

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS
DEPARTMENT OF REVENUE

RULES AND REGULATIONS REGARDING
DEALERS, MANUFACTURERS & RENTAL LICENSES
PURSUANT TO R.I.G.L. SECTIONS 31-5-2 AND 31-5.1-3

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I. AUTHORITY

Pursuant to the provisions of Sections 31-5-2 and 31-5.1-3 and Chapter 42-35 of the Rhode Island General Laws, the Rhode Island Department of Revenue hereby adopts and establishes the following Rules and Regulations regarding Dealers, Manufacturers and Rental Licenses.

II. PURPOSE

(A) These Rules and Regulations are promulgated in order to protect the interest of the public when dealing with motor vehicle dealers in Rhode Island. Any violation of these provisions may result in:

- (1) revocation of a dealer's license or
- (2) suspension of a dealer's license or
- (3) suspension or loss of dealer's registration plates or
- (4) full restitution of any money and/or motor vehicle repairs and parts suffered by a purchaser as a result of an unconscionable practice or illegal transaction as may be determined by the Department of Revenue; and/or
- (5) a fine imposed in accordance with Rhode Island General Laws Section 31-5-14 (a) and (c), as amended

(B) The purpose of these Rules is to implement the provisions of Chapter 31-5 and 31-5.1 regarding the issuance, suspension and/or revocation of dealers', manufacturers' and rental licenses as well as the regulation of business practices among businesses seeking or holding those licenses. Furthermore, these Rules are implemented to regulate business practices between dealers, manufacturers and distributors.

III. DEALERS' HEARING BOARD

The director of the Rhode Island Department of Revenue establishes a five member board, hereinafter referred to as the "Dealers' Hearing Board" or the "Board". The Board is authorized to hear evidence and make decisions on behalf of the Department of Revenue ("Department") in order to implement the provisions of Chapters 31-5 and 31-5.1. The Board has the authority to act on behalf of the Department and the Board serves at the pleasure of the director of the Department of Revenue.

IV. REVIEW OF DECISIONS OF DEALERS' HEARING BOARD

Any licensee, consumer or other person in interest, being dissatisfied with the final decision of the Board, shall file petition for review in Superior Court. Petitions for review must be made within thirty (30) calendar days of receipt of the Board's decision.

V. DEFINITIONS

The following terms, as used in these Rules and Regulations, are defined as follows:

(A) **"DEALER"** means any person, firm or corporation who sells or acts as a broker with respect to the sale of more than four (4) vehicles in any one calendar year shall be considered a motor vehicle dealer. Any person, firm or corporation who, prior to the retail sale of a motor vehicle, converts or otherwise assembles, installs or affixes a body, cab or special equipment to a chassis or who adds to, subtracts from or modifies a previously assembled or manufactured motor vehicle shall be considered a motor vehicle dealer.

(B) **"PERSON"** means a natural person, corporation, partnership, trust or other entity, and, in case of an entity it shall include any other entity in which it has a majority interest or effectively controls as well the individual officers, directors, and other persons in active control of the activities of each such entity.

(C) **"PLACE OF BUSINESS"** means a designated location at which the business of the dealer or auction is conducted and facilities for displaying new or used motor vehicles are maintained.

(D) **“BRANCH”** means a location where the business of a motor vehicle dealership is carried on and where all minimum requirements are in effect.

(E) **“ANNEX”** means a location within the radius of two (2) roadway miles where the business of a licensed used motor vehicle dealership is carried on in addition to the place of business designated on the dealer’s license.

(F) **“AGENT”** means an individual or groups of individuals authorized by another to act for the licensed dealer.

(G) **“APPLICANT”** means a person, partnership, corporation or association which has filed an application for a license from the Rhode Island Department of Revenue under these Regulations.

(H) **“ADVERTISEMENT”** (including the terms “advertise” and “advertising”) means any oral, written or graphic statement made by a seller in any manner in connection with the solicitation of business and includes, without limitation because of statements and representations made in a newspaper or other publication or on radio or television or via the internet or contained in any notice, handbill, sign, billboard, poster, bill, circular, brochure, pamphlet, catalogue or letter, or printed on or contained in any tag or label which is attached to or accompanies any merchandise offered for sale.

(I) **“AUTHORIZED DEALER REPRESENTATIVE”** means a salesperson, sales manager or other agent or employee of a motor vehicle dealer or auction who is authorized to represent or act for the dealer or the auction in connection with the acceptance, rejection or modification of motor vehicle purchase contracts.

(J) **“CLEAR AND CONSPICUOUS”** means that the statement, representation or term being disclosed is of such size, sound or color contrast and is so placed as to be readily noticeable to the person to whom it is being disclosed. A statement contained in a printed contract, form or notice is not clear and conspicuous unless it is printed in at least ten-point type or its equivalent.

(K) **“FRANCHISED DEALER”** means a licensed dealer who holds a franchise agreement or more with a licensed manufacturer or distributor to sell new

motorized vehicles of a type to be registered and has received approval from the Department.

(L) “AUCTION” means a person, firm, partnership, corporation or association who engages in the business of auctioning motor vehicles to and for licensed motor vehicle dealers only, on a wholesale basis.

(M) “AUCTIONEER” means a person who sells motor vehicles at an auction for another on commission or for recompense and is licensed and bonded by the State of Rhode Island Department of Business Regulations.

(N) “NEW OR UNUSED MOTOR VEHICLE” means a motor vehicle that is transferred from either a manufacturer or a distributor to a franchised dealer of the same line make with a certificate of origin and carries a full factory warranty. Any motor vehicle that is transferred from one franchised dealer to another same line make franchised dealer with a certificate of origin and a full factory warranty shall also be considered a new or unused motor vehicle.

(O) “DEMONSTRATOR” means a new motor vehicle used for demonstration purposes by a licensed dealership which has a certificate of origin, a factory warranty, and a written disclosure identifying the vehicle as a demonstrator vehicle. The written disclosure shall include the number of miles that the vehicle has been driven and the terms of the factory warranty. Any motor vehicle used for demonstration purposes by a licensed dealership that has been previously titled shall not be considered a demonstrator vehicle.

(P) “USED MOTOR VEHICLE” means any motor vehicle that does not fall within the definition of a new or unused motor vehicle or demonstrator vehicle shall be considered a used motor vehicle.

(Q) “MANUFACTURER” means any person, partnership, firm, association, corporation or trust, resident or nonresident who manufactures or assembles new motor vehicles, or imports for distribution through distributors of motor vehicles, or any partnership, firm, association, joint venture, corporation or trust, resident or nonresident, which is controlled by the manufacturer. Additionally, the term manufacturer shall include the following terms:

(1) **“Factory Branch”** which means a branch office maintained by a manufacturer for the purpose of selling, or offering for sale, vehicles to a distributor or new motor vehicle dealer, or for directing or supervising in whole or in part factory or distributor representatives.

(2) **“Distributor”** which means any person, firm, association, corporation or trust, resident or nonresident, who in whole or in part offers for sale, sells or distributes any new motor vehicle to new motor vehicle dealers or who maintains factory representatives or who controls any person, firm, association, corporation or trust, resident or nonresident, who in whole or in part offers for sale, sells or distributes any new motor vehicle to new motor vehicle dealers.

(R) “NEW MOTOR VEHICLE DEALER” means any person engaged in the business of selling, offering to sell, soliciting or advertising the sale of new motor vehicles and who holds or held at the time a cause of action under this chapter accrued, a valid sales and service agreement, franchise or contract, granted by the manufacturer or distributor for the retail sale of said manufacturer’s or distributor’s new motor vehicle.

(S) “MOTOR VEHICLE” means every vehicle intended primarily for use and operation on the public highways which is self- propelled, not including farm tractors and other machines and tools used in the production, harvesting and care of farm products.

(T) “FRANCHISE” means the agreement or contract between any new motor vehicle manufacturer, written or otherwise, and any new motor vehicle dealer which purports to fix the legal rights and liabilities of the parties to such agreement or contract, and pursuant to which the dealer purchases and re-sells the franchise product or leases or rents the dealership premises.

(U) “GOOD FAITH” means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade as is defined and interpreted in Section 6A-2-103 (1)(b).

(V) **“DESIGNATED FAMILY MEMBER”** means the spouse, child, grandchild, parent, brother or sister of the owner of a new motor vehicle dealer (1) who, in the case of the owner’s death, is entitled to inherit the ownership interest in the new motor vehicle dealership under the terms of the owner’s will, or (2) who has been nominated in any other written instrument or (3) who, in the case of an incapacitated owner of a new motor vehicle dealer, has been appointed by a court as the legal representative of the new motor vehicle dealer’s property.

(W) **“RELEVANT MARKET AREA”** shall mean (1) a radius of twenty (20) miles around a proposed dealer, or (2) the area of responsibility defined in the franchise agreement, whichever is greater.

(X) **“FRAUD”** includes, in addition to its normal legal connotation, the following: a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made honestly and in good faith; and an intentional failure to disclose a material fact.

(Y) **“DEPARTMENT”** shall mean the Rhode Island Department of Revenue.

(Z) **“RENTAL VEHICLE BUSINESS”** means any person, firm or corporation, whether resident or nonresident, engaging in, granting a franchise or license to engage in, or granting use of its name, trademark or trade name, for the business or renting motor vehicles for the transportation of persons or property.

VI. REQUIREMENTS FOR DEALERS

(A) “MUST BE PRIMARILY A DEALER IN MOTOR VEHICLES”:

The business of dealing in motor vehicles is of prime and vital importance to the car buying public. The purchaser of a motor vehicle has the right to expect that it be equipped with proper brakes, lights and other safety appliances as required by law. Consequently, the sale of motor vehicles must not be carried on as a sideline by any other type of business.

- (1) Any scrap/salvage dealers must set up an entirely separate place of business and comply with those minimum requirements to operate as a motor vehicle dealer.

(2) Any gasoline filling station who desires to become a motor vehicle dealer must, in addition to meeting all other requirements, remove all retail gasoline pumps and signs.

(B) "PLACE OF BUSINESS": Every dealer must establish a suitable place in which to conduct the business of dealing in motor vehicles. The business must be housed in one (1) building, on the premises, which contains at least 2,400 square feet of enclosed and heated floor space to provide a suitable office and space where motor vehicles may be properly repaired and serviced. At the Board's discretion, service facilities may be maintained in a separate building. Any applicant requesting a license to deal in motor vehicles who presently maintains or intends to apply for a competitive body shop license must provide at least 2,400 square feet of enclosed and heated floor space in addition to any other license requirements. A minimum requirement for lot display must be 2,400 square feet. This place of business must be used exclusively by the dealer for the purpose of displaying, repairing, buying and selling vehicles. Dealers, solely in the business of buying and selling motor scooters, motorcycles and mopeds, will be licensed to sell these vehicles only. The place of business for such dealers must be housed in a building that measures at least 1,200 square feet of enclosed and heated space, to provide suitable office and space where cycles may be properly repaired and serviced. Such dealer's license must be stamped "for mopeds, motorcycles, or motor scooters only". Dealer plates issued to such dealers may only be used on mopeds, motorcycles, or motor scooters, and may not be used on other motor vehicles.

(C) "PROOF OF OWNERSHIP OR LEASE": Every dealer must provide the Department at the time of application for a dealer's license with proof of ownership (copy of deed) of the place of business, or with a copy of a formal signed lease for the place of business, including the square feet and outside display area, that is at least one (1) year in duration.

(D) "CHANGE IN LOCATION": When a change in location is contemplated, notification shall be made to the Department on whatever forms the Department requires and must be approved by this Department prior to the relocation. If the

new location has not been previously approved by the Department, the same procedure shall be followed as if it were a new application.

(E) “ZONING”: Every applicant for a dealer’s license who desires to operate in any city or town which has a zoning law or zoning regulations must submit proof, in writing, that the property on which he intends to conduct his motor vehicle dealership is properly zoned for the business of dealing in motor vehicles. If a town or city requires a license to sell motor vehicles, this office must receive a copy of that license in lieu of the zoning approval notice.

(F) “REPAIR AND SERVICE FACILITIES”: Every dealer must maintain a service and repair shop with sufficient tools to perform routine repairs and maintenance of motor vehicles.

(G) “DISPLAY OF LICENSE”: Every dealer must conspicuously display the dealer’s license at the location for which it was issued.

(H) “SIGNS”: Every dealer must display a sign or window lettering on the front of the premises where the building is located showing the actual name under which the business is licensed. The words and lettering of the sign must be of a size sufficiently large enough to be readily discerned. The total size of the sign must be a minimum of twenty-four (24) square feet, or the maximum size under local zoning ordinances if such ordinances restrict signs to less than twenty-four (24) square feet.

(I) “BUSINESS TELEPHONES”: Prior to the issuance of a dealer’s license, all applicants must have a telephone installed at the licensed address including main, branch and annex locations.

(J) “LOCATIONS”: A separate license must be obtained for each annex or branch location. The Department may waive certain requirements for dealers when an annex lies within the radius of two (2) driven miles from the main place of business specified on the dealer’s license and is to be used for the sale of used vehicles.

(K) “BRANDS OF MOTOR VEHICLES TO BE SOLD”: A dealer may only sell those brands of new vehicles as a “franchised dealer” that are listed on the license application(s) submitted by the dealer and approved by the Department. If

a dealer wishes to sell additional brands of new vehicles, he must apply for permission to do so from the Department in accordance with Sections 31-5.1-4.2.

(L) “SALESPERSON/AGENT”: No dealer shall be permitted to accept any motor vehicle transactions negotiated by a salesperson or agent during the course of his or her employment as a salesperson or agent for any other dealer. Dealers shall not permit individuals not actually in their employ and not actually selling vehicles for that dealer, to use the dealer’s headquarters, premises, dealer plates, or sales documents when selling motor vehicles. Payroll records must be available to the Department on request. Any person buying motor vehicle (s) for any licensed dealership must use that dealer’s company check to purchase such vehicle (s). The owner, a partner or a corporate officer of such dealership must also be authorized to sign the same company checks. Dealers must provide the names of salespersons to the Department immediately upon starting employment, even if the salesperson has been hired on a probationary/trial basis.

(M) “TITLE PREPARATION FEE”: A motor vehicle dealer licensed by the Department may, in connection with the sale of a motor vehicle, impose a fee for the service of registering and titling said vehicle with the division of motor vehicles. Said fee shall be separately itemized on the bill of sale, shall be designated as “Title Preparation Fee” and shall not exceed twenty dollars (\$20.00). A motor vehicle dealer who, in connection with the sale of a motor vehicle, imposes a “Title Preparation Fee”, shall provide to the purchaser a written statement which fully discloses the services to be rendered pursuant to the payment of the “Title Preparation Fee”. Said services shall include:

- (1) preparation of the title application;
- (2) preparation of the sales tax forms;
- (3) preparation of any other forms required to title the vehicle, and
- (4) registering and titling the vehicle at the division of motor vehicles.

No dealer shall impose any other fees of similar meaning and/or for related services, such as, but not limited to: freight, handling, overhead expenses, vehicle preparation, etc., in an attempt to circumvent this rule.

(N) "DOCUMENTARY PREPARATION FEE": A motor vehicle dealer licensed by the Department may impose a fee on vehicle transactions in excess of seven thousand five hundred dollars (\$7,500.00) for the preparation of various paperwork associated with the sale, financing, leasing, insurance, liens, warranties, federal and state disclosures and other procedures associated with the sale, leasing and financing of vehicles obtained or provided by the dealership. The fee may not exceed two hundred dollars (\$200.00). Any motor vehicle dealer who charges a documentary preparation fee in excess of two hundred dollars (\$200.00) or who charges any documentary preparation fee in connection with the sale of a motor vehicle for less than seven thousand five hundred dollars (\$7,500.00) shall be subject to the imposition of a fine and/or the suspension or revocation of their license.

(O) "FINANCIAL REQUIREMENT": In order that the purchasers of motor vehicles shall be adequately protected, all applications for a license must be accompanied by a financial statement prepared by a Certified Public Accountant (CPA) which must demonstrate a sufficient amount of cash and other tangible assets over and above all liabilities that would justify the issuance of such license. The Department may request a line of credit. The Department has the authority to request for inspection any and all documents pertaining to the business. A bond in the amount of ~~one hundred~~ fifty thousand dollars (~~\$100~~50,000) for all motor vehicle dealers, and fifty thousand dollars (\$50,000) for moped and motorcycle dealers, payable to the Department, issued by a surety company authorized to do business in Rhode Island, must be filed. Said bond shall be filed yearly along with the dealer's license renewal forms and shall be in effect until December 31 of that year. This bond requirement will become effective March ~~16~~ 31, 2009 for all existing dealers and applicants for dealers' licenses.

(P) "HOURS OF BUSINESS": The business of dealing in motor vehicles must be a full time operation and such establishments must be kept open for business during normal business hours unless a sudden emergency makes it necessary to close, at which time the Department must be notified within two business days of closing.

(Q) "DISPLAY OF VEHICLES": All motor vehicles must be owned by the dealer, and all sales transactions must be made from the dealer's licensed place of business. Dealers shall not sell vehicles on a consignment basis. No dealer shall display a vehicle other than at his place of business. The Department shall have the authority to make exceptions.

(R) "INSPECTION OF VEHICLES": No dealer of used vehicles, as defined by R.I.G.L. § 31-1-19 (b), shall sell at retail a used motor vehicle unless a new inspection of the vehicle conforming to the standards set pursuant to Chapters 31-38 and 31-47.1 has been conducted and the vehicle has a new certificate of inspection affixed to the windshield at the time of sale. A new inspection consists of an inspection conducted at a point no more than ninety (90) calendar days prior to the date of sale of a vehicle, or an inspection conducted no more than 500 vehicle odometer miles prior to the date of sale, whichever shall occur first. All vehicles offered for sale on a dealer's premises must have valid state inspection stickers affixed to the vehicles' windshields.

VII. ADMINISTRATIVE POLICIES - MOTOR VEHICLE DEALERS:

(A) APPLICATION: Every dealer must fill out an application for a dealer's license on a form prescribed by the Department. Every applicant for a motor vehicle dealer's license must furnish with the application four photographs showing front view, right side view, left side views, and the rear view of the premises, except in case of renewal.

(B) CHANGE IN MEMBERS OF A PARTNERSHIP OR OFFICER OF A CORPORATION OR ASSOCIATION: The Department must be notified within ten (10) days, in writing, on whatever forms the Department may require, if there is a change in members of a partnership or officers of a corporation or association licensed by the Department. If the location does not meet the minimum requirements, as amended then at least one (1) of the present owners, partners or corporate officers on record must remain on record for a minimum of six (6) months after the effective date of such change. The license is not subject to transfer at any future date without application to, and approval from the

Department. The Department may revoke the license of a corporation when the officers are changed and the new officers are unfit to do business as a dealer under Section 31-5-11.

(C) RETIRING FROM BUSINESS: When a licensee retires from business, the licensee must return his or her dealer's license, dealer plates, temporary plates, and loan agreement forms to the Department on or before the date of such retirement or closing.

(D) RECORD OF VEHICLES BOUGHT AND SOLD: Dealers are required to maintain a book or other system in which shall be recorded a complete description of all vehicles bought and sold, vehicles taken in trade, including the name and address of the previous owner and new owner, date of transaction, make of vehicle, year, type, model and motor number, and a copy of every title signed by the purchaser at the time of sale acknowledging receipt of or the presence of such valid/negotiable title. This book or other system shall be open for inspection by employees of the Department, division of motor vehicles inspectors, police, employees of the Department of Attorney General, or any other proper officers at all times during hours of business.

(E) BILLS OF SALE: Every dealer must give a bill of sale with each vehicle purchased, and must maintain a copy of the bill of sale as part of the records required above in Section VII, subsection (D). The bill of sale must be numbered and contain the dealer license number, odometer reading, and must state what warranties are being given. If no warranty is given, this must also be stated on the bill of sale. The bill of sale for all used vehicles must also contain a notice to the buyer which clearly and conspicuously states as follows: "Attention purchaser: Rhode Island law requires that all motor vehicles sold at retail must be in such condition as to pass a State safety inspection at the time of sale so as to protect consumers".

(F) TITLES: Title shall pass from the dealer to the consumer at the time of sale, unless such vehicle is to be registered by said dealer, then a maximum of twenty (20) days from the date of sale shall be allowed. Dealer must obtain a signed

receipt from the buyer. The receipt must be kept by the dealer. If the dealer is not able to produce a receipt, it shall be presumed that the title was not given to buyer.

(G) SPECIAL USE VEHICLES:

(1) **Demonstrators:** The word “Demonstrator” shall be understood to refer to a motor vehicle which has never been sold to a member of the public; this term describes cars used by automobile dealers or their salespeople and shall be so identified in writing on the bill of sale when sold and/or advertised for the first time at retail.

(2) **Executives’ and Officials’ Cars:** “Executive” and “Officials” motor vehicles must have been used by executives, personnel of a motor vehicle manufacturer, distributor, or a dealer, and shall be so identified in writing on the bill of sale when sold and/or advertised for the first time at retail.

(3) **Taxi-Cabs, Police Cars, Leasing Cars, Rental Cars, etc.:** Such vehicles shall be so identified in writing on the bill of sale when sold and/or advertised dealer-to-dealer up to and including the first retail buyer. This rule shall apply to salvaged, restored, and other vehicles with extensive damage as may be determined by the Department.

(H) DEALER PLATE ALLOCATION: The Department will allocate dealer plates in proportion to the amount of sales of licensed dealers. All new dealers shall be issued three (3) plates at the time of licensing. At the end of six (6) months, and from time to time thereafter, such dealer may apply to the Department for additional plates by establishing sales that would indicate its sales over a period of one (1) year. For each one hundred (100) sales per year, a dealer will be issued three (3) plates; this includes the three (3) plates originally issued. Any dealer engaging in the unconscionable practice of loaning or leasing a dealer plate is subject to immediate revocation of license. Dealer plates used by unauthorized persons shall be immediately seized by the Department or other appropriate law enforcement agency and the dealer to whom the plates belong will be subject to immediate revocation of license. Every year, upon renewal of a

dealer's license, the Department shall review the prior sales of the dealership to determine whether or not the dealer is entitled to the number of plates already issued. In the event that the dealer's sales no longer qualify the dealer for the number of plates already issued to it, the Department shall have the authority to request a hearing before the Board at which time the dealer will be required to present all bills of sale from the prior year. A dealer must report all lost or stolen dealer plates to the Department. Any licensee who wished to replace a lost or stolen dealer plate must appear in person with a copy of a police report at the Department and execute an affidavit required by the Department. Any plate reported lost or stolen cannot be used upon being found or returned to the dealer. Dealers who desire additional dealer plates must apply, in writing, to the Department stating the amount and reason(s) for such a request, and in addition, must complete the form(s) required by the Department, subject to Department approval.

(I) DEALERSHIP NAME CHANGE: Whenever a licensee wishes to change the name of their licensed dealership, a licensee may apply to do so on whatever form(s) the Department requires, providing the owner, partners, or corporate officers on record, remain on record under the new dealership name. A new license certificate shall be issued upon approval of such change in dealership name, pursuant to Rhode Island General Law Section 31-5-8, as amended. It shall be clearly understood that whether or not the new dealership name is that of a corporation, the licensee shall remain responsible for any prior happenings under that dealer license number.

(J) RETURNED CHECKS: In the event a dealer provides the DMV with a check that is returned for insufficient funds, a fee of \$35.00 will be charged in addition to interest on the original amount of the check. Interest shall be in the amount of one percent (1%) per month. Failure to make good on a returned check, including paying all applicable fees and interest, may result in suspension or revocation of the dealer's license or imposition of a fine.

VIII. MOTOR VEHICLE DEALERS – SERVICEMEMBERS’ CIVIL RELIEF ACT

(A) No dealer shall require the purchaser of a vehicle to submit a dispute arising from the transaction between the purchaser and dealer to any forum that does not acknowledge that it is a court or administrative agency for purposes of the Civil Service Relief Act. Any violation of this provision will be deemed an unfair and deceptive trade practice.

(B) It shall be considered an unfair and deceptive trade practice for any dealer to mislead or attempt to mislead a purchaser regarding his or rights under this section.

(C) A purchaser may only waive the protections under this section if the waiver is made in writing and after the dispute for which the waiver is sought has arisen. No pre-dispute waivers are permitted.

IX. ADVERTISING

(A) **NAME AND ADDRESS OF DEALER:** All advertising for the sale or purchase of any motor vehicle must disclose the licensed business name and address of the dealer, except classified advertisements, which need only contain the dealer’s license number.

(B) **PRICE:**

(1) No dealer shall advertise the price of motor vehicles unless such price is the full delivered price. Charges for freight, handling, vehicle preparation, overhead expenses, consultation fees, or any other fees that are inconsistent with these rules shall not be used in advertising nor included on the bill of sale.

(2) When the price of a motor vehicle is quoted, the advertisement shall clearly identify the motor vehicle as to make, year and model.

(3) The word “wholesale” shall not be used in retail motor vehicle advertising to imply that motor vehicles are being offered to the general public at “wholesale prices”.

(4) The price of motor vehicles shall not be advertised in relation to the vehicles “dealer cost”, or words of similar meaning. “Invoice

price” may be used provided the dealer provides the Department with the invoice issued from the manufacture substantiating any statements the dealer makes in advertising the vehicles prior to the use of “Invoice price” in any and all advertisements.

(5) No dealer shall offer a motor vehicle with “cash rebates” or words of similar meaning, unless such rebate is in the form of a cash incentive given directly to the consumer from the manufacturer or distributor of said motor vehicle.

(6) No price shall be used in the advertising for sale of motor vehicles unless a vehicle or vehicles are actually available at the price stated and as described. Whenever a price is advertised for a new motor vehicle, the stock number of that vehicle must be conspicuously placed in the ad, unless it is clearly stated that the vehicle may be ordered at such a price. If the ad states that the vehicle must be ordered and is not in stock, it must also state an approximate reasonable delivery date based on actual recent experience with delivery time for that particular make and model of vehicle.

(7) Unsupported underselling claims are viewed as not in the public interest and shall not be used because it is obvious that no dealer can be fully informed about every competitor’s prices at all times. This pertains to such statement as: “Our prices are guaranteed lower than elsewhere”, “Money refunded if you can duplicate our values”, “We guarantee to sell for less”, “Highest trade-in allowance”, “We give \$300.00 more in trade than any other dealer”, etc.

(8) Use of telegrams, cards, circulars, letters or other advertising containing such offered as “Would You Take \$..”, “If I Could Get You \$...For Your Car”, are condemned as deceptive and detrimental to the public’s interest. Such devices have invariably

been found to be inaccurate and to have been used unfairly to attract purchasers who were not given the trade allowances quoted.

(9) Statements such as “Write Your Own Deal”, “Name Your Price”, “Name Your Own Monthly Payments”, “Appraise Your Own Car”, and phrases of similar import shall not be used.

(C) BAIT AND SWITCH: Bait and switch advertising and selling practices shall not be used. A motor vehicle advertised at a specific price shall be in the possession of the advertiser and conspicuously displayed at the address given, unless the ad clearly states the vehicle must be ordered. It shall be willingly shown, demonstrated and sold or, as to a new motor vehicle floor model, orders shall be taken for future delivery of the identical model at the advertised price and terms. If the specific model advertised at a designated price is not available, as it has been sold subsequent to the placing of the ad, the advertiser shall, upon request of any interested buyer, show sales records of the advertised motor vehicle or motor vehicles which allegedly have been sold.

(D) BUSHING: Bushing is the practice of increasing the selling price of a car that was originally quoted to the purchaser, after the purchaser has made an initial payment, either with money or with a trade-in, or signed a contract. Such practice of bushing or similar practice is deceptive, not in the public interest, and shall not be used.

(E) TRADE-IN ALLOWANCE: No specific price shall be stated in an advertisement as an offer for a trade-in, if the price so stated is contingent upon the condition, model, or age of the prospective buyer’s motor vehicle, without so stating in the advertisement. The use of phrases such as “up to”, “as much as”, etc. shall not be considered an adequate explanation. Notwithstanding any provisions to the contrary in a retail sales agreement, no dealer shall decrease the value to a trade-in previously made part of a sales agreement because of additional depreciation from the time of the agreement until delivery of the new vehicle. This shall not exclude a dealer from re-evaluating a trade-in because of damage to the vehicle or removal of equipment after the sales agreement was entered into but before delivery of the new vehicle is completed.

(F) USED VEHICLES: When a used car of the current or previous year series is advertised in any media, the word **USED or USED PROGRAM CAR** must be shown as the prefix to the model year in the same size type. The stock number and current mileage shall also appear.

EXAMPLE: Used (year) (make) (model) (stock number) (mileage)

(G) REPOSSESSIONS: The term “repossessed” shall be used only to describe such motor vehicles as have been presently and directly taken back from a purchaser. Advertisers offering repossessed cars for sale shall be willing to offer proof of such repossessions. An amount quoted as an unpaid balance shall be the full selling price unless otherwise stated.

(H) DEALER PREP: No dealer shall charge its new car customers for “dealer prep” or other specified pre-delivery services when the manufacturer or distributor of the vehicle in question has agreed to reimburse dealer for such services, or when the dealer’s agreement with the manufacturer or distributor contemplates that the dealer will adequately prepare the vehicle for delivery at no charge to the customer.

(I) “FREE EQUIPMENT”: No equipment, accessories, or other miscellaneous merchandise shall be described as “Free”, “No Charge”, or words of similar meaning unless such “Free” equipment, accessories, or other miscellaneous merchandise is from a manufacturer sponsored promotion and such promotion is substantiated in writing from the manufacturer and provided to the Department by the dealer prior to the use of “Free” in any and all advertisements. No cash awards or merchandise give-aways shall be offered. Trading stamps may not be offered with the purchase of a motor vehicle. No equipment, accessories or other merchandise shall be described as being available at minimal cost, in an attempt to circumvent this rule. This rule, however, shall not be construed to prevent a dealer from advertising whatever equipment a motor vehicle contains at the advertised price by use of such wording as “every car includes X, Y, Z equipment”.

(J) DRIVING TRIALS:

(1) **“Free Driving Trial”** can only mean that the purchaser may drive the car during the trial period and return it to the dealer within the specified period and obtain a refund of all moneys, return of the car traded in, signed agreements or other considerations deposited. The exact terms and conditions of the “Free Driving Trial” shall be set forth in writing and a copy given to the purchaser at the time of sale.

(2) **“Driving Trial”** means that the purchaser may have the use of the car with the understanding that if it is not satisfactory, the amount paid will be applied to any other car in the dealer’s stock, of like or greater advertised value. The exact terms and conditions of the “Driving Trial” shall be set forth in writing and a copy given to the purchaser at the time of sale. The car, however, must be returned within the driving trial period, in substantially the same condition as when received.

(K) GUARANTEED: When such words as “Guarantee”, “Warranty”, or other terms implying protection are used in advertising, explanation shall be given in clear and concise language as to the time and coverage of such guarantee or protection. The purchaser shall be provided with a written document stating the specific terms and coverage therein.

(1) Unless otherwise qualified, such expressions as “90-Day Warranty”, “6-Month Warranty”, or others of similar import, mean that the seller will pay for all needed repairs, both as to labor and parts, for the period of time and/or mileage specified.

(2) If either labor or parts are not covered by such guarantee or warranty, the offer shall be qualified as, for example, “Parts Guaranteed - Labor Extra”.

(3) A “new car guarantee” shall not be offered in connection with the sale of a used car.

(L) PICTURED VEHICLES: No photographs, sketches, cuts, etc. shall be used showing equipment not included in the price quoted unless it is clearly itemized as to which equipment pictured is not included in the quoted price. (Examples: whitewall tires, two-tone paint, deluxe trim, bumper guards, special wheel covers, etc.)

X. REQUIREMENTS FOR AUCTION DEALERS

(A) "PLACE OF BUSINESS": Every auction must establish a suitable place in which to conduct the business of dealing in motor vehicles. The business must be housed in a building, on the premises, which contains at least 7,000 square feet of enclosed and heated floor space to provide a suitable office and space where motor vehicles may properly enter and exit. Minimum floor space in all instances shall be interpreted as a ground level space and in no instance shall basements or second floors or any upper or lower areas be considered in computing the required minimum amount of space. A minimum requirement for lot display must be five (5) acres (218,000 square feet). Such auction dealer's license must be stamped "auction dealer only".

(B) "PROOF OF OWNERSHIP OR LEASE": Every auction dealer must provide the Department at the time of application, for a dealer's license, with proof of ownership (copy of deed) of the place of business, or with a copy of a formal lease for the place of business that is at least one (1) year in duration.

(C) "CHANGE IN LOCATION": When a change in location is contemplated, notification shall be made to the Department on whatever forms the Department requires and must be approved by this Department prior to the relocation. If the new location has not been previously approved by the Department, the same procedure shall be followed as if it were a new application.

(D) "ZONING": Every applicant for an auction's license who desires to operate in any city or town which has a zoning law or zoning regulations must submit proof, in writing, that the property on which he intends to conduct his motor vehicles auction is properly zoned for the business of dealing in motor vehicles. If

a city or town requires a license to deal in motor vehicles, this office must receive a copy of that license in lieu of the zoning approval notice.

(E) “DISPLAY OF LICENSE”: Every auction dealer must conspicuously display the dealer’s license at the location for which it was issued.

(F) “SIGNS”: Every auction dealer must display a sign or window lettering on the front of the premises where the building is located showing the actual name under which the business is licensed. The words and lettering of the sign must be of a size sufficiently large enough to be readily discerned. The total size of the sign must be a minimum of 24 square feet, or the maximum size under local zoning ordinances if such ordinances restrict signs to less than 24 square feet.

(G) “BUSINESS TELEPHONES”: Prior to the issuance of an auction dealer’s license, all applicants must have a telephone installed at the licensed address.

(H) “LOCATIONS”: Any holder of an auction license who desires to engage in the business of retailing motor vehicles (to the general public) must, in addition to meeting the auction requirements, establish a facility separate and apart from the auction location and must meet all minimum requirements in accordance with Section III et seq. of the Department of Revenue’s Rules and Regulations.

(I) “FINANCIAL REQUIREMENT”: No application for an auction dealer’s license will be considered unless the notarized financial statement shows a minimum of fifty thousand dollars (\$50,000) in assets over and above all liabilities, and must be submitted annually. The Department has the authority to request for inspection any and all documents pertaining to the business. A bond in the amount of ~~one hundred~~ fifty thousand dollars (~~\$100~~50,000) for all motor vehicle auction dealers, payable to the Department, issued by a surety company authorized to do business in Rhode Island, must be filed, for the purpose of indemnifying a good faith purchaser who suffers any loss occasioned by a violation of the General Laws or the Rules and Regulations of the Department. Said bond shall be renewed annually. This bond requirement will become effective March 31, 2009 for all existing auction dealers and applicants for auction dealers’ licenses.

(J) “HOURS OF BUSINESS”: The business of dealing in motor vehicles must be a full time operation and such establishment must be kept open for business during normal business hours unless a sudden emergency makes it necessary to close, at which time the Department must be notified within two business days.

XI. ADMINISTRATIVE POLICIES - AUCTION DEALERS

(A) APPLICATION: Every Auction dealer must fill out an application for an auction dealer’s license on form (s) prescribed by the Department. Every applicant must furnish three to four (3-4) photographs showing front view, right and left side views, and the rear view of the premises, a plan or blueprint of the establishment or location where he intends to do business along with the application, except in case of renewal.

(B) CHANGE IN MEMBERS OF A PARTNERSHIP OR OFFICERS OF A CORPORATION OR ASSOCIATION: The Department must be notified within ten (10) days, in writing, on whatever forms the Department may require if there is a change in members in a partnership or officers of a corporation or association licensed by the Department. The license is not subject to transfer at any future date without application to, and approval from the Department. The Department may revoke the license of a corporation or partnership when the officers or partners are changed and the new officers are unfit to do business as a dealer under Rhode Island General Law Section 31-5-11.

(C) RETIRING FROM BUSINESS: When a licensee retires from or closes his business, he must return his auction dealer’s license to the Department on the date of such retirement or closing.

(D) RECORDS OF VEHICLES SOLD THROUGH THE AUCTION:

Auction dealers are required to maintain a book or other system in which shall be recorded a complete description of all vehicles sold through the auction, including the name and address of the previous owner and new owner, date of transaction, make of vehicle, year, type, model, motor (VIN) number, and mileage. This book or other system shall be open for inspection by employees of this Department, division of motor vehicles inspectors, police, employees of the Department of

Attorney General, or any other proper officers at all times during hours of business.

(E) BILLS OF SALE: Every auction dealer must give a bill of sale with each vehicle sold, and must maintain a copy of these bills of sale as part of the records required above in Section X (D). The bill of sale must be numbered and contain the auction dealer license number, odometer reading, and the buyer and sellers name and address.

(F) SPECIAL USE VEHICLES - TAXI-CABS, POLICE CARS, LEASING CARS, DAILY RENTAL CARS, SALVAGED AND RESTORED VEHICLES: Such vehicles shall be so identified in writing on the bill of sale when sold dealer-to-dealer up to and including the first retail buyer.

(G) DEALER PLATES: Allocation of dealer plates shall be at the discretion of the Department.

(H) RESPONSIBILITY OF LICENSEE FOR ACTS OF AGENTS: Prior to the hiring of any employee or agent for the purpose of working at or for the motor vehicle auction, it shall be the responsibility of the licensee to report to the Department a listing of all proposed personnel along with an authorized Bureau of Criminal Identification form signed by each proposed employee for approval by the Department. Such information shall be reported with every application filed by the licensee and at each time during the course of the year when another employee is hired. Auction dealers must provide the names of employees to the Department immediately upon starting employment, even if the employee has been hired on a probationary/trial basis. If a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension or revocation of a license that any officers, director or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be cause for refusing, suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any agent for such license.

(I) AUCTION DEALERSHIP NAME CHANGE: Whenever a licensee wishes to change the name of their licensed auction dealership, they may apply to do so on whatever form(s) the Department requires, providing the owner, partner, or

corporate officers on record, remain on record under the new dealership name. A new license certificate shall be issued upon approval of such change in auction dealership name, pursuant to Rhode Island General Law 31-5-8, as amended. It shall be clearly understood that whether or not the new dealership name is that of a corporation, the licensee shall remain responsible for any prior happenings under that auction dealer's license number.

XII. ESTABLISHING NEW DEALERSHIP & RELOCATING EXISTING DEALERHIPS

(A) APPLICATIONS: The applicant must comply with the provisions of 31-5.1 and in addition, all applications for licenses must conform to requirements of Rhode Island General Laws Chapter 31-5 and Chapter 31-5.1 and these Regulations.

(B) HEARINGS: In the event that there is a timely protest filed by a new car dealer in same line, a hearing will be held in compliance with the R.I. General Law Section 31-5.1-4.2. The date, time and location of hearings under Section 31-5.1 will be mailed to all parties, by normal mailing, thirty (30) days before each hearing. No party having actual knowledge of the hearing may raise an objection for failure to be notified by mail. The hearing will take place no sooner than sixty (60) days of the Department receiving notice of a protest by a new motor vehicle dealers in the same line and make in the relevant market area. Exceptions to the sixty day time limit may be made by agreement of the parties or by the Board. The Board may also order an expedited hearing if good cause is shown.

(C) EXCHANGE OF INFORMATION:

(1) This Department encourages the parties to exchange documents and expected testimony intended to be used at a hearing. In the event that the parties choose not to exchange information, then the aggrieved party will be given up to forty-five (45) days continuance, at the discretion of the Department to review and rebut the evidence submitted at the hearing.

(2) The Department will base its decision on the length of any continuance on the availability, complexity and technical nature of the evidence not exchanged. In addition, the Department can, in its discretion on the basis that a party is surprised by the evidence not exchanged, grant a continuance.

XIII. SHOW CAUSE HEARINGS & FINES

(A) SHOW CAUSE HEARINGS: If the Department has reason to believe that any person, firm, corporation or association is: Violating the provisions of these rules or Rhode Island General Laws, Chapter 31-5 or 31-5.1, the Department may issue its order to such person, firm, corporation or association commanding them to appear at a hearing to be held not sooner than ten (10) days after issuance of said order to show cause why the Department should not issue an order to said person, firm, corporation or association to cease and desist from such violation of the provisions of this chapter. If upon such hearing the Hearing Board shall be satisfied that such person is in fact violating any provision of this chapter, then it shall order such person, in writing, to cease and desist from such violation or may in its discretion suspend or revoke the license. In the case of suspension or revocation, the Department must have complied with the notice provisions of Section XIII (B) (2) of these rules. All such hearings shall be conducted in accordance with the Administrative Procedures Act, Chapter 42-35. If such person shall thereafter fail to comply with the order of the Department, the Superior Court for the State of Rhode Island shall have jurisdiction upon the complaint of the Department to restrain and enjoin such person from violating this chapter.

(B) FINE SCHEDULE: See R.I. General Law § 31-5-14 (a) and (c).

(C) APPEALS: Any licensee or other person dissatisfied by any order of the Hearing Board or Department shall within thirty (30) days after receiving the order, file a petition for review in Superior Court.

XIV. DENIAL, SUSPENSION & REVOCATION

(A) REASONS FOR DENIAL, ETC.: The Department may deny, suspend or revoke a license obtained under these chapters on any grounds found in Section 31-5-11 and Section 31-5-23 of the Rhode Island General Laws, or for any violation of Chapter 31-5.1 or of these Regulations. No license may be suspended or revoked until after hearing.

(B) HEARINGS ON DENIAL, ETC.:

(1) **Denials:** Any person aggrieved by any decision of the Department in reference to denial, may request a hearing on the matter. Such request must be within ten (10) days of receipt of notice of such denial.

(2) **Suspensions & Revocation:** When the Department determines that grounds exists for the suspension or revocation of a license, it will give the licensee at least ten (10) days notice of a date, time and place of a hearing on the matter, together with a statement of the grounds for the proposed action.

(3) **Hearing Format:** All hearings will be held in accordance with the Administrative Procedures Act, R.I.G.L. Chapter 42-35.

XV. DEPARTMENT INVESTIGATION AND ACTION

(A) INVESTIGATIONS: The Department, pursuant to its own authority, may initiate an investigation and take regulatory action (i) against a dealer, (ii) against an applicant for a dealer's license or applicant for renewal of a dealer's license, (iii) against any person who is required to be licensed as a dealer but is not, and (iv) against any person who is otherwise subject to the regulatory or statutory authority of the Department. All such regulatory actions shall be pursuant to applicable law and the rules and regulations adopted pursuant thereto.

(B) NOTICE OF COMPLAINT: In the event the Department receives a written complaint regarding a dealer or manufacturer, the Department shall forward a copy of the written complaint to the Dealer or manufacturer. The Dealer or

manufacturer shall have ten days from receipt of the complaint to file a written response to the complaint with the Department.

(C) HEARING NOTICE: The Department shall give written notice to the dealer or manufacturer of the initiation of a hearing. The notice shall be designed to afford an opportunity for hearing pursuant to R.I. Gen. Laws § 42-35-9 or as otherwise provided by law. The notice of hearing shall inform the dealer that: (i) it shall be his/her or its sole responsibility (or his/her or its representative) to present a defense at hearing; and (ii) specify the statutory cause of action under which the hearing is convened and potential penalty or penalties resulting therefrom. The notice of hearing shall comply with R.I. Gen. Laws § 42-35-9(b) and/or any other statutory requirements.

XVI. REPRESENTATION

(A) REPRESENTATION AT HEARINGS:

(1) The Department shall notify the dealer that he or she may retain legal counsel admitted to practice in the State of Rhode Island. Said notification shall be set forth in the notice of hearing.

(2) Individuals, and partners of partnerships, may appear *pro se* if they choose. An officer of a corporation may represent a corporation as long as duly authorized by corporation to act on its behalf in the matter. A Dealer may authorize, in writing, an employee to represent the Dealer at a hearing.

(3) If a dealer is not appearing *pro se*, or as described herein, he or she must be represented by a member in good standing of the Bar of the State of Rhode Island or by an out of state attorney admitted *pro hac vice* by the Superior Court or by the appropriate court unless exempted pursuant to R.I. Gen. Laws § 11-27-11. All attorneys appearing before the Board shall file a written entry of appearance. All attorneys must conform to the standards of ethical conduct required of practitioners before the courts of the State of Rhode Island.

XVII. FILING OF PLEADINGS AND OTHER DOCUMENTS

(A) Title: All pleadings and other documents filed with the Department in any hearing, whenever possible, shall state the case number, if any, the title of the proceeding and the name of the person on whose behalf the filing is made.

(B) Form and Size: All pleadings and other documents filed with the Department, except those documents which are kept in a smaller or larger format during the ordinary course of business, are to be submitted on 8½ by 11 inch paper. All papers shall be filed during regular business hours. The Department's date stamp shall be presumptive of the actual date of filing.

(C) Construction: All pleadings shall be liberally construed and errors or defects therein which do not mislead or affect the substantive rights of the Parties involved may be disregarded.

XVIII. TIME

(A) Computation: Unless otherwise specifically provided by law, computation of any time period referred to in these rules shall begin with the first day following the act which initiates the running of the time period (including Saturday, Sunday and legal holidays). The last day of the time period so computed is to be included unless it is a Saturday, Sunday or legal holiday or any other day the Division of Motor Vehicles is closed, in which case the period shall run until the end of regular business hours of the next following business day.

(B) Extensions of Time: It shall be within the sole discretion of the Board, for good cause shown, to extend any time limit. All requests for extensions of time shall be made by written motion filed with the Department.

(C) Continuances: Except as otherwise provided by law, the Board may, at any time, with or without request, continue or adjourn a hearing. Any request for continuance must be in writing setting forth the basis of the request.

XIX. EVIDENCE

(A) Rules of Evidence: Irrelevant, immaterial or unduly repetitious evidence shall be excluded in all proceedings wherein evidence is taken. While the rules of evidence as applied in civil cases in the Superior Courts of this state shall be followed to the extent practicable, the Board shall not be bound by the technical evidentiary rules. Evidence not otherwise admissible may be admitted, unless precluded by statute, when necessary to ascertain facts not reasonably susceptible of proof under the rules, if the evidence is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The rules of privilege recognized by law shall apply. Objections to evidentiary offers may be made and shall be noted in the record.

(B) Administrative Notice: In all proceedings wherein evidence is taken, notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Board's specialized knowledge, including any report or data required by law or regulation to be filed with the Department.

(C) DMV Employees, Agents and Consultants: At a hearing, the Board may employ the use of DMV employees, agents and consultants to assist in the evaluation of any evidence introduced at the hearing.

(E) Oath: All testimony shall be under oath or by affirmation.

(F) Testimony: At the discretion of the Board, an adverse inference may be drawn by an assertion by a witness or a Party of his/her Fifth Amendment rights under the U.S. Constitution.

XX. CONDUCT OF HEARINGS

(A) General: Hearings shall be as informal as may be reasonable and appropriate under the circumstances. All persons at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in any

courtroom. Where such decorum is not observed, the Board may take appropriate action including ejection or adjournment, if necessary.

(B) Record of Proceedings:

(1) A complete record of the proceedings shall be recorded on audiotape, digital recorder or similar electronic device or, at the discretion of the Board, by stenographic record.

(2) If a party chooses to appeal a decision to Superior Court pursuant to R.I. Gen. Laws § 42-35-1 *et seq.* or to appeal a decision as otherwise provided by law and the Superior Court (or another Court) requires a transcript of the hearing and there is only an electronic recording of the hearing, said Party shall be responsible for having the transcript prepared by an independent person or company at his, her or its expense.

(C) Public Hearings: Except as provided by law, all hearings are to be open to the public.

(D) Close of Proceedings: At the conclusion of the evidence, the Board may, in its discretion, permit the parties to argue orally and/or to submit written briefs. The Board may, within its discretion, direct that proposed findings of fact and conclusions of law be submitted by the parties. The record in the proceeding shall close after oral argument, the deadline for the filing of the briefs or upon such date as may be set by the Board. No evidence shall be admitted thereafter, unless otherwise ordered by the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence in any matter relevant to the hearing.

(E) Dispositions: Unless otherwise precluded by law, disposition may be made of any case at any time by stipulation, consent agreement, consent settlement, consent order, default or dismissal by the Board.

(F) Consent Agreements and Consent Orders: The Board may enter into a consent agreement with a party(ies) prior to a hearing being held. Subsequent to a hearing being held, the parties may agree to the terms of a consent order; provided

however, such a consent order must be approved by the Board to be valid. Both consent agreements and consent orders are considered public records pursuant to the Access to Public Records Act, R.I. Gen. Laws § 38-2-1 *et seq.*

XXI. DEFAULT

If any party to a proceeding fails to answer a complaint or appear at a hearing, the Board may enter a default judgment against the defaulting party, take such action based on the pleadings and/or other evidence submitted by the nondefaulting party as the Board deems appropriate in its sole discretion or take such other action as the Board deems appropriate in its sole discretion.

XXII. DISQUALIFICATION; INCAPACITY OF BOARD MEMBER

(A) Disqualification: Any party may make a motion requesting that a Board Member be disqualified or removed from the proceeding. The motion shall be accompanied by an affidavit setting forth the reasons for the request to disqualify. In the event that the motion to disqualify is granted, the Board Member shall recuse himself/herself from the hearing.

(B) Incapacity: When a Board Member becomes incapacitated or unavailable to complete a hearing and/or render a decision, the hearing shall continue and be conducted by and/or the decision rendered by the remaining Board Members so long as a quorum is met. In the event there is no longer a quorum, the hearing must be rescheduled and heard *de novo*.

XXIII. MISCELLANEOUS

(A) Intervention: Any person claiming a right to intervene or an interest of such a nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought may seek to intervene in any proceeding. Intervention may be initiated by filing a motion to intervene with the Board.

(B) Ex Parte Consultations: No person who is a participant in any hearing before the Board or any other individual acting on the person's behalf, shall

attempt to influence a Board member on a matter pending before the Board and a Board member shall not request or entertain any such communications. The prohibitions contained above do not apply to those communications which relate solely to general matters of procedure and scheduling of the hearing.

(C) Consolidation: The Board may, in its discretion, consolidate or combine several matters for purposes of hearing or other proceedings, when it finds that sufficient common issues of fact or law or both are involved.

(D) Statutes: If any statute has different requirements than those contained within this Regulation, the statute shall be controlling.

(E) Public Documents: The DMV reserves the right to publish in any form any public document.

XXIV. SEVERABILITY

These Rules and Regulations are hereby declared to be severable. If any portion of these Rules and Regulations shall at any time be declared to be unenforceable or illegal, no other portion of such Rules and Regulations shall be affected thereby.

The within Rules and Regulations were adopted by me as Administrator of the Division of Motor Vehicles on the _____ day of February, 2009.

Sara R. Strachan
Administrator, Division of Motor Vehicles