

RULEMAKING HEARING INFORMATION

January 15, 2016

Dear Interested Persons:

I. General Information

The Motor Vehicle Dealer Board will hold a Rulemaking Hearing on Thursday, February 25, 2016 at 9:00 A.M. in the Boards and Commissions Meeting Room (#110) at the Department of Revenue building at 1881 Pierce Street, Lakewood, CO 80214. You may review the proposed regulatory changes in the Addenda, below. Each Addendum includes 1) a “REDLINE” version, which tracks the proposed changes in Colorado’s standard redline format, and, 2) a “CLEAN” version, which displays the regulation without change-tracking and with the proposed changes in place. The Division will also post the proposed regulatory changes on its website: <https://www.colorado.gov/pacific/enforcement/AID> (See Heading, “What’s New,” Bullet, “Rulemaking 2015/2016.”)

II. Topic, Basis, and Purpose

During the Rulemaking Hearing, the Board will consider proposed regulatory changes to both 1 CCR 205-1 (Dealing in Motor Vehicles) [*Addendum A*] and 1 CCR 205-2 (Dealing in Powersports Vehicles) [*Addendum B*], regarding the topic, “Changes to the Material Particulars’ Disclosure Rules.” The basis and purpose of the proposed revised regulations in both 1 CCR 205-1 and 1 CCR 205-2 is the same: to clarify the meaning of and method of disclosure of “material particulars” in the sale of vehicles by dealers to buyers.

III. Submission of Written Comments Prior to the Rule-making Hearing

If you wish to submit written comments on the proposed rule changes prior to the scheduled hearing, you may either mail or email your comments to the following respective addresses:

If by US Mail, to:

Attn: Rules Manager
Colorado Motor Vehicle Dealer Board/AID
P.O. Box 173350
Denver, CO. 80217-3350

If by Email, to:

Attn: Rules Manager
dor_mvdb@state.co.us

Special Note on Timing of Written Comment Submissions: The Rules Manager must **receive** your written comments no later than 5:00 P.M. on Tuesday, February 16, 2016, to ensure that your comments can be included in the Rule-making Comments’ Book that Board Members receive.

IV. Attendance and Participation at the Hearing

You are welcome to attend the Rulemaking Hearing. The Boards and Commissions Meeting Room is the largest available meeting space in the Pierce Facility of the Department of Revenue. Nevertheless, space is limited, and seating will be first-come, first-served. The Board will call the meeting to order as close as possible to the scheduled time.

The record-keeping requirements of the rule-making process require that the identities of those attending be made part of the record. Therefore, you will be required to sign an official attendance sheet, even if you do not plan to address the Board.

You will also be required to sign a second record-keeping sheet, a Public Commenter's List, if you intend to address the Board or want to submit documents during the Public Comment phase of the Hearing. The Public Commenters' List establishes the order in which the Board calls you and others to address the Board. You should not prepare to speak longer than five minutes, although the Board can agree to extend that time or offer you the opportunity to submit the remainder of your comments in written form.

Special Note on the submission of documents on the day of the Hearing: Submitting documents on the day of the Hearing is disfavored. Although the documents will become part of the Official Record, and every effort will be made to ensure that the Board Members have an opportunity to examine the documents, neither Board Members nor AID staff can devote time and resources during the Hearing to duplicating belated documents. Therefore, if you intend to submit belated documents and want to ensure that each Board Member, staff subject-matter expert, and the Rules Manager receives a copy, you will need to bring to the Hearing for distribution fourteen (14) copies of each document.

Thank you for your interest in and potential future participation in this rule-making process.

Yours truly,

Leland W. BeBee

Leland W. BeBee
Legal Assistant



P [303.205.5696](tel:303.205.5696) | F [303.205.5649](tel:303.205.5649)

Mailing Address: PO Box 173350 | Denver, CO 80217-3350

Physical Address: 1881 Pierce St | Suite #112 | Lakewood, CO 80214

dor_mvdb@state.co.us | www.colorado.gov/revenue/AID

ADDENDUM A
REDLINE VERSION

Proposed Revised Regulation Regarding Motor Vehicles

*[Notice of Proposed Rulemaking,
Tracking Number 2016-00034]*

Proposed Revised Regulation 12-6-118(3)(i)
Statement of Authority, Basis and Purpose

Statutory Authority: Colorado Revised Statutes, Sections 12-6-101, 12-6-102, 12-6-103, 12-6-104, 12-6-118, and, 12-6-118(3)(i).

Basis and Purpose: Consumer protection, improved compliance, and improved enforcement by means of:

1) clarification of the following: a) the term, “material particulars”; b) the relationship of the term, “material damage,” to the term, “material particulars”; c) the process required for disclosure by the seller to the consumer; and, d) the relationship of the term, “as is,” in the required disclosure process; and,

2) listing, without limitation, the following: a) examples of what would be considered material particulars; and, b) examples of what would not be considered material particulars.

PROPOSED REVISED REGULATION:

Regulation 12-6-118 (3) (i)

~~A copy of the completed contract form shall be given to the purchaser when signed by both parties.~~

~~A dealer, wholesaler, or auction dealer shall disclose on the contract form when a motor vehicle is known by the dealer, wholesaler or auction dealer to be a salvage vehicle as defined in C.R.S. 42-6-102(10.6), or when a motor vehicle is known to have sustained material damage at any one time from any one incident.~~

A. DEFINITIONS FOR PURPOSES OF THIS REGULATION

1. “CONTRACT” MEANS ANY WRITTEN AGREEMENT, SUCH AS A PURCHASE AGREEMENT, BUYER ORDER OR INVOICE, BETWEEN A DEALER AND A BUYER FOR THE SALE OF A VEHICLE, EXCLUDING THE RETAIL INSTALLMENT SALES CONTRACT (“RISC”).

2. “DEALER” MEANS A MOTOR VEHICLE DEALER, USED MOTOR VEHICLE DEALER, WHOLESALER, WHOLESALE MOTOR VEHICLE

AUCTION DEALER, MOTOR VEHICLE AUCTIONEER, OR A REPRESENTATIVE OF THE DEALERSHIP.

- 3. “SELLER” MEANS DEALER.**
- 4. “MATERIAL PARTICULARS” MEANS THOSE DETAILS CONCERNING A VEHICLE FOR SALE THAT ARE ESSENTIAL OR NECESSARY FOR A REASONABLE PROSPECTIVE BUYER TO KNOW PRIOR TO MAKING THE DECISION TO BUY OR NOT TO BUY A VEHICLE ON SPECIFIC TERMS.**

B. NON-EXCLUSIVE LIST OF “MATERIAL PARTICULARS”

MATERIAL PARTICULARS INCLUDES BUT IS NOT LIMITED TO THE FOLLOWING:

- 1. THE VEHICLE IS A “SALVAGE VEHICLE” AS THAT TERM IS DEFINED IN THE “COLORADO CERTIFICATE OF TITLE ACT,” PART 1 OF ARTICLE 6 OF TITLE 42, C.R.S.**
- 2. THE VEHICLE HAS SUSTAINED DAMAGE, WHETHER REPAIRED OR NOT REPAIRED, OF THE FOLLOWING TYPES:**
 - A. FRAME OR UNIBODY DAMAGE, OF ANY GRADE OR TYPE.**
 - B. FLOOD, FIRE OR HAIL DAMAGE.**
 - C. ACCIDENT OR COLLISION DAMAGE.**
- 3. THE VEHICLE HAS BEEN MODIFIED IN A WAY THAT IMPACTS WARRANTY COVERAGE.**
- 4. THE VEHICLE HAD BEEN DECLARED A “TOTAL LOSS” BY AN INSURANCE COMPANY.**
- 5. THE VEHICLE HAD BEEN STOLEN.**
- 6. THE VEHICLE HAD BEEN USED AS A POLICE VEHICLE, VEHICLE FOR HIRE, RENTAL VEHICLE, OR A LOANER OR COURTESY VEHICLE, IF SUCH USE IS CLEARLY ASCERTAINABLE FROM A TITLE BRAND, FROM INFORMATION OBTAINED FROM A PRIOR OWNER, OR FROM A VEHICLE IDENTIFICATION NUMBER (VIN).**

7. THE VEHICLE HAD BEEN PUT TO A USE OR HAD SUSTAINED DAMAGE THAT A REASONABLE PERSON WOULD CONSIDER HIGHLY UNUSUAL OR EXTRAORDINARY, SUCH AS USE AS A RACING VEHICLE.

C. MATTERS GENERALLY NOT CONSIDERED “MATERIAL PARTICULARS”

MATERIAL PARTICULARS DOES NOT GENERALLY INCLUDE THE ITEMS ON THE FOLLOWING LIST. THIS LIST IS NOT INTENDED TO BE ALL-INCLUSIVE.

1. NORMAL WEAR AND TEAR.
2. COMPLETED OR PRIOR MECHANICAL REPAIR.
3. GENERAL MAINTENANCE.
4. REPAIR OR REPLACEMENT OF TIRES, WHEELS, GLASS, HANDLEBARS, MOLDINGS, RADIOS, IN-DASH AUDIO EQUIPMENT, OR THE LIKE, PROVIDED THAT THE REPAIR OR REPLACEMENT WAS COMPLETED IN A MANNER REASONABLY COMPARABLE TO MANUFACTURER’S SPECIFICATIONS AND PROVIDED THAT ANY REPAIRED OR REPLACED ITEM IS FUNCTIONING AT THE TIME OF SALE IN THE MANNER THAT A REASONABLE PERSON WOULD EXPECT.
5. TOUCH-UP PAINT FOR MINOR SCRATCHES, DENTS, OR DINGS.
6. COMPLETED RECALL REPAIR, PROVIDED THE REPAIR WAS DONE BY A DEALER AUTHORIZED BY THE MANUFACTURER TO PERFORM SUCH REPAIRS.

D. “AS IS” STATEMENT

A STATEMENT BY THE SELLER TO THE BUYER THAT A VEHICLE IS SOLD “AS-IS” DOES NOT RELIEVE THE SELLER OF THE DISCLOSURE OBLIGATIONS IMPOSED BY THIS REGULATION NOR RELIEVE THE SELLER OF ANY OTHER DISCLOSURE OBLIGATIONS OTHERWISE REQUIRED BY STATE OR FEDERAL LAW. AN “AS-IS” STATEMENT SOLELY DISCLAIMS IMPLIED WARRANTIES UNDER PROVISIONS OF THE “COLORADO UNIFORM COMMERCIAL CODE,” TITLE 4, C.R.S.

E. DISCLOSURE PROCESS

PRIOR TO THE SIGNING OF THE CONTRACT, THE SELLER SHALL PRODUCE A WRITTEN DOCUMENT DISCLOSING ALL KNOWN MATERIAL PARTICULARS. BOTH THE SELLER AND BUYER MUST SIGN THE DOCUMENT. THE DOCUMENT IS DEEMED TO BE PART OF THE CONTRACT. A SIGNED COPY OF THE CONTRACT AND THE DISCLOSURE DOCUMENT SHALL BE PROVIDED TO THE BUYER IMMEDIATELY. THE SELLER SHALL RETAIN A COPY OF THE CONTRACT AND THE DISCLOSURE DOCUMENT.

ADDENDUM A
CLEAN VERSION

Proposed Revised Regulation Regarding Motor Vehicles

*[Notice of Proposed Rulemaking,
Tracking Number 2016-00034]*

**Proposed Revised Regulation 12-6-118(3)(i)
Statement of Authority, Basis and Purpose**

Statutory Authority: Colorado Revised Statutes, Sections 12-6-101, 12-6-102, 12-6-103, 12-6-104, 12-6-118, and, 12-6-118(3)(i).

Basis and Purpose: Consumer protection, improved compliance, and improved enforcement by means of:

1) clarification of the following: a) the term, “material particulars”; b) the relationship of the term, “material damage,” to the term, “material particulars”; c) the process required for disclosure by the seller to the consumer; and, d) the relationship of the term, “as is,” in the required disclosure process; and,

2) listing, without limitation, the following: a) examples of what would be considered material particulars; and, b) examples of what would not be considered material particulars.

PROPOSED REVISED REGULATION:

Regulation 12-6-118 (3) (i)

A. DEFINITIONS FOR PURPOSES OF THIS REGULATION

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

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

B. NON-EXCLUSIVE LIST OF “MATERIAL PARTICULARS”

Material Particulars includes but is not limited to the following:

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

C. MATTERS GENERALLY NOT CONSIDERED “MATERIAL PARTICULARS”

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

1. **Normal wear and tear.**

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

D. "AS IS" STATEMENT

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

E. DISCLOSURE PROCESS

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

ADDENDUM B
REDLINE VERSION

Proposed Revised Regulation Regarding Powersports Vehicles

*[Notice of Proposed Rulemaking,
Tracking Number 2016-00035]*

**Proposed Revised Regulation 12-6-520(3)(h)
Statement of Authority, Basis and Purpose**

Statutory Authority: Colorado Revised Statutes, Sections 12-6-102, 12-6-103, 12-6-104, 12-6-501, 12-6-502, 12-6-503, 12-6-504, 12-6-520, and 12-6-520 (3) (h), C.R.S.

Basis and Purpose: Consumer protection, improved compliance, and improved enforcement by means of:

1) clarification of the following: a) the term, “material particulars”; b) the relationship of the term, “material damage,” to the term, “material particulars”; c) the process required for disclosure by the seller to the consumer; and, d) the relationship of the term, “as is,” in the required disclosure process; and,

2) listing, without limitation, the following: a) examples of what would be considered material particulars; and, b) examples of what would not be considered material particulars.

PROPOSED REVISED REGULATION:

REGULATION 12-6-520 (3)(h)

~~A copy of the completed contract form shall be given to the purchaser when signed by both parties. The year and make of the powersports vehicle along with miles or hours of operation (if known) shall be disclosed on the contract.~~

~~A powersports dealer shall disclose on the contract form when a powersports vehicle is known by the dealer to have sustained material damage such as complete replacement of the engine, drive train, chassis or when the vehicle was known to be a rental.~~

~~Addendum to Powersports vehicle _____
sales contract Year of Vehicle _____
Make _____
_____~~

~~Miles (if applicable) _____
_____~~

~~Hours (if known) _____
_____~~

~~Used as a daily rental (if known) _____
: Yes No~~

A. DEFINITIONS FOR PURPOSES OF THIS REGULATION

- 1. “CONTRACT” MEANS ANY WRITTEN AGREEMENT, SUCH AS A PURCHASE AGREEMENT, BUYER ORDER OR INVOICE, BETWEEN A DEALER AND A BUYER FOR THE SALE OF A VEHICLE, EXCLUDING THE RETAIL INSTALLMENT SALES CONTRACT (“RISC”).**
- 2. “DEALER” MEANS A POWERSPORTS VEHICLE DEALER, USED POWERSPORTS VEHICLE DEALER, WHOLESALER, OR A REPRESENTATIVE OF THE DEALERSHIP.**
- 3. “SELLER” MEANS DEALER.**
- 4. “MATERIAL PARTICULARS” MEANS THOSE DETAILS CONCERNING A VEHICLE FOR SALE THAT ARE ESSENTIAL OR NECESSARY FOR A REASONABLE PROSPECTIVE BUYER TO KNOW PRIOR TO MAKING THE DECISION TO BUY OR NOT TO BUY A VEHICLE ON SPECIFIC TERMS.**

B. NON-EXCLUSIVE LIST OF “MATERIAL PARTICULARS”

MATERIAL PARTICULARS INCLUDES BUT IS NOT LIMITED TO THE FOLLOWING:

- 1. YEAR AND MAKE OF THE VEHICLE, AND, IF KNOWN TO THE SELLER, THE HISTORICAL MILEAGE OR HOURS OF OPERATION OF THE VEHICLE.**
- 2. COMPLETE REPLACEMENT OF THE ENGINE, DRIVETRAIN, OR CHASSIS.**
- 3. REPAIR OR REPLACEMENT OF SKIS OR TRACKS.**
- 4. THE VEHICLE IS A “SALVAGE VEHICLE” AS THAT TERM IS DEFINED IN THE “COLORADO CERTIFICATE OF TITLE ACT,” PART 1 OF ARTICLE 6 OF TITLE 42, C.R.S.**
- 5. THE VEHICLE HAS SUSTAINED DAMAGE, WHETHER REPAIRED OR NOT REPAIRED, OF THE FOLLOWING TYPES:**
 - A. FRAME OR UNIBODY DAMAGE, OF ANY GRADE OR TYPE.**
 - B. FLOOD, FIRE OR HAIL DAMAGE.**
 - C. ACCIDENT OR COLLISION DAMAGE.**

6. THE VEHICLE HAS BEEN MODIFIED IN A WAY THAT IMPACTS WARRANTY COVERAGE.
7. THE VEHICLE HAD BEEN DECLARED A “TOTAL LOSS” BY AN INSURANCE COMPANY.
8. THE VEHICLE HAD BEEN STOLEN.
9. THE VEHICLE HAD BEEN USED AS A POLICE VEHICLE, VEHICLE FOR HIRE, RENTAL VEHICLE, OR A LOANER OR COURTESY VEHICLE, IF SUCH USE IS CLEARLY ASCERTAINABLE FROM A TITLE BRAND, FROM INFORMATION OBTAINED FROM A PRIOR OWNER, OR FROM A VEHICLE IDENTIFICATION NUMBER (VIN).
10. THE VEHICLE HAD BEEN PUT TO A USE OR HAD SUSTAINED DAMAGE THAT A REASONABLE PERSON WOULD CONSIDER HIGHLY UNUSUAL OR EXTRAORDINARY, SUCH AS USE AS A RACING VEHICLE.

C. MATTERS GENERALLY NOT CONSIDERED “MATERIAL PARTICULARS”

MATERIAL PARTICULARS DOES NOT GENERALLY INCLUDE THE ITEMS ON THE FOLLOWING LIST. THIS LIST IS NOT INTENDED TO BE ALL-INCLUSIVE.

1. NORMAL WEAR AND TEAR.
2. COMPLETED OR PRIOR MECHANICAL REPAIR.
3. GENERAL MAINTENANCE.
4. REPAIR OR REPLACEMENT OF TIRES, WHEELS, GLASS, HANDLEBARS, MOLDINGS, RADIOS, IN-DASH AUDIO EQUIPMENT, OR THE LIKE, PROVIDED THAT THE REPAIR OR REPLACEMENT WAS COMPLETED IN A MANNER REASONABLY COMPARABLE TO MANUFACTURER’S SPECIFICATIONS AND PROVIDED THAT ANY REPAIRED OR REPLACED ITEM IS FUNCTIONING AT THE TIME OF SALE IN THE MANNER THAT A REASONABLE PERSON WOULD EXPECT.
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E. DISCLOSURE PROCESS

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ADDENDUM B
CLEAN VERSION

Proposed Revised Regulation Regarding Powersports Vehicles

*[Notice of Proposed Rulemaking,
Tracking Number 2016-00035]*

**Proposed Revised Regulation 12-6-520(3)(h)
Statement of Authority, Basis and Purpose**

Statutory Authority: Colorado Revised Statutes, Sections 12-6-102, 12-6-103, 12-6-104, 12-6-501, 12-6-502, 12-6-503, 12-6-504, 12-6-520, and 12-6-520 (3) (h), C.R.S.

Basis and Purpose: Consumer protection, improved compliance, and improved enforcement by means of:

1) clarification of the following: a) the term, “material particulars”; b) the relationship of the term, “material damage,” to the term, “material particulars”; c) the process required for disclosure by the seller to the consumer; and, d) the relationship of the term, “as is,” in the required disclosure process; and,

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PROPOSED REVISED REGULATION:

REGULATION 12-6-520 (3)(h)

A. DEFINITIONS FOR PURPOSES OF THIS REGULATION

1. **“Contract” means any written agreement, such as a purchase agreement, buyer order or invoice, between a dealer and a buyer for the sale of a vehicle, excluding the Retail Installment Sales Contract (“RISC”).**
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3. **“Seller” means Dealer.**
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B. NON-EXCLUSIVE LIST OF “MATERIAL PARTICULARS”

Material Particulars includes but is not limited to the following:

- 1. Year and make of the vehicle, and, if known to the Seller, the historical mileage or hours of operation of the vehicle.**
- 2. Complete replacement of the engine, drivetrain, or chassis.**
- 3. Repair or replacement of skis or tracks.**
- 4. The vehicle is a “Salvage vehicle” as that term is defined in the “Colorado Certificate of Title Act,” part 1 of article 6 of title 42, C.R.S.**
- 5. The vehicle has sustained damage, whether repaired or not repaired, of the following types:**
 - a. Frame or unibody damage, of any grade or type.**
 - b. Flood, fire or hail damage.**
 - c. Accident or collision damage.**
- 6. The vehicle has been modified in a way that impacts warranty coverage.**
- 7. The vehicle had been declared a “total loss” by an insurance company.**
- 8. The vehicle had been stolen.**
- 9. The vehicle had been used as a police vehicle, vehicle for hire, rental vehicle, or a loaner or courtesy vehicle, if such use is clearly ascertainable from a title brand, from information obtained from a prior owner, or from a Vehicle Identification Number (VIN).**
- 10. The vehicle had been put to a use or had sustained damage that a reasonable person would consider highly unusual or extraordinary, such as use as a racing vehicle.**

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7. Touch-up paint for minor scratches, dents, or dings.
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