

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Division of Motor Vehicles TITLE NUMBER: 91

CITE AUTHORITY West Virginia Code 17A-2-9

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 91 CSR 6

TITLE OF RULE BEING AMENDED: Motor Vehicle Dealers

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Joe E. Miller, Commissioner

SEP 16 1 46 PM '99
OFFICE OF THE CLERK
WEST VIRGINIA

(PROPOSED)
WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF MOTOR VEHICLES
91CSR6

Title: Motor Vehicle Dealers, Wrecker/Dismantler/Rebuilders and License Services, Automobile Auctions, Vehicle Leasing Companies, Daily Passenger Rental Car Businesses, and Administrative Due Process

§91-6-1 General

1.1. Scope - This legislative rule establishes requirements for licensing of motor vehicle dealers, wrecker/dismantler/rebuilders, license services, automobile auctions, vehicle leasing and rental companies and administrative due process.

1.2. Authority - West Virginia Code §17A-2-9, §17A-6-3, §17A-6B-13, and §17A-6C-17.

1.3. Filing Date -

1.4. Effective Date -

1.5. Application and Enforcement - This legislative rule applies to applicants and licensees of businesses subject to the provisions of West Virginia Code §17A-6A-1 et. seq. West Virginia Code §17A-6B-1 et. seq. West Virginia Code §17A-6C-1 et seq. and persons engaged in the business of leasing and renting motor vehicles. Enforcement of this legislative rule is vested with the Commissioner of Motor Vehicles or the Commissioner's lawful designee.

§91-6-2 REQUIREMENTS FOR LICENSE - GENERAL

2.1. Application for License

2.1.1. All applications for a license shall be typewritten or printed legibly. The applicant shall answer all questions in detail. If the applicant fails to complete the application in full, the Division may return the application to the applicant without further processing. The applicant shall identify the type of licensed business it is engaged in as part of the name in which the license is obtained. The use of generic terms such as "motors" or "auto dealer" to identify the type of licensed business is reserved to Class D licensees, and further identification of those businesses is not required.

2.1.2. The applicant shall attach photographs of the dealer office interior and

exterior, display lot and sign to the application for a dealer license in the space provided. This requirement does not apply to manufacturers, transporters or financial institutions.

2.1.3. A licensee shall file any application for renewal of a license with the Division at least thirty days prior to the expiration of the current license. A licensee who fails to file an application for renewal at least thirty days prior to the expiration of the dealer license is required to pay the original license fee prescribed in West Virginia Code § 17A-6-10(a).

2.1.4. An applicant shall complete a detailed application form designated by the Commissioner, upon initial application for a license. In the case of a Class D and DUC dealer, the licensee may use an abbreviated application form designated by the Commissioner, for license renewal.

2.1.5. ~~The Dealer License Application Forms are as follows:~~

- ~~a. DMV-126-A-DS Application for New or Used Motor Vehicle Dealer License Certificate;~~
- ~~b. DMV-126-B-DS Application for Trailer , Semi-Trailer or House Trailer Dealer License Certificate;~~
- ~~c. DMV-126-C-DS Application for Motorcycle or Motor Scooter Dealer License Certificate;~~
- ~~d. DMV-126-D-DS Application for Wrecker/Dismantler /Rebuilder Dealer License Certificate;~~
- ~~e. DMV-126-E-DS Application for renewal of New or Used Motor Vehicle Dealer License Certificate;~~
- ~~f. DMV-126-F-DS Application for Financial Institution License Certificate and Special Plate or Plates;~~
- ~~g. DMV-126-G-DS Application for Manufacturer or Transporter of License Certificate and Special Plate or Plates;~~
- ~~h. DMV-126-H-DS Application for Recreational Vehicle Dealer License Certificate; and~~
- ~~i. DMV-126-DS-AA Application for Automobile Auction License Certificate.~~

2.2. Established Place of Business

2.2.1. Each dealer location shall meet the "Established Place of Business" requirements of West Virginia Code §17A-6-1 et seq.

2.2.2. Businesses not related to the furtherance of the licensee's vehicle business may not operate from the location of the dealership. However, a Class D or DUC licensee may have one attached single residential rental unit located and operated in accordance with the provisions of West Virginia Code §17A-6-1(a)(17) and (19).

2.2.3. A place of residence may not qualify as an established place of business, and a place of residence may not be located at the established place of business except as provided in subdivision 2 of this subsection. Any residence located in close proximity to a place of business must shall be clearly separated from the business.

2.2.4. Additional locations for a dealership are subject to the following criteria:

a. A licensee shall display and offer for sale only vehicles owned by him or her at only those locations designated on the dealer license certificate;

b. Each additional location shall have an office and display lot which meet the same minimum standards required of the primary location; and

c. A licensee may use dealer special plates issued to the primary location at additional locations licensed by the Division. The trade name and ownership of the dealership shall be identical to that of the primary location.

2.5. Off Premises Sales

2.5.1. Prior Approval - A licensee shall not display or sell motor vehicles, motorcycles, trailers, house trailers or recreational vehicles at a location other than the licensed location or locations unless the Commissioner grants prior approval. The licensee shall request approval at least ten (10) days prior to the date the temporary location is to be established.

2.5.2. Term of Approval - The Commissioner shall not approve a temporary additional location for more than a ten (10) day period of time, subject to renewal at his or her discretion.

2.5.3. Display of Approval Certificate - The licensee shall display the certificate of approval for the temporary additional dealer location in a conspicuous place at the temporary additional dealer location.

2.6. Dealership Office

2.6.1. The licensee shall locate the business office at the dealership location. The office shall have inside dimensions of at least 144 square feet and be a permanent structure suitable for the purpose of operating the business of the dealership.

2.6.2. Trailer type structures shall have a foundation and be fully underpinned and be suitable for the purpose of operating the business of the dealership.

2.6.3. The licensee shall equip the office with adequate heating and electric service and the office shall not contain any items which would constitute a danger to the public.

2.6.4. The licensee shall equip the office with the equipment required to conduct a business including a desk, chairs and filing facilities.

2.6.5. A Class D, Class DUC or Class AA licensee shall have a telephone listed in the name of the dealership at the dealership office.

2.6.6. The licensee shall maintain and keep all records for the dealership on the premises and have all records available during regular posted business hours for inspection by authorized representatives of the Division and all law enforcement officers.

2.6.7. The licensee shall maintain office hours open to the public a minimum of twenty (20) hours per week with ten (10) of those hours being between 9:30 A.M. & 8:30 P.M., Monday through Saturday. The dealership shall be open a minimum of forty (40) weeks per year. The dealership shall notify the Division in advance of the dates they intend to be closed. The licensee shall post the business hours in a conspicuous place at the dealership office.

2.7. Dealership Sign

2.7.1. The licensee shall permanently affix a sign on the premises of the dealership which shall clearly and specifically identify the business and class of dealer licensure which is being conducted at the location except for Class D licensees which may use generic terms such as "motors" or "auto dealer" as provided in Section subdivision 2.1.1 of this rule.

2.7.2. The sign shall contain letters at least four inches in height and of such size as to be reasonably legible from the nearest public road.

• 2.8 Display Area

2.8.1. The display area shall have a minimum of 1200 square feet located immediately adjacent to the dealership office. This requirement does not apply to manufacturer, reposessor, or transporter licensees.

2.8.2. The licensee shall keep the display area free of junk, junk vehicles, scrap iron and trash of all types.

2.8.3. The display area shall have a covering of concrete, blacktop, gravel or other type material making it suitable for vehicle display under all weather conditions.

2.8.4. The licensee shall keep the display area free of any hazardous condition which would endanger the public.

2.9. Service Facilities

2.9.1. Each licensee with a Class D or Class DUC dealer license shall have facilities and space adequate to carry out servicing and repairs necessary to keep and carry out all representations, warranties and agreements made with respect to vehicles sold by the dealership in accordance with the provisions of West Virginia Code §17A-6-1(a)(17) and (19).

2.9.2. A Class DUC dealer licensee may provide service and repair facilities through written agreement with another person or persons. The licensee shall submit a copy of the agreement with the application for a dealer license. The person providing the contracted services shall maintain regular business hours, and be located within a reasonable distance from the dealership location. The execution of a service and repair agreement shall serve to make these service facilities an extension of the dealership location and subject to inspection by representatives of the Division during regular business hours.

2.10. State and Other Political Subdivision Requirements.

2.10.1. Each dealership location shall possess all current State and local tax licenses applicable to the type of business being conducted.

2.10.2. Each dealership location shall meet all local zoning requirements for the business location.

2.10.3. The licensee shall display all tax licenses in the dealership office.

2.10.4. The licensee shall as a condition of licensing pay any and all taxes or fees due the State or any political subdivision of the State.

2.11. Miscellaneous

2.11.1. Recreational vehicle, utility trailer, or motorcycle dealer licensees conducting business at a location such as a department store, sporting goods store, marine goods store or a similar type business, are exempt from the requirements of ~~Section~~ Subdivision 2.6.1 and 2.6.2 of this legislative rule. Licensees are subject to the "Established Place of Business" requirements of

West Virginia Code §17A-6-1(a)(20).

2.11.2. A licensee who sells vehicles on consignment in conjunction with the dealership business shall not use dealer special plates on any consignment vehicle being offered for sale. All consignment vehicles shall be so designated, properly insured, titled and registered.

2.11.3. In accordance with the provisions of West Virginia Code §17A-6-1(a)(17) and (19), the Commissioner shall not issue a dealer license for a location where the retail sale of gasoline or fuel takes place.

2.12. Bonding Requirements

2.12.1. The licensee, with the exception of a manufacturer, transporter or reposessor licensee, shall post a surety bond of ten thousand dollars prior to licensing pursuant to West Virginia Code §17A-6-4(f) on form DMV-126-DS-P. The licensee shall complete this form in full upon the original application for license and each subsequent renewal. A licensee shall post a separate bond for each dealer license.

2.12.2. The bond shall be conditioned on the premise that the licensee will not, in the conduct of business, practice any fraud, or make any fraudulent representation which causes a financial loss to any purchaser, seller, or financial institution or agency, or the State of West Virginia.

2.12.3. The licensee shall obtain the surety bond with corporate surety from a bonding company licensed to do business in the State of West Virginia.

2.12.4. The licensee shall obtain the surety bond in the trade name under which the dealership is being operated.

2.12.5. The surety bond shall run concurrently from the date the license is issued or renewed to the expiration of the license.

2.12.6. The surety bonding company shall give the Division thirty (30) days notice, by certified mail, of the cancellation of a bond. The Division shall consider the surety bond as being in effect until notice is received by the Division from the bonding company.

2.12.7. The Commissioner shall immediately revoke the dealer license upon cancellation of the bond and without proper replacement of the bond.

2.12.8. The licensee shall notify the Division and the bonding company of any change in any information contained in the application for the surety bond.

2.12.9. The Division may notify the bonding company of any audit discrepancies or

of revocation or suspension proceedings against the licensee.

2.13. Insurance Requirements

2.13.1. The licensee shall secure dealer liability insurance pursuant to West Virginia Code §17A-6-4(a) from an insurance company licensed to do business in the State of West Virginia.

2.13.2. The licensee shall provide proof of liability insurance on form DMV-126-DS-J. An authorized representative of the insurance company shall execute the completed insurance certificate, in the trade name of the dealership whether it ~~be~~ is an individual, co-partnership or corporation. The certificate shall show that insurance coverage is in force and in effect when the application for a dealer license is made, and that insurance coverage remains in effect throughout the effective period of the dealer license.

2.13.3. The licensee shall file a new certificate of insurance with each renewal application.

2.13.4. The insurance company shall give the Division thirty (30) days notice of cancellation of dealer liability coverage on form DMV-126-DS-K. The Commissioner shall immediately revoke the dealer license upon notice of the cancellation of insurance coverage, and without proper replacement of the coverage.

2.13.5. The licensee shall require the purchaser of a motor vehicle with a dealer transfer of a license plate to complete an owner's statement of insurance (WV-4A) or a valid certificate of insurance at the time of application for transfer of plates. The licensee shall advise the purchaser that completion of the owner's statement of insurance means the purchaser is swearing under penalty of false swearing that there is liability insurance in effect on the vehicle and that the statement is subject to the random sample verification procedure provided for in West Virginia Code §17A-3-3(a)(5) and Division of Motor Vehicles Legislative Rule, Regulations relating to Compulsory Motor Vehicle Liability Insurance 91 CSR 13.

2.13.6. The licensee shall require that the purchaser of a motor vehicle with dealer issuance of a temporary registration plate complete insurance information on DMV Form 40. The licensee shall submit the DMV Form 40 to the Division within five (5) working days of the issuance of the temporary registration plate. The licensee shall advise the purchaser that completion of the owner's statement of insurance means the purchaser is swearing under penalty of false swearing that there is insurance coverage in effect on the vehicle and that the statement is subject to the random sample verification procedure provided for in West Virginia Code §17A-3-39(a)(5)a and Division of Motor Vehicles Legislative Rule, Regulations relating to Compulsory Motor Vehicle Liability Insurance 91 CSR 13.

2.14. Issuance of Temporary Registration Plates

2.14.1. The licensee shall make application for temporary registration plates on form DMV-126-F-DS.

2.14.2. A licensee may apply for a maximum of two hundred plates at one time.

2.14.3. The licensee shall account for all temporary registration plates previously issued by the dealership before the Commissioner will approve any application for additional temporary registration plates.

2.14.4. The Division shall not issue any additional temporary registration plates to the licensee if the licensee's application shows fifty (50) or more temporary registration plates on hand from the previous allotment assigned to the licensee.

2.14.5. The licensee shall issue temporary registration plates in numerical order.

2.14.6. The licensee shall ~~punch out~~ insert the date of issuance and expiration date and shall also insert clearly and legibly on the face of each temporary registration plate the name, year, make and vehicle identification number (VIN) of the vehicle to which the temporary registration is assigned.

2.14.7. The licensee shall complete the temporary registration certificate (WV Form 40) in triplicate. Each copy shall be clear and legible. The licensee shall give the original certificate to the customer, forward the second copy to the Division within five (5) working days from the date of issuance and retain the third copy.

2.14.8. The licensee shall maintain a numerical log of all plates assigned to the dealership. The licensee shall keep a record of all temporary registration plates issued by the dealership for a period of three (3) years from the date of issuance.

2.14.9. The licensee shall not issue, assign, transfer or deliver a temporary registration plate to anyone other than the bonafide purchaser of the vehicle sold or delivered by the dealership.

2.14.10. The licensee shall not issue a temporary registration plate for a vehicle which has been purchased from another dealer.

2.14.11. The licensee shall not issue a second temporary registration plate on a vehicle previously assigned a West Virginia temporary registration plate. A licensee shall not extend the period of time on a temporary plate.

2.14.12. The licensee shall not issue a temporary registration plate containing any misstatement of fact.

2.14.13. If it is determined by the Division that a licensee is not in compliance with

the provisions of law and this legislative rule relative to temporary registration plates, the Commissioner may suspend the right of the licensee to issue temporary registration plates pursuant to West Virginia Code §17A-6-15 (f).

2.15. Dealer Franchise Agreement

2.15.1. Each licensee conducting a business in new motor vehicles or house trailers ~~must~~ shall obtain a franchise from the manufacturer to sell a particular brand of motor vehicle or house trailer.

2.15.2. The licensee shall submit on any original or renewal application, or upon the request of the Division, a copy of the franchise or sales agreement the licensee has with the manufacturer.

2.16. Dealer License Certificate

2.16.1. The licensee shall conspicuously display the dealer license certificate in the office of the dealer's place of business.

2.16.2. The licensee shall conspicuously display a certified copy of the dealer license certificate issued pursuant to West Virginia Code §17A-6-8(b) for approved additional locations in the office of each additional location.

2.16.3. The licensee shall make immediate application to the Division for a duplicate certificate if a dealer license certificate becomes lost or mutilated.

2.16.4. The licensee shall use the assigned dealer license number on all forms forwarded to the Division.

2.16.5. The licensee shall immediately return all license certificates, temporary registration certificates and dealer special plates to the Division upon suspension or revocation the dealer license, or upon exhaustion of an administrative appeal of the licensee's suspension or revocation. The licensee may be subject to civil penalties and fines if he or she fails to comply with the provisions of this subdivision.

2.17. Change in Dealership

2.17.1. Pursuant to West Virginia Code §17A-6-9, if any of the following changes in ~~the~~ dealership occur, the licensee shall, within sixty (60) days, file a new application:

a. A change of the location of any place of business; however the licensee shall notify the Division of any change of mailing address within twenty days;

- b. A change in the name or trade name under which the licensee engages or will engage in business;
- c. The death of the licensee or any partner or partners of the licensee;
- d. A change in any partners, officers or directors of the business;
- e. A change in ownership of the business;
- f. A change in the type of legal entity by which the licensee engages or will engage in the business; or
- g. The appointment of any trustee in bankruptcy, trustee under an assignment of the benefit of creditors, master or receiver.

2.18. Dealer Special Plates

2.18.1. The licensee may use dealer special plates issued in accordance with West Virginia Code §17A-6-10 pursuant to the provisions of West Virginia Code §17A-6-13 on a vehicle owned by the licensee which is operated with the licensee's knowledge and consent.

2.18.2. The licensee shall not use a dealer special plate on any work or service vehicle, or on any vehicle offered for hire or lease, or on any vehicle sold by a dealer to a customer, or on any vehicle not registrable for highway use. However, a Class D licensee may use a Class D special license plate on one Class A type van or pick-up truck which is clearly identified as a parts truck for the licensee and is exclusively used for the transportation of parts for the dealership.

2.18.3. The licensee may use a Class D or Class DUC dealer special plate on one courtesy vehicle per dealership. For the purposes of the rule, a courtesy vehicle means a vehicle used to transport customers to and from the dealership while the customers vehicle is being serviced.

2.18.4. A licensee shall not use a Class D-T/R special plate for the purpose of operating a motor vehicle upon the streets and highways of this State, or on any house trailer or other trailer owned by the licensee and offered for hire or lease, or on any house trailer or other trailer which has been sold by the licensee to a customer. A Class D-T/R special plate may be used in moving a house trailer sold by a house trailer dealer to a customer for one trip only from the dealer's established place of business to a place designated by the customer.

2.18.5. The licensee shall not use a Class F special plate for the purpose of operating any type of motor vehicle other than a motorcycle on the streets and highways of this State, or on any motorcycle offered for hire or lease, or on any motorcycle which has been sold by a dealer to a customer.

2.18.6. A manufacturer or transporter licensee may operate a motor vehicle displaying special dealer plates issued pursuant to West Virginia §17A-6-10(a) on the streets or highways of this State solely for the purpose of transporting or testing the vehicle. ~~Such~~ These plates shall not be used on any work or service vehicles.

2.18.7. A financial institution licensee may use special dealer plates only when operating a vehicle in conjunction with the repossession or sale of a vehicle pursuant to the provisions of West Virginia Code §17A-6-10(b).

2.18.8. No licensee may subcontract, broker, lease or rent a dealer special license plate.

§91-6-3 WRECKER/DISMANTLER/REBUILDER DEALER LICENSE

3.1. Application for License

3.1.1. All applications for a license shall be typewritten or printed legibly. The applicant shall complete all questions in detail. If the applicant fails to complete the application, the Division may return the application to the applicant without further processing.

3.1.2. The applicant shall attach photographs of the dealer's office interior and exterior, to the application for a dealer license in the space provided. This requirement does not apply to manufacturers, transporters or financial institutions.

3.2. Established Place of Business

3.2.1. The licensee shall locate the place of business for a wrecker/dismantler/rebuilder in a permanent structure suitable for the purpose of dismantling and/or rebuilding motor vehicles.

3.2.2. The licensee shall equip the place of business with adequate heating and lighting.

3.2.3. The place of business shall have adequate facilities for the storage of records and to conduct business.

3.2.4. The wrecker/dismantler/rebuilder licensee shall maintain all records on the premises and keep them available during regular business hours for inspection by authorized representatives of the Division and all law enforcement officers.

3.2.5. A place of residence does not qualify as an established place of business.

3.3. Dealership Sign

3.3.1. The licensee shall permanently affix a sign on the premises of the wrecker/dismantler/rebuilder which clearly and specifically identifies that the business which is being conducted at the location is a wrecker/dismantler/rebuilder business.

3.3.2. The sign shall contain letters which are at least four (4) inches high and of such size as to be reasonably legible from the nearest public road.

3.4. Display Area

3.4.1. The licensee shall have a display area if the wrecker/dismantler/rebuilder has vehicles in inventory for sale.

3.4.2. The licensee shall locate the display area immediately adjacent to the licensee's place of business.

3.4.3. The licensee shall keep the display area free of junk vehicles, miscellaneous junk and trash of all types.

3.4.4. The display area, if required, shall have some type of all weather surface making it suitable for vehicle display under all weather conditions.

3.4.5. The licensee shall keep the display area, if a display area is required, free of any hazardous condition which would endanger the public.

3.4.6. The display area, if a display area is required, shall not be located at a place of residence.

3.5. Bonding Requirements

3.5.1. The applicant for a wrecker/dismantler/rebuilder license shall post a surety bond in the amount of ten thousand dollars prior to licensing pursuant to West Virginia Code §17A-6-4(f) on form DMV-126-DS-P. The wrecker/dismantler/rebuilder shall complete this form in full upon the original application for license and each subsequent renewal. A separate bond shall be posted for each license.

3.5.2. The bond shall be conditioned on the premise that the licensee will not, in the conduct of business, practice any fraud, or make any fraudulent representation which shall cause a financial loss to any purchaser, seller, or financial institution or agency, or the State of West Virginia.

3.5.3. The wrecker/dismantler/rebuilder licensee shall obtain the surety bond with corporate surety from a bonding company licensed to do business in the State of West Virginia.

3.5.4. The wrecker/dismantler/rebuilder licensee shall obtain the surety bond in the trade name under which the business is being operated.

3.5.5. The surety bond shall run concurrently from the date the license is issued or renewed to the expiration of the license.

3.5.6. The surety bonding company shall give the Division thirty (30) days notice, by certified mail, of the cancellation of the bond. The Division shall consider the surety bond as being in effect until notice of the cancellation is received by the Division.

3.5.7. The Commissioner shall immediately revoke the wrecker/dismantler/rebuilder license upon cancellation of the bond and without proper replacement of the bond.

3.5.8. The licensee shall notify the Division and the bonding company of any change in any information contained in the application for the surety bond.

3.5.9. The Division may notify the bonding company of any audit discrepancies or of revocation or suspension proceedings against the wrecker/dismantler/rebuilder licensee.

3.6 Insurance Requirements

3.6.1. A wrecker/dismantler/rebuilder licensee shall secure dealer liability insurance pursuant to West Virginia Code §17A-6-4(a) from an insurance company licensed to do business in the State of West Virginia.

3.6.2. The wrecker/dismantler/rebuilder licensee shall provide proof of liability insurance on form DMV-126-DS-J. The completed certificate shall be properly executed by an authorized representative of the insurance company. The certificate shall be issued in the trade name of the dealership, whether it ~~be~~ is an individual, co-partnership or corporation. The certificate shall be in force and in effect when the application is made and shall remain in effect throughout the effective period of the dealer license.

3.6.3. The dealer shall file a new certificate of insurance with each renewal application.

3.6.4. The insurance company shall give the Division thirty (30) days notice of cancellation of dealer liability coverage on form DMV-126-DS-K. The Commissioner shall immediately revoke the wrecker/dismantler/rebuilder license upon notice of cancellation of coverage and without proper replacement.

3.6.5. The wrecker/dismantler/rebuilder licensee shall require the purchaser of a motor vehicle with dealer transfer of a license plate to complete an owner's statement of insurance (WV-4A) at the time of application for transfer of plates. The licensee shall advise the purchaser

that completion of the owner's statement of insurance means the purchaser is swearing under penalty of false swearing that there is liability insurance in effect on the vehicle and that the statement is subject to the random sample verification procedure provided for in West Virginia Code §17A-3-3(a)(5) and Division of Motor Vehicles Legislative Rule, Regulations relating to Compulsory Motor Vehicle Liability Insurance 91 CSR 13.

3.6.6. The wrecker/dismantler/rebuilder licensee shall require the purchaser of a motor vehicle with dealer issuance of a temporary registration plate to complete insurance information on DMV Form 40. The dealer shall submit the DMV Form 40 to the Division within five (5) days of the issuance of the temporary registration plate. The dealer shall advise the purchaser that completion of the owner's statement of insurance means the purchaser is swearing under penalty of false swearing that there is insurance coverage in effect on the vehicle and that the statement is subject to the random sample verification procedure provided for in West Virginia Code §17A-3-3(a)(5) and Division of Motor Vehicles Legislative Rule, Regulations relating to Compulsory Motor Vehicle Liability Insurance 91 CSR 13.

3.7. License Certificate

3.7.1. The wrecker/dismantler/rebuilder licensee shall conspicuously display the wrecker/dismantler/rebuilder's license certificate at the wrecker/dismantler/rebuilder's place of business.

3.7.2. The licensee shall display a certified copy of the license certificate issued pursuant to West Virginia Code §17A-6-8(b) for approved additional locations at each additional location.

3.7.3. The wrecker/dismantler/rebuilder shall make immediate application to the Division for a duplicate certificate if the license certificate is lost or mutilated.

3.7.4. The wrecker/dismantler/rebuilder licensee shall use the assigned wrecker/dismantler/rebuilder's license number on all forms forwarded to the Division.

3.7.5. The wrecker/dismantler/rebuilder licensee shall immediately return all license certificates, temporary registration plates and dealer special plates to the Division upon suspension or revocation, of his or her license or upon exhaustion of an administrative appeal.

3.8. Change in Business

3.8.1 Pursuant to West Virginia Code §17A-6-9, if any of the following changes occur, the wrecker/dismantler/rebuilder shall, within sixty (60) days, file a new application:

a. A change of the location of any place of business: however the licensee shall notify the Division of any change of mailing address within twenty days;

- b. A change in the name or trade name under which the licensee engages or will engage in business;
- c. The death of the licensee or any partner or partners of the licensee;
- d. A change in any partners, officers or directors of the business;
- e. A change in ownership of the business;
- f. A change in the type of legal entity by which the licensee engages or will engage in the business; or
- g. The appointment of any trustee in bankruptcy, trustee under an assignment for the benefit of creditors, master or receiver.

3.9. Dealer Special Plates

3.9.1. In accordance with West Virginia Code §17A-6-10(g), the wrecker/dismantler/rebuilder licensee is entitled to a maximum of four (4) "Towing Only" special plates and one (1) "Demo" special plate.

3.9.2. The wrecker/dismantler/rebuilder licensee may use the "Towing Only" special plate on a vehicle being towed by a vehicle which is properly licensed and which is owned by the wrecker/dismantler/rebuilder.

3.9.3. The wrecker/dismantler/rebuilder licensee may use the "Towing Only" special plate only on a vehicle which is owned by the wrecker/dismantler/rebuilder or upon which the salvage certificate has been properly assigned to the wrecker/dismantler/rebuilder in accordance with West Virginia Code §17A-4-10.

3.9.4. The wrecker/dismantler/rebuilder licensee may use the "Demo" special plate only on a vehicle which is owned by the wrecker/dismantler/rebuilder or upon which the salvage certificate has been properly assigned to the wrecker/dismantler/rebuilder in accordance with West Virginia Code §17A-4-10.

3.9.5. The wrecker/dismantler/rebuilder licensee may use the "Demo" special plate only under the following circumstances:

- a. To allow a prospective purchaser to test drive a vehicle;
- b. To drive a vehicle to a Division of Motor Vehicles examination location or to an authorized state inspection station; or

c. To drive a vehicle to an auction.

3.9.6. The wrecker/dismantler/rebuilder licensee shall keep a written record of the use of a "Demo" special plate. The record shall include: 1) the name and address of the person driving the vehicle; 2) the date and time the vehicle was driven; 3) the odometer reading before and after the vehicle was driven; and 4) the reason the vehicle was driven.

3.9.7. The wrecker/dismantler/rebuilder licensee shall follow the provisions set forth by West Virginia Code §17A-4-10 and procedures established by the Division when titling a reconstructed vehicle.

3.9.8. The wrecker/dismantler/rebuilder licensee may deal only with a salvage vehicle upon which a salvage certificate has been issued, or in a salvage vehicle which the wrecker/dismantler/rebuilder has rebuilt.

3.9.9. A wrecker/dismantler/rebuilder licensee shall follow the provisions of West Virginia Code §17A-6-15 when issuing temporary registration plates.

3.9.10. The wrecker/dismantler/rebuilder licensee shall follow the provisions of Subsection 2.14 of this rule when issuing temporary registration plates.

§91-6-4 LICENSE SERVICES - GENERAL

4.1. Application for License

4.1.1. In accordance with the provisions of West Virginia Code §17A-6B-1, any person processing Division of Motor Vehicles documents for compensation when the service is offered to the general public shall first obtain a license certificate to operate a License Service business. For the purposes of this rule the term, "persons processing documents for compensation" does not include bonafide full time employees of a licensed motor vehicle dealer processing documents related to a vehicle sold by the dealer. The employee ~~cannot~~ may not be employed by more than one dealership to be exempted from the licensing requirements of this rule.

4.1.2. All applications for a license shall be typewritten or printed legibly. The applicant shall complete the application in full. If the applicant fails to complete the application in full, the Division may return the application to the applicant without further processing.

4.1.3. The licensee shall file an application for renewal of a license with the Division at ~~least~~ thirty days prior to the expiration of the current license. The licensing period is January 1 to December 31.

4.1.4. For the purposes of this section. ~~The~~ the term applicant, has the following meaning; a person operating in his or her own name or under a trade name, two or more partners

operating in his or her own name or under a trade name, two or more partners operating under a co-partnership name or under a trade name, or the officers and directors of a corporation operating under the corporation name.

4.2. ~~Establish~~ Established Place of Business

4.2.1. The License Service office shall contain the equipment required to conduct a business including a desk, chairs and filing facilities for the maintenance of records.

4.2.2. The office location may be self-standing or in a residence. The office ~~must~~ shall have a telephone listed in the name of the License Service.

4.2.3. The License Service licensee shall keep all records on the premises.

4.2.4. The License Service may set any office hours it chooses. However, the hours shall be based on a regular schedule and be posted in a conspicuous place in order to facilitate the availability of records for review by the Division. An employee of the License Service ~~must~~ shall be present during posted business hours.

4.2.5. State and other political subdivision requirements.

- a) Each office location shall possess all current State and local licenses applicable to a business of the type being conducted.
- b) Each office location shall meet all local zoning requirement for the business location.
- c) The licensee shall display all tax licenses in the office.
- d) The licensee shall pay any and all taxes due the State or any political subdivision of the State.

4.3. Bonding Requirements

4.3.1. In accordance with the provisions of the West Virginia Code §17A-6B-2 a bond in the penal sum of twenty-five thousand dollars is required. The licensee shall have the bond completed on form DMV-126-DS-P. The bond shall be conditioned on the premise that the applicant will not, in the conduct of business, practice any fraud, or make any fraudulent representation which causes a financial loss to any purchaser, seller, financial institution, agency, or the State of West Virginia.

4.3.2. The licensee shall secure the surety bond with corporate surety from a bonding company licensed to do business in the State of West Virginia.

4.3.3. The licensee shall obtain the surety bond in the trade name under which the License Service is being operated.

4.3.4. The surety bond shall run concurrently from the date the license is issued or renewed to the expiration of the license.

4.3.5. The surety bonding company shall give the Division thirty (30) days notice by certified mail, of the cancellation of the bond. The Division shall consider the surety bond as being in effect until notice of the cancellation is received by the Division.

4.3.6. The Commissioner shall immediately revoke the License Service license upon cancellation of the bond and without proper replacement of the bond.

4.3.7. The licensee shall notify the Division and the bonding company of any change in any information contained in the application for the surety bond.

4.3.8. The Division may notify the bonding company of audit discrepancies or revocation or suspension proceedings against the licensee.

4.4. License Service License Certificate

4.4.1. The licensee shall conspicuously display the License Service license certificate in the office of the License Service's place of business.

4.4.2. The licensee shall conspicuously display a certified copy of the license certificate issued pursuant to West Virginia Code §17A-6B-7 for approved additional locations in the office of each additional location.

4.4.3. The licensee shall make immediate application to the Division for a duplicate certificate if a license certificate becomes lost or mutilated.

4.4.4. The licensee shall use the assigned license number on all forms forwarded to the Division.

4.4.5. Upon exhaustion of an administrative appeal of a license suspension or revocation, or upon revocation for failure to maintain the bond pursuant to West Virginia Code §17A-6B-9(c), or upon voluntary cancellation of the dealer license, the licensee shall immediately return all license certificates, and/or temporary registration certificates to the Division.

4.5. Change in License Service

4.5.1. Pursuant to West Virginia Code §17A-6B-8, if any of the following changes

occur, the licensee shall, within sixty (60) days, file a new application for license:

- a. Change of the location of any place of business; however the licensee shall notify the Division of any change of mailing address within twenty days;
- b. A change in the name or trade name under which the licensee engages or will engage in business;
- c. The death of the licensee or any partner or partners ~~thereof~~ of the licensee;
- d. A change in any partners, officers or directors;
- e. A change in ownership of the business;
- f. A change in the type of legal entity by which the licensee engages or will engage in the business; or
- g. The appointment of any trustee in bankruptcy, trustee under an assignment for the benefit of creditors, master or receiver.

4.6. Issuance of Temporary Registration Plates

4.6.1. The licensee shall make application for temporary registration plates on form DMV-126-F-DS.

4.6.2. A licensee may apply for a maximum of two hundred plates at one time.

4.6.3. The licensee shall account for all temporary registration plates previously issued by the License Service before the Commissioner will approve any application for additional temporary registration plates.

4.6.4. The Division shall not issue any additional temporary registration plates to the licensee if the licensee's application shows fifty (50) or more temporary registration plates on hand from the previous allotment assigned to the licensee.

4.6.5. The licensee shall issue temporary registration plates in numerical order.

4.6.6. The licensee shall ~~punch out~~ insert the date of issuance and the expiration date and shall also insert clearly and legibly on the face of each temporary registration plate the name, year, make and vehicle identification number (VIN) of the vehicle to which the temporary registration is assigned.

4.6.7. The licensee shall complete the temporary registration certificate (WV Form 40) in triplicate. Each copy shall be clear and legible. The licensee shall give the original certificate to the customer, forward the second copy to the Division and retain the third copy.

4.6.8. The licensee shall maintain a numerical log of all plates assigned to the License Service. The licensee shall keep a record of all temporary registration plates issued by the License Service for a period of three (3) years from the date of issuance.

4.6.9. The licensee shall not issue, assign, transfer or deliver a temporary registration plate to anyone other than the bonafide applicant for a West Virginia title and registration to the vehicle to which the temporary registration plate is assigned, and not until the applicant has submitted all documents with the fees and taxes necessary to obtain a West Virginia title and registration.

4.6.10. The licensee shall not issue a temporary registration plate for a vehicle which has been purchased from a licensed West Virginia dealer. However, a licensee may issue a temporary registration plate for vehicles entering West Virginia from another state or jurisdiction irrespective of the place of purchase.

4.6.11. The licensee shall not issue a second temporary registration plate on a vehicle previously assigned a West Virginia temporary registration plate. A license shall not extend the period of time on a temporary plate.

4.6.12. The licensee shall not issue a temporary registration plate containing any misstatement of fact.

4.6.13. The fee charged by the licensee for a temporary registration plate shall not exceed \$5.00 as prescribed by West Virginia Code §17A-6B-10(h).

4.6.14. If it is determined by the Division that a licensee is not in compliance with the provisions of law and this legislative rule relative to temporary registration plates, the Commissioner may suspend the right of the licensee to issue temporary registration plates pursuant to West Virginia Code §17A-6B-10(f).

4.7. License Service Record Keeping and Document Processing

4.7.1. In addition to the records as required by West Virginia Code §17A-6B-10 and this rule, the licensee shall maintain a record or log of all work accepted by the License Service for a period of three (3) years from the date of the transaction. The record shall include the name and address of the customer, the vehicle identification information, the type of transaction, the date of transaction and/or any activity relating to the transaction. The licensee shall provide each customer with an itemized receipt and retain a duplicate copy for the licensee's records.

4.7.2. In accordance with the provisions of West Virginia Code §17A-6B-10, the licensee shall not issue a temporary registration plate for a vehicle unless the applicant has provided all necessary titling documents, fees and taxes. The licensee shall forward all title documents, fees and taxes to the division within forty-eight (48) hours of issuance of the temporary registration plate. The postmark on the envelope containing the submitted title documents serves as the measure of compliance.

4.7.3. If an investigation of the licensee's financial records shows that any tax or fee is due the State, the Commissioner shall immediately suspend the License Service's license.

4.7.4. In addition to any administrative license suspension or revocation, the Division may pursue criminal or civil action to collect any taxes or fees due the Division.

4.7.5. The licensee shall keep all records open for inspection by authorized representatives of the Division and all law enforcement officers during the regular posted business hours of the License Service.

4.7.6. When the licensee does not issue a temporary registration plate, the licensee shall submit to the Division all title work or other transactions received from a customer within five (5) days. The licensee shall attempt to notify the customer within five (5) days of all transactions returned for correction.

4.8. Noncompliance with Statute, Rule or Policy

4.8.1. The licensee, as a condition of licensing, agrees to abide by all statutes, or rules, policies and procedures established by the Division in order to provide for the most efficient processing of work.

4.8.2. The Commissioner may suspend the processing of a License Service's documents due to noncompliance with any statute, rule, policy or procedure.

4.8.3. The Commissioner shall suspend or revoke a License Service's license to offer document processing services to the general public for continued noncompliance with any statute, rule, policy, or procedure.

§91-6-5 AUTOMOBILE AUCTION BUSINESSES

5.1. Application for license

5.1.1. All applications for a license shall be typewritten or printed legibly. The applicant shall complete all questions in detail. If the applicant fails to complete the application the Division may return the application to the applicant without further processing.

5.1.2. The applicant shall attach at least one photograph of not less than three by five inches of the established place of business that clearly shows the office, the parking lot and one permanent sign.

5.2. Established Place Of Business

5.2.1. The licensee shall locate the business at a permanent site which is owned or leased by the licensee.

5.2.2. The licensee may not operate any other class of dealership from the location.

5.2.3. The licensee shall have office space of at least one hundred ~~forty-five~~ forty-four square feet. Trailer type structures shall have a foundation and be fully underpinned. The office shall be suitable for the purpose of operating the auction business with adequate heating and electric service as well as a telephone listed in the name of the auction business.

5.2.4. The licensee shall maintain and keep all records for the auction business on the premises, and have all records available during business hours.

5.2.5. The licensee shall maintain parking space for at least one hundred (100) vehicles.

5.2.6. The licensee shall display at least one sign which is clearly visible from the nearest public road specifically identifying the auction business with letters at least four (4) inches in height.

5.3. Bonding Requirements

5.3.1. The applicant for a automobile auction license shall post a surety bond in the amount of twenty-five thousand dollars (\$25,000) prior to licensing pursuant to West Virginia Code §17A-6C-2 on form DMV-126-DS-M. The applicant shall complete this form in full upon the original application for license and each subsequent renewal. A separate bond shall be posted for each license.

5.3.2. The bond shall be conditioned on the premise that the licensee will not, in the conduct of business, practice any fraud, or make any fraudulent representation which shall cause a financial loss to any purchaser, seller or financial institution or agency, or the State of West Virginia.

5.3.3. The automobile auction licensee shall obtain the surety bond with corporate surety from a bonding company licensed to do business in the State of West Virginia.

5.3.4. The automobile auction licensee shall obtain the surety bond in the trade name under which the business is being operated.

5.3.5. The surety bond shall run concurrently from the date the license is issued or renewed to the expiration of the license.

5.3.6. The surety bonding company shall give the Division thirty (30) days notice, by certified mail, of the cancellation of the bond. The Division shall consider the surety bond as being in effect until notice of cancellation is received by the Division.

5.3.7. The Commissioner shall immediately revoke the automobile auction license upon cancellation of the bond and without proper replacement of the bond.

5.3.8. The licensee shall notify the Division and the bonding company of any change in any information contained in the application for the surety bond.

5.3.9. The Division may notify the bonding company of any audit discrepancies or of revocation or suspension proceedings against the automobile auction licensee.

5.4. Insurance Requirements

5.4.1. An automobile auction licensee shall secure dealer liability insurance pursuant to West Virginia Code §17A-6C-2(b) from an insurance company licensed to do business in the State of West Virginia.

5.4.2. The automobile auction licensee shall provide proof of liability insurance on form MV-126-DS-L. The completed certificate shall be properly executed by an authorized representative of the insurance company. The certificate shall be issued in the trade name of the dealership, whether it ~~be~~ is an individual, co-partnership or corporation. The certificate shall be in force and in effect when the application is made and shall remain in effect throughout the effective period of the dealer license.

5.4.3. The dealer shall file a new certificate of insurance with each renewal application.

5.4.4. The insurance company shall give the Division thirty (30) days notice of cancellation of dealer liability coverage on form DMV-126-DS-K. The Commissioner shall immediately revoke the automobile auction license upon notice of cancellation of coverage and without proper replacement of insurance coverage.

5.4.5. The automobile auction licensee shall require the purchaser of a motor vehicle with dealer transfer of a license plate to complete an owner's statement of insurance (WV-4A) at the time of application for a transfer of plates. The licensee shall advise the purchaser that completion of the owner's statement of insurance means the purchaser is swearing under penalty of false swearing that there is liability insurance in effect on the vehicle and that the statement is subject to the random sample verification procedure provided for in West Virginia Code §17A-3-3(a)(5) and

~~Title~~ Division of Motor Vehicles Legislative Rule, Regulations relating to Compulsory Motor Vehicle Liability Insurance 91 CSR 13.

5.4.6. The automobile auction licensee shall require the purchaser of a motor vehicle with dealer issuance of a temporary registration plate to complete insurance information on DMV Form 40. The dealer shall submit the DMV Form 40 to the Division within five (5) days of the issuance of the temporary registration plate. The licensee shall advise the purchaser that completion of the owner's statement of insurance means the purchaser is swearing under penalty of false swearing that there is insurance coverage in effect on the vehicle and that the statement is subject to the random sample verification procedure provided for in West Virginia Code §17A-3-3(a)(5) and Division of Motor Vehicles Legislative Rule, Regulations relating to Compulsory Motor Vehicle Liability Insurance 91 CSR 13.

5.5. License Certificate

5.5.1. The licensee shall conspicuously display the automobile auction's license certificate at the automobile auction's place of business.

5.5.2. The licensee shall display a certified copy of the license certificate issued pursuant to West Virginia Code §17A-6C-8(b) for approved additional locations at each additional location.

5.5.3. The automobile auction licensee shall make immediate application to the Division for a duplicate certificate if the license certificate is lost or mutilated.

5.5.4. The automobile auction licensee shall use the assigned automobile auction's license number on all forms forwarded to the Division.

5.5.5. The automobile auction licensee shall immediately return all license certificates, temporary registration plates and dealer special plates to the Division upon suspension or revocation of his or her license or upon exhaustion of an administrative appeal.

5.6. Change in Business

5.6.1. Pursuant to West Virginia Code §17A-6C-9, if any of the following changes occur the automobile auction licensee shall, within sixty (60) days, file a new application:

a. A change of the location of any place of business: however the licensee shall notify the Division of any change of mailing address within twenty days;

b. A change in the name or trade name under which the licensee engages or will engage in business;

- c. The death of the licensee or any partner or partners of the licensee;
- d. A change in any partners, officers or directors of the business;
- e. A change in ownership of the business;
- f. A change in the type of legal entity by which the licensee engages or will engage in the business; or
- g. The appointment of any trustee in bankruptcy, trustee under an assignment for the benefit of creditors, master or receiver.

5.7. Dealer Special Plates

5.7.1. In accordance with West Virginia Code §17A-6C-4, the automobile auction licensee is entitled to a minimum of one (1) Class AA special plate. The licensee is eligible for additional plates based on the formula provided in West Virginia Code §17A-6C-4(c).

5.7.2. The automobile auction licensee may use the Class AA special plate only for the purpose of transporting or moving consigned or owned motor vehicles to and from the automobile auction, or for the purpose of demonstrating vehicles owned by the auction which are offered for sale.

5.7.3. The automobile auction licensee shall keep a written record of the use of the special plate. The record shall include: 1) the name and address of the person driving the vehicle; 2) the date and time the vehicle was driven; 3) the odometer reading before and after the vehicle was driven; and 4) the reason the vehicle was driven.

5.7.4. An automobile auction licensee shall follow the provisions of West Virginia Code §17A-6C-11 and subsection 2.14 of this rule when issuing temporary registration plates.

5.7.5 The Commissioner may investigate whether any provisions of West Virginia Code §17A-6C-1 et. seq. have been violated or whether other grounds exist which may demonstrate that an applicant or licensee is unfit to hold a license. Upon a finding that the applicant or licensee has committed acts described in West Virginia Code §17A-6C-10(c), the Commissioner shall suspend, revoke or refuse to issue a license certificate. Upon a finding of acts of non-compliance set forth in West Virginia Code §17A-6C-10(b) or such other act as the Commissioner determines demonstrates that the licensee is unfit to obtain or keep a license, the Commissioner may suspend, revoke or refuse to issue a license.

§91-6-6 VEHICLE LEASING COMPANIES LESSOR LICENSE

- 6.1. The lessor of any vehicle which is subject to the tax on monthly payments in lieu of

the privilege tax pursuant to West Virginia Code §17A-3-4(b)(6), shall make application to the Commissioner for a lessor license on a form prescribed by the Commissioner. However, any lessor whose business consists of less than five motor vehicle leases a year to residents of West Virginia is not subject to this rule if he or she chooses to pay the privilege tax in lieu of the monthly payments.

6.2. The application shall include:

6.2.1. A non-refundable fee of two hundred and fifty (\$250) dollars;

6.2.2. An application completed in full and signed and sworn to by the lessor, or if the lessor is a corporation by an officer authorized to execute ~~such~~ the documents;

6.2.3. A financial statement reported on the form prescribed by the Commissioner showing a net worth of at least seventy-five thousand (\$75,000) dollars; ~~and~~

6.2.4. A bond in the penal sum of twenty-five thousand dollars from a corporate surety authorized to do business in this state, to ensure that the applicant will not, in the conduct of his or her business, make any fraudulent representation which causes a financial loss to any purchaser, seller, financial institution, agency, or the state of West Virginia. The bond shall be effective on the date the license certificate is issued. A licensee shall keep the bond in full force and effect at all times. The surety on the bond may cancel the bond upon giving thirty days notice to the commissioner and thereafter is relieved of liability for any breach or condition occurring after the effective date of the cancellation; and

~~6.2.4.~~ 6.2.5. ~~Such~~ Any other documents or records as the Commissioner may require to verify the information provided on the application, and/or the financial condition of the applicant or its leasing business.

6.3. The Commissioner shall either approve the application for a lessor license and issue the necessary permits or shall deny the application. The denial of any application shall be accompanied by a statement in writing of the reasons the application was denied. The applicant may request an administrative hearing in accordance with the provisions of Section 8 of this rule on any refusal to approve an application for a lessor license.

6.4. All lessor licenses expire September 30 of each year, unless previously suspended or revoked.

6.5. A lessor license certificate may be renewed each year, on a form prescribed by the Commissioner, for a fee of one hundred (\$100) dollars. All applications for the renewal of any license certificate shall be filed with the Commissioner at least thirty (30) days before the expiration of the license. A licensee who fails to file an application for renewal at least thirty days before the expiration of the dealer license is required to pay the original license fee prescribed in subdivision

6.2.1 of this rule.

6.6. One license certificate shall be issued to each licensee. The licensee may request additional certificates for additional business locations in accordance with the provisions of West Virginia Code §17A-6-8(b).

6.7. The lessor is subject to any audit which the Commissioner determines is necessary to ensure that all revenue due the State is being calculated and remitted to the State in the proper amount and manner.

6.8. The lessor shall complete an application for title on each leased vehicle transaction as well as any additional forms or information, which the Commissioner may require to ascertain that the proper fees are remitted and proper procedures are followed.

6.9. The Commissioner may suspend the processing of a lessor licensee's titling documents upon noncompliance with any statute, rule, policy or procedure.

6.10 Any lessor license certificate issued under this section may be suspended or revoked upon failure of the licensee to comply with any provision of law or this rule. Any motor vehicle title and or registration plate issued under the provisions of West Virginia Code §17A-3-4(b)(6) may be cancelled or revoked upon the failure of the lessor licensee to timely remit the proper fees and taxes in the required amount. The cancellation or revocation of these types of title or registration documents shall be pursuant to West Virginia Code §17A-9-7.

6.11. Any application for a lessor license issued under the provisions of this section and any information submitted with the application is confidential for the use of the Division. No person shall divulge any information contained in any application or any information submitted with the application except in response to a valid subpoena or subpoena duces tecum issued pursuant to law.

§91-6-7 CIVIL PENALTIES FOR UNLICENSED DEALERS

7.1. Any person who engages, represents or advertises that he or she is engaged in or intends to engage in the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, or wrecker/dismantler/rebuilder dealer in this State, without first obtaining a license certificate is in violation of West Virginia Code §17A-6-3, and is, in addition to any other penalty, subject to civil penalties pursuant to the provisions of West Virginia Code §17A-6-3(c).

7.2. The civil penalties provided by West Virginia Code §17A-6-3(c) shall be levied by the Commissioner upon receipt of information which gives the Commissioner reason to believe that a violation of West Virginia Code §17A-6-3 has occurred. The Commissioner may request any additional information or investigation he or she ~~deems~~ considers necessary before levying any civil

penalty.

7.3. The civil penalty assessed shall not take effect until the Commissioner sends by certified mail returned receipt requested to the person in violation of West Virginia Code §17A-6-3, a notice of violation finding that the person has committed an offense. The notice shall contain:

7.3.1. A statement of the offense the person committed;

7.3.2. A summary of the facts on which the finding of a violation was made;

7.3.3. The amount of the civil penalty which is being levied; and

7.3.4. An order that the person:

a. Cease and desist from all future violations and pay the civil penalty; or

b. Protest in writing the findings of the Commissioner and or the amount of the assessed penalty and request a hearing in accordance with the provisions of this subsection and of section 8 of this rule.

7.4. Any request for a hearing must be received by the Commissioner within thirty (30) days after the mailing date of the Notice of Violation.

7.5. The Notice of Violation may be sent to any address which the person has used on any title or license application, or other record which the Commissioner believes is current.

7.6. Failure of any person to receive a Notice of Violation shall not preclude the civil penalty from taking effect. However, the Commissioner shall accept as timely a request for hearing from any person who, within one (1) year of the date the Notice of Violation was sent, provides satisfactory proof that he or she did not receive the Notice of Violation and that good cause exists to excuse his or her failure to receive the Notice of Violation and that he or she wishes in good faith to assert a protest to the Notice of Violation. The pendency of the one year period shall not keep any penalty from taking effect pursuant to subsection 9 of this section. The Commissioner shall stay enforcement of the civil penalty upon his or her acceptance of any notice filed after the thirty (30) day period pending the outcome of the appeal.

7.7. Upon receipt of a timely request the Commissioner shall afford the person a hearing in accordance with section 8 of this rule. For purposes of section 8 of this rule, the Notice of Violation shall be considered an order of the Commissioner. The Commissioner, in addition to considering the evidence relied upon to prove or defend against a finding of a violation, shall also evaluate the appropriateness of the amount of the civil penalty. In making ~~such~~ the evaluation, the Commissioner shall consider:

- 7.7.1. The severity of the violation and or its impact on the public;
- 7.7.2. The number of similar or related violations;
- 7.7.3. Whether or not the violations were willful or intentional; and
- 7.7.4. Any other facts considered appropriate.

7.8. In addition to any other findings of fact or conclusions of law, the Commissioner may reduce the civil penalty to a stated amount. The appellant may, at any time during the pendency of the appeal, enter into a settlement agreement with the Commissioner. The settlement agreement may provide for a reduction in the penalty and it may provide for assurances that future violations will not occur without an admission of guilt by the appellant. The payment of any civil penalty pursuant to a settlement agreement which clearly states that no finding of violation is made shall not amount to an admission of guilt for purposes of any criminal prosecution. But the settlement agreement shall operate as a violation for any additional penalty for a second or subsequent violations of the provisions of West Virginia Code §17A-6-3.

7.9. Upon the expiration of all periods for protest or appeal, of any Notice of Violation, or other order of the Commissioner issued pursuant to §17A-6-3(a), the Notice of Violation or order shall have the same force and effect as a judgment entered by any court of law of this State.

7.10. Any officer of a corporation that is found to have committed a violation of West Virginia Code §17A-6-3 and is shown to have been substantially involved with the violation may be individually found to be a co-violator and assessed a civil penalty as provided by this rule.

§91-6-8 ADMINISTRATIVE APPEALS OF COMMISSIONER'S ORDERS OR DECISIONS

8.1. Any applicant or licensee or any other party, adversely affected by an order made and entered by the Commissioner in accordance with the provisions of West Virginia Code §17A-6-1 et seq., West Virginia Code §17A-6B-1 et seq., or 17A-6C-1 et seq. and/or this legislative rule, may request a hearing in accordance with the provisions of West Virginia Legislative Rules, Division of Motor Vehicles, 91 CSR 1, Administrative Due Process. ~~by filing a written notice with the Commissioner in person, or by certified mail, return receipt requested. The applicant, licensee, or other party must request a hearing within thirty (30) days from the date on which the registered or certified mail receipt for the order of revocation was signed. However, in cases when the registered or certified mail is not signed for, the provisions of West Virginia Code §17A-2-19 apply which provides that the giving of notice is complete upon expiration of four (4) days after deposit of the notice in the United States mail.~~

~~8.2. The notice requesting a hearing shall contain a description of the order upon which a hearing is requested, and the grounds upon which it is asserted that the order should be vacated or modified.~~

~~8.3. Within ten (10) days after receipt of a notice requesting a hearing, the Commissioner shall cause a notice of hearing to be served upon the party requesting the hearing by registered or certified mail, return receipt requested. The notice shall specify the time, date and place of the hearing and shall contain a statement of the issues to be considered at the hearing. All parties shall be afforded at least ten (10) days notice of the hearing. The Commissioner may postpone or continue a hearing on his or her own motion. The Commissioner may also grant a continuance on less than five (5) days notice in the event of unexpected personal emergencies. The Commissioner shall hold the hearing in Charleston, Kanawha County, unless another place is agreed upon by all parties.~~

~~8.4. The person requesting a hearing may be granted a continuance of a scheduled hearing. The request for continuance shall be in writing, and must be received by the Commissioner at least five (5) days prior to the scheduled hearing date. The request will be granted if good cause is shown. Good cause includes as but is not limited to reasons such as serious illness, medical appointments, court appearances, or religious holidays of either the person requesting a hearing or his or her attorney.~~

~~8.5. The failure of a person requesting a hearing to appear without first obtaining a continuance pursuant to Sections 8.3 or 8.4 of this rule shall result in an automatic reinstatement of the Commissioner's order.~~

~~8.6. Any party may request the issuance of subpoenas or subpoenas duces tecum by the Commissioner. The authority for the issuance of subpoenas or subpoenas duces tecum is contained in West Virginia Code §17A-2-18. All parties shall follow the provisions relating to subpoenas and subpoenas duces tecum set forth in paragraph (b) of West Virginia Code §29A-5-1.~~

~~8.7. 8.2. The filing of a notice requesting a hearing operates to automatically stay or suspend execution of any order which is the subject matter of the hearing except for an order suspending a license certificate in accordance with the provisions of subsection (b) of West Virginia Code §17A-6-18(b) which provides for immediate suspension for failure to maintain the required bond or liability insurance.~~

~~8.8. The Commissioner may appoint a hearing examiner to conduct hearings under West Virginia Code §17A-6-1 et seq. §17A-6B-1 et seq., or §17A-6C-1 et seq. and/or this legislative rule and to recommend findings of fact and conclusions of the law to the Commissioner. Hearing examiners may exercise all the powers granted by West Virginia Code §29A-5-1(d).~~

~~8.9. The party who has requested a hearing may represent himself or herself or be represented by an attorney licensed to practice law in the State of West Virginia. The Division shall be represented by a person designated by the Commissioner. The hearing examiner shall swear in all~~

witnesses offering testimony.

~~8.10. The rules of evidence as applied in civil cases in the circuit courts of this State shall be followed.~~

~~8.10.1. When necessary to ascertain facts not reasonably susceptible to proof under the rules of evidence, evidence not admissible thereunder shall be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.~~

~~8.10.2. The rules of privilege recognized by law shall be followed.~~

~~8.10.3. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.~~

~~8.10.4. Evidentiary depositions may be taken and admitted into evidence as in civil actions in the circuit courts of this State.~~

~~8.11. The Division has the burden of sustaining the Commissioner's order, and therefore, shall make the initial presentation of evidence. At the conclusion of the Division's presentation, the party requesting the hearing shall have an opportunity to present evidence. The Division has the right of rebuttal. All parties have the right to cross-examine witnesses.~~

~~8.12. Hearings in progress may be continued from one day to another or adjourned to a later date or a different place by the hearing examiner by making an announcement at the hearing or by appropriate notice to all parties.~~

~~8.13. All testimony, evidence, arguments, and rulings on the admissibility of testimony and evidence shall be reported by stenographic notes and characters, sound recording devices or other mechanical means.~~

~~8.14. All reported materials shall be transcribed and a copy furnished to any party to the hearing at his or her expense. The Division shall collect a fee of one dollar and fifty cents (\$1.50) for each page transcribed.~~

~~8.15. The Division has the responsibility for making arrangements for the transcription of the reported testimony and for the preparation of the record made before the Division. In the event transcription is required, it shall be accomplished within a reasonable time.~~

~~8.16. Upon the motion of the Division or any party assigning error or omission in any part of the transcript, the Division through the Commissioner or the duly appointed hearing examiner, shall settle all differences arising as to whether the transcript truly disclosed what occurred at the hearing and if the Commissioner considers it appropriate, he or she shall direct that the transcript be~~

corrected and revised:

~~8.17. Every final order entered by the Commissioner, following a hearing conducted pursuant to this rule, shall be made in accordance with the provisions of West Virginia Code §29A-5-3. Any party adversely affected by the final order entered by the Commissioner may petition the appropriate circuit court for judicial review in accordance with West Virginia Code §29A-5-4.~~

§91-6-9 DAILY PASSENGER RENTAL CAR BUSINESS

9.1. Registration and Bond Required - Each business location engaged in the occupation of renting vehicles intended for passenger use having a gross vehicle weight of eight thousand pounds or less on a daily basis is required to be registered and bonded.

9.1.1. Application for a Daily Passenger Rental Car Business registration certificate shall be made on a form prescribed by the Commissioner and shall include all information the Commissioner requires. The application shall be verified by an oath or affirmation of the applicant, if an individual, or if the applicant is a copartnership or corporation, by a partner or officer of the business.

9.1.2. Investigation - Upon receipt of a completed application and the required bond, the Commissioner may conduct any investigation as necessary to determine the accuracy of any statements contained in the application and the existence of any other facts relevant on considering the application. Any application for a registration certificate under the provisions of this rule and any information submitted with the application is confidential for use of the Division. No person may divulge any information contained in any application or any information submitted with the application, except in response to a valid subpoena or subpoena duces tecum issued pursuant to law.

9.1.3. Bond Required- An application for a registration certificate shall be accompanied by a bond in the penal sum of twenty-five thousand dollars for each business location from a corporate surety authorized to do business in this state, to ensure that the applicant will not, in the conduct of his or her business, make any fraudulent representation which causes a financial loss to any purchaser, seller, financial institution, agency, or the state of West Virginia. The bond shall be effective on the date the registration certificate is issued. A Daily Passenger Rental Car Business registrant shall keep the bond in full force and effect at all times. The surety on the bond may cancel the bond upon giving thirty days notice to the Commissioner and thereafter is relieved of liability for any breach or condition occurring after the effective date of the cancellation.

9.1.4. Change in Business - Every Daily Passenger Rental Car Business registrant shall notify the Commissioner within thirty days from the date on which any of the following changes in the business occur.

- a. A change of the location of any place of business;
- b. A change of the name or trade name under which the registrant engages or will engage in the business;
- c. The death of the principle registrant or any partner or partners of the business;
- d. A change in any partners, officers or directors;
- e. A change in ownership of the business;
- f. A change in the type of legal entity by and through which the registrant engages or will engage in the business; or
- g. The appointment of any trustee in bankruptcy, any trustee under an assignment for the benefit of creditors, any master or any receiver.

9.1.5. When any change specified in paragraph a, b, c, d, e or f of subdivision 9.1.4 of this rule occurs, an application for a new registration certificate shall immediately be filed with the Commissioner. However, when a paragraph c change is involved, an application for a new registration certificate need not be filed if a member of the family of the deceased registrant succeeds to the interest in the business. The Commissioner shall, upon review of the application, issue a new registration certificate incorporating the changes. No new registration certificate is required for any trustee in bankruptcy, trustee under an assignment for by benefit of creditors, receiver or master, appointed pursuant to law, who takes charge of or operates the business for the purpose of winding up the affairs of the business or protecting the interests of the creditors of the business.

9.1.6. Inspections -The Commissioner and all law-enforcement officers of the state, acting at the Commissioner's request, may inspect the place of business and pertinent records, documents and papers of any person required to be registered under the provisions of this section to the extent considered reasonably necessary to determine compliance with this section. For the purpose of making any inspection, the Commissioner and law-enforcement officers may, at reasonable times, to enter in and upon the place of business of the registrant.

9.1.7. Exceptions- This section does not apply to any person, corporation or other entity commonly known as a taxicab company subject to the regulation of the Public Service Commission of West Virginia as a common carrier.

9.2. Revocation or Suspension of Registration Investigation - The Commissioner may conduct an investigation to determine whether any provisions of law or this rule have been violated by a registrant. Any investigation shall be kept in strictest confidence by the Commissioner, the

division, the registrant, any complainant and all other persons, unless and until the Commissioner suspends or revokes the registration certificate.

9.2.1 The Commissioner may suspend or revoke a registration certificate if the Commissioner finds that the registrant has:

a. Failed or refused to comply with the laws of this state relating to the collection or reporting of tax collections and the registration and titling of vehicles;

b. Failed or refused to comply with the provisions and requirements of any law, or Division of Motor Vehicle rule or policy;

c. Knowingly made a false statement or omitted a material fact in his or her application for the registration certificate then issued and outstanding, or in any monthly or annual report submitted in compliance with this rule;

d. Habitually defaulted on financial obligations;

e. Been guilty of any fraudulent act in connection with the Daily Passenger Rental Car Business; or

f. Defrauded or is attempting to defraud the state or any political subdivision of the state of any taxes or fees in connection with the rental, sale or transfer of any vehicle;

9.2.2. Whenever a registrant fails or refuses to keep the bond required by this rule in full force and effect, the Commissioner shall automatically suspend the registration certificate unless and until the registrant files the required bond with the Commissioner, in which event the suspension shall be vacated.

9.2.3. Whenever the Commissioner refuses to issue a registration certificate, or revokes or suspends a certificate, he or she shall make and enter an order to that effect. The Division shall serve a copy of the order in person or by certified mail, return receipt requested, on the applicant or registrant, as the case may be.

9.2.4. Any applicant whose request for a registration certificate is refused, and any registrant whose registration is suspended or revoked may appeal that action in accordance with Division of Motor Vehicles Legislative Rules, 91 CSR 1. Administrative Due Process.

9.3. Collection of Tax

9.3.1 A daily passenger rental car tax of twenty-five cents for each rental day or part of a day of the rental transaction contract is imposed on the rental of daily passenger vehicles in accordance with the provisions of West Virginia Code §17A-3-4(b)(11). For the purposes of this

section, a daily rental transaction is defined as one twenty-four hour period within the terms of the contract rental day regardless of time of contract start or finish. Contracts for less than a twenty-four hour period are also defined as a transaction. This tax is in addition to the taxes imposed by West Virginia Code §11-15 et. seq and §11-15a et. seq. The Daily Passenger Rental Car Business registrant shall collect the tax on each vehicle rental transaction originating in this state regardless of where the vehicle is titled or registered and shall remit all taxes collected to the Division of Motor Vehicles on a monthly basis. The Daily Passenger Rental Car Business registrant shall complete monthly and annual returns as required by the Commissioner of Motor Vehicles. The Division shall deposit the revenue generated by this tax into the Road Fund.

9.4. Liability for Tax- If the business is an association or corporation, the officers of the business are personally liable, jointly and severally, for any default on the part of the association or corporation, and payment of the tax and any additions to tax, penalties and interest thereon may be enforced against them as against the association or corporation which they represent. Any failure to collect the tax imposed under the provisions of West Virginia Code §17A-3-4(b)(11), any failure to timely remit the tax to the Commissioner of Motor Vehicles, or any other failure to comply with the provisions of this rule constitutes a default for purposes of this section.

9.5. Monthly Return Required

9.5.1. Date due - The registrant shall complete a monthly return on the forms designated by the Commissioner and file the return with the Commissioner no later than the fifteenth day following the last day of the month for which the return applies. The monthly return shall include but not be limited to the following information:

a. The total gross proceeds of the Daily Passenger Car Rental Business for the preceding month;

b. The gross number of transactions, contract days and contract amounts upon which the tax for that month was computed; and

c. Any other information necessary in the computation or collection of the tax that the Commissioner of Motor Vehicles may require.

9.5.2. Payment shall be made in the form of a check made payable to the West Virginia Division of Motor Vehicles.

9.5.3. Any check returned to the Division because of insufficient funds constitutes grounds for the imposition of civil penalties, the revocation or suspension of the registration and collection against the registrant's bond.

9.6. Annual Return Required

9.6.1. Date due. - The registrant shall complete an annual return on the forms designated by the Commissioner and file the return with the Commissioner no later than thirty days after the end of the calendar year showing the following information:

a. The total gross proceeds of the Daily Passenger Rental Car Business for preceding tax year;

b. The gross number of transactions, contract days and contract amounts upon which the tax for that year was computed; and

c. Any other information necessary in the computation or collection of the tax that the Commissioner may require.

9.6.2. Payment. - After deducting the amount of prior payments during the tax year, the registrant shall forward the annual return along with payment of any remaining tax, due for the preceding tax year, to the Commissioner of Motor Vehicles. The registrant or his or her duly authorized agent shall verify the return under oath.

9.6.3. Extension of time. - The Commissioner for good cause shown, may, on written application of a registrant, extend the time for making any return required by the provisions of this section.

9.7. Violations

9.7.1. The Division shall assess a penalty for failure to remit payments at a rate of five percent of the unpaid tax liability for each month or part thereof for which payment has not been made. The penalty shall not exceed twenty-five percent of the tax liability. All assessed penalties are treated as tax owed and paid in the same manner as the daily passenger rental tax. The assessed penalty shall be deposited in the State Road Fund. The Commissioner may abate any assessed penalty for just and reasonable cause. The Commissioner shall also collect interest on any tax liability. Interest shall be compounded at the average prime rate as determined by the Federal Reserve Board of Governors in the amount that commercial banks charge for large businesses. The interest calculation date shall be based on the rate charged as of March 31st for the period of time of April 1 through September 13. The interest rate for the period September 14th through March 31st shall be based on the rate charged as of September 13th. Any assessed interest shall be treated in the same manner as the daily passenger rental car tax and deposited into the State Road Fund. The State shall not pay interest on any refunds or over payments.

9.7.2 Whenever it appears to the Commissioner that any person has violated any provision of law or this section or any final order of the Commissioner, the Commissioner may petition, in the name of the state, the circuit court of Kanawha County, for an injunction against that person. A violation or violations resulting in prosecution or conviction shall not prohibit injunctive relief. The circuit court may, by mandatory or prohibitory injunction, compel compliance with the provisions of this rule and all final orders of the Commissioner. The court may also issue temporary injunctions.

9.7.3. The judgement by the circuit court is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals. Any appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil cases.