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Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Division of Motor Vehicles TITLE NUMBER: 91

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 4

TITLE OF RULE BEING AMENDED: Examination and Issuance of Driver's Licenses

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

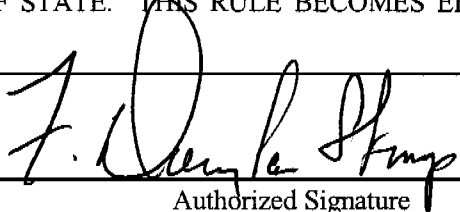
TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) Senate Bill 353

SECTION WV Code §64-8-2(b), PASSED ON April 8, 2005

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: July 1, 2005


Authorized Signature

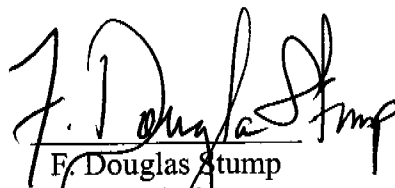


WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
Division of Motor Vehicles
1800 Kanawha Boulevard East • Building Three
Charleston, West Virginia 25317

Joe Manchin III
Governor

Promulgation History
91 CSR 4
Examination and Issuance of Driver's Licenses

Rule Cite:	91 CSR 4
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Authorization by Legislature:	SB 353, WV Code §64-8-2(b)
Final Filing:	June 1, 2005
Effective Date:	July 1, 2005


F. Douglas Stump
Commissioner

**PROPOSED
WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF MOTOR VEHICLES
91 CSR 4**

FILED
2005 JUN -1 A 9:25
OFFICE WEST VIRGINIA
SECRETARY OF STATE

Title: Examination and Issuance of Driver's Licenses

§91-4-1. General

1.1 Scope- This rule establishes the procedures for the examination of applicants for driver's licenses and the issuance of driver's licenses.

1.2 Authority- West Virginia Code §17A-2-9, §17B-2-7, §17B-2-15 and §17E-1-18.

1.3 Filing Date- June 1, 2005

1.4 Effective Date- July 1, 2005

§91-4-2. Application and Enforcement.

2.1 Application- This rule applies to the examination of applicants for driver licenses and the issuance and renewal of driver's licenses and identification cards.

2.2 Enforcement- Enforcement of this rule is vested with the Commissioner of Motor Vehicles or the Commissioner's lawful designee.

§91-4-3. Definitions.

3.1. Birth Certificate- Means the certified original or a certified copy of a birth certificate issued by a state or other governmental agency of the United States, its territories, or Puerto Rico responsible for the collection of vital records indicating a person's name and date of birth. For the purposes of this rule, a document issued by a hospital is not considered a birth certificate.

3.2. Certified- Means a validation of a document by a state or other governmental agency responsible for the issuance, collection or verification of documents with a raised or stamped seal indicating the authenticity of the document. Duplicate copies, or notarized copies not certified by the issuing agency are not acceptable.

3.3. Court Order- Means a certified original or certified copy of a court's official determination or final order.

3.4. Divorce Decree- Means a certified original or certified copy of a court's judgement or decree dissolving a marriage which also specifically states the name that a person is to use for legal purposes.

3.5. Driver's License- Means any permit or license issued by this state or any other state or jurisdiction which authorizes the person to operate a motor vehicle including an instruction permit, level 1, 2 or 3 driver's license or a commercial driver's license.

3.6. United States Citizen and Immigration Services or USCIS- Means the United States Department of Homeland Security, Citizen and Immigration Services or its successor agency of the United States Department of Homeland Security. Where ever the term United States Immigration and Naturalization Services or INS is used, it shall be construed as referring to its successor agency, the United States Citizen and Immigration Services.

3.7. Marriage Certificate- Means the certified original or certified copy of the record of marriage verified by the state or other governmental agency responsible for the collection or verification of marriage records.

3.8. Individual Taxpayer Identification Number or ITIN- Means the number issued by the United States Department of the Treasury, Internal Revenue Service (IRS) to persons who are required to have a U.S. taxpayer identification number but who do not have, and are not eligible to obtain a Social Security Number (SSN) issued by the Social Security Administration (SSA). Under this rule, the Individual Taxpayer Identification number is, if the applicant is eligible, the alternative for persons not eligible to receive a social security number.

3.9. School Enrollment Form- Means the document approved by the State Department of Education and issued by a county Board of Education indicating that an applicant under the age of eighteen is in current compliance with the provisions of West Virginia Code §18-8-11.

3.10. Social Security Card- Means the official document issued by the Social Security Administration (SSA) indicating the social security number assigned to a person. The Division requires the social security number of every applicant for a driver's license or identification card or holder of a driver's license or identification card as required by the provisions of the Personal Responsibility and Work Opportunity Act of 1996 as amended at 42 USC §666(a)(13) and as authorized by the provisions of the Tax Reform Act of 1976 as amended at 42 USC §405(C). The social security card is the proof of the actual issued number. For the purposes of this rule, except when the United States Social Security Administration electronically fails to verify the match between submitted name and number; the term "social security card" or proof of social security number shall also include;

3.10.a. A Medicare card issued in the applicant's name which contains the applicant's social security number and the signature of the applicant as card holder,

3.10.b. A military identification card with the social security number issued to the applicant indicating active, retired, reserve or dependant status in the military of the United States, or

3.10.c. an original or a copy certified by a governmental entity of the Military Discharge Form DD 214 with the social security card.

3.10.d. At the discretion of the Division, a Wage and Tax Statement Form W-2 or payroll stub with the applicant's employer's name and employer identification number, the applicant's social security number and the applicant's name and address may be accepted in lieu of a social security card.

3.10.e. At the discretion of the Division, an applicant who is not a citizen of the United States but who presents proof of legal presence, identity and residency in this state in accordance with this rule, who is not eligible to receive either a social security number or an individual taxpayer identification number may present a written statement subject to verification in the manner prescribed by the Commissioner, that he or she is not eligible for a social security card or an Individual Taxpayer Identification Number in lieu of a social security card and social security number.

3.11. Valid Driver's License- Means a driver's license issued to a person whose privilege to operate a motor vehicle has not expired, and is not currently suspended, revoked or cancelled for any reason.

§91-4-4 Preliminary Examination of Applicants Never Licensed, Holding a License Expired more than 6 Months or Holding an Expired License from Another State or Jurisdiction.

4.1. An applicant for an instruction permit to operate a motor vehicle shall present a properly completed application on the form designated by the Commissioner. The application shall include the applicant's full name as evidenced by the applicant's certified birth certificate, and the applicant's certified marriage license if the applicant desires to use a name other than the full name on the birth certificate, or a divorce decree or court order which specifically states the name that the applicant is to use, and the applicant's social security number as evidenced by the applicant's social security card. If an applicant is not eligible to receive a social security number, the applicant shall obtain an individual taxpayer identification number if eligible from the Internal Revenue Service. The application shall also include the address and all other information required by the provisions of the West Virginia Code and any other information required by the Division. The applicant shall also comply with the following:

4.1.a. The applicant shall provide the certified original or certified copy of a birth certificate as evidence of the applicant's full birth name, and date of birth. Foreign birth certificates are not acceptable. If no record of birth exists, in lieu of a birth certificate, the

applicant shall provide any documentation required by the Division to establish the applicant's full birth name and date of birth. An applicant who is not a citizen of the United States shall present all documents required by the Division to verify his or her legal presence in the United States, proof of identity, and proof of residency in this state;

4.1.b. The applicant shall provide proof of his or her social security number or individual taxpayer identification number card if he or she is ineligible for a social security number;

4.1.c. If the applicant is under the age of eighteen, the applicant must have the consent of his or her parent or guardian as evidenced by the custodial parent or legal guardian's signature on the application for an instruction permit. However, an applicant under the age of eighteen who presents a marriage certificate as proof of marital status is exempt from the parental consent requirement;

4.1.d. An applicant under the age of eighteen shall present proof of current school enrollment in the form of certification from the applicant's school dated less than thirty days prior to the date of application. When application is made during summer, the school enrollment form may be dated during the last month of school of the previous semester and is valid through the summer until the beginning of the next semester. If the applicant is not enrolled in school, he or she shall present evidence of progress toward a general education degree, exemption from school attendance or enrollment in an institution of higher education as approved by the applicant's county board of education;

4.1.e. A marriage certificate does not exempt an applicant from the requirement to submit a school enrollment form or from compliance with the requirements of the graduated driver's license program.

4.1.f. An applicant who has a change of gender from the birth certificate shall provide a court order specifically indicating the change is complete; and

4.1.g. An applicant age eighteen or older shall provide two documents showing residency as provided in section 10 and one additional document verifying identity as provided in section 11 of this rule.

4.2. The preliminary examination shall consist of five components.

4.2.a. The Division shall administer a visual acuity test with a standard eye testing chart or mechanical device.

1. An applicant with uncorrected visual acuity of 20/40 or better in at least one eye will pass the visual acuity test.

2. An applicant with visual acuity of 20/40 or better in at least one eye with the use of contact lenses or glasses will pass the visual acuity test with the appropriate restriction placed on his or her driver's license.

3. An applicant whose visual acuity is less than 20/40 will fail the visual acuity test. An applicant who fails the visual acuity test may request a Driver License Advisory Board Form 2.

4. An applicant who presents a properly completed Driver License Advisory Board Form 2 which indicates that the applicant is within the parameters set forth in West Virginia Legislative Rules, Division of Motor Vehicles, Denial, Suspension, Revocation or Nonrenewal of Driving Privileges, 91 CSR 5 will pass the visual acuity test with the appropriate restrictions placed on his or her driver's license.

5. An applicant may not use special lens arrangements, including but not limited to bioptic or telescopic lenses, to satisfy the visual acuity standard.

6. An applicant for a Commercial Driver's License or endorsement shall adhere to the visual acuity standard in section 14 of this rule.

7. An applicant or licensee who cannot meet the requirements in paragraphs (1) - (6) of this subdivision is not entitled to a license or instruction permit.

4.2.b. Before the Division issues an instruction permit, the Division may require the applicant to pass a color vision test that determines the applicant's ability to distinguish between the colors green, amber and red.

4.2.c. Before the Division issues an instruction permit, the Division may require the applicant to pass a depth perception test that detects deficiencies in depth perception.

4.2.d. An applicant shall pass a basic knowledge examination consisting of not less than twenty-five questions based on information contained in the West Virginia Driver Licensing Handbook and other materials provided by the Division. An applicant may test orally if the applicant presents documentation from an adult basic education center or a county board of education certifying that the applicant has reading comprehension difficulty. At the Division's discretion, the applicant may use a translator. An applicant shall answer at least seventy-six percent of the questions correctly in order to pass the examination.

4.2.e. An applicant shall complete a driving while under the influence awareness education component as prescribed by West Virginia Code §17B-2-7(b).

4.3. The driver license examiner shall mark and return an application for an instruction permit or a copy of the application to an applicant who fails a portion of the preliminary examination. The applicant may return in seven days for reexamination.

4.4. The driver license examiner shall approve the application of an applicant who successfully completes all components of the preliminary examination. The applicant is eligible for an instruction permit subject to the following:

4.4.a. A national check of the applicant's driver license status is completed and shows that the applicant's privilege to operate a motor vehicle is not currently suspended or revoked by this or any other state or jurisdiction; and

4.4.b. The applicant pays the required fee.

4.5. The instruction permit shall contain the full name of the applicant and all other information required by law or prescribed by the Commissioner. The Division shall maintain the social security number as a part of the licensee's record but it shall not appear on the face of the instruction permit.

4.6. The West Virginia Driver Licensing Handbook is the instruction guide of the Division concerning the examination of applicants for a driver's license and the qualifications required of applicants.

§91-4-5 Road Skill Examination

5.1. Applicants who present a valid instruction permit and who meet all other statutory requirements may complete the appropriate application and take the road skills examination subject to the following:

5.1.a. The applicant is accompanied to the examination site by a supervising driver aged twenty-one or older, or a driver education instructor with a valid driver's license;

5.1.b. The applicant presents his or her valid instruction permit, and if under the age of eighteen, a school enrollment form. Applicants age eighteen and older shall provide one additional document verifying residency as required by section 10 of this rule;

5.1.c. The applicant presents current proof of insurance and a valid registration card for the vehicle used for testing; and

5.1.d. The applicant who is under the age of eighteen presents proof of completion of an approved course of driver's education, or the form prescribed by the Division indicating completion of a minimum of thirty hours of behind the wheel instruction.

5.2. The road skills examination shall consist of:

5.2.a. A check of the safety equipment of the testing vehicle; and

5.2.b. An examination of the applicant's ability to operate a motor vehicle on a designated course consisting of a moderate grade, right turn, left turn and a traffic control device or stop sign. The applicant must show successful mastering of all skills required to safely operate a motor vehicle including backing and parallel parking. The applicant must give the proper turn signals, use good judgement in traffic situations and have the proper regard for pedestrians and traffic control devices and signals. Available occupant restraint devices must be properly adjusted and securely fastened whenever the vehicle is in motion. Only the applicant and the examiner or examiners and an interpreter may occupy the vehicle during the test.

5.3. An applicant will fail the road skills examination if the applicant:

5.3.a. Appears for the road skills test with a vehicle with illegal or inoperable equipment. However, the Division may allow an applicant to correct a minor defect and continue the examination;

5.3.b. Has an accident involving any property damage or personal injury or an accident was prevented only by the action of another driver or the examiner;

5.3.c. Drives into or stalls the vehicle into a location which may be hazardous under certain traffic conditions;

5.3.d. Passes another vehicle yielding to a pedestrian in a crosswalk;

5.3.e. Makes two successive turns from the wrong lane under conditions which make the action hazardous;

5.3.f. Fails to stop for a traffic control device or signal;

5.3.g. Refuses to perform a maneuver which is part of the test;

5.3.h. Makes it apparent that he or she is dangerously inexperienced after proceeding a short distance on the course; or

5.3.i. Does not demonstrate the ability to locate and use all mechanical and safety equipment on the vehicle.

5.4. The examiner shall evaluate the applicant's performance and determine whether the applicant possesses the skills necessary to operate a motor vehicle. He or she shall record the results of the equipment check and road skills examination and record any restrictions.

5.5. The applicant may use a translator at the Division's discretion.

5.6. An unsuccessful applicant may return for reexamination after a minimum of seven days have passed and if the applicant still holds a valid instruction permit. The applicant for

reexamination must complete all of the components of the road skills examination. The applicant is eligible for three attempts to pass the examination while the instruction permit is valid. After the third failed attempt to pass, or upon expiration of the permit the applicant shall complete all requirements for an instruction permit as if he or she was never previously licensed.

5.7. An unsuccessful applicant under the age of eighteen who renews his or her level one instruction permit prior to its expiration is eligible for three more attempts at the road skills test without first completing a second six month period of infraction free driving.

5.8. Applicants who successfully complete the road skills examination are eligible for a driver's license with the appropriate restrictions and endorsements subject to the following:

5.8.a. The applicant shall complete an application on the form prescribed by the Commissioner, endorsed by the examiner and validated with the appropriate information;

5.8.b. A national check of the applicant's driver license status shows that the applicant's privilege to operate a motor vehicle is not currently suspended or revoked by this or any other state or jurisdiction; and

5.8.c. If under the age of eighteen, the applicant shall present a school enrollment form and proof of completion of an approved course of driver's education, or the form prescribed by the Division indicating completion of a minimum of thirty hours of behind the wheel instruction.

5.9. An applicant who successfully completes either the passenger vehicle knowledge examination or road skills examination shall obtain the appropriate instruction permit or driver's license within thirty days of successfully passing the examination.

§91-4-6. Issuance and Content of the Driver's License and Identification Card

6.1. The driver's license or identification card shall contain the full name of the applicant as evidenced by the applicant's certified birth certificate, the applicant's certified marriage certificate, if the applicant desires to use a name other than the full name on the birth certificate, or a court order which specifically states the name that the applicant is to use, a color photograph of the applicant taken by the Division and all other information required by law or prescribed by the Commissioner. The Division shall maintain the social security number as a part of the licensee's or identification card holder's record but it shall not appear on the face of the driver's license or identification card.

6.1.a. The Commissioner shall designate distinguishing colors for licenses issued to drivers under the ages of eighteen and twenty-one.

6.1.b. In order for a driver to obtain the appropriately colored license based upon his or her age, the Commissioner may extend the license to thirty days after the expiration date that appears on the front of the license.

6.1.c. The applicant may choose from the following options as to display of his or her name on the driver's license or identification card. However, a court order specifying a change of name supersedes a birth and or marriage certificate:

1. Last name, first name then middle name as evidenced by the applicant's birth certificate;

2. Last name of spouse, as evidenced by the applicant's marriage certificate, then first name and middle name as evidenced by the applicant's birth certificate; ~~or~~

3. Last name as evidenced by the applicant's marriage certificate, first name, then maiden name as evidenced by the applicant's birth certificate to stand in place of the middle name or

4. Last name as a combination of the applicant's last name as evidenced by the applicant's marriage certificate separated by a hyphen from the applicant's maiden name as evidenced by the applicant's birth certificate or as customarily used by a foreign born applicant.

§91-4-7 Renewal of Driver's License and Identification Card.

7.1. The driver's license or identification card is valid for the statutory period of time based on the age of the applicant and the length of the applicant's authorized legal presence in the United States.

7.2. The Division shall mail an application for renewal to each licensee at least thirty days prior to the day of the license's expiration to the licensee's address of record.

7.3. A licensee shall renew his or her license prior to or on the expiration date in order to legally drive a motor vehicle in this or any other state.

7.4. The Division shall complete a national check of the renewal applicant's driver license status. Any licensee whose driving privileges are suspended or revoked in this or any other state for an offense for which this state would suspend or revoke a person's privilege to operate a motor vehicle, is not eligible for renewal of his or her driver's license.

7.4.a. The Division shall not refuse to renew a driver's license for an offense that is more than ten years old and not involving a driving under the influence related offense.

7.4.b. The Division, at its' discretion, may renew an applicant's driver's license if his or her driving privileges are suspended or revoked by another state or jurisdiction for an

offense for which the jurisdiction of record can not provide records or assistance to clear the offense. The renewal applicant shall provide written documentation from the suspending jurisdiction indicating that the records to clear the suspension or revocation are unavailable.

7.5. Any West Virginia licensee whose license is expired six months or less may renew the license without resubmitting to a written or road test. Any West Virginia licensee whose license is expired more than six months, shall resubmit to the examination requirements applicable to the type of license and endorsements the licensee is renewing. At the discretion of the Division, this requirement may be waived if the renewal applicant's driver's license has been expired less than one year and he or she can establish that he or she was hospitalized, incarcerated or otherwise seriously incapacitated consequently preventing the applicant from renewing his or her license in a timely manner. The retesting requirement may not be waived unless the Division determines the applicant has sufficiently recovered from any disability which may prevent the applicant from safely operating a motor vehicle.

7.6 A licensee who will be out of state at the time his or her license expires shall renew the license prior to departure. The licensee may renew the license within two years prior to expiration.

7.7. The Division may, upon request, renew the driving privileges of a licensee who is temporarily located out of state at the time his or her license expires. The Division shall not issue a new driver's license to the licensee out of state. The Division may issue a certified driving record to the licensee indicating that the licensee has renewed his or her driver's license with a notation of the new expiration date. The licensee shall obtain a new license upon returning to West Virginia.

7.8. The Division shall upon request issue a certified driving record to active duty military personnel licensed in West Virginia which indicates that the license remains valid and shall not expire until six months after the licensee's honorable discharge.

7.9. Any licensee or identification card holder seeking to renew his or her license or identification card shall present one proof of identity and one proof of residency as prescribed by the Division and this rule and pay all required fees. An applicant who presents the division's renewal notice mailed to his or her address and whose residence address appears in the records of the division and whose residence address has not changed since the renewal notice was mailed is not required to present proof of residency.

7.10. The Division, in the event of system or equipment failure, may issue a non-transferable, temporary driver's license valid for a period of time not to exceed fourteen days to an applicant with a class E or class F driver's license, whose driving privileges are not suspended, revoked or cancelled and who is otherwise eligible for renewal. The temporary driver's license shall be marked not valid for transfer to another state or jurisdiction.

7.11. For the purposes of this rule when an applicant's driver's license expires on a weekend, holiday, or on a day that a full service regional office is closed, the applicant has until the end of the next business day to renew his or her license to avoid payment for the additional penalty fee of five dollars. If the date upon which the driver's license has been expired more than six months occurs on a weekend, holiday or on a day that a full service regional office is closed, the applicant has until the end of the next business day to renew his or her driver's license without being required to take the vision, written and road skills examination. Nothing in this provision may be interpreted to grant an applicant relief from any criminal penalties associated with operating a motor vehicle without a valid driver's license.

§91-4-8 Transfer of Driver's License

8.1. A new resident who wishes to operate a motor vehicle in this state shall obtain a West Virginia driver's license within thirty days of establishing residency in this state. The applicant shall substantiate identity, West Virginia residency, social security number or substitute and legal presence with the documents required under sections 3, 10, 11 and 12 of this rule

8.2. An applicant age eighteen or older who holds a valid driver's license from another state or jurisdiction of the United States or from a foreign jurisdiction with which this state has a reciprocal agreement may exchange the out of state driver's license for a West Virginia driver's license without taking the written examination or road skills examination prescribed in section 4 and 5 of this rule subject to the following:

8.2.a. The Division completes a national check of the applicant's driver's license status. Any licensee whose driving privileges are suspended or revoked in this state, or in any other state or jurisdiction for an offense for which this state would suspend or revoke a person's privilege to operate a motor vehicle, is not eligible for licensure;

8.2.b. The applicant surrenders his or her valid out of state license. If the applicant's driver's license has been lost, the applicant shall provide a certified driving record dated thirty days or less from the date of application from the applicant's former state of residence indicating that the applicant's driver's license is valid and a written statement indicating his or her intention to surrender his or her driving privileges and the circumstances of why the applicant does not have a valid driver's license in his or her possession;

8.2.c. The applicant presents his or her certified birth certificate as evidence of the applicant's full name and age. Any change of gender from the birth certificate requires a court order specifically indicating that the gender change is complete. If no record of birth exists, the applicant shall provide any documentation required by the Division to establish the applicant's full birth name and date of birth;

8.2.d. The applicant presents his or her social security number as evidenced by the applicant's social security card. If an applicant is not eligible to receive a social security number,

the applicant if eligible shall obtain an individual taxpayer identification number from the Internal Revenue Service;

8.2.e. The applicant passes the visual acuity test prescribed by this rule, and completes the driving under the influence awareness component as prescribed as prescribed by West Virginia Code §17B-2-7(b).

8.2.f. The applicant presents two proofs of residence as prescribed in section 10 of this rule; and

8.2.g. The applicant licensed by a foreign jurisdiction with which this state has a reciprocal agreement shows proof of legal presence as required under section 12 of this rule._

8.3. The Division may require a driving record from an applicant's prior licensing state or jurisdiction to be incorporated into the record maintained by the Division. The Division may consider the entire record in a revocation or suspension action, or consider any restrictions applied to an applicant's privilege to operate by the applicant's prior licensing state to determine eligibility for a license.

8.4. An applicant under the age of eighteen who holds a valid driver's license from another state or jurisdiction of the United States which has a graduated driver's license system may exchange the out of state driver's license for a West Virginia driver's license at a comparable level, without taking the written examination or road skills examination prescribed in section 4 and 5 of this rule subject to the following:

8.4.a The applicant complies with the provisions of subsection 8.2. of this rule and in addition presents a:

1. Valid school enrollment form as prescribed in subdivision 4.1.d of this rule that will also meet the proof of residency requirement of Section 10 of this rule, and;
2. Driving record dated thirty days or less from the applicant's prior state or jurisdiction of licensure.

8.4.b. An applicant who does not possess a graduated driver's license which equals or exceed this state's level 2 graduated driver's license or who was previously licensed in a state or jurisdiction which does not have a graduated driver's license system, shall comply with the provisions of section 4 and 5 of this rule as if he or she never held a license. However, the applicant will be credited with whatever time period the applicant held the previous state or jurisdictions license toward any time periods required for level 1 graduated driver's license if the applicant presents a current driving record at the time of his or her initial application for a West Virginia driver's license.

8.4.c. An applicant's driving record from his or her previous state of licensure will be transferred and become part of the applicant's West Virginia driving record.

§91-4-9 Reissuance of Driver's License with Changes or Issuance of a Duplicate Driver's License or Identification Card.

9.1. Change of Address- In accordance with law, all licensees shall provide the Division with a correct address within twenty days of moving to a new location. If a licensee's address is changed by the United States Postal Service, the licensee shall provide the Division with a correct address twenty days prior to the final date on which mail with the old address is deliverable. If the licensee chooses to obtain a new driver's license, he or she shall present at least one proof of identity and one proof of residency as described in Sections 10 and 11 of this rule.

9.2. Change of Name- Any person who changes his or her name shall apply for a new license or identification card within twenty days of the name change and shall present at least one proof of identity and one proof of residency as described in Sections 10 and 11 of this rule in addition to any documents required to substantiate the change of name.

9.2.a. The licensee or identification card holder shall substantiate a change of name by marriage with a marriage certificate. The licensee or identification card holder may choose from the following options as to display of his or her name on the driver's license. However, a court order specifying a change of name supersedes a birth and marriage certificate:

1. Last name, first name then middle name as evidenced by the applicant's birth certificate;

2. Last name of spouse, as evidenced by the applicant's marriage certificate, then first name and middle name as evidenced by the applicant's birth certificate; ~~or~~

3. Last name as evidenced by the applicant's marriage license, first name, then maiden name as evidenced by the applicant's birth certificate to stand in place of the middle name or

4. Last name as a combination of the applicant's last name as evidenced by the applicant's marriage certificate separated by a hyphen from the applicant's maiden name as evidenced by the applicant's birth certificate.

9.2.b. The licensee or identification card holder shall substantiate a change of name by divorce, or court order with a copy of the certified divorce decree or certified court order that specifically states the new name the applicant will use for legal purposes.

9.2.c. Any other change in the name requires a certified birth certificate or a court order ordering the name change.

9.3. Any change in the birth date requires a certified birth certificate.

9.4. Any change or correction of the social security number requires a social security card.

9.5. Any change of gender requires a court order specifically indicating that the gender change is complete.

9.6. Any change to restriction or endorsement requires proper documentation.

9.7. The Division shall collect the statutory fee for the reissuance of any license or identification card.

9.8. An applicant requesting a change to his or her driver's license or identification card shall surrender the previously issued driver's license or identification card.

9.9. An applicant under the age of eighteen requesting a duplicate driver's license or a change to his or her driver's license shall also present current proof of school enrollment which shall also serve as proof of residency.

§91-4-10 Residency Requirement

10.1. An applicant for any license or identification card shall be a resident of the State of West Virginia. The West Virginia address of residence shall appear on the face of the license or identification card. The Division shall not license or issue an identification card to an applicant who does not have a West Virginia address unless the applicant resides in an area of West Virginia not served by a West Virginia post office. Acceptable documents for proof of residency are:

10.1.a. Current utility bills indicating a West Virginia address;

10.1.b. Tax records indicating a West Virginia address;

10.1.c. Residential rental and lease agreements for a West Virginia residence;

10.1.d. Mortgage documents for a West Virginia residence;

10.1.e. A W-2 form not more than 18 months old with a West Virginia address;

10.1.f. A current concealed weapons permit with a West Virginia address;

10.1.g. A current West Virginia School enrollment form if applicant is under the age of eighteen;

10.1.h. A motor vehicle registration card in the name of the applicant issued by the Division with a West Virginia address;

10.1.i. West Virginia Voters Registration Card;

10.1.j. Proof of receipt of West Virginia Public Assistance, and

10.1.k. West Virginia Homestead tax exemption.

10.1.l Notarized affidavit of homeowner or lessee that the applicant lives at the household address and verified by two proofs of residency in the name of the homeowner or lessee.

10.2. The Division may, at its discretion accept or require other documentation to substantiate residency in this state.

10.3 The Division shall not license or issue an identification card to persons who are not bona fide residents of this state. Nonresidents who previously resided and were licensed or issued an identification card in West Virginia may not renew their West Virginia license or identification card until they again establish a residence in this state.

10.4. Licensees who have either obtained their initial driver's license, renewed their driver's license or obtained a duplicate driver's license since July 1, 2003 are not required to present proof of residency if there has been no change of address.

10.5. Applicants for renewal who have received the division of motor vehicles renewal notice at their address, have provided the division with their residence address and whose address has not changed since they received the renewal notice are not required to present proof of residency.

§91-4-11 Identity Requirements.

11.1. Acceptable forms of proof of identity for citizens of the United States are:

11.1.a. A certified original or certified birth certificate;

11.1.b. A valid photo driver's license or identification card expired six months or less issued the Division or by another state or jurisdiction;

11.1.c. A valid United States passport;

11.1.d. A valid United States active duty, retiree or reservist Military photo identification card (DOD IDDD-2);

11.1.e. A valid United States Uniform Service Identification and Privilege photo card (DD 1173),

11.1.f. A certificate of United States citizenship INS Form N-560; and

11.1.g. A certificate of United States naturalization INS Form N-550 or N-570.

11.2. The Division may at its discretion accept other documentation to substantiate identity..

11.3 Acceptable forms of identity documents for persons who are not citizens of the United States are valid USCIS documents with a photo that can be verified with the United State Citizen and Immigration Service.

11.4 All documents required by this rule to show age, identity, residency and or legal presence in this country must show the same name and or date of birth, or an association between the information on the forms. Additional documentation may be required if a connection between the documents can not be established or if the documents are not original or certified copies issued by the authorized government agency. The Division may waive any documents required to establish a connection, match or association between names if the Division determines that the applicant is not attempting to change his or her identity, to assume someone else's identity or to perpetuate a fraudulent identity.

§91-4-12 Proof of Legal Presence in the United States.

12.1. The Division shall not issue a driver's license or identification card to a person who is not a citizen of the United States who does not submit proof satisfactory to the Division that the applicant's presence in the United States is authorized under federal law and who can not show that he or she is a resident of West Virginia.

12.2. Acceptable documents to establish United States citizenship are:

12.2.a. An original or certified birth certificate;

12.2.b. A United States passport either valid or expired;

12.2.c. A Certificate of Naturalization INS Form N550, N-57, N-578;

12.2.d. A Certificate of Citizenship INS Form N-560, N-561, N-565; and

12.3. The Division at its discretion may accept another document which establishes a place of birth in the United States or its' territories or which indicates United States citizenship.

12.4. The following subdivisions describing categories of persons who are not citizens of the United States, prescribe the documents required to establish that an applicant is authorized under federal law to be in the United States and who is eligible to receive a driver's license if he or she has complied with all other requirements of West Virginia law and this rule.

12.4.a. Immigrants- Immigrants shall provide the following documents:

1. The applicant's social security number as evidenced by the applicant's social security card. If an applicant is not eligible to receive a social security number, the applicant shall if eligible present an individual taxpayer identification number from the Internal Revenue Service or a statement of ineligibility for either number in accordance with section 3 of this rule;

2. Two forms showing West Virginia residency as identified in section 10 of this rule; and

3. One of the following documents or similar successor documents:

A. An INS Form I-551 Alien Registration Receipt Card;

B. A valid Temporary I-551 stamp in Foreign Passport (with English translation) or on INS Form I-94; or,

C. Valid re-entry permit INS Form I-327.

D. The Division may at its discretion accept other INS or USCIS documentation that establishes the applicant's legal presence.

12.4.b. Non-Immigrants- Non immigrants are persons granted temporary entry into the United States. Applicants who are Non-Immigrants, granted temporary entry into the United States shall provide:

1. The applicant's social security number as evidenced by the applicant's social security card. If an applicant is not eligible to receive a social security number, the applicant shall present written documentation from the Social Security Administration that he or she is not eligible for a number and if eligible obtain an individual taxpayer identification number from the Internal Revenue Service or a statement of ineligibility for either number in accordance with section 3 of this rule;

2. Two documents showing West Virginia residency as identified in section 10 of this rule;

3. A valid foreign passport with English translation;
4. A form I-94;
5. A visa issued by the United States if applicant is from a nation whose citizens are required by the United States to obtain a visa; and,
6. All original INS documents to verify status and length of authorized stay.

A. If applicant's status is F-1 or F-2, a form I-20 and written verification of attendance at the school listed on form I-20 is also required:

B. If the applicant's status is H1-A, H1-B, H-3, or H-4, written verification from employer is also required.

C. If the applicant's status is J-1, or J-2, a form DS 2019 and written verification of attendance at the school listed on form DS 2019 is also required;

12.4.c. Refugee- An applicant who is a refugee with a sponsoring organization shall provide:

1. The applicant's social security number as evidenced by the applicant's social security card. If an applicant is not eligible to receive a social security number, the applicant shall present written documentation from the Social Security Administration that he or she is not eligible for a number and if eligible obtain an individual taxpayer identification number from the Internal Revenue Service or a statement of ineligibility for either number in accordance with section 3 of this rule ;

2. One form showing West Virginia residency as identified in section 10 of this rule;

3. INS Form I-94 showing grant of refugee status;

4. A Reception and Placement Program Assurance Form; and

5. Written verification of identity and West Virginia residency presented by an employee of a sponsoring organization approved by the United States Department of State to resettle refugees in West Virginia.

12.4.d. Applicants who are refugees who do not have an approved sponsoring organization or an asylee shall provide the following:

1. The applicant's social security number as evidenced by the applicant's social security card. If an applicant is not eligible to receive a social security number, the applicant shall present written documentation from the Social Security Administration that he or she is not eligible for a number and if eligible obtain an individual taxpayer identification number from the Internal Revenue Service or a statement of ineligibility for either number in accordance with section 3 of this rule ;

2. Two forms showing residency as identified in section 10 of this rule;

3. Form INS I-94 stamped Refugee/Asylee; and

4. Form I-688 B and I-766 Employment Authorization Document.

12.5. The Division may require verification of any submitted documents and the applicant's legal status by the United States Citizen and Immigration Service before a driver's license or identification card is issued.

12.6. All INS forms designations refer to the current form or to any successor or substitute form promulgated by the Immigration and Naturalization Service or the United States Citizen and Immigration Service.

12.7. The Division may at its discretion accept other INS or USCIS documentation that establishes the applicant's legal presence in this county.

§91-4-13 Motorcycle License or Endorsement

13.1. An applicant for a motorcycle-only instruction permit shall submit to the preliminary examination described in section 4 of this rule except that the written examination may contain information from the West Virginia Motorcycle Licensing Handbook as well as the West Virginia Driver Licensing Handbook.

13.2. An applicant for a motorcycle endorsement instruction permit shall present a valid West Virginia license, pass the visual acuity test described in section 4 of this rule and pass a written examination as described in section 4 of this rule except that the examination may contain information from the West Virginia Motorcycle Licensing Handbook in addition to the West Virginia Driver Licensing Handbook.

13.3. Any applicant under this section shall pass a road skill examination designed to test the skills of a motorcycle operator and meet the requirements described in section 5 of this rule. The Division may exempt any applicant who satisfactorily completes the West Virginia motorcycle safety education program from the road skill examination. No applicant is eligible

for the road skill examination until at least seven days after issuance of the motorcycle instruction permit.

13.4. An applicant shall perform the motorcycle road skill examinations on a motorcycle with a 50 cc engine or larger.

13.5. In addition to the West Virginia Driver Licensing Handbook, the West Virginia Motorcycle Licensing Handbook is the instruction guide of the Division concerning the examination and qualification of applicants for a motorcycle license or endorsement.

13.6. Any applicant for a motorcycle license or endorsement under the age of eighteen shall complete the following Graduated Driver's License requirements prior to application:

13.6.a. The applicant shall hold a level one instruction permit conviction free for one hundred eighty days immediately preceding the date of application;

13.6.b. The applicant shall complete either a driver's education course approved by the state department of education or thirty hours of behind the wheel driving experience certified by a parent or legal guardian or other responsible adult over the age of twenty-one on the form prescribed by the division: Provided, That nothing in this subdivision shall be construed to require any school or any county board of education to provide any particular number of driver's education courses or to provide driver's education training to any student; and

13.6.c. The applicant shall present a current school enrollment form or otherwise show compliance with West Virginia Code §18-8-11.

13.7. Applicants for a motorcycle license or endorsement shall comply with all identity, residency and legal presence requirements of this rule.

§91-4-14 Commercial Driver's License

14.1. An applicant for a commercial driver's license instruction permit shall complete a Commercial Driver's License Application. The applicant shall include a current Federal Motor Carrier Safety Administration Medical Examiners Certificate (physical long form) unless he or she is exempt under Title 49 CFR §390.3 of the Federal Motor Carrier Safety Regulations. The applicant shall satisfactorily complete a written examination for the Commercial Driver's License and each endorsement as prescribed by the Commissioner.

14.2. An applicant for a Commercial Driver's License or endorsement shall present a Commercial Driver instruction permit and satisfactorily complete any applicable road skill examination as determined by the Commissioner.

14.3. In addition to the West Virginia Driver Licensing Handbook, the West Virginia Division of Motor Vehicles Commercial Driver's License Manual is the instruction guide of the

Division concerning the examination and qualification of applicants for a Commercial Driver's License.

14.4 A licensee shall maintain a current Federal Motor Carrier Safety Administration Medical Examiners Certificate (DOT physical long form) on file with the Division. Any certificate more than two years old is not current. A licensee with a Class D driver's license who operates a commercial vehicle over 10,000 pounds but less than 26,001 pounds is required to comply with requirements related to submitting and maintaining a current Federal Motor Carrier Safety Administration Medical Examiners Certificate.

14.5. The Division may cancel the license of any licensee that does not provide a current Federal Motor Carrier Safety Administration Medical Examiners Certificate (physical long form) within twenty days from the date the previous Certificate is no longer current.

14.6. The following provisions apply to the Intrastate Waiver Program for drivers of commercial vehicles with either a Commercial Driver's License or a Class D Driver's License:

14.6.a. Licensees who do not meet the requirements of Title 49 CFR §391.41(b) and cannot obtain a federal interstate waiver may apply for an intrastate waiver with the Division;

14.6.b. A commercially licensed driver with an intrastate waiver may only operate a commercial vehicle in West Virginia. Individuals with an intrastate waiver may not drive a commercial vehicle in furtherance of interstate commerce;

14.6.c. A licensee with an intrastate waiver is not eligible for passenger and hazardous material endorsements except that an individual who has a passenger or hazardous material endorsement prior to passage of this rule may, in the Commissioner's discretion, maintain the endorsement as long as all other criteria in this rule and federal law and rule are met;

14.6.d. A licensee shall complete and submit a Commercial Driver License Application, a Federal Motor Carrier Safety Administration Medical Examiners Certificate (physical long form), a supplemental Medical History Form and/or a Vision Form, and any other information considered necessary; and

14.6.e. An applicant may submit any other information pertaining to the applicant's ability to safely operate a commercial motor vehicle such as letters from a treating physician, a specialist or an employer.

14.7. The Commissioner, or his or her designee, shall review the documents provided in subdivision (d) and (e), the driver history record of the applicant, and the following medical guidelines:

14.7.a. Limb Impairment: The Division shall not issue an intrastate waiver to an applicant disqualified from an interstate license because of a loss or impairment of a foot, leg, arm, hand or fingers unless the applicant passes a skills test in a commercial vehicle adapted for the specific disability. Any waiver issued shall be vehicle specific;

14.7.b. Vision: The Division shall not issue an intrastate waiver to an applicant disqualified from an interstate license because of vision problems unless it is found that:

1. The applicant has a distance visual acuity of 20/60 or better with or without corrective lenses in at least one eye;

2. The applicant uses only conventional corrective lenses which excludes bioptic lenses;

3. The applicant does not exhibit uncorrectable double vision;

4. The applicant does not show evidence of disease or rapid deterioration of vision;

5. The applicant can readily distinguish which light is illuminated on a traffic signal showing standard red, amber, and green; or

6. An ophthalmologist or optometrist reports on the supplemental Vision Form that the applicant can safely operate a motor vehicle with appropriate restrictions;

14.7.c. Epilepsy: The Division shall not issue an intrastate waiver to an applicant disqualified from an interstate license because of epilepsy or any other condition likely to cause loss of consciousness unless the applicant is seizure free for three years immediately preceding application and free from loss of consciousness, a blackout, fainting or disorientation for one year immediately preceding application. The applicant shall prove reliability in taking prescribed medication by providing blood content level readings;

14.7.d. Cardiovascular: The Division shall not issue an intrastate waiver to an applicant disqualified from an interstate license because of cardiovascular problems unless there is no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure. The Division shall not grant an intrastate waiver to any applicant who is disqualified from an interstate license because of a blood pressure reading outside of acceptable federal limits;

14.7.e. Diabetes: The Division shall not issue an intrastate waiver to an applicant disqualified from an interstate license because of diabetes unless a board certified/eligible endocrinologist attests that the applicant:

1. Is free from insulin reactions which means the applicant does not have severe hypoglycemia or hypoglycemia unawareness, and has less than one documented, symptomatic hypoglycemic reaction per month;

2. Is able to and has demonstrated willingness to properly monitor and manage his or her diabetes;

3. Is not likely to suffer any diminution in driving ability due to his or her diabetic condition; and

4. Has not exhibited any instances of diabetic shock or coma in the year immediately preceding the application for an intrastate waiver;

14.7.f. Alcohol or Drugs: The Division shall not issue an intrastate waiver to an applicant disqualified from an interstate license until the applicant has been free from addiction to or abuse of alcohol or other drugs for one year immediately preceding application;

14.7.g. Psychiatric Disorders: The Division shall not issue an intrastate waiver to an applicant disqualified from an interstate license because of a mental, nervous, organic, or functional disease or psychiatric disorder if:

1. The applicant exhibits homicidal, suicidal, or destructive behavior;

2. The applicant has experienced extreme anxiety, depression, paranoia, confusion, delusions or hallucinations in the year immediately preceding application; or

3. The applicant has been hospitalized for any condition described in Paragraph (A) or Paragraph (B) in the three years immediately preceding the application; and

14.7.h. An applicant disqualified from an interstate license for a medical condition not discussed in this subdivision may apply for an intrastate waiver. The Division shall review applications on a case by case basis with due regard for the applicant's ability to safely operate a commercial motor vehicle. The Division shall not issue an intrastate waiver to an applicant who does not meet the federal standards for hearing found in Title 49 CFR §391.41 (11).

14.7.i. After reviewing the relevant material, the Commissioner or his or her designee may grant or deny a intrastate waiver, or refer the application to the Medical Advisory Board for a recommendation. If an intrastate waiver is granted, the Commissioner or his or her designee may apply restrictions or conditions to the license as determined necessary.

14.7.j. If at any time after issuing the license, it is determined the applicant failed to meet a condition or no longer qualifies for an intrastate waiver, then the Commissioner

shall cancel the license or modify it with appropriate restrictions, endorsements and/or conditions.

14.7.k. If an intrastate waiver is denied or canceled, the applicant may reapply with additional information at any time. An applicant or licensee who is denied an intrastate waiver is not entitled to an administrative hearing.

14.7.l. Intrastate waivers granted by another state are not valid in West Virginia.

14.8. A licensee whose commercial driving privileges are disqualified based on a sworn report submitted by a law-enforcement officer in accordance with West Virginia Code §17E-1-15 may request a hearing in accordance with West Virginia Legislative Rules, Division of Motor Vehicles, Administrative Due Process, 91 CSR 1. The docket fee for the hearing is fifty dollars.

14.9. A third party examiner who has paid a fifty-dollar application fee and has contracted with the Division may conduct a road skills examination test. The Division may dismiss a third party examiner who fails to comply with the terms of any contract or agreement with the Division.

14.10. Designated employees of the Division shall conduct random checks of third party examinations for compliance with state rules and federal regulations and any written agreement. All third party examiners shall maintain current certification.

14.11. The Division shall conduct the hazardous material endorsement examination in the English language only and shall issue the endorsement in accordance with the provisions of Section 1012 of the USA Patriot Act as codified at 49 USC § 5103 and Federal Rules implementing the provisions of Section 1012.

14.11.a. In accordance with the provisions of 49 USC §5103 and 49 CFR §Part 1572 (2004), all applicants for either an original or renewal of a hazardous material endorsement shall submit finger prints in the manner prescribed by the Division and undergo a security threat assessment check by the United States Department of Homeland Security Transportation Security Administration and by the United States Department of Justice, Federal Bureau of Investigation.

14.11.b. Any appeal of a denial of a hazardous material endorsement by the United States Department of Homeland Security Transportation Security Administration shall be heard by the appropriate federal agency and not by the Division of Motor Vehicles.

14.12. The division may, upon appropriate application allow a licensee with a commercial driver's license to temporarily downgrade his or her driver's license status to a Class E passenger vehicle driver's license at the time of renewal if he or she has a temporary disability which prevents the licensee from immediately meeting the Federal Motor Carrier Safety Administration medical criteria. The licensee may restore his or her driver's license to CDL

status without retesting if the licensee meets the federal medical criteria within two years of the initial downgrade.

§91-4-15 Non Driver Identification Cards

15.1. The Division may issue a children's identification card to any person two years old or older but younger than sixteen years old subject to the following:

15.1.a. A custodial parent or legal guardian accompanies the child at the time of application;

15.1.b. The parent or legal guardian provides the child's certified birth certificate and social security card. If the child is not a citizen of the United States, the parent or legal guardian shall provide in lieu of the birth certificate, proof of the child's legal presence in accordance with section 12 of this rule; and

15.1.c. The parent or legal guardian provides proof of West Virginia residency.

15.1.d. The Division may issue a children's identification card containing less information than a non-driver identification card.

15.1.e. The Division may use the information from a children's identification card to assist law-enforcement officials to locate a missing or kidnapped child.

15.2. The Division may issue a non-driver identification card to any person sixteen years old or older subject to the following:

15.2.a. The applicant does not have a valid driver's license;

15.2.b. The applicant provides a certified birth certificate and social security card; and

15.2.c. The applicant complies with the applicable provisions of this rule pertaining to identity, residency and legal presence.

15.3. The holder of an identification card or children's identification card shall surrender the card to the Division when the holder is issued a driver's license. A holder of a identification card who has surrendered his or her driver's license in order to obtain an identification card may obtain a driver's license without the requirement of retesting if otherwise eligible under section 7.5 of this rule, if he or she reinstates his or her driver's license within six months of obtaining the identification card.

15.4. The Division may issue a non-transferable temporary identification card valid for a period not to exceed 60 days to applicants who appear otherwise eligible but who submit documents that require additional verification.

§91-4-16 Review and Verification of Documents.

16.1. The Division reserves the right to photocopy, review and verify any document submitted to meet the requirements of this rule prior to the issuance of a driver's license or identification card.

16.2. The Division shall notify the applicant or licensee by regular mail to the address of record of its determination, and may require the applicant to provide the original documents upon his or her return to the office for issuance of the driver's license or identification card.



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Joe Manchin III
Governor

May 19, 2005

The Honorable Betty Ireland
Secretary of State
State Capitol Building
Charleston, WV 25305

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2005 JUN -1 A 9: 24

FILED

Dear Madam Secretary:

The Commissioner of Motor Vehicles is hereby authorized to promulgate proposed amendments to 91 CSR 4, Examination and Issuance of Driver's Licenses.

Sincerely,

Danny Ellis
Cabinet Secretary

DE:sd
Enclosure