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ADMINISTRATIVE LAW DIVISION**

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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: 91 CSR 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) House Bill 2685

SECTION WV Code §64-8-3(a), PASSED ON April 13, 2001

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: July 1, 2001



Authorized Signature

\$5.00



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

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91 CSR 4

Examination and Issuance of Driver's Licenses

Promulgation History

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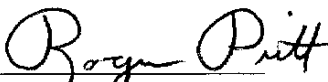
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Roger Pritt
Commissioner

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF MOTOR VEHICLES
91CSR4

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- May 2, 2001

1.4 Effective Date- July 1, 2001

1.5 Repeal of Former Rule- This legislative rule repeals and replaces West Virginia Legislative Rule §91CSR4 Motor Vehicle Operators' and Chauffeurs' Licenses filed March 25, 1976.

§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 Preliminary Examination of Applicants

3.1 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 social security number as evidenced by the applicant's social security card.

3.1.a. An applicant shall present his or her original or certified copy of a birth certificate issued by a state or other governmental agency of the United States responsible for the collection of vital records as evidence of the applicant's full name and age. Foreign birth certificates are acceptable if accompanied by an Immigration and Naturalization Service Identification Card.

3.1.b. The social security number requirement in section 3.1 of this rule does not apply to certain foreign nationals who are not eligible to receive a social security number.

3.1.c. An applicant under the age of eighteen 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 valid marriage license as proof of marital status is exempt from the parental consent requirement.

3.1.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, or when application is made during summer, dated during the last week of school of the previous 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.

3.2. The preliminary examination shall consist of five components.

3.2.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 with the appropriate restriction placed on the driver's license.

3. An applicant whose visual acuity is less than 20/40 will fail. An applicant who fails 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, 91CSR5.3, will pass with the appropriate restrictions placed on the 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 8 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.

3.2.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.

3.2.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.

3.2.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. 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 Commissioner's discretion, the applicant may use a translator at his or her own expense. An applicant shall answer seventy-five percent of the questions correctly in order to pass the examination.

3.2.e. An applicant shall complete a driving while under the influence awareness education component.

3.3. 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.

3.4. 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:

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

3.4.b. The applicant pays the required fee.

3.5. 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.

3.6. The West Virginia Driver Licensing Handbook is the official policy of the Division concerning the examination of applicants for a driver's license and the qualifications required of applicants.

§91-4-4. Road Skill Examination

4.1. 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:

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

4.1.b. The applicant presents two forms of identification; and

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

4.2. The road skills examination shall consist of:

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

4.2.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 may occupy the vehicle during the test.

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

4.3.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;

4.3.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;

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

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

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

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

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

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

4.4. 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.

4.5. An unsuccessful applicant may return for reexamination after a minimum of seven days have passed. The applicant for reexamination must complete all of the components of the road skills examination. The applicant is eligible for three attempts to pass 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 never previously licensed.

4.6. 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:

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

4.6.b. The applicant shall present two forms of identification;

4.6.c. A national check of the applicant's driver license status shows that the applicant is not currently suspended or revoked by this or any other state or jurisdiction; and

4.6.d. If under the age of eighteen, the applicant shall present current proof of compliance with the school attendance law.

§91-4-5 Issuance, Renewal and Content of Driver's License

5.1. The driver's license shall contain the full name of the applicant as evidenced by the

applicant's birth certificate, a color photograph 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 driver's license.

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

5.1.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.

5.2. The driver's license is valid for the statutory period of time based on the age of the applicant.

5.3. 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.

5.4. In order to legally drive a motor vehicle in West Virginia, a licensee shall renew his or her license prior to or on the expiration date.

5.5. 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 to determine eligibility for a license.

5.6. 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 is not eligible for renewal.

5.7. Any West Virginia licensee whose license is expired less than six months 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 wants to renew.

5.8. 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.

5.9. The Division may, upon request, renew the driving privileges of a licensee 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, upon request, issue a certified driving record to the licensee. The licensee shall obtain a new license upon returning to West Virginia.

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

5.11. Any licensee seeking to renew his or her license shall pay all required fees.

§91-4-6 Reissuance of Driver's License with Changes

6.1. 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 State 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.

6.2. Change of Name- Any person who changes his or her name must apply for a new license within twenty days of the name change.

6.2.a. The licensee shall substantiate a change of name by marriage with a marriage certificate.

6.2.b. The licensee shall substantiate a change of name by divorce with a copy of the divorce decree which specifically states the new name the applicant will use.

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

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

6.4. Any change or correction of the social security number requires an original social security card issued by the Social Security Administration.

6.5. Any change of gender requires a court order.

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

6.7. Any time a license is reissued or renewed the Commissioner may require proof of identification other than the old license.

6.8. The Division shall collect the statutory fee for the reissuance of any license.

§91-4-7 Residency Requirement

7.1. An applicant for any license shall be a resident of the State of West Virginia. The West Virginia address of residence shall appear on the face of the license. The Division shall not

license an applicant that 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.

7.2. The Division shall not license nonresidents. Nonresidents who previously resided and were licensed in West Virginia may not renew their West Virginia license until they again establish a residence in the State of West Virginia.

§91-4-8 Motorcycle License or Endorsement

8.1. An applicant for a motorcycle-only instruction permit shall submit to the preliminary examination described in section three 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.

8.2. An applicant for a motorcycle endorsement instruction permit shall present a valid West Virginia license, pass the vision test described in section 3 of this rule and pass a written examination as described in section 3 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.

8.3. 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 4 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.

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

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

8.6. 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:

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

8.6.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

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

§91-4-9 Commercial Driver's License

9.1. 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.

9.2. 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.

9.3. In addition to the West Virginia Driver Licensing Handbook, the West Virginia Division of Motor Vehicles Commercial Driver's License Manual is the official procedures of the Division concerning the examination and qualification of applicants for a Commercial Driver's License.

9.4. A licensee shall maintain a current Federal Motor Carrier Safety Administration Medical Examiners Certificate (physical long form) on file with the Division. Any Certificate more than two years old is not current.

9.5. 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.

9.6. The following provisions apply to the Intrastate Waiver Program for drivers' of commercial vehicles:

9.6.a. Individuals 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;

9.6.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;

9.6.c. An individual 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 are met;

9.6.d. An applicant 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

9.6.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.

9.6.f. 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:

1. Paraplegia or Quadriplegia: 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;

2. 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:

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

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

C. The applicant does not exhibit uncorrectable double vision;

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

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

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

3. 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;

4. 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;

5. 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:

A. 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;

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

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

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

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

7. 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:

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

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

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

8. 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).

9.6.g. 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.

9.6.h. 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.

9.6.i. 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.

9.6.j. Intrastate waivers granted by another state are not valid in West Virginia.

9.7. 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.

9.8. 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.

9.9. Designated employees of the Division shall conduct random checks of third party examinations for compliance with state and federal regulations and any written agreement.

9.10. All third party examiners shall maintain current certification.

§91-4-10 Transfer of License

10.1. An applicant for transfer of a license shall present and surrender any license issued by another state or country in a reciprocal agreement upon application for a West Virginia license. An applicant for transfer of a license licensed in another state who is unable to present the out-of-state license or obtain a duplicate license shall present a certified copy of the out-of-state driving record with a letter from the licensee requesting cancellation of the out-of-state license. An applicant for transfer of a license licensed in a foreign country in a reciprocal agreement with the Division must have a valid license in his or her possession in order to transfer the license.

10.2. The Division may exempt an applicant for transfer of a license over the age of eighteen who has a valid unexpired license issued by another state, or by a country in a reciprocal agreement with the Division, from the written or road skills examination. All other licensing requirements apply.

10.3. The Division may incorporate the driving record from a transfer applicant's prior licensing state or jurisdiction into the record maintained by the Division.

§91-4-11 Identification Cards

11.1. The Division may issue a children's identification card to any person two years old or older but younger than sixteen years old. A custodial parent or legal guardian shall accompany the child at the time of application. The Division may use the information from a children's identification card to assist law-enforcement officials to locate a missing or kidnapped child.

11.2. The Division may issue an identification card to any person over sixteen years old or older unless the person has a valid license or instruction permit.

11.3. 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 or instruction permit.

11.4. An application for an identification card or children's identification card shall include information in accordance with section three of this rule.