

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #4

Do Not Mark In this Box

FILED

SEP 19 9 31 AM '95

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Division of Motor Vehicles TITLE NUMBER: 91CSR6

CITE AUTHORITY 17A-2-9, 17A-6B-13, 17A-6C-17

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 91CSR6

TITLE OF RULE BEING AMENDED: Motor Vehicle Dealers, Wrecker/Dismantler  
Rebuilders, License Services, Automobile Auctions, Vehicle Leasing  
Companies, and Administrative Due Process

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.

  
\_\_\_\_\_  
Jane L. Cline, Commissioner

9.00

(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 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, and license services, automobile auctions, vehicle leasing companies and administrative due process.

1.2. Authority - West Virginia Code §17A-2-9, §17A-6-3 and West Virginia Code §17A-6B-13, and §17A-6C-17 related to West Virginia Code §17A-6-1 et. seq. and West Virginia §17A-6B-1 et. seq.

1.3. Filing Date -

1.4. Effective Date -

~~1.5. Repeal of Former Rule - This legislative rule repeals Title 91 CSR 6, Motor Vehicle Dealers, filed April 25, 1969; Title 91 CSR 10, Bonding Requirements for License Service Agencies effective June 18, 1965; Title 91 CSR 17 Dealer and Financial Institutions Applicant or Licensee Administrative Hearings, effective July 8, 1984, Title 91 CSR 18, Dealer Issuance of Temporary Registration Plates, effective September 23, 1988, and Title 91 CSR 22. Approval of Dealer Temporary Additional Locations, effective July 25, 1986.~~

~~4.6.~~ 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. and West Virginia Code §17A-6B-1 et. seq. West Virginia Code §17A-6C-1 et seq. and persons engaged in the business of leasing 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.

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

~~2.1.6. The term "applicant" as defined in all dealer applications has the following meaning; a person operating in his or her own name or under a trade name; or 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.~~

## 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.

2.2.3. A place of residence does may not qualify as an established place of business, and a place of residence may not be located at the established place of business. Any residence located in close proximity to a place of business must 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, ~~or~~ 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 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, repossessor, 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 Sections 2.6.1 and 2.6.2 of this legislative rule. ~~Applicants~~ 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)(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 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) 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 Title 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 Title 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 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 a 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 business in new motor vehicles or house trailers must 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.

#### 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;
- 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.

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 customer's 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 ~~such~~ the vehicle. Such 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).

## §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 wrecker/dismantler/rebuilder's 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 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 Title 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 Title 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;
- 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 section 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 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. 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 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 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 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;
- 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;
- 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 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/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 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 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;
- 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 (91CSR6 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 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.

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

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. Such 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.

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 in violation of West Virginia Code §17A-6-3, 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 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 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., ~~or~~ West Virginia Code §17A-6B-1 et seq., or 17A-6C-1 et seq. and/or this legislative rule, may request a hearing by filing a written notice with the Commissioner in person, or by certified mail, return receipt requested. The applicant, ~~or licensee,~~ or other party must request a hearing within thirty (30) days from the date on which the ~~order of revocation's~~ 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. 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 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. ~~or West Virginia Code §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 their 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~~ SEVERABILITY

~~In the event any portion of this legislative rule is held invalid or unconstitutional,~~

~~the invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this legislative rule.~~



FILED

SEP 13 2 41 PM '95

West Virginia Legislature  
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Room MB47-State Capitol  
Charleston, West Virginia 25305  
(304) 347-4840

Senator Mike Ross, Co-Chair  
Delegate Vickie Douglas, Co-Chair

September 11, 1995

Debra A. Graham, Counsel  
Joe Altizer, Associate Counsel  
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Ms. Jane L. Cline, Commissioner  
Division of Motor Vehicles  
State Capitol  
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Motor Vehicle Dealers, Wrecker/Dismantler/, Rebuilders  
and License Service, etc.

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule
  - (a) as originally filed
  - (b) as modified by the agency   X
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Charles S. Dunn  
Steven O. Dale