CHAPTER IV

DEALER OPERATIONS

Every dealer, in addition to having to comply with the "Place of Business" requirements, as previously described in this manual, must also comply with additional laws and regulations pertaining to the operation of a dealership. A summary of these laws and regulations, as well as some general information relating to dealer operations, can be found below.

A. RECORD KEEPING REQUIREMENTS

Every dealer shall keep and maintain a record of the following:

1. Every vehicle which is bought, sold, exchanged, received, or accepted for sale or exchange;

2. Every used vehicle body or chassis which is sold or otherwise disposed of; and

3. Every vehicle which is bought or otherwise acquired and wrecked or dismantled by the licensee.

   Each of the above records shall state the name and address of the person from whom such vehicle was purchased or acquired and the date thereof, the name and address of the person to whom any such vehicle, vehicle body, or chassis was sold or otherwise disposed of, the date thereof, and a description of every such vehicle, body, or chassis by name and identifying numbers sufficient to identify same.

4. Every vehicle sold at retail shall be evidenced by a sales instrument in writing which shall contain the following information:

   a. Name of seller;

   b. Name of buyer;

   c. Make, year, and model of vehicle;

   d. Cash sale price;

   e. Cash paid down by buyer;

   f. Amount credited to buyer for trade-in;

   g. Provision as to whether the seller or buyer is to pay off the indebtedness, if any, of the trade-in;

   h. Description of the trade-in;

   i. Amount of the time differential charge [if not cash sale so far as the dealer is concerned];

   j. Amount charged by seller for insurance and the type of coverage afforded; if any insurance does not include coverage for bodily injury and/or property damage caused to others, the sales instrument shall expressly so state; and

   k. Net balance due from buyer and the terms of payment.

5. Every dealer must keep a written record of the salesman, mechanic, employee, agent, officer or other person to whom a dealer plate is assigned.

6. Every dealer who is issued a special demonstration plate for use on trucks, trailers, truck-tractors, and/or road-tractors shall keep a written record containing the following information:

a. Identification of the motor vehicle upon which the special demonstration plate is being used;

b. The time and date during which each special demonstration plate is used;

c. The name and address of company or individual using a motor vehicle on which a special demonstration plate is used; and

d. Any other information considered necessary by the Commissioner.

7. Every dealer must keep a record of all temporary registration plates delivered to him, and a record of all temporary plates issued by him.

8. Every financial institution must keep a written record of the vehicle on which a REPO plate is used, the time used, and the location of the place of repossession, storage, and delivery of the vehicle.

9. Every manufacturer or transporter shall keep a written record of the vehicle upon which MFG or TRS plates are used, the time during which they are used, and the location used.

10. Every wrecker/dismantler/rebuilder must keep, in addition to all previously mentioned records, a record of all reconstructed vehicles which they have rebuilt. The record shall include, but is not limited to, "before" photographs of the rebuilt vehicle, receipts for all parts and materials used in reconstructing the vehicle, and a copy of the Form DMV-3 pertaining to the vehicle.

B. **USE OF DEALER SPECIAL PLATES**

1. The dealer special plate may be used for any purpose on any motor vehicle owned by the dealer to whom issued, which is being operated with the dealer's knowledge and consent and not otherwise. Under no circumstances whatsoever shall a dealer special plate be used on any work or service vehicle owned by a dealer or any vehicle which has been sold by a dealer to a customer. Provided, however, that a dealer is authorized to use a Class D or DUC special plate on no more than one [1] courtesy vehicle per dealership. Provided further, that any dealer engaged in the business of selling trailers, truck-tractors, road-tractors, or trucks, who demonstrate the motor vehicles under actual work conditions to potential customers, shall be allowed to use a "Special Demonstration" plate for such demonstration purposes.

2. Under no circumstances whatsoever shall a Class DTR special plate be used for the purpose of operating a motor vehicle upon the streets and highways of the state, or on any house trailer or other trailer owned by a dealer and offered for hire or lease, or on any house trailer or other trailer which has been sold by a dealer to a customer. A Class DTR special plate may be used in moving a house trailer sold by a house trailer dealer to a customer for one trip only from the said dealer's established place of business to a place designated by such customer.

3. Under no circumstances whatsoever shall a Class F special plate be used for the purpose of operating any type of motor vehicle other than a motorcycle on the streets and highways of the state, or on a motorcycle owned by a dealer and offered for hire or lease, or on any motorcycle which has been sold by a dealer to a customer.

4. A manufacturer or transporter may operate a vehicle displaying MFG or TRS special plates on the streets or highways of the state solely for the purpose of testing or transporting such vehicle. Under no circumstances shall such plates be used on any work or service vehicles owned by a manufacturer or transporter.

5. Financial institutions may operate a vehicle displaying REPO special plates only in conjunction with the repossession or sale of a vehicle.

6. A wrecker/dismantler/rebuilder may use a "towing only" special plate only on a vehicle which is being towed and which is owned by the wrecker/dismantler/rebuilder. The wrecker/dismantler/rebuilder may use a "demo" special plate only:

a. On a vehicle being test driven by a prospective purchaser;

b. On a vehicle being driven to or from a DMV examination location;

c. On a vehicle being driven to or from an authorized state inspection station; or

d. On a vehicle being driven to an auction.

7. Under no circumstances whatsoever shall a Class DRV special plate be used for the purpose of operating a motor vehicle upon the streets and highways, or on any recreational vehicle owned by a dealer and offered for hire or lease, or on any recreational vehicle which has been sold by a dealer to a customer. A Class DRV special plate may be used upon the streets and highways for demonstration purposes only on those recreational vehicles that are subject to registration.

C. **ISSUANCE OF TEMPORARY REGISTRATION PLATES**

1. All applications for temporary registration plates shall be submitted on Form MV-126-F-TR.

2. All applications for temporary registration plates shall be limited to 400 plates.

3. Application for additional temporary plates shall not be approved if the application shows 100 or more temporary plates on hand from the previous allotment.

4. All temporary plates previously issued by the dealer shall be accounted for before any application for additional plates will be approved.

5. Temporary plates shall be issued in numerical order.

6. Every dealer issuing temporary plates shall write the date of issuance and expiration date and shall also insert clearly and legibly on the face of each temporary plate the name, year, make, and the vehicle identification number [VIN] of the vehicle to which the temporary plate is assigned.

7. The temporary registration certificate [Form DMV-40-TR] executed by the dealer shall be completed in triplicate. Each copy shall be clear and legible. The original certificate shall be sent to the DMV within 5 working days from the date of issue. The

second copy shall be given to the purchaser. The third copy shall be retained by the dealer.

8. The insurance policy referred to on the Form 40 must be in effect either on or before the date of issuance of the temporary plate. This would also apply when a temporary plate is to be issued for a vehicle which is to be titled out-of-state and **must** be in effect for the entire length of 60 days that the plate is active.

9. No temporary plates shall be delivered to any dealer in house trailers only, and no such temporary plates shall be issued for or used on any house trailer for any purpose.

10. Every dealer who has made application for and received temporary plates shall maintain in permanent form a record of all temporary plates delivered to him, a record of all temporary plates issued by him, and a record of any other information pertaining to the receipt or the issuance of temporary plates which the commissioner may require. Each such record shall be kept for at least three years from the date of the making thereof.

11. A dealer shall not issue, assign, transfer or deliver a temporary plate to anyone other than the bona fide purchaser of the vehicle to be registered; nor shall a dealer issue a temporary plate to anyone possessed of an annual registration plate for a vehicle which has been sold or exchanged, except a dealer may issue a temporary plate to the bona fide purchaser of a vehicle to be registered who possesses an annual registration plate of a different class and makes application to the division to exchange such annual registration plate in accordance with the provisions of §17A-4-1 of the code; nor shall a dealer lend a temporary plate to anyone, or use one on a vehicle which he may own.

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

13. Every person to whom a temporary plate has been issued shall permanently destroy such temporary plate immediately upon receiving their annual registration plate from the division. If the annual registration plate is not received within sixty [60] days of the issuance of the temporary plate, the owner shall, notwithstanding the fact that the annual registration plate has not been received, immediately and permanently destroy the temporary plate.

14. Not more than one temporary plate shall be issued to the same bona fide purchaser for the same vehicle. Nor, shall a dealer extend the period of time on a temporary plate.

15. A temporary plate shall expire and become void upon the receipt of the annual registration plate from the division or upon the rescission of the contract to purchase the vehicle in question, or upon the expiration of sixty [60] days from the date of issuance, depending upon whichever event shall first occur.

16. If it is determined that the dealer is not in compliance with the law and legislative rules relative to the issuance of temporary plates, the commissioner may suspend the dealers right to issue temporary plates.

D. **WARRANTIES**

Before offering a used motor vehicle for sale a dealer must display a "Buyers Guide" on the side window of the vehicle. Regulations pertaining to the "Buyers Guide" can be found below.

1. **BUYERS GUIDE WINDOW FORM**: Before offering a used motor vehicle for sale to a consumer the dealer must properly complete and display a "Buyers Guide" form on the

side window of the vehicle so both sides of the form can be read, with the title "Buyers Guide" facing to the outside. Contents of the form must conform exactly to the Rule, e.g., wording, type styles, sizes, black ink on white stock, and not less than 11 inches high by 7 1/4 inches wide.

2. **VEHICLE DESCRIPTION**: Insert the make, model, and vehicle identification number [VIN]. Insertion of the dealer stock number is optional.

3. **AS IS - NO WARRANTY**: West Virginia law prohibits "as is" sales. The "AS IS - NO WARRANTY" form may not be used.

4. **WARRANTY**: If the vehicle is offered with a written warranty, check the box "WARRANTY". Check whether the warranty is "FULL" or "LIMITED" and fill in the percentage of parts and paid by the dealer. List the specific systems covered by the warranty. For example: engine, transmission, differential, etc. Shorthand terms, such as drivetrain or powertrain, cannot be used for covered systems. Include the corresponding duration of coverage for each system. The window form must reflect all changes in the warranty coverage that have been negotiated by the dealer and consumer.

5. **IMPLIED WARRANTIES ONLY**: This means that the dealer does not make any specific promises to fix things that need repaired when the consumer buys the vehicle or after the time of sale. However, under West Virginia law, "Implied Warranty" may give the consumer some rights to have the dealer take care of serious problems that were not apparent when he/she bought the vehicle.

6. **MANUFACTURER'S WARRANTY**: If the manufacturer's original warranty still applies, the dealer may insert the following statement: "MANUFACTURER'S WARRANTY STILL APPLIES. THE MANUFACTURER'S ORIGINAL WARRANTY HAS NOT EXPIRED ON THE VEHICLE. CONSULT THE MANUFACTURER'S WARRANTY BOOKLET FOR DETAILS AS TO WARRANTY COVERAGE, SERVICE LOCATIONS, ETC."

7. **SERVICE CONTRACT**: If the dealer makes a service contract [other than a contract regulated in West Virginia as the business of insurance] available on the vehicle, check the appropriate box.

8. **DEALERSHIP IDENTIFICATION**: On the reverse side of the "Buyers Guide" insert the dealership name, address, and the telephone number of the dealership employee designated to handle any complaints.

9. **FORM GIVEN TO BUYER**: Give the "Buyers Guide" form displayed on the vehicle to the buyer of that vehicle or 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.

10. **BUYERS GUIDE INCORPORATED INTO CONTRACT**: Inform the consumer that the final version of the "Buyers Guide" form is incorporated in the contract of sale by including the following language in each consumer contract: "The information you see on the window for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale."

11. **MISCELLANEOUS PROVISIONS**:

    a. **CONTRARY STATEMENTS**: A dealer may not make any statement, oral or written, or take any action which contradicts the "Buyers Guide" and contractual disclosure statement.

b. **PENALTIES**: Each separate violation of the Rule carries a civil penalty of up to $10,000 which the Federal Trade Commission [FTC] may seek in Federal District Court. Each separate violation would also be a violation of the West Virginia Consumer Credit and Protection Act, subject to a civil penalty of $5,000.

c. **ENFORCEMENT**: Matters pertaining to "Buyers Guides" and warranties fall under the jurisdiction of the West Virginia Attorney General's Office of Consumer Protection. Any relevant questions should be directed to that office.

E. **INSPECTIONS; VIOLATIONS AND PENALTIES**

1. The commissioner and all law-enforcement officers of the State, acting at the commissioner's request, are hereby authorized to inspect the place of business, vehicles and pertinent records, documents and papers of any person required to be licensed to the extent deemed reasonably necessary to determine compliance with the code. For the purpose of making any such inspection, the commissioner and such law-enforcement officers are authorized, at reasonable times, to enter in and upon any such place of business and any other public garage or enclosure where vehicles are sold, stored, or repaired.

2. Any person who shall violate any provisions of §17A-6 of the code or any final order of the commissioner shall be guilty of a misdemeanor.

F. **DEALER LICENSE SUSPENSION/REVOCATION**

1. The commissioner may suspend or revoke a license certificate or suspend a special license plate or plates if it is found that the licensee has:

a. Failed or refused to comply with the laws of this state relating to the registration and titling of vehicles and the issuing of notices of transfer, the provisions and requirements of §17A-6 of the code, or any reasonable rule and regulation authorized in §17A-2-9, promulgated, to implement the provisions of §17A-6, by the commissioner in accordance with the provisions of §29A-3-1 of the code;

b. Given any check in the payment of any fee required under the provisions of the code which is dishonored;

c. In the case of a dealer, has knowingly made or permitted any unlawful use of any dealer plate or plates issued to him; or

d. In the case of a dealer, has a dealer plate or plates to which he is not lawfully entitled.

2. The commissioner shall suspend or revoke a license certificate if the commissioner finds that the licensee has:

a. Knowingly made a false statement of a material fact in his application for the license certificate then issued and outstanding;

b. Habitually defaulted on financial obligations;

c. Does not have and/or maintain at each place of business an "Established Place of Business" as defined in §17A-6-1 of the code for the type of business in question;

d. Been guilty of any fraudulent action in connection with the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, motorcycle dealer, recreational vehicle dealer, or wrecker/dismantler/rebuilder;

e. Defrauded or is attempting to defraud any buyer or any other person, to the damage of the buyer or such other person, in the conduct of the licensee's business;

f. Defrauded or is attempting to defraud the state or any political subdivision of the state of any taxes or fees in connection with the sale or transfer of any vehicle;

g. Committed fraud in the registration of a vehicle;

h. Knowingly purchased, sold, or otherwise dealt in a stolen vehicle or vehicles;

i. Advertised by any means, with intent to defraud, any material representation or statement of fact which is untrue, misleading or deceptive in any particular relating to the conduct of the licensed business;

j. Willfully failed or refused to perform any legally binding written agreement with any buyer;

k. Made a fraudulent sale or purchase;

l. Failed or refused to assign, reassign or transfer a proper certificate of title; or

m. A license certificate to which he is not lawfully entitled.

n. The commissioner shall also suspend or revoke the license certificate if he finds the existence of any ground upon which the license certificate could have been refused, or any ground which would be cause for refusing a license a license certificate to such licensee were he then applying for the same.

3. Whenever a licensee fails or refuses to keep the bond and liability insurance required by §17A-6-4 of the code in full force and effect, the license certificate of such licensee shall automatically be suspended unless and until a bond or certificate of insurance as required by said section is furnished to the commissioner, in which event the suspension shall be vacated.

4. Suspensions shall continue until the cause therefore has been eliminated or corrected. Revocation of a license certificate shall not preclude application for a new license certificate, which application shall be processed in the same manner and the license certificate issued or refused on the same grounds as any other application for a license certificate is processed, considered and passed upon, except that any previous suspension and revocation may be given such weight in deciding whether to issue or refuse such license certificate.