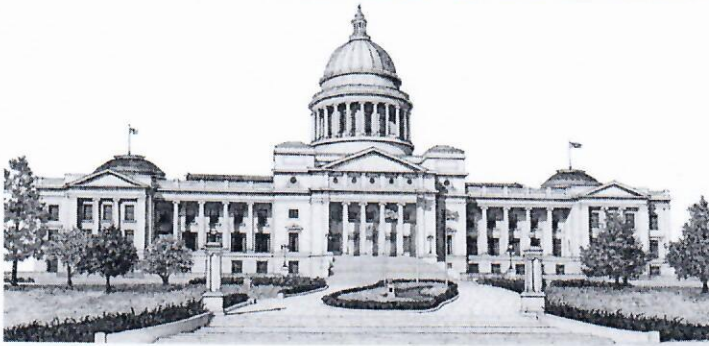


ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

John Thurston

500 Woodlane, Suite 026

Little Rock, Arkansas 72201-1094

(501) 682-5070

www.sos.arkansas.gov



For Office

Use Only:

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Name of Agency Department of Public Safety

Department Arkansas State Police

Contact Joan Shipley E-mail joan.shipley@asp.arkansas.gov Phone 501-618-8632

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Rule Title: Used Motor Vehicle Dealer Licensing Rules

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Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Joan Shipley joan.shipley@asp.arkansas.gov

05/20/2022

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Joan Shipley
Signature

501-618-8632

Phone Number

joan.shipley@asp.arkansas.gov

E-mail Address

Attorney, Department of Public Safety

Title

05/20/2022

Date

**DEPARTMENT OF ARKANSAS STATE POLICE
USED MOTOR VEHICLE DEALER LICENSING RULES**

Rule 1. “Definitions” As used in these rules and procedures, unless the context otherwise requires, the following terms are defined as:

1A. “Department” means the Department of Arkansas State Police.

1B. “Director” means the Director of the Arkansas State Police, or his designated representative.

1C. “Act” means Act 490 of 1993, as it may hereafter be amended.

1D. “Application” means a form of such size and design which contains the required information, as prescribed by the “Act,” whereas a person may apply for a certificate of license under the provisions of Act 490 of 1993 as amended.

1E. “Applicant” means any person who has submitted to the Department a properly completed application for a certificate of license to conduct business under the provisions of the Act.

1F. “License” means a certificate issued to a person, by the Department, authorizing that person to conduct business under the provisions of this “Act” and these rules.

1G. “Licensee” means a person who holds a valid certificate of license as defined in Rule 1F.

1H. “Documentation” means such information as may be required by the Department, utilized to determine an applicant’s or licensee’s qualifications to hold a certificate of license.

1I. “Hearing Officer” means the Director of the Arkansas State Police, or his designated representative acting in cases of adjudication as outlined in the Arkansas Administrative Procedures Act, as amended.

1J. “Salesman” means a person as defined in Act 490 of 1993, as amended.

Rule 2. “Licensee” Responsibilities

2.1. Any person who fails to renew the certificate of license as outlined in this “Act” and within the guidelines of the provisions of the Department of Finance, division of Motor Vehicles shall be required to submit, with the application for renewal, a sworn affidavit attesting they have not violated any provisions of this “Act” or these rules.

2.2. A licensee, shall within seven (7) calendar days, notify the Department in writing of any change in the following:

A. Change of physical address.

B. Change of mailing address.

C. Change of any telephone number(s).

D. Change of any persons or entities having any ownership in the used vehicle dealership.

E. Change of any name, address, or telephone number of the person designated to receive legal process, as outlined in the “Act.”

2.3. The licensee shall be legally responsible for the good conduct in the business of each employee, including salesmen.

2.4. Any person who falsely represents that he is employed by a licensee shall be deemed guilty of violating, the provisions of Act 490 of 1993 as amended.

2.5. The Director may issue a written order of summary suspension of a certificate of license if it is determined that the public health, safety, or welfare requires emergency action. The suspended license holder shall be afforded a hearing in a prompt and timely manner.

2.6. The Director shall issue an order of summary suspension to the holder of a certificate of license 30 days after a judgment is entered against the licensee, and the suspension shall be in effect until proof that the judgment has been satisfied is submitted to the Department.

2.7. The Bond and Insurance requirement(s), as outlined under the provisions of the "Act" shall be in force at all times while holding a certificate of license. Failure of a licensee to comply with this rule shall result in the certificate of license being summarily suspended by the Director and such suspension shall be in effect until said Bond and Insurance is submitted to the Department and shown to be in full force.

2.8. Persons who hold a certificate of license must use the Arkansas State Police dealer number in published advertising as follows: AR/DLR (number) or print the dealership name.

2.9. Any person to whom a certificate of license has been granted and receives an order of suspension or revocation shall immediately, upon receipt of such notice, return all certificates of license to the Department.

2.10. A suspended license is subject to expiration and shall be renewed as provided in the "Act" or these Rules, however, renewal does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity or in any other activity or conduct in violation of the order by which the license was suspended.

2.11. It shall be unlawful for a suspended license holder to operate while the license is suspended.

2.12. The Director may deny an application for a certificate of license or its renewal. Suspend or revoke a license if it is determined the applicant or licensee has:

- A.** Made a material misstatement in the application for or the renewal of a license.
- B.** Practiced fraud, deceit, or misrepresentation.
- C.** Demonstrated incompetence or untrustworthiness in their actions.
- D.** Violated any provisions of the "Act" and/or these rules.

2.13. Any person to who a certificate of license has been granted ceases to conduct business at the location on file with the department, shall notify the director, in writing, of such cessation within ten (10) calendar days. The license shall automatically be suspended and shall not be reinstated until the provisions for licensure outlined in the "Act" or these rules are met.

2.14 Fee Waivers – the Division will waive the initial application fees prescribed by A.C.A. § 23-112-608 if the application:

- A.** Is receiving assistance through the Arkansas Medicaid Program, the Supplemental Nutrition Assistance Program, the Special Supplemental Nutrition Program for Women, Infants, and Children, the Temporary Assistance for Needy Families Program, or the Lifeline Assistance Program;
- B.** Was approved for unemployment within the last twelve (12) months; or
- C.** Has an income that does not exceed two hundred percent (200%) of the federal poverty income guidelines.

Rule 3. Hearing Provisions

3.1. The Director shall have the authority to deny the issuance of a license. He shall notify the applicant of his decision in writing, stating the reason for the denial. The applicant may appeal the decision, provided he perfects the appeal, in writing, within fourteen (14) days of his notice of rejection. The hearing officer shall hear the appeal within sixty (60) days.

3.2. If as a result of its own investigation or as a result of any complaint against a licensee, it is determined that there exists sufficient proof that the actions or the person constitutes a violation of this “Act” or these rules, the Director, before taking any action, shall provide twenty (20) days written notice to the person of his right to a hearing. The Director, when issuing an order and notice of hearing shall state the legal authority under which the hearing is to be held along with a brief and concise statement of the matters of fact and law involved. The order and notice shall be served on the person at least twenty (20) prior to the hearing.

3.3. The Director shall assign a file number to each order and notice of hearing and hereafter all documents pertaining to the matter shall bear that number. All pleadings and motions to be filed relative to the hearing shall be signed, verified and dated, and filed with the Department.

3.4. During the course of a hearing, the Department shall not be bound by the technical rules of evidence and may admit and give probative value to any evidence which possesses such probative value as would entitle it to be accepted by reasonable and prudent men in the conduct of their affairs, provided, however, the hearing officer shall give effect to the rules of privilege recognized by the law and may exclude hearsay, incompetent, irrelevant, immaterial or repetitious evidence and may make rulings to protect witnesses from undue harassment or oppression.

3.5. All evidence, including records and documents, in possession of the Department of which it desires to avail itself, shall be offered and made part of the record in a hearing, and no other factual information or evidence shall be considered in the determination of any cause. Any person who is required to meet any of the qualifications under the “Act” or these rules, whose rights may be affected in any hearing shall have the right to appear personally and by counsel to introduce evidence in their behalf, to cross-examine witnesses and to examine any document or other evidence submitted.

3.6. In any hearing held for the purpose of affording any applicant the opportunity to show his qualifications under this “Act” or these rules, the burden of proof shall be on the applicant. In hearings held for the purpose of revoking, suspending or reprimanding, the burden of proof shall be on the Department or Complainant.

3.7. Hearings shall be conducted by the hearing officer, as defined in Rule 11 of these rules.

3.8. Hearings shall be held at location to be determined by the Department.

3.9. The hearing officer may rule in cases where the affected party fails to attend a hearing.

3.10. All decisions of the hearing officer shall be in writing and signed by the Director, and shall include findings of fact and conclusion of law separately stated with an appropriate order entered in accordance with. A copy of the findings of fact, conclusions of law and order shall be sent to each part of the hearing.

3.11. The Department will cause to be made an official record of the proceedings.

3.12. The affected party may appeal the decision of the Director in accordance with the Arkansas Administrative Procedures Act, as amended.

Rule 4. Mandatory Educational Seminar

4.1. All applicants for a license as a used motor vehicle dealer, as described in Ark. Code Ann. Section 23-112-601 et seq. prior to obtaining a license, are required to attend a Department approved educational seminar.

4.2. In order to be approved by the Department, a seminar must meet the following criteria to the satisfaction of the Department:

- A.** The seminar must be sponsored by a non-profit corporation, authorized to conduct business in Arkansas, that develops and presents educational programs which enhance the knowledge and competence of used motor vehicle dealers, their sales persons and service personnel for the benefit of the public; and
- B.** The names of the individuals who will be conducting the seminar must be submitted with the application for approval of the seminar. Said individuals shall demonstrate knowledge of these rules and general provisions by having at least one year of experience with the used motor vehicle industry in Arkansas or a related area as determined by the Department; and
- C.** The proposal for approval of a seminar shall include a course outline, along with proposed materials to be used in the instruction. The course outline must provide for, at a minimum, instruction in each of the following areas:
 - 1.** requirements of Act 490 of 1993, as amended, for obtaining a license as a used motor vehicle dealer;
 - 2.** overview of related state statutes, regulations and Department rules;
 - 3.** laws concerning titles, tags and taxes;
 - 4.** applicable laws and rules concerning required record keeping;
 - 5.** The Deceptive Trade Practices Act, including, but not limited to, advertising, unfair and

deceptive sales practices and odometer requirements;

- 6.** such general discussion items as may be determined by the Department to be of significance or concern.

- D.** The course of instruction of the required seminar shall be no less than three (3) hours.
- E.** The course of instruction shall be attended by a bona fide, full-time employee of the applicant used motor vehicle dealership. The attendee shall attend the full time of the prescribed course. Failure of the attendee to attend the full time of the prescribed course shall cause the applicant's license to be delayed until such time as the course requirement is fulfilled.
- F.** In the event the employee attending the required course as a representative of the licensee shall cease employment with the licensee company for any reason, the licensee company shall within ten (10) days notify the Department. The licensee shall then designate another bona fide, full-time employee who must complete the mandatory course within 120 days of the date of such notification.

4.3. The corporation administering the mandatory course shall be certified by the Department. Application for certification shall be on a form prescribed by the Department, and shall include the following:

- A.** Names and addresses of all individuals who will be utilized in any manner during the course of instruction; and
- B.** Names and addresses of all officers of the corporation; and
- C.** Documentation to demonstrate the experience and qualifications of all persons who will instruct any portion of the mandatory course; and
- D.** A list of the times, dates and locations of all courses to be taught, provided such list may be changed or updated if notification of such change or updating is provided to the Department a minimum of seven (7) days prior to the course being presented.
- E.** Such application shall be accompanied by material prescribed in Rule 4.2 (B) and Rule 4.2 (C) of these Rules and shall be in typewritten or computer generated form.

4.4. A corporation certified by the Department to conduct the mandatory training course may utilize video equipment for the presentation of portions of the course in lieu of live instructors, provided that a copy of the video has been presented to the Department and the Department has provided written approval of the contents; provided that when such video is utilized, the certified corporation shall provide a proctor or proctors to assure attendance of the applicants for licensing. Such manner for proctoring shall be approved by

the Department prior to implementation of the use of video equipment as an alternative to live instructors.

4.5. A corporation certified by the Department to conduct the mandatory training course shall, within five (5) days of the completion of such course, provide to the Department on a form prescribed by the Department a list of all persons completing the course and, in the case of a renewal of license, the Department-assigned control number of the licensee.

4.6. Failure of any corporation certified by the Department, or any licensee, to fulfill the requirements of this Rule shall result in suspension or revocation of the certification of the corporation or the license of the licensee. Provided, the corporation or licensee shall have the right to appeal such suspension or revocation as provided in Rule 3 of these Rules.

Rule 5. Reciprocal, Temporary, and Expedited Licensure

5.1 An applicant who holds a Used Motor Vehicle Dealer License in another state, territory, or district of the United States may obtain a reciprocal Arkansas license if he or she meets the requirements set forth in Ark. Code Ann. § 23-112-607. The reciprocity applicant must submit the required forms and applicable fees.

5.2 An applicant for a reciprocal Arkansas license who resides in a state, territory, or district of the United States that does not require licensure to sell used motor vehicles may obtain a reciprocal Arkansas license if he or she meets the requirements set forth in Ark. Code Ann. § 23-112-607. The reciprocity applicant must submit the required forms and applicable fees.

5.3 An applicant for a temporary Arkansas license may obtain a six (6) month temporary Arkansas license if he or she meets the requirements set forth in Ark. Code Ann. § 23-112-607. The temporary applicant must submit the required forms and applicable fees.

5.4 The Division will expedite the licensure process for:

- (a) A uniformed service member stationed in the State of Arkansas;
- (b) A uniformed service veteran who resides in or establishes residency in the State of Arkansas;
- (c) The spouse of:
 - (i) A person listed in subdivision (a) or (b) of this Rule;
 - (ii) A uniformed service member who is assigned a tour of duty that excludes the uniformed service member's spouse from accompanying the uniformed service member and the spouse relocates to this state; and
 - (iii) A uniformed service member who is killed or succumbs to his or her injuries or illness in the line of duty if the spouse establishes residency in the state.

To qualify for expedited licensure, the applicant must notate his or her status on the application and provide the Division with a copy of the active duty orders or DD214.