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735-150-0010

Definitions

As used in this division and ORS Chapter 822:

(1) “Additional (or supplemental) place of business” or “additional (or supplemental) location” means a location, other than one exempted under OAR 735-150-0020, that is more than 500 feet from any other business location of the dealer that is operated under the same name as the main business location.

(2) “Advertise” means to offer a vehicle for sale or to communicate to the public that a person is acting as a vehicle dealer, by any oral, written, or graphic means including, but not limited to, handbills, the Internet, newspapers, signs, television, billboards, radio, and telephone directories.

(3) “Agent” means any dealer possessing a current valid vehicle dealer certificate issued under ORS 822.020, who accepts applications and fees for the titling and [*the*] registration of vehicles sold by the dealer and who performs such other duties related to the titling and registration of vehicles as DMV authorizes under the rules set forth in division 150.

(4) “Authorized Representative” for the purposes of ORS 822.015 means an individual who is authorized by a certified dealer or licensed dealer to buy and sell vehicles on behalf of that dealer while participating in a vehicle auction as described under OAR 735-150-0047.

[(4)]**(5)** “Broker” has the same meaning as “motor vehicle broker” as defined in ORS 822.047(1).

[(5)]**(6)** “Brokerage services” has the same meaning as defined in ORS 822.047(1).

[(6)]**(7)** “Business day” means Monday through Saturday and does not include Sundays or State of Oregon and Federal legal holidays.

[(7)]**(8)** “Buyer,” “purchaser” and “lessee” have the same meaning as “owner” as defined in ORS 801.375.

[(8)]**(9)** “Cancellation” has the same meaning as “revocation” as defined in section [(24)]**(29)** of this rule.

[(9)]**(10)** “Certified dealer” means a **vehicle** dealer who holds a [*valid*] **vehicle** dealer certificate issued **or renewed** under ORS Chapter 822.**020 or 822.040.**

[(10)]**(11)** “Circumstances beyond the dealer’s control,” as used in ORS 822.045(3)(b) and OAR 735-150-0050(5) means:

(a) That the dealer could not get the title from any state and the prior security interest holder was paid in full by the dealer; and

(b) The delay was a result of the security interest holder failing to release title; or

(c) DMV may consider the follow mitigating circumstances, if those circumstances result in the physical destruction of, or inaccessibility to vehicle records necessary to prove compliance with ORS 822.045(1) and OAR 735-150-0050(5):

(A) The direct result of clearly-established fraud or other criminal activity against the vehicle dealer, as determined in a criminal or civil action in a court of law or independently corroborated by a report of a law enforcement agency or insurer or the sworn testimony or affidavit of an accountant or the person who actually engaged in the criminal activity. This mitigating circumstance does not apply if the dealer is the perpetrator of the wrongdoing described in this paragraph; or

(B) The direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to vehicle records to prove compliance with ORS 822.045(1) and OAR 735-150-0050(5).

[(11)](12) “Closure” means a vehicle dealership that no longer has legal authority to conduct dealer-related activity. For example, a dealer’s certificate issued under ORS 822.020 is expired, cancelled, suspended or revoked.

[(12)](13) “Clearly marked” means the notice and dealer contact information required under ORS 822.040(4)(b) and OAR 735-150-0033 is conspicuously posted on the window of each display vehicle, is in plain view of the public and is legible at a distance of six feet or more.

[(13)](14) “Date of sale,” or use of similar terms to indicate the day that the sale occurred, means the date that the purchaser takes possession of the vehicle. This does not apply to vehicles purchased by a dealer at wholesale auction. With respect to auto auctions and for purposes of consignor payment under ORS 822.060(1)(d), “date of sale” means[,] the date upon which the consigning party delivers the necessary title documents to the purchasing dealer.

[(14)](15) “Dealer” means a person who engages in any of the activities described in ORS 822.005, except those persons exempted by ORS 822.015.

[(15)](16) “Dealership,” “place of business” or “business location” means a location within the State of Oregon where activities specified in ORS 822.005 take place.

[(16)](17) “Designated dealer” means a certified dealer who has been authorized to act as an agent of DMV under OAR 735-150-0040.

[(17)](18) “DMV” means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

[(18)](19) “DMV Administrator” means the administrator of the Driver and Motor Vehicles Services Division of the Oregon Department of Transportation.

[(19)](20) “Employee” means a person over whom a dealer exercises the type of control typically associated with an employer, including but not limited to:

- (a) Determining the frequency, method and amount of compensation;
- (b) Determining whether the person’s work is continuous or intermittent;
- (c) Determining the hours or frequency of a person’s work; or
- (d) Retaining the ability to terminate the relationship.

[(20)](21) “Good faith effort” as used in ORS 822.045(3) means action satisfactory to DMV that a vehicle dealer complied with the requirements set forth in OAR 735-150-0050(1) and (2).

(a) DMV will determine that the dealer’s efforts are in good faith if written documentation is provided that verifies:

(A) Action(s) was taken by the dealer within ten (10) days of sale to resolve problems with providing transfer of ownership; and

(B) The dealer provided complete and timely information to the customer concerning any problems encountered and actions being taken to resolve them.

(b) DMV will not accept a good faith effort by a dealer if, before the sale of the vehicle, the dealer knows or reasonably should know that title transfer could not be completed within 30 days.

(22) “Licensed dealer” as used in ORS 822.015, 822.045 and division 150 means a person who is currently licensed as a vehicle dealer in another jurisdiction.

[(21)](24) “Location,” “main business location” or “main dealership” means a location identified and listed as the dealer’s main business location on the most current application for vehicle dealer certificate.

[(22)](25) “Normal business hours” means all times during which a dealer engages in any of the activities described in ORS 822.005, except as exempted by ORS 822.015.

[(23)](26) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation or any other legal or commercial entity.

[(24)](27) “Permanent revocation” means to permanently revoke a vehicle dealer certificate and the right to apply for a vehicle dealer certificate.

[(25)](28) “Probation” means a period of time specified by DMV during which a vehicle dealer may continue to operate, but only under the terms or conditions established by DMV.

[(26)](29) “Principal” means an owner, partner, corporate officer or other person who controls or manages the business organization or [the] employees or agents of the business organization.

[(27)](30) “Purchaser” has the same meaning as buyer or [a] lessee.

[(28)](31) “Rebuilder” means a person engaged in conducting a “vehicle rebuilding business” as specified in ORS 822.070.

[(29)](32) “Revocation” means to void and terminate a vehicle dealer certificate. Unless permanently revoked, DMV will specify the period of time before the person subject to the revocation may apply for a new vehicle dealer certificate.

[(30)](33) “Sanction” means an action taken against a vehicle dealer by DMV in cases of non-compliance, fraud, misuse or abuse of privileges granted by a vehicle dealer certificate pursuant to a violation of the Oregon Vehicle Code or any rule adopted by DMV relating to vehicle dealers or the operation of a vehicle dealership.

[(31)](34) “Suspension” means a period of time specified by DMV during which a vehicle dealer is prohibited from:

(a) Buying, selling, trading, exchanging any vehicle or providing brokerage services. This includes, but is not limited to, providing information about price, quality, availability, payment terms, or any other information specific to the sale of a vehicle; and

(b) Acting as DMV’s agent.

[(32)]**(35)** “Violation” means any violation by a person or vehicle dealer of the Oregon Vehicle Code or any rules adopted by DMV in accordance with ORS 822.009(1) & (2).

[(33)]**(36)** “Warning” means a documented oral warning to the principal of a dealership or a written correction notice issued to the principal, or an employee of the dealership.

Stat. Auth.: ORS 184.616, 184.619, 802.010 [&] 822.035 **and 2009 Or. Laws, Ch. 551**

Stats. Implemented: ORS 822.005 - 822.080 **and 2009 Or. Laws, Ch. 551**

735-150-0020

Exemptions From Vehicle Dealer Certification Requirement

(1) A person who rents or leases space to a vehicle dealer who holds a current valid certificate is not a dealer as defined in OAR 735-150-0010[(11)]**(15)**.

(2) The following apply where there is a formal display of vehicles, such as an auto show, by a group of dealers for a period of ten (10) days or less:

(a) Except as otherwise provided in this section and ORS 822.015[(9)] **(1)(h)(B)**, a dealer participating in a display must either be a certified vehicle dealer or a manufacturer of vehicles not engaged in sales to the public;

(b) A person who only rents or leases space to a participating dealer does not need a vehicle dealer certificate;

(c) A certified vehicle dealer does not need a supplemental certificate; and

(d) This section does not apply to RV shows held in accordance with OAR 735-150-0045.

(3) The exemption in ORS 822.015 [(2)]**(1)(b)** will be narrowly construed to exempt from dealer regulatory requirements only those persons who engage in buying, selling or exchanging vehicles as a mere incident to their personal ownership and use of those vehicles. This includes a business or corporate entity that holds such vehicles primarily for its own transportation needs, but not primarily for sale or exchange. No person may apply for certificates of title for the purpose of avoiding dealer regulatory requirements while dealing in vehicles.

(4) A person is not a rebuilder if that person:

(a) Is an employee of a certified vehicle dealer; or

(b) Is engaged solely in the repair of damaged vehicles at the request of the registered owner(s) of the vehicle(s).

(5) An employee of a dealer as defined in OAR 735-150-0010[(16)]**(15)** is not required to have a separate dealer certificate in order to buy or sell vehicles on behalf of his or her employer.

(6) A certified vehicle dealer does not need a supplemental certificate for the location of an auction conducted by the dealer. This exemption applies when all the following conditions exist:

(a) Vehicles sold at the auction are consigned to the dealer;

(b) Vehicles are sold on the basis of the highest bid or most favorable offer;

(c) The auction does not exceed three (3) consecutive days; and

(d) The dealer does not own the property where the auction is conducted. If the dealer rents or leases the property where the auction is conducted, the rent/lease period must not exceed three (3) consecutive days.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.015 [&] 822.035 **and 2009 Or. Laws, Ch. 551**
Stats. Implemented: ORS 822.015 **and 2009 Or. Laws, Ch. 551**

735-150-0110

Dealer Offenses Subject to Civil Penalty or Sanction

In addition to any other penalties provided by law, a dealer will be subject to the civil penalties or sanctions in OAR 735-150-0120 to 0140 if the dealer:

- (1) Allows or assists a person who is not an employee [*of the dealer*] **or an authorized representative of the dealer** to imply or represent an affiliation with the vehicle dealership in order to engage in any activity pursuant to ORS 822.005.
- (2) Fails to submit all taxes or fees due this state **or**[.] another **jurisdiction** [*state or a political subdivision*] in connection with the sale or transfer of a vehicle.
- (3) Signs a name or allows any other person to sign a name of the owner, security interest holder, or lessor on a certificate of title, salvage title or any motor vehicle document used by DMV in the transfer of title without first obtaining a properly signed Power of Attorney. This section does not apply to a dealer who as an owner, security interest holder or lessor signs their own name on a certificate of title, salvage title or any motor vehicle document used by DMV in the transfer of title.
- (4) Purchases, sells, disposes of or has in the dealer's possession, any vehicle that the dealer knows or with reasonable diligence should have known has been stolen or appropriated without the consent of the owner.
- (5) Fails to comply with state or federal laws, rules or regulations pertaining to the construction or safety of motor homes, trailers or campers.
- (6) Buys, sells, receives, disposes of, conceals or has in the dealer's possession any vehicle or component from which an identification number has been removed, defaced, covered, altered or destroyed for the purpose of concealing or misrepresenting the identity of the vehicle.
- (7) Violates any provision of state or federal law, rule or regulation concerning odometer tampering, repair, readings or notices.
- (8) Prints or produces or causes to be printed or produced any certificate of title or certificate of registration without authority, or holds or uses any such certificate or assignment knowing that it has been printed or purchased without authority.
- (9) Commits any offense specified in ORS 822.045.
- (10) Acts as a vehicle dealer anytime between the day DMV receives notice of cancellation of bond or insurance and the day the vehicle dealer presents proof to DMV of another bond or certificate of insurance.
- (11) Issues a temporary registration permit to a person not domiciled in Oregon or who is otherwise not subject to or eligible for Oregon registration.

- (12) Fails to notify DMV on a form or in a format approved by DMV within seven (7) calendar days of receipt of a vehicle in inventory, that a vehicle has been transferred to the dealer.
- (13) Fails to immediately remove registration plates from vehicles registered in other jurisdictions that are in the dealer's inventory. The dealer may retain the plates until the vehicle is sold.
- (14) Fails to destroy registration plates removed from vehicles registered in other jurisdictions at the time of sale if the vehicle is to be titled in Oregon or in a jurisdiction other than that in which the vehicle was previously registered. If the vehicle will be re-registered in the former jurisdiction, the plates may be placed back on the vehicle following the sale.
- (15) Completes or allows an employee to complete a DMV Vehicle Identification Number (VIN) Inspection form without physically inspecting the vehicle for its vehicle identification number.
- (16) Sells a vehicle of a type not authorized by the dealer's certificate.
- (17) Fails to comply with any provision of ORS 822.060 through 822.065 concerning consignment sales.
- (18) Fails to comply with any provision of ORS 822.040(4) or OAR 735-150-0033 concerning the display of a vehicle at a location other than the dealer's place of business for the purpose of advertising.
- (19) Provides brokerage services and fails:
- (a) To provide the written disclosure described in ORS 822.047(2);
 - (b) To provide the written statement described in ORS 822.047(3); or
 - (c) To comply with the requirements for broker fees described in ORS 822.047(4).
- (20) Makes a false statement of material fact in:
- (a) An application for a dealer certificate or attachments thereof;
 - (b) Any investigation by DMV or law enforcement; or
 - (c) Any DMV document.
- (21) Commits a felony by violating ORS 822.605.
- (22) Fails to maintain records described in OAR 735-150-0050(5) or fails to make those records available to DMV, law enforcement personnel or investigators of the Oregon Department of Justice upon their request.
- (23) Fails to comply with the requirements of the Oregon Vehicle Code with reference to notices or reports of the transfer of vehicles or campers.
- (24) Allows or permits the unlawful use of any certificate or registration plate.
- (25) Falsely certifies under ORS 822.033 that the dealer is exempt from filing a certificate of insurance as required by ORS 822.020 or 822.040.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.370, 803.600, 803.625, 821.060, 821.080 [&] 822.035 **and 2009 Or. Laws, Ch. 551**

Stats. Implemented: ORS 822.005 - 822.080 **and 2009 Or. Laws, Ch. 551**

New Rule

735-150-0047

Rules Concerning Dealer-Only Auctions

(1) For purposes of ORS 822.015(h)(B), as amended by section 3, chapter 551, Oregon Laws 2009, and this rule, the follow definitions apply:

(a) “Authorized Representative” means an individual who is authorized by a certified dealer or licensed dealer to buy and sell vehicles on behalf of that dealer while participating in a vehicle auction as described in this rule.

(b) “Certified dealer” has the same meaning as defined in OAR 735-150-0010(10).

(c) “Licensed dealer” for the purposes of this rule and as defined under OAR 735-150-0010(22) means a person who is currently licensed as vehicle dealer in another jurisdiction.

(d) “Vehicle auction” means a vehicle auction conducted by a certified dealer as authorized under ORS 822.015, in which only certified dealers, licensed dealers or their authorized representatives are permitted to participate.

(2) An authorized representative who wishes to participate in a vehicle auction must present proof to the certified dealer conducting the auction before the representative may participate in the auction. Proof that an individual is an “authorized representative” as defined under section (1) of this rule, includes but is not limited to any of the following:

(a) Written authorization issued from a certified dealer or licensed dealer that names the individual as an authorized representative and a copy of the authorizing dealer’s certificate or license, whichever is applicable. The copy must include the following:

(A) The dealer’s certificate or the dealer’s license, whichever is applicable;

(B) The business name under which the dealer is registered to do business and the street address and telephone number of the business;

(C) The business type of the dealer or dealership, for example, a sole proprietorship, partnership, limited liability company, corporation, etc.); and

(D) The name, address and phone number of an individual authorized by the dealer as the contact person for the dealer on any matter related to a dealer’s certificate or license.

(b) A current valid picture identification card issued by a certified dealer, licensed dealer, or a dealer registration identification business that maintains a database of vehicle dealers or authorized representative.

(c) Any other form of authorization, documentation or identification, sufficient to a vehicle auction or DMV that the individual is an authorized representative. Information provided under this subsection is subject to verification by the auction or DMV by telephone, fax, or other electronic means.

(3) In addition to the proof described under section (2) of this rule, upon request of a vehicle auction or DMV, an authorized representative must provide proof of personal identification. Proof of personal identification under this section includes, but is not limited to the following photo identification:

(a) A current valid driver license or identification card issued by Oregon or another jurisdiction;

(b) A current valid vehicle salesperson license or authorized representative license, if required in the jurisdiction;

(c) A current valid passport; or

(d) Any other form of photo identification, sufficient to establish the identity of the individual to the satisfaction of a vehicle auction or DMV.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.015, 822.035 and 2009 Or. Laws, Ch. 551

Stats. Implemented: ORS 822.015 and 2009 Or. Laws, Ch. 551

New Rule

OAR 735-150-0042

Vehicle Consignments

For purposes of ORS 822.015 and 822.060, only a certified dealer who holds a vehicle dealer certificate issued or renewed under ORS 822.020 or 822.040 may take and sell vehicles on consignment from other jurisdictions.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.015, 822.060 and 2009 Or. Laws, Ch. 551

Stats. Implemented: ORS 822.015, 822.060 and 2009 Or. Laws, Ch. 551