407. Attorney general to advise and represent

- (1) The attorney general shall represent the board, director, and executive director and shall give opinions on questions of law relating to the interpretation of this part 4 or arising out of the administration thereof and shall appear for and on behalf of the board, director, and executive director in all actions brought by or against them, whether under this part 4 or otherwise.
- (2) The board may request the attorney general to make civil investigations and enforce rules of the board in cases of civil violations and to bring and defend civil suits and

proceedings for any of the purposes necessary and proper for carrying out the functions of the board.

44-20-408. Classes of licenses

- (1) The following classes of licenses are issued under this part 4:
- (a) A powersports vehicle dealer's license shall permit the licensee to engage in the business of selling, exchanging, leasing, or offering new and used powersports vehicles, which license shall not permit more than two persons named therein as owners of the business of the licensee to act as powersports vehicle salespersons.
 - (b) A used powersports vehicle dealer's license shall permit the licensee to engage in the business of selling, exchanging, leasing, or offering used powersports vehicles only. The license shall also permit a licensee to negotiate for a consumer the sale, exchange, or lease of used and new powersports vehicles not owned by the licensee. Prior to completion of a sale, exchange, or lease of a powersports vehicle not owned by the licensee, the licensee shall disclose in writing to the consumer whether the licensee will receive compensation from the consumer or the owner of the powersports vehicle as a result of the transaction. If the licensee receives compensation from the owner of the powersports vehicle as a result of the transaction, the licensee shall include in the written disclosure the name of the owner from whom the licensee will receive compensation. This license shall not permit more than two persons named therein who shall be owners of the business of the licensee to act as powersports vehicle salespersons.

Regulation 44-20-408(1)(b) - Compensation Disclosure

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

COMPENSATION DISCLOSURES

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

_____, hereby discloses to
License Name of Negotiating Used Powersports Vehicle Dealer License Number

_____ that _____ will receive
Full Printed Legal Name(s) of Consumer(s) Negotiating Used Powersports Vehicle Dealer

compensation from: *[mark each box that applies]*

☐ the Consumer(s)

☐ the Current Powersports Vehicle Owner

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

_____, owned by
Year Make Model VIN (if applicable)

Printed Full Legal Name of Current Owner

Signature of Authorized Representative of Used Powersports Vehicle Dealer

Printed Name of Authorized Representative of Used Powersports Vehicle Dealer

Title of Authorized Representative of Used Powersports Vehicle Dealer

Signature(s) of Consumer(s)

Printed Full Legal Name(s) of Consumer(s)

Date of the Consumer(s) Signature(s)

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

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

- (c) A powersports vehicle salesperson's license permits the licensee to engage in the activities of a powersports vehicle salesperson while employed by a licensed powersports vehicle dealer or used powersports vehicle dealer.
- (d) A powersports vehicle manufacturer's or distributor's license shall permit the licensee to engage in the activities of a powersports manufacturer or distributor.

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- (e) A powersports vehicle manufacturer representative's license shall permit the licensee to engage in the activities of a powersports vehicle manufacturer representative.
- (f) A wholesaler's license shall permit the licensee to engage in the activities of a wholesaler, but does not permit more than two individuals, who must be named in the license and who must be owners or part owners of the business of the licensee, to perform the activities of a wholesaler.

Regulation 44-20-408(1)(f)

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

1. *A person shall not simultaneously hold a powersports vehicle salesperson license and also have an ownership interest in a licensed wholesale business.*
2. *A wholesaler shall not employ a licensed powersports vehicle salesperson.*
3. *A wholesaler shall have a place of business with a business office. The wholesaler's business books and records shall be kept at that business office.*
4. *A wholesaler shall maintain written records of all business transactions involving the sale, exchange, or offer of any interest in a powersports vehicle.*
5. *A wholesaler shall transact all business, including but not limited to the purchase and sale of powersports vehicles, exclusively in its licensed wholesale business name, and not in the name of another person, whether that other person is or is not associated with the wholesaler license. However, in order to prevent confusion between the wholesale business transactions of a sole proprietor and the personal transactions of the natural person of the same name, a sole proprietor wholesaler shall transact all wholesale business using the sole proprietor's name coupled with the word, "wholesaler" (for example, "Wholesaler Joe Smith," "Joe Smith, Wholesaler," or "Joe Smith---Wholesaler").*
6. *A wholesaler shall permit the board and its agents and representatives to inspect, with cause, including ongoing investigation, compliance audit, sworn complaint, or order of the board, the wholesaler's books and records, excluding financial statements and tax returns, any time from Monday through Friday between 9 AM and 5 PM. Upon receipt of a subpoena from the board or the director, the wholesaler shall provide all records, including financial records and tax returns, to the board, the director, or to the agents or representatives of the board or the director. Upon the wholesaler's written request, auto industry division staff shall, under their direct supervision, make available to the wholesaler, all of the records that the wholesaler provides voluntarily or under subpoena, in order for the wholesaler to test, inspect, or copy the records.*
7. *See Regulation 44-20-402(12) for the definitions of "profit" and "gain of money."*

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- (2) (a) A person who is licensed as a motor vehicle salesperson pursuant to part 1 of this article 20 shall be deemed to be licensed as a powersports vehicle salesperson under this part 4.
- (b) A person who is licensed as a motor vehicle manufacturer or distributor pursuant to part 1 of this article 20 shall be deemed to be licensed as a powersports vehicle manufacturer or distributor under this part 4.
- (c) A person who is licensed as a motor vehicle manufacturer pursuant to part 1 of this article 20 shall be deemed to be licensed as a powersports vehicle manufacturer under this part 4.

44-20-409. Temporary powersports vehicle dealer license

- (1) (a) If a licensed powersports vehicle dealer has entered into a written agreement to sell a dealership to a purchaser and the purchaser has been awarded a new franchise, the board may issue a temporary powersports vehicle dealer's license to the purchaser or prospective purchaser. The director shall issue the temporary license only after the board has received the applications for both a temporary powersports vehicle dealer's license and a powersports vehicle dealer's license, the appropriate application fee for the powersports vehicle dealer's application, evidence of a passing score of the written examination described in section 44-20-415, and evidence that the franchise has been awarded to the applicant by the powersports vehicle manufacturer.
- (b) A temporary powersports vehicle dealer's license authorizes the licensee to act as a powersports vehicle dealer and subjects the licensee to this article 20 and to all rules adopted by the executive director or the board. A temporary powersports vehicle dealer's license is effective for up to sixty days or until the board acts on the licensee's application for a powersports vehicle dealer's license, whichever is sooner.

Regulation 44-20-409(1)

Evidence of a passing test score shall be as required by Regulation 44-20-404(1)(k).

- (2) For the purpose of enabling an out-of-state dealer to sell powersports vehicles on a temporary basis during specifically identified events, the director may issue, upon direction by the board, a temporary powersports vehicle dealer's license that is effective for thirty days. The temporary licensee is subject to the rules adopted by the executive director or the board.

Regulation 44-20-409(2)

- 1. *For purposes of this regulation, an "out-of-state powersports vehicle dealer" means a powersports vehicle dealer or used powersports vehicle dealer that is not a resident of*

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Colorado and that is not licensed in Colorado as a powersports vehicle dealer or as a used powersports vehicle dealer.

2. *An out-of-state powersports vehicle dealer may sell a powersports vehicle to a consumer only at the following specific events: A) the Colorado State Fair; B) the National Western Stock Show; and, C) the annual Colorado RV, Sports and Travel Show.*
3. *If an out-of-state powersports vehicle dealer intends to sell a powersports vehicle to a consumer at a specific event other than those listed above, then the out-of-state powersports vehicle dealer must obtain the board's permission to apply for a temporary license for that specific event. To obtain the board's permission, the out-of-state powersports vehicle dealer must submit a written petition to the executive secretary of the board at least ninety days prior to the specific event so that the executive secretary can docket the board's review of the petition. At the review, the board will consider only the written petition.*
4. *An out-of-state powersports vehicle dealer temporary license is issued for thirty consecutive calendar days related to the specific event designated in the application for an out-of-state powersports vehicle temporary license.*
5. *An out-of-state powersports vehicle dealer may not obtain more than three out-of-state powersports vehicle dealer temporary licenses in a calendar year.*
6. *In order to sell a powersports vehicle to a consumer at a specific event, an out-of-state powersports vehicle dealer must apply for an out-of-state powersports vehicle dealer temporary license. An out-of-state powersports vehicle dealer must not engage in any sales activity at a specific event until the board approves the out-of-state powersports vehicle dealer temporary license.*
7. *By no later than fourteen calendar days prior to the specific event designated in the application, an out-of-state powersports vehicle dealer must submit a completed application form for an out-of-state powersports vehicle dealer temporary license related to the specific event. The board shall reject for filing any application for an out-of-state powersports vehicle dealer temporary license that is not accompanied by both a remittance in the full amount of the fee for the license and by the bond required for the license. The board may reject for filing any application that does not completely satisfy the requirements of the application form and its instructions.*
8. *In the event that an out-of-state powersports vehicle dealer intends to sell a new powersports vehicle to a consumer in Colorado, then an out-of-state powersports vehicle dealer shall provide written evidence that each manufacturer, whose vehicles the out-of-state powersports vehicle dealer intends to sell at the specific event, has authorized the out-of-state powersports vehicle dealer to sell the manufacturer's vehicles at the specific event.*

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9. *An out-of-state powersports vehicle dealer must make an out-of-state powersports vehicle dealer temporary license readily-available for inspection by any person at the specific event during the entire time that the out-of-state powersports vehicle dealer is present at the event.*
10. *An out-of-state powersports vehicle dealer operating in Colorado pursuant to an out-of-state powersports vehicle dealer temporary license has agreed to do business under applicable Colorado law and regulations. Therefore, an out-of-state powersports vehicle dealer has both the same rights and the same responsibilities as a licensed Colorado powersports vehicle dealer.*

44-20-410. Display, form, custody, and use of licenses

- (1) The board and the executive director shall prescribe the form of the license to be issued by the executive director, and shall imprint on each license the seal of their offices. The executive director shall mail the license to the business address where the powersports vehicle salesperson is licensed. Each powersports vehicle salesperson shall keep a copy of the license at the salesperson's place of employment for inspection by employers, consumers, the director, the executive director, or the board. A powersports vehicle dealer or wholesaler shall display conspicuously the person's license in the person's place of business.
- (2) Each license issued under this part 4 is separate and distinct. It is a violation of this part 4 for a person to exercise any of the privileges granted under a license that the person does not hold, or for a licensee to knowingly allow such an exercise of privileges.

Regulation 44-20-410

1. *All current and active licenses, including temporary licenses, of any class issued by the board must be conspicuously displayed in an area that is in public view at the powersports vehicle dealer's or used powersports vehicle dealer's place or places of business.*
2. *When the board issues a salesperson's license that is not a temporary license, the dealer associated with the salesperson's license shall do the following upon receipt of the license document:*
 - (a) *take charge of the actual license portion in order to display that portion in accordance with this regulation; and,*
 - (b) *hand over the "Change of Employer Notification" portion of the license document to the salesperson.*
3. *Within ten calendar days of the end of a salesperson's working relationship with a dealer, both the dealer and the salesperson shall, independently, notify the board, in*

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writing, of the date the relationship ended, and the dealer shall also return to the board the actual license portion of the salesperson's license.

4. *If a salesperson chooses to transfer his or her working relationship to a new dealer for the remainder of the salesperson's license year, he or she must submit a "Change of Employer Notification" to the board, along with any other required documents and a remittance to cover the license-reissue fee. Because the former dealer may cancel the bond associated with the remainder of the salesperson's license year, the salesperson must take any necessary steps to ensure that a valid salesperson's bond will be in effect.*
5. *A salesperson shall not engage in sales activities until the dealer conspicuously displays the license of the salesperson in accordance with this regulation.*

44-20-411. Fees - disposition - expenses - expiration of licenses

- (1) The fee established pursuant to subsection (5) of this section shall be collected with each application for each of the following:
 - (a)
 - (I) Powersports vehicle dealer's license or used powersports vehicle dealer's license;
 - (II) Powersports vehicle dealer's or used powersports vehicle dealer's license for each place of business in addition to the principal place of business;
 - (III) Renewal or reissue of powersports vehicle dealer's license or used dealer's license after change in location or lapse in principal place of business;
 - (b) Powersports vehicle manufacturer's license;
 - (c) Powersports vehicle distributor's license;
 - (d) Powersports vehicle manufacturer representative's license;
 - (e) Powersports vehicle salesperson's license including, without limitation, reissuing a license;
 - (f) Wholesaler's license.
- (2) Fees shall be paid to the state treasurer who shall credit the same to the auto dealer's license fund created in section 44-20-133.
- (3) If an application for a wholesaler's license, powersports vehicle dealer's, used powersports vehicle dealer's, or powersports salesperson's license is withdrawn by the applicant prior to issuance of the license, one-half of the license fee shall be refunded.
- (4) (a) Licenses issued under this part 4, if not suspended or revoked, shall be valid until one year following the month of issuance thereof and shall then expire; except that any license issued under this part 4 shall expire upon the voluntary surrender

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thereof or upon the abandonment of the licensee's place of business for a period of more than thirty days.

- (b) Thirty days before the expiration of a license, the director shall mail to the licensee's business address of record a notice stating when the person's license is due to expire and the fee necessary to renew the license. For a powersports vehicle salesperson or powersports vehicle manufacturer representative, the notice shall be mailed to the address of the powersports vehicle dealer, used powersports vehicle dealer, or powersports vehicle manufacturer where the person is licensed.
- (c) Upon the expiration of a license, unless suspended or revoked, it may be renewed upon the payment of the application fees specified in this section and renewal shall be made from year to year as a matter of right; except that, if a wholesaler or powersports vehicle dealer voluntarily surrenders its license or abandons its place of business for a period of more than thirty days, the licensee is required to file a new application to renew its license.
- (d) Notwithstanding subsection (4)(a) of this section, a person has a thirty-day grace period after the license expires in which the license may be renewed pursuant to subsection (4)(c) of this section, so long as the person has a bond in full force and effect that complies with the applicable bonding requirements of section 44-20-412 or 44-20-413 during the thirty-day period. A person applying during the thirty-day grace period shall pay a late fee established pursuant to subsection (5) of this section.
- (5) (a) The board shall propose, as part of its annual budget request, an adjustment in the amount of each fee that the board is authorized by law to collect. The budget request and the adjusted fees for the board shall reflect direct and indirect costs.

(b) Based upon any appropriation made and subject to the approval of the executive director, the board shall adjust the fees collected by the executive director so that the revenue generated from fees covers the direct and indirect costs of administering this part 4. The fees shall remain in effect for the fiscal year for which the appropriation is made.

(c) In any year, if money appropriated by the general assembly to the board for its activities for the prior fiscal year is unexpended, the money shall be made a part of the appropriation to the board for the next fiscal year, and the amount shall not be raised from fees collected by the board or the executive director. If a supplemental appropriation is made by the general assembly to the board for its activities, the fees of the board and the executive director, when adjusted for the fiscal year next following that in which the supplemental appropriation was made, shall be adjusted by an additional amount that is sufficient to compensate for the supplemental appropriation. Money appropriated to the board in the annual general appropriation bill shall be from the fund provided in section 44-20-133.

44-20-412. Bond of licensee

- (1) To be issued a wholesaler's license, powersports vehicle dealer's license, or used powersports vehicle dealer's license, an applicant must procure and file with the board evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101 or a good and sufficient bond with a corporate surety duly licensed to do business within the state, approved as to form by the attorney general, and conditioned that the applicant not practice fraud or violate any of the provisions of this part 4 related to fraud or any rule promulgated by the board under this part 4 related to fraud. A powersports vehicle dealer or used powersports vehicle dealer need not furnish an additional bond, savings account, deposit, or certificate of deposit under this section if the dealer furnishes a bond, savings account, deposit, or certificate of deposit under section 44-20-112.
- (2)
 - (a) The purpose of the bond procured by the applicant in accordance with subsection (1) of this section and section 44-20-413 is to provide for the reimbursement for any loss or damage suffered by any retail consumer caused by fraud or by a violation of this part 4 related to fraud by a wholesaler, powersports vehicle dealer, or used powersports vehicle dealer. For a wholesale transaction, the bond is available to each party to the transaction; except that, if a retail consumer is involved, the consumer has priority to recover from the bond. The amount of the bond must be fifty thousand dollars for each wholesaler applicant, powersports vehicle dealer applicant, and used powersports vehicle dealer applicant. The aggregate liability of the surety for all transactions does not exceed the amount of the bond, regardless of the number of claims or claimants.
 - (b) No corporate surety is required to make a payment to any person making a claim under the bond until a final determination of fraud has been made by the board or by a court of competent jurisdiction.
- (3) Bonds required pursuant to this section shall be renewed annually when the bondholder's license is renewed. Bonds may be renewed through a continuation certificate issued by the surety.
- (4) Nothing in this part 4 shall interfere with the authority of the courts to administer and conduct an interpleader action for claims against a licensee's bond.

44-20-413. Powersports vehicle salesperson's bond

- (1) To be issued a powersports vehicle salesperson's license, the applicant must procure and file with the board evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101 or a good and sufficient bond in the amount of fifteen thousand dollars with a corporate surety duly licensed to do business within the state, approved as to form by the attorney general, and conditioned that the applicant perform in good faith as a powersports vehicle salesperson without fraud and

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without violating a provision of this part 4 related to fraud or any rule promulgated by the board under this part 4 related to fraud. The board shall implement a psychometrically valid and reliable salesperson exam that measures the minimum level of competence necessary to practice. A powersports vehicle salesperson need not furnish an additional bond, savings account, deposit, or certificate of deposit under this section if the salesperson furnishes a bond, savings account, deposit, or certificate of deposit under section 44-20-113.

- (2) No corporate surety is required to make a payment to any person claiming under the bond until a final determination of fraud has been made by the board or by a court of competent jurisdiction.
- (3) Bonds required under this section shall be renewed annually when the bondholder's license is renewed. Bonds may be renewed through a continuation certificate issued by the surety.

44-20-414. Notice of claims honored against bond

- (1) A corporate surety that has provided a bond to a licensee pursuant to section 44-20-412 or 44-20-413 shall provide notice to the board and director of any claim that is honored against the bond within thirty days after the claim is honored.
- (2) A notice provided by a corporate surety pursuant to subsection (1) of this section must be in the form required by the director, subject to approval by the board, and must include the name of the licensee, the name and address of the claimant, the amount of the honored claim, and the nature of the claim against the licensee.

44-20-415. Testing licensees

All persons applying for a wholesaler's, powersports vehicle dealer's, used powersports vehicle dealer's, or powersports vehicle salesperson's license under this part 4 shall be examined for their knowledge of the powersports vehicle laws of the state of Colorado and the rules promulgated pursuant to this part 4. If the applicant is a corporation, the managing officer shall take the examination, and, if the applicant is a partnership, all the general partners shall take the examination. No license shall be issued except upon successful passing of the examination. This section shall not apply to a motor vehicle dealer, used motor vehicle dealer, or motor vehicle salesperson licensed pursuant to part 1 of this article 20.

[Regulation 44-20-415](#)

[See Regulation 44-20-404\(1\)\(k\)](#)

44-20-416. Filing of written warranties

A licensed powersports vehicle manufacturer shall file with the director all written warranties and changes in written warranties the manufacturer makes on powersports vehicles or parts thereof. A licensed powersports vehicle manufacturer shall file with the director a copy of the

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delivery and preparation obligations of a powersports vehicle manufacturer's dealer, and these warranties and obligations constitute the powersports vehicle dealer's only responsibility for product liability as between the powersports vehicle dealer and the powersports vehicle manufacturer. Any mechanical, body, or parts defects arising from express or implied warranties of the powersports vehicle manufacturer constitute the powersports vehicle manufacturer's product or warranty liability, and the powersports vehicle manufacturer shall reasonably compensate any authorized powersports vehicle dealer who performs work to rectify a powersports vehicle manufacturer's product or warranty defects.

44-20-417. Application - fingerprint-based background check – rules

- (1) An application for a wholesaler's license, powersports vehicle dealer's license, used powersports vehicle dealer's license, or powersports vehicle salesperson's license shall be submitted to the board.
- (2) An application for a powersports vehicle distributor, powersports vehicle manufacturer representative, or powersports vehicle manufacturer license shall be submitted to the director.
- (3) Fees for licenses shall be paid at the time of the filing of application for license.
- (4) Persons applying for a powersports vehicle dealer's license shall file with the board a certified copy of a certificate of appointment as a powersports vehicle dealer from a powersports vehicle manufacturer.
- (5)
 - (a) A person applying for a powersports vehicle manufacturer's or distributor's license must:
 - (I) File with the director a certified copy of a typical sales, service, and parts agreement with all powersports vehicle dealers; and
 - (II) File evidence of the appointment of an agent for process in the state of Colorado.
 - (b) Within sixty days after amending or modifying or adding an addendum to the, or parts agreement of more than one powersports dealer, a licensed manufacturer or distributor shall file a certified copy of the new sales, service, and parts agreement, including the changes, with the director if the amendment, modification, or addendum materially alters the rights and obligations of the contracting parties.

Regulation 44-20-417(5)[Recodified as 1 CCR 210-2]**1 CCR 210-2 Regulation 44-20-417(5)**

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

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Manufacturers and distributors shall notify the executive director 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 executive director 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 executive director and placed on file.

- (6) Persons applying for a wholesaler's, powersports vehicle dealer's, used powersports vehicle dealer's, or a powersports vehicle salesperson's license shall file with the board a written instrument in which the applicant shall appoint the secretary of the board as the agent of the applicant upon whom all process may be served in any action against the applicant arising out of a claim for damages suffered by a violation of this part 4, rules promulgated under this part 4, or any condition of the applicant's bond.

Regulation 44-20-417(6)

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

- (7) (a) A person applying for a wholesaler's license or used powersports vehicle dealer's license shall file with the board a certification that the applicant has met the educational requirements for licensure under this subsection (7), unless the applicant is licensed as a motor vehicle dealer or a used motor vehicle dealer. This subsection (7) shall not apply to a person who has held a license, within the last three years, as a motor vehicle dealer, used motor vehicle dealer, wholesaler, wholesale motor vehicle auction dealer, powersports vehicle dealer, or used powersports vehicle dealer under this part 4 or part 1 of this article 20.
- (b) An applicant for a wholesaler's license or used powersports vehicle dealer's license shall not be licensed unless one of the following persons has completed an eight-hour pre-licensing education program:
- (I) The managing officer if the applicant is a corporation or limited liability company;
 - (II) All of the general partners if the applicant is any form of partnership; or
 - (III) The owner or managing officer if the applicant is a sole proprietorship.
- (c) The pre-licensing education program shall include, without limitation, state and federal statutes and rules governing the sale of powersports vehicles.

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- (d) A pre-licensing education program shall not fulfill the requirements of this section unless approved by the board. The board shall approve any program with a curriculum that reasonably covers the material required by this section within eight hours.

Regulation 44-20-417(7)(d)

1. *The board hereby delegates to the board's executive secretary the authority to execute all actions within the authority of the board respective to the Pre-licensing Education Program.*
2. *The executive secretary shall provide public notice a) immediately after the effective date of these rules, and b) once every year thereafter, by means of publication on the board's website, which public notice shall contain a general description of the Pre-licensing Education Program requirements and shall indicate the procedures by which interested persons may apply to obtain approval from the executive secretary to provide a Pre-licensing Education Program.*
3. *The executive secretary shall evaluate each Pre-licensing Education Program application for compliance with the requirements of the relevant statutes and rules.*
4. *An approval of a Pre-licensing Education Program is for a period of one year from the date of approval.*
5. *A Pre-licensing Education Program Provider can reapply by means of an updated application for an approval of its program in subsequent years.*
6. *The executive secretary shall, by means of a Letter of Approval, within thirty (30) days of the executive secretary's receipt of either 1) an initial application for an approval of a prospective Pre-licensing Education Program Provider or 2) a subsequent application for a renewal of an existing approval of a Pre-licensing Education Program Provider, notify any applicant, whose Pre-licensing Education Program has been approved in its initial or a subsequent term, of the specific dates of the one-year term of the approval and of the procedures to apply to renew the approval for subsequent one-year terms.*
7. *The executive secretary shall, by means of a Letter of Denial, within thirty (30) days of the executive secretary's receipt of either 1) an initial application for an approval of a prospective Pre-licensing Education Program Provider or 2) a subsequent application for a renewal of an existing approval of a Pre-licensing Education Program Provider, notify any applicant, whose Pre-licensing Education Program has been denied in its initial or a subsequent term, of the basis and reasons for the denial and the procedure to follow to appeal the denial to the board.*
8. *Any recipient of a Letter of Denial shall have the right to appeal that denial to the board by means of a request for a hearing in writing within sixty (60) days after notice of the denial.*

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

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17. *Procedures for the suspension or revocation of the approval of a Pre-licensing Education Program Provider shall be in accordance with sections 24-4-104 and 24-4-105, C.R.S.*

- (e) The board may adopt rules establishing reasonable fees to be charged for the pre-licensing education program.
- (f) The board may adopt reasonable rules to implement this section, including, without limitation, rules that govern:
 - (I) The content and subject matter of education;

Regulation 44-20-417(7)(f)(I)

The Pre-Licensing Education Program shall include in its content, federal and Colorado state laws and federal and Colorado state regulations governing powersports vehicle dealers. The education curriculum shall contain without limitation titles 4, 5, 6, 18, 33, 39, 42 and 44 of the Colorado Revised Statutes applicable to powersports vehicle dealers and powersports vehicle sales and Federal Laws and Rules applicable to powersports vehicle dealers and powersports vehicle sales.

- (II) The criteria, standards, and procedures for the approval of courses and course instructors;

Regulation 44-20-417(7)(f)(II)

- I. *An application from a prospective Pre-licensing Education Program Provider or a renewal application of a prior-approved Pre-licensing Education Program Provider must contain each of the following items:*
 - a. *Identifying information, to include the applicant's full legal name, the mailing address of its Colorado place of business, telephone number(s), email address(es), if any, and website addresses, if any. Addresses in addition to that of the Colorado place of business may also be provided, although communications will go to the Colorado place of business only.*
 - b. *Contact information, to include the name and title of any individual(s) who have authority to speak on behalf of the applicant.*
 - c. *A Pre-licensing Education Program Proposal for the delivery of the required education. The Proposal must include each of the following items, but may include additional items: 1) the manner of completing the eight (8) required hours of classroom instruction; 2) a detailed outline of curriculum (or full course materials, if available); 3) the full legal names and dates of birth of all instructors, teachers, and curriculum preparers, and their respective educational credentials (faculty additions and changes may later be made, subject to approval by the executive secretary); 4) routine educational materials, if any, which will be made available to program participants as part of the pre-licensing education program either prior to, during, or subsequent to the classroom attendance time;*

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- 5) optional educational materials, if any, which will be made available to program participants as supplements, enhancements, or enrichments in addition to routine educational materials; 6) the testing protocols and baselines of achievement that will be used to ensure that a program participant has learned what the program is required by law to teach; and, 7) the methods that the Pre-licensing Education Program Provider will consistently use a) to establish the identity of each participant in the Pre-licensing Education Program and b) to verify that any test or examination validating achievement in the Pre-licensing Education Program is taken by the individual participant whose identity had been established and not by another person.*
- 2. The provider of a Pre-licensing Education Program must have a minimum of three (3) years experience in the regulation and enforcement of state and federal laws governing motor vehicle dealers and/or powersports vehicle dealers and motor vehicle and/or powersports vehicle sales, or have three (3) years experience as an instructor working for an approved Pre-licensing Education Program provider.*
 - 3. The executive secretary shall require additional information from any applicant, in the event that the application is deficient with regard to any of the noted materials, or in the event that more information is needed to reach a decision on the application.*

(III) The training facility requirements; and

Regulation 44-20-417(7)(f)(III)

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

(IV) The methods of instruction.

Regulation 40-20-417(7)(f)(IV)

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

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- (g) An approved pre-licensing program provider shall issue a certificate to a person who successfully completes the approved pre-licensing education program. The current certificate of completion, or a copy of the certificate, shall be posted conspicuously at the dealership's principal place of business.

Regulation 44-20-417(7)(g)

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

- (h) An approved pre-licensing program provider shall submit a certificate to the director for each person who successfully completes the pre-licensing education program. The certificate may be transmitted electronically.

Regulation 44-20-417(7)(h)

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

- (8) (a) With the submission of an application for any license issued under this part 4, each applicant shall submit a complete set of fingerprints to the Colorado bureau of investigation or the auto industry division for the purpose of conducting fingerprint-based criminal history record checks. The Colorado bureau of investigation shall forward the fingerprints to the federal bureau of investigation for the purpose of conducting fingerprint-based criminal history record checks. The board or the executive director shall use the information resulting from the finger print based criminal history record check to investigate and determine whether an applicant is qualified to be licensed. The board or the executive director may verify the information an applicant is required to submit. The applicant shall pay the costs associated with the finger print based criminal history record check to the Colorado bureau of investigation.
- (a.5) When the results of a fingerprint-based criminal history record check of an applicant performed pursuant to this subsection (8) reveal a record of arrest without a disposition, the department shall require that applicant to submit to a name-based criminal history record check, as defined in section 22-2-119.3 (6)(d).
- (b) This subsection (8) does not apply to a publicly traded company or the company's subsidiary.

44-20-418. Notice of change of address or status

- (1) The board, through the executive director, shall not issue a powersports vehicle dealer's license or used powersports vehicle dealer's license to an applicant who has no principal place of business. If a powersports vehicle dealer or used powersports vehicle dealer changes the site or location of the dealer's principal place of business, the dealer shall immediately notify the board in writing, and thereupon, a new license shall be granted for the unexpired portion of the term of the existing license at a fee established pursuant to section 44-20-411. If a powersports vehicle dealer or used powersports vehicle dealer ceases to possess a principal place of business where the dealer conducts the business for which the dealer is licensed, the dealer shall immediately notify the board in writing and, upon demand by the board, shall deliver the dealer's license, which shall be held and retained until it appears to the board that the licensee possesses a principal place of business; whereupon, the dealer's license shall be reissued. Nothing in this part 4 shall be construed to prevent a powersports vehicle dealer or used powersports vehicle dealer from conducting the business for which the dealer is licensed at one or more sites or locations not contiguous to the dealer's principal place of business but operated and maintained in conjunction therewith.
- (2)
 - (a) If a powersports vehicle dealer changes to a new line-make of powersports vehicles, adds another franchise for the sale of new powersports vehicles, or cancels or otherwise loses a franchise for the sale of new powersports vehicles; the dealer shall immediately notify the board. If a franchise is canceled or lost, the board shall determine whether the dealer should be licensed as a used powersports vehicle dealer.
 - (b) If the powersports vehicle dealer no longer possesses a franchise to sell new powersports vehicles, the board shall cancel and the powersports vehicle dealer shall deliver to it the dealer's license, and the board shall direct the director to issue to the dealer a used powersports vehicle dealer's license.
 - (c) Upon the cancellation or loss of a franchise to sell new powersports vehicles and the relicensing of the dealer as a used powersports vehicle dealer, the dealer may continue in the business of a powersports vehicle dealer for a time, not exceeding six months after the relicensing of the dealer, to enable the dealer to dispose of the stock of new powersports vehicles on hand at the time of relicensing, but not otherwise.
- (3) If a powersports vehicle salesperson is discharged, leaves an employer, or changes a place of employment, the powersports vehicle dealer who last employed the salesperson shall confiscate and return the salesperson's license to the board. Upon being reemployed as a powersports vehicle salesperson, the powersports vehicle salesperson shall notify the board. Upon receiving the notification, the board shall issue a new license for the unexpired portion of the returned license after collecting a fee set pursuant to section 44-

20-411 (5). It shall be unlawful for the salesperson to act as a powersports vehicle salesperson until a new license is procured.

- (4) Upon a change of place of business or business address, a wholesaler shall immediately notify the board of the change.
- (5) (a) Except as specified in subsection (5)(d) of this section:

 - (I) A person holding an ownership interest in a licensed corporation, limited liability company, limited liability partnership, or other business entity shall not sell the interest to a person who does not already own an interest in the business entity until the owner applies to the board to be approved to hold an ownership interest in the business entity and the board approves the person to hold the interest.
 - (II) A licensed corporation, limited liability Company, limited liability partnership, or other business entity shall notify the board within ten days after a transfer, other than a sale, of any ownership that results in a new person holding an interest in the business entity. To continue to hold ownership in the business, the transferee shall apply to the board for approval to continue holding an ownership interest in the business entity.
- (b) To be approved by the board to hold an ownership interest in a licensed business entity, the new owner must demonstrate the qualifications necessary for licensing, including a fingerprint-based criminal history record check, in accordance with this part 4.
- (c) (I) If the board does not approve a person to hold an ownership interest in a licensed business entity, the person shall transfer the interest within six months after acquiring the ownership interest.

(II) This subsection (5)(c) does not authorize a person to hold an interest in a licensed business entity when the person acquired the interest as the result of a sale that violates subsection (5)(a)(I) of this section.
- (d) (I) This subsection (5) does not apply to the sale or transfer of an interest in a publicly traded company.

(II) This subsection (5) does not apply to the sale of an interest to an institutional investor of a business entity that is subject to the reporting requirements of the "Securities Exchange Act of 1934", 15 U.S.C. sec. 78a et seq., as amended. For the purposes of this subsection (5)(d) (II), "institutional investor" means an entity, such as a pension fund, endowment fund, insurance company, commercial bank, or mutual fund, that invests money on behalf of its members or clients and that is required by the United States securities and exchange commission to file a form 13F, or its successor form, to report quarterly holdings.

44-20-419. Principal place of business – requirements

- (1) The building or structure required to be located on a principal place of business shall have electrical service and adequate sanitary facilities.

Regulation 44-20-419(1)

1. *An applicant for a powersports vehicle dealer license or a used powersports vehicle dealer license shall document each of the following, as part of the license application submitted to the board:*
 - a. *the existence of adequate sanitary facilities at the principal place of business;*
 - b. *proof that the applicant either owns or has leased the principal place of business; and,*
 - c. *proof that the applicant is in possession of the principal place of business.*
2. *A licensee applying for an additional location for a licensee's powersports vehicle business or a licensee's used powersports vehicle business, shall document each of the following, as part of the additional location application submitted to the board:*
 - a. *the existence of adequate sanitary facilities at the additional location, unless the additional location will be used by the licensee solely as a powersports vehicle storage site;*
 - b. *proof that the licensee either owns or has leased the additional location; and,*
 - c. *proof that the licensee is in possession of the additional location.*
3. *During the entire active period of a powersports vehicle dealer's license or a used powersports vehicle dealer's license, the licensee shall:*
 - a. *maintain adequate sanitary facilities at its principal place of business and at each additional location associated with the license at any given time, unless the additional location is used by the licensee solely as a motor vehicle storage site;*
 - b. *maintain, through ownership or lease, the licensee's right to occupy its principal place of business and each additional location approved by the board, unless the licensee has notified the board that it relinquished a previously authorized additional location; and,*
 - c. *continue to be in possession of the principal place of business and each additional location approved by the board, unless the licensee has notified the board that it relinquished a previously authorized additional location.*
4. *As used in this regulation, "adequate sanitary facilities" means a publicly-accessible, private bathroom with either 1) a functioning portable chemical toilet or, 2) a functioning permanent flush toilet with either a permanent sewer hookup, cesspool, or septic tank with leaching field.*

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- (2) A room in a hotel, rooming house, or apartment house building or a part of any single or multiple unit dwelling house shall not be used as a principal place of business unless the entire ground floor of the hotel, apartment house, or rooming house building or the dwelling house is devoted principally to and occupied for commercial purposes and the office of the dealer is located on the ground floor thereof.
- (3) Nothing in this section shall be construed to exempt a powersports vehicle dealer or used powersports vehicle dealer from local zoning ordinances.

44-20-420. Licenses - grounds for denial, suspension, or revocation

Regulation 44-20-420

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

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- (1) A powersports vehicle manufacturer's or distributor's license may be denied, suspended, or revoked on the following grounds:
 - (a) Material misstatement in an application for a license;
 - (b) Willful failure to comply with this part 4 or any rule promulgated by the executive director under this part 4;
 - (c) Engaging, in the past or present, in any illegal business practice.
- (2) A powersports vehicle manufacturer representative's license may be denied, suspended, or revoked on the following grounds:
 - (a) Material misstatement in an application for a license;
 - (b) Willful failure to comply with this part 4 or any rules promulgated by the executive director under this part 4;
 - (c) Committing any unconscionable business practice under title 4;
 - (d) Having coerced or attempted to coerce a powersports vehicle dealer to accept delivery of any powersports vehicle, parts or accessories therefore, or any other commodities or services that have not been ordered by the dealer;
 - (e) Having coerced or attempted to coerce a powersports vehicle dealer to enter into any agreement to do an act unfair to the dealer by threatening to cause the cancellation of the dealer's franchise;
 - (f) Having withheld, threatened to withhold, reduced, or delayed without just cause an order for powersports vehicles, parts or accessories therefore, or any other commodities or services that have been ordered by a powersports vehicle dealer; or
 - (g) Engaging, in the past or present, in any illegal business practice.
- (3) A wholesaler's license, powersports vehicle dealer's license, or a used powersports vehicle dealer's license may be denied, suspended, or revoked on the following grounds:
 - (a) Material misstatement in an application for a license;

Regulation 44-20-420(3)(a)

“Material Misstatement in an Application for a License” means

- (a) *either a written statement, a responsive mark (for example, a mark in a checkbox), or, an omission,*
- (b) *for which the applicant is responsible,*
- (c) *that is false or misleading, and*
- (d) *that is made in support of an application either*

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- (1) *by a natural person who has an ownership, financial, or equity interest in an applicant for a class of license other than a salesperson's license (except for a natural person whose sole relationship to the applicant is as a stockholder of a corporation that is subject to the reporting requirements of the "Securities Exchange Act of 1934," as amended, 15 U.S.C. § 78a, et seq.), or,*
 - (2) *by a natural person who has the ability to control or to exercise significant financial or operational influence over an applicant for a class of license other than a salesperson's license. For purposes of this rule, "material" means reasonably significant enough to affect the outcome of the Board's review of an application.*
- (b) Willful failure to comply with this part 4 or any rule promulgated by the executive director under this part 4;
- (c) Having been convicted of or pled nolo contendere to any felony or crime pursuant to article 3, 4, or 5 of title 18 or any like crime pursuant to federal law or the law of another state. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be conclusive evidence of the conviction in a hearing held pursuant to this article 20.

Regulation 44-20-420(3)(c)[Repealed eff. 11/30/2019]

- (d) Defrauding any buyer, seller, powersports vehicle salesperson, or financial institution to the person's damage;
- (e) Intentionally or negligently failing to perform any written agreement with any buyer or seller;
- (f) Failing or refusing to furnish and keep in force a bond required under this part 4;
- (g) Making a fraudulent or illegal sale, transaction, or repossession;
- (h) Willfully misrepresenting, circumventing, concealing, or failing to disclose, through subterfuge or device, any of the material particulars or the nature thereof required to be stated or furnished to the buyer;

Regulation 44-20-420(3)(h)

A. Definitions for Purposes of this Regulation

- 1. *"Contract" means any written agreement, such as a purchase agreement, buyer order or invoice, between a Dealer and a Buyer for the sale of a powersports vehicle, excluding the Retail Installment Sales Contract ("RISC").*
- 2. *"Dealer" means a powersports vehicle dealer, used powersports vehicle dealer, wholesaler, or a representative of the dealership.*
- 3. *"Seller" means Dealer.*

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4. *“Buyer” means a retail consumer or a Dealer.*
5. *“Material Particulars” means those details concerning a powersports vehicle for sale that are essential or necessary for a reasonable prospective Buyer to know prior to making the decision to buy or not to buy a powersports vehicle.*

B. *Disclosure Process*

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

C. *“As Is” Statement*

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

D. *Non-Exclusive List of “Material Particulars”*

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

1. *Year and make of the powersports vehicle, and, if known to the Seller, the historical mileage or hours of operation of the vehicle.*
2. *Complete replacement of the engine, drivetrain, or chassis.*
3. *Repair or replacement of skis or tracks.*
4. *The powersports vehicle is a “Salvage vehicle” as that term is defined in the Colorado “Certificate of Title Act,” part 1 of article 6 of title 42, C.R.S.*
5. *The powersports vehicle has sustained damage, whether repaired or not repaired, of the following types:*
 - a. *Frame or unibody damage of any grade or type; or*
 - b. *Flood, fire or hail damage; or*
 - c. *Accident or collision damage.*
6. *The powersports vehicle has been modified in a way that impacts warranty coverage.*
7. *The powersports vehicle had been declared a “total loss” by an insurance company.*
8. *The powersports vehicle had been stolen.*

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9. *The powersports vehicle had been used as a police vehicle, vehicle for hire, rental vehicle, or a loaner or courtesy vehicle, if such use is clearly ascertainable from a title brand, from information obtained from a prior owner, from a Vehicle Identification Number (VIN), from a State-issued Identification Number, or from any other source.*
10. *The powersports vehicle had been put to a use or had been altered in such a way that a reasonable person would consider unusual or extraordinary, such as use as a racing vehicle.*

E. Matter Generally Not Considered “Material Particulars”

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

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

Regulation 44-20-420(3)(i)

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

- Rule 1. Advertising a powersports 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 powersports vehicle for sale or lease with price or terms quoted, without fully identifying the vehicle as to year, make, model, and dealer stock number.*

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a. Powersports vehicles shall be willfully shown and sold at the advertised price and/or terms while such vehicle remains unsold or unleased, for a period of three 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.

b. If a powersports vehicle is not available for immediate delivery, the advertisement must clearly and conspicuously state the powersports vehicle's availability, such as it is in transit, on order, or otherwise in a specified location, and that it is not in stock.

c. Any powersports vehicle may use a complete 17-digit VIN number in lieu of a dealer stock number.

- Rule 4. Using a picture or photograph of a powersports vehicle in advertising when the picture or photograph is not the same make, year and equipment actually being offered for the price or terms advertised.*
- Rule 5. Advertising in such a manner which utilizes an asterisk or other reference symbols to contradict or materially change the meaning of any advertising statements.*
- Rule 6. A used powersports vehicle shall not be advertised in any manner that creates the impression that it is new.*
- Rule 7. Advertising in any manner to imply that a purchaser will be receiving benefits of any existing loan on a powersports vehicle when no such benefit exists.*
- Rule 8. 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 powersports vehicle.*
- Rule 9. Advertising sales prices for used powersports vehicles which claim or imply a specific savings or discount without clearly and accurately documenting the basis for the savings or discount*
- Rule 10. Advertising any reference to "dealer cost" or "invoice" price. Advertising the word "wholesale" in connection with the retail offering of powersports vehicles.*
- Rule 11. 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.,*

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sale price, or capitalized cost of the powersports vehicle from which the trade-in will be deducted.

- Rule 12. Advertising the price of a powersports vehicle without including all costs to the purchaser at the time of delivery, except sales tax, finance charges, cost of any required emissions test, other governmental fees or taxes, and transportation costs, incurred after sale, to deliver the powersports vehicle to the purchaser at the purchaser's request.*
- Rule 13. Advertising any specific discount or rebate on new powersports vehicles without the manufacturer's suggested retail price conspicuously stated in the ad. When advertising rebates, incentives, or other offers, a dealer shall not combine such offers or give the impression that such offers are obtainable, when in fact they are not.*
- Rule 14. 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 15. 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 tenpoint type.*
- Rule 16. If any advertisement relates to a lease, the advertisement shall clearly and conspicuously disclose that the advertisement is for the lease of a powersports vehicle.*
- Rule 17. Statements, such as "Everybody Financed," "No Credit Rejected," "We Finance Anyone," and other statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit, are prohibited, unless such statements are true.*
- Rule 18. The term, "advertisement," shall have the same meaning as set forth in § 44-20-102(1), C.R.S., and the term, "computer display," means any electronic device capable of presenting a commercial message.*
- Rule 19. Bait advertising, as defined in § 18-5-303, C.R.S., is not allowed.*
- (j)** Knowingly purchasing, selling, or otherwise acquiring or disposing of a stolen powersports vehicle;
 - (k)** Engaging in the business for which the dealer is licensed without at all times maintaining a principal place of business as required by this part 4 during reasonable business hours;

Regulation 44-20-420(3)(k)

All powersports vehicle dealers and all used powersports 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 powersports 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 powersports dealerships shall notify the board in writing of any subsequent change in such periods of time.

Any powersports 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 powersports 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.

- (l) Engaging in the business through employment of an unlicensed powersports vehicle salesperson;
- (m) Willfully violating any state or federal law respecting commerce or powersports vehicles, or any lawful rule respecting commerce or powersports vehicles promulgated by any licensing or regulating authority pertaining to powersports vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or powersports vehicles;
- (n) Representing or selling as a new and unused powersports vehicle any powersports vehicle that the dealer or salesperson knows is otherwise a used powersports vehicle;
- (o) Committing a fraudulent insurance act pursuant to section 10-1-128;
- (p) Failing to give notice to a prospective buyer of the acceptance or rejection of a powersports vehicle purchase order agreement within a reasonable time period, as determined by the board, when the licensee is working with the prospective buyer on a finance sale or a consignment sale.

Regulation 44-20-420(3)(p)

A powersports 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.

- (4) A wholesaler's license may be denied, suspended, or revoked for the selling, leasing, or offering or attempting to negotiate the sale, lease, or exchange of an interest in motor vehicles to persons other than powersports vehicle dealers, used powersports vehicle dealers, or other wholesalers.

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(5) The license of a powersports vehicle salesperson may be denied, revoked, or suspended on the following grounds:

(a) Material misstatement in an application for a license;

Regulation 44-20-420(5)(a)

“Material Misstatement in an Application for a License” means

- (a) either a written statement, a responsive mark (for example, a mark in a checkbox), or, an omission,*
- (b) for which the applicant is responsible,*
- (c) that is false or misleading, and,*
- (d) that is made by the applicant in support of an application for a salesperson’s license. For purposes of this rule, “material” means reasonably significant enough to affect the outcome of the Board’s review of an application.*
- (b) Failure to comply with any provision of this part 4 or any rule promulgated by the board or executive director under this part 4;
- (c) Engaging in the business for which the licensee is licensed without having in force and effect a good and sufficient bond with corporate surety as provided in this part 4;
- (d) Intentionally publishing or circulating an advertisement that is misleading or inaccurate in any material particular or that misrepresents a powersports vehicle product sold or attempted to be sold by the salesperson;
- (e) Having indulged in any fraudulent business practice;
- (f) Selling, offering, or attempting to negotiate the sale, exchange, or lease of powersports vehicles for a powersports vehicle dealer or used powersports vehicle dealer for which the salesperson is not licensed; except that negotiation with a powersports vehicle dealer or used powersports vehicle dealer for the sale, exchange, or lease of new and used powersports vehicles, by a salesperson compensated for the negotiation by a powersports vehicle dealer or used powersports vehicle dealer for which the salesperson is licensed shall not be grounds for denial, revocation, or suspension;

Regulation 44-20-420(5)(f)[Repealed eff. 11/30/2019]

- (g) Representing oneself as a salesperson for a powersports vehicle dealer when the salesperson is not so employed and licensed;
- (h) Having been convicted of or pled nolo contendere to any felony or any crime pursuant to article 3, 4, or 5 of title 18 or any like crime pursuant to federal law or

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the law of another state. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be conclusive evidence of the conviction in a hearing held pursuant to this article 20.

Regulation 44-20-420(5)(h)[Repealed eff. 11/30/2019]

- (i) Having knowingly purchased, sold, or otherwise acquired or disposed of a stolen powersports vehicle;
 - (j) Employing an unlicensed powersports vehicle salesperson;
 - (k) Defrauding any retail buyer to the person's damage;
 - (l) Representing or selling as a new and unused powersports vehicle a powersports vehicle that the salesperson knows is otherwise a used powersports vehicle;
 - (m) Willfully violating any state or federal law respecting commerce or powersports vehicles, or any lawful rule respecting commerce or powersports vehicles promulgated by any licensing or regulating authority pertaining to powersports vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or powersports vehicles;
 - (n) Improperly withholding, misappropriating, or converting to the salesperson's own use any money belonging to customers or other persons received in the course of employment as a powersports vehicle salesperson.
- (6) A license issued pursuant to this part 4 may be denied, revoked, or suspended if unfitness of the licensee or licensee applicant is shown in the following:
- (a) The licensing character or record of the licensee or licensee applicant;
 - (b) The criminal character or record of the licensee or licensee applicant;
 - (c) The financial character or record of the licensee or licensee applicant;
 - (d) A violation of any lawful order of the board.

Regulation 44-20-420(6)

- (a) *The Board, in determining whether a licensee or license applicant has demonstrated unfitness of licensing character or record, will consider whether the licensee or license applicant or the licensee's or license applicant's partner, officer, director, or shareholder of any corporation, limited liability company, limited liability partnership or any other business entity authorized under law to hold a license, 1) has had a license fined, denied, suspended or revoked; 2) has been determined to have violated the licensing examination procedures of Regulation 44-20-404(1)(k); or, 3) has had any complaints, civil judgments, injunctions, consent orders/decrees, or stipulations, arising from the operation of a business in this state or any other state, engaged in the sale,*

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lease, or distribution of powersports vehicles, and, if so, the nature, severity, and extent of these legal matters. This regulation does not apply to shareholders of corporations, who own less than five percent 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 powersports vehicle dealer or used powersports vehicle license will be closely evaluated based on the factors herein and the applicant's concept of operation for the business to assess the potential for harm to retail customers.*
- (d) Failure to 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.*
- (7)** The license of a powersports vehicle dealer may be denied, revoked, suspended, or otherwise subject to discipline imposed under this part 4 if an owner is acting as a salesperson without a motor vehicle salesperson license and the owner commits any of the acts or omissions that subject a salesperson's license to denial, revocation, or suspension under subsection (6) of this section.
- (8)**
 - (a)** A license issued or applied for pursuant to this part 4 shall be revoked or denied if the licensee or applicant has been convicted of or pleaded no contest to any of the following offenses in this state or another jurisdiction during the previous ten years:
 - (I)** A felony in violation of article 3, 4, or 5 of title 18 or any similar crime under federal law or the law of another state; or
 - (II)** A crime involving salvage fraud or the defrauding of a retail consumer in a powersports vehicle sale or lease transaction.
 - (b)** A certified copy of a judgment of conviction by a court of competent jurisdiction of an offense under subsection (8)(a)(I) of this section is conclusive evidence of the conviction in any hearing held pursuant to this article 20.

- (9) A person whose license issued under this part 4 is revoked or who surrenders a license to avoid discipline is ineligible to apply for a new license under this part 4 for one year after the date of revocation or surrender of the license.

44-20-421. Procedure for denial, suspension, or revocation of license - judicial review

- (1) The denial, suspension, or revocation of licenses issued under this part 4 shall be in accordance with the provisions of sections 24-4-104 and 24-4-105; except that the discovery available under rule 26 (b)(2) of the Colorado rules of civil procedure is available in any proceeding.
- (2) The board shall appoint an administrative law judge pursuant to part 10 of article 30 of title 24 to conduct any hearing concerning the licensing or discipline of a wholesaler, powersports vehicle dealer, used powersports vehicle dealer, powersports vehicle manufacturer, powersports vehicle manufacturer representative, or powersports vehicle distributor; except that the board may, upon a unanimous vote of the members present when the vote is taken, conduct the hearing in lieu of appointing an administrative law judge.

Regulation 44-20-421(2) 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 respectively may rule on any motion.*
- (III) *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.*
- (IV) *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.

- (V) *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.*
- (VI) *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.*
- (3) (a) The board shall assign a hearing concerning the licensing or discipline of a powersports vehicle salesperson to the executive director, who shall appoint an officer to conduct a hearing.
- (b) Hearings conducted before an administrative law judge shall be in accordance with the rules of procedure of the office of administrative courts. Hearings conducted before an officer appointed by the executive director shall be in accordance with the rules of procedure established by the executive director.
- (4) The board may summarily suspend a licensee required to post a bond under this article 20 if the licensee does not have a bond in full force and effect as required by this article 20. The suspension shall become effective upon the earlier of the licensee receiving notice of the suspension or within three days after the notice of suspension is mailed to a licensee's last known address on file with the board. The notice may be effected by certified mail or personal delivery.
- (5) The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the board. The proceedings shall be conducted in accordance with section 24-4-106 (11).

44-20-422. Sales activity following license denial, suspension, or revocation - unlawful act - penalty

- (1) (a) It shall be unlawful and a violation of this part 4 for any person whose wholesaler's, powersports vehicle dealer's, used powersports vehicle dealer's, or powersports vehicle salesperson's license has been denied, suspended, or revoked to exercise the privileges of the license that was denied, suspended, or revoked.
- (b) A violation of subsection (1)(a) of this section shall be punishable in accordance with section 44-20-429; except that a second or subsequent violation of subsection (1)(a) of this section shall be a class 6 felony.
- (c) In any trial for a violation of subsection (1)(a) of this section:

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- (I) A duly authenticated copy of the board's order of denial, suspension, or revocation shall constitute prima facie evidence of the denial, suspension, or revocation;
 - (II) A duly authenticated invoice, buyer's order, or other customary, written sales or purchase document or instrument proven to be signed by the defendant and indicating the defendant's role in the purchase or sale of a powersports vehicle at a retail or wholesale powersports vehicle sales location shall constitute prima facie evidence of the defendant's exercise of a privilege of licensure;
 - (III) It shall be an affirmative defense that the defendant bought or sold a powersports vehicle that was, at all relevant times, intended for the defendant's own use and not bought or sold for the purpose of profit or gain; and
 - (IV) The fact that the defendant has a powersports vehicle dealer's, used powersports vehicle dealer's, or powersports vehicle salesperson's license, or another license to buy and sell powersports vehicles, that is issued by a state or jurisdiction other than Colorado, shall not constitute a defense.
- (2) Upon the defendant's conviction by entry of a plea of guilty or nolo contendere or judgment or verdict of guilt in connection with a violation of subsection (1)(a) of this section or of section 44-20-423 (2) or 42-6-142 (1), the court shall immediately give the executive director written notice of the conviction. In addition, the court shall forward to the executive director copies of documentation of any conviction on a lesser included offense and any amended charge, plea bargain, deferred prosecution, deferred sentence, or deferred judgment in connection with the original charge.
- (3) Upon receiving notice of a conviction or other disposition pursuant to subsection (2) of this section, the executive director or his or her designee shall forward the notice to the board, which shall immediately examine its files to determine whether the defendant's license was denied, suspended, or revoked at the time of the offense. If in fact the defendant's license was denied, suspended, or revoked at the time of the offense, the board shall:
 - (a) Not issue or reinstate any license to the defendant until one year after the time the defendant would otherwise have been eligible to receive a new or reinstated license; and
 - (b) Revoke or suspend any other licenses held by the defendant until at least one year after the date of the conviction or other disposition.

44-20-423. Unlawful acts

- (1) It is unlawful and a violation of this part 4 for any powersports vehicle manufacturer, distributor, or manufacturer representative:
- (a) To willfully fail to perform or cause to be performed any written warranties made with respect to a powersports vehicle or parts thereof;
 - (b) To coerce or attempt to coerce any powersports vehicle dealer to perform or allow to be performed an act that could be financially detrimental to the dealer or that would impair the dealer's goodwill or to enter into an agreement with a powersports vehicle manufacturer or distributor that would be financially detrimental to the dealer or impair the dealer's goodwill, by threatening to cancel or not renew a franchise between a powersports vehicle manufacturer or distributor and the dealer;
 - (c) To coerce or attempt to coerce any powersports vehicle dealer to accept delivery of a powersports vehicle, parts or accessories thereof, or any commodities or services that have not been ordered by the dealer;
 - (d)
 - (I) To cancel or cause to be canceled, directly or indirectly, without just cause, the franchise of a powersports vehicle dealer, and the nonrenewal of a franchise or selling agreement without just cause is a violation of this subsection (1)(d) and shall constitute an unfair cancellation.
 - (II) As used in this subsection (1)(d), "just cause" shall be determined in the context of all circumstances surrounding the cancellation or nonrenewal, including but not limited to:
 - (A) The amount of business transacted by the powersports vehicle dealer;
 - (B) The investments necessarily made and obligations incurred by the powersports vehicle dealer, including but not limited to goodwill, in the performance of its duties under the franchise agreement, together with the duration and permanency of the investments and obligations;
 - (C) The potential for harm to consumers as a result of disruption of the business of the powersports vehicle dealer;
 - (D) The powersports vehicle dealer's failure to provide adequate service of facilities, equipment, parts, and qualified service personnel;
 - (E) The powersports vehicle dealer's failure to perform warranty work on behalf of the powersports vehicle manufacturer, subject to reimbursement by the powersports vehicle manufacturer; and

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distributor fails to send notice of the disapproval within sixty days after receiving all documents and information necessary to approve the sale or transfer of ownership; or

- (IV) To condition the sale, transfer, relocation, or renewal of a franchise agreement or to condition sales, services, parts, or finance incentives upon site control or an agreement to renovate or make improvements to a facility; except that voluntary acceptance of the conditions by the dealer shall not constitute a violation;
- (j) (I) To fail or refuse to offer to its same line-make franchised dealers all models manufactured for that line-make except as a result of a strike or labor difficulty, lack of manufacturing capacity, shortage of materials, freight embargo, or other cause over which the powersports vehicle manufacturer has no control; or

(II) To require a dealer to pay an unreasonable fee, purchase unreasonable advertising displays or other materials, or comply with unreasonable training or facilities requirements as a prerequisite to receiving any particular model of that same line-make, which shall be judged based on the circumstances of the individual dealer and the conditions of the market served by the dealer;
- (k) To require, coerce, or attempt to coerce any powersports vehicle dealer to refrain from participation in the management of, investment in, or acquisition of another line-make of new powersports vehicles or related products; except that this subsection (1)(k) shall not apply unless the powersports vehicle dealer:

 - (I) Maintains a reasonable line of credit for each make or line of new powersports vehicle;
 - (II) Remains in compliance with reasonable capital standards and reasonable facilities requirements specified by the powersports vehicle manufacturer; but "reasonable facilities requirements" shall not include a requirement that a powersports vehicle dealer establish or maintain exclusive facilities, personnel, or display space; and
 - (III) Provides written notice to the manufacturer, distributor, or manufacturer's representative, no less than ninety days prior to the dealer's intent to participate in the management of, investment in, or acquisition of another line-make of new powersports vehicles or related products;
- (l) To fail to pay to a powersports vehicle dealer, within ninety days after the termination, cancellation, or nonrenewal of a franchise, all of the following:

 - (I) The dealer cost, plus any charges made by the powersports vehicle manufacturer for distribution, delivery, and taxes, less all allowances paid

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- or credited to the powersports vehicle dealer by the powersports vehicle manufacturer, of unused, undamaged, and unsold powersports vehicles in the powersports vehicle dealer's inventory that were acquired from the powersports vehicle manufacturer or from another powersports vehicle dealer of the same line make in the ordinary course of business within the previous twelve months;
- (II) The dealer cost, less all allowances paid or credited to the powersports vehicle dealer by the powersports vehicle manufacturer, for all unused, undamaged, and unsold supplies, parts, and accessories in original packaging and listed in the powersports vehicle manufacturer's current parts catalog;
 - (III) The fair market value of each undamaged sign owned by the powersports vehicle dealer and bearing a common name, trade name, or trademark of the powersports vehicle manufacturer if acquisition of the sign was required by the powersports vehicle manufacturer;
 - (IV) The fair market value of all special tools and equipment that were acquired from the powersports vehicle manufacturer or from sources approved and required by the powersports vehicle manufacturer and that are in good and usable condition, excluding normal wear and tear; and
 - (V) The cost of transporting, handling, packing, and loading the powersports vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings described in this subsection (1)(l);
- (m) To require, coerce, or attempt to coerce a powersports vehicle dealer to close or change the location of the powersports vehicle dealer, or to make any substantial alterations to the dealer premises or facilities when doing so would be unreasonable or without written assurance of a sufficient supply of powersports vehicles so as to justify the changes, in light of the current market and economic conditions;
- (n) To authorize or permit a person to perform warranty service repairs on powersports vehicles unless the person is:
- (I) A powersports vehicle dealer with whom the powersports vehicle manufacturer has entered into a franchise agreement for the sale and service of the manufacturer's powersports vehicles; or
 - (II) A person or government entity that has purchased new powersports vehicles pursuant to a powersports vehicle manufacturer's fleet discount program and is performing the warranty service repairs only on vehicles owned by the person or entity;

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- (o)** To require, coerce, or attempt to coerce a powersports vehicle dealer to prospectively agree to a release, assignment, novation, waiver, or estoppel that would relieve any person of a duty or liability imposed under this article 20 except in settlement of a bona fide dispute;
- (p)** To discriminate between or refuse to offer to its same line-make franchised dealers all models manufactured for that line-make based upon unreasonable sales and service standards;
- (q)** To fail to make practically available an incentive, rebate, bonus, or other similar benefit to a powersports vehicle dealer that is offered to another powersports vehicle dealer of the same line-make within this state;
- (r)** To fail to pay to a powersports vehicle dealer:

 - (I)** Within ninety days after the termination, cancellation, or nonrenewal of a franchise for the failure of a dealer to meet performance sales and service obligations or after the termination, elimination, or cessation of a line-make, the cost of the lease for the facilities used for the franchise or line-make for the unexpired term of the lease, not to exceed one year; except that:

 - (A)** If the powersports vehicle dealer owns the facilities, the value of renting the facilities for one year, prorated for each line-make based upon total sales volume for the previous twelve months before the involuntary termination;
 - (B)** Nothing in this subsection (1)(r)(I) shall be construed to limit the application of subsection (1)(d) of this section;
 - (II)** Within ninety days after the termination, elimination, or cessation of a line-make or the termination of a franchise due to the insolvency of the manufacturer or distributor, the fair market value of the powersports vehicle dealer's goodwill for the line-make as of the date the manufacturer or distributor announces the action that results in the termination, elimination, or cessation, not including any amounts paid under subsections (1)(l)(I) to (1)(l)(V) of this section;
- (s)** To condition a franchise agreement on improvements to a facility unless reasonably required by the technology of a powersports vehicle being sold at the facility;
- (t)** To charge back, deny powersports vehicle allocation, withhold payments, or take other actions against a powersports vehicle dealer if a powersports vehicle sold by the powersports vehicle dealer is exported from Colorado unless the manufacturer, distributor, or manufacturer representative proves that the powersports vehicle dealer knew or reasonably should have known a powersports

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vehicle was intended to be exported, which shall operate as a rebuttable presumption that the powersports vehicle dealer did not have this knowledge;

- (u) Within ninety days after the termination, elimination, or cessation of a line-make or the termination, cancellation, or nonrenewal of a franchise by the manufacturer, distributor, or manufacturer representative, for any reason other than that the powersports vehicle dealer commits fraud, makes a misrepresentation, or commits any other crime within the scope of the franchise agreement or in the operation of the dealership, to fail to reimburse a powersports vehicle dealer for the cost depreciated by five percent per year of any upgrades or alterations to the powersports vehicle dealer's facilities required by the manufacturer, distributor, or manufacturer representative within the previous five years;
- (v) To fail to notify a powersports vehicle dealer at least ninety days before the following and to provide the specific reasons for the following:

 - (I) Directly or indirectly terminating, cancelling, or not renewing a franchise agreement; or
 - (II) Modifying, replacing, or attempting to modify or replace the franchise or selling agreement of a powersports dealer, including a change in the dealer's geographic area upon which sales or service performance is measured, if the modification would substantially and adversely alter the rights or obligations of the dealer under the current franchise or selling agreement or would substantially impair the sales or service obligations or the dealer's investment;
- (w) To require, coerce, or attempt to coerce a powersports dealer to substantially alter a facility or premises if the facility or premises has been altered within the last ten years at a cost of more than twenty-five thousand dollars, and the alteration was required and approved by the manufacturer, distributor, or manufacturer representative; except that this subsection (1)(w) does not apply to improvements made to comply with health or safety laws or to accommodate the technology requirements necessary to sell or service a line-make;
- (x) (I) To sell or offer to sell new powersports vehicles to a franchised powersports vehicle dealer with whom the manufacturer has a franchise agreement at a lower actual price than the actual price offered to any other powersports vehicle dealer with whom the manufacturer has a franchise agreement for the same powersports vehicle similarly equipped; except that this subsection (1)(x) does not apply to:

 - (A) Resale to any government;
 - (B) Donation or use by the dealer in a driver education course; or

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- (C) A price change made in the ordinary course of business if made available to all powersports vehicle dealers when the price changes.
- (II) This subsection (1)(x) does not prohibit a manufacturer, distributor, or manufacturer representative from offering incentive programs, sales-promotion plans, or other discounts if the incentives or discounts are reasonably available to all powersports vehicle dealers with whom the manufacturer has a franchise agreement.
- (y) To require a powersports vehicle dealer to grant a manufacturer, distributor, or manufacturer representative the following or to enforce the following if the exercise of the contractual right would stop the transfer of the powersports vehicle dealer ownership from an owner to an immediate family member of the owner:
 - (I) A right of first refusal to purchase the powersports vehicle dealer; or
 - (II) An option to purchase the powersports vehicle dealer; and
- (z) (I) To use an unreasonable, arbitrary, or unfair performance standard in determining a powersports vehicle dealer's compliance with a franchise agreement; or
 - (II) To fail to communicate, upon the request of the dealer, any performance standard in a clear and concise writing to a powersports vehicle dealer before applying the standard to the powersports vehicle dealer.
- (2) It is unlawful for a person to act as a wholesaler, powersports vehicle dealer, used powersports vehicle dealer, powersports vehicle manufacturer, powersports vehicle distributor, powersports vehicle manufacturer representative, or powersports vehicle salesperson unless the person has been duly licensed under this part 4; except that this subsection (2) does not apply to a business owner selling a powersports vehicle if the vehicle has been owned for more than one year, the vehicle has been used exclusively for business purposes, the vehicle is titled in the name of the business, all taxes for the vehicle have been paid, and the total number of vehicles sold by the business owner over a two-year period does not exceed twenty vehicles.

44-20-424. New, reopened, or relocated dealer - notice required - grounds for refusal of dealer license - definitions - rules

- (1) No powersports vehicle manufacturer or distributor shall establish an additional powersports vehicle dealer, reopen a previously existing powersports vehicle dealer, or authorize an existing powersports vehicle dealer without first providing at least sixty days' notice to all of its franchised dealers within whose relevant market area the new, reopened, or relocated dealer would be located. The notice must state:

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- (a) The specific location at which the additional, reopened, or relocated powersports vehicle dealer will be established;
 - (b) The date on or after which the powersports vehicle manufacturer intends to be engaged in business with the additional, reopened, or relocated powersports vehicle dealer at the proposed location; and
 - (c) The identity of all powersports vehicle dealers who are franchised to sell the same line make of vehicles with licensed locations in the relevant market area where the additional, reopened, or relocated powersports vehicle dealer is proposed to be located.
- (2) A powersports vehicle manufacturer shall approve or disapprove of a powersports vehicle dealer facility initial site location, relocation, or reopening request within sixty days after the request or after sending the notice required by subsection (1) of this section to all of its franchised powersports vehicle dealers, whichever is later.
- (3) Subsection (1) of this section shall not apply to:
 - (a) The relocation of an existing dealer within two miles of its current location; or
 - (b) The establishment of a replacement dealer, within two years, either at the former location or within two miles of the former location.
- (4) As used in this section:
 - (a) "Powersports manufacturer" means a powersports vehicle manufacturer, distributor, or manufacturer representative.
 - (b) "Relevant market area" means the greater of the following:
 - (I) The geographic area of responsibility defined in the franchise agreement of an existing dealer; or
 - (II) The geographic area within a radius of ten miles of any existing dealer of the same line make of powersports vehicle as the proposed additional motor vehicle dealer.
- (5) (a) An existing powersports vehicle dealer adversely affected by the reopening or relocation of an existing same line-make powersports vehicle dealer or the addition of a same line-make powersports vehicle dealer may, within ninety days after receipt of the notice required in subsection (1) of this section, file a legal action in a district court of competent jurisdiction or file an administrative complaint with the executive director to prevent or enjoin the relocation, reopening, or addition of the proposed powersports vehicle dealer. An existing powersports vehicle dealer is adversely affected if:

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- (I) The dealer is located within the relevant market area of the proposed relocated, reopened, or additional dealership described in the notice required in subsection (1) of this section; or
 - (II) The existing dealer or dealers of the same line-make show that, during any twelve-month period within the thirty-six months preceding the receipt of the notice required in subsection (1) of this section, the dealer or dealers, or a dealer's predecessor, made at least twenty-five percent of the dealer's retail sales of new powersports vehicles to persons whose addresses are located within ten miles of the location of the proposed relocated, reopened, or additional dealership.
- (b) The executive director shall refer a complaint filed under this section to an administrative law judge in the office of administrative courts for final agency action.
- (c) In any court or administrative action, the manufacturer has the burden of proof on each of the following issues:
 - (I) The change in population;
 - (II) The relevant vehicle buyer profiles;
 - (III) The relevant historical new powersports vehicle registrations for the line-make of vehicles versus the manufacturer's actual competitors in the relevant market area;
 - (IV) Whether the opening of the proposed reopened, relocated, or additional powersports vehicle dealer is materially beneficial to the public interest or the consumers in the relevant market area;
 - (V) Whether the powersports vehicle dealers of the same line-make in the relevant market area are providing adequate representation and convenient customer care, including the adequacy of sales and service facilities, equipment, parts, and qualified service personnel, for powersports vehicles of the same line-make in the relevant market area;
 - (VI) The reasonably expected market penetration of the line-make, given the factors affecting penetration; and
 - (VII) Whether the reopened, relocated, or additional dealership is reasonable and justifiable based on expected economic and market conditions within the relevant market area.
- (d) In any court or administrative action, the powersports vehicle dealer has the burden of proof on each of the following issues:

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- (I) Whether the manufacturer engaged in any action or omission that, directly or indirectly, denied the existing powersports vehicle dealer of the same line-make the opportunity for reasonable growth or market expansion;
 - (II) Whether the manufacturer has coerced or attempted to coerce any existing powersports vehicle dealer into consenting to additional or relocated franchises of the same line-make in the community or territory or relevant market area; and
 - (III) The size and permanency of the investment of, and the obligations incurred by, the existing powersports vehicle dealers of the same line-make located in the relevant market area.
- (e) (I) In a legal or administrative action challenging the relocation, reopening, or addition of a powersports vehicle dealer, the district court or administrative law judge shall make a determination, based on the factors identified in subsections (5)(c) and (5)(d) of this section, of whether the relocation, reopening, or addition of a powersports vehicle dealer is:
- (A) In the public interest; and
 - (B) Fair and equitable to the existing powersports vehicle dealers.
- (II) The district court or the executive director shall deny any proposed relocation, reopening, or addition of a powersports vehicle dealer unless the manufacturer shows by a preponderance of the evidence that the existing powersports vehicle dealer or dealers of the same line-make in the relevant market area of the proposed dealership are not providing adequate representation of the line-make powersports vehicles. A determination to deny, prevent, or enjoin the relocation, reopening, or addition of a powersports vehicle dealer is effective for at least eighteen months.

44-20-425. Independent control of dealer - definitions

- (1) Except as otherwise provided in this section, no powersports vehicle manufacturer shall own, operate, or control any powersports vehicle dealer or used powersports vehicle dealer in Colorado.
- (2) Notwithstanding subsection (1) of this section, the following activities are not prohibited:
 - (a) Operation of a powersports vehicle dealer for a temporary period, not to exceed twelve months, during the transition from one owner or operator to another independent owner or operator; except that the executive director may extend the period, not to exceed twenty-four months, upon a showing by the manufacturer or distributor of the need to operate the dealership for such time to achieve a transition from an owner or operator to another independent third-party owner or operator;

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- (b) Ownership or control of a powersports vehicle dealer while the dealer is being sold under a bona fide contract or purchase option to the operator of the dealer;
 - (c) Participation in the ownership of the powersports vehicle dealer solely for the purpose of providing financing or a capital loan that will enable the dealer to become the majority owner of the dealer in less than seven years; and
 - (d) Operation of a powersports vehicle dealer if the powersports vehicle manufacturer has no other franchised dealers of the same line-make in this state.
- (3) As used in this section:
- (a) "Control" means to possess, directly, the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise; except that "control" does not include the relationship between a powersports vehicle manufacturer and a powersports vehicle dealer under a franchise agreement.
 - (b) "Operate" means to directly or indirectly manage a powersports vehicle dealer.
 - (c) "Own" means to hold any beneficial ownership interest of one percent or more class of equity interest in a powersports vehicle dealer, whether as a shareholder, partner, limited liability company member, or otherwise. To "hold" an ownership interest means to have possession of, title to, or control of the ownership interest, either directly or through a fiduciary or agent.
 - (d) "Powersports vehicle manufacturer" means a powersports vehicle manufacturer, distributor, or manufacturer representative.

44-20-426. Successor under existing franchise agreement - duties of powersports vehicle manufacturer

- (1) If a licensed powersports vehicle dealer under franchise by a powersports vehicle manufacturer dies or becomes incapacitated, the powersports vehicle manufacturer shall act in good faith to allow a successor, which may include a family member, designated by the deceased or incapacitated powersports vehicle dealer to succeed to ownership and operation of the dealer under the existing franchise agreement if:
- (a) Within ninety days after the powersports vehicle dealer's death or incapacity, the designated successor gives the powersports vehicle manufacturer written notice of an intent to succeed to the rights of the deceased or incapacitated powersports vehicle dealer in the franchise agreement;
 - (b) The designated successor agrees to be bound by all of the terms and conditions of the existing franchise agreement; and
 - (c) The designated successor meets the criteria generally applied by the powersports vehicle manufacturer in qualifying powersports vehicle dealers.

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- (2) A powersports vehicle manufacturer may refuse to honor the existing franchise agreement with the designated successor only for good cause. The powersports vehicle manufacturer may request in writing from a designated successor the personal and financial data that is reasonably necessary to determine whether the existing franchise agreement should be honored, and the designated successor shall supply the data promptly upon request.
- (3)
 - (a) If a powersports vehicle manufacturer believes that good cause exists for refusing to honor the requested succession, the powersports vehicle manufacturer shall send the designated successor, by certified or overnight mail, notice of its refusal to approve the succession within sixty days after the later of:
 - (I) Receipt of the notice of the designated successor's intent to succeed the powersports vehicle dealer in the ownership and operation of the dealer; or
 - (II) The receipt of the requested personal and financial data.
 - (b) Failure to serve the notice pursuant to subsection (3)(a) of this section shall be considered approval of the designated successor, and the franchise agreement is considered amended to reflect the approval of the succession the day following the last day of the notice period specified in subsection (3)(a) of this section.
 - (c) If the powersports vehicle manufacturer gives notice of refusal to approve the succession, the notice shall state the specific grounds for the refusal and shall state that the franchise agreement shall be discontinued not less than ninety days after the date the notice of refusal is served unless the proposed successor files an action in the district court to enjoin the action.
- (4) This section shall not be construed to prohibit a powersports vehicle dealer from designating a person as the successor in advance, by written instrument filed with the powersports vehicle manufacturer. If the powersports vehicle dealer files the instrument, that instrument governs the succession rights to the management and operation of the dealer subject to the designated successor satisfying the powersports vehicle manufacturer's qualification requirements as described in this section.

44-20-427. Audit reimbursement limitations - dealer claims

- (1)
 - (a) A manufacturer, distributor, or manufacturer representative shall have the right to audit warranty, sales, or incentive claims of a powersports vehicle dealer for nine months after the date the claim was submitted.
 - (b) A manufacturer, distributor, or manufacturer representative shall not require documentation for warranty, sales, or incentive claims or audit warranty, sales, or incentive claims of a powersports vehicle dealer more than fifteen months after the date the claim was submitted, nor shall the manufacturer require a charge back, reimbursement, or credit against a future transaction arising out of an audit

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or request for documentation arising more than nine months after the date the claim was submitted.

- (2) The powersports vehicle dealer shall have nine months after making a sale or providing service to submit warranty, sales, or incentive claims to the manufacturer, distributor, or manufacturer representative.
- (3) Subsection (1) of this section shall not limit any action for fraud instituted in a court of competent jurisdiction.
- (4) A powersports vehicle dealer may request a determination from the executive director, within thirty days, that a charge back, reimbursement, or credit required violates subsection (1) of this section. If a determination is requested within the thirty-day period, then the charge back, reimbursement, or credit shall be stayed pending the decision of the executive director. If the executive director determines after a hearing that the charge back, reimbursement, or credit violates subsection (1) of this section, the charge back, reimbursement, or credit shall be void.

44-20-428. Reimbursement for disapproving sale

A manufacturer or distributor shall pay reasonable attorney fees, not to exceed the usual and customary fees charged for the transfer of a franchise, and reasonable expenses that are incurred by the proposed owner or transferee before the manufacturer or distributor exercised its right of first refusal in negotiating and implementing the contract for the proposed change of ownership or the transfer of assets. Payment of attorney fees and expenses is not required if the claimant has failed to submit an accounting of attorney fees and expenses within twenty days after the receipt of the manufacturer's or dealer's written request for an accounting. An expense accounting may be requested by the manufacturer or distributor before exercising its right of first refusal.

44-20-429. Penalty

- (1) Except as provided in subsection (2) of this section, a person who willfully violates this part 4 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501.
- (2) (a) A person who willfully violates section 44-20-423 (2) by acting as a powersports vehicle manufacturer, powersports vehicle distributor, or powersports vehicle manufacturer representative without proper authorization commits a class 3 misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars for each separate offense, or if the violator is a corporation, the fine shall be not less than five hundred dollars nor more than two thousand five hundred dollars for each separate offense. A second conviction shall be punished by a fine of two thousand five hundred dollars.

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- (b) A person who willfully violates section 44-20-423 (2) by acting as a wholesaler, powersports vehicle dealer, used powersports vehicle dealer, or powersports vehicle salesperson without proper authorization commits a class 3 misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one thousand dollars and a penalty of twenty-five hours of useful public service, neither of which the court may suspend, for each separate offense; except that, if the violator is a corporation, the corporation shall be punished by a fine of not less than five thousand dollars nor more than twenty-five thousand dollars for each separate offense. A second conviction for an individual shall be punished by a fine of not less than five thousand dollars nor more than twenty-five thousand dollars for each separate offense, which the court may not suspend.

44-20-430. Fines - disposition - unlicensed sales

Of any fine collected for a violation of section 44-20-423 (2), half is awarded to the law enforcement agency that investigated and issued the citation for the violation and half is credited to the auto dealers license fund created in section 44-20-133.

44-20-431. Drafts or checks not honored for payment – penalties

- (1) If a wholesaler, powersports vehicle dealer, or used powersports vehicle dealer issues a draft or check to a wholesaler, powersports vehicle dealer, or used powersports vehicle dealer and fails to honor the draft or check, then the license of the licensee shall be subject to suspension pursuant to section 44-20-420. The license suspension shall be effective upon the date of a final decision against the licensee. A licensee whose license has been suspended pursuant to this subsection (1) shall not be eligible for reinstatement of the license and shall not be eligible to apply for another license issued under this part 4 unless it is demonstrated to the board that the unpaid draft or check has been paid in full and that any fine imposed on the licensee pursuant to subsection (2) of this section has been paid in full.
- (2) A wholesaler, powersports vehicle dealer, or used powersports vehicle dealer that issues a draft or check to a wholesaler, powersports vehicle dealer, or used powersports vehicle dealer and who fails to honor the draft or check, causing loss to a third party, commits a misdemeanor and shall be punished by a fine of two thousand five hundred dollars. Any fine collected for a violation of this subsection (2) shall be awarded to the law enforcement agency that investigated and issued the citation for the violation.

44-20-432. Right of action for loss

- (1) A person has a right of action against the licensed powersports vehicle dealer, used powersports vehicle dealer, or the dealer's powersports salespersons if the person suffers loss or damage by reason of fraud practiced on the person by a dealer or one of the dealer's salespersons acting on the dealer's behalf or within the scope of the employment

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or suffers loss or damage by reason of the violation by the dealer or salesperson of any provision of this part 4 related to fraud that is designated by the board by rule, whether or not the violation is the basis for denial, suspension, or revocation of a license. The right of a person to recover for loss or damage as provided in this subsection (1) against the dealer or salesperson is not limited to the amount of their respective bonds.

- (2) If a person suffers any loss or damage by reason of any unlawful act under section 44-20-423 (1)(a), the person shall have a right of action against the powersports vehicle manufacturer, distributor, or manufacturer representative. In a court action wherein a powersports vehicle manufacturer, distributor, or manufacturer representative has been found liable in damages to any person under this part 4, the amount of damages so determined shall be trebled and shall be recoverable by the person so damaged. Any person so damaged shall also be entitled to recover reasonable attorney fees.
- (3) If a licensee suffers loss or damage by reason of an unlawful act under section 44-20-423(1), the licensee shall have a right of action against the powersports vehicle manufacturer, distributor, or manufacturer representative. In a court action wherein a powersports vehicle manufacturer, distributor, or manufacturer representative has been found liable in damages to a licensee under this part 4, the licensee so damaged shall also be entitled to recover reasonable attorney fees.
- (4) A person who suffers loss or damages resulting from fraud may bring a separate action against, and recover from the surety on the bond of, the licensed powersports vehicle dealer, used powersports vehicle dealer, or powersports salesperson if:
 - (a) The licensed dealer or salesperson has not reimbursed the person for the loss or damages; and
 - (b) After either:
 - (I) The board issued a final agency order with a finding of fraud by a licensed dealer or salesperson; or
 - (II) A court entered judgment upon a claim of fraud by a licensed dealer or salesperson.

44-20-433. Contract disputes - venue - choice of law

- (1) In the event of a dispute between a powersports vehicle dealer and a powersports vehicle manufacturer under a franchise agreement, notwithstanding any provision of the agreement to the contrary:
 - (a) At the option of the powersports vehicle dealer, venue shall be proper in the county or judicial district where the dealer resides or has its principal place of business; and
 - (b) Colorado law shall govern, both substantively and procedurally.

44-20-434. Advertisement - inclusion of dealer name

No powersports vehicle dealer or used powersports vehicle dealer or an agent of a dealer shall advertise an offer for the sale, lease, or purchase of a powersports vehicle that creates the false impression that the vehicle is being offered by a private party or that does not contain the name of the dealer or the word "dealer" or, if the name is contained in the offer and does not clearly reflect that the business is a dealer, both the name of the dealer and the word "dealer".

44-20-435. Payout exemption to execution

A powersports vehicle dealer's right to receive payments from a manufacturer or distributor required by section 44-20-423 (1)(l) and (1)(r) is not liable to attachment or execution and may not otherwise be seized, taken, appropriated, or applied in a legal or equitable process or by operation of law to pay the debts or liabilities of the manufacturer or distributor. This section shall not prohibit a secured creditor from exercising rights accrued pursuant to a security agreement if the right arose as a result of the manufacturer or distributor voluntarily creating a security interest before paying existing debts or liabilities of the manufacturer or distributor. This section shall not prohibit a manufacturer or distributor from withholding a portion of the payments necessary to cover an amount of money owed to the manufacturer or distributor as an offset to the payments if the manufacturer or distributor provides the motor vehicle dealer written notice thereof.

44-20-436. Site control extinguishes

If a manufacturer, distributor, or manufacturer representative has terminated, eliminated, or not renewed a franchise agreement containing a site control provision, the powersports vehicle dealer may void a site control provision of a franchise agreement by returning any money the dealer has accepted in exchange for site control prorated by the time remaining before the agreement expires over the time period between the agreement being signed and the agreement expiring. This section does not apply if the termination, elimination, or nonrenewal is for just cause in accordance with section 44-20-423 (1)(d).

44-20-437. Modification voidable

If a manufacturer, distributor, or manufacturer representative fails to comply with section 44-20-423 (1)(v)(II), the powersports dealer may void the modification or replacement of the franchise agreement.

44-20-438. Termination appeal

- (1) A powersports vehicle dealer who has reason to believe that a manufacturer, distributor, or manufacturer representative has violated section 44-20-423 (1)(d) or (1)(v) may appeal to the board by filing a complaint with:
 - (a) The executive director; or

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- (b) A district court if neither the executive director nor the administrative law judge, appointed in accordance with this section, holds a hearing concerning the complaint within sixty days after the complaint was filed.
- (2) Upon filing a verified complaint alleging with specific facts that a violation has occurred under this section, the termination, elimination, modification, or nonrenewal of the franchise agreement is automatically stayed, without the motor vehicle dealer posting a bond, until a final determination is made on each issue raised in the complaint; except that the executive director, administrative law judge, or court may cancel the stay upon finding that the cancellation, termination, or nonrenewal of the franchise agreement was for any of the reasons specified in section 44-20-423 (1)(d)(III). The automatic stay maintains all rights under the franchise agreement until the final determination of the issues raised in the verified complaint. The manufacturer, distributor, or manufacturer representative shall not name a replacement motor vehicle dealer for the market or location until a final order is entered.
- (3) If a verified complaint is filed with the executive director, the executive director shall refer the complaint to an administrative law judge with the office of administrative courts for final agency action.
- (4) In resolving a termination complaint, the manufacturer, distributor, or manufacturer representative has the burden of proving any claim made that the factors listed in section 44-20-423 (1)(d)(II) apply to the termination, cancellation, or nonrenewal.
- (5) The prevailing party in a claim that a termination, cancellation, or nonrenewal violates section 44-20-423 (1)(d) or (1)(v) is entitled to recover attorney fees and costs, including expert witness fees, incurred in the termination protest.

44-20-439. Stop-sale directives - used powersports vehicles – definitions

- (1) As used in this section, unless the context otherwise requires:
 - (a) "Average trade-in value" means the value of a used powersports vehicle as established by a generally accepted, published, third-party used vehicle resource.
 - (b) "Stop-sale directive" means an unconditional directive from a manufacturer or distributor to a powersports vehicle dealer to stop selling a type of powersports vehicle manufactured by the manufacturer or distributed by the distributor because of a safety defect.
- (2) The manufacturer or distributor shall reimburse a powersports vehicle dealer in accordance with subsection (3) of this section if:
 - (a) The manufacturer or distributor issues a stop-sale directive for a powersports vehicle manufactured or distributed by the issuer of the stop-sale directive;

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- (b) The powersports vehicle dealer holds an active sales, service, and parts agreement with the manufacturer or distributor for the line-make of the used powersports vehicle covered by the stop-sale directive;
 - (c) The used powersports vehicle covered by the stop-sale directive is held in the inventory of the powersports vehicle dealer on the date the stop-sale directive is issued or taken by the dealer as a trade-in vehicle on a consumer purchase of the same line-make; and
 - (d) The manufacturer or distributor has not provided a remedy procedure or made parts available to repair the used powersports vehicle for more than thirty days after the stop-sale directive was issued.
- (3) If the conditions in subsection (2) of this section are met, the manufacturer or distributor shall, upon application by the powersports vehicle dealer, pay or credit the dealer one and one half percent per month of the average trade-in value of each used powersports vehicle's model affected by the stop-sale directive prorated from thirty days after the stop-sale directive was issued to the earlier of:
 - (a) The date when the manufacturer or distributor provides the powersports vehicle dealer with a remedy procedure and any necessary parts for ordering to repair the used powersports vehicle; or
 - (b) The date the powersports vehicle dealer transfers the powersports vehicle.
- (4) A manufacturer or distributor may determine the reasonable manner and method required for a powersports vehicle dealer to demonstrate the inventory status of a used powersports vehicle to determine eligibility for reimbursement.
- (5)
 - (a) This section applies only to used powersports vehicles.
 - (b) This section is not intended to prevent a manufacturer or distributor from requiring that a powersports vehicle not be subject to an open recall or stop-sale directive as a condition for the powersports vehicle to be qualified or sold as a certified pre-owned vehicle or substantially similar designation.
 - (c) This section does not require a manufacturer or distributor to provide total compensation to a powersports vehicle dealer that would exceed the total average trade-in valuation of the affected used powersports vehicle.
 - (d) This section does not preclude a powersports vehicle dealer and a manufacturer or distributor from agreeing to reimbursement terms that differ from those specified in this section.
 - (e) Compensation provided to a powersports vehicle dealer under this section is exclusive and may not be combined with any other remedy under state or federal law.

44-20-439.5. Fulfillment and compensation for warranty and recall obligations – definitions

- (1) As used in this section:
 - (a) "Manufacturer" means a powersports vehicle manufacturer, a powersports vehicle distributor, and a powersports vehicle manufacturer representative.
 - (b) "Nonwarranty repair" means a diagnosis, repair, labor, or part for which payment was made by a person other than a manufacturer and that was not a warranty obligation. "Nonwarranty repair" also means customer-pay repairs, labor, or parts.
 - (c) "Part" means an accessory, a part, or a component used to repair a powersports vehicle. "Part" includes engine and transmission parts and all powersports vehicle assemblies.
 - (d) "Repair" means diagnosing, work, and labor performed by a powersports vehicle dealer for which the powersports vehicle dealer is making a claim for compensation.
 - (e) "Retail labor rate" means the rate for labor calculated by the powersports vehicle dealer in accordance with subsection (4) of this section that a manufacturer is required to pay a powersports vehicle dealer in accordance with subsection (2) of this section.
 - (f) "Retail parts markup percentage" means the percentage markup on parts calculated by the powersports vehicle dealer in accordance with subsection (4) of this section that a manufacturer is required to pay a powersports vehicle dealer in accordance with subsection (2) of this section.
 - (g) "Warranty obligation" means diagnosing and repairing a powersports vehicle in accordance with any warranty, recall, or certified pre-owned warranty, under which a manufacturer makes a repair commitment to a consumer or powersports vehicle dealer.
- (2) At a powersports vehicle dealer's request, a manufacturer shall timely compensate the powersports vehicle dealer at the retail labor rate and the retail parts markup percentage in accordance with subsection (3) of this section for all labor performed and parts used by the powersports vehicle dealer for covered repairs performed in accordance with the warranty obligation, if the retail labor rate and retail parts markup percentage are reasonable and consistent with the requirements of this section that concern the retail labor rate and parts markup percentage.
- (3) (A) A powersports vehicle dealer may establish the retail labor rate and the retail parts markup percentage by submitting to the manufacturer either of the following as decided by the powersports vehicle dealer:

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- (I) One hundred sequential repair orders containing no warranty repairs, which may include a no warranty repair that is included in a repair order with a warranty obligation repair, that have been paid by a consumer and closed by the time of submission; or
 - (II) All repair orders for no warranty repairs, which may include a no warranty repair that is included in a repair order with warranty obligation repair that have been paid by a consumer and closed by the time of submission for a period of ninety consecutive days.
 - (b) A manufacturer shall not disqualify a repair order under this subsection (3) because the repair order contains both warranty and no warranty repairs, but only no warranty repairs are used in the calculation of the retail labor rate and the retail parts markup percentage.
 - (c) A powersports vehicle dealer may submit one set of repair orders for the purpose of calculating both its retail labor rate and the retail parts markup percentage or may submit separate sets of repair orders for purposes of calculating only its retail labor rate or for purposes of calculating only its retail parts markup percentage. If the rates from the calculation are ten percent higher or lower than the current rates, the manufacturer may request additional repair orders for the ninety days before or after the submitted repair orders for purposes of alteration.
 - (d) Except with regard to a request for additional repair orders as provided in subsection (3)(c) of this section, the repair orders submitted under this subsection (3) to determine the retail labor rate must contain only repair orders from the last ninety days before the date the submission is sent to the manufacturer.
 - (e) Except with regard to a request for additional repair orders as provided in subsection (3)(c) of this section, the repair orders submitted under this subsection (3) to determine the retail parts markup percentage must contain only repair orders from the last ninety days before the date the submission is sent to the manufacturer.
 - (4)
 - (a) Except as provided in subsection (4)(c) of this section, to calculate the retail labor rate, the powersports vehicle dealer must divide the powersports vehicle dealer's total no warranty labor sales generated from the no warranty repairs submitted under subsection (3) of this section by the total number of labor hours that generated those total labor sales.
 - (b) Except as provided in subsection (4) (c) of this section, to calculate the retail parts markup percentage, the powersports vehicle dealer must divide the powersports vehicle dealer's total parts sales generated from nonwarranty repairs submitted under subsection (3) of this section by the amount of the powersports vehicle

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dealer's total cost for those parts, subtracting one from this amount, and then multiplying the amount by one hundred.

- (c) The calculation of the retail labor rate in subsection (4) (a) of this section and of the retail parts markup percentage in subsection (4) (b) of this section do not include parts used or labor performed:

 - (I) For manufacturer or powersports vehicle dealer special events, one-time specials, express service, and quoted-price promotional discounts, but this exclusion from the calculation does not include broadly applicable discounts offered by the dealer, such as percentage-off coupons, that apply to repairs and parts;
 - (II) For parts sold at wholesale;
 - (III) For routine maintenance, including replacement fluids, filters, batteries, bulbs, nuts, bolts, fasteners, tires, and belts;
 - (IV) That do not have individual part numbers;
 - (V) For the repairs of a powersports vehicle owned by the powersports vehicle dealer, an affiliate of the powersports vehicle dealer, or an employee of either the powersports vehicle dealer or the affiliate;
 - (VI) For powersports vehicle dealer reconditioning;
 - (VII) For window tint, protective film, masking products, or window replacement labor;
 - (VIII) For manufacturer-approved and -reimbursed goodwill repairs or replacements;
 - (IX) For emission inspections required by law;
 - (X) For safety inspections required by law;
 - (XI) For which a volume discount was negotiated with a third-party payer, including government agencies, insurance carriers, and fleet operators, but not including third-party warranty companies or service contract companies.
- (5) (a) Notwithstanding any manufacturer requirement, policy, procedure, guideline, or standard, a powersports vehicle dealer may submit to the manufacturer the retail labor rate or retail parts markup percentage as each is calculated in accordance with subsection (4) of this section.
- (b) A powersports vehicle dealer may request in writing, not more often than once annually, an increase in compensation for labor at the retail labor rate for warranty obligations.

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- (c) A powersports vehicle dealer may request in writing, not more often than once annually, an increase in compensation for parts at the retail parts markup percentage for warranty obligations.
 - (d)
 - (I) A manufacturer may conduct a periodic review of a powersports vehicle dealer's service records to verify the continuing accuracy of the retail labor rate or retail parts markup percentage proposed by or in effect for the dealer.
 - (II) A manufacturer shall not conduct a periodic review more than once per calendar year. This periodic review is not an audit in accordance with section 44-20-135.
- (6)
 - (a)
 - (I) If the submitted calculation of the retail labor rate or retail parts markup percentage is materially inaccurate or is substantially different than the rate of or percentage of other similarly situated same line-make dealers within the state, a manufacturer may contest the powersports vehicle dealer's submitted calculations of the retail labor rate or retail parts markup percentage by delivering a notice to the powersports vehicle dealer within forty-five days after receiving the submission in accordance with subsection (3) of this section from the powersports vehicle dealer. To comply with this subsection (6), the notice must:
 - (A) Include an explanation of the reasons that the manufacturer believes the calculation is subject to contest;
 - (B) Provide evidence substantiating the manufacturer's position; and
 - (C) Propose an adjustment of the contested retail labor rate or retail parts markup percentage.
 - (II) Upon the discovery of new relevant information by the manufacturer, the manufacturer may modify the grounds for contesting the retail labor rate or retail parts markup percentage after delivering the notice to the powersports vehicle dealer under this subsection (6), but the modification does not change the timing requirements in this section.
 - (b) If the manufacturer does not timely contest the powersports vehicle dealer's calculation of the retail labor rate or retail parts markup percentage in accordance with this subsection (6), the uncontested retail labor rate or retail parts markup percentage becomes effective forty-five days after the manufacturer has received the submission from the powersports vehicle dealer, and thereafter, the manufacturer shall use the powersports vehicle dealer's increased retail labor rate and retail parts markup percentage in calculating compensation for warranty obligations until a subsequent calculation of the powersports vehicle dealer's retail

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labor rate or retail parts markup percentage is established in accordance with this section.

- (c)
 - (I) If the manufacturer timely contests the powersports vehicle dealer's calculation of the retail labor rate or retail parts markup percentage and the manufacturer and powersports vehicle dealer are unable to resolve the disagreement, the powersports vehicle dealer may seek a determination by filing a complaint with a court of competent jurisdiction or the executive director no later than sixty days after the new powersports vehicle dealer receives the manufacturer's challenge to the determined retail labor rate or retail parts markup percentage.
 - (II) In a court proceeding, the court shall determine, in accordance with this section, the proper retail labor rate or retail parts markup percentage.
 - (III) Any retail labor rate or retail parts markup percentage established through the proceeding applies retroactively to calculate reimbursement for any labor and part beginning thirty days after the manufacturer received the submission required by subsection (3) of this section.
 - (IV) If the manufacturer contests the powersports vehicle dealer's calculation of the retail labor rate or retail parts markup percentage, the manufacturer shall continue to reimburse the powersports vehicle dealer for warranty obligation repairs at the retail labor rate and retail parts markup percentage as both existed before the powersports vehicle dealer submitted a request for an increase under subsection (5) of this section. When the manufacturer and powersports vehicle dealer agree on the retail labor rate or retail parts markup percentage, the manufacturer shall pay any difference between the amount the manufacturer compensated the dealer and the amount agreed to by the powersports vehicle dealer and manufacturer as of thirty days after the manufacturer received the submission required by subsection (3) of this section.
 - (d) In the court proceeding, the court shall award the prevailing party reasonable attorney fees and costs. If the powersports vehicle dealer prevails, the court shall award as damages the full amount of reimbursement that should have been paid to the powersports vehicle dealer.
- (7) When calculating the retail labor rate and the retail parts markup percentage, the manufacturer:
 - (a) Shall not establish an unreasonable flat-rate time, nor establish unreasonable flat-rate labor times for new line-makes that are inconsistent with the existing rates;
 - (b) Shall, if the manufacturer furnishes a part to a powersports vehicle dealer at no cost for use in performing a repair under a warranty obligation, compensate the

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powersports vehicle dealer for the authorized repair part by paying the dealer an amount equal to the retail parts markup percentage multiplied by the cost the dealer would have paid for the authorized part as listed in the manufacturer's price schedule;

- (c) Shall not establish a different part number for repairs made in accordance with a warranty obligation than the part number established for nonwarranty repairs solely to provide a lower compensation to a powersports vehicle dealer;
 - (d) Shall not recover or attempt to recover, directly or indirectly, in whole or in part, any of its costs from the powersports vehicle dealer for compensating the powersports vehicle dealer under this section;
 - (e) Shall not, directly or indirectly, in whole or in part, assess penalties or surcharges to the powersports vehicle dealer, limit allocation of powersports vehicles or parts to the powersports vehicle dealer, or take any adverse action based on the powersports vehicle dealer's exercise of the dealer's rights under this section;
 - (f) Shall not require from a powersports vehicle dealer any information that is unduly burdensome or time consuming to obtain, including any part-by-part or transaction-by transaction calculations.
- (8) Nothing in this section prohibits a manufacturer from increasing the price of a powersports vehicle or powersports vehicle part in the normal course of business.

44-20-440. Repeal of part

This part 4 is repealed, effective September 1, 2027. Before its repeal, this part 4 is scheduled for review in accordance with section 24-34-104.

Statutes- Vehicles & Traffic, Insurance, Consumer & Commercial Affairs, Criminal Code, Uniform Commercial Code and Consumer Credit Code

4-9-629. Secured party's liability when taking possession after default - legislative declaration - fund

- (a) The general assembly recognizes that, in the past, certain debtors may have been disadvantaged by the actions of reposseors and that such debtors were then unable to obtain just redress for their losses in the courts, especially in cases in which the creditor who initiated the action by employing or contracting with the reposseor was shielded from liability because the reposseor was categorized by the courts as an independent contractor. The general assembly wishes to ensure that the reposseor is bonded or that the secured party or assignee is held responsible at law as a principal under the general principles of agency law for the actions of a reposseor who is acting at the behest of the creditor in the event that no bond has been posted.
- (b) A secured party or such party's assignee who wishes to contract with a person to recover or take possession of collateral upon default, including a motor vehicle repossessed pursuant to section 42-6-146, C.R.S., shall contract to recover or take possession of collateral only with a person who is bonded for property damage to or conversion of such collateral in the amount of at least fifty thousand dollars. Such bond shall be filed with and drawn in favor of the attorney general of the state of Colorado for use of the people of the state of Colorado, and shall be revocable only with the written consent of the attorney general pursuant to rules promulgated by the office of the attorney general. The office of the attorney general may charge a fee to be paid by the person filing such bond in order to cover the direct and indirect costs incurred by such office in fulfilling its duties under the provisions of this section.
- (c) A secured party or secured party's assignee who employs or contracts with a person who has not complied with the requirements specified in subsection (b) of this section shall be liable as principal for the actions of any person the secured party or assignee employs or contracts with to recover or take possession of the collateral after default as provided in section 4-9-609 in the same manner as if such person were the agent of the secured party or assignee, whether or not such person has been or may be deemed to be acting as an independent contractor in law.
- (d) A reposseor shall not engage in repossessing, recovering, or removing collateral or personal property on behalf of a secured creditor or assignee without first disclosing to such secured creditor or assignee whether such reposseor is bonded pursuant to this article. Any person who fails to disclose or misrepresents to a secured party such person's bonded status or fails to file such bond with the attorney general shall be in violation of

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the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S., and shall be subject to remedies or penalties or both pursuant to said article.

- (e) Any person who knowingly falsifies a reposessor bond application or misrepresents information contained therein commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.
- (f) All moneys collected by the attorney general pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the general fund.
- (g) Notwithstanding any provision by contract or common law, in exercising its rights after default, a secured party or lessor taking possession of a motor vehicle may not disable or render unusable any computer program or other similar device embedded in the motor vehicle if immediate injury to any person or property is a reasonably foreseeable consequence of such action. Any secured party or lessor who disables or renders unusable such a computer program or other similar device in such circumstances shall be liable in accordance with applicable rules of law to any person who sustains an injury to person or property as a reasonably foreseeable result of the secured party's or lessor's action.

5-1-301. General definitions

In addition to definitions appearing in subsequent articles, as used in this code, unless the context otherwise requires:

- (1) "Actuarial method" means the method, defined by rules promulgated by the administrator in accordance with article 4 of title 24, C.R.S., of allocating payments made on a debt between the amount financed and finance charge pursuant to which a payment is applied first to the accumulated finance charge and the balance subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.
- (2) "Administrator" means the administrator designated in section 5-6-103.
- (3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.
- (4) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

- (5)** "Amount financed" means the total of the following items to the extent that payment is deferred:
- (a)** In the case of a sale:
 - (I)** The cash price of the goods, services, or interest in land, less the amount of any down payment whether made in cash or in property traded in; and
 - (II)** The amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in;
 - (b)** In the case of a loan:
 - (I)** The net amount paid to, receivable by, or paid or payable for the account of the debtor; and
 - (II)** The amount of any discount excluded from the finance charge described in paragraph (c) of subsection (20) of this section; and
 - (c)** In the case of a sale or loan, to the extent that payment is deferred and the amount is not otherwise included in the cash price:
 - (I)** Any applicable sales, use, excise, or documentary stamp taxes;
 - (II)** Amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees; and
 - (III)** Additional charges permitted by this code described in section 5-2-202.
- (6)** "Business day" means any calendar day except Sunday, New Year's day, the third Monday in January observed as the birthday of Dr. Martin Luther King, Jr., Washington-Lincoln day, Memorial day, Independence day, Labor day, Frances Xavier Cabrini day, Veterans' day, Thanksgiving day, and Christmas day.
- (7)** **(a)** "Cash price" means, except as the administrator may otherwise prescribe by rule promulgated in accordance with article 4 of title 24, C.R.S., the price at which goods, services, or an interest in land is offered for sale by the seller to cash buyers in the ordinary course of business and may include the cash price of accessories or related services such as delivery, installation, servicing, repairs, alterations, modifications, and improvements and, if individually itemized, may also include:
- (I)** Applicable sales, use, and excise and documentary stamp taxes; and
 - (II)** Amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees.

- (b) The cash price stated by the seller to the buyer pursuant to the provisions on disclosure contained in section 5-3-101 is presumed to be the cash price.
- (8) "Closing costs" with respect to a debt secured by an interest in land includes:
- (a) Fees or premiums for title examination, title insurance, or similar purposes including surveys;
 - (b) Fees for preparation of a deed, settlement statement, or other documents;
 - (c) Escrows for future payments of taxes and insurance;
 - (d) Fees for notarizing deeds and other documents;
 - (e) Appraisal fees; and
 - (f) Credit reports.
- (9) "Conspicuous" means a term or clause that is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court. A printed heading in capitals (as: WARRANTY) is conspicuous, and language in the body of the form is conspicuous if it is in larger or other contrasting type or color. In a telegram, any stated term is conspicuous.
- (10) "Consumer" means a person other than an organization who is the buyer, lessee, or debtor to whom credit is granted in a consumer credit transaction.
- (11) (a) "Consumer credit sale" means, except as provided in paragraph (b) of this subsection (11), a sale of goods, services, a mobile home, or an interest in land in which:
- (I) Credit is granted or arranged by a person who regularly engages as a seller in credit transactions of the same kind or pursuant to a seller credit card;
 - (II) The buyer is a person other than an organization;
 - (III) The goods, services, mobile home, or interest in land are purchased primarily for a personal, family, or household purpose;
 - (IV) Either the debt is by written agreement payable in installments or a finance charge is made; and
 - (V) With respect to a sale of goods or services, the amount financed does not exceed seventy-five thousand dollars.
- (b) Unless the sale is made subject to this code by section 5-2-501, "consumer credit sale" does not include:

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- (I)** A sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement;
- (II) (A)** Except as required by the federal "Truth in Lending Act" or the federal "Consumer Leasing Act" with respect to disclosure contained in section 5-3-101 and consumers' remedies for transactions secured by interests in land as contained in section 5-5-204, a sale of a mobile home or a sale of an interest in land if the finance charge does not exceed twelve percent per year calculated according to the actuarial method on the unpaid balances of the amount financed on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term or, notwithstanding the rate of the finance charge with respect to the sale of an interest in land, the sale is secured by a first mortgage or deed of trust lien against a dwelling to finance the acquisition of that dwelling.

(B) For the purposes of this subparagraph (II), "dwelling" means any improved real property or portion thereof that is used or intended to be used as a residence and contains not more than four dwelling units, and "first mortgage or deed of trust" means a mortgage or deed of trust having priority as a lien over the lien of any other mortgage or deed of trust on the same dwelling and subject to the lien of taxes levied on that dwelling.
- (III)** A sale for a business, investment, or commercial purpose; or
- (IV)** A sale primarily for an agricultural purpose.
- (12)** "Consumer credit transaction" means a consumer credit sale or consumer loan, or a refinancing or consolidation thereof, or a consumer lease.
- (13)** "Consumer insurance premium loan" means a consumer loan that:

 - (a)** Is made for the sole purpose of financing the payment by or on behalf of an insured of the premium on one or more policies or contracts issued by or on behalf of an insurer;
 - (b)** Is secured by an assignment by the insured to the lender of the unearned premium on the policy or contract; and
 - (c)** Contains an authorization to cancel the policy or contract so financed.
- (14) (a)** "Consumer lease" means a lease of goods and includes any insurance incidental to the lease and any other services merely incidental to upkeep or repair of the goods:

 - (I)** That a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family, or household purpose;

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- (17) "Creditor" means the seller, lessor, lender, or person who makes or arranges a consumer credit transaction and to whom the transaction is initially payable, or the assignee of a creditor's right to payment, but use of the term does not in itself impose on an assignee any obligation of his or her assignor. In case of credit granted pursuant to a credit card, "creditor" means the card issuer and not another person honoring the credit card.
- (18) "Dwelling" means a residential structure or mobile home that contains one to four family housing units or individual units of condominiums or cooperatives.
- (19) "Earnings" means compensation paid or payable to an individual or for the individual's account for personal services rendered or to be rendered by the individual, whether denominated as wages, salary, fees, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement, or disability program.
- (20) "Finance charge" means:
- (a) The sum of all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, whether paid or payable by the consumer, the creditor, or any other person on behalf of the consumer to the creditor or to a third party, including any of the following types of charges that are applicable:
 - (I) Interest or any amount payable under a point, discount, or other system of charges, however denominated;
 - (II) Time-price differential, credit service, service, carrying, or other charge, however denominated;
 - (III) Premium, or other charge for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss; and
 - (IV) Charges incurred for investigating the collateral or credit-worthiness of the consumer or for commissions or brokerage for obtaining the credit.
 - (b) The term does not include charges as a result of default described in section 5-3-302, additional charges described in section 5-2-202, delinquency charges described in section 5-2-203, or deferral charges described in section 5-2-204.
 - (c) If a creditor makes a loan to a consumer by purchasing or satisfying obligations of the consumer pursuant to a credit card or similar arrangement and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the finance charge.

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- (21) "Goods" includes goods not in existence at the time the transaction is entered into and merchandise certificates but excludes money, chattel paper, documents of title, and instruments.
- (22) "Investment purpose" means that the primary purpose of the credit sale or loan is for future financial gain rather than for a present personal, family, or household use.
- (23) "Lender" includes an assignee of the lender's right to payment, unless otherwise provided in this code, but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.
- (24) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a consumer the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:
- (a) By the lender's honoring a draft or similar order for the payment of money drawn or accepted by the consumer;
 - (b) By the lender's payment or agreement to pay the consumer's obligations; or
 - (c) By the lender's purchase from the obligee of the consumer's obligations.
- (25) "Loan" includes:
- (a) Except as otherwise provided in paragraph (b) of this subsection (25):
 - (I) The creation of debt by the lender's payment of or agreement to pay money to the consumer or to a third party for the account of the consumer;
 - (II) The creation of debt by a credit to an account with the lender upon which the consumer is entitled to draw immediately;
 - (III) The creation of debt pursuant to a lender credit card in any manner, including a cash advance or the card issuer's honoring a draft or similar order for the payment of money drawn or accepted by the consumer, paying or agreeing to pay the consumer's obligation, or purchasing or otherwise acquiring the consumer's obligation from the obligee or his or her assignees;
 - (IV) The forbearance of debt arising from a loan; and
 - (V) The creation of debt by a cash advance to a consumer pursuant to a seller credit card.
 - (b) "Loan" does not include:

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- (I) A card issuer's payment or agreement to pay money to a third person for the account of a consumer if the debt of the consumer arises from a sale or lease and results from use of a seller credit card; or
 - (II) The forbearance of debt arising from a sale or lease.
- (26) (a) "Loan primarily secured by an interest in land" means a consumer loan secured by a mobile home or primarily secured by an interest in land if, at the time the loan is made the value of the collateral is substantial in relation to the amount of the loan, and:
 - (I) The rate of the finance charge does not exceed twelve percent per year calculated according to the actuarial method on the unpaid balances of the principal on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term; or
 - (II) Notwithstanding the rate of the finance charge, and other than a precomputed loan as defined in subsection (35) of this section, the loan is secured by a first mortgage or deed of trust lien against a dwelling to:
 - (A) Finance the acquisition of that dwelling; or
 - (B) To refinance, by amendment, payoff, or otherwise, an existing loan made to finance the acquisition of that dwelling, including a refinance loan providing additional sums for any purpose whether or not related to acquisition or construction.
- (b) As to any refinance loan in the form of a revolving loan account that is in whole or in part for purposes other than acquisition or construction, section 5-3-103 shall apply.
- (c) With respect to loans secured by a first mortgage or deed of trust lien against a dwelling to refinance an existing loan to finance the acquisition of the dwelling and providing additional sums for any other purpose that are not subject to this code pursuant to paragraph (a) of this subsection (26), the lender shall disclose to the consumer that the refinance loan creates a lien against the dwelling or property and that the limits set forth in section 5-5-112 on the amount of attorney fees that a lender may charge the consumer are not applicable.
- (d) For purposes of this subsection (26):
 - (I) A "loan secured by a first mortgage or deed of trust lien against a dwelling to finance the acquisition of the dwelling" includes a loan secured by a first mortgage or deed of trust lien against a dwelling to finance the original construction of such dwelling or to refinance any such construction loan;

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- (II) "Dwelling" means any improved real property, or portion thereof, that is used or intended to be used as a residence and contains not more than four dwelling units; and
 - (III) "First mortgage or deed of trust" means a mortgage or deed of trust having priority as a lien over the lien of any other mortgage or deed of trust on the same dwelling and subject to the lien of taxes levied on that dwelling.
- (27) "Material disclosures" means the disclosure, as required by this code, of the annual percentage rate, the method of determining the finance charge and the balance upon which a finance charge will be imposed, the amount of the finance charge, the amount to be financed, the total of payments, the number and amount of payments, and the due dates or periods of payments scheduled to repay the indebtedness.
- (28) "Merchandise certificate" means a writing not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.
- (29) "Mobile home" means a dwelling that is built on a chassis designed for long-term residential occupancy, that is capable of being installed in a permanent or semi-permanent location, with or without a permanent foundation, and with major appliances and plumbing, gas, and electrical systems installed but needing the appropriate connections to make them operable, and that may be occasionally drawn over the public highways, by special permit, as a unit or in sections to its permanent or semi-permanent location.
- (30) "Official fees" means:
- (a) Fees and charges prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit transaction; or
 - (b) Premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the consumer credit transaction if the premium does not exceed the fees and charges described in paragraph (a) of this subsection (30) that would otherwise be payable.
- (31) "Organization" means a corporation, limited liability company, government or governmental subdivision or agency, trust, estate, partnership, limited liability partnership, cooperative, or association.
- (32) "Payable in installments" means that payment is required or permitted by agreement to be made in more than four periodic payments, excluding a down payment. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the consumer credit transaction is "payable in installments".

- (33)** "Person" includes a natural person or an individual and an organization.
- (34) (a)** "Person related to" means, with respect to an individual, the spouse of the individual; a brother, brother-in-law, sister, or sister-in-law of the individual; an ancestor or lineal descendant of the individual or the individual's spouse; and any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.
- (b)** "Person related to" means, with respect to an organization, a person directly or indirectly controlling, controlled by, or under common control with the organization; an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization; the spouse of a person related to the organization; and a relative by blood or marriage of a person related to the organization who shares the same home with such person.
- (35)** "Precomputed" means a consumer credit sale or consumer loan in which the debt is expressed as a sum comprising the amount financed and the amount of the finance charge computed in advance or in which any portion of the finance charge is prepaid and the amount of that portion of the finance charge either computed in advance or prepaid constitutes more than one-half of the total finance charge applicable to the consumer credit sale or consumer loan.
- (36)** "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced that would support a finding of its nonexistence.
- (37)** "Regularly" has the same meaning as stated in the federal "Truth in Lending Act" and the federal "Consumer Leasing Act".
- (38)** "Revolving credit" means an arrangement pursuant to which:
- (a)** A creditor may permit a consumer, from time to time, to purchase or lease on credit from the creditor or to obtain loans from the creditor;
 - (b)** The amounts financed and the finance and other appropriate charges are debited to an account;
 - (c)** The finance charge, if made, is computed on the account periodically; and
 - (d)** Either the consumer has the privilege of paying in full or in installments or the creditor periodically imposes charges computed on the account for delaying payment and permits the consumer to continue to purchase or lease on credit.
- (39)** "Sale of goods" includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or

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in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his or her obligations under the agreement.

- (40) "Sale of an interest in land" includes a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.
- (41) "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.
- (42) "Seller", except as otherwise provided, includes an assignee of the seller's right to payment, but use of the term does not in itself impose on an assignee any obligation of the seller with respect to events occurring before the assignment.
- (43) "Seller credit card" means an arrangement pursuant to which a person gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person or from that person and any other person.
- (44) "Services" includes:

 - (a) Work, labor, and other personal services;
 - (b) Privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like; and
 - (c) Insurance provided by a person other than the insurer.
- (45) "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business:

 - (a) Organized, chartered, or holding an authorization certificate under the laws of any state or of the United States that authorize the person to make loans and to receive deposits, including a savings, share, certificate, or deposit account; and
 - (b) Subject to supervision by an official or agency of any state or of the United States.
- (46) "Supervised lender" means a person authorized to make or take assignments of supervised loans under a license issued by the administrator or as a supervised financial organization.
- (47) "Supervised loan" means a consumer loan, including a loan made pursuant to a revolving credit account, in which the rate of the finance charge exceeds twelve percent per year as determined according to the provisions on finance charges contained in section 5-2-201.

- (48) "Written" or "in writing" means any record conveying information and that is in a form the consumer may retain, or is capable of being displayed in visual text in a form the consumer may retain, including paper, electronic, digital, magnetic, optical, and electromagnetic.

5-5-110. Notice of right to cure

- (1) With respect to a consumer credit transaction, after a consumer has been in default for ten days for failure to make a required payment and has not voluntarily surrendered possession of goods or the mobile home that are collateral, a creditor may give the consumer the notice described in this section. A creditor gives notice to the consumer pursuant to this section when the creditor delivers the notice to the consumer or mails the notice to the consumer at the consumer's residence, as defined in section 5-1-201 (6).
- (2) Except as provided in subsection (3) of this section, the notice shall be in writing and conspicuously state: The name, address, and telephone number of the creditor to which payment is to be made, a brief identification of the credit transaction, the right to cure the default, and the amount of payment and date by which payment must be made to cure the default. A notice in substantially the following form complies with this subsection (2):

(Name, address, and telephone number of creditor)

(Account number, if any)

(Brief identification of credit transaction)

_____ (Date) is the LAST DATE FOR PAYMENT.

_____ (Amount) is the AMOUNT NOW DUE.

You are late in making your payment(s). If you pay the AMOUNT NOW DUE (above) by the LAST DAY FOR PAYMENT (above), you may continue with the contract as though you were not late. If you do not pay by this date, we may exercise our rights under the law.

If you are late again in making your payments, we may exercise our rights without sending you another notice like this one. If you have questions, write or telephone the creditor promptly.

- (3) If the consumer credit transaction is a consumer insurance premium loan, the notice shall conform to the requirements of subsection (2) of this section, and a notice in substantially the form specified in subsection (2) of this section shall be deemed compliance with this subsection (3) except for the following:
- (a) In lieu of a brief identification of the credit transaction, the notice shall identify the transaction as a consumer insurance premium loan and shall identify each policy or contract that may be canceled;

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- (b) In lieu of the statement in the form of notice specified in subsection (2) of this section that the creditor may exercise its rights under law, a statement shall be included that each policy or contract identified in the notice may be canceled; and
 - (c) The last paragraph of the form of notice specified in subsection (2) of this section shall be omitted.
- (4) A notice of right to cure delivered or mailed to a cosigner pursuant to this section shall be modified to state that the consumer is late in making his or her payment, include the consumer's name, and that if the amount now due is not paid by the last date for payment, the creditor may exercise its rights against the consumer, cosigner, or both.

5-5-111. Cure of default

- (1) With respect to a consumer credit transaction, except as provided in subsection (2) of this section, after a default consisting only of the consumer's failure to make a required payment, a creditor, because of that default, may neither accelerate maturity of the unpaid balance of the obligation nor take possession of or otherwise enforce a security interest in the goods or the mobile home that are collateral until twenty days after giving the consumer a notice of right to cure described in section 5-5-110. Until the expiration of the minimum applicable period after the notice is given, all defaults consisting of a failure to make the required payment may be cured by tendering to the creditor the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges. Cure restores the consumer to his or her rights under the agreement as though the defaults had not occurred.
- (2) With respect to defaults on the same obligation, other than defaults on an obligation secured by a mobile home, after a creditor has once given the consumer a notice of right to cure described in section 5-5-110, this section gives no right to cure and imposes no limitation on the creditor's right to proceed against the consumer or goods that are collateral with respect to any subsequent default that occurs within twelve months of such notice. With respect to defaults on the same obligation that is secured by a mobile home, this section gives no right to cure and imposes no limitation on the creditor's right to proceed against the consumer or goods that are collateral with respect to any third default that occurs within twelve months of such notice. For the purpose of this section, in connection with revolving credit accounts, the obligation is the consumer's account, and there is no right to cure and no limitation on the creditor's rights with respect to any default that occurs within twelve months after an earlier default as to which a creditor has given the consumer notice of right to cure.
- (3) Unless a creditor has provided the cosignor on a consumer credit transaction with a notice of right to cure that complies with section 5-5-110 and this section, in addition to the notice of right to cure provided to the consumer, the creditor may neither accelerate maturity of the unpaid balance of the obligation as to the cosignor nor report that amount

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on the cosignor's consumer report with a consumer reporting agency, as defined in section 5-18-103 and 15 U.S.C. sec. 1681a.

- (4) This section and the provisions on waiver, agreements to forego rights, and settlement of claims do not prohibit a consumer from voluntarily surrendering possession of goods that are collateral and the creditor from thereafter enforcing its security interest in the goods at any time after default.
- (5) This section shall not apply to consumer credit transactions that are payable in four or fewer installments.

6-1-105. Unfair or deceptive trade practices

- (1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person:
 - (a) Either knowingly or recklessly passes off goods, services, or property as those of another;
 - (b) Either knowingly or recklessly makes a false representation as to the source, sponsorship, approval, or certification of goods, services, or property;
 - (c) Either knowingly or recklessly makes a false representation as to affiliation, connection, or association with or certification by another;
 - (d) Uses deceptive representations or designations of geographic origin in connection with goods or services;
 - (e) Either knowingly or recklessly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith;
 - (f) Represents that goods are original or new if he knows or should know that they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;
 - (g) Represents that goods, food, services, or property are of a particular standard, quality, or grade, or that goods are of a particular style or model, if he knows or should know that they are of another;
 - (h) Disparages the goods, services, property, or business of another by false or misleading representation of fact;
 - (i) Advertises goods, services, or property with intent not to sell them as advertised;

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- (j) Advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
- (k) Advertises under the guise of obtaining sales personnel when in fact the purpose is to first sell a product or service to the sales personnel applicant;
- (l) Makes false or misleading statements of fact concerning the price of goods, services, or property or the reasons for, existence of, or amounts of price reductions;
- (m) Fails to deliver to the customer at the time of an installment sale of goods or services a written order, contract, or receipt setting forth the name and address of the seller, the name and address of the organization which he represents, and all of the terms and conditions of the sale, including a description of the goods or services, stated in readable, clear, and unambiguous language;
- (n) Employs "bait and switch" advertising, which is advertising accompanied by an effort to sell goods, services, or property other than those advertised or on terms other than those advertised and which is also accompanied by one or more of the following practices:
 - (I) Refusal to show the goods or property advertised or to offer the services advertised;
 - (II) Disparagement in any respect of the advertised goods, property, or services or the terms of sale;
 - (III) Requiring tie-in sales or other undisclosed conditions to be met prior to selling the advertised goods, property, or services;
 - (IV) Refusal to take orders for the goods, property, or services advertised for delivery within a reasonable time;
 - (V) Showing or demonstrating defective goods, property, or services which are unusable or impractical for the purposes set forth in the advertisement;
 - (VI) Accepting a deposit for the goods, property, or services and subsequently switching the purchase order to higher-priced goods, property, or services; or
 - (VII) Failure to make deliveries of the goods, property, or services within a reasonable time or to make a refund therefor;
- (o) Either knowingly or recklessly fails to identify flood-damaged or water-damaged goods as to such damages;

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(p) Solicits door-to-door as a seller, unless the seller, within thirty seconds after beginning the conversation, identifies himself or herself, whom he or she represents, and the purpose of the call;

(p.3) to (p.7) Repealed.

(q) Contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes any pyramid promotional scheme;

(r) Advertises or otherwise represents that goods or services are guaranteed without clearly and conspicuously disclosing the nature and extent of the guarantee, any material conditions or limitations in the guarantee which are imposed by the guarantor, the manner in which the guarantor will perform, and the identity of such guarantor. Any representation that goods or services are "guaranteed for life" or have a "lifetime guarantee" shall contain, in addition to the other requirements of this paragraph (r), a conspicuous disclosure of the meaning of "life" or "lifetime" as used in such representation (whether that of the purchaser, the goods or services, or otherwise). Guarantees shall not be used which under normal conditions could not be practically fulfilled or which are for such a period of time or are otherwise of such a nature as to have the capacity and tendency of misleading purchasers or prospective purchasers into believing that the goods or services so guaranteed have a greater degree of serviceability, durability, or performance capability in actual use than is true in fact. The provisions of this paragraph (r) apply not only to guarantees but also to warranties, to disclaimer of warranties, to purported guarantees and warranties, and to any promise or representation in the nature of a guarantee or warranty; however, such provisions do not apply to any reference to a guarantee in a slogan or advertisement so long as there is no guarantee or warranty of specific merchandise or other property.

(s) and (t) Repealed.

(u) Fails to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction;

(v) Disburses funds in connection with a real estate transaction in violation of section 38-35-125 (2), C.R.S.;

(w) Repealed.

(x) Violates sections 6-1-203 to 6-1-206 or part 7 of this article 1;

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- (y)** Fails, in connection with any solicitation, oral or written, to clearly and prominently disclose immediately adjacent to or after the description of any item or prize to be received by any person the actual retail value of each item or prize to be awarded. For the purposes of this paragraph (y), the actual retail value is the price at which substantial sales of the item were made in the person's trade area or in the trade area in which the item or prize is to be received within the last ninety days or, if no substantial sales were made, the actual cost of the item or prize to the person on whose behalf any contest or promotion is conducted; except that, whenever the actual cost of the item to the provider is less than fifteen dollars per item, a disclosure that "actual cost to the provider is less than fifteen dollars" may be made in lieu of disclosure of actual cost. The provisions of this paragraph (y) shall not apply to a promotion which is soliciting the sale of a newspaper, magazine, or periodical of general circulation, or to a promotion soliciting the sale of books, records, audio tapes, compact discs, or videos when the promoter allows the purchaser to review the merchandise without obligation for at least seven days and provides a full refund within thirty days after the receipt of the returned merchandise or when a membership club operation is in conformity with rules and regulations of the federal trade commission contained in 16 CFR 425.
- (z)** Refuses or fails to obtain all governmental licenses or permits required to perform the services or to sell the goods, food, services, or property as agreed to or contracted for with a consumer;
- (aa)** Fails, in connection with the issuing, making, providing, selling, or offering to sell of a motor vehicle service contract, to comply with the provisions of article 11 of title 42, C.R.S.;
- (bb)** Repealed.
- (cc)** Engages in any commercial telephone solicitation which constitutes an unlawful telemarketing practice as defined in section 6-1-304;
- (dd)** Repealed.
- (ee)** Intentionally violates any provision of article 10 of title 5, C.R.S.;
- (ee.5) to (ff)** Repealed.
- (gg)** Fails to disclose or misrepresents to another person, a secured creditor, or an assignee by whom such person is retained to repossess personal property whether such person is bonded in accordance with section 4-9-629, C.R.S., or fails to file such bond with the attorney general;
- (hh)** Violates any provision of article 16 of this title;

- (ii)** Repealed.
- (jj)** Represents to any person that such person has won or is eligible to win any award, prize, or thing of value as the result of a contest, promotion, sweepstakes, or drawing, or that such person will receive or is eligible to receive free goods, services, or property, unless, at the time of the representation, the person has the present ability to supply such award, prize, or thing of value;
- (kk)** Violates any provision of article 6 of this title;
- (ll)** Either knowingly or recklessly makes a false representation as to the results of a radon test or the need for radon mitigation;
- (mm)** Violates section 35-27-113 (3)(e), (3)(f), or (3)(i), C.R.S.;
- (nn)** Repealed.
- (oo)** Fails to comply with the provisions of section 35-80-108 (1)(a), (1)(b), or (2)(f), C.R.S.;
- (pp)** Violates article 9 of title 42, C.R.S.;
- (qq)** Repealed.
- (rr)** Violates the provisions of part 8 of this article;
- (ss)** Violates any provision of part 33 of article 32 of title 24, C.R.S., that applies to the installation of manufactured homes;
- (tt)** Violates any provision of part 9 of this article;
- (uu)** Violates section 38-40-105, C.R.S.;
- (vv)** Violates section 24-21-523 (1)(f) or (1)(i) or 24-21-525 (3), (4), or (5);
- (ww)** Violates any provision of section 6-1-702;
- (xx)** Violates any provision of part 11 of this article;
- (yy)** Repealed.
- (zz)** Violates any provision of section 6-1-717;
- (aaa)** Violates any provision of section 12-10-710;
- (bbb)** Violates any provision of section 12-10-713;
- (ccc)** Violates the provisions of section 6-1-722;

(ddd) Violates section 6-1-724;

(eee) Violates section 6-1-701;

(fff) Violates section 6-1-723;

(ggg) Violates section 6-1-725;

(hhh) Either knowingly or recklessly represents that hemp, hemp oil, or any derivative of a hemp plant constitutes retail marijuana or medical marijuana unless it fully satisfies the definition of such products pursuant to section 44-10-103 (34) or (57);

(iii) Either knowingly or recklessly enters into, or attempts to enforce, an agreement regarding the recovery of an overbid on foreclosed property if the agreement concerns the recovery of funds in the possession of:

(I) A public trustee prior to transfer of the funds to the state treasurer under section 38-38-111; or

(II) The state treasurer and does not meet the requirements for such an agreement as specified in section 38-13-1304;

(jjj) Violates section 6-1-726;

(kkk) Either knowingly or recklessly engages in any unfair, unconscionable, deceptive, deliberately misleading, false, or fraudulent act or practice;

(lll) Violates article 20 of title 5;

(mmm) Violates section 12-30-113.

(2) Evidence that a person has engaged in a deceptive trade practice shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

(3) The deceptive trade practices listed in this section are in addition to and do not limit the types of unfair trade practices actionable at common law or under other statutes of this state.

(4) For purposes of this section, "recklessly" means a reckless disregard for the truth or falsity of a statement or advertisement.

6-1-708. Vehicle sales and leases - deceptive trade practice

(1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, such person:

(a) Commits any of the following acts pertaining to the sale or lease of a motor vehicle, used motor vehicle, powersports vehicle, or used powersports vehicle:

- 212

10-4-619. Coverage compulsory

- (1) Every owner of a motor vehicle who operates the motor vehicle on the public highways of this state or who knowingly permits the operation of the motor vehicle on the public highways of this state shall have in full force and effect a complying policy under the terms of this part 6 covering the said motor vehicle, and any owner who fails to do so shall be subject to the sanctions provided under sections 42-4-1409 and 42-7-301, C.R.S., of the "Motor Vehicle Financial Responsibility Act". This section shall not apply to persons who hold a current and valid certificate of self-insurance pursuant to section 10-4-624.
- (2) An insurer shall not refuse to provide benefits to an insured on the basis that the insured is a volunteer for a fire department and is injured in a motor vehicle while responding to an emergency.

18-5-301. Fraud in effecting sales

- (1) A person commits a class 2 misdemeanor if, in the course of business, he knowingly:
 - (a) Uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity; or
 - (b) Sells, offers, or exposes for sale or delivers less than the represented quantity of any commodity or service; or
 - (c) Takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure; or
 - (d) Sells, offers, or exposes for sale an adulterated or mislabeled commodity. "Adulterated" means varying from the standard of composition or quality prescribed by or pursuant to any statute of the state of Colorado or the United States providing criminal penalties for such variance, or set by established commercial usage. "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed or pursuant to any statute of the state of Colorado or the United States providing criminal penalties for such variance, or set by established commercial usage; or
 - (e) Makes a false or misleading statement in any advertisement addressed to the public or to a substantial segment thereof for the purpose of promoting the purchase or sale of property or services.
 - (f) Repealed.

18-5-303. Bait advertising

- (1) A person commits bait advertising if, in any manner, including advertising or any other means of communication, he offers property or services as part of a scheme or plan, with

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the intent, plan, or purpose not to sell or provide the advertised property or services at all, or not at the price at which he offered them, or not in a quantity sufficient to meet the reasonable expected public demand, unless the quantity is specifically stated in the advertisement.

- (2) It shall be an affirmative defense that a television or radio broadcasting station or a publisher or printer of a newspaper, magazine, or other form of printed advertising which broadcasted, published, or printed a false advertisement prohibited by section 18-5-301 (1)(e) or a bait advertisement prohibited by subsection (1) of this section or a telephone company which furnished service to a subscriber did so without knowledge of the advertiser's or subscriber's intent, plan, or purpose.
- (3) Bait advertising is a class 2 misdemeanor.

42-3-116. Manufacturers or dealers

- (1) Upon application using the proper form and payment of the fees required by law, a manufacturer of, drive-away or tow-away transporter of, or dealer in, motor vehicles, trailers, special mobile machinery, or semitrailers operating such vehicle upon any highway, in lieu of registering each vehicle, may obtain from the department and attach to each such vehicle one number plate, as required in this article for different classes of vehicles. Such plate shall bear a distinctive number; the name of this state, which may be abbreviated; the year issued; and a distinguishing word or symbol indicating that such plate was issued to a manufacturer, drive-away or tow-away transporter, or dealer. Such plates may, during the registration period for which they were issued, be transferred from one such vehicle to another when owned and operated by or with the authority of such manufacturer or representative of such manufacturer or operated by such drive-away or tow-away transporter or dealer.
- (2) No manufacturer of or dealer in motor vehicles, trailers, or semitrailers shall cause or permit a vehicle owned by such person to be operated or moved upon a public highway without displaying upon such vehicle a number plate, except as otherwise authorized in this article.
- (3) A manufacturer of motor vehicles, trailers, or semitrailers may operate or move upon the highways any such vehicle from the factory where manufactured to a railway depot, vessel, or place of shipment or delivery, without registering the same and without an attached number plate, under a written permit first obtained from the police authorities with jurisdiction over such highways and upon displaying upon each such vehicle a placard bearing the name and address of the manufacturer authorizing or directing such movement, plainly readable from one hundred feet away during daylight.
- (4) (a) Any dealer in motor vehicles, trailers, or semitrailers may operate, move, or transport a vehicle owned by such dealer on the streets and highways of this state without registering such vehicle and without an attached numbered plate if there

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is displayed on such vehicle a depot tag issued by the department. Such tag may be purchased from the department for a fee of five dollars. Such tags shall only be used for moving authorized vehicles for purposes of testing, repairs, or transporting them from the point of delivery to the dealer's place of business and for similar legitimate business purposes; but nothing in this section shall be construed to allow the use of such tag for private purposes.

- (b)** The executive director of the department shall promulgate rules for the use of depot tags and dealer plates, and a violation of such rules shall subject the violator to a suspension or revocation of the violator's depot tag and dealer plates after a hearing pursuant to article 4 of title 24, C.R.S.
- (5)** A manufacturer or dealer, upon transferring a motor vehicle, trailer, or semitrailer, whether by sale, lease, or otherwise, to any person other than a manufacturer or dealer shall immediately give written notice of such transfer to the department upon the form provided by the department. Such notice shall contain the date of such transfer, the names and addresses of the transferor and transferee, and such description of the vehicle as may be required by the department.
- (6)**
 - (a)**
 - (I)** An application for a full-use dealer plate may be submitted by a motor vehicle dealer or wholesaler who:
 - (A)** Has sold more than twenty-five motor vehicles in the twelve-month period preceding application;
 - (B)** Purchases an existing motor vehicle dealership or wholesale business that has sold more than twenty-five vehicles during the twelve-month period preceding application; or
 - (C)** Obtains a license to operate a new or used motor vehicle dealership or wholesale business with an inventory of fifty or more motor vehicles.
 - (II)** Full-use dealer plates may be used in lieu of, in the same manner as, and to the same extent as number plates issued pursuant to section 42-3-201.
 - (b)**
 - (I)** The department shall issue full-use dealer plates upon payment of the fee specified in subparagraph (II) of this paragraph (b) and upon application of a motor vehicle dealer or wholesaler accompanied by satisfactory evidence that the applicant is entitled to the plate in accordance with the criteria established in subparagraph (I) of paragraph (a) of this subsection (6).
 - (II)** The annual fee for full-use dealer plates shall be established and adjusted annually by the department based on the average of specific ownership taxes and registration fees paid for passenger vehicles and light duty trucks that are seven model years old or newer and that were registered

(b) (I) The department shall issue a demonstration plate upon payment of the fee specified in subparagraph (II) of this paragraph (b) and upon application

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of a motor vehicle dealer or wholesaler accompanied by satisfactory evidence that the applicant is entitled to the plate in accordance with this subsection (7).

- (II) The department shall establish and adjust the annual fee for a demonstration plate based on the average of specific ownership taxes and registration fees paid for items of special mobile machinery that are seven model years old or newer during the previous year.
- (III) A demonstration plate shall be valid for one year.
- (IV) The owner of a demonstration plate shall return the plate to the department within ten days after the sale or closure of the business that sells special mobile machinery in the ordinary course of business.
- (c) No person shall operate special mobile machinery with a demonstration plate unless the machinery is offered for sale and being demonstrated for the purposes of a sale. The owner may transfer the plate from one item of special mobile machinery to another and without reporting the transfer to the department.
- (d) A person who violates this subsection (7) commits a class 2 misdemeanor, and shall be punished as provided in section 18-1.3-501, C.R.S.

42-3-203. Standardized plates - notice of funding through gifts, grants, and donations - rules – repeal

- (1) (a) Unless otherwise authorized by statute, the department shall issue all Class C vehicles a single type of standardized license plate. Unless otherwise authorized by statute, the department shall issue all Class B vehicles, except recreational trucks, a single type of standardized license plate.
- (b) Repealed.
- (2) An owner who has applied for renewal of registration of a vehicle but who has not received the number plates or plate for the ensuing registration period may operate or permit the operation of such vehicle upon the highways, upon displaying the number plates or plate issued for the preceding registration period, for such time as determined by the department as it may find necessary for issuance of such new plates.
- (3) (a) (I) The department may issue individual temporary registration number plates and certificates good for a period not to exceed sixty days upon application by an owner of a motor vehicle or the owner's agent and the payment of a registration fee of two dollars, one dollar and sixty cents to be retained by the authorized agent or department issuing the plates and certificates and the remainder to be remitted monthly to the department to

(II) The authorized agent may issue individual temporary registration number plates and certificates good for a period not to exceed sixty days upon application by an owner of special mobile machinery or the owner's agent and the payment of a registration fee of two dollars, one dollar and sixty cents to be retained by the authorized agent or department issuing the plates and certificates and the remainder to be remitted monthly to the department to be transmitted to the state treasurer for credit to the highway users tax fund.

(III) It is unlawful for a person to use a number plate and certificate after it expires. A person who violates any provision of this paragraph (a) commits a class B traffic infraction.

- (I)** Print on the temporary plates the temporary registration number, vehicle identification number, and other information required by the department; and
- (II)** Print temporary registration certificates with the information required by the department.

(d) (I) By July 1, 2016, the department shall make temporary registration number plates or certificates so that each complies with the requirements of section 42-3-202, including being fastened, visible, and readable; except

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that a temporary plate is affixed only to the rear of the vehicle. The department shall implement an electronic issuance system for temporary license plates. The department may promulgate rules to implement this system.

(II) & (III) Repealed.

(e) A dealer may issue a second temporary registration number plate in accordance with this subsection (3) if the dealer:

(I) Has issued a temporary plate to the owner when selling the motor vehicle to the owner;

(II) Has not delivered or facilitated the delivery of the certificate of title to the purchaser or the holder of a chattel mortgage as required in section 42-6-112 or 42-6-119 (3) within sixty days after the motor vehicle was purchased; and

(III) Has taken every reasonable action necessary to deliver or facilitate the delivery of the certificate of title.

(4) All or part of the face of the license plates furnished pursuant to this section shall be coated with a reflective material.

42-3-304. Registration fees - passenger and passenger-mile taxes - clean screen fund - definitions - repeal

(1) (a) In addition to other fees specified in this section, an applicant shall pay a motorist insurance identification fee in an amount determined by paragraph (d) of subsection (18) of this section when applying for registration or renewal of registration of a motor vehicle under this article.

(b) The following vehicles are exempt from the motorist insurance identification fee:

(I) Vehicles that are exempt from registration fees under this section or are owned by persons who have qualified as self-insured pursuant to section 10-4-624, C.R.S.

(II) Repealed.

(c) (Deleted by amendment, L. 2009, (SB 09-274), Ch. 210, p. 955, § 8, effective May 1, 2009.)

(2) With respect to passenger-carrying motor vehicles, the weight used in computing annual registration fees shall be that weight published by the manufacturer in approved manuals, and, in case of a dispute over the weight of such vehicle, the actual weight determined by weighing such vehicle on a certified scale, as provided in section 35-14-122 (6), C.R.S., shall be conclusive. With respect to all other vehicles, the weight used in computing

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annual registration fees shall be the empty weight, determined by weighing such vehicle on a certified scale or in the case of registration fees imposed pursuant to section 42-3-306 (5), the declared gross vehicle weight of the vehicle declared by the owner at the time of registration.

- (3) No fee shall be payable for the annual registration of a vehicle when:
- (a) The owner of such vehicle is a veteran who in an application for registration shows that the owner has established such owner's rights to benefits under the provisions of Public Law 663, 79th Congress, as amended, and Public Law 187, 82nd Congress, as amended, or is a veteran of the armed forces of the United States who incurred a disability and who is, at the date of such application, receiving compensation from the veterans administration or any branch of the armed forces of the United States for a fifty percent or more, service-connected, permanent disability, or for loss of use of one or both feet or one or both hands, or for permanent impairment or loss of vision in both eyes that constitutes virtual or actual blindness. The exemption provided in this paragraph (a) shall apply to the original qualifying vehicle and to any vehicle subsequently purchased and owned by the same veteran but shall not apply to more than one vehicle at a time.
 - (b) The application for registration shows that the owner of such vehicle is a foreign government or a consul or other official representative of a foreign government duly recognized by the department of state of the United States government. License plates for the vehicles qualifying for the exemption granted in this paragraph (b) shall be issued only by the department and shall bear such inscription as may be required to indicate their status.
 - (c) The owner of such vehicle is the state or a political or governmental subdivision thereof; but any such vehicle that is leased, either by the state or any political or governmental subdivision thereof, shall be exempt from payment of an annual registration fee only if the agreement under which it is leased has been first submitted to the department and approved, and such vehicle shall remain exempt from payment of an annual registration fee only so long as it is used and operated in strict conformity with such approved agreement.
 - (d) The owner of such vehicle is a former prisoner of war being issued special plates pursuant to section 42-3-213 (3) or is the surviving spouse of a former prisoner of war retaining the special plates that were issued to such former prisoner of war pursuant to section 42-3-213 (3).
 - (e) The owner of such vehicle is the recipient of a purple heart being issued special plates pursuant to section 42-3-213 (2).
 - (f) The owner of such vehicle is a recipient of a medal of honor issued special plates pursuant to section 42-3-213 (7).

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- (g) The owner of the vehicle is a recipient of a medal of valor and is issued special license plates pursuant to section 42-3-213 (10).
 - (h) The owner of the vehicle survived the attack on Pearl Harbor and is issued special license plates pursuant to section 42-3-213 (6).
- (4) Upon registration, the owner of each motorcycle shall pay a surcharge of four dollars, which shall be credited to the motorcycle operator safety training fund created in section 43-5-504, C.R.S.
- (5) In lieu of registering each vehicle separately, a dealer in motorcycles shall pay to the department an annual registration fee of twenty-five dollars for the first license plate issued pursuant to section 42-3-116 (1), a fee of seven dollars and fifty cents for each additional license plate so issued up to and including five such plates, and a fee of ten dollars for each license plate so issued in excess of five.
- (6) In lieu of registering each vehicle separately:
 - (a) A dealer in motor vehicles, trailers, and semitrailers, except dealers in motorcycles, shall pay to the department an annual fee of thirty dollars for the first license plate issued pursuant to section 42-3-116 (1), and a fee of seven dollars and fifty cents for each additional license plate so issued up to and including five, and a fee of ten dollars for each license plate so issued in excess of five; and
 - (b) A manufacturer of motor vehicles shall pay to the department an annual fee of thirty dollars for the first license plate issued pursuant to section 42-3-116 (1), and a fee of seven dollars and fifty cents for each additional license plate so issued up to and including five, and a fee of ten dollars for each additional license plate issued.
- (7)
 - (a) Every drive-away or tow-away transporter shall apply to the department for the issuance of license plates that may be transferred from one vehicle or combination to another vehicle or combination for delivery without further registration. The annual fee payable for the issuance of such plates shall be thirty dollars for the first set and ten dollars for each additional set. No transporter shall permit such license plates to be used upon a vehicle that is not in transit, or upon a work or service vehicle, including a service vehicle utilized regularly to haul vehicles, or by any other person.
 - (b) Each such transporter shall keep a written record of all vehicles transported, including the description thereof and the names and addresses of the consignors and consignees, and a copy of such record shall be carried in every driven vehicle; except that, when a number of vehicles are being transported in convoy, such copy, listing all the vehicles in the convoy, may be carried in only the lead vehicle in the convoy.

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- (c) This subsection (7) shall not apply to a nonresident engaged in interstate or foreign commerce if such nonresident is in compliance with the in-transit laws of the state of his or her residence and if such state grants reciprocal exemption to Colorado residents. The department may enter into reciprocal agreements with any other state or states containing such reciprocal exemptions or may issue written declarations as to the existence of any such reciprocal agreements.
- (8)
 - (a) Subsections (5), (6)(a), and (7) of this section shall not apply to a motor vehicle, trailer, or semitrailer operated by a dealer or transporter for such dealer's or transporter's private use or to a motor vehicle bearing full-use dealer plates issued pursuant to section 42-3-116 (6)(d).
 - (b) Paragraph (b) of subsection (6) of this section shall only apply to a motor vehicle if owned and operated by a manufacturer, a representative of a manufacturer, or a person so authorized by the manufacturer. A motor vehicle bearing manufacturer plates shall be of a make and model of the current or a future year and shall have been manufactured by or for the manufacturer to which such plates were issued.
- (9) In addition to the registration fees imposed by section 42-3-306 (4)(a), the following additional registration fee shall be imposed on such vehicles:
 - (a) For farm trucks less than seven years old, twelve dollars;
 - (b) For farm trucks seven years old but less than ten years old, ten dollars;
 - (c) For farm trucks ten years old or older, seven dollars.
- (10)
 - (a) In addition to the registration fees imposed by section 42-3-306 (5)(a) and (13), for motor vehicles described in section 42-3-306 (5)(a) and (13), the following additional registration fee shall be imposed:
 - (I) For light trucks and recreational vehicles less than seven years old, twelve dollars;
 - (II) For light trucks and recreational vehicles seven years old but less than ten years old, ten dollars;
 - (III) For light trucks and recreational vehicles ten years old or older, seven dollars.
 - (b) In addition to the registration fees imposed by section 42-3-306 (5)(b), (5)(c), or (12)(b), an additional registration fee of ten dollars shall be assessed.
 - (c) The department shall adopt rules that allow a vehicle owner or a vehicle owner's agent to apply for apportioned registration for a vehicle that is used in interstate commerce and that qualifies for the registration fees provided in section 42-3-306 (5). In establishing the amount of such apportioned registration, such rules shall take into account the length of time such item may be operated in Colorado or the

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number of miles such item may be driven in Colorado. The apportioned registration, if based upon the length of time such item may be operated in Colorado, shall be valid for a period of between two and eleven months. Such rules shall also allow for extensions of apportioned registration periods. During such rule-making, the department shall confer with its authorized agents regarding enhanced communications with the authorized agents and the coordination of enforcement efforts.

- (11)** The additional fees collected pursuant to section 42-3-306 (2)(b)(II) and subsection (9) of this section and paragraphs (a) and (b) of subsection (10) of this section shall be transmitted to the state treasurer, who shall credit the same to the highway users tax fund to be allocated pursuant to section 43-4-205 (6)(b), C.R.S.
- (12)** An owner or operator that desires to make an occasional trip into this state with a truck, truck tractor, trailer, or semitrailer that is registered in another state shall obtain a permit from the public utilities commission as provided in article 10.1 of title 40, C.R.S. This subsection (12) does not apply to the vehicles of a public utility that are temporarily in this state to assist in the construction, installation, or restoration of utility facilities used in serving the public.
- (13)** In addition to the annual registration fees prescribed in this section for vehicles with a seating capacity of more than fourteen and operated for the transportation of passengers for compensation, the owner or operator of every such vehicle operated over the public highways of this state shall pay a passenger-mile tax equal to one mill for each passenger transported for a distance of one mile. The tax shall be credited to the highway users tax fund created in section 43-4-201, C.R.S., as required by section 43-4-203 (1)(c), C.R.S., and allocated and expended as specified in section 43-4-205 (5.5)(d), C.R.S. The tax assessed by this subsection (13) shall not apply to passenger service rendered within the boundaries of a city, city and county, or incorporated town by a company engaged in the mass transportation of persons by buses or trolley coaches.
- (14)** **(a)** The owner or operator of special mobile machinery having an empty weight not in excess of sixteen thousand pounds that the owner or operator desires to operate over the public highways of this state shall register such vehicle under section 42-3-306 (5)(a).

(b) The owner or operator of special mobile machinery with an empty weight exceeding sixteen thousand pounds that the owner or operator desires to operate over the public highways of this state shall register the vehicle under section 42-3-306 (5)(b).
- (15)** The owner of special mobile machinery, except that mentioned in sections 42-1-102 (44) and 42-3-104 (3), that is not registered for operation on the highway shall pay a fee of one dollar and fifty cents, which shall not be subject to any quarterly reduction.

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- (16) Nothing in this section shall be construed to prevent a farmer or rancher from occasionally exchanging transportation with another farmer or rancher when the sole consideration involved is the exchange of personal services and the use of vehicles.
- (17) (a) At the time of registration of such vehicle, the owner of a truck subject to registration under section 42-3-306 (5) having a weight in excess of four thousand five hundred pounds, but not in excess of ten thousand pounds, including mounted equipment other than that of a recreational type, shall present to the authorized agent a copy of the manufacturer's statement or certificate of origin that specifies the shipping weight of such vehicle, or if such documentation is not available, a certified scale ticket showing the weight of such vehicle.
- (b) The department shall furnish appropriate identification, by means of tags or otherwise, to indicate that a vehicle registered under this section is not subject to clearance by a port of entry weigh station.
- (18) (a) In addition to any other fee imposed by this section, the owner shall pay, at the time of registration, a fee of fifty cents on every item of Class A, B, or C personal property required to be registered pursuant to this article. Such fee shall be transmitted to the state treasurer, who shall credit the same to a special account within the highway users tax fund, to be known as the AIR account, and such moneys shall be used, subject to appropriation by the general assembly, to cover the direct costs of the motor vehicle emissions activities of the department of public health and environment in the presently defined nonattainment area, and to pay for the costs of the commission in performing its duties under section 25-7-106.3, C.R.S. In the program areas within counties affected by this article, the authorized agent shall impose and retain an additional fee of up to seventy cents on every such registration to cover reasonable costs of administration of the emissions compliance aspect of vehicle registration. The department of public health and environment may accept and expend grants, gifts, and moneys from any source for the purpose of implementing its duties and functions under this section or section 25-7-106.3, C.R.S.
- (b) In addition to any other fee imposed by this section, at the time of registration of any motor vehicle in the program area subject to inspection and not exempt from registration, the owner shall pay a fee of one dollar and fifty cents. Such fee shall be transmitted to the state treasurer, who shall credit the same to the AIR account within the highway users tax fund, and such moneys shall be expended only to cover the costs of administration and enforcement of the automobile inspection and readjustment program by the department of revenue and the department of public health and environment, upon appropriation by the general assembly. For such purposes, the revenues attributable to one dollar of such fee shall be available for appropriation to the department of revenue, and the revenues

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attributable to the remaining fifty cents of such fee shall be available for appropriation to the department of public health and environment.

- (c) There shall be established two separate subaccounts within the AIR account, one for the revenues available for appropriation to the department of public health and environment pursuant to paragraphs (a) and (b) of this subsection (18) and one for the revenues available for appropriation to the department of revenue pursuant to paragraph (b) of this subsection (18) and section 42-4-305. After the state treasurer transfers moneys in the department of revenue subaccount to the department of revenue equal to the amount appropriated to the department of revenue from the AIR account for the fiscal year, the state treasurer shall transfer from the balance in the department of revenue subaccount to the department of public health and environment subaccount any amount needed to cover appropriations made to the department of public health and environment from the AIR account for that fiscal year for the administration and enforcement of the automobile inspection and readjustment program. Transfers from the department of revenue subaccount to the department of public health and environment subaccount shall be made on a monthly basis after the transfers to the department of revenue equal to the department of revenue's appropriation for that fiscal year have been made. The state treasurer shall not transfer to the department of public health and environment an amount that exceeds the amount of the appropriation made to the department of public health and environment from the AIR account for the fiscal year. Any transfer made pursuant to this paragraph (c) shall be subject to any limits imposed or appropriations made by the general assembly for other purposes and any limitations imposed by section 18 of article X of the state constitution.
- (d) (I) (A) Repealed.
- (B) In addition to any other fee imposed by this section, the owner, in order to register a motor vehicle or low-power scooter, must pay a motorist insurance identification fee. The department shall annually adjust the fee based upon appropriations made by the general assembly for the operation of the motorist insurance identification database program. The department shall transmit the fee to the state treasurer, who shall credit it to the Colorado DRIVES vehicle services account created in section 42-1-211 (2). This subsection (18)(d)(I)(B) takes effect July 1, 2019.
- (II) (Deleted by amendment, L. 2009, (SB 09-274), ch. 210, p. 955, § 8, effective May 1, 2009; (HB 09-1026), ch. 281, p. 1268, § 30, effective July 1, 2010.)

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- (19) (a)** If the air quality control commission determines pursuant to section 42-4-306 (23)(b) to implement an expanded clean screen program in the enhanced emissions program area, on and after the specific dates determined by the commission for each of the following subparagraphs:
- (I)** In addition to any other fee imposed by this section, authorized agents, acting as agents for the clean screen authority, shall collect at the time of registration an emissions inspection fee in an amount determined by section 42-4-311 (6)(a) on every motor vehicle that the department of revenue has determined from data provided by its contractor to have been clean screened; except that the motorist need not pay the emissions inspection fee if the authorized agent determines that a valid certification of emissions compliance has already been issued for the vehicle being registered indicating that the vehicle passed the applicable emissions test at an enhanced inspection center, inspection and readjustment station, motor vehicle dealer test facility, or fleet inspection station.
 - (II)** Authorized agents may retain three and one-third percent of the fee so collected to cover the agent's expenses in the collection and remittance of the fee. County treasurers shall, no later than ten days after the last business day of each month, remit the remainder of the fee to the clean screen authority created in section 42-4-307.5. The clean screen authority shall transmit the fee to the state treasurer, who shall deposit the remainder in the clean screen fund, which fund is hereby created. The clean screen fund is a pass-through trust account to be held in trust solely for the purposes and the beneficiaries specified in this subsection (19). Money in the clean screen fund is not fiscal year spending of the state for purposes of section 20 of article X of the state constitution and is a custodial fund that is not subject to appropriation by the general assembly. Interest earned from the deposit and investment of money in the clean screen fund shall be credited to the clean screen fund, and the clean screen authority may also expend interest earned on the deposit and investment of the clean screen fund to pay for its costs associated with the implementation of House Bill 01-1402, enacted at the first regular session of the sixty-third general assembly. The clean screen authority may also expend interest earned on the deposit and investment of the clean screen fund to pay for its costs associated with the implementation of House Bill 06-1302, enacted at the second regular session of the sixty-fifth general assembly.
 - (III)** The clean screen authority shall transmit moneys from the clean screen fund monthly to the contractor in accordance with the fees determined by section 42-4-311 (6)(a) within one week after receipt by the authority from

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the department of revenue of a notification of the number of registrations of clean-screened vehicles during the previous month.

(IV) Repealed.

- (b)** In specifying dates for the implementation of the clean screen program pursuant to paragraph (a) of this subsection (19), the commission may specify different dates for the enhanced and basic emissions program areas.
- (c)** This subsection (19) shall not apply to El Paso county if the commission has excluded such county from the clean screen program pursuant to section 42-4-306 (23)(a).
- (d)** Any moneys remaining in the clean screen fund upon termination of the AIR program shall revert to the AIR account established in paragraph (a) of subsection (18) of this section.
- (20)** In addition to any other fee imposed by this section, there shall be collected, at the time of registration, a fee of ten dollars on every light and heavy duty diesel-powered motor vehicle in the program area registered pursuant to this article in Colorado. Such fee shall be transmitted to the state treasurer, who shall credit the same to the AIR account in the highway users tax fund, and such moneys shall be used, subject to appropriation by the general assembly, to cover the costs of the diesel-powered motor vehicle emissions control activities of the departments of public health and environment and revenue.
- (21)** In order to promote an effective emergency medical network and thus the maintenance and supervision of the highways throughout the state, in addition to any other fees imposed by this section, there shall be assessed an additional fee of two dollars at the time of registration of any motor vehicle. Such fee shall be transmitted to the state treasurer, who shall credit the same to the emergency medical services account created by section 25-3.5-603, C.R.S., within the highway users tax fund.
- (22)** In addition to any other fees imposed by this section, the authorized agent may collect and retain, and an applicant for registration shall pay at the time of registration, a reasonable fee, as determined from time to time by the authorized agent, that approximates the direct and indirect costs incurred, not to exceed five dollars, by the authorized agent in shipping and handling those license plates that the applicant has, pursuant to section 42-3-105 (1)(a), requested that the department mail to the owner.
- (23)** Repealed.
- (24)** In addition to any other fee imposed by this section, at the time of registration, the owner shall pay a fee of one dollar on every item of Class A, B, or C personal property required to be registered by this article. Notwithstanding section 43-4-203, the department shall transmit the fee to the state treasurer, who shall credit it to the peace officers standards and training board cash fund, created in section 24-31-303 (2)(b); except that authorized agents may retain five percent of the fee collected to cover the agents' expenses in the

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collection and remittance of the fee. All of the money in the fund that is collected under this subsection (24) shall be used by the peace officers standards and training board for the purposes specified in section 24-31-310.

- (25) (a) In addition to any other fee imposed by this section, each authorized agent shall annually collect a fee of fifty dollars at the time of registration on every plug-in electric motor vehicle. The authorized agent shall transmit the fee to the state treasurer, who shall credit thirty dollars of each fee to the highway users tax fund created in section 43-4-201, and twenty dollars of each fee to the electric vehicle grant fund created in section 24-38.5-103.
- (b) The department of revenue shall create an electric vehicle decal, which an authorized agent shall give to each person who pays the fee charged under subsection (25)(a) of this section. The decal must be attached to the upper right-hand corner of the front windshield on the motor vehicle for which it was issued. If there is a change of vehicle ownership, the decal is transferable to the new owner.
- (c) Repealed

42-4-304. Definitions relating to automobile inspection and readjustment program

As used in sections 42-4- 301 to 42-4-316, unless the context otherwise requires:

- (1) "AIR program" or "program" means the automobile inspection and readjustment program until replaced as provided in sections 42-4- 301 to 42-4-316, the basic emissions program, and the enhanced emissions program established pursuant to sections 42-4- 301 to 42-4-316.
- (2) "Basic emissions program" means the inspection and readjustment program, established pursuant to the federal act, in the counties set forth in paragraph (b) of subsection (20) of this section.
- (3) (a) "Certification of emissions control" means one of the following certifications, to be issued to the owner of a motor vehicle which is subject to the automobile inspection and readjustment program to indicate the status of inspection requirement compliance of said vehicle:
- (I) "Certification of emissions waiver", indicating that the emissions of other than chlorofluorocarbons from the vehicle do not comply with the applicable emissions standards and criteria after inspection, adjustment, and emissions-related repairs in accordance with section 42-4-310.
- (II) "Certification of emissions compliance", indicating that the emissions from said vehicle comply with applicable emissions and opacity standards

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and criteria at the time of inspection or after required adjustments or repairs.

- (b) (I)** The certification of emissions control will be issued to the vehicle owner at the time of sale or transfer except as provided in section 42-4-310 (1)(a)(I). The certification of emissions control will be in effect for twenty-four months for 1982 and newer model vehicles. 1981 and older model vehicles and all vehicles inspected by the fleet-only air inspection stations shall be issued certifications of emissions control valid for twelve months.
 - (II)** Except as provided in section 42-4-309, the executive director shall establish a biennial inspection schedule for 1982 and newer model vehicles, an annual inspection schedule for 1981 and older model vehicles, and a five-year inspection schedule for a 1976 or newer motor vehicle registered as a collector's item.
 - (c)** Repealed.
 - (d)** Subject to section 42-4-310 (4), the certification of emissions control shall be obtained by the seller and transferred to the new owner at the time of vehicle sale or transfer.
 - (e)** For purposes of this subsection (3), "sale or transfer" shall not include a change only in the legal ownership as shown on the vehicle's documents of title, whether for purposes of refinancing or otherwise, that does not entail a change in the physical possession or use of the vehicle.
- (3.5)** "Clean screen program" means the remote sensing system or other emission profiling system established and operated pursuant to sections 42-4-305 (12), 42-4-306 (23), 42-4-307 (10.5), and 42-4-310 (5).
- (4)** "Commission" means the air quality control commission, created in section 25-7-104, C.R.S.
- (5)** "Contractor" means any person, partnership, entity, or corporation that is awarded a contract by the state of Colorado through a competitive bid process conducted by the division in consultation with the executive director and in accordance with the "Procurement Code", articles 101 to 112 of title 24, C.R.S., and section 42-4-306, to provide inspection services for vehicles required to be inspected pursuant to section 42-4-310 within the enhanced program area, as set forth in subsection (9) of this section, to operate enhanced inspection centers necessary to perform inspections, and to operate the clean screen program within the program area.
- (6)** "Division" means the division of administration in the department of public health and environment.

- (7) "Emissions inspector" means:
- (a) An individual trained and licensed in accordance with section 42-4-308 to inspect motor vehicles at an inspection-only facility, fleet inspection station, or motor vehicle dealer test facility subject to the enhanced emissions program set forth in this part 3; or
 - (b) An individual employed by an enhanced inspection center who is authorized by the contractor to inspect motor vehicles subject to the enhanced emissions program set forth in this part 3 and subject to the direction of said contractor.
- (8) "Emissions mechanic" means an individual licensed in accordance with section 42-4-308 to inspect and adjust motor vehicles subject to the automobile inspection and readjustment program until such program is replaced as provided in sections 42-4-301 to 42-4-316 and to the basic emissions program after such replacement.
- (8.5) "Enhanced emissions inspection" means a motor vehicle emissions inspection conducted pursuant to the enhanced emissions program, including a detection of high emissions by remote sensing, an identification of high emitters, a clean screen inspection, or an inspection conducted at an enhanced inspection center.
- (9) (a) "Enhanced emissions program" means the emissions inspection program established pursuant to the federal requirements set forth in the federal performance standards, 40 CFR, part 51, subpart S, in the locations set forth in paragraph (c) of subsection (20) of this section.
- (b) (Deleted by amendment, L. 2009, (SB 09-003), Ch. 322, p. 1714, § 1, effective June 1, 2009.)
- (10) "Enhanced inspection center" means a strategically located, single- or multi-lane, high-volume, inspection-only facility operated in the enhanced emissions program area by a contractor not affiliated with any other automotive-related service, which meets the requirements of sections 42-4-305 and 42-4-306, which is equipped to enable vehicle exhaust gas and evaporative and chlorofluorocarbon emissions inspections, and which the owner or operator is authorized to operate by the executive director as an inspection-only facility.
- (11) "Environmental protection agency" means the federal environmental protection agency.
- (12) "Executive director" means the executive director of the department of revenue or the designee of such executive director.
- (13) "Federal act" means the federal "Clean Air Act", 42 U.S.C. sec. 7401 et seq., as in effect on November 15, 1990, and any federal regulation promulgated pursuant to said act.
- (14) "Federal requirements" means regulations of the environmental protection agency pursuant to the federal act.

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- (15) "Fleet inspection station" means a facility which meets the requirements of section 42-4-308, which is equipped to enable appropriate emissions inspections as prescribed by the commission and which the owner or operator is licensed to operate by the executive director as an inspection station for purposes of emissions testing on vehicles pursuant to section 42-4-309.
- (15.5) Repealed.
- (16) "Inspection and readjustment station" means:
- (a) Repealed.
 - (b) (I) A facility within the basic emissions program area as defined in subsection (20) of this section which meets the requirements of section 42-4-308, which is equipped to enable vehicle exhaust, evaporative, and chlorofluorocarbon emissions inspections and any necessary adjustments and repairs to be performed, and which facility the owner or operator is licensed by the executive director to operate as an inspection and readjustment station.
 - (II) This paragraph (b) is effective January 1, 1994.
- (17) (a) "Inspection-only facility" means a facility operated by an independent owner-operator within the enhanced program area as defined in subsection (20) of this section which meets the requirements of section 42-4-308 and which is equipped to enable vehicle exhaust, evaporative, and chlorofluorocarbon emissions inspections and which facility the operator is licensed to operate by the executive director as an inspection-only facility. Such inspection-only facility shall be authorized to conduct inspections on model year 1981 and older vehicles.
- (b) This subsection (17) is effective January 1, 1995.
- (18) "Motor vehicle", as applicable to the AIR program, includes only a motor vehicle that is operated with four wheels or more on the ground, self-propelled by a spark-ignited engine burning gasoline, gasoline blends, gaseous fuel, blends of liquid gasoline and gaseous fuels, alcohol, alcohol blends, or other similar fuels, having a personal property classification of A, B, or C pursuant to section 42-3-106, and for which registration in this state is required for operation on the public roads and highways or which motor vehicle is owned or operated or both by a nonresident who meets the requirements set forth in section 42-4-310 (1)(c). "Motor vehicle" does not include kit vehicles; vehicles registered pursuant to section 42-12-301 or 42-3-306 (4); vehicles registered pursuant to section 42-12-401 that are of model year 1975 or earlier or that have two-stroke cycle engines manufactured prior to 1980; or vehicles registered as street-rods pursuant to section 42-3-201.
- (19) (a) "Motor vehicle dealer test facility" means a stationary or mobile facility which is operated by a state trade association for motor vehicle dealers which is licensed to

(b) (I) Inspections conducted pursuant to section 42-4-309 (3) by a motor vehicle dealer test facility shall only be conducted on used motor vehicles inventoried or consigned in this state for retail sale by a motor vehicle dealer that is licensed pursuant to part 1 of article 20 of title 44 and that is a member of the state trade association operating the motor vehicle dealer test facility.

(II) Inspection procedures used by a motor vehicle dealer test facility pursuant to this paragraph (b) shall include a loaded mode transient dynamometer test cycle in combination with appropriate idle short tests pursuant to rules and regulations of the commission.

- (I) That portion of Adams County that is east of Kiowa creek (Range sixty-two west, townships one, two, and three south) between the Adams-Arapahoe county line and the Adams-Weld county line;
- (II) That portion of Arapahoe County that is east of Kiowa creek (Range sixty-two west, townships four and five south) between the Arapahoe-Elbert county line and the Arapahoe-Adams county line;
- (III) That portion of El Paso county that is east of the following boundary, defined on a south-to-north axis: From the El Paso-Pueblo county line north (upstream) along Chico creek (Ranges 63 and 64 West, Township 17 South) to Hanover road, then east along Hanover road (El Paso county route 422) to Peyton highway, then north along Peyton highway (El Paso county route 463) to Falcon highway, then west on Falcon highway (El Paso county route 405) to Peyton highway, then north on Peyton highway (El Paso county route 405) to Judge Orr road, then west on Judge Orr road (El Paso county route 108) to Elbert road, then north on Elbert road (El Paso county route 91) to the El Paso-Elbert county line;
- (IV) That portion of Larimer county that is west of the boundary defined on a north-to-south axis by Range seventy-one west and north of the boundary defined on an east-to-west axis by township five north, that portion that is west of the boundary defined on a north-to-south axis by range seventy-three west, and that portion that is north of the boundary latitudinal line 40 degrees, 42 minutes, 47.1 seconds north;

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- (V) That portion of Weld county that is north of the boundary defined on an east-to-west axis by Weld county road 78; that portion that is east of the boundary defined on a north-to-south axis by Weld county road 43 and north of the boundary defined on an east-to-west axis by Weld county road 62; that portion that is east of the boundary defined on a north-to-south axis by Weld county road 49, south of the boundary defined on an east-to-west axis by Weld county road 62 and north of the boundary defined on an east-to-west axis by Weld county road 46; that portion that is east of the boundary defined on a north-to-south axis by Weld county road 27, south of the boundary defined on an east-to-west axis by Weld county road 46 and north of the boundary defined on an east-to-west axis by Weld county road 36; that portion that is east of the boundary defined on a north-to-south axis by Weld county road 19, south of the boundary defined on an east-to-west axis by Weld county road 36 and north of the boundary defined on an east-to-west axis by Weld county road 20; and that portion that is east of the boundary defined on a north-to-south axis by Weld county road 39 and south of the boundary defined on an east-to-west axis by Weld county road 20.
- (b) Effective January 1, 2010, the basic emissions program area shall consist of the county of El Paso, as described in paragraph (a) of this subsection (20).
- (c) (I) Effective January 1, 2010, the enhanced emissions program area shall consist of the counties of Adams, Arapahoe, Boulder, Douglas, Jefferson, Larimer, and Weld, and the cities and counties of Broomfield and Denver as described in paragraph (a) of this subsection (20) and subject to paragraph (d) of this subsection (20). Notwithstanding any other provision of this section, vehicles registered in the counties of Larimer and Weld shall not be required to obtain a certificate of emissions control prior to July 1, 2010, in order to be registered or reregistered.
- (II) (Deleted by amendment, L. 2003, p. 1357, 1, effective August 6, 2003.)
- (III) Only those counties included in the basic emissions program area pursuant to paragraph (b) of this subsection (20) that violate national ambient air quality standards for carbon monoxide or ozone as established by the environmental protection agency may, on a case-by-case basis, be incorporated into the enhanced emissions program by final order of the commission.
- (d) The commission shall review the boundaries of the program area and may, by rule promulgated on or before December 31, 2011, adjust such boundaries to exclude particularly identified regions from either the basic program area, the enhanced

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area, or both, based on an analysis of the applicable air quality science and the effects of the program on the population living in such regions.

- (21) "Registered repair facility or technician" means an automotive repair business which has registered with the division, agrees to have its emissions-related cost effectiveness monitored based on inspection data, and is periodically provided performance statistics for the purpose of improving emissions-related repairs. Specific repair effectiveness information shall subsequently be provided to motorists at the time of inspection failure.
- (22) "State implementation plan" or "SIP" means the plan required by and described in section 110 (a) of the federal act.
- (23) "Technical center" means any facility operated by the division or its designee to support AIR program activities including but not limited to licensed emissions inspectors or emissions mechanics, motorists, repair technicians, or small business technical assistance.
- (23.5) "Vehicle" means a motor vehicle as defined in subsection (18) of this section.
- (24) "Verification of emissions test" means a certificate to be attached to a motor vehicle's windshield verifying that the vehicle has been issued a valid certification of emissions control.

42-4-310. Periodic emissions control inspection required

- (1) (a) (I) Subject to subsection (4) of this section, a motor vehicle that is required to be registered in the program area shall not be sold, registered for the first time without a certification of emissions compliance, or reregistered unless the vehicle has passed a clean screen test or has a valid certification of emissions control as required by the appropriate county. The provisions of this subsection (1)(a) do not apply to motor vehicle transactions at wholesale between motor vehicle dealers licensed pursuant to part 1 of article 20 of title 44. An inspection is not required prior to the sale of a motor vehicle with at least twelve months remaining before the vehicle's certification of emissions compliance expires if such certification was issued when the vehicle was new.
- (II) (A) If title to a roadworthy motor vehicle, as defined in section 42-6-102 (15), for which a certification of emissions compliance or emissions waiver must be obtained pursuant to this paragraph (a) is being transferred to a new owner, the new owner may require at the time of sale that the prior owner provide said certification as required for the county of residence of the new owner.
- (B) The new owner shall submit such certification to the department of revenue or an authorized agent thereof with application for registration of the motor vehicle.

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- (C) If such vehicle is being registered in the program area for the first time, the owner shall obtain any certification required for the county where registration is sought and shall submit such certification to the department of revenue or an authorized agent thereof with such owner's application for the registration of the motor vehicle. A motor vehicle being registered in the program area for the first time may be registered without an inspection or certification if the vehicle has not yet reached its fourth model year or a later model year established by the commission pursuant to section 42-4-306 (8)(b).
- (D) Except for a motor vehicle that was registered as a collector's item before September 1, 2009, and meets the requirements of sections 42-12- 101 (2)(b) and 42-12- 404 (2), to be sold or transferred or to renew the registration, a 1976 or newer model motor vehicle registered as a collector's item under article 12 of this title must be inspected and have a certification of emissions control. The certification of emissions control is valid for sixty months.
- (b) (I) (A) Repealed.
- (B) New motor vehicles owned by the United States government or an agency thereof or by the state of Colorado or any agency or political subdivision thereof that would be registered in the program area shall be issued a certification of emissions compliance without inspection that shall expire on the anniversary of the day of the issuance of such certification when such vehicle has reached its fourth model year or a later model year established by the commission pursuant to section 42-4-306 (8)(b). Prior to the expiration of such certification such vehicle shall be inspected and a certification of emissions control shall be obtained therefor.
- (C) Effective May 28, 1999, 1982 and newer model motor vehicles that are owned by the United States government or an agency thereof or by the state of Colorado or any agency or political subdivision thereof that would be registered in the program area shall be inspected every two years, and shall be issued a certification of emissions compliance that shall be valid for twenty-four months; except that vehicles owned or operated by any agency or political subdivision that is authorized and licensed pursuant to section 42-4-309 to inspect fleet vehicles shall be inspected annually.

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- (D) Effective May 28, 1999, 1981 and older model motor vehicles that are owned by the United States government or an agency thereof or by the state of Colorado or any agency or political subdivision thereof that would be registered in the program area shall be inspected once each year, and shall be issued a certification of emissions compliance that shall be valid for twelve months.
- (E) Any vehicle subject to this subparagraph (I) that is suspected of having an emissions problem may undergo a voluntary inspection as provided in subparagraph (IV) of paragraph (c) of this subsection (1).
- (II) (A) Motor vehicle dealers shall purchase verification of emissions test forms for the sum of twenty-five cents per form from the department or persons authorized by the department to make such sales to be used only on new motor vehicles. No refund or credit shall be allowed for any unused verification of emissions test forms. New motor vehicles required under this section to have a verification of emissions test form shall be issued a certification of emissions compliance without inspection, which shall expire on the anniversary of the day of the issuance of such certification when such vehicle has reached its fourth model year or a later model year established by the commission pursuant to section 42-4-306 (8)(b). Prior to the expiration of such certification such vehicle shall pass a clean screen test or be inspected and a certification of emissions control shall be obtained therefor.
- (B) 1982 and newer model motor vehicles required pursuant to this section to have a certification of emissions control shall be inspected at the time of the sale or transfer of any such vehicle and, prior to registration renewal, shall be issued a certification of emissions control that shall be valid for twenty-four months except as provided under section 42-4-309. An inspection is not required prior to the sale of a motor vehicle with at least twelve months remaining before the vehicle's certification of emissions compliance expires if such certification was issued when the vehicle was new. This sub-subparagraph (B) does not apply to the sale of a motor vehicle that is inoperable or otherwise cannot be tested in accordance with regulations promulgated by the department of revenue if the seller of the motor vehicle provides a written notice to the purchaser pursuant to the requirements of subsection (4) of this section.

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- (C)** 1981 and older model motor vehicles required pursuant to this section to have a certification of emissions control shall be inspected at the time of the sale or transfer of any such vehicle and, prior to registration renewal, shall be issued a certification of emissions control that shall be valid for twelve months. This sub-subparagraph (C) does not apply to the sale of a motor vehicle which is inoperable or otherwise cannot be tested in accordance with regulations promulgated by the department of revenue if the seller of the motor vehicle provides a written notice to the purchaser pursuant to the requirements of subsection (4) of this section.
- (III)** Upon registration or renewal of registration of a motor vehicle required to have a certification of emissions control, the department shall issue a tab identifying the vehicle as requiring certification of emissions control. The tab shall be displayed from the time of registration. The verification of emissions test shall also be displayed on the motor vehicle in a location prescribed by the department of revenue consistent with federal regulations.
- (c)**

 - (I)** Effective October 1, 1989, those motor vehicles owned by nonresidents who reside in either the basic or enhanced emissions program areas or by residents who reside outside the program area who are employed for at least ninety days in any twelve-month period in a program area or who are attending school in a program area, and are operated in either the basic or enhanced emissions program areas for at least ninety days, shall be inspected as required by this section and a valid certification of emissions compliance or emissions waiver shall be obtained as required for the county where said person is employed or attends school. Such nonresidents include, but are not limited to, all military personnel, temporarily assigned employees of business enterprises, and persons engaged in activities at the olympic training center.
 - (II)** Any person owning or operating a business and any postsecondary educational institution located in a program area shall inform all persons employed by such business or attending classes at such institution that they are employed or attending classes in a program area and are required to comply with the provisions of subparagraph (I) of this paragraph (c).
 - (III)** Vehicles that are registered in a program area and are being operated outside such area but within another program area shall comply with all program requirements of the area where such vehicles are being operated. Vehicles registered in a program area that are being temporarily operated

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outside the state at the time of registration or registration renewal may apply to the department of revenue for a temporary exemption from program requirements. Upon return to the program area, such vehicles must be in compliance with all requirements within fifteen days. A temporary exemption shall not be granted if the vehicle will be operated in an emissions testing area in another state unless proof of emissions from that area is submitted.

- (IV) Nothing in this section shall be deemed to prevent or shall be interpreted so as to hinder the voluntary inspection of any motor vehicle in the enhanced emissions program. A certificate of emissions control issued under the provisions of the enhanced emissions program shall be acceptable as a demonstration of compliance within the basic program for vehicle registration purposes. In order to provide motorist protection, those vehicles voluntarily inspected and that fail said inspection but that are warrantable under manufacturers' emissions control warranties pursuant to section 207 (A) and (B) of the federal act shall comply with the emissions-related repair requirements of this part 3.
- (V) Motor vehicles operated in the enhanced emissions program area, and required to be inspected pursuant to subparagraph (I) of this paragraph (c), shall comply with the inspection requirements of the enhanced emissions program area and are not required to comply with the inspection requirements of the basic emissions program area.
- (d) (I) Repealed.

 - (II) (A) For the basic emissions program, effective January 1, 1994, for businesses which operate nineteen or fewer motor vehicles and for 1981 or older private motor vehicles required to be registered in the basic emissions program area, after any adjustments or repairs required pursuant to section 42-4-306, if total expenditures of at least seventy-five dollars have been made to bring the vehicle into compliance with applicable emissions standards and the vehicle still does not meet such standards, a certification of emissions waiver shall be issued for such vehicle.

(B) (Deleted by amendment, L. 2011, (SB 11-031), Ch. 86, p. 246, § 11, effective August 10, 2011.)
 - (III) Repealed.
 - (IV) For the basic emissions program, effective January 1, 1994, for businesses that operate nineteen or fewer vehicles and for private motor vehicles only of a model year 1982 or later required to be registered in the basic

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emissions program area, after any adjustments or repairs required pursuant to section 42-4-306, if total expenditures of at least two hundred dollars have been made to bring the vehicle into compliance with the applicable emissions standards and the vehicle still does not meet such standards, a certification of emissions waiver shall be issued for such vehicle. For vehicles not older than two years or that have not more than twenty-four thousand miles, or such period of time and mileage as established for warranty protection by amendments to federal regulations, no emissions-related repair waivers shall be issued due to the provisions and enforcement of section 207 (A) and (B) of the federal act relating to emissions control systems components and performance warranties. Vehicles that are owned by the state of Colorado or any agency or political subdivision thereof are not eligible for emissions-related repair waivers under this subparagraph (IV).

(V) Repealed.

(VI) For the enhanced emissions program, effective January 1, 1995, for businesses that operate nineteen or fewer vehicles and for private motor vehicles only of a model year 1968 and later required to be registered in the enhanced emissions program area, after any adjustments or repairs required pursuant to section 42-4-306, if total expenditures of at least four hundred fifty dollars have been made to bring the vehicle into compliance with applicable emissions standards and the vehicle does not meet such standards, a certification of emissions waiver shall be issued for such vehicle except as prescribed in subparagraph (XII) of this paragraph (d) pertaining to vehicle warranty. The four-hundred-fifty-dollar minimum expenditure may be adjusted annually by an amount not to exceed the percentage, if any, by which the consumer price index for all urban consumers (CPIU) for the Denver-Boulder metropolitan statistical area for the preceding year differs from such index for 1989. Vehicles that are owned by the state of Colorado or any agency or political subdivision thereof are not eligible for emissions-related repair waivers under this subparagraph (VI).

(VII) Repealed.

(VIII) (A) For the enhanced emissions program except as provided in sub-subparagraph (B) of this subparagraph (VIII), for businesses that operate nineteen or fewer vehicles and for private motor vehicles only of a model year 1967 or earlier required to be registered in the enhanced emissions program area, after any adjustments or repairs required under section 42-4-306, if total expenditures of at least

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seventy-five dollars have been made to bring the vehicle into compliance with applicable emissions standards and the vehicle still does not meet the standards, a certification of emissions waiver shall be issued for the vehicle.

- (B)** This subparagraph (VIII) shall apply in Boulder County, effective July 1, 1995.
- (IX) (A)** For the enhanced emissions program except as provided in sub-subparagraph (B) of this subparagraph (IX) effective January 1, 1995, for vehicles subject to a transient, loaded mode dynamometer inspection procedure under the enhanced program as determined by the commission, a certificate of waiver may be issued by an authorized state representative, if after failing a retest, at which point the minimum repair cost limit of four hundred fifty dollars has not been met, a complete and documented physical and functional diagnosis of the vehicle performed at an emissions technical center indicates that no additional emissions-related repairs would be effective or needed.
- (B)** This subparagraph (IX) shall apply in Boulder County, effective July 1, 1995.
- (X)** Subject to the provisions of subparagraph (V) of this paragraph (d), a certificate of emissions control shall not be issued for vehicles in the program area exhibiting smoke or indications of tampering with or poor maintenance of emissions control systems including on-board diagnostic systems.
- (XI)** As used in this paragraph (d), "total expenditures" means those expenditures directly related to adjustment or repair of a motor vehicle to reduce exhaust or evaporative emissions to a level which complies with applicable emissions standards. The term does not include an inspection fee, or any costs of adjustment, repair, or replacement necessitated by the disconnection of, tampering with, or abuse of air pollution control equipment, improper fuel use, or visible smoke.
- (XII)** No certification of emissions waiver shall be issued for vehicles not older than two years or which have not more than twenty-four thousand miles, or are of such other age and mileage as established for warranty protection under the federal act in accordance with the provisions and enforcement of section 207 (A) and (B) of the federal act relating to emissions control component and systems performance warranties.

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- (2) (a) The emissions inspection required under this section shall include an analysis of tail pipe and evaporative emissions. After January 1, 1994, such inspection shall include an analysis of emissions control equipment including on-board diagnostic systems, chlorofluorocarbons, and visible smoke emissions for the basic emissions program area and the enhanced emissions program area and emissions testing that meets the performance standards set by federal requirements for the enhanced emissions program area by means of procedures specified by regulation of the commission to determine whether the motor vehicle qualifies for issuance of a certification of emissions compliance. For motor vehicles of the model year 1975 or later, not tested under a transient load on a dynamometer, said inspection shall also include a visual inspection of emissions control equipment pursuant to rules of the commission.
- (b) & (c) Repealed.
- (d) (I) In the basic emissions program area, effective January 1, 1994, in order to be issued a certificate of emissions waiver, appropriate adjustments and repairs must have been performed at a licensed inspection and readjustment station by a licensed emissions mechanic.
- (II) In the enhanced emissions program area, effective January 1, 1995, in order to be issued a certificate of emissions waiver, appropriate adjustments and repairs must have been performed by a technician at a registered repair facility within the enhanced emissions program area.
- (III) Adjustments and repairs performed by a registered repair facility and technician within the enhanced emissions program area shall be sufficient for compliance with the provisions of this paragraph (d) in the basic program area.
- (3) (a) Effective July 1, 1993, any home rule city, city, town, or county shall, after holding a public hearing and receiving public comment and upon request by the governing body of such local government to the department of public health and environment and the department of revenue and after approval by the general assembly acting by bill pursuant to paragraph (e) of this subsection (3), be included in the program area established pursuant to sections 42-4-301 to 42-4-316. When such a request is made, said departments and governing body shall agree to a start-up date for the program in such area, and, on or after such date, all motor vehicles, as defined in section 42-4-304 (18), which are registered in the area shall be inspected and required to comply with the provisions of sections 42-4-301 to 42-4-316 and rules and regulations adopted pursuant thereto as if such area was included in the program area. Except as provided in paragraph (c) of this subsection (3), the department of public health and environment and the department of revenue, the executive director, and the commission shall perform

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all functions and exercise all powers related to the program in areas included in the program pursuant to this subsection (3) that they are otherwise required to perform under sections 42-4-301 to 42-4-316.

- (b)** Effective July 1, 1993, notwithstanding the provisions of section 42-4-304 (20), a local government with jurisdiction over an area excluded from the program area pursuant to section 42-4-304 (20) may request inclusion in the program area, and the exclusion under section 42-4-304 (20) shall not apply to vehicles registered within such area.
- (c)** Effective July 1, 1993, the inclusion pursuant to paragraph (a) or (b) of this subsection (3) of any home rule city, city, town, or county in the program area shall not be submitted to the United States environmental protection agency as a revision to the state implementation plan or otherwise included in such plan. Any governing body which requests inclusion of an area pursuant to paragraph (a) or (b) of this subsection (3) in the program area may, after a minimum period of five years, request termination of the program in such area, and the program in such area shall be terminated thirty days after the receipt by the department of revenue of such a request.
- (d)** Effective January 1, 1994, except for those entities included within the program area pursuant to section 42-4-304 (20), for inclusion in the program area, any home rule city, city, town, or county shall have the basic emissions program test requirements and standards implemented as its emissions inspection program.
- (e)** Unless a home rule city, city, town, or county violates national ambient air quality standards as established by the environmental protection agency, the inclusion pursuant to paragraph (a) or (b) of this subsection (3) of any home rule city, city, town, or county in the program area shall be contingent upon approval by the general assembly acting by bill to include any such home rule city, city, town, or county in the program area.
- (4) (a)** The seller of a motor vehicle that is inoperable or otherwise cannot be tested in accordance with rules promulgated by the department of revenue or that is being sold pursuant to part 18 or part 21 of this article is not required to obtain a certification of emissions control prior to the sale of the vehicle if the seller provides a written notice to the purchaser prior to completion of the sale that clearly indicates the following:

 - (I)** the vehicle does not currently comply with the emissions requirements for the program area;
 - (II)** The seller does not warrant that the vehicle will comply with emissions requirements; and

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- (III)** The purchaser is responsible for complying with emissions requirements prior to registering the vehicle in the emissions program area.
- (b)** The department shall prepare a form to comply with the provisions of paragraph (a) of this subsection (4) and shall make such form available to dealers and other persons who are selling motor vehicles which are inoperable or otherwise cannot be tested in accordance with regulations promulgated by the department of revenue.
- (c)** If a motor vehicle is exempted from the requirement for obtaining a certification of emissions control prior to sale pursuant to this subsection (4), the new owner of the motor vehicle is required to obtain a certification of emissions control for such motor vehicle before registering it in the program area.
- (5)**

 - (a)** Notwithstanding any other provision of this section, any eligible motor vehicle registered in a clean screen program county that complies with the requirements of the clean screen program under the provisions of sections 42-4-305 (12), 42-4-306 (23), and 42-4-307 (10.5)(a), by passing the requirements of such program and applicable rules shall be deemed to have complied with the inspection requirements of this section for the applicable emissions inspection cycle. For purposes of this subsection (5), "eligible motor vehicle" means a motor vehicle, including trucks, for model years 1978 and earlier having a gross vehicle weight rating of six thousand pounds or less and for model years 1979 and newer having a gross vehicle weight rating of eight thousand five hundred pounds or less.
 - (b)**

 - (I)** If the commission does not specify a date for authorized agents in the basic emissions program area to begin collecting emissions inspection fees at the time of registration pursuant to section 42-3-304 (19)(a), or if the contractor determines that a motor vehicle required to be registered in the basic program area has complied with the inspection requirements pursuant to this subsection (5), a notice shall be sent to the owner of the vehicle identifying the owner of the vehicle, the license plate number, and other pertinent registration information, and stating that the vehicle has successfully complied with the applicable emission requirements. The notice must also include a notification that the registered owner of the vehicle may return the notice to the authorized agent with the payment as set forth on the notice to pay for the clean screen program. The receipt of the payment from the motor vehicle owner is notice that the motor vehicle has complied with the inspection requirements pursuant to this subsection (5).
 - (II)** For vehicles with registration renewals coming due on or after the dates specified by the commission for authorized agents to collect emissions inspection fees at the time of registration, if the contractor determines that

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a motor vehicle required to be registered in the program area has complied with the inspection requirements pursuant to this subsection (5), the contractor shall send a notice to the department of revenue identifying the owner of the vehicle, the license plate number, and any other pertinent registration information, stating that the vehicle has successfully complied with the applicable emission requirements.

- (c) The department shall, by contract with a private vendor or by rule, establish a procedure for a vehicle owner to obtain the necessary emissions-related documents for the registration and operation of a vehicle that has complied with the inspection requirements pursuant to this subsection (5).

42-4-406. Requirement of certification of emissions control for registration - testing for diesel smoke opacity compliance

- (1) (a) A diesel vehicle in the program area that is registered or required to be registered pursuant to article 3 of this title, routinely operates in the program area, or is principally operated from a terminal, maintenance facility, branch, or division located within the program area shall not be sold, registered for the first time, or reregistered unless such vehicle has been issued a certification of emissions control within:
 - (I) The past twelve months if the motor vehicle is a heavy-duty diesel vehicle that is over ten model years old;
 - (II) The last twenty-four months if the motor vehicle is a heavy-duty diesel vehicle that is ten model years old or newer;
 - (III) The last twelve months if the motor vehicle is a light-duty diesel vehicle that is at least ten model years old or that is model year 2003 or older; or
 - (IV) The last twenty-four months if the motor vehicle is a light-duty diesel vehicle that is ten model years old or newer and that is model year 2004 or newer.
- (b) (I) a certification of emissions control shall be issued to any diesel vehicle that has been inspected and tested pursuant to subsection (2) of this section for diesel smoke opacity compliance and was found at such time to be within the smoke opacity limits established by the commission.
- (II) Notwithstanding subparagraph (I) of this paragraph (b), new diesel vehicles, required under this section to have a certification of emissions control, shall be issued a certification of emissions compliance without inspection or testing. Prior to the expiration of the certification, the owner shall have the vehicle inspected and shall obtain a certification of

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emissions control for diesel smoke opacity compliance. The certificate shall expire on the earliest to occur of the following:

- (A) The anniversary of the day of the issuance of the certification when the vehicle has reached its fourth model year if it is a light-duty diesel vehicle;
 - (B) The anniversary of the day of the issuance of the certification when the vehicle has reached its fourth model year if it is a heavy-duty diesel vehicle;
 - (C) The anniversary of the day of the issuance of the certification when the vehicle has reached its sixth model year if the vehicle has a gross vehicle weight rating of twenty-six thousand pounds or more and it is of a model year of 2014 or newer; or
 - (D) On the date of the transfer of ownership if the date is within twelve months before the certification would expire under sub-subparagraph (A), (B), or (C) of this subparagraph (II), unless the transfer of ownership is a transfer from the lessor to the lessee.
- (2) (a) On or after January 1, 1990, all heavy duty diesel vehicles in the program area not subject to the provisions of section 42-4- 414, with fleets of nine or more, shall be required to be tested for diesel smoke opacity compliance at a licensed diesel inspection station by submitting to loaded mode opacity testing utilizing dynamometers or on-road tests as prescribed by the commission.
- (b) Light-duty diesel vehicles in the program area shall be required to be tested for diesel smoke opacity compliance at a licensed diesel inspection station by submitting to loaded mode opacity testing utilizing dynamometers.

42-4-414. Heavy-duty diesel fleet inspection and maintenance program - penalty - rules

- (1) The commission shall develop and implement, effective January 1, 1987, a fleet inspection and maintenance program for diesel-powered motor vehicles of more than fourteen thousand pounds gross vehicle weight rating. Regional transportation district buses, state, county, and municipal vehicles, and private diesel fleets shall participate in the program through self-certification inspection procedures as developed by the commission.
- (2) (a) The commission shall promulgate rules that:
- (I) Require owners of diesel-powered motor vehicles, registered in the program area, routinely operated in the program area, or principally operated from a terminal, maintenance facility, branch, or division located within the program area, and subject to the provisions of this section, to

(II) Are strictly construed;

(IV) Do not require additional fees or loaded mode testing equipment.

(b.5) As an alternative to automated or visual opacity testing, the commission may promulgate rules that establish an alternative method for operators of heavy-duty diesel vehicles to demonstrate compliance with opacity standards by following and submitting proof of exemplary maintenance practices. Any commission rules promulgated under this paragraph (b.5) must contain eligibility requirements for enrollment of heavy-duty diesel vehicles in the alternative method, including when vehicles or fleets should be discontinued from enrollment.

(II) If a new diesel vehicle has a gross vehicle weight rating of at least twenty-six thousand pounds and is of a model year of 2014 or newer, the commission shall exempt the vehicle from testing until the vehicle has reached its sixth model year or, if ownership of the vehicle is transferred after the vehicle has reached its fifth model year, until the date of the transfer of ownership.

(I) Twelve months unless subparagraph (II) of this paragraph (d) applies; or

(2.5) An owner of a fleet registered in the program area may certify to the executive director or the executive director's designee, in a form and manner required by the executive director, that a diesel vehicle registered in the program area is physically based and

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principally operated from a terminal, division, or maintenance facility outside the program area. Any diesel vehicle registered in the program area, but certified to be physically based and principally operated from a terminal, division, or maintenance facility outside the program area, is exempt from this section. The commission shall promulgate rules to administer this subsection (2.5).

- (3) (a) & (b) (Deleted by amendment, L. 2003, p. 1023, § 1, effective August 6, 2003.)
- (c) On or after January 1, 1990, in addition to any other penalty set forth in this subsection (3), any owner who is subject to the provisions of this section and who commits an excessive violation of this section twice in a twelve-month period shall be subject to the provisions of this part 4. For purposes of this paragraph (c), "excessive violation" shall be that definition recommended by the governor's blue ribbon diesel task force in 1988 and thereafter adopted by the air quality control commission, or, if such task force does not make a recommendation, "excessive violation" shall be that definition adopted by the air quality control commission.
- (4) As used in this section, "fleet" means nine or more diesel-powered motor vehicles.

42-6-102. Definitions

As used in this part 1, unless the context otherwise requires:

- (1) "All-terrain vehicle" means a three- or four-wheeled vehicle that travels on low-pressure tires with a seat that is straddled by the rider and with handlebars for steering control.
- (1.5) "Authorized agent" has the same meaning as set forth in section 42-1- 102 (5).
- (1.7) "Brand" means a permanent designation or marking on a motor vehicle's title, associated with the vehicle identification number, that conveys information about the value of the vehicle or indicates that the vehicle:
- (a) Is a salvage vehicle;
 - (b) Is rebuilt from salvage;
 - (c) Is nonrepairable;
 - (d) Is flood damaged;
 - (e) Has had its odometer tampered with; or
 - (f) Has a designation placed on the title by another jurisdiction.
- (2) "Dealer" means any person, firm, partnership, corporation, or association licensed under the laws of this state to engage in the business of buying, selling, exchanging, or otherwise trading in motor vehicles.
- (3) "Department" means the department of revenue acting directly or through a duly authorized officer, agent, or third-party provider.

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- (4) "Director" means the executive director of the department of revenue.
- (5) (a) "Electronic record" means a record generated, created, communicated, received, sent, or stored by electronic means.
(b) Repealed
- (5.5) "Electronic signature" has the same meaning as set forth in section 24-71-101.
- (6) "File" means the creation of or addition to an electronic record maintained for a certificate of title by the director or an authorized agent.
- (6.1) "Flood damaged" means a motor vehicle was submerged in water to the point that rising water has reached over the doorsill and entered the passenger compartment and damaged electrical, computer, or mechanical components.
- (6.3) "Historical military vehicle" means a vehicle of any size or weight that is valued for historical purposes, that was manufactured for use by any nation's armed forces, and that is maintained in a condition that represents its military design and markings.
- (6.4) "Junk" means a vehicle that is incapable of operating on roads and is no longer a vehicle because it has been destroyed, dismantled, or changed. These vehicles may not be issued a certificate of title, and any title secured in the purchase of such a vehicle is to be surrendered to the department, which shall cancel the vehicle identification number and remove the vehicle from the motor vehicle system.
- (6.5) "Kit vehicle" means a passenger-type motor vehicle assembled, by other than a licensed manufacturer, from a manufactured kit that includes a prefabricated body and chassis and is accompanied by a manufacturer's statement of origin.
- (7) "Lien" means a security interest in a motor vehicle under article 9 of title 4, C.R.S., and this article.
- (8) "Manufacturer" means a person, firm, partnership, corporation, or association engaged in the manufacture of new motor vehicles, trailers, or semitrailers.
- (9) "Mortgage" or "chattel mortgage" means a security agreement as defined in section 4-9-102 (76), C.R.S.
- (10) "Motor vehicle" means any self-propelled vehicle that is designed primarily for travel on the public highways and is generally and commonly used to transport persons and property over the public highways, including trailers, semitrailers, and trailer coaches, without motive power. "Motor vehicle" does not include the following:
 - (a) A low-power scooter or an electric scooter, as both terms are defined in section 42-1-102;
 - (b) A vehicle that operates only upon rails or tracks laid in place on the ground or that travels through the air or that derives its motive power from overhead electric lines;

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- (c) A farm tractor, farm trailer, and any other machines and tools used in the production, harvesting, and care of farm products; or
 - (d) Special mobile machinery or industrial machinery not designed primarily for highway transportation.
- (11) "New vehicle" means a motor vehicle being transferred for the first time from a manufacturer or importer, or dealer or agent of a manufacturer or importer, to the end user or customer. A motor vehicle that has been used by a dealer for the purpose of demonstration to prospective customers shall be considered a "new vehicle" unless such demonstration use has been for more than one thousand five hundred miles. Motor vehicles having a gross vehicle weight rating of sixteen thousand pounds or more shall be exempt from this definition.
- (11.2) "Nonrepairable" means a motor vehicle that:
 - (a) Is incapable of safe operation on the road and that has no resale value except as scrap or as a source of parts; or
 - (b) The owner has designated as scrap or as a source of parts.
- (11.3) "Nonrepairable title" means a title document issued by the director or authorized agent to indicate ownership of a nonrepairable vehicle.
- (11.5) (a) "Off-highway vehicle" means a self-propelled vehicle that is:
 - (I) Designed to travel on wheels or tracks in contact with the ground;
 - (II) Designed primarily for use off of the public highways; and
 - (III) Generally and commonly used to transport persons for recreational purposes.
- (b) (I) Except as described in subsection (11.5)(b)(II) of this section, "off-highway vehicle" includes vehicles commonly known as all-terrain vehicles, snowmobiles, and surplus military vehicles but does not include:
 - (A) Toy vehicles;
 - (B) Vehicles designed and used primarily for travel on, over, or in the water;
 - (C) Historical military vehicles;
 - (D) Golf carts or golf cars;
 - (E) Vehicles designed and used to carry persons with disabilities;
 - (F) Vehicles designed and used specifically for agricultural, logging, or mining purposes; or
 - (G) Motor vehicles

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- (C) A vehicle that is damaged by collision, fire, flood, accident, trespass, or other occurrence, excluding hail damage or theft, to the extent that the vehicle is determined to be a total loss by the insurer or other person acting on behalf of the owner or that the cost of repairing the vehicle to a roadworthy condition and for legal operation on the highways exceeds the vehicle's retail fair market value immediately prior to the damage, as determined by the person who owns the vehicle at the time of the occurrence or by the insurer or other person acting on behalf of the owner.
- (II) "Salvage vehicle" does not include an off-highway vehicle.
- (b) In assessing whether a vehicle is a "salvage vehicle" under this section, the retail fair market value shall be determined by reference to sources generally accepted within the insurance industry including price guide books, dealer quotations, computerized valuation services, newspaper advertisements, and certified appraisals, taking into account the condition of the vehicle prior to the damage. When assessing the repairs, the assessor shall consider the actual retail cost of the needed parts and the reasonable and customary labor rates for needed labor.
 - (c) "Salvage vehicle" does not include a vehicle that qualifies as a collector's item, horseless carriage, or street rod vehicle under article 12 of this title at the time of damage.
- (18)
 - (a) "Signature" means either a written signature or an electronic signature.
 - (b) "Electronic signature" has the same meaning as set forth in section 24-71-101.
- (18.5) "Snowmobile" means a self-propelled vehicle primarily designed or altered for travel on snow or ice off of the public highways and supported by skis, belts, or cleats. "Snowmobile" does not include machinery used for the grooming of snowmobile trails or ski slopes.
- (19) "State" includes the territories and the federal districts of the United States.
- (20) "Street rod vehicle" means a vehicle manufactured in 1948 or earlier with a body design that has been modified for safe road use, including, but not limited to, modifications of the drive train, suspension, and brake systems, modifications to the body through the use of materials such as steel or fiberglass, and modifications to any other safety or comfort features.
- (20.5) "Surplus military vehicle" means a self-propelled vehicle that was:
 - (a) Purchased for nonmilitary use; and
 - (b) Built for the United States armed forces.

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- (21) "Transfer by inheritance" means the transfer of ownership after the death of an owner by means of a will, a written statement, a list as described in section 15-11-513, C.R.S., or upon lawful descent and distribution upon the death intestate of the owner of the vehicle.
- (22) "Used vehicle" means a motor vehicle that has been sold, bargained, exchanged, or given away, or has had the title transferred from the person who first took title from the manufacturer or importer, dealer, or agent of the manufacturer or importer, or has been so used as to have become what is commonly known as a secondhand motor vehicle. A motor vehicle that has been used by a dealer for the purpose of demonstration to prospective customers shall be considered a "used vehicle" if such demonstration use has been for more than one thousand five hundred miles.
- (23) "Vehicle" means any motor vehicle as defined in subsection (10) of this section.

42-6-109. Sale or transfer of vehicle

- (1) Except as provided in section 42-6-113, a person shall not sell or otherwise transfer a motor or off-highway vehicle to a purchaser or transferee without delivering to the purchaser or transferee a certificate of title to the vehicle duly transferred in the manner prescribed in section 42-6-110. Except as provided in subsection (2) of this section, the certificate of title may be in an electronic format. Except as provided in section 42-6-115, a purchaser or transferee does not acquire any right, title, or interest in and to a motor or off-highway vehicle purchased by the purchaser or transferee unless and until he or she obtains from the transferor the certificate of title duly transferred in accordance with this part 1. A lienholder may request either a paper or electronic version of a certificate of title.
- (2) Except as provided in section 42-6-115, a paper copy of a certificate of title is necessary for a transaction in which:
 - (a) Either party to the transaction is located outside Colorado; or
 - (b) The purchaser pays for a motor or off-highway vehicle entirely with cash.
- (3)
 - (a) Beginning January 1, 2019, the department shall implement a voluntary program or an owner of a motor vehicle to notify the department or an authorized agent after ownership of the motor vehicle is transferred to another person in accordance with subsections (1) and (2) of this section.
 - (b) A report of ownership transfer is properly filed if the report is made in a manner, which may include by electronic means, approved by the department and received by the department or authorized agent within five business days after the transfer of ownership, and includes the following:
 - (I) The date and time of sale or transfer;
 - (II) The full name of the owner of the motor vehicle before the transfer;

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- (e) A report filed under this subsection (3) does not extinguish or impair the rights of any lienholder.
- (f) This subsection (3) does not require the owner who transfers a motor vehicle to another person to report the sale to the department in accordance with this subsection (3).
- (4) (a) A record covered by this article 6, including a certificate of title, a document necessary to issue a certificate of title, or a signature on the record or document may not be denied legal effect, validity, or enforceability solely because it is in the form of an electronic record, document, or signature. Except as otherwise provided in this article 6, if a rule of law requires a record to be in writing or provides consequences if it is not, an electronic record satisfies that rule of law.
- (b) For a record, document, or signature to be legally effective, valid, or enforceable, a person need not obtain a written power of attorney solely because the record, document, or signature is in an electronic form.
- (c) This subsection (4) applies to and in a court of law.
- (d) This subsection (4) does not require the department to implement a system to electronically accept records, documents, or signatures.

42-6-110. Certificate of title - transfer - department of records

- (1) Upon the sale or transfer of a motor or off-highway vehicle for which a certificate of title has been issued or filed, the person in whose name the certificate of title is registered, if the person is not a dealer, shall execute a formal transfer of the vehicle described in the certificate. The person in whose name the certificate of title is registered or the person's agent or attorney shall affirm the sale or transfer, accompanied by a written declaration that the statement is made under the penalties of perjury in the second degree, as defined in section 18-8-503, C.R.S. The purchaser or transferee, within sixty days thereafter, shall present the certificate, together with an application for a new certificate of title, to the director or one of the authorized agents, accompanied by the fee required in section 42-6-137 to be paid for the filing of a new certificate of title; except that, if no title can be found and the motor vehicle is not roadworthy, the purchaser or transferee may wait until twenty-four months after the motor vehicle was purchased to apply for a certificate of title.
- (1.5) (a) If an insurer, as defined in section 10-1-102 (13), C.R.S., or a salvage pool authorized by an insurer is unable to obtain the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department within thirty days following oral or written acceptance by the owner of an offer of settlement of a total loss, that insurer or salvage pool may request, on a form provided by the department and signed under penalty of perjury, the department

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to issue a salvage or nonrepairable title for the vehicle. The request must include information declaring that the insurer or salvage pool has made at least two written attempts to obtain the certificate of ownership or other acceptable evidence of title and must include the fee for a duplicate title. The form requesting a salvage or nonrepairable title is the only evidence required to obtain a salvage or nonrepairable title.

- (b)** Upon receiving the fee for a duplicate title and the certificate of ownership, other evidence of title, or a properly executed request described in paragraph (a) of this subsection (1.5), the department shall issue the salvage or nonrepairable title for the vehicle.
- (1.7) (a)** The department shall allow an insurer, as defined in section 10-1-102 and that is regulated under title 10, an agent of the insurer, a salvage pool that is licensed as a used motor vehicle dealer, a motor vehicle dealer licensed under article 20 of title 44, a used motor vehicle dealer licensed under article 20 of title 44, or any person approved by the department to use the electronic systems created in section 42-4-2103 (3)(c)(III) to access owner and lienholder information of a motor vehicle in the department's records if:
 - (I)** The motor vehicle is the subject of an insurance claim being processed by the insurer;
 - (II)** The motor vehicle is possessed by a salvage pool;
 - (III)** The access is related to a motor vehicle transaction with a motor vehicle dealer or used motor vehicle dealer; or
 - (IV)** The access is authorized by section 24-72-204 (7).
- (b)** The department shall ensure that the information available to the insurer, the insurer's agent, the salvage pool, a motor vehicle dealer, a used motor vehicle dealer, or a person approved by the department is correct and is limited to the information needed to verify and contact the owner and lienholder of the motor vehicle.
- (c)** The department may charge the insurer, the insurer's agent, the salvage pool, a motor vehicle dealer, a used motor vehicle dealer, or a person approved by the department a fee in an amount not to exceed the lesser of five dollars or the direct and indirect costs of implementing this subsection (1.7). The department shall deposit the fee in the special purpose account created in section 42-1-211.
- (d)** The department may promulgate rules establishing standards for verifying:
 - (I)** The identity of the person accessing the records; and
 - (II)** That the access is authorized by section 24-72-204 (7).

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- (e) In allowing access to the electronic system under this subsection (1.7), the department shall ensure that the addresses of program participants under part 21 of article 30 of title 24 are not released.
- (2) A person who violates subsection (1) of this section is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than ten dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than six months, or by both such fine and imprisonment.

42-6-111. Sale to dealers - certificate need not issue

- (1) Upon the sale or transfer to a dealer of a motor or off-highway vehicle for which a Colorado certificate of title has been issued, the dealer shall transfer and file the certificate of title to the motor or off-highway vehicle; except that, so long as the vehicle remains in the dealer's possession and at the dealer's place of business for sale and for no other purpose, the dealer need not procure or file a new certificate of title as is otherwise required in this part 1.
- (2) If a motor or off-highway vehicle dealer wishes to obtain a new certificate of title, the dealer may present the old certificate of title to the director with the fee imposed by section 42-6-137 (6), whereupon the director shall issue a new certificate of title to the dealer within one working day after application. This subsection (2) does not apply to a motor or off-highway vehicle subject to a lien.
- (3)
 - (a) A wholesale motor vehicle auction dealer who does not buy, sell, or own the motor vehicles transferred at auction shall disclose the identity of the wholesale motor vehicle auction dealer, the date of the auction, and the license number of the auction on a form and in a manner prescribed by the executive director. A wholesale motor vehicle auction dealer does not become an owner by reason of such disclosure nor as a result solely of the guarantee of title, guarantee of payment, or reservation of a security interest.
 - (b) A wholesale motor vehicle auction dealer may buy or sell motor vehicles at wholesale in such dealer's own name and, in such instances, shall comply with the provisions of this part 1 applicable to dealers, including licensing.

42-6-112. Initial registration of a vehicle - dealer responsibility to timely forward certificate of title to purchaser or holder of a chattel mortgage

A dealer of motor or off-highway vehicles shall, within thirty days after the sale, deliver or facilitate the delivery of the certificate of title to a purchaser or the holder of a chattel mortgage on the motor or off-highway vehicle subject to section 42-6-109.

42-6-113. New vehicles - bill of sale - certificate of title - rules

- (1) Upon the sale or transfer by a dealer of a new motor or off-highway vehicle, the dealer shall, upon delivery, make, execute, and deliver to the purchaser or transferee a sufficient bill of sale and the manufacturer's certificate of origin.
- (2) The bill of sale must:
 - (a) Be affirmed by a statement signed by the dealer, containing or accompanied by a written declaration that it is made under the penalties of perjury in the second degree, as defined in section 18-8-503, C.R.S.;
 - (b) Be in such form as the director may require; and
 - (c) Contain, in addition to other information that the director may by rule require, the make and model of the motor or off-highway vehicle, the identification number placed upon the vehicle by the manufacturer for identification purposes, the manufacturer's suggested retail price, and the date of the sale or transfer, together with a description of any mortgage or lien on the vehicle that secures any part of the purchase price.
- (3) Upon presentation of the bill of sale and the manufacturer's certificate of origin, the director or an authorized agent shall file a new certificate of title for the vehicle described in the bill of sale. A dealer shall transfer a new motor or off-highway vehicle used by a dealer for demonstration in accordance with this section.
- (4) Notwithstanding subsection (3) of this section, the department may, upon presentation of a manufacturer's invoice, issue a business that rents motor vehicles or special mobile machinery a certificate of title for a new motor vehicle or special mobile machinery if the business submits a signed affidavit or a title application attesting that the motor vehicle or special mobile machinery is new and has not been issued a certificate of title and that the business is entitled to be issued a certificate of title for the motor vehicle or special mobile machinery. Upon request of the department, the business shall make available a scanned image of the front of the manufacturer's certificate of origin for up to one percent of the registered vehicles of the business for any given month.

42-6-119. Certificates for vehicles registered in other states

- (1) When a resident of the state acquires the ownership of a motor or off-highway vehicle for which a certificate of title has been issued by a state other than Colorado, the person acquiring the vehicle shall apply to the director or an authorized agent for the filing of a certificate of title as in other cases.
- (2) If a dealer acquires the ownership of a motor or off-highway vehicle by lawful means and the vehicle is titled under the laws of a state other than Colorado, the dealer need not file a Colorado certificate of title for the vehicle so long as the vehicle remains in the dealer's possession and at the dealer's place of business solely for the purpose of sale.

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- (3) Upon the sale by a dealer of a motor or off-highway vehicle, the certificate of title to which was issued in a state other than Colorado, the dealer shall, within thirty days after the sale, deliver or facilitate the delivery to the purchaser the certificate of title, duly and properly endorsed or assigned to the purchaser, with a statement by the dealer containing or accompanied by a written declaration that it is made under the penalties of perjury in the second degree, as defined in section 18-8-503, C.R.S., and setting forth the following:
- (a) That the dealer, by the execution of the affidavit, warrants to the purchaser and all persons who claim through the named purchaser that, at the time of the sale, transfer, and delivery by the dealer, the vehicle described was free and clear of all liens and mortgages except as might appear in the certificate of title;
 - (b) That the vehicle is not a stolen vehicle; and
 - (c) That the dealer had good, sure, and adequate title to, and full authority to sell and transfer, the vehicle.
- (4) (a) Except as otherwise provided in subsection (4)(b) of this section, if the purchaser of the vehicle completes and includes the vehicle identification number inspection form as part of the application for filing of a Colorado certificate of title to the vehicle and accompanies the application with the affidavit required by subsection (3) of this section and the duly endorsed or assigned certificate of title from a state other than Colorado, a Colorado certificate of title may be filed in the same manner as upon the sale or transfer of a motor or off-highway vehicle for which a Colorado certificate of title has been issued or filed. Upon the filing by the director or the authorized agent of the certificate of title, the director or the authorized agent may dispose of the certificate of title and shall record the certificate of title as provided in section 42-6-124.
- (b) If an applicant for the filing of a Colorado certificate of title for a vehicle for which another state has issued a certificate of title presents either a copy of a manufacturer's certificate of origin or a purchase receipt from the dealer or the out-of-state seller from whom the applicant purchased the vehicle and either document indicates that the applicant purchased the vehicle as new, the applicant need not include a vehicle identification number inspection form as part of the application.

42-6-136. Surrender and cancellation of certificate - penalty for violation

- (1) (a) The owner of a motor or off-highway vehicle for which a Colorado certificate of title has been issued, upon the destruction or dismantling of the vehicle or upon its being changed so that it is no longer a motor or off-highway vehicle, shall surrender the certificate of title to the vehicle to the director or the authorized agent or notify the director or the authorized agent on director-approved forms indicating the loss, destruction, or dismantling. Upon receiving the surrendered

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certificate of title or the notice of loss, destruction, or dismantling, the director or authorized agent shall classify the vehicle as junk.

- (b) The department shall not issue a certificate of title to a vehicle classified as junk. The holder of a lien or mortgage secured by the vehicle's title for the purchase shall surrender the title to the department. The department shall cancel the title and remove the vehicle identification number from the motor vehicle database.
 - (c) Upon the owner's procuring the consent of the holders of unreleased mortgages or liens noted on or recorded as part of the certificate of title, the director or authorized agent shall cancel the certificate.
 - (d) A person who violates this section commits a class 1 petty offense and shall be punished as provided in section 18-1.3-503, C.R.S.
- (2) (a) When a motor vehicle owner determines that a motor vehicle for which a Colorado certificate of title has been issued is nonrepairable, the owner of the vehicle shall apply for a nonrepairable title. To be issued a nonrepairable title, an applicant must provide the director with evidence of ownership that satisfies the director of the applicant's right to have a nonrepairable title filed in the applicant's favor. If a motor vehicle is nonrepairable, the director or authorized agent shall issue the vehicle a nonrepairable title.
- (b) Upon the owner's procuring the consent of the holder of an unreleased mortgage or lien noted on the certificate of title, the director or authorized agent shall cancel the vehicle's registration.
- (3) (Deleted by amendment, L. 2014.)

42-6-146. Repossession of motor vehicle or off-highway vehicle - owner must notify law enforcement agency - definition - penalty

- (1) If a mortgagee, lienholder, or the mortgagee's or lienholder's assignee or the agent of either repossesses a motor or off-highway vehicle because of default in the terms of a secured debt, the reposessor shall notify, either orally or in writing, a law enforcement agency, as provided in this section, of the repossession, the name of the owner, the name of the reposessor, and the name of the mortgagee, lienholder, or assignee. The notification must be made at least one hour before, if possible, and in any event no later than one hour after, the repossession occurs. If the repossession takes place in an incorporated city or town, the reposessor shall notify the police department, town marshal, or other local law enforcement agency of the city or town. If the repossession takes place in the unincorporated area of a county, the reposessor shall notify the county sheriff.

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- (2) A reposessor who violates subsection (1) of this section is guilty of a class 2 misdemeanor and, upon conviction, shall be punished as provided in section 18-1.3-501, C.R.S.
- (3) If a motor or off-highway vehicle being repossessed is subject to the "Uniform Commercial Code - Secured Transactions", article 9 of title 4, C.R.S., the repossession is governed by section 4-9-629, C.R.S.
- (4) As used in this section, the term "reposessor" means the party who physically takes possession of the motor or off-highway vehicle and drives, tows, or transports the vehicle for delivery to the mortgagee, lienholder, or assignee or the agent of the mortgagee, lienholder, or assignee.

42-6-201. Definitions

As used in this part 2, unless the context otherwise requires:

- (1) "Owner" means the person who holds the legal title of a motor vehicle, but, in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof, with the right to purchase upon the performance of the conditions stated in the agreement and with an immediate right to possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee, lessee, or mortgagor shall be deemed the owner.
- (2) "Person" means an individual, firm, association, corporation, or partnership.
- (3) "Private sale" means a sale or transfer of a used motor vehicle between two persons neither of whom is a used motor vehicle dealer.
- (4) "Retail used motor vehicle sale" means a sale or transfer of a used motor vehicle from a used motor vehicle dealer to a person other than a used motor vehicle dealer.
- (5) "Sale" means that the buyer of the used motor vehicle has paid the purchase price or, in lieu thereof, has signed a purchase contract or security agreement and has taken physical possession or delivery of the used motor vehicle.
- (6) "Sale between used motor vehicle dealers" means a sale or transfer of a used motor vehicle from one used motor vehicle dealer to another.
- (7) "Sale from an owner other than a used motor vehicle dealer to a used motor vehicle dealer" means any sale, trade-in, or other transfer of a used motor vehicle from a person other than a used motor vehicle dealer to a used motor vehicle dealer.
- (8) "Used motor vehicle" means every self-propelled motor vehicle having a gross weight of less than sixteen thousand pounds that has been sold, bargained for, exchanged, given away, leased, loaned, or driven as a "company executive car" or the title to which has been transferred from the person who first acquired it from the manufacturer or importer and it is so used as to have become what is commonly known as "secondhand" within the

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ordinary meaning thereof. A previously untitled motor vehicle that has been driven by the dealer for more than one thousand five hundred miles, excluding mileage incurred in the transit of the motor vehicle from the manufacturer to the dealer or from another dealer to the dealer, shall be considered a "used motor vehicle". This shall not apply to any automobile manufactured before January 1, 1942.

- (9) "Used motor vehicle dealer" means any licensed motor vehicle dealer, used motor vehicle dealer, or wholesaler as defined by section 44-20-102.

42-6-202. Prohibited acts

- (1) It is unlawful for any person to advertise for sale, to sell, to use, or to install or to have installed any device which causes an odometer to register any mileage other than the true mileage driven. For purposes of this section, the true mileage driven is that mileage driven by the vehicle as registered by the odometer within the manufacturer's designed tolerance.
- (2) It is unlawful for any person or the person's agent to disconnect, reset, or alter the odometer of any motor vehicle with the intent to change the number of miles indicated thereon.
- (3) It is unlawful for any person, with the intent to defraud, to operate a motor vehicle on any street or highway knowing that the odometer of such vehicle is disconnected or nonfunctional.
- (4) Nothing in this part 2 shall prevent the service, repair, or replacement of an odometer, if the mileage indicated thereon remains the same as before the service, repair, or replacement. When the odometer is incapable of registering the same mileage as before such service, repair, or replacement, the odometer shall be adjusted to read zero, and a notice in writing shall be attached to the left door frame of the vehicle by the owner or the owner's agent specifying the mileage prior to repair or replacement of the odometer and the date on which it was repaired or replaced. Any removal or alteration of such notice so affixed is unlawful.
- (5) It is unlawful for any transferor to fail to comply with 49 U.S.C. sec. 32705 and any rule concerning odometer disclosure requirements or to knowingly give a false statement to a transferee in making any disclosure required by such law.

42-6-203. Penalty

A violation of any of the provisions of section 42-6-202 is a class 1 misdemeanor.

42-6-204. Private civil action

- (1) Any person who, with intent to defraud, violates any requirement imposed under this part 2 shall be liable in an amount equal to the sum of:
 - (a) Three times the amount of actual damages sustained or three thousand dollars, whichever is greater; and
 - (b) In the case of any successful action to enforce said liability, the costs of the action together with reasonable attorney fees as determined by the court.
- (2) An action to enforce any liability created under subsection (1) of this section must be brought within the time period prescribed in section 13-80-102, C.R.S.
- (3) There shall be no liability under this section if a judgment has been entered in federal court pursuant to section 409 of the "Motor Vehicle Information and Cost Savings Act", Public Law 92-513.

42-6-205. Consumer protection

All provisions of section 6-1-708, C.R.S., concerning deceptive trade practices in the sale of motor vehicles shall apply to the sale of used motor vehicles.

42-6-206. Disclosure requirements upon transfer of ownership of a salvage vehicle

- (1) Prior to sale of a vehicle rebuilt from salvage to a prospective purchaser for the purpose of selling or transferring ownership of such vehicle, the owner shall prepare a disclosure affidavit stating that the vehicle was rebuilt from salvage. The disclosure affidavit shall also contain a statement of the owner stating the nature of the damage which resulted in the determination that the vehicle is a salvage vehicle. The words "rebuilt from salvage" shall appear in bold print at the top of each such affidavit.
- (2) Any person who sells a vehicle rebuilt from salvage for the purpose of transferring ownership of such vehicle shall:
 - (a) Provide a copy of a disclosure affidavit prepared in accordance with the provisions of subsection (1) of this section to each prospective purchaser; and
 - (b) Obtain a signed statement from each such purchaser clearly stating that the purchaser has received a copy of the disclosure affidavit and has read and understands the provisions contained therein.
- (3)
 - (a) Any person who purchases a vehicle rebuilt from salvage who was not provided with a copy of a disclosure affidavit prepared in accordance with the provisions of subsection (1) of this section and who, subsequent to sale, discovers that the vehicle purchased was rebuilt from salvage shall be entitled to a full and immediate refund of the purchase price from the prior owner.

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- (b) In the event a person is entitled to a refund under this subsection (3), the prior owner shall be required to make an immediate refund of the full purchase price to the purchaser. A signed statement from the purchaser prepared in accordance with the provisions of paragraph (b) of subsection (2) of this section shall relieve the prior owner of the obligation to make such refund.
- (4) Any owner, seller, or transferor of a vehicle rebuilt from salvage who fails to comply with the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine for a first offense not to exceed one thousand five hundred dollars and a fine of five thousand dollars for each subsequent offense.
- (5) The executive director of the department of revenue shall prescribe rules and regulations for the purpose of implementing the provisions of this section.
- (6) As used in this section, unless the context otherwise requires:
 - (a) "Sale" means any sale or transfer of a vehicle rebuilt from salvage.
 - (b) "Salvage vehicle" shall have the same meaning as set forth in section 42-6- 102 (17).

42-10-101. Definitions

As used in this article, unless the context otherwise requires:

- (1) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle normally used for personal, family, or household purposes, any person to whom such motor vehicle is transferred for the same purposes during the duration of a manufacturer's express warranty for such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty.
- (2) "Motor vehicle" means a self-propelled private passenger vehicle, including pickup trucks and vans, designed primarily for travel on the public highways and used to carry not more than ten persons, which is sold to a consumer in this state; except that the term does not include motor homes as defined in section 42-1-102 (57) or vehicles designed to travel on three or fewer wheels in contact with the ground.
- (3) "Warranty" means the written warranty, so labeled, of the manufacturer of a new motor vehicle, including any terms or conditions precedent to the enforcement of obligations under that warranty.

42-10-102. Repairs to conform vehicle to warranty

If a motor vehicle does not conform to a warranty and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer during the term of such warranty or during a period of one year following the date of the original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent, or its authorized dealer shall make such

repairs as are necessary to conform the vehicle to such warranty, notwithstanding the fact that such repairs are made after the expiration of such term or such one-year period.

42-10-103. Failure to conform vehicle to warranty - replacement or return of vehicle

- (1) If the manufacturer, its agent, or its authorized dealer is unable to conform the motor vehicle to the warranty by repairing or correcting the defect or condition which substantially impairs the use and market value of such motor vehicle after a reasonable number of attempts, the manufacturer shall, at its option, replace the motor vehicle with a comparable motor vehicle or accept return of the motor vehicle from the consumer and refund to the consumer the full purchase price, including the sales tax, license fees, and registration fees and any similar governmental charges, less a reasonable allowance for the consumer's use of the motor vehicle. Refunds shall be made to the consumer and lienholder, if any, as their interests may appear. A reasonable allowance for use shall be that amount directly attributable to use by the consumer and any previous consumer prior to the consumer's first written report of the nonconformity to the manufacturer, agent, or dealer and during any subsequent period when the vehicle is not out of service by reason of repair.
- (2)
 - (a) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the warranty if:
 - (I) The same nonconformity has been subject to repair four or more times by the manufacturer, its agent, or its authorized dealer within the warranty term or during a period of one year following the date of the original delivery of the motor vehicle to the consumer, whichever is the earlier date, but such nonconformity continues to exist; or
 - (II) The motor vehicle is out of service by reason of repair for a cumulative total of thirty or more business days of the repairer during the term specified in subparagraph (I) of this paragraph (a) or during the period specified in said subparagraph (I), whichever is the earlier date.
 - (b) For the purposes of this subsection (2), the term of a warranty, the one-year period, and the thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, or fire, flood, or other natural disaster.
 - (c) In no event shall a presumption under paragraph (a) of this subsection (2) apply against a manufacturer unless the manufacturer has received prior written notification by certified mail from or on behalf of the consumer and has been provided an opportunity to cure the defect alleged. Such defect shall count as one nonconformity subject to repair under subparagraph (I) of paragraph (a) of this subsection (2).

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- (d) Every authorized motor vehicle dealer shall include a form, containing the manufacturer's name and business address, with each motor vehicle owner's manual on which the consumer may give written notification of any defect, as such notification is required by paragraph (c) of this subsection (2), and the form shall clearly and conspicuously disclose that written notification by certified mail of the nonconformity is required, in order for the consumer to obtain remedies under this article.
- (3) The court shall award reasonable attorney fees to the prevailing side in any action brought to enforce the provisions of this article.

42-10-104. Affirmative defenses

- (1) It shall be an affirmative defense to any claim under this article that:
 - (a) An alleged nonconformity does not substantially impair the use and market value of a motor vehicle; or
 - (b) A nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the motor vehicle by a consumer.

42-10-105. Limitations on other rights and remedies

Nothing in this article shall in any way limit the rights or remedies which are otherwise available to a consumer under any other state law or any federal law. Nothing in this article shall affect the other rights and duties between the consumer and a seller, lessor, or lienholder of a motor vehicle or the rights between any of them. Nothing in this article shall be construed as imposing a liability on any authorized dealer with respect to a manufacturer or creating a cause of action by a manufacturer against its authorized dealer; except that failure by an authorized dealer to properly prepare a motor vehicle for sale, to properly install options on a motor vehicle, or to properly make repairs on a motor vehicle, when such preparation, installation, or repairs would have prevented or cured a nonconformity, shall be actionable by the manufacturer.

42-10-106. Applicability of federal procedures

If a manufacturer has established or participates in an informal dispute settlement procedure which substantially complies with the provisions of part 703 of title 16 of the code of federal regulations, as from time to time amended, the provisions of section 42-10-103 (1) concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure.

42-10-107. Statute of limitations

Any action brought to enforce the provisions of this article shall be commenced within six months following the expiration date of any warranty term or within one year following the date

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of the original delivery of a motor vehicle to a consumer, whichever is the earlier date; except that the statute of limitations shall be tolled during the period the consumer has submitted to arbitration under section 42-10-106.

Regulations- Motor Vehicle and Powersports vehicle manufacturers, distributors, and Manufacturer's Representatives and also Motor Vehicle Buyers Agents

1 CCR 210-2 REGULATION 44-20-105(2)(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.

1 CCR 210-2 REGULATION 44-20-105(3)(a)(II)

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.

1 CCR 210-2 REGULATION 44-20-105(2)(d)

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.

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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.

1 CCR 210-2 REGULATION 44-20-105(2)(e)

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,

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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.

1 CCR 210-2 REGULATION 44-20-117

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.

1 CCR 210-2 REGULATION 44-20-118(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.

1 CCR 210-2 REGULATION 44-20-121(1)(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.

1 CCR 210-2 REGULATION 44-20-405(1)

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 powersports 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.

1 CCR 210-2 REGULATION 44-20-405(1)(d)

1. All applications for licenses shall be made upon forms prescribed by the executive director. 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 ten percent or more 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 executive director not less than ten days prior to such transfer. All such reports shall be made on forms supplied by the executive director.

Upon request of the executive director, applicants for a license shall provide suitable additional evidence of residence, good character and reputation. Applicants and licensees shall also submit upon request by the executive director 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, the place of business or business address without submitting written notice to the executive director, not less than ten days prior to the change.

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

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

1 CCR 210-2 REGULATION 44-20-405(1)(e)

If it shall appear from an investigation by the executive director and executive director agents and representatives, or shall otherwise come to the attention of the executive director that there is probable cause to believe that a licensee has violated any provision set forth in this article or any

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rule or regulation promulgated in accordance therewith, executive director 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 executive director 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 executive director 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 executive director by the licensee or by personal service upon the licensee a notice of final determination. In the event the licensee is found not to have violated any law, rule or regulation, the charges against the licensee 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 executive director, and in the proper case the licensee's license suspended or revoked on such terms and conditions and for such period of time as to the executive director shall appear fair and just. The decision of the executive director 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.

1 CCR 210-2 REGULATION 44-20-417(5)

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

Manufacturers and distributors shall notify the executive director 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 executive director 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 executive director and placed on file.

Regulations- Titles & Registration

1 CCR 204-10 RULE 8. DEALER TITLE

Basis: The statutory bases for this rule are 42-6-102(2), 42-6-104, 42-6-111(2), 42-6-137(6), and 42-6-138(4), C.R.S.

Purpose: The purpose of this rule is to establish requirements for a motor vehicle dealer or wholesaler for providing proof of ownership and for the processing of certificates of title.

1.0 Definitions

- 1.1** “Agent” means an individual authorized by a dealer or wholesaler to act on behalf of that dealer or wholesaler.
- 1.2** “Assigned” means a certificate of title or MCO that is signed by a seller and accompanied by the Colorado dealer’s bill of sale for motor vehicle to evidence the chain of ownership progression to the dealer or wholesaler.
- 1.3** “Manufacturer’s Certificate of Origin” or “MCO” has the same meaning as Colorado Code of Regulation 1 CCR 204-10 Rule 22. Manufacturer’s Certificate of Origin – Requirements and Use.
- 1.4** “Working Day” means the daily period beginning at 8:00 a.m. and ending at 5:00 p.m. Monday through Friday, with the exception of those days designated as official State of Colorado holidays by statute or Executive Order of the Governor.
- 1.5** “Secure and Verifiable Identification” means a document issued by a state or federal jurisdiction or recognized by the United States Government and that is verifiable by federal or state law enforcement, intelligence, or the Homeland Security Agency.
- 1.6** “Letter of Authorization” means an authorization on a dealer's or wholesaler's letterhead from a designated representative of a dealer or wholesaler to the Department authorizing a specific person to act as an Agent for the dealer or the wholesaler.

2.0 Proof of Ownership Requirements

- 2.1** All Colorado dealers or wholesalers must maintain the following evidence of ownership for each vehicle in their possession:
 - a.** If the vehicle is a used vehicle with a Colorado certificate of title:
 - 1.** A Colorado certificate of title Assigned to the dealer or wholesaler; and,
 - 2.** Odometer disclosure if required.
 - b.** If the vehicle is a used vehicle with an out-of-state certificate of title:
 - 1.** The out-of-state certificate of title Assigned to the dealer or wholesaler; and,
 - 2.** Odometer disclosure if required; and,

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3. Colorado Dealer's Out-of-State Vehicle Information Disclosure; and,
 4. Colorado verification of Vehicle Identification Number.
 - c. A new vehicle assigned by MCO to a dealer or wholesaler:
 1. MCO Assigned or re-Assigned to a franchised dealer or wholesaler; and,
 2. Odometer disclosure if required.
 3. A dealer or wholesaler shall not hold a MCO unless that dealer or wholesaler is franchised to sell that specific make of vehicle as indicated on the MCO.
 - d. A new vehicle Assigned or re-Assigned with its MCO from an out-of-state franchised dealer or wholesaler to a franchised Colorado dealer or wholesaler:
 1. MCO re-Assigned to the franchised dealer or wholesaler; and,
 2. Odometer disclosure if required; and,
 3. A dealer or wholesaler shall not hold a MCO unless that dealer or wholesaler is franchised to sell that specific make of vehicle as indicated on the MCO.
 - e. A vehicle with incomplete or insufficient certificate of title shall be marked "Not for Sale" and withheld from any public offering.
- 3.0** Requirements for Obtaining Certificate of Title in One Working Day
- 3.1** A dealer or wholesaler may obtain a "dealer resale" certificate of title in the licensed name of the dealer or wholesaler within one Working Day, at the Department of Revenue, after providing the required documents outlined in section 4.0 below and upon payment of the statutorily required fee.
- 3.2** A dealer or wholesaler requesting the Department issue a certificate of title to an Agent must provide a Letter of Authorization, listing the names of all persons who will be acting as Agents on their behalf. Letters of Authorization will be kept on file at the Department. It shall be the responsibility of the dealer or wholesaler to notify the Department of any changes in Agents. A person attempting to obtain a Dealer Resale certificate of title that is not listed on the dealer's or wholesaler's Letter of Authorization will not be permitted to receive the certificate of title. If the dealer, wholesaler, or Agent fails to pick up the certificate of title after one Working Day the Department may choose to hold the certificate of title until it is picked up or mail it to the dealer or wholesaler.
- 3.3** The Agent shall be required to present Secure and Verifiable Identification at the time of application and upon receipt of a certificate of title. The Agent shall sign a receipt verifying receipt of the certificate of title.

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- 3.4** An Agent representing more than one dealer or wholesaler must have a Letter of Authorization from each dealer or wholesaler for which the Agent is an authorized Agent in order to obtain a certificate of title on behalf of that dealer or wholesaler.
- 4.0** Requirements for Acceptance of Applications for Dealer Resale Certificate of Title
- 4.1** An application for dealer resale certificate of title will only be accepted when:
- a.** The supporting ownership document is a MCO properly Assigned to a dealer or wholesaler or re-Assigned to a dealer or wholesaler; or,
 - b.** The supporting ownership document is a certificate of title properly Assigned to a dealer or wholesaler; or,
 - c.** The supporting ownership document is a salvage certificate of title for a vehicle that has been made roadworthy, as defined in C.R.S. 42-6-102(15), and is being submitted for a dealer resale certificate of title in the dealer's or wholesaler's name.
- 4.2** An application for a dealer resale certificate of title must be free and clear of all liens and encumbrances.
- 4.3** An application for a dealer resale certificate of title must be complete and contain all required documents listed in section 2.0 Proof of Ownership Requirements above.
- 4.4** The Department may limit dealer resale certificate of title applications to three applications per dealer, wholesaler or Agent per Working Day. Additional applications above the maximum limit of three may not be processed in one Working Day.
- 5.0** Dealer Resale Certificate of Title Application Processing Timeframes
- 5.1** An application for a dealer resale certificate of title submitted prior to 3:00 p.m. on a Working Day may be picked up, at the Department, between 8:00 a.m. and 5:00 p.m. of the next Working Day. An application submitted after 3:00 p.m. on a Working Day will not be processed until the following Working Day.
- 5.2** One Working Day processing is contingent upon an application meeting requirements, passing Department auditing of the application and documents, and extraordinary circumstances beyond the control of the Department.
- 5.3** A dealer or wholesaler may request overnight mail service of a dealer resale certificate of title. If overnight mail service is requested the dealer or wholesaler must provide the Department with a pre-paid return envelope. Otherwise, the Department will mail any dealer resale certificate of title that is not picked up or overnight mailed by first class mail to the dealer or wholesaler.
- 5.4** A dealer resale certificate of title that is not picked up by the dealer, wholesaler, or Agent within eight Working Days of submitting the application will be mailed to the dealer or wholesaler. If mailing instructions are not provided to the Department with the

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application, the Department will destroy the dealer resale certificate of title and the dealer or wholesaler will be required to apply for a duplicate title.

6.0 Duplicate Certificates of title

6.1 Only licensed Colorado dealers or wholesalers may, at the Department's discretion, obtain duplicate certificates of title directly from the Department.

6.2 A dealer or wholesaler may obtain a duplicate certificate of title for a vehicle that has been “traded-in” to them, but the owner has lost, misplaced, or accidentally destroyed the certificate of title.

6.3 The dealer or wholesaler must provide a power of attorney from the previous owner and the vehicle must be in the dealer's or wholesaler's possession before an application for a duplicate certificate of title will be accepted.

6.4 A duplicate certificate of title showing an active recorded lien will not be provided to a dealer or wholesaler. If a proper lien release is submitted with a duplicate certificate of title application, the satisfied lien will be removed from the vehicle record and a duplicate certificate of title will be provided to the dealer or wholesaler.

7.0 Payment

7.1 An application for a dealer resale certificate of title will not be processed until all statutorily required fees are paid.

7.2 A check returned for insufficient funds will require any and all future payments by that dealer or wholesaler to be made by cash or certified funds.

7.3 Refunds will be processed at the discretion of the Department.

8.0 Appeals

8.1 If a dealer or wholesaler has been denied issuance of a dealer resale certificate of title or a duplicate title, the dealer or wholesaler may request a hearing, in writing, within 60 days after the date of the notice of denial. Written hearing requests shall be submitted to the Department of Revenue, Hearings Division.

8.2 The hearing shall be held at the Department of Revenue, Hearings Division. The presiding hearing officer shall be an authorized representative designated by the Executive Director. The Department's representative need not be present at the hearing unless the presiding hearing officer requires his or her presence or the dealer or wholesaler requests his or her presence in writing. If the Department's representative is not present at the hearing, the hearing officer has the discretion to consider any written documents and affidavits submitted by the Department.

1 CCR 204-10 RULE 9. DEPOT LICENSE PLATES

Basis: The statutory bases for this rule are sections 42-1-204, 42-3-116, and 42-3-301, C.R.S.

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Purpose: The following is promulgated to establish criteria for the issuance and use of Depot License Plates.

1.0 Definitions

- 1.1** “Dealer” – means a Colorado licensed dealership as defined in Code of Colorado Regulation 1 CCR 204-10 Rule 48. Colorado Dealer License Plates.
- 1.2** “Depot License Plate(s)” also referred to as “Depot Tags” – means a numbered license plate issued by the Department that has the stacked “DPT” lettering on the Colorado blue and white graphic license plate.

2.0 Requirements

- 2.1** A Dealer requesting Depot License Plates must complete and submit to the Department form DR 2521 Depot Plate Application, together with a copy of the Dealer’s license and required fees.
- 2.2** A Dealer can obtain one Depot License Plate per mechanic or service technician employed by the Dealer. Upon application or renewal, the owner or authorized representative of the Dealer must certify the number of mechanics or service technicians currently employed by the Dealer.
- 2.3** Applications, issuance, renewals, and replacements may be conducted via mail (including U.S. Postal Service, FedEx, UPS, DHL, etc.). The Dealer must provide a self-addressed, postage-paid envelope for Depot License Plates if requesting delivery by mail services. Depot License Plates cannot be mailed to a non-Colorado address.
- 2.4** Use of Depot License Plates is limited to the purposes described in section 42-3-116(4)(a), C.R.S.

3.0 Lost or Stolen Depot License Plates

- 3.1** A Dealer must report lost or stolen Depot License Plates within seventy-two (72) hours to the local law enforcement agency and to the Department using form DR 2283 Lost or Stolen License Plates/Permits Affidavit.

4.0 Surrender of Depot License Plates

- 4.1** A Dealer whose dealer license is suspended, denied, revoked, or expired, or otherwise ceases to operate must surrender to the Department all Depot License Plates in its possession within seventy-two (72) hours.
- 4.2** The Department will not refund any portion of the original fees paid when Depot License Plates are surrendered.

1 CCR 204-10 RULE 18. SATISFACTORY EVIDENCE OF VEHICLE OWNERSHIP

Basis: The statutory bases for this regulation are sections 42-1-204, 42-6-104, 42-6-106, 42-6-107, 42-6-109, 42-6-110, 42-6-113, 42-6-114, 42-6-115, and 42-6-119, C.R.S.

Purpose: The following rules and regulations are promulgated to establish the process for proving vehicle ownership for the purpose of issuing a certificate of title.

1.0 Definitions

1.1 “Registration” means a vehicle registration card or other document that demonstrates the vehicle has been registered in the applicant’s name

1.2 “Foreign Jurisdiction” means any state, other than the State of Colorado, or any country other than the United States, or sovereign nation.

1.3 “Purged Colorado Record” means a record that is no longer active or accessible in motor vehicle system.

1.4 “Suspense Title” means the issuance of a Colorado registration to a vehicle titled in a Foreign Jurisdiction when the vehicle cannot be titled in Colorado.

2.0 Satisfactory Evidence of Vehicle Ownership

2.1 The Department may accept the following documents as evidence of vehicle ownership:

- a.** A certificate of title issued by the State of Colorado or a Foreign Jurisdiction that has been properly transferred.
 - 1.** A copy or electronic printout of a title from a Foreign Jurisdiction is satisfactory for a Suspense Title transaction when the title is held by a lien holder.
 - 2.** A Registration issued by a Foreign Jurisdiction that has issued a title and the title is held by a lien holder.
- b.** A Registration for the vehicle listing the applicant’s name if issued by a Foreign Jurisdiction that does not issue a title for that vehicle type;
- c.** A bill of sale for a vehicle not previously required to be titled or registered in the State of Colorado;
- d.** A bill of sale from a Foreign Jurisdiction if that jurisdiction does not issue a title for or register that vehicle type;
- e.** A bill of sale that notates “parts only” if applying for a Colorado nonrepairable title;
- f.** A Current Registration issued by the U.S. Armed Services;
- g.** A copy of a court order describing the vehicle by year, make, and Vehicle Identification Number (VIN), and directing the Department to issue a Colorado

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certificate of title to the applicant, or a judgment for possession obtained through a civil proceeding;

- h.** A completed DR 2409 Statement of Assembly of Homemade Trailer and Assignment of Trailer I.D. Number if the trailer is a homemade vehicle as defined in section 42-5-201(4), C.R.S.;
- i.** A Colorado Parks and Wildlife Registration for an off-highway vehicle.
- j.** Other evidence deemed by the Department to be satisfactory evidence of vehicle ownership.

2.2 If an applicant does not have the Colorado certificate of title and the Colorado record has been purged, any of the following documents listing the applicant's name, submitted together with a completed DR 2116 Motor Vehicle Bill of Sale For a Purged Colorado Record, may be considered satisfactory evidence of proof of vehicle ownership:

- a.** Colorado registration;
- b.** Colorado registration renewal card;
- c.** Photocopy of the Colorado certificate of title;
- d.** A copy of the Colorado motor vehicle record; or
- e.** Other documentation deemed by the Department to be satisfactory evidence of vehicle ownership.

2.3 Any document provided as evidence of vehicle ownership must include the vehicle's VIN, model year, make, and the applicant's name listed as the owner, buyer, or transferee.

2.4 The Department will not accept documents that do not contain all elements that may be required to prove authenticity (e.g., certification, notary, acceptable transfers, assignments, etc...).

2.5 An applicant who cannot provide satisfactory evidence of vehicle ownership documents must satisfy all requirements as required in section 42-6-115, C.R.S., and Code of Colorado Regulation 1 CCR 204-10. Rule 19. Bonding for Colorado Certificate of Title.

1 CCR 204-10 RULE 19. BONDING FOR COLORADO CERTIFICATE OF TITLE

Basis: The statutory bases for this regulation are 42-6-104, 42-6-107(1)(b), 42-6-115, 42-6-116, and 42-6-117, C.R.S.

Purpose: The following rule is promulgated to clarify documents required and processes relating to bonding for a Colorado certificate of title when satisfactory evidence of vehicle proof of ownership cannot be provided by an applicant.

1.0 Definitions

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- 1.1** “Certified VIN Inspection” means a vehicle identification number (VIN) inspection conducted by a Peace Officers Standards and Training (P.O.S.T.) certified inspector completed on forms provided by the Department.
- 1.2** “Secure Form” means a form produced through a secure printing process or other secure process which deters counterfeiting and/or unauthorized reproduction and allows alterations to be visible to the naked eye.
- 2.0** Bonding for Title
- 2.1** An applicant that is unable to provide satisfactory evidence of proof of ownership of a vehicle shall be required to perform the bonding for title requirements listed in 42-6-115, C.R.S., in order to obtain a Colorado certificate of title.
- 2.2** A Colorado certificate of title will be issued upon successful completion of the requirements listed in this subsection 2.0 below. The applicant must:
 - a.** Provide a Certified VIN Inspection. The Certified VIN Inspection must not be over one year old at the time of application.
 - b.** Obtain and provide a title record search. The title record search may not be older than one-year from the date of application; and
 - i.** Vehicles registered in the State of Colorado must have a Colorado title record search completed on the form DR2489A Motor Vehicle Requestor Release And An Affidavit Of Intended Use.
 - ii.** Vehicles registered out-of-state or that display an out-of-state license plate or that show an out-of-state reference on a title record search must have a title and lien record search completed from the state in which the vehicle was last titled along with the Colorado title record search.
 - c.** Provide proof of an attempt to contact all owner(s) and lienholder(s) identified on the title record search(es) through certified or registered mail. The proof of attempted contact must include the following:
 - i.** A copy of the letter sent to all owner(s) and lienholder(s). The letter must contain:
 - 1.** The vehicle year, make, and VIN;
 - 2.** The applicant’s intent (e.g., retain the vehicle, sell the vehicle); and
 - 3.** The applicant’s contact information.
 - 4.** The letter to the lienholder shall also include:
 - A)** The date of the lien(s);
 - B)** The amount secured by the vehicle; and

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C) Where the liens are of public record.

- ii. One of the following documents demonstrating mailing of the letter with the U.S. Postal Service or other commercial mailing entity (e.g., FedEx, UPS, DHL):
 - 1. Certified receipt, or
 - 2. Domestic Return Receipt – U.S. Postal Form PS 3811, or
 - 3. Undeliverable notification
- d. Provide a lien release for all active liens indicated on the title record search(es). Lien releases must be on the lienholder's letterhead, unless the lienholder is an individual, and must include the vehicle year, make, VIN, titled owner's name(s), agent's signature, date of lien release, and must be signed under penalty of perjury in the second degree as defined in 18-8-503, C.R.S. The lien release must be a signed original or signed duplicate of the mortgage or copy thereof, certified by the holder of the mortgage or the holder's agent to be a true copy of the signed original mortgage.
 - i. If an attempt is made to secure a lien release and the lienholder is not available or has failed to respond, the applicant must provide one of the following documents demonstrating mailing the letter to the lienholder's last known address with the U.S. Postal Service or other commercial mailing entity (e.g., FedEx, UPS, DHL):
 - 1. Certified receipt, or
 - 2. Domestic Return Receipt – U.S. Postal Form PS 3811, or
 - 3. Undeliverable notification
- e. Provide the reasonable appraised value of the vehicle pursuant to 42-6-115(3)(a), C.R.S. The appraisal must be for the current condition of the vehicle at the time of application for a Colorado certificate of title. The appraisal must describe the vehicle by the VIN, year, and make, and must be established as listed by one of the following:
 - i. An appraisal from a Colorado licensed motor vehicle dealer or used motor vehicle dealer that is signed by the dealer, dated, and states the dealership's license number. If the appraisal is not on the dealer's letterhead, the appraisal must be notarized and signed under penalty of perjury, or
 - ii. A current value obtained from Kelly Blue Book. When using the current value from the Kelly Blue Book, a form DR 2444 Statement of Fact is also required stating that the applicant desires to use the amount listed as the

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current retail market value. The applicant must circle or mark that amount on the Kelly Blue Book printout, or

- iii. A Current value from the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide. When using the current value from NADA, a form DR 2444 Statement of Fact is also required stating that the applicant desires to use the amount listed as the current retail market value. The applicant must circle or mark that amount on the NADA printout.
 - f. Provide proof of a surety bond for twice the appraised value shown on the appraisal, unless exempted pursuant to 42-6-115(3)(b), C.R.S. 2.3 If the vehicle record search(es) completed in paragraph 2.2b above indicates the vehicle is salvage, then the applicant must complete the rebuilt from salvage processes contained in Code of Colorado Regulations 1 CCR 204-10 Rule 31. Salvage and Rebuilt From Salvage Certificate of Title Requirements.
- 2.4** The applicant must disclose at the time of application for Colorado certificate of title the vehicle's odometer reading on the Secure Form DR 2173 Motor Vehicle Bill Of Sale provided by the Department for vehicles with model years of less than ten years.
- 2.5** If the vehicle is a trailer weighing 2,000 pounds or less, and the applicant provides a form DR 2697 Certification of Equipment Compliance for Homemade and In Lieu of Bond Trailers, and the applicant completes the form DR 2908 In Lieu Of Bonding For Trailer 2000 Pounds or Less Checklist, as necessary, then the applicant is deemed to have provided evidence of ownership satisfactory to the director for purposes of this rule and is not required to purchase a surety bond.
- 3.0** Application Rejection Appeals
- 3.1** Applicants who have been denied issuance of a Colorado certificate of title may request a hearing, in writing, within thirty days after the denial notice is issued. Written hearing requests shall be submitted to the Department of Revenue, Enforcement Unit, Hearings Section, 1881Pierce Street, Room #106, Lakewood, CO 80214
- 3.2** The hearing shall be held at the Department of Revenue, Enforcement Unit, Hearing Section, 1881 Pierce Street, Room #106, Lakewood, CO 80214. The presiding hearing officer shall be an authorized representative designated by the Executive Director. The Department's representative need not be present at the hearing unless his or her presence is required by the presiding officer, or requested by the applicant at the time the written request for hearing is submitted. If the Department's representative is not present at the hearing, any written documents and affidavits submitted by the Department may be considered at the discretion of the hearing officer.

1 CCR 204-10 RULE 34. DEALER ISSUED TEMPORARY REGISTRATION PERMITS

Basis: The statutory bases for this rule are sections 2-4-108(2), 42-1-204 and 42-3-203(3)(b), C.R.S.

Purpose: : The purpose of this rule is to establish criteria for the issuance of a Temporary Registration Permit or an Analog Temporary Registration Permit by Licensed Colorado Motor Vehicle Dealers.

1.0 Definitions

- 1.1** “After Department Business Hours” means 5:00 p.m. – 8:00 a.m. Monday – Friday, or on a weekend, or a State holiday.
- 1.2** “Analog Temporary Registration Permit” means the Department approved form that is issued by a Licensed Colorado Motor Vehicle Dealer as a substitute to the Temporary Registration Permit.
- 1.3** “Approved System” means the Department approved web-based portal and its infrastructure allowing a Dealer to perform Temporary Registration Permit transactions.
- 1.4** “Licensed Colorado Motor Vehicle Dealer” or “Dealer” means the same as defined in section 42- 6-102(2), C.R.S.
- 1.5** “Mounting Boards” means the Department approved device that a printed Temporary Registration Permit is affixed to. “Mounting Boards” includes both Mounting Boards that are passenger vehicle license plate size and motorcycle license plate size.
- 1.6** “Secure and Verifiable Identification” or “SVID” means an identification document issued by a state or federal jurisdiction or recognized by the United States Government and that is verifiable by federal or state law enforcement, intelligence, or homeland security agencies.
- 1.7** “System Outage” means the Approved System is not operational at the time the Dealer is attempting to issue a Temporary Registration Permit. “System Outage” does not include situations where the Dealer’s system is not operational or when the Approved System is operational but the Dealer is unable to complete the Temporary Registration Permit transaction due to other factors (e.g., Dealer’s password problems, Dealer system network issues etc.).
- 1.8** “Temporary Registration Permit” means the Department approved form that is printed when performing a Temporary Registration Permit issuance transaction on the Approved System that when affixed to a Mounting Board and mounted to a vehicle provides evidence that the vehicle has been issued a temporary registration.

2.0 Requirements

- 2.1** Dealer issued Temporary Registration Permits must be processed and issued through the Approved System. A Dealer must register its dealership and each individual authorized

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user in the Approved System. A Dealer must not issue Temporary Registration Permits unless registered in the Approved System.

- 2.2** A Dealer whose license is inactive, suspended, or revoked must not issue Temporary Registration Permits.
- 2.3** A Temporary Registration Permit is only valid if issued through the Approved Vendor System and affixed to a Mounting Board.
- a.** A Temporary Registration Permit issued to a motorcycle defined in section 42-1-102(55), C.R.S., will be printed to simulate a motorcycle size license plate and must be affixed to the motorcycle size Mounting Board.
 - b.** A Temporary Registration Permit issued to all other vehicle types will be printed to simulate a passenger size license plate and must be affixed to the passenger size Mounting Board.
- 2.4** Dealers must purchase Mounting Boards directly from a Department authorized Mounting Board vendor(s). A Dealer must only use Department approved Mounting Boards for affixing Temporary Registration Permits.
- 2.5** Upon the sale of a vehicle by the Dealer, the Dealer must:
- a.** Perform the Temporary Registration Permit issuance transaction in the Approved System;
 - b.** Print the Temporary Registration Permit generated by the Approved System;
 - c.** Print the Colorado registration receipt generated by the Approved System;
 - d.** Affix the printed Temporary Registration Permit to a Mounting Board;
 - e.** Affix the Mounting Board with the Temporary Registration Permit according to statute; and
 - f.** Provide the printed Colorado registration receipt to the purchaser.
- 2.6** A Dealer must verify the purchaser(s) SVID prior to the issuance of a Temporary Registration Permit.
- 2.7** If the Temporary Registration Permit and/or Mounting Board are damaged during issuance, the Dealer may issue a corrected Temporary Registration Permit through the Approved Vendor System. The Dealer must destroy the original Temporary Registration Permit and Mounting Board to render it unreadable and unusable.
- 2.8** A Temporary Registration Permit is valid for up to sixty (60) days from the date of sale/issuance. A Temporary Registration Permit cannot not expire on a Saturday, Sunday, or legal holiday. If the sixtieth day falls on a Saturday, Sunday, or legal holiday, the Temporary Registration Permit will expire on the next weekday which is not a Saturday, Sunday, or legal holiday.

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- 2.9** A Temporary Registration Permit is not renewable, but when circumstances outlined in section 42-3-203(3)(e), C.R.S., are met, the Dealer may issue a second Temporary Registration Permit pursuant to the requirements in this rule.
- 2.10** A Dealer must not place hand written markings, stickers, items, decorations, decals, or other markings on the printed Temporary Registration Permit and/or Mounting Board. Mounting frames must not obstruct any portion of or otherwise render the Temporary Registration Permit unreadable pursuant to in section 42-3-202(2), C.R.S.
- 2.11** A Dealer must not alter the printing of the Temporary Registration Permit by resizing it, rotating it, or by any other alteration. Altering the printing of the Temporary Registration Permit will render it invalid.
- 2.12** A Temporary Registration Permit must not be issued to vehicles sold as “Tow Away” or to vehicles that are not roadworthy. A Temporary Registration Permit must not be used to demonstrate, transport, or deliver vehicles.
- 2.13** Dealers must ensure that the Approved Vendor System is secure and accessible only by authorized users. Dealers must meet all training and system requirements to use the Approved System.
- 2.14** Mounting Boards must be kept in a secure location. Dealers must file a police report with local law enforcement within twenty-four (24) hours of discovering that a Mounting Board(s) has been lost or stolen. A copy of the police report must be supplied to the Department.
- 2.15** All Mounting Boards must be surrendered immediately to the Department of Revenue, Enforcement Business Group, Auto Industry Division, when a Dealer’s license has been suspended or revoked.
- 2.16** After notice and hearing conducted pursuant to 24-4-104 and 24-4-105, C.R.S., a Dealer found to have violated this rule may have its privilege of issuing Temporary Registration Permits suspended or revoked.
- 3.0** Analog Temporary Registration Permit Issuance
- 3.1** In the event of a System Outage occurring After Department Business Hours, Dealers may issue an Analog Temporary Registration Permit in lieu of the Temporary Registration Permit.

 - a.** In the event of a System Outage occurring during Department Business Hours, Dealers may issue an Analog Temporary Registration Permit in lieu of the Temporary Registration Permit upon receiving notice from the Department that authorization to issue them is granted for the period of time that the System Outage occurred during Department Business Hours.
- 3.2** An Analog Temporary Registration Permit is valid for thirty-six (36) hours from the date of issuance during an Approved System outage.

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- 3.3** An Analog Temporary Registration Permit shall be completed on forms provided by the Department and must contain:
- a.** The Dealer's dealer number, (preceded by zeros if less than six digits) and the last three numbers of the vehicle identification number (VIN). This will be the Analog Temporary Registration Permit serial number.
 - b.** Month, Day and Year of issuance.
 - c.** Time of issuance.
 - d.** Vehicle VIN, color, model year, make, and body.
- 3.4** Dealer must affix the Analog Temporary Registration Permit to a Mounting Board as required in 2.3 above.
- 3.5** Dealer must provide the vehicle owner the completed Analog Temporary Registration Permit affixed to a Mounting Board, and a letter on the dealership letterhead that includes the date, time, VIN, color, model year, make, body, owner name and contact information, and Dealer's contact information.
- 3.6** Dealer must retain a copy of the Analog Temporary Registration Permit and dealership letter and send an image of the Analog Temporary Registration Permit and dealership letter to the Department via email to dor_comcenter@state.co.us and dor_vehicleportal@state.co.us or by fax to (303)205-5802.
- 3.7** Within thirty-six (36) hours from the date of issuance of the Analog Temporary Registration Permit, the Dealer must complete the issuance of a sixty-day (60) Temporary Registration Permit on the Approved System, as required in section 2.0, and provide it to the owner.
- 3.8** A Dealer that issues an Analog Temporary Registration Permit that does not coincide with an Approved System outage, or coincides with a Department approval notification, or fails to complete the requirements of this rule upon issuance of an Analog Temporary Registration Permit will be reported to the Department's Auto Industry Division.

1 CCR 204-10 RULE 35. TRANSPORTER LICENSE PLATES

Basis: The statutory bases for this rule are 42-1-204, 42-3-116(1), and 42-3-304(7)(a), C.R.S.

Purpose: The purpose of this rule is to establish criteria for the issuance, renewal, and to regulate the use of Transporter License Plates.

1.0 Definitions

- 1.1** "Financial Institution" means a bank, savings bank, savings and loan association, industrial bank, industrial loan company, credit union, or bank or savings association holding company organized under federal law or the laws of any state, the District of

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Columbia, a territory or protectorate of the United States, or an operating subsidiary or affiliate of such entities.

- 1.2** “Repair Activity” means “Repairs on a Motor Vehicle” or “Repairs” as those terms are defined in 42-9-102(5), C.R.S.
- 1.3** “Repair Facility” means “Motor Vehicle Repair Facility” as that term is defined in 42-9-102(3), C.R.S.
- 1.4** “Transporter Tag(s)” or “Transporter License Plate(s)” means the numbered license plate issued by the Department on the Colorado blue and white license plate graphic with the stacked lettering “TRP”.
- 2.0** Issuance and Renewal Requirements
 - 2.1** An applicant requesting a Transporter License Plate or renewal must submit to the Department:
 - a.** A form DR 2222 Transporter Plate Application;
 - I.** Requests for annual renewal must include the renewal notice attached to the DR 2222 Transporter Plate Application.
 - b.** The documentation or other evidence identified in paragraphs 2.2 a. through 2.2 i. below proving that the applicant meets the requirement to be issued a Transporter License Plate; and
 - c.** The fees required in 42-3-301(1)(a) and 42-3-304(7)(a), C.R.S.
 - 2.2** A Transporter License Plate will only be issued and renewed to:
 - a.** A Dealer or auctioneer that provides a valid license issued by the Colorado Department of Revenue, Auto Industry Division.
 - b.** A manufacturer that provides a valid license issued by the Colorado Department of Revenue, Auto Industry Division.
 - c.** A Distributor, as defined in 12-6-102(5), C.R.S., that provides a valid license issued by the Colorado Department of Revenue, Auto Industry Division.
 - d.** A Dealer of special mobile machinery that provides: (1) a valid Colorado Sales Tax License; and (2) a business license or other proof that the Dealer is engaged in the sale of special mobile machinery in the ordinary course of business.
 - e.** A Government agency that is acting in the capacity of disposing, auctioning, or movement of vehicles previously owned by the Government.
 - f.** A Repair Facility that provides a current executed written agreement proving that it is engaged in Repair Activity for a State of Colorado licensed dealer and a valid Colorado Sales Tax License.

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days, the Transporter License Plate(s) in question may be suspended. If so, the plate shall be surrendered to the Department of Revenue, Division of Motor Vehicles, Title and Registration Section within ten days of the date of notice of the suspension at the cost of person/business subject to the loss.

- 6.2** The hearing shall be held at the Department of Revenue, Hearings Division. The presiding hearing officer shall be an authorized representative designated by the Executive Director. The law enforcement officer or Department Investigator who submits the documents and affidavit related to the action in question need not be present at the hearing unless his or her presence is required by the presiding officer, or requested by the person/business subject to the loss at the time the written request for hearing is submitted. If the law enforcement officer or investigator is not present at the hearing, the hearing officer may use the written documents and affidavit submitted by the officer or investigator.

1 CCR 204-10 RULE 48. COLORADO DEALER LICENSE PLATES

Basis: The statutory bases for this regulation are sections 42-1-102(22), 42-1-204, 42-3-116, and 42-3-304, C.R.S.

Purpose: The following rule is promulgated to establish criteria for issuance or license plates authorized for use by vehicle Dealers, vehicle Wholesalers, and persons who Offer for Sale special mobile machinery (SMM).

1.0 Definitions

- 1.1** “Dealer” has the same meaning as set forth in section 42-1-102(22), C.R.S.
- 1.2** “Dealer Demonstration” means a license plate that has stacked “DMO” lettering on the Colorado blue and white graphic license plate.
- 1.3** “Dealer Full-Use” means a license plate that has stacked “DLR” lettering on the Colorado blue and white graphic license plate.
- 1.4** “Dealer In-Transit” means a license plate that has stacked “INT” lettering on the Colorado blue and white graphic license plate.
- 1.5** “Dealer License Plates” means the Dealer Demonstration, Dealer Full-Use, Dealer In-Transit, or SMM Dealer Demonstration license plates.
- 1.6** “Established Place of Business” has the same meaning as set forth in section 42-1-102(31), C.R.S.
- 1.7** “Legitimate Business Interest” for the purpose of Section 2.8 as referred to in section 42-3-116(6)(d)(III), C.R.S., means:

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- a.** One or more specific and identifiable reasons that assigning a Dealer Full-Use license plate to any person serves the bona fide business interest of the Dealer or Wholesaler; and
 - b.** Use of the plate is benefiting the bona fide business interest.
- 1.8** “Motorcycle Plate” means a license plate manufactured in the standard size and configuration for a motorcycle.
- 1.9** “Normal Business Hours” for the purpose of this rule means 7:00 a.m. – 7:00 p.m. Monday through Saturday, unless otherwise defined by the Motor Vehicle Dealer Board.
- 1.10** “Offered for Sale” means:
 - a.** The title to a vehicle has been properly assigned to Dealer or Wholesaler, or if a new motor vehicle, the Dealer or Wholesaler has evidence of a manufacturer’s certificate of origin for the vehicle; and
 - b.** The vehicle is identified as available for sale on the Dealer’s or Wholesaler’s inventory list.
- 1.11** “Passenger Plate” means a standardized license plate manufactured for a Class C vehicle pursuant to section 42-3-203(1)(a), C.R.S.
- 1.12** “SMM Dealer” means a person who Offers to Sell special mobile machinery in the ordinary course of business.
- 1.13** “SMM Dealer Demonstration” means a license plate that has dual stacked “SMM” and “DMO” lettering on the Colorado blue and white license plate graphic.
- 1.14** “Wholesaler” has the same meaning as set forth in section 12-6-102(29), C.R.S.
- 2.0** Requirements
- 2.1** A Dealer or Wholesaler meeting all statutory and regulatory requirements may be issued Dealer License Plates.
- 2.2** SMM Dealers meeting all statutory and regulatory requirements may be issued SMM Dealer Demonstration license plate.
- 2.3** Dealer License Plates shall be issued, registered, and renewed by the County Motor Vehicle Office in the county in which the Dealer, Wholesaler, or SMM Dealer has an Established Place of Business.
- 2.4** Dealer License Plates shall be manufactured and offered as:
 - a.** Dealer Demonstration – single Passenger Plate and single Motorcycle Plate.
 - b.** Dealer In-Transit – single Passenger Plate.
 - c.** Dealer Full-Use – single Passenger Plate and single Motorcycle Plate.
 - d.** SMM Dealer Demonstration – single Passenger Plate.

2.5 Quantity of Dealer License Plates issued:

- a.** Dealer Demonstration license plates may be issued in unrestricted quantities to Dealers with the “Demo Plates: Y” indicator on the DR 2118 Dealer’s License.
- b.** Dealer In-Transit license plates may be issued in unrestricted quantities to Dealers with a current and valid DR 2118 Dealer’s License.
- c.** Dealer Full-Use license plates may be issued in unrestricted quantities to Dealers and Wholesalers with a valid “Full Use Plates: Y” indicator on the DR 2118 Dealer’s License.

2.6 Prior to initial issuance of an SMM Dealer Demonstration license plate the SMM Dealer will be assigned a SMM Dealer number that begins with “S” by the County Motor Vehicle Office. This SMM Dealer number shall be used for the issuance, renewal, and reporting of SMM Dealer Demonstration license plates registered under that “S” number. This SMM Dealer number shall be retained by the SMM Dealer and be used for all SMM transactions with regard to SMM Dealer Demonstration license plates.

2.7 Fees for Dealer License Plates shall be paid upon issuance and renewal as listed below:

- a.** Dealer Demonstration and Dealer In-Transit license plates fees must be paid as required by sections 42-3-304(6), 42-3-301, and 42-1-210, C.R.S.
- b.** Dealer Full-Use license plates fees must be paid as required by sections 42-3-116(6)(b)(II), 42-3-301, and 42-1-210, C.R.S.
- c.** SMM Dealer Demonstration license plates fees must be paid as required by sections 42-3-116(7)(b)(II), 42-3-301, and 42-1-210, C.R.S.

2.8 Dealer License Plates can be used only as follows:

- a.** A Dealer Demonstration license plate:
 - 1.** May be displayed on a vehicle Offered for Sale by a Dealer; and
 - 2.** May be displayed on a vehicle operated by a prospective buyer for demonstration drive purposes during Normal Business Hours when a dealership employee is in the vehicle with the prospective buyer or
 - 3.** May be displayed on a vehicle operated by a prospective buyer for demonstration drives purposes outside of Normal Business Hours when a dealership employee is not in the vehicle with the prospective buyer; provided that:
 - A.** The Dealer must provide the prospective buyer a letter authorizing him/her to operate the vehicle with a Dealer Demonstration license plate after Normal Business Hours;

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- b.** Upon revocation of the Dealer's DR 2118 Dealer's License by the Motor Vehicle Dealer Board.
- 2.11** A Dealer, Wholesaler, or SMM Dealer that changes ownership or legal status (e.g., changes from a corporation to a limited liability company, etc.) must immediately return all Dealer License Plates to the County Motor Vehicle Office that issued the plates and apply for new Dealer License Plates.
- 2.12** Lost or stolen Dealer License Plates must be reported within seventy-two hours to local law enforcement and to the County Motor Vehicle Office that issued the Dealer License Plates. A copy of the police report must be attached to the DR 2283 Lost or Stolen License Plate/Permit Affidavit when submitted to the County Motor Vehicle Office.
- 2.13** Secure and verifiable identification is required for issuance and replacement of Dealer License Plates. Dealers, Wholesalers, and SMM Dealers must provide the Department a list of all personnel authorized to conduct Dealer License Plate transactions with the Department on the Dealer's, Wholesaler's, or SMM Dealer's behalf.
- 3.0** Appeals
 - 3.1** If a Dealer, Wholesaler, or SMM Dealer has been denied a Dealer License Plate, it may request a hearing, in writing, within 60 days after a notice of denial is issued. Written hearing requests shall be submitted to the Department of Revenue, Hearings Section.
 - 3.2** The hearing shall be held at the Department of Revenue, Hearing Section. The presiding hearing officer shall be an authorized representative designated by the Executive Director. The Department's representative need not be present at the hearing unless the presiding hearing officer requires his or her presence or the Dealer, Wholesaler, or SMM Dealer requests his or her presence in writing. If the Department's representative is not present at the hearing, the hearing officer has the discretion to consider any written documents and affidavits submitted by the Department.

Federal Statutes and Regulations Related to the Auto Industry

16 CFR Part 455 – Used Motor Vehicle Trade Regulation Rule

455.1 General duties of a used vehicle dealer; definitions.

- (a) It is a deceptive act or practice for any used vehicle dealer, when that dealer sells or offers for sale a used vehicle in or affecting commerce as commerce is defined in the Federal Trade Commission Act:
 - (1) To misrepresent the mechanical condition of a used vehicle;
 - (2) To misrepresent the terms of any warranty offered in connection with the sale of a used vehicle; and
 - (3) To represent that a used vehicle is sold with a warranty when the vehicle is sold without any warranty.
- (b) It is an unfair act or practice for any used vehicle dealer, when that dealer sells or offers for sale a used vehicle in or affecting commerce as commerce is defined in the Federal Trade Commission Act:
 - (1) To fail to disclose, prior to sale, that a used vehicle is sold without any warranty; and
 - (2) To fail to make available, prior to sale, the terms of any written warranty offered in connection with the sale of a used vehicle.
- (c) The Commission has adopted this Rule in order to prevent the unfair and deceptive acts or practices defined in paragraphs (a) and (b). It is a violation of this Rule for any used vehicle dealer to fail to comply with the requirements set forth in §§ 455.2 through 455.5 of this part. If a used vehicle dealer complies with the requirements of §§ 455.2 through 455.5 of this part, the dealer does not violate this Rule.
- (d) The following definitions shall apply for purposes of this part:
 - (1) Vehicle means any motorized vehicle, other than a motorcycle, with a gross vehicle weight rating (GVWR) of less than 8500 lbs., a curb weight of less than 6,000 lbs., and a frontal area of less than 46 sq. ft.
 - (2) Used vehicle means any vehicle driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer, but does not include any vehicle sold only for scrap or parts (title documents surrendered to the State and a salvage certificate issued).
 - (3) Dealer means any person or business which sells or offers for sale a used vehicle after selling or offering for sale five (5) or more used vehicles in the previous

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twelve months, but does not include a bank or financial institution, a business selling a used vehicle to an employee of that business, or a lessor selling a leased vehicle by or to that vehicle's lessee or to an employee of the lessee.

- (4) Consumer means any person who is not a used vehicle dealer.
- (5) Warranty means any undertaking in writing, in connection with the sale by a dealer of a used vehicle, to refund, repair, replace, maintain or take other action with respect to such used vehicle and provided at no extra charge beyond the price of the used vehicle.
- (6) Implied warranty means an implied warranty arising under State law (as modified by the Magnuson-Moss Act) in connection with the sale by a dealer of a used vehicle.
- (7) Service contract means a contract in writing for any period of time or any specific mileage to refund, repair, replace, or maintain a used vehicle and provided at an extra charge beyond the price of the used vehicle, unless offering such contract is "the business of insurance" and such business is regulated by State law.
- (8) You means any dealer, or any agent or employee of a dealer, except where the term appears on the window form required by § 455.2(a).

455.2 Consumer sales—window form.

- (a) **General duty.** Before you offer a used vehicle for sale to a consumer, you must prepare, fill in as applicable and display on that vehicle the applicable "Buyers Guide" illustrated by Figures 1-2 at the end of this part. Dealers may use remaining stocks of the version of the Buyers Guide in effect prior to the effective date of this Rule for up to one year after that effective date (i.e., until January 27, 2018). Dealers who opt to use their existing stock and choose to disclose the applicability of a non-dealer warranty, must add the following as applicable below the "Full/Limited Warranty" disclosure: "Manufacturer's Warranty still applies. The manufacturer's original warranty has not expired on the vehicle;" "Manufacturer's Used Vehicle Warranty Applies;" or "Other Used Vehicle Warranty Applies," followed by the statement, "Ask the dealer for a copy of the warranty document and an explanation of warranty coverage, exclusions, and repair obligations."

- (1) The Buyers Guide shall be displayed prominently and conspicuously in any location on a vehicle and in such a fashion that both sides are readily readable. You may remove the form temporarily from the vehicle during any test drive, but you must return it as soon as the test drive is over.
- (2) The capitalization, punctuation and wording of all items, headings, and text on the form must be exactly as required by this Rule. The entire form must be printed in 100% black ink on a white stock no smaller than 11 inches high by 7 1/4 inches wide in the type styles, sizes and format indicated. When filling out the form, follow the directions in paragraphs (b) through (f) of this section and § 455.4.

- (b) **Warranties -**

(1) *No Implied Warranty - “As Is”/No Dealer Warranty.*

- (i) If you offer the vehicle without any implied warranty, i.e., “as is,” mark the box appearing in Figure 1. If you offer the vehicle with implied warranties only, substitute the IMPLIED WARRANTIES ONLY disclosure specified in paragraph (b)(1)(ii) of this section, and mark the IMPLIED WARRANTIES ONLY box illustrated by Figure 2. If you first offer the vehicle “as is” or with implied warranties only but then sell it with a warranty, cross out the “As Is - No Dealer Warranty” or “Implied Warranties Only” disclosure, and fill in the warranty terms in accordance with paragraph (b)(2) of this section.
- (ii) If your State law limits or prohibits “as is” sales of vehicles, that State law overrides this part and this rule does not give you the right to sell “as is.” In such States, the heading “As Is - No Dealer Warranty” and the paragraph immediately accompanying that phrase must be deleted from the form, and the following heading and paragraph must be substituted as illustrated in the Buyers Guide in Figure 2. If you sell vehicles in States that permit “as is” sales, but you choose to offer implied warranties only, you must also use the following disclosure instead of “As Is - No Dealer Warranty” as illustrated by the Buyers Guide in Figure 2. See § 455.5 for the Spanish version of this disclosure.

IMPLIED WARRANTIES ONLY

The dealer doesn't make any promises to fix things that need repair when you buy the vehicle or afterward. But *implied warranties* under your state's laws may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

(2) *Full/Limited Warranty.* If you offer the vehicle with a warranty, briefly describe the warranty terms in the space provided. This description must include the following warranty information:

- (i) Whether the warranty offered is “Full” or “Limited.” Mark the box next to the appropriate designation. A “Full” warranty is defined by the Federal Minimum Standards for Warranty set forth in section 104 of the Magnuson-Moss Act, 15 U.S.C. 2304 (1975). The Magnuson-Moss Act does not apply to vehicles manufactured before July 4, 1975. Therefore, if you choose not to designate “Full” or “Limited” for such vehicles, cross out both designations, leaving only “Warranty.”
- (ii) Which of the specific systems are covered (for example, “engine, transmission, differential”). You cannot use shorthand, such as “drive train” or “power train” for covered systems.
- (iii) The duration (for example, “30 days or 1,000 miles, whichever occurs first”).
- (iv) The percentage of the repair cost paid by you (for example, “The dealer will pay 100% of the labor and 100% of the parts.”)

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- (v) You may, but are not required to, disclose that a warranty from a source other than the dealer applies to the vehicle. If you choose to disclose the applicability of a non-dealer warranty, mark the applicable box or boxes beneath “NON-DEALER WARRANTIES FOR THIS VEHICLE” to indicate: “MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on some components of the vehicle,” “MANUFACTURER'S USED VEHICLE WARRANTY APPLIES,” and/or “OTHER USED VEHICLE WARRANTY APPLIES.”

If, following negotiations, you and the buyer agree to changes in the warranty coverage, mark the changes on the form, as appropriate. If you first offer the vehicle with a warranty, but then sell it without one, cross out the offered warranty and mark either the “As Is - No Dealer Warranty” box or the “Implied Warranties Only” box, as appropriate.

- (2) Service contracts. If you make a service contract available on the vehicle, you must add the following heading and paragraph below the Non-Dealer Warranties Section and mark the box labeled “Service Contract,” unless offering such service contract is “the business of insurance” and such business is regulated by State law. See § 455.5 for the Spanish version of this disclosure.

SERVICE CONTRACT. A service contract on this vehicle is available for an extra charge. Ask for details about coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of your purchase of this vehicle, *implied warranties* under your state's laws may give you additional rights.

- (c) **Name and Address.** Put the name and address of your dealership in the space provided. If you do not have a dealership, use the name and address of your place of business (for example, your service station) or your own name and home address.
- (d) **Make, Model, Model Year, VIN.** Put the vehicle's make (for example, “Chevrolet”), model (for example, “Corvette”), model year, and Vehicle Identification Number (VIN) in the spaces provided. You may write the dealer stock number in the space provided or you may leave this space blank.
- (e) **Complaints.** In the space provided, put the name and telephone number of the person who should be contacted if any complaints arise after sale.
- (f) **Optional Signature Line.** In the space provided for the name of the individual to be contacted in the event of complaints after sale, you may include a signature line for a buyer's signature. If you opt to include a signature line, you must include a disclosure in immediate proximity to the signature line stating: “I hereby acknowledge receipt of the Buyers Guide at the closing of this sale.” You may pre-print this language on the form if you choose.

455.3 Window form.

- (a) **Form given to buyer.** Give the buyer of a used vehicle sold by you the window form displayed under § 455.2 containing all of the disclosures required by the Rule and reflecting the warranty coverage agreed upon. If you prefer, you may give the buyer a

copy of the original, so long as that copy accurately reflects all of the disclosures required by the Rule and the warranty coverage agreed upon.

- (b) ***Incorporated into contract.*** The information on the final version of the window form is incorporated into the contract of sale for each used vehicle you sell to a consumer. Information on the window form overrides any contrary provisions in the contract of sale. To inform the consumer of these facts, include the following language conspicuously in each consumer contract of sale:

The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

455.4 Contrary statements.

You may not make any statements, oral or written, or take other actions which alter or contradict the disclosures required by §§ 455.2 and 455.3. You may negotiate over warranty coverage, as provided in § 455.2(b) of this part, as long as the final warranty terms are identified in the contract of sale and summarized on the copy of the window form you give to the buyer.

455.5 Spanish language sales.

- (a) If you conduct a sale in Spanish, the window form required by § 455.2 and the contract disclosures required by § 455.3 must be in that language. You may display on a vehicle both an English language window form and a Spanish language translation of that form. Use the translation and layout for Spanish language sales in Figures 4, 5, and 6.
- (b) Use the following language for the “Implied Warranties Only” disclosure when required by § 455.2(b)(1) as illustrated by Figure 5:

SOLO GARANTÍAS IMPLÍCITAS

El concesionario no hace ninguna promesa de reparar lo que sea necesario cuando compre el vehículo o posteriormente. Sin embargo, las *garantías implícitas* según las leyes estatales podrían darle algunos derechos para hacer que el concesionario se encargue de ciertos problemas que no fueran evidentes cuando compró el vehículo.

- (c) Use the following language for the “Service Contract” disclosure required by § 455.2(b)(3) as illustrated by Figures 4 and 5:

CONTRATO DE MANTENIMIENTO. Con un cargo adicional, puede obtener un contrato de mantenimiento para este vehículo. Pregunte acerca de los detalles de la cobertura, los deducibles, el precio y las exclusiones. Si compra un contrato de mantenimiento dentro de los 90 días desde el momento en que compró el vehículo, las *garantías implícitas* según las leyes de su estado podrían darle derechos

- (d) Use the following language if you choose to use the Optional Signature Line provided by § 455.2(f):

Por este medio confirmo que he recibido copia de la Guía del Comprador al momento de la compraventa.

455.6 State exemptions.

- (a) If, upon application to the Commission by an appropriate State agency, the Commission determines, that -
- (1) There is a State requirement in effect which applies to any transaction to which this rule applies; and
 - (2) That State requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this Rule; then the Commission's Rule will not be in effect in that State to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the State requirement.
- (b) Applications for exemption under subsection (a) should be directed to the Secretary of the Commission. When appropriate, proceedings will be commenced in order to make a determination described in paragraph (a) of this section, and will be conducted in accordance with subpart C of part 1 of the Commission's Rules of Practice.

455.7 Severability.

The provisions of this part are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

Excerpts from IRS Form 8300 Reference Guide

<https://www.irs.gov/businesses/small-businesses-self-employed/irs-form-8300-reference-guide>

Type of Payments to Report

Trades and businesses must report cash payments received if all of the following criteria are met:

- 1) The amount of cash is more than \$10,000
- 2) The business receives the cash as:
 - One lump sum of more than \$10,000, or
 - Installment payments that cause the total cash received within one year of the initial payment to total more than \$10,000, or
 - Previously unreported payments that cause the total cash received within a 12-month period to total more than \$10,000
- 3) The establishment receives the cash in the ordinary course of a trade or business
- 4) The same agent or buyer provides the cash
- 5) The business receives the cash in a single transaction or in related transactions

Example: Dave bought a new car and sold his old one for \$11,000. The buyer paid Dave in cash. Since Dave is not in the trade or business of selling cars, he would not be required to report the receipt of cash exceeding \$10,000 from the sale of the car.

Example: Jane operates a jewelry store in Puerto Rico and received payment in cash on a sale of jewelry for \$12,000. She will need to report the transaction on a Form 8300. In general, a person engaged in a trade or business located in a U.S. possession or territory is subject to the general jurisdiction of the IRS and must file Form 8300 with IRS. This is in addition to any filing obligation the person may have with the territory tax authorities under requirements that are similar to the requirement to file Forms 8300 with the IRS.

Example: Twilight Cemetery Co. provides burial sites and burial services to its customers. As part of its business, Twilight acts as an agent for XYZ Insurance. Tom, a customer of Twilight, purchases a burial insurance policy by making a cash payment of more than \$10,000 to Twilight who immediately delivers the cash to XYZ. The receipt of cash by the agent Twilight is a transaction that must be reported on Form 8300. In completing Form 8300, Twilight must provide the principal's information in Part II.

Cash Includes

Cash includes the coins and currency of the United States and a foreign country. Cash may also include cashier's checks, bank drafts, traveler's checks, and money orders with a face value of \$10,000 or less, if the business receives the instrument in:

- A designated reporting transaction (as defined below), or
- Any transaction in which the business knows the customer is trying to avoid reporting of the transaction on Form 8300.

Example: Tom Greenwood purchases a used car from XYZ Auto Dealership for a total of \$12,000. He pays with a cashier's check having a face value of \$12,000. The cashier's check is not treated as cash because its face value is more than \$10,000. The business does not need to file Form 8300.

A designated reporting transaction is the retail sale of any of the following:

- A consumer durable such as an automobile, boat, or property other than land or buildings that:
 - Is suitable for personal use
 - Can reasonably be expected to last at least one year under ordinary use
 - Has sales price of more than \$10,000
 - Can be seen or touched (tangible property)
- A collectible such as a work of art, rug, antique, metal, gem, stamp or coin.
- Travel or entertainment, if the total sales price of all items sold for the same trip or entertainment event in one transaction or related transactions is more than \$10,000. The total sales price of all items sold for a trip or entertainment event, which includes the sales price of items such as airfare, hotel rooms and admission tickets.

Example: Ed Johnson asks a travel agent to charter a passenger airplane to take a group to a sports event in another city. He also asks the travel agent to book hotel rooms and admission

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tickets for the group. He pays with two money orders, each for \$6,000. The travel agent has received more than \$10,000 cash in the designated reporting transaction and must file Form 8300.

Cash Does Not Include

Cash does not include:

- Personal checks drawn on the account of the writer.
- A cashier's check, bank draft, traveler's check or money order with a face value of more than \$10,000.

When a customer uses currency of more than \$10,000 to purchase a monetary instrument, the financial institution issuing the cashier's check, bank draft, traveler's check or money order is required to report the transaction by filing the FinCEN Currency Transaction Report (CTR).

Example: Jim Roberts purchases an automobile from ABC Auto Dealers for \$19,000. He pays with \$4,000 in currency and wires \$15,000 from his bank account to the dealership's bank account. A wire transfer does not constitute cash for Form 8300 reporting purposes, since the remaining cash remitted to ABC Auto Dealers was below \$10,000 the dealer has no filing requirement.

- A cashier's check, bank draft, traveler's check or money order that is received in payment on a promissory note or an installment sales contract (including a lease that is considered a sale for federal tax purposes). However, this exception applies only if:
 - The business uses similar notes or contracts in other sales to ultimate customers in the ordinary course of its trade or business and
 - The total payments for the sale that the business receives on or before the 60th day after the sale are 50 percent or less of the purchase price.
- A cashier's check, bank draft, traveler's check, or money order that is received in payment for a consumer durable or collectible, and all three of the following statements are true:
 - The business receives it under a payment plan requiring:
 - One or more down payments and
 - Payment of the rest of the purchase price by the date of sale.
 - The business receives it more than 60 days before the date of the sale.
 - The business uses payment plans with the same or substantially similar terms when selling to ultimate customers in the ordinary course of its trade or business.
- A cashier's check, bank draft, traveler's checks, or money order received for travel or entertainment if all three of the following statements are true:
 - The business receives it under a payment plan requiring:
 - One or more down payments and

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- Payment of the rest of the purchase price by the earliest date that any travel or entertainment item (such as airfare) is furnished for the trip or entertainment event.
- The business receives it more than 60 days before the date on which the final payment is due.
- The business uses payment plans with the same or substantially similar terms when selling to ultimate customers in the ordinary course of its trade or business.

Definition of a Related Transaction

The law requires that trades and businesses report transactions when customers use cash in a single transaction or a related transaction. Related transactions are transactions between a payer, or an agent of the payer, and a recipient of cash that occur within a 24-hour period. If the same payer makes two or more transactions totaling more than \$10,000 in a 24-hour period, the business must treat the transactions as one transaction and report the payments. A 24-hour period is 24 hours, not necessarily a calendar day or banking day.

Example: A retail motorcycle dealer sells a motorcycle for \$9,000 in cash to Gary Smith at 10 a.m. During the afternoon on the same day, Mr. Smith returns to buy another motorcycle for his son and pays \$9,000 in cash. Since, both transactions occurred within a 24-hour period, they are related transactions, and the motorcycle dealer must file Form 8300.

Transactions are related even if they are more than 24 hours apart when a business knows, or has reason to know, that each is a series of connected transactions.

Example: A client pays a travel agent \$8,000 in cash for a trip. Two days later, the same client pays the travel agent \$3,000 more in cash to include another person on the trip. These are related transactions, and the travel agent must file Form 8300.

Example: A customer purchases a vehicle for \$9,000 and then within the next 12 months pays the dealership additional cash of \$1,500 for items such as a new transmission, accessories, customized paint job, and others. The dealership is not required to file a Form 8300 if the additional transactions are not part of the original sales contract and the customer has no additional legal obligation to make such additional transactions.

Taxpayer Identification Number (TIN)

A business must obtain the correct TIN of the person(s) from whom they receive the cash. If the transaction is conducted on behalf of another person or persons, the business must also obtain the TIN of that person or persons. Failure to include all required information or inclusion of incorrect information, on Form 8300, may result in civil or criminal penalties. However, a filer may be able to avoid penalties when the customer refuses to provide a TIN by showing that its failure to file is reasonable under circumstances more fully described in 26 CFR 301.6724-1(e) and (f).

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Under the filing exception as described in [Publication 1544](#), a filer is not required to provide the TIN of a person who is a nonresident individual or foreign organization. However, name and address verification is required, and the source of the verification must be included in item 14 of Form 8300. For nonresident aliens, acceptable documentation would include a passport, alien registration card or other official document.

Example: A nonresident alien with no SSN or [ITIN](#) makes a purchase requiring Form 8300 reporting and presents a Mexican driver's license to verify his name and address. A driver's license issued by a foreign government would be acceptable documentation for name and address verification purposes.

Reporting Suspicious Transactions

There may be situations where the business is suspicious about a transaction. A transaction is suspicious if:

- It appears that a person is trying to prevent a business from filing Form 8300,
- It appears that a person is trying to cause a business to file a false or incomplete Form 8300, or
- There is a sign of possible illegal activity.

The business may report suspicious transactions by checking the "suspicious transaction" box (box 1b) on the top line of Form 8300. Businesses may also call the IRS Criminal Investigation Division Hotline at 800-800-2877, or the local IRS Criminal Investigation unit to report suspicious transactions. If a business suspects that a transaction is related to terrorist activity, the business should call the Financial Institutions Hotline at 866-556-3974.

The business may voluntarily file a Form 8300 in those situations where the transaction is \$10,000 or less and suspicious. Because the Form 8300 is not required in those situations, there is no requirement to send a statement to the payor.

When to Report Payments

The amount of cash a customer uses for a transaction and when the customer makes the transaction are the determining factors for when the business must file the Form 8300. Generally, a business must file Form 8300 within 15 days after they receive the cash. If the 15th day falls on a Saturday, Sunday, or holiday the business must file the report on the next business day.

Example: An attorney receives more than \$10,000 cash from a person as advance payment for legal services. Even though no service has been performed at the time the cash is received, the attorney is required to file Form 8300 within fifteen days after the cash is received. Once a person receives (in a transaction or related transactions) cash exceeding \$10,000 in a person's trade or business, a Form 8300 must be filed.

Multiple Payments

In some situations, the payer may arrange to pay in cash installments. If the first payment is more than \$10,000, a business must file Form 8300 within 15 days. If the first payment is not more than \$10,000, the business adds the first payment and any later payments made within one year of the first payment. When the total cash payments exceed \$10,000, the business must file Form 8300 within 15 days.

After a business files Form 8300, it must start a new count of cash payments received from that buyer. If a business receives more than \$10,000 in additional cash payments from that buyer within a 12-month period, it must file another Form 8300 within 15 days of the payment that causes the additional payments to total more than \$10,000.

If a business must file Form 8300 and the same customer makes additional payments within the 15 days before the business must file Form 8300, the business can report all the payments on one form.

Example: On January 10, a customer makes a cash payment of \$11,000 to a business. The same customer makes additional payments on the same transaction of \$4,000 on February 15, \$5,000 on March 20, and \$6,000 on May 12. By January 25 (fifteen days from January 10), the business must file Form 8300 for the \$11,000 payment. By May 27 (fifteen days from May 12), the business must file another Form 8300 for the additional payments that total \$15,000.

Example: Hospital Emergency Rooms often treat patients that pay for the services via installment payments, with cash or monetary instruments of less than \$10,000. When an installment arrangement is established on a single transaction, in this case the treatment received during the emergency room visit, the hospital must file a Form 8300 when cash payments received exceed \$10,000 within a 12-month period. After filing the Form 8300, a new count of cash payments from the patient would begin. Since this is not a designated reporting transaction, the expanded definition of cash to include monetary instruments would not apply, unless the hospital knows that the payer is trying by the manner of the payment to keep the hospital from reporting on Form 8300 the transaction or payments.

Where to File Form 8300

Businesses can file Form 8300 electronically using the [Bank Secrecy Act \(BSA\) Electronic Filing \(E-Filing\) System](#). E-filing is free, and is a quick and secure way for individuals to file their Form 8300s. Businesses can also mail the Form 8300 to the IRS at:

IRS Detroit Federal Building
P.O. Box 32621
Detroit, MI 48232

U.S. Territory Businesses

Businesses, including sole proprietorships, located in the U.S. territories must file Form 8300 with the IRS on cash transactions of \$10,000 or more. The U.S. Territories include American Samoa, Northern Mariana Islands, Guam, Puerto Rico and the U.S. Virgin Islands. This IRS filing requirement is in addition to any U.S. territory filing requirement the business may also have with territory tax authorities under similar territory rules, including under a U.S. territorial mirror income tax code.

Required Written Statement for Customers

When a business is required to file a Form 8300, the law requires the business to provide a written statement to each person(s) named on Form 8300 to notify them that the business has filed the form. This requirement to provide a written statement does not apply with respect to a Form 8300 filed voluntarily, including a Form 8300 to report a suspicious transaction involving less than \$10,000.

- The statement must include the following information:
- The name and address of the cash recipient's business,
- Name and telephone number of a contact person for the business,
- The total amount of reportable cash received in a 12-month period, and
- A statement that the cash recipient's is reporting the information to the IRS.

The code and regulations only specify the information that the business is required to include on a statement, not the format of the statement. A business may use its invoice for the statement of notification, as long as the invoice includes all required information. Providing a copy of Form 8300 to the payer(s), although not prohibited, is not advisable due to the sensitive information contained on the form, for example, the Employer Identification Number (commonly called an EIN) or SSN of the filer.

The business filing Form 8300 must provide its identified customers with the written statement **on or before Jan. 31** of the year that immediately follows the year the customer made the cash payment.

Recordkeeping

A business should keep a copy of every Form 8300 it files, and the required statement it sent to customers, for at least five years from the date filed.

Penalties

Businesses may be subject to civil and criminal penalties for noncompliance with the law.

Civil Penalties**For returns due to be filed during calendar year 2020:**

The IRS adjusts the penalty amounts *annually* for inflation. Please refer to the United States Internal Revenue Service publications for years other than 2020.

Civil penalties and applicable rules are:

- The penalty for negligent failure to timely file, to include all required information or to include correct information is \$270 per return, not to exceed \$3,339,000 per calendar year. IRC Section 6721(a)(1).
- For persons with average annual gross receipts of not more than \$5,000,000, the ceiling is \$1,113,000. The penalty applies to each return. IRC Section 6721(d)(1)(A).
- If any failure to file under IRC Section 6721(a) is corrected on or before the 30th day after the required filing date, the penalty is reduced to \$50 in lieu of \$270 and the maximum amount imposed shall not exceed \$556,500 per calendar year. IRC Section 6721(b)(1). The ceiling is \$194,500 for persons with average annual gross receipts of not more than \$5,000,000. IRC Section 6721(d)(1)(B).
- The penalty for intentional disregard of the requirement to timely file or to include all required information, or to include correct information is the greater of: (1) \$27,820 or (2) the amount of cash received in the transaction, not to exceed \$111,000 (with no calendar year limitation applicable). The penalty applies to each failure. IRC Section 6721(e)(2)(C).
- The penalty for negligent failure to furnish a timely, complete, and correct notice to the person(s) required to be identified on the Form 8300 is \$270 per statement, not to exceed \$3,339,000 per calendar year. IRC Section 6722(a)(1). For persons with average annual gross receipts of not more than \$5,000,000 the ceiling is \$1,113,000. IRC Section 6722(d)(1)(A).
- If any failure to furnish described in IRC 6722(a) is corrected within 30 days, the penalty is \$50 in lieu of \$270, and the ceiling is \$556,000. IRC 6722(b)(1). For persons with gross receipts of not more than \$5,000,000 the ceiling is \$194,000. IRC 6722(d)(1)(B).
- If any failure described in subsection (a)(2) is corrected after the 30th day referred to in paragraph (1) but on or before August 1 of the calendar year in which the required filing date occurs the penalty is \$110 in lieu of \$270, and the ceiling is \$1,669,500. IRC 6722(b)(2). For persons with gross receipts of not more than \$5,000,000 the ceiling is \$556,500. IRC 6722(d)(1)(C).
- Intentional disregard of the requirement to furnish timely, correct, and complete notices is \$550 per failure or, if greater, 10 percent of the aggregate amounts of the items required to be reported correctly (with no calendar year limitation applicable). IRC Section 6722(e)(2)(A).

Criminal Penalties

A person may be subject to criminal penalties for:

- Willfully failing to file a Form 8300,
- Willfully filing a false or fraudulent Form 8300,

- Stopping, or trying to stop, a Form 8300 from being filed, or
- Setting up, helping to set up, or trying to set up a transaction in a way that would make it seem unnecessary to file Form 8300.

Any person required to file Form 8300 who willfully fails to file, fails to file timely, or fails to include complete and correct information is subject to criminal sanctions as a felony under IRC Section 7203. Sanctions include a fine up to \$25,000 (\$100,000 in the case of a corporation), and/or imprisonment up to five years, plus the costs of prosecution.

Any person who willfully files a Form 8300 which is false with regard to a material matter may be fined up to \$100,000 (\$500,000 in the case of a corporation), and/or imprisoned up to three years, plus the costs of prosecution. IRC Section 7206(1)

The penalties for failure to file may also apply to any person (including a payer) who attempts to interfere with or prevent the seller (or business) from filing a correct Form 8300. This includes any attempt to structure the transaction in a way that would make it seem unnecessary to file Form 8300. “Structuring” means breaking up a large cash transaction into small cash transactions to disguise the true amount of cash involved in the transaction.

Excerpts from Regulation Z

12 C.F.R. § 226.1 Authority, purpose, coverage, organization, enforcement, and liability.

- (a) **Authority.** This regulation, known as Regulation Z, is issued by the [Board](#) of Governors of the Federal Reserve System to implement the federal Truth in Lending Act, which is contained in title I of the [Consumer Credit](#) Protection Act, as amended ([15 U.S.C. 1601](#) *et seq.*). This regulation also implements title XII, section 1204 of the Competitive Equality Banking Act of 1987 ([Pub. L. 100-86, 101 Stat. 552](#)). Information collection [requirements](#) contained in this regulation have been approved by the [Office](#) of Management and Budget under the provisions of [44 U.S.C. 3501](#) *et seq.* and have been assigned OMB No. 7100-0199.
- (b) **Purpose.** The purpose of this regulation is to promote the informed use of [consumer credit](#) by requiring disclosures about its terms and cost. The regulation also includes substantive protections. It gives [consumers](#) the right to cancel certain [credit](#) transactions that involve a lien on a [consumer's](#) principal [dwelling](#), regulates certain [credit](#) card practices, and provides a means for fair and timely resolution of [credit](#) billing disputes. The regulation does not [generally](#) govern charges for [consumer credit](#), except that several provisions in Subpart G set forth special rules addressing certain charges applicable to [credit](#) card [accounts](#) under an open-end (not home secured) [consumer credit](#) plan. The regulation requires a maximum interest rate to be [stated](#) in variable-rate contracts secured by the [consumer's](#) [dwelling](#). It also imposes limitations on home equity plans that are subject to the [requirements](#) of [§ 226.5b](#) and mortgages that are subject to the [requirements](#) of [§ 226.32](#). The regulation prohibits certain acts or practices in connection with [credit](#) secured by a [dwelling](#) in [§ 226.36](#), and [credit](#) secured by

a [consumer](#)'s principal [dwelling](#) in [§ 226.35](#). The regulation also regulates certain practices of [creditors](#) who extend private education loans as defined in [§ 226.46\(b\)\(5\)](#).

(c) **Coverage.**

- (1) In general, this regulation applies to each individual or business that offers or extends [credit](#) when four conditions are met:
 - (i) The [credit](#) is offered or extended to consumers;
 - (ii) The offering or extension of [credit](#) is done regularly; ¹

¹ [Reserved]

 - (iii) The [credit](#) is subject to a finance charge or is payable by a written agreement in more than four installments; and
 - (iv) The [credit](#) is primarily for personal, family, or household purposes.
- (2) If a [credit](#) card is involved, however, certain provisions apply even if the [credit](#) is not subject to a finance charge, or is not payable by a written agreement in more than four installments, or if the [credit](#) card is to be used for business purposes.
- (3) In addition, certain [requirements](#) of [§ 226.5b](#) apply to [persons](#) who are not [creditors](#) but who provide applications for home-equity plans to consumers.
- (4) Furthermore, certain [requirements](#) of [§ 226.57](#) apply to [institutions](#) of higher education.

(d) **Organization.** The regulation is divided into subparts and appendices as follows:

- (1) Subpart A contains general information. It sets forth:
 - (i) The authority, purpose, coverage, and [organization](#) of the regulation;
 - (ii) The definitions of basic terms;
 - (iii) The transactions that are exempt from coverage; and
 - (iv) The method of determining the finance charge.
- (2) Subpart B contains the rules for [open-end credit](#). It requires that [account](#)-opening disclosures and periodic statements be provided, as well as additional disclosures for [credit](#) and charge card applications and solicitations and for home-equity plans subject to the [requirements](#) of [§ 226.5a](#) and [§ 226.5b](#), respectively. It also describes special rules that apply to [credit](#) card transactions, treatment of payments and [credit balances](#), procedures for resolving [credit](#) billing errors, annual percentage rate calculations, rescission requirements, and advertising.
- (3) Subpart C relates to [closed-end credit](#). It contains rules on disclosures, treatment of [credit balances](#), annual percentages rate calculations, rescission requirements, and advertising.
- (4) Subpart D contains rules on oral disclosures, disclosures in languages other than English, [record](#) retention, effect on [state](#) laws, [state](#) exemptions, and rate limitations.

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- (5) Subpart E contains special rules for mortgage transactions. [Section 226.32](#) requires certain disclosures and provides limitations for closed-end loans that have rates or fees above specified amounts. [Section 226.33](#) requires special disclosures, including the total annual loan cost rate, for reverse mortgage transactions. [Section 226.34](#) prohibits specific acts and practices in connection with closed-end mortgage transactions that are subject to [§ 226.32](#). [Section 226.35](#) prohibits specific acts and practices in connection with closed-end higher priced [mortgage loans](#), as defined in [§ 226.35\(a\)](#). [Section 226.36](#) prohibits specific acts and practices in connection with an extension of [credit](#) secured by a [dwelling](#).
 - (6) Subpart F relates to private education loans. It contains rules on disclosures, limitations on changes in terms after approval, the right to cancel the loan, and limitations on cobranding in the marketing of private education loans.
 - (7) Subpart G relates to [credit](#) card [accounts](#) under an open-end (not home-secured) [consumer credit](#) plan (except for [§ 226.57\(c\)](#), which applies to all [open-end credit](#) plans). [Section 226.51](#) contains rules on evaluation of a [consumer's](#) ability to make the required payments under the terms of an [account](#). [Section 226.52](#) limits the fees that a [consumer](#) can be required to pay with respect to an open-end (not home-secured) [consumer credit](#) plan during the first year after [account](#) opening. [Section 226.53](#) contains rules on allocation of payments in excess of the minimum payment. [Section 226.54](#) sets forth certain limitations on the imposition of finance charges as the result of a loss of a grace period. [Section 226.55](#) contains limitations on increases in annual percentage rates, fees, and charges for [credit](#) card accounts. [Section 226.56](#) prohibits the assessment of fees or charges for over-the-limit transactions unless the [consumer](#) affirmatively consents to the [creditor's](#) payment of over-the-limit transactions. [Section 226.57](#) sets forth rules for reporting and marketing of college student [open-end credit](#). [Section 226.58](#) sets forth [requirements](#) for the Internet posting of [credit](#) card [accounts](#) under an open-end (not home secured) [consumer credit](#) plan.
 - (8) Several appendices contain information such as the procedures for determinations about [state](#) laws, [state](#) exemptions and issuance of staff interpretations, special rules for certain kinds of [credit](#) plans, a list of enforcement agencies, and the rules for computing annual percentage rates in [closed-end credit](#) transactions and total annual loan cost rates for reverse mortgage transactions.
- (e) ***Enforcement and liability.*** Section 108 of the act contains the administrative enforcement provisions. Sections 112, 113, 130, 131, and 134 contain provisions relating to liability for failure to comply with the [requirements](#) of the act and the regulation. Section 1204 (c) of title XII of the Competitive Equality Banking Act of 1987, [Public Law 100-86](#), [101 Stat. 552](#), incorporates by reference administrative enforcement and civil liability provisions of sections 108 and 130 of the act.

12 C.F.R § 226.24 Advertising.

- (a) ***Actually available terms.*** If an advertisement for [credit states](#) specific [credit](#) terms, it shall [state](#) only those terms that actually are or will be arranged or offered by the [creditor](#).

- (b) ***Clear and conspicuous standard.*** Disclosures required by this section shall be made clearly and conspicuously.
- (c) ***Advertisement of rate of finance charge.*** If an advertisement states a rate of finance charge, it shall state the rate as an “annual percentage rate,” using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. If an advertisement is for credit not secured by a dwelling, the advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate. If an advertisement is for credit secured by a dwelling, the advertisement shall not state any other rate, except that a simple annual rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.
- (d) ***Advertisement of terms that require additional disclosures -***
- (1) ***Triggering terms.*** If any of the following terms is set forth in an advertisement, the advertisement shall meet the requirements of paragraph (d)(2) of this section:
- (i) The amount or percentage of any downpayment.
 - (ii) The number of payments or period of repayment.
 - (iii) The amount of any payment.
 - (iv) The amount of any finance charge.
- (2) ***Additional terms.*** An advertisement stating any of the terms in paragraph (d)(1) of this section shall state the following terms,⁴⁹ as applicable (an example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used):
- (i) The amount or percentage of the downpayment.
 - (ii) The terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment.
 - (iii) The “annual percentage rate,” using that term, and, if the rate may be increased after consummation, that fact.
- (e) ***Catalogs or other multiple-page advertisements; electronic advertisements -*** (1) If a catalog or other multiple-page advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (d)(2) of this section, it shall be considered a single advertisement if -
- (i) The table or schedule is clearly and conspicuously set forth; and
 - (ii) Any statement of the credit terms in paragraph (d)(1) of this section appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.
- (2) A catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site) complies with paragraph (d)(2) of this section if the table or schedule of terms includes all

appropriate disclosures for a representative scale of [amounts](#) up to the level of the more commonly sold higher priced property or services offered.

(f) ***Disclosure of rates and payments in advertisements for credit secured by a dwelling -***

(1) ***Scope.*** The [requirements](#) of this paragraph apply to any advertisement for [credit](#) secured by a [dwelling](#), other than television or radio advertisements, including promotional materials accompanying applications.

(2) ***Disclosure of rates -***

(i) ***In general.*** If an advertisement for [credit](#) secured by a [dwelling states](#) a simple annual rate of interest and more than one simple annual rate of interest will apply over the term of the advertised loan, the advertisement shall disclose in a clear and conspicuous manner:

- (A) Each simple annual rate of interest that will apply. In variable-rate transactions, a rate determined by adding an index and margin shall be disclosed based on a reasonably current index and margin;
- (B) The period of time during which each simple annual rate of interest will apply; and
- (C) The annual percentage rate for the loan. If such rate is variable, the annual percentage rate shall comply with the accuracy standards in [§§ 226.17\(c\)](#) and 226.22.

(ii) ***Clear and conspicuous requirement.*** For purposes of [paragraph \(f\)\(2\)\(i\)](#) of this section, clearly and conspicuously disclosed means that the required information in paragraphs (f)(2)(i)(A) through (C) shall be disclosed with equal prominence and in close proximity to any advertised rate that triggered the required disclosures. The required information in paragraph (f)(2)(i)(C) may be disclosed with greater prominence than the other information.

(3) ***Disclosure of payments -***

(i) ***In general.*** In addition to the [requirements](#) of [paragraph \(c\)](#) of this section, if an advertisement for [credit](#) secured by [dwelling states](#) the [amount](#) of any payment, the advertisement shall disclose in a clear and conspicuous manner:

- (A) The [amount](#) of each payment that will apply over the term of the loan, including any balloon payment. In variable-rate transactions, payments that will be determined based on the application of the sum of an index and margin shall be disclosed based on a reasonably current index and margin;
- (B) The period of time during which each payment will apply; and
- (C) In an advertisement for [credit](#) secured by a first lien on a [dwelling](#), the fact that the payments do not include [amounts](#) for taxes and insurance premiums, if applicable, and that the actual payment [obligation](#) will be greater.

- (ii) **Clear and conspicuous requirement.** For purposes of [paragraph \(f\)\(3\)\(i\)](#) of this section, a clear and conspicuous disclosure means that the required information in paragraphs (f)(3)(i)(A) and (B) shall be disclosed with equal prominence and in close proximity to any advertised payment that triggered the required disclosures, and that the required information in paragraph (f)(3)(i)(C) shall be disclosed with prominence and in close proximity to the advertised payments.
 - (4) **Envelope excluded.** The [requirements](#) in paragraphs (f)(2) and (f)(3) of this section do not apply to an envelope in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.
- (g) **Alternative disclosures - television or radio advertisements.** An advertisement made through television or radio stating any of the terms requiring additional disclosures under [paragraph \(d\)\(2\)](#) of this section may comply with [paragraph \(d\)\(2\)](#) of this section either by:
 - (1) Stating clearly and conspicuously each of the additional disclosures required under [paragraph \(d\)\(2\)](#) of this section; or
 - (2) Stating clearly and conspicuously the information required by [paragraph \(d\)\(2\)\(iii\)](#) of this section and listing a toll-free telephone number, or any telephone number that allows a [consumer](#) to reverse the phone charges when calling for information, along with a reference that such number may be used by [consumers](#) to obtain additional cost information.
- (h) **Tax implications.** If an advertisement distributed in paper form or through the Internet (rather than by radio or television) is for a loan secured by the [consumer's](#) principal [dwelling](#), and the advertisement [states](#) that the advertised extension of [credit](#) may exceed the fair market value of the [dwelling](#), the advertisement shall clearly and conspicuously [state](#) that:
 - (1) The interest on the portion of the [credit](#) extension that is greater than the fair market value of the [dwelling](#) is not tax deductible for Federal income tax purposes; and
 - (2) The [consumer](#) should consult a tax adviser for further information regarding the deductibility of interest and charges.
- (i) **Prohibited acts or practices in advertisements for credit secured by a dwelling.** The following acts or practices are prohibited in advertisements for [credit](#) secured by a dwelling:
 - (1) **Misleading advertising of “fixed” rates and payments.** Using the word “fixed” to refer to rates, payments, or the [credit](#) transaction in an advertisement for variable rate transactions or other transactions where the payment will increase, unless:
 - (i) In the case of an advertisement solely for one or more variable-rate transactions,
 - (A) The phrase “Adjustable-Rate Mortgage,” “Variable-Rate Mortgage,” or “ARM” appears in the advertisement before the first

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use of the word “fixed” and is at least as conspicuous as any use of the word “fixed” in the advertisement; and

- (B) Each use of the word “fixed” to refer to a rate or payment is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period;
 - (ii) In the case of an advertisement solely for non-variable-rate transactions where the payment will increase (*e.g.*, a stepped-rate mortgage transaction with an initial lower payment), each use of the word “fixed” to refer to the payment is accompanied by an equally prominent and closely proximate statement of the time period for which the payment is fixed, and the fact that the payment will increase after that period; or
 - (iii) In the case of an advertisement for both variable-rate transactions and non-variable-rate transactions,
 - (A) The phrase “Adjustable-Rate Mortgage,” “Variable-Rate Mortgage,” or “ARM” appears in the advertisement with equal prominence as any use of the term “fixed,” “Fixed-Rate Mortgage,” or similar terms; and
 - (B) Each use of the word “fixed” to refer to a rate, payment, or the [credit](#) transaction either refers solely to the transactions for which rates are fixed and complies with [paragraph \(i\)\(1\)\(ii\)](#) of this section, if applicable, or, if it refers to the variable-rate transactions, is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period.
- (2) ***Misleading comparisons in advertisements.*** Making any comparison in an advertisement between actual or hypothetical [credit](#) payments or rates and any payment or simple annual rate that will be available under the advertised product for a period less than the full term of the loan, unless:
- (i) ***In general.*** The advertisement includes a clear and conspicuous comparison to the information required to be disclosed under [sections 226.24\(f\)\(2\) and \(3\)](#); and
 - (ii) ***Application to variable-rate transactions.*** If the advertisement is for a variable rate transaction, and the advertised payment or simple annual rate is based on the index and margin that will be used to make subsequent rate or payment adjustments over the term of the loan, the advertisement includes an equally prominent statement in close proximity to the payment or rate that the payment or rate is subject to adjustment and the time period when the first adjustment will occur.
- (3) ***Misrepresentations about government endorsement.*** Making any statement in an advertisement that the product offered is a “government loan program”,

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“government supported loan”, or is otherwise endorsed or sponsored by any federal, [state](#), or local government entity, unless the advertisement is for an FHA loan, VA loan, or similar loan program that is, in fact, endorsed or sponsored by a federal, [state](#), or local government entity.

- (4) ***Misleading use of the current lender's name.*** Using the name of the [consumer](#)'s current lender in an advertisement that is not sent by or on behalf of the [consumer](#)'s current lender, unless the advertisement:
 - (i) Discloses with equal prominence the name of the [person](#) or [creditor](#) making the advertisement; and
 - (ii) Includes a clear and conspicuous statement that the [person](#) making the advertisement is not associated with, or acting on behalf of, the [consumer](#)'s current lender.
- (5) ***Misleading claims of debt elimination.*** Making any misleading claim in an advertisement that the mortgage product offered will eliminate debt or result in a [waiver](#) or forgiveness of a [consumer](#)'s existing loan terms with, or [obligations](#) to, another [creditor](#).
- (6) ***Misleading use of the term “counselor”.*** Using the term “counselor” in an advertisement to refer to a for-profit mortgage broker or mortgage [creditor](#), its employees, or [persons](#) working for the broker or [creditor](#) that are involved in offering, originating or selling mortgages.
- (7) ***Misleading foreign-language advertisements.*** Providing information about some trigger terms or required disclosures, such as an initial rate or payment, only in a foreign language in an advertisement, but providing information about other trigger terms or required disclosures, such as information about the fully-indexed rate or fully amortizing payment, only in English in the same advertisement.

Excerpts from Regulation M

12 C.F.R. § 213.1 Authority, scope, purpose, and enforcement.

- (a) ***Authority.*** The regulation in this part, known as Regulation M, is issued by the [Board](#) of Governors of the Federal Reserve System to implement the consumer leasing provisions of the Truth in Lending [Act](#), which is title I of the Consumer Credit Protection [Act](#), as amended ([15 U.S.C. 1601](#) *et seq.*). Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of [44 U.S.C. 3501](#) *et seq.* and have been assigned OMB control number 71000202.
- (b) ***Scope and purpose.*** This part applies to all [persons](#) that are [lessors](#) of [personal property](#) under [consumer leases](#) as those terms are defined in [§ 213.2\(e\)\(1\) and \(h\)](#). The purpose of this part is:
 - (1) To ensure that [lessees](#) of [personal property](#) receive meaningful disclosures that enable them to compare lease terms with other leases and, where appropriate, with credit transactions;

- (2) To limit the amount of balloon payments in [consumer lease](#) transactions; and
- (3) To provide for the accurate disclosure of lease terms in advertising.
- (c) **Enforcement and liability.** Section 108 of the [act](#) contains the administrative enforcement provisions. Sections 112, 130, 131, and 185 of the [act](#) contain the liability provisions for failing to comply with the requirements of the [act](#) and this part.

12 C.F.R. § 213.7 Advertising.

- (a) **General rule.** An [advertisement](#) for a [consumer lease](#) may [state](#) that a specific lease of property at specific amounts or terms is available only if the [lessor](#) usually and customarily leases or will lease the property at those amounts or terms.
- (b) **Clear and conspicuous standard.** Disclosures required by this section shall be made clearly and conspicuously.
 - (1) **Amount due at lease signing or delivery.** Except for the statement of a periodic payment, any affirmative or negative reference to a charge that is a part of the disclosure required under [paragraph \(d\)\(2\)\(ii\)](#) of this section shall not be more prominent than that disclosure.
 - (2) **Advertisement of a lease rate.** If a [lessor](#) provides a percentage rate in an [advertisement](#), the rate shall not be more prominent than any of the disclosures in [§ 213.4](#), with the exception of the notice in [§ 213.4\(s\)](#) required to accompany the rate; and the [lessor](#) shall not use the term “annual percentage rate,” “annual lease rate,” or equivalent term.
- (c) **Catalogs or other multipage advertisements; electronic advertisements.** A catalog or other multipage [advertisement](#), or an electronic [advertisement](#) (such as an [advertisement](#) appearing on an Internet Web site), that provides a table or schedule of the required disclosures shall be considered a single [advertisement](#) if, for lease terms that appear without all the required disclosures, the [advertisement](#) refers to the page or pages on which the table or schedule appears.
- (d) **Advertisement of terms that require additional disclosure -**
 - (1) **Triggering terms.** An [advertisement](#) that [states](#) any of the following items shall contain the disclosures required by [paragraph \(d\)\(2\)](#) of this section, except as provided in paragraphs (e) and (f) of this section:
 - (i) The amount of any payment; or
 - (ii) A statement of any capitalized cost reduction or other payment (or that no payment is required) prior to or at consummation or by delivery, if delivery occurs after consummation.
 - (2) **Additional terms.** An [advertisement](#) stating any item listed in [paragraph \(d\)\(1\)](#) of this section shall also [state](#) the following items:
 - (i) That the transaction advertised is a lease;
 - (ii) The total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;

- (iii) The number, amounts, and due dates or periods of scheduled payments under the lease;
 - (iv) A statement of whether or not a security deposit is required; and
 - (v) A statement that an extra charge may be imposed at the end of the lease term where the [lessee's](#) liability (if any) is based on the difference between the [residual value](#) of the leased property and its [realized value](#) at the end of the lease term.
- (e) **Alternative disclosures - merchandise tags.** A merchandise tag stating any item listed in [paragraph \(d\)\(1\)](#) of this section may comply with [paragraph \(d\)\(2\)](#) of this section by referring to a sign or display prominently posted in the [lessor's](#) place of business that contains a table or schedule of the required disclosures.
- (f) **Alternative disclosures - television or radio advertisements -**
 - (1) **Toll-free number or print advertisement.** An [advertisement](#) made through television or radio stating any item listed in [paragraph \(d\)\(1\)](#) of this section complies with [paragraph \(d\)\(2\)](#) of this section if the [advertisement states](#) the items listed in paragraphs (d)(2)(i) through (iii) of this section, and:
 - (i) Lists a toll-free telephone number along with a reference that such number may be used by consumers to obtain the information required by [paragraph \(d\)\(2\)](#) of this section; or
 - (ii) Directs the consumer to a written [advertisement](#) in a publication of general circulation in the community served by the media station, including the name and the date of the publication, with a statement that information required by [paragraph \(d\)\(2\)](#) of this section is included in the [advertisement](#). The written [advertisement](#) shall be published beginning at least three days before and ending at least ten days after the broadcast.
 - (2) **Establishment of toll-free number.**
 - (i) The toll-free telephone number shall be available for no fewer than ten days, beginning on the date of the broadcast.
 - (ii) The [lessor](#) shall provide the information required by [paragraph \(d\)\(2\)](#) of this section orally, or in writing upon request.

15 U.S.C. 1233 – Regarding Monroney Labels TITLE 15—Commerce and Trade CHAPTER 28—Disclosure of Automobile Information

1231 - Definitions

For purposes of this chapter—

- (a) The term “[manufacturer](#)” shall mean any person engaged in the manufacturing or assembling of [new automobiles](#), including any person importing [new automobiles](#) for

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resale and any person who acts for and is under the control of such manufacturer, assembler, or importer in connection with the distribution of [new automobiles](#).

- (b) The term “[person](#)” means an individual, partnership, corporation, business trust, or any organized group of [persons](#).
- (c) The term “[automobile](#)” includes any passenger car or station wagon.
- (d) The term “[new automobile](#)” means an automobile the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an [ultimate purchaser](#).
- (e) The term “[dealer](#)” shall mean any [person](#) resident or located in the United States or any Territory thereof or in the District of Columbia engaged in the sale or the distribution of [new automobiles](#) to the [ultimate purchaser](#).
- (f) The term “[final assembly point](#)” means—
 - (1) in the case of a [new automobile](#) manufactured or assembled in the United States, or in any Territory of the United States, the plant, factory, or other place at which a [new automobile](#) is produced or assembled by a manufacturer and from which such automobile is delivered to a dealer in such a condition that all component parts necessary to the mechanical operation of such automobile are included with such automobile, whether or not such component parts are permanently installed in or on such automobile; and
 - (2) in the case of a [new automobile](#) imported into the United States, the port of importation.
- (g) The term “[ultimate purchaser](#)” means, with respect to any new automobile, the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases such new automobile for purposes other than resale.
- (h) The term “[commerce](#)” shall mean [commerce](#) among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation. [New automobiles](#) delivered to, or for further delivery to, [ultimate purchasers](#) within the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, Virgin Islands, American Samoa, the Trust Territories of the Pacific, the Canal Zone, Wake Island, Midway Island, Kingman Reef, Johnson Island, or within any other place under the jurisdiction of the United States shall be deemed to have been distributed in commerce.

1232 - Label and entry requirements

Every [manufacturer](#) of [new automobiles](#) distributed in commerce shall, prior to the delivery of any [new automobile](#) to any dealer, or at or prior to the introduction date of new models delivered to a dealer prior to such introduction date, securely affix to the windshield, or side window of

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such automobile a label on which such manufacturer shall endorse clearly, distinctly and legibly true and correct entries disclosing the following information concerning such automobile—

- (a) the make, model, and serial or identification number or numbers;
- (b) the [final assembly point](#);
- (c) the name, and the location of the place of business, of the [dealer](#) to whom it is to be delivered;
- (d) the name of the city or town at which it is to be delivered to such [dealer](#);
- (e) the method of transportation used in making delivery of such [automobile](#), if driven or towed from [final assembly point](#) to place of delivery;
- (f) the following information:
 - (1) the retail price of such [automobile](#) suggested by the [manufacturer](#);
 - (2) the retail delivered price suggested by the [manufacturer](#) for each accessory or item of optional equipment, physically attached to such automobile at the time of its delivery to such dealer, which is not included within the price of such automobile as stated pursuant to paragraph (1);
 - (3) the amount charged, if any, to such [dealer](#) for the transportation of such [automobile](#) to the location at which it is delivered to such dealer; and
 - (4) the total of the amounts specified pursuant to paragraphs (1), (2), and (3);
- (g) if one or more safety ratings for such [automobile](#) have been assigned and formally published or released by the National Highway Traffic Safety Administration under the New Car Assessment Program, information about safety ratings that—
 - (1) includes a graphic depiction of the number of stars, or other applicable rating, that corresponds to each such assigned safety rating displayed in a clearly differentiated fashion indicating the maximum possible safety rating;
 - (2) refers to safety rating categories that may include frontal impact crash tests, side impact crash tests, and rollover resistance tests (whether or not such [automobile](#) has been assigned a safety rating for such tests);
 - (3) contains information describing the nature and meaning of the crash test data presented and a reference to additional vehicle safety resources, including <http://www.safecar.gov>; [\[1\]](#) and
 - (4) is presented in a legible, visible, and prominent fashion and covers at least—
 - (A) 8 percent of the total area of the label; or
 - (B) an area with a minimum length of 4½ inches and a minimum height of 3½ inches; and

- (h) if an [automobile](#) has not been tested by the National Highway Traffic Safety Administration under the New Car Assessment Program, or safety ratings for such [automobile](#) have not been assigned in one or more rating categories, a statement to that effect.

1233. Violations and penalties

(a) Failure to Affix Required Label

Any [manufacturer](#) of automobiles distributed in commerce who willfully fails to affix to any [new automobile](#) manufactured or imported by him the label required by [section 1232 of this title](#) shall be fined not more than \$1,000. Such failure with respect to each automobile shall constitute a separate offense.

(b) Failure to Endorse Required Label

Any [manufacturer](#) of automobiles distributed in commerce who willfully fails to endorse clearly, distinctly and legibly any label as required by [section 1232 of this title](#), or who makes a false endorsement of any such label, shall be fined not more than \$1,000. Such failure or false endorsement with respect to each automobile shall constitute a separate offense.

(c) Removal, Alteration, or Illegibility of Required Label

Any [person](#) who willfully removes, alters, or renders illegible any label affixed to a [new automobile](#) pursuant to [section 1232 of this title](#), or any endorsement thereon, prior to the time that such automobile is delivered to the actual custody and possession of the ultimate purchaser of such new automobile, except where the manufacturer relabels the automobile in the event the same is rerouted, repurchased, or reacquired by the manufacturer of such automobile, shall be fined not more than \$1,000, or imprisoned not more than one year, or both. Such removal, alteration, or rendering illegible with respect to each automobile shall constitute a separate offense.

49 U.S. Code Chapter 327 – ODOMETERS

32701 - Findings and purposes

(a) Findings. —Congress finds that—

- (1) buyers of [motor vehicles](#) rely heavily on the [odometer](#) reading as an index of the condition and value of a vehicle;
- (2) buyers are entitled to rely on the [odometer](#) reading as an accurate indication of the mileage of the vehicle;
- (3) an accurate indication of the mileage assists a buyer in deciding on the safety and reliability of the vehicle; and
- (4) [motor vehicles](#) move in, or affect, interstate and foreign commerce.

- (b) Purposes.—The purposes of this chapter are—
- (1) to prohibit tampering with [motor vehicle odometers](#); and
 - (2) to provide safeguards to protect purchasers in the sale of [motor vehicles](#) with altered or reset [odometers](#).

32702 - Definitions

- (1) “[auction company](#)” means a person taking possession of a motor vehicle owned by another to sell at an auction.
- (2) “[dealer](#)” means a person that sold at least 5 motor vehicles during the prior 12 months to buyers that in good faith bought the vehicles other than for resale.
- (3) “[distributor](#)” means a person that sold at least 5 motor vehicles during the prior 12 months for resale.
- (4) “[leased motor vehicle](#)” means a motor vehicle leased to a person for at least 4 months by a lessor that leased at least 5 vehicles during the prior 12 months.
- (5) “[odometer](#)” means an instrument or system of components for measuring and recording the distance a motor vehicle is driven, but does not include an auxiliary instrument or system of components designed to be reset by the operator of the vehicle to record mileage of a trip.
- (6) “[repair](#)” and “[replace](#)” mean to restore to a sound working condition by replacing any part of an [odometer](#) or by correcting any inoperative part of an [odometer](#).
- (7) “[title](#)” means the certificate of [title](#) or other document issued by the State indicating ownership.
- (8) “[transfer](#)” means to change ownership by sale, gift, or any other means.

32703 - Preventing tampering

A [person](#) may not—

- (1) advertise for sale, sell, use, install, or have installed, a device that makes an [odometer](#) of a motor vehicle register a mileage different from the mileage the vehicle was driven, as registered by the [odometer](#) within the designed tolerance of the manufacturer of the [odometer](#);
- (2) disconnect, reset, alter, or have disconnected, reset, or altered, an [odometer](#) of a motor vehicle intending to change the mileage registered by the [odometer](#);
- (3) with intent to defraud, operate a [motor vehicle](#) on a street, road, or highway if the person knows that the [odometer](#) of the vehicle is disconnected or not operating; or
- (4) conspire to violate this section or section [32704](#) or [32705](#) of this title.

32704 - Service, repair, and replacement

- (a) **Adjusting Mileage.** —A [person](#) may service, [repair](#), or [replace](#) an [odometer](#) of a motor vehicle if the mileage registered by the [odometer](#) remains the same as before the service, repair, or replacement. If the mileage cannot remain the same—
- (1) the [person](#) shall adjust the [odometer](#) to read zero; and
 - (2) the owner of the vehicle or agent of the owner shall attach a written notice to the left door frame of the vehicle specifying the mileage before the service, [repair](#), or replacement and the date of the service, [repair](#), or replacement.
- (b) **Removing or Altering Notice.** — A [person](#) may not, with intent to defraud, remove or alter a notice attached to a [motor vehicle](#) as required by this section.

32705 - Disclosure requirements on transfer of motor vehicles

- (a) (1) Disclosure Requirements. —Under regulations prescribed by the [Secretary](#) of Transportation that include the way in which information is disclosed and retained under this section, a person transferring ownership of a [motor vehicle](#) shall give the transferee the following written disclosure:
- (A) Disclosure of the cumulative mileage registered on the [odometer](#).
 - (B) Disclosure that the actual mileage is unknown, if the transferor knows that the [odometer](#) reading is different from the number of miles the vehicle has actually traveled.
- (2) A [person](#) transferring ownership of a [motor vehicle](#) may not violate a regulation prescribed under this section or give a false statement to the transferee in making the disclosure required by such a regulation.
- (3) A [person](#) acquiring a [motor vehicle](#) for resale may not accept a written disclosure under this section unless it is complete.
- (4) (A) This subsection shall apply to all [transfers](#) of motor vehicles (unless otherwise exempted by the Secretary by regulation), except in the case of [transfers](#) of new motor vehicles from a vehicle manufacturer jointly to a dealer and a person engaged in the business of renting or leasing vehicles for a period of 30 days or less.
- (B) For purposes of subparagraph (A), the term “new [motor vehicle](#)” means any [motor vehicle](#) driven with no more than the limited use necessary in moving, transporting, or road testing such vehicle prior to delivery from the vehicle manufacturer to a [dealer](#), but in no event shall the [odometer](#) reading of such vehicle exceed 300 miles.

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- (5) The [Secretary](#) may exempt such classes or categories of vehicles as the [Secretary](#) deems appropriate from these requirements. Until such time as the [Secretary](#) amends or modifies the regulations set forth in [49 CFR 580.6](#), such regulations shall have full force and effect.
- (b) **Mileage Statement Requirement for Licensing.** —
- (1) A [motor vehicle](#) the ownership of which is transferred may not be licensed for use in a State unless the transferee, in submitting an application to a State for the [title](#) on which the license will be issued, includes with the application the transferor's [title](#) and, if that [title](#) contains the space referred to in paragraph (3)(A)(iii) of this subsection, a statement, signed and dated by the transferor, of the mileage disclosure required under subsection (a) of this section. This paragraph does not apply to a [transfer](#) of ownership of a motor vehicle that has not been licensed before the [transfer](#).
- (2) (A) Under regulations prescribed by the [Secretary](#), if the [title](#) to a motor vehicle issued to a transferor by a State is in the possession of a lienholder when the transferor [transfers](#) ownership of the vehicle, the transferor may use a written power of attorney (if allowed by State law) in making the mileage disclosure required under subsection (a) of this section. Regulations prescribed under this paragraph—
- (i) shall prescribe the form of the power of attorney;
 - (ii) shall provide that the form be printed by means of a secure printing process (or other secure process);
 - (iii) shall provide that the [State](#) issue the form to the transferee;
 - (iv) shall provide that the [person](#) exercising the power of attorney retain a copy and submit the original to the [State](#) with a copy of the [title](#) showing the restatement of the mileage;
 - (v) may require that the [State](#) retain the power of attorney and the copy of the [title](#) for an appropriate period or that the State adopt alternative measures consistent with [section 32701\(b\) of this title](#), after considering the costs to the State;
 - (vi) shall ensure that the mileage at the time of [transfer](#) be disclosed on the power of attorney document;
 - (vii) shall ensure that the mileage be restated exactly by the [person](#) exercising the power of attorney in the space referred to in paragraph (3)(A)(iii) of this subsection;
 - (viii) may not require that a [motor vehicle](#) be titled in the State in which the power of attorney was issued;

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- (ix) shall consider the need to facilitate normal commercial transactions in the sale or exchange of [motor vehicles](#); and
 - (x) shall provide other conditions the [Secretary](#) considers appropriate.
 - (B) Section 32709(a) and (b) applies to a [person](#) granting or granted a power of attorney under this paragraph.
- (3) (A) A [motor vehicle](#) the ownership of which is transferred may not be licensed for use in a State unless the [title](#) issued by the State to the transferee—
 - (i) is produced by means of a secure printing process (or other secure process);
 - (ii) indicates the mileage disclosure required to be made under subsection (a) of this section; and
 - (iii) contains a space for the transferee to disclose the mileage at the time of a future [transfer](#) and to sign and date the disclosure.
- (B) Subparagraph (A) of this paragraph does not require a [State](#) to verify, or preclude a [State](#) from verifying, the mileage information contained in the [title](#).

(c) Leased Motor Vehicles.—

- (1) For a [leased motor vehicle](#), the regulations prescribed under subsection (a) of this section shall require written disclosure about mileage to be made by the lessee to the lessor when the lessor transfers ownership of that vehicle.
- (2) Under those regulations, the lessor shall provide written notice to the lessee of—
 - (A) the lessee's mileage disclosure requirements under paragraph (1) of this subsection; and
 - (B) the penalties for failure to comply with those requirements.
- (3) The lessor shall retain the disclosures made by a lessee under paragraph (1) of this subsection for at least 4 years following the date the lessor [transfers](#) the [leased motor vehicle](#).
- (4) If the lessor [transfers](#) ownership of a [leased motor vehicle](#) without obtaining possession of the vehicle, the lessor, in making the disclosure required by subsection (a) of this section, may indicate on the title the mileage disclosed by the lessee under paragraph (1) of this subsection unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle.

(d) State Alternate Vehicle Mileage Disclosure Requirements.—

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The requirements of subsections (b) and (c)(1) of this section on the disclosure of [motor vehicle](#) mileage when [motor vehicles](#) are transferred or leased apply in a State unless the State has in effect alternate [motor vehicle](#) mileage disclosure requirements approved by the Secretary. The Secretary shall approve alternate [motor vehicle](#) mileage disclosure requirements submitted by a State unless the Secretary decides that the requirements are not consistent with the purpose of the disclosure required by subsection (b) or (c), as the case may be.

(e) **Auction Sales.**—If a [motor vehicle](#) is sold at an auction, the [auction company](#) conducting the auction shall maintain the following records for at least 4 years after the date of the sale:

- (1) the name of the most recent owner of the [motor vehicle](#) (except the [auction company](#)) and the name of the buyer of the motor vehicle.
- (2) the vehicle identification number required under chapter [301](#) or [331](#) of this title.
- (3) the [odometer](#) reading on the date the [auction company](#) took possession of the motor vehicle.

(f) **Application and Revision of State Law.** —

- (1) Except as provided in paragraph (2) of this subsection, subsections (b)–(e) of this section apply to the [transfer](#) of a motor vehicle after April 28, 1989.
- (2) If a [State](#) requests, the Secretary shall assist the [State](#) in revising its laws to comply with subsection (b) of this section. If a [State](#) requires time beyond April 28, 1989, to revise its laws to achieve compliance, the Secretary, on request of the State, may grant additional time that the Secretary considers reasonable by publishing a notice in the Federal Register. The notice shall include the reasons for granting the additional time. In granting additional time, the Secretary shall ensure that the State is making reasonable efforts to achieve compliance.

(g) **Electronic Disclosures.**—

- (1) Not later than 18 months after the date of enactment of the [Motor Vehicle](#) and Highway Safety Improvement Act of 2012, in carrying out this section, the Secretary shall prescribe regulations permitting any written disclosures or notices and related matters to be provided electronically.
- (2) Notwithstanding paragraph (1) and subject to paragraph (3), a [State](#), without approval from the Secretary under subsection (d), may allow for written disclosures or notices and related matters to be provided electronically if—
 - (A) in compliance with—
 - (i) the requirements of subchapter 1 of [chapter 96 of title 15; \[1\]](#) or

- (ii) the requirements of a [State](#) law under [section 7002\(a\) of title 15](#); ¹ and
- (B) the disclosures or notices otherwise meet the requirements under this section, including appropriate authentication and security measures.
- (3) Paragraph (2) ceases to be effective on the date the regulations under paragraph (1) become effective.

32706 - Inspections, investigations, and records

(a) Authority to Inspect and Investigate. —

Subject to [section 32707 of this title](#), the Secretary of Transportation may conduct an inspection or investigation necessary to carry out this chapter or a regulation prescribed or order issued under this chapter. The Secretary shall cooperate with State and local officials to the greatest extent possible in conducting an inspection or investigation. The Secretary may give the Attorney General information about a violation of this chapter or a regulation prescribed or order issued under this chapter.

(b) Entry, Inspection, and Impoundment. —

- (1) In carrying out subsection (a) of this section, an officer or [employee](#) designated by the [Secretary](#), on display of proper credentials and written notice to the owner, operator, or agent in charge, may—
 - (A) enter and inspect commercial premises in which a [motor vehicle](#) or [motor vehicle](#) equipment is manufactured, held for shipment or sale, maintained, or repaired;
 - (B) enter and inspect noncommercial premises in which the [Secretary](#) reasonably believes there is a [motor vehicle](#) or [motor vehicle](#) equipment that is an object of a violation of this chapter;
 - (C) inspect that [motor vehicle](#) or [motor vehicle](#) equipment; and
 - (D) impound for not more than 72 hours for inspection a [motor vehicle](#) or [motor vehicle](#) equipment that the Secretary reasonably believes is an object of a violation of this chapter.
- (2) An inspection or impoundment under this subsection shall be conducted at a reasonable time, in a reasonable way, and with reasonable promptness. The written notice may consist of a warrant issued under [section 32707 of this title](#).

(c) Reasonable Compensation. —

When the [Secretary](#) impounds for inspection a [motor vehicle](#) (except a vehicle subject to subchapter I of [chapter 135 of this title](#)) or motor vehicle equipment under subsection (b)(1)(D) of this section, the Secretary shall pay reasonable compensation to the owner of

the vehicle or equipment if the inspection or impoundment results in denial of use, or reduction in value, of the vehicle or equipment.

(d) Records and Information Requirements. .—

- (1) To enable the [Secretary](#) to decide whether a [dealer](#) or [distributor](#) is complying with this chapter and regulations prescribed and orders issued under this chapter, the Secretary may require the dealer or [distributor](#)—
 - (A) to keep records;
 - (B) to provide information from those records if the [Secretary states](#) the purpose for requiring the information and identifies the information to the fullest extent practicable; and
 - (C) to allow an officer or [employee](#) designated by the [Secretary](#) to inspect relevant records of the [dealer](#) or [distributor](#).
- (2) This subsection and subsection (e)(1)(B) of this section do not authorize the [Secretary](#) to require a [dealer](#) or [distributor](#) to provide information on a regular periodic basis.

(e) Administrative Authority and Civil Actions to Enforce.

- (1) In carrying out this chapter, the [Secretary](#) may—
 - (A) inspect and copy records of any [person](#) at reasonable times;
 - (B) order a [person](#) to file written reports or answers to specific questions, including reports or answers under oath; and
 - (C) conduct hearings, administer oaths, take testimony, and require (by subpoena or otherwise) the appearance and testimony of witnesses and the production of records the [Secretary](#) considers advisable.
- (2) A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United [States](#).
- (3) A civil action to enforce a subpoena or order of the [Secretary](#) under this subsection may be brought in the [United States district court](#) for any judicial district in which the proceeding by the Secretary is conducted. The court may punish a failure to obey an order of the court to comply with the subpoena or order of the Secretary as a contempt of court.

(f) Prohibitions. —

A [person](#) may not fail to keep records, refuse access to or copying of records, fail to make reports or provide information, fail to allow entry or inspection, or fail to permit impoundment, as required under this section.

32707 - Administrative warrants**(a) Definition.—**

In this section, “[probable cause](#)” means a valid public interest in the effective enforcement of this chapter or a regulation prescribed under this chapter sufficient to justify the inspection or impoundment in the circumstances stated in an application for a warrant under this section.

(b) Warrant Requirement and Issuance.—

- (1)** Except as provided in paragraph (4) of this subsection, an inspection or impoundment under [section 32706 of this title](#) may be carried out only after a warrant is obtained.
- (2)** A judge of a court of the United [States](#) or a [State](#) court of record or a United [States](#) magistrate may issue a warrant for an inspection or impoundment under [section 32706 of this title](#) within the territorial jurisdiction of the court or magistrate. The warrant must be based on an affidavit that—
 - (A)** establishes [probable cause](#) to issue the warrant; and
 - (B)** is sworn to before the judge or magistrate by an officer or [employee](#) who knows the facts alleged in the affidavit.
- (3)** The judge or magistrate shall issue the warrant when the judge or magistrate decides there is a reasonable basis for believing that [probable cause](#) exists to issue the warrant. The warrant must—
 - (A)** identify the premises, property, or [motor vehicle](#) to be inspected and the items or type of property to be impounded;
 - (B)** [state](#) the purpose of the inspection, the basis for issuing the warrant, and the name of the affiant;
 - (C)** direct an individual authorized under [section 32706 of this title](#) to inspect the premises, property, or vehicle for the purpose stated in the warrant and, when appropriate, to impound the property specified in the warrant;
 - (D)** direct that the warrant be served during the hours specified in the warrant; and
 - (E)** name the judge or magistrate with whom proof of service is to be filed.
- (4)** A warrant under this section is not required when—
 - (A)** the owner, operator, or agent in charge of the premises consents;
 - (B)** it is reasonable to believe that the mobility of the [motor vehicle](#) to be inspected makes it impractical to obtain a warrant;
 - (C)** an application for a warrant cannot be made because of an emergency;

- (D) records are to be inspected and copied under [section 32706\(e\)\(1\)\(A\) of this title](#); or
- (E) a warrant is not constitutionally required.

(c) Service and Impoundment of Property.

- (1) A warrant issued under this section must be served and proof of service filed not later than 10 days after its issuance date. The judge or magistrate may allow additional time in the warrant if the [Secretary](#) of Transportation demonstrates a need for additional time. Proof of service must be filed promptly with a written inventory of the property impounded under the warrant. The inventory shall be made in the presence of the individual serving the warrant and the individual from whose possession or premises the property was impounded, or if that individual is not present, a credible individual except the individual making the inventory. The individual serving the warrant shall verify the inventory. On request, the judge or magistrate shall send a copy of the inventory to the individual from whose possession or premises the property was impounded and to the applicant for the warrant.
- (2) When property is impounded under a warrant, the individual serving the warrant shall
 - (A) give the [person](#) from whose possession or premises the property was impounded a copy of the warrant and a receipt for the property; or
 - (B) leave the copy and receipt at the place from which the property was impounded.
- (3) The judge or magistrate shall file the warrant, proof of service, and all documents filed about the warrant with the clerk of the [United States district court](#) for the judicial district in which the inspection is made.

32708 - Confidentiality of information

- (a) General.** —Information obtained by the [Secretary](#) of Transportation under this chapter related to a confidential matter referred to in [section 1905 of title 18](#) may be disclosed only—

- (1) to another officer or [employee](#) of the United [States](#) Government for use in carrying out this chapter; or
- (2) in a proceeding under this chapter.

(b) Withholding Information from Congress. —

This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

32709 - Penalties and enforcement

(a) Civil Penalty. —

- (1) A [person](#) that violates this chapter or a regulation prescribed or order issued under this chapter is liable to the United [States](#) Government for a civil penalty of not more than \$10,000 for each violation. A separate violation occurs for each [motor vehicle](#) or device involved in the violation. The maximum penalty under this subsection for a related series of violations is \$1,000,000.
- (2) The [Secretary](#) of Transportation shall impose a civil penalty under this subsection. The Attorney General shall bring a civil action to collect the penalty. Before referring a penalty claim to the Attorney General, the [Secretary](#) may compromise the amount of the penalty. Before compromising the amount of the penalty, the [Secretary](#) shall give the person charged with a violation an opportunity to establish that the violation did not occur.
- (3) In determining the amount of a civil penalty under this subsection, the [Secretary](#) shall consider—
 - (A) the nature, circumstances, extent, and gravity of the violation;
 - (B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to [pay](#), and any effect on the ability to continue doing business; and
 - (C) other matters that justice requires.

(b) Criminal Penalty. —

A [person](#) that knowingly and willfully violates this chapter or a regulation prescribed or order issued under this chapter shall be fined under [title](#) 18, imprisoned for not more than 3 years, or both. If the person is a corporation, the penalties of this subsection also apply to a director, officer, or individual agent of a corporation who knowingly and willfully authorizes, orders, or performs an act in violation of this chapter or a regulation prescribed or order issued under this chapter without regard to penalties imposed on the corporation.

(c) Civil Action by Attorney General. .—

The Attorney General may bring a civil action to enjoin a violation of this chapter or a regulation prescribed or order issued under this chapter. The action may be brought in the [United States district court](#) for the judicial district in which the violation occurred or the defendant is found, resides, or does business. Process in the action may be served in any other judicial district in which the defendant resides or is found. A subpoena for a witness in the action may be served in any judicial district.

(d) Civil Actions by States. —

- (1) When a [person](#) violates this chapter or a regulation prescribed or order issued under this chapter, the chief law enforcement officer of the [State](#) in which the violation occurs may bring a civil action—
 - (A) to enjoin the violation; or
 - (B) to recover amounts for which the [person](#) is liable under [section 32710 of this title](#) for each person on whose behalf the action is brought.
- (2) An action under this subsection may be brought in an appropriate [United States district court](#) or in a State court of competent jurisdiction. The action must be brought not later than 2 years after the claim accrues.

32710 - Civil actions by private persons

(a) Violation and Amount of Damages. —

A [person](#) that violates this chapter or a regulation prescribed or order issued under this chapter, with intent to defraud, is liable for 3 times the actual damages or \$10,000, whichever is greater.

(b) Civil Actions. —

A [person](#) may bring a civil action to enforce a claim under this section in an appropriate [United States district court](#) or in another court of competent jurisdiction. The action must be brought not later than 2 years after the claim accrues. The court shall award costs and a reasonable attorney's fee to the person when a judgment is entered for that person.

32711 - Relationship to State law

Except to the extent that [State](#) law is inconsistent with this chapter, this chapter does not—

- (1) affect a [State](#) law on disconnecting, altering, or tampering with an [odometer](#) with intent to defraud; or
- (2) exempt a [person](#) from complying with that law.

TITLE 49—Transportation Part 580—Odometer Disclosure Requirements

580.5 Disclosure of odometer information.

- (a) At the time a physical or electronic title is issued or made available to the transferee, it must contain the mileage disclosed by the transferor when ownership of the vehicle was transferred and contain a space for the information required to be disclosed under paragraphs (c) through (f) of this section at the time of future transfer.

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- (b) Any physical documents which are used to reassign a title shall contain a space for the information required to be disclosed under paragraphs (c) through (f) of this section at the time of transfer of ownership.
- (c) In connection with the transfer of ownership of a motor vehicle, the transferor shall disclose the mileage to the transferee on the physical or electronic title or, except as noted below, on the physical document being used to reassign the title. In the case of a transferor in whose name the vehicle is titled, the transferor shall disclose the mileage on the electronic title or the physical title, and not on a reassignment document. This disclosure must be signed by the transferor and must contain the transferor's printed name. In connection with the transfer of ownership of a motor vehicle in which more than one person is a transferor, only one transferor need sign the disclosure. In addition to the signature of the transferor, the disclosure must contain the following information:
 - (1) The odometer reading at the time of transfer (not to include tenths of miles);
 - (2) The date of transfer;
 - (3) The transferor's printed name and current address;
 - (4) The transferee's printed name and current address; and
 - (5) The identity of the vehicle, including its make, model, year, and body type, and its vehicle identification number.
- (d) In addition to the information provided under paragraph (c) of this section, the physical document shall provide a statement referencing federal law and stating failure to complete the disclosure or providing false information may result in fines and/or imprisonment. Reference may also be made to applicable law of the jurisdiction. If the transaction at issue is electronic, the information specified in this paragraph shall be displayed, prior to the execution of any electronic signatures.
- (e) In addition to the information provided under paragraphs (c) and (d) of this section,
 - (1) The transferor shall certify that to the best of their knowledge the odometer reading reflects the actual mileage, or;
 - (2) If the transferor knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, they shall include a statement that the mileage exceeds mechanical limits; or
 - (3) If the transferor knows that the odometer reading does not reflect a valid mileage display or differs from the mileage and that the difference is greater than that caused by odometer calibration error, they shall include a statement that the odometer reading does not reflect the actual mileage, and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.
- (f) Upon receipt of the transferor's signed disclosure statement, the transferee shall sign the disclosure statement, which shall include their printed name, and make copy available to

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their transferor. If the disclosure is on an electronic title, the jurisdiction shall provide a means for making copies of the completed disclosure statement available to the transferee and transferor.

- (g) If the vehicle has not been titled the written disclosure shall be executed on a separate physical document or by electronic means and incorporated into the electronic title record. A separate physical reassignment document may be used for a subsequent reassignment only after a transferor holding title has made the mileage disclosure in conformance with paragraphs (c), (e), and (f) of this section on the title and assigned the physical title to their transferee. An electronic title system shall provide a means for making mileage disclosures upon assignment and reassignment electronically and incorporating these disclosures into the electronic title. A physical reassignment document shall not be used with an electronic title or when an electronic reassignment has been made. In instances where a paper title is held by the initial transferor, an available electronic reassignment may be used for a subsequent reassignment after a transferor holding title has made the mileage disclosure in conformance with paragraphs (c), (e), and (f) of this section on the title and assigned the physical title to their transferee.
- (h) No person shall sign an odometer disclosure statement as both the transferor and transferee in the same transaction, unless permitted by §§ 580.13 or 580.14.

580.7 Disclosure of odometer information for leased motor vehicles.

- (a) Before executing any transfer of ownership document, each lessor of a leased motor vehicle shall notify the lessee electronically or in writing stating that the lessee is required to provide a written or electronic disclosure to the lessor regarding the mileage. This written or electronic notice shall contain a reference to the federal law and shall state failure to complete the disclosure or providing false information may result in fines and/or imprisonment. Reference may also be made to applicable law of the jurisdiction. If the notice is electronic, the information specified in this paragraph shall be displayed prior to, or at the time of, the execution of any electronic signatures.
- (b) In connection with the transfer of ownership of the leased motor vehicle, the lessee shall furnish to the lessor a written or electronic statement regarding the mileage of the vehicle. This statement must be signed by the lessee. This statement, in addition to the lessee acknowledging receiving notification of federal law and any applicable law of the jurisdiction as required by paragraph (a) of this section, shall also contain the following information:
 - (1) The printed name of the person making the disclosure;
 - (2) The current odometer reading (not to include tenths of miles);
 - (3) The date of the statement;
 - (4) The lessee's printed name and current address;
 - (5) The lessor's printed name and current address;

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- (6) The identity of the vehicle, including its make, model, year, and body type, and its vehicle identification number;
 - (7) The date that the lessor notified the lessee of disclosure requirements;
 - (8) The date that the completed disclosure statement was received by the lessor; and
 - (9) The signature of the lessor.
- (c) In addition to the information provided under paragraphs (a) and (b) of this section,
- (1) The lessee shall certify that to the best of his knowledge the odometer reading reflects the actual mileage; or
 - (2) If the lessee knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or
 - (3) If the lessee knows that the odometer reading differs from the mileage and that the difference is greater than that caused by odometer calibration error, he shall include a statement that the odometer reading is not the actual mileage and should not be relied upon.
- (d) If the lessor transfers the leased vehicle without obtaining possession of it, the lessor may indicate on the title the mileage disclosed by the lessee under paragraph (b) and (c) of this section, unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle.
- (e) Any electronic system maintained by a lessor for the purpose of complying with the requirements of this section shall meet the requirements of § 580.4(b) of this part.

580.8 Odometer disclosure statement retention.

- (a) Dealers and distributors of motor vehicles who are required by this part to execute an odometer disclosure statement shall retain, except as noted in paragraph (d), for five years a photostat, carbon, other facsimile copy, or electronic copy of each odometer mileage statement, which they issue and receive. They shall retain all odometer disclosure statements at their primary place of business in an order appropriate to business requirements and that permits systematic retrieval. Electronic copies shall be retained in a format which cannot be altered and which indicates any attempts to alter it.
- (b) Lessors shall retain, for five years following the date they transfer ownership of the leased vehicle, each written or electronic odometer disclosure statement which they receive from a lessee. They shall retain all odometer disclosure statements at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval. Electronic copies shall be retained in a format which cannot be altered and which indicates any attempts to alter it.
- (c) Dealers and distributors of motor vehicles who are granted a power of attorney, except as noted in paragraph (d) of this section, by their transferor pursuant to § 580.13, or by their

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transferee pursuant to § 580.14, shall retain for five years a photostat, carbon, or other facsimile copy, or electronic copy of each power of attorney they receive. They shall retain all powers of attorney at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval. Electronic copies shall be retained in a format which cannot be altered and which indicates any unauthorized attempts to alter it.

- (d) Any odometer disclosure statement made on an electronic title or electronic power of attorney shall be retained by the jurisdiction for a minimum of five years and made available upon request to dealers, distributors, and lessors for retrieval at their principal place of business and inspection on demand by law enforcement officials. Dealers, distributors, and lessors are not required to, but may, retain a copy of an odometer disclosure statement made on an electronic title or electronic power of attorney.

580.9 Odometer record retention for auction companies.

Each auction company shall establish and retain in physical or electronic format at its primary place of business in an order appropriate to business requirements and that permits systematic retrieval, for five years following the date of sale of each motor vehicle, the following records:

- (a) The name of the most recent owner (other than the auction company);
- (b) The name of the transferee;
- (c) The vehicle identification number; and
- (d) The odometer reading on the date which the auction company took possession of the motor vehicle.

580.17 Exemptions.

Notwithstanding the requirements of §§ 580.5 and 580.7:

- (a) A transferor or a lessee of any of the following motor vehicles need not disclose the vehicle's odometer mileage:
 - (1) A vehicle having a Gross Vehicle Weight Rating, as defined in § 571.3 of this title, of more than 16,000 pounds;
 - (2) A vehicle that is not self-propelled;
 - (3)
 - (i) A vehicle manufactured in or before the 2010 model year that is transferred at least 10 years after January 1 of the calendar year corresponding to its designated model year;
 - (ii) Example to paragraph (a)(3): For vehicle transfers occurring during calendar year 2020, model year 2010 or older vehicles are exempt.

(4)

- (i)** A vehicle manufactured in or after the 2011 model year that is transferred at least 20 years after January 1 of the calendar year corresponding to its designated model year; or
- (ii)** Example to paragraph (a)(4): For vehicle transfers occurring during calendar year 2031, model year 2011 or older vehicles are exempt.

(5) A vehicle sold directly by the manufacturer to any agency of the United States in conformity with contractual specifications.

- (b)** A transferor of a new vehicle prior to its first transfer for purposes other than resale need not disclose the vehicle's odometer mileage.
- (c)** A lessor of any of the vehicles listed in paragraph (a) of this section need not notify the lessee of any of these vehicles of the disclosure requirements of § 580.7.