

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2006 JUL 28 P 2:10

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Division of Motor Vehicles TITLE NUMBER: #91

CITE AUTHORITY: WV Code §17A-2-9, 17A-2A-12, 17D-2-2, 29A-1-1 et seq

AMENDMENT TO AN EXISTING RULE: YES NO

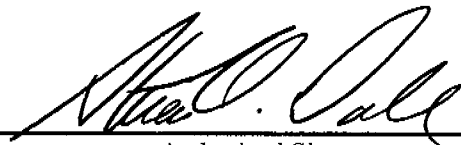
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 8

TITLE OF RULE BEING AMENDED: Policies Pertaining to the Disclosure of Information
From the Files of the Division of Motor Vehicles

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature



WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION
1900 Kanawha Boulevard East • Building Five • Room 109
Charleston, West Virginia 25305-0440 • 304/558-0444

Joe Manchin III
Governor

June 21, 2006

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

Dear Madam Secretary:

The Commissioner of Motor Vehicles is hereby authorized to promulgate proposed amendments to 91 CSR 8, Policies Pertaining to the Disclosure of Information from the Files of the Division of Motor Vehicles.

Comments and concerns about the contents of this rule should be directed to the Commissioner of Motor Vehicles. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Paul A. Mattox, Jr.".

Paul A. Mattox, Jr., P.E.
Secretary of Transportation/
Commissioner of Highways

PAM:sd
Enclosure

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 28, 2006

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Division of Motor Vehicles
Building 3 Capitol Complex
Charleston, WV 25317
(304) 558-2723

LEGISLATIVE RULE TITLE: Policies Pertaining to the Disclosure of Information From the
Files of the Division of Motor Vehicles

1. Authorizing statute(s) citation WV Code §17A-2-9, 17A-2A-12, 17D-2-2, 29A-1-1 et seq

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 22, 2006

b. What other notice, including advertising, did you give of the hearing?
Written and E-Mail Notice as attached

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 25, 2006

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 31, 2006

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

~~Joseph Cichirillo, Commissioner: jicicchirillo@dot.state.wv.us (304) 558-2723~~

Jill Dunn, General Counsel: jdunn@dot.state.wv.us (304) 558-3611

Steven O. Dale, Asst to Commissioner: sdale@dot.state.wv.us (304) 558-2723

all at

Division of Motor Vehicles

~~Building 3, Capitol Complex~~

Charleston, WV 25317

Fax (304) 558-1987

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

~~Jill Dunn, General Counsel~~

Division of Motor Vehicles

Building 3, Capitol Complex

Charleston, WV 25317

Phone: (304) 558-3611

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
Division of Motor Vehicles

1800 Kanawha Boulevard East • Building Three • Room 319
Charleston, West Virginia 25317-0010 • 304/558-3900
TDD 1-800-742-6991 • 1-800-642-9066

Joe Manchin III
Governor

91 CSR 8

**POLICIES PERTAINING TO THE DISCLOSURE OF INFORMATION
FROM THE FILES OF THE DIVISION OF MOTOR VEHICLES**

PUBLIC COMMENT SUMMARY

Notice of Public Comment Sent

T. Randolph Cox; Spillman Thomas and Battle
Debbie Phillips, Arnold Agency; Erie Insurance
John Canfield, State Farm Insurance
Jill Bentz, Spillman Thomas and Battle; WV Insurance Federation
Hershel Rose III, State Farm

Comments Received and Attached

John Stuckemeyer, State Farm Insurance
Jill Bentz, WV Insurance Federation

Summary of Comments and Agency Response

State Farm Insurance Company Comments

1. State Farm seeks confirmation that third party vendors employed by an insurance company will continue to be permitted users.

Agency Response: Third party vendors employed by an insurance company are permitted users and will continue to be permitted users under this proposed rule.

2. Suggests five year driver record instead of proposed three year driver record because insurance companies would be hindered in their ability to fully review the driving history of an applicant which is critical to properly underwriting insurance.

Agency Response: The Division agrees with the suggestion to propose a five year driving record instead of a three year record. The current driving record is seven years; consequently, the proposed five year record is reasonable.

3. Suggests that the requirement to provide verification of identity is a difficult and cumbersome prerequisite to obtaining vehicle and driver information and is confused as to whether that same identity verification requirement applies to insurance company employees obtaining information about company owned vehicles.

Agency Response: The Division has a responsibility to insure that only users authorized under the State and Federal laws pertaining to the release of motor vehicle and driver records obtain information maintained by DMV. Consequently, verification of identity is essential for release of both company vehicle information to an employee of the company as well as information requested as a part of insurance underwriting.

West Virginia Insurance Federation Comments

1. The WV Insurance Federation suggests that the requirement to provide verification of identity is a difficult and cumbersome prerequisite to obtaining vehicle and driver information.

Agency Response: The Division has a responsibility to insure that only users authorized under the State and Federal laws pertaining to the release of motor vehicle and driver records obtain information maintained by DMV. Consequently, verification of identity is essential for release of information requested as a part of insurance underwriting.

2. The West Virginia Insurance Federation seeks confirmation that third party vendors employed by an insurance company will continue to be permitted users.

Agency Response: Third party vendors employed by an insurance company are permitted users and will continue to be permitted users under these proposed rules.

3. Suggests that the Agency retain the current seven year driver record instead of proposed three year driver record because insurance companies would be hindered in their ability to fully review the driving history of an applicant which is critical to properly underwriting insurance.

Agency Response: The Division disagrees with the suggestion to retain the current seven year driving record instead of the proposed three year record. The Agency will propose changing the rule to reflect a five year record based on the comments of State Farm. The commenter states that most insurance companies look back five years to identify drivers who have had driving under the influence of alcohol offenses. As these types of offenses are one of the most serious of driving offenses, a five year look back period is reasonable.


Joseph Cicchirillo, Commissioner
Division of Motor Vehicles

State Farm®

Providing Insurance and Financial Services

Home Office, Bloomington, Illinois 61710



July 24, 2006

John D. StuckemeyerCounsel
Corporate Law**Mr. Steve Dale**
Office of the Commissioner
West Virginia Division of Motor Vehicles
Building 3, Room 319
WV State Capitol Complex
Charleston, WV 25317**Corporate Headquarters**One State Farm Plaza, A-3
Bloomington, Illinois 61710-0001
309 766 3534 FAX 309 766 4909**RE: Docket Number 2006 91CSR8**
Public Comments on Proposed Rules
91 C.S.R. 8 Disclosure of DMV InformationRECEIVED
D.M.V. COMMISSIONER
2006 JUL 24 PM 4:28

Dear Mr. Dale:

On behalf of the State Farm Insurance Companies, please accept the following written comments and suggestions regarding the proposed rules at 91 CSR 8 -- Policies Pertaining to the Disclosure of Information from the Files of the Division of Motor Vehicles.

Permitted Users & Third-Party Vendors

Generally, insurance companies request information from the Division of Motor Vehicles ("DMV") relating to either a driver or a vehicle. Sometimes this request will come directly from employees of the insurance company, or sometimes it will come from a third-party vendor retained by the insurance company for such purposes (for example, Choicepoint or Equifax).

It is our understanding that insurance companies fall within the definition of a "permitted user" when requesting information from the DMV, as defined in the proposed Rule 3.5b and in West Virginia Code 17A-2A-7(6): "...any insurer or insurance support organization or by a self-insured entity, its agents, employees or contractors in connection with claim investigation activities, anti-fraud activities, rating or underwriting;....."

We want to confirm that a third-party vendor retained by an insurance company and acting on its behalf would also fall within this definition of a "permitted user".

For example, if an insurer retains the services of a third-party vendor (Choicepoint, Equifax, etc.), and such vendor requests an MVR record on behalf of the insurer in connection with underwriting an application for a new insurance policy, we believe that such vendor qualifies as a "permitted user" of DMV information, acting on behalf of the insurance company.

Three Year Look Back Period

The proposed change from a 7 year driving record to a 3 year driving record presents a conflict with our current underwriting guidelines. When underwriting an application for new automobile insurance, we look for a 60 month period without a major traffic violation. If the "look back" period is reduced to 3 years as proposed by Rule 3.7.b(1)(B), insurance companies will be hindered in their ability to fully review the driving history of an applicant. Accurate and complete information regarding prior accidents, prior violations, prior suspensions and revocations, and prior DUI convictions are critical to properly underwriting automobile insurance.

State Farm suggests that the "look back" period not be reduced to 3 years, as is proposed by Rule 3.7.b(1)(B). In the alternative, State Farm suggests that the look back period could be reduced to five (5) years instead of the current seven (7) year period.

Identification Requirements for Employees of a Permitted User

Proposed Rule 3.7.b provides that a written request for a DMV record must also include "proper identification" from the requestor.

Proposed Rule 3.5k further defines appropriate identification as follows: "If the person is a corporation or business, an employee of the company must provide a copy of his or her driver's license or state issued identification card."

We are confused and concerned by the wording of these rules as relates to identification required from an employee of a permitted user (such as an insurance company employee) when requesting driver or vehicle information from the DMV.

Does Rule 3.5.k refer to an employee of a company who is requesting vehicle information for a corporate-owned vehicle? Or does Rule 3.5.k also refer to an insurance company employee who is requesting driver or vehicle information regarding another person in the scope of their job duties for the insurer?

As a permitted user, insurance companies request and obtain information from the DMV on a regular basis. It would be difficult and cumbersome to require that all employees of an insurance company must provide a photocopy of their personal driver's license before being able to obtain DMV information in the scope of their employment.

Sincerely,



John Stuckemeyer
Attorney
STATE FARM INSURANCE
COMPANIES



West Virginia Insurance Federation

West Virginia Insurance Federation
P.O. Box 273
Charleston, WV 25321
(304) 340-3880
(304) 340-3801

July 24, 2006

BY HAND-DELIVERY

Steven O. Dale
Division of Motor Vehicles
Office of the Commissioner
Docket No. 2006 91CSR8
Building 3, Room 319, Capitol Complex
Charleston, West Virginia 25317

RECEIVED
D.M.V. COMMISSIONER
2006 JUL 24 PM 3:46

**RE: Docket Number 2006 91CSR8
Comments to Proposed Administrative Rules
Title 91, Series 8**

Dear Mr. Dale:

These comments to the proposed amendments to 91 CSR 8, relating to "Policies Pertaining to the Collection, Filing, and Distribution of Information from the Files of the Department of Motor Vehicles" are submitted on behalf of the West Virginia Insurance Federation ("WVIF"), the trade association for property and casualty insurance companies doing business in West Virginia.

The WVIF is particularly interested in the effect of these proposed rules because insurance companies routinely request and obtain information from the Division of Motor Vehicles ("DMV"). This information is critical to insurers' ability to conduct claim investigation activities, antifraud activities, rating and underwriting. Indeed, West Virginia law recognizes that this information should be available to insurance companies. Specifically, W. Va. Code § 17A-2A-7(6) provides:

The division or its designee shall disclose personal information as defined in section three of this article to any person who requests the information if the person: (a) Has proof of his or her identity; and (b) verifies that the use of the personal information will be strictly limited to one or more of the following: . . .

(6) For use by any insurer or insurance support organization or by a self-insured entity, its agents, employees or contractors in connection with claim investigation activities, antifraud activities, rating or underwriting. (Underlining added.)

Accordingly, members of the WVIF, consisting of more than 80 percent of West Virginia's private passenger automobile insurance market, offer the following comments concerning the following specific proposed sections:

1. Section 3.7.b. This section requires that requests to the Division of Motor Vehicles for information be in writing and that permitted users, as defined above, provide appropriate identification in order to obtain data.

First, Section 3.5.k defines "appropriate identification" as a photo ID such as a driver's license and states: "If the person is a corporation or business, an employee of the company must provide a copy of his or her driver's license or state-issued identification card."

This creates a practical problem when an insurer, through an employee acting on behalf of the company, not in his or her individual capacity, requests information under this section. The WVIF believes insurers should be excepted from this requirement to provide photo identification because it is unduly burdensome for insurers to force their employees to provide their individual personal photo identification to make a request which falls within the scope of his or her employment duties.

Not only is it unreasonable to require individual insurance company employees to do this, but it is very common for agents or contractors of insurance companies to request information from the DMV on behalf of the insurance company. Indeed, W. Va. Code § 17A-2A-7(6) contemplates that contractors may be involved in claim investigation activities, antifraud activities, rating or underwriting on behalf of insurance companies. Accordingly, the WVIF seeks clarification that contractors and agents will continue to be permitted to obtain information from the DMV. Individuals employed by these contractors similarly should not be required to provide personal photo identification to make such a request in the scope of his or her employment.


2. Section 3.7.b.1.B. The WVIF is very concerned about the proposed amendment of the "look back" period from a seven to a three-year period because insurance companies look back more than a mere three years to adequately assess a person's driving history, which forms a critical component of insurance companies' ability to conduct underwriting activities. For example, most insurance companies look back five years to identify drivers with convictions for driving under the influence of alcohol ("DUI"). Obviously, this information should be available to insurance companies.

Additionally, the WVIF believes that insurance companies should be included among those entities, such as government agencies and employers, who may obtain information outside the proposed three-year period. Indeed, W. Va. Code § 17A-2A-7 contemplates the various permitted uses for DMV records, including use by governmental agencies and law enforcement to carry out their job functions, "for use in the normal course of business by a legitimate business or its agents, employees or contractors", and by "an insurer or insurance support organization or by a self-insured entity, its agents, employees or contractors in connection with claim investigation activities, antifraud activities, rating or underwriting". W. Va. Code § 17A-2A-7(1), (3), (7). Proposed Section 3.7.b.1.B excepts government agencies and employers but does not except insurance companies.

The WVIF believes that it should permit insurance companies to access DMV information through an appropriate request for a period of seven, not three, years.

Thank you for the opportunity to provide these comments. Naturally, if you have any questions or need additional information of any kind, please do not hesitate to contact me.

Very truly yours,



Jill C. Bentz
President

cc: The Honorable Joe Cicchirillo, Commissioner



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

1800 Kanawha Boulevard East • Building Three • Room 319
Charleston, West Virginia 25317-0010 • 304/558-3900
TDD 1-800-742-6991 • 1-800-642-9066

Joe Manchin III
Governor

91 CSR 8

**Policies Pertaining to the Disclosure of Information
From the Files of the Division of Motor Vehicles**

2006 -2007 Proposed Amendments

Circumstances Requiring Filing of Rule

This promulgation of proposed changes to this rule is necessary because the existing rule is obsolete with the passage of the federal Driver Privacy Protection Act and the West Virginia Uniform Motor Vehicle Records Disclosure Act.

Both of those statutory changes completely who is and who is not eligible to receive certain types of vehicle and driver information maintained by the Division of Motor Vehicles.

Specifically, this rule changes the content of the standard driving record from a seven-year look back period to a three-year look back period. Most of this type of record is requested by insurance companies for underwriting purposes.

A handwritten signature in cursive script, reading "Joseph Cicchirillo".

Joseph Cicchirillo
Commissioner of Motor



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

1800 Kanawha Boulevard East • Building Three • Room 319
Charleston, West Virginia 25317-0010 • 304/558-3900
TDD 1-800-742-6991 • 1-800-642-9066

Joe Manchin III
Governor

91 CSR 8

**Policies Pertaining to the Disclosure of Information
From the Files of the Division of Motor Vehicles**

2006 -2007 Proposed Amendments

Summary of Rule

This Proposed rule makes the following changes

1. Repeals and replaces the current rule on file with the Secretary of State
2. This rule completely rewrites an existing rule made obsolete by the passage of the federal Driver Privacy Protection Act and the West Virginia Uniform Motor Vehicle Records Disclosure Act.
3. Outlines the terms and conditions of the release of driver and vehicle information to both the individual driver and the vehicle owner and to other parties in accordance with the above cited statutes.
4. Specifically, this rule changes the content of the standard driving record from a seven-year look back period to a three-year look back period. Exceptions are provided for law enforcement and employment requests.
5. Incorporates statutory fees and other hybrids of statutory fees into rule.

A handwritten signature in cursive script, reading "Joseph Cicchirillo".

Joseph Cicchirillo
Commissioner of Motor

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Policies Pertaining to the Disclosure of Information From the Files of the DMV

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Motor Vehicles

Address: Building 3, Capitol Complex
Charleston, WV 25317

Phone Number: 304 558-2723 Email: sdale@dot.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This rule will have no impact on the costs and revenue of state government. The rule reflects current practices dictated by present state and federal law.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: Policies Pertaining to the Disclosure of Information From the Files of the DMV

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

This rule will have no impact on the costs and revenue of state government. The rule reflects current practices dictated by present state and federal law.

Most of the fees referenced in this rule are by statute. Remaining fees are assessed on a case by case basis based on the programming cost to produce a particular type of report.

Several fees are variations of statutory fees such as different types of motor vehicle title records with more or less detail.

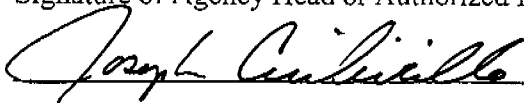
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

This rule does not implement any new fees. The biggest information request item is the driving record which are requested by individuals, employers and insurance companies on both an instant print basis and in a bulk basis. The fee for driving records is established by WV Code §17D-2-2.

Date: _____

Signature of Agency Head or Authorized Representative

 _____

TITLE 91
WEST VIRGINIA LEGISLATIVE RULE
DIVISION OF MOTOR VEHICLES

FILED

2006 JUL 28 P 2:11

SERIES 8
POLICIES PERTAINING TO THE DISCLOSURE OF INFORMATION
FROM THE FILES OF THE DIVISION OF MOTOR VEHICLES

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§91-8-1. General.

1.1. Scope – This legislative rule establishes procedures for the Division’s disclosures of information and other requests for information made to the Division.

1.2. Authority – W. Va. Code §§17A-2-9, 17A-2A-12, 17D-2-2, 29A-1-1 et seq.

1.3. Filing Date –

1.4. Effective Date –

1.5. Repeal of Former Rule. – This legislative rule repeals and replaces 91 CSR 8 (Title 91 Department of Motor Vehicles, Series 8, Policies Pertaining to the Collection, Filing, and Distribution of Information from the Files of the Department of Motor Vehicles) Filing Date: August 14, 1974. Effective Date: September 13, 1974.

§91-8-2. Application and Enforcement.

2.1. Application. – This legislative rule applies to persons requesting information from the Division of Motor Vehicles.

2.2. Enforcement. – Enforcement of this legislative rule is vested with the Commissioner of Motor Vehicles or lawful designee.

§ 91-8-3. Disclosure of Personal Information from the Files of the Division of Motor Vehicles.

3.1. W. Va. Code §17A-2A-1 et seq., hereinafter referred to as the Uniform Motor Vehicle Records Disclosure Act, or the Act, requires the Division of Motor Vehicles to disclose information, including personal information, maintained in its motor vehicle records. The Act mandates disclosure dependent on who is making the request, the type of information requested, and the proposed use of the information. Personal information disclosure may be further restricted by the Health and Insurance Portability Accountability Act. W. Va. Code §17A-6-4 prohibits the disclosure of information contained in a motor vehicle dealership file. If the information requested is not personal information as defined by the Act, the information may be released if permitted by the Freedom of Information Act, W. Va. Coe §29B-1-1 et seq and §17A-2A-1 et seq.

3.2. The Act was based on a federal government requirement to regulate the disclosure of personal information from motor vehicle agencies.

3.3. The purpose of the Act is to implement the federal Driver's Privacy Protection Act of 1994 (Title XXX of Public Law 103-322) in order to protect the interest of individuals in their personal privacy by prohibiting the disclosure and use of personal information contained in their motor vehicle record, except as authorized by an individual or by law.

3.4. The Act allows the Division to promulgate rules in accordance with chapter twenty-nine-a of the West Virginia Code to carry out the purposes of the Act.

3.5. Definitions.

3.5.a. Personal information is defined by W.Va. Code §17A-2A-3(f).

3.5.b. Permitted users are persons allowed to receive information as defined by the permitted disclosures section of the Act found in W. Va. Code §17A-2A-7. Persons who want copies of their own records are permitted users and may obtain copies of their own records.

3.5.c. Required users are persons to whom the Division must disclose personal information as mandated under W.Va. Code §17A-2A-5.

3.5.d. Consensual users are persons to whom the Division may disclose personal information pursuant to W.Va. Code §17A-2A-6. Under that section, personal information may be disclosed by the Division with written permission of the person about whom the information is sought.

3.4.e. Written permission includes a copy of a power of attorney, a completed Division waiver form, or a written statement signed and dated by the individual about whom the information is sought.

3.5.f. Person is defined by W.Va. Code §17A-2A-3(e).

3.5.g. Motor vehicle record is defined by W.Va. Code §17A-2A-3(d).

3.5.h. Individual record is defined by W.Va. Code §17A-2A-3(c).

3.5.i. Legitimate purpose is defined as a person eligible to receive personal information pursuant to W.Va. Code §§17A-2A-5, 17A-2A-6, and 17A-2A-7.

3.5.j. Records are defined by W.Va. Code §17A-2A-3(g).

3.5.k. Appropriate identification is defined as an original or a legible photocopy of the driver's license or state-issued identification card of the person requesting personal information. If the person is a corporation or business, an employee of the company must provide a copy of his or her driver's license or state-issued identification card.

3.5.1. Requestor is defined as any person who requests personal information from the Division.

3.6. Disclosure of Records that do not contain personal information.

3.6.a. Verbal Requests. The Division may disclose records that do not contain personal information upon verbal request.

1. Division employees may confirm information over the telephone given by the person requesting the information.

2. Division employees may disclose information over the telephone regarding the status of vehicle titles, and vehicle registrations including the vehicle identification number, the year, the make, and the model of vehicles registered or titled in West Virginia.

3. Division employees may disclose information over the telephone concerning the status of driver's licenses and identification cards including revocations, suspensions, and citations.

4. Division employees may disclose information over the telephone regarding the status of a dealership license including final revocations, suspensions, and civil penalties.

3.6.b. Written Requests. The Division may disclose records that do not contain personal information upon written request pursuant to W. Va. Code §29B-1-1 et seq.

3.7. Disclosure of Records that contain personal information.

3.7.a. Verbal Requests. The Division will not disclose records that contain personal information upon verbal request.

3.7.b. Written Requests. The Division will disclose records that contain personal information if the request is in writing on a form prescribed by the Division, if the request is for a legitimate purpose, if the requestor pays the required fees, and if the requestor provides proper identification. Records will be disclosed only to required users, consensual users, or permitted users pursuant to the Act.

1. Permitted Users.

A. Requestors may obtain their own driver records at any branch office of the Division. Driver records will cover a three year period unless otherwise specified by the requestor. All other requests must be processed through the Charleston Capitol office at the following address:

Attention: Driver Records
WVDMV
1800 Kanawha Blvd., E
Charleston, WV 25317

B. Obtaining Another Person's Driver's License Records. All driver records released will cover a five-year period. Courts, law enforcement agencies, government agencies, and employers may request records covering a longer period.

C. Requesting Vehicle Records. Requestors may obtain their own vehicle records and other persons' vehicle information, if permitted, by sending a written request to the Charleston Capitol office at the following address:

Attention: Vehicle Records
WVDMV
1606 Washington Street, E
Charleston, WV 25317

2. Bulk Sales. The Division will disclose personal information in bulk to required or permitted users only after review by the Division and only after the requestor has:

A. Completed and submitted a letter of intent. The letter of intent must specify that personal information will be used only in accordance with the Act; and it must specify the section of the Act that qualifies the requestor as either a required user, a consensual user, or a permitted user;

B. Completed and submitted a contract prescribed by the Division; and

C. Submitted the appropriate fees.

3. Non-Permitted Users. The Division may release records that contain personal information to non-permitted users under the Act as long as all personal information has been obscured or redacted. Any requestor who wants copies of another person's personal information, including copies of records about their immediate family members, may be able to obtain this information only if:

A. The Division has a completed Opt-in form from the person who is the subject of the request; or

B. The requestor is a consensual user as defined by W. Va. Code §17A-2A-6.

4. Opt-In. The Division will disclose all personal information about a person to any requestor if the person about whom the information is requested has signed and submitted a written consent form, or opt-in form, allowing the Division to disclose personal information for any purpose.

3.8 Nondisclosure of Records.

3.8.a. The Division will not disclose personal information contained in records if the Division has reasonable grounds to believe that the information will not be used for a legitimate purpose.

3.8.b. The Division will not disclose personal information to satisfy curiosity, for marketing purposes, for solicitations or for any purpose not permitted under the Act.

3.8.c. The Division will not disclose personal information to the media since the media are not required users, permitted users, or consensual users under the Act.

3.8.d. The Division will not disclose finger images collected by the Division except for issuing and processing driver's licenses and any legal process associated with issuing and processing driver's licenses.

3.8.e. The Division will not disclose personal information by facsimile machine unless the request is made pursuant to the Act and all appropriate fees have been received.

3.8.f. The Division will not disclose information contained in motor vehicle dealership files maintained by the Division pursuant to W.Va. Code §17A-6-4 except by valid subpoena or court order.

3.8.g. The Division will not disclose medical or disability records to any person except a consensual user; a required user with statutory requirements and authority for the use of medical or disability records; the Division's driver's license advisory board; a reviewing court, pursuant to a valid subpoena pursuant to a valid Supreme Court or Circuit Court order.

3.8.h. Message Forwarding- The Division will not disclose personal information if the requester is not a permitted user, a required user, or a consensual user. However, the Division may send a message to the person about whom the personal information pertains. The requestor must fill out a form prescribed by the Division, write a message on the form and pay the appropriate, nonrefundable fee. The Division will forward the message to the last known address in its records. The Division will not guarantee a response. The Division may refuse to send the message if it contains offensive language, threats, language that may incite violence, or any language that may induce or assist in criminal activities.

3.8.i. The Division will not disclose social security numbers or credit card numbers except pursuant to federal law, West Virginia law, a valid court order, a valid subpoena, or a valid government agency request on agency letterhead that includes statutory authority for the release of the social security number or credit card number.

3.9. Fees. All fees listed below must accompany requests for information. Fees are nonrefundable even if the requested information is not available from the Division's records. Fees established in accordance with W.Va. Code §17A-2A-9 or related statute.

3.9.a. Five Dollars (\$5) per request for a certified driver's license record. A One Dollar (\$1) additional fee will be charged if the driver's license number is not provided by the requestor.

3.9.b. Five Dollars (\$5) per request for each certified driver history.

3.9.c. One Dollar (\$1) per request for vehicle registration information (screen print from computer records).

3.9.d. Five Dollars (\$5) for a title file which includes any documents submitted at the time the vehicle was titled and any documents submitted subsequent to titling.

3.9.e. Twenty-five Dollars (\$25) for a complete title history.

3.9.f. Five Dollars (\$5) per request for proof of fees paid to the Division when vehicle was purchased.

3.9.g. Five Dollars (\$5) per request for encumbrance information that includes both registration and lien information (screen print from computer records)

3.9.h. Twenty-five Dollars (\$25) per copy for each administrative hearing cassette tape

3.9.i. One Dollar and fifty cents (\$1.50) per page for each transcribed page from an administrative hearing.

3.9.j. Twenty-five cents (0.25) per page for each copy of a driver license suspension, revocation, or disqualification file. This excludes investigation information

3.9.k. Five Dollars (\$5) nonrefundable fee for any message forwarding request

3.9.l. Thirty Dollars (\$30) for each copy of an administrative hearing CD

3.9.m. Fifteen Dollars (\$15) per copy of a video tape in the administrative hearing file

3.9.n. The cost of each bulk information request fee may vary and will be determined by the cost of producing the information

3.9.o. Ten Dollars (\$10) for each certified record of a vehicle title

3.9.p. Twenty Dollars (\$20) per copy of lien perfection information

TITLE 91
PROCEDURAL RULE
DEPARTMENT OF MOTOR VEHICLES

SERIES 8
POLICIES PERTAINING TO THE COLLECTION, FILING, AND
DISTRIBUTION OF INFORMATION FROM THE FILES OF THE
DEPARTMENT OF MOTOR VEHICLES

§91-8-1. General.

1.1. Scope. -- These legislative rules establish procedures for compiling and disseminating information regarding a consumer which is classified as a consumer report, and other requests for information.

1.2. Authority. -- W. Va. Code 17A-2-9.

1.3. Filing Date. -- August 14, 1974.

1.4. Effective Date. -- September 13, 1974.

§91-8-2. Application and Enforcement.

2.1. Application. -- These legislative rules apply to persons requesting information from the Department of Motor Vehicles.

2.2. Enforcement. -- Enforcement of these legislative rules is vested with the commissioner of Motor Vehicles or lawful designee.

§91-8-3. Policies Pertaining to the Collection, Filing, and Distribution of Information from the Files of the Department of Motor Vehicles.

3.1. The Department of Motor Vehicles, by virtue of its function of assembling and distributing information classified as consumer information, has been designated by the Federal Trades Commission as a Consumer Reporting Agency; and as such, is required to comply with the provisions of the Fair Credit Reporting Act effective August 23, 1973.

3.2. The Federal Trades Commission made this designation under the provisions of Public Law 91-508, the Consumer Credit Protection Act of 1968, short title, the Fair Credit Reporting Act amended Sub-Section Six -- consumer Credit Report, enacted by Congress on October 26, 1970.

3.3. The purpose of the Fair Credit Reporting Act is to protect private citizens, "Consumers," from the excesses of credit bureaus, insurance companies, employment agencies, and other businesses which use or distribute information concerning consumers.

3.4. The act requires that the department adopt reasonable procedures to provide information to credit grantors, insurers, employers, and others in a manner that is fair and equitable to the consumer with due regard for confidentiality, accuracy, and the proper use of such information.

3.5. To assure compliance with the Fair Credit Reporting Act, the department hereby initiates the following methods of compiling and disseminating information regarding a consumer which is classified as a consumer report. Definitions and rules of construction which are applicable for this purpose are as follows:

(1) The term "Person" means an individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(2) The term "Consumer" means an individual.

(3) The term "Consumer Report" means all written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of servicing as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes; or (2) employment purposes; or (3) in connection with credit transactions involving the consumer about whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of the consumer; or for the determination of the consumer's eligibility for a license or other benefit granted by a governmental agency required by law to consider an applicant's financial responsibility or status; or a legitimate business need for information in connection with a business transaction involving the consumer.

(4) The term "Consumer Reporting Agency" means any person, who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information regarding consumers for the purpose of furnishing consumer reports to third parties, and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(5) The term "File" when used in connection with information about any consumer, means all of the information concerning that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(6) The term "Employment Purposes" when used in connection with a consumer report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(7) The term "Medical Information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

3.6. The department will furnish a consumer report only under the following circumstances:

- (1) In response to the order of a court having jurisdiction to issue such an order;
- (2) In response to the written instructions of the consumer to whom it relates; and
- (3) To a person whom it has reason to believe.

(a) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of the consumer;

(b) Intends to use the information for employment purposes;

(c) Intends to use the information in connection with the underwriting of insurance involving the consumer;

(d) Intends to use the information in connection with determining the consumer's eligibility for a license or other benefit granted by a governmental agency required by law to consider an applicant's financial responsibility or status; or

(e) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

3.7. The department will not make a disclosure from a consumer's file regarding the following list of items which are classified under the provisions of the Fair Credit Reporting Act as obsolete information.

(1) Bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than fourteen (14) years.

(2) Suits and judgements which, from date of entry, antedate the report by more than seven (7) years or until the governing statute of limitations has expired, whichever is the longer period.

(3) Paid tax liens, which, from date of payment, antedate the report by more than seven (7) years.

(4) Records of arrest, indictment, or conviction or crime which, from date of disposition, release, or parole, antedate the report by more than seven (7) years.

(5) Any other adverse item of information which antedates the report by more than seven (7) years.

3.8. The following information is exempt from the obsolete provisions of the act:

(1) A credit transaction involving, or which may reasonably be expected to involve, a principal amount of fifty thousand dollars (\$50,000) or more.

(2) The underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of fifty thousand dollars (\$50,000) or more.

(3) The employment of any individual at an annual salary which equals, or which may reasonably be expected to equal, twenty thousand dollars (\$20,000) or more.

3.9. The department requires that prospective users of consumer information identify themselves, certify the purpose for which the information is sought, and certify that the information will be used for no other purpose.

3.10. The department shall make a reasonable effort to verify the identity of the person requesting such information prior to furnishing a consumer report. No consumer report may be furnished to a person if the department has reasonable grounds to believe that the report will not be used for a purpose which is in compliance with the Fair Credit Reporting Act.

3.11. The department will utilize trained personnel to compile, maintain, and distribute records of

consumers contained in the department's files in order to assure that the files are accurate and current, and are clearly explained to a consumer or user of a consumer report.

3.12. The department will, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

(1) The nature and substance of all information (except medical information) in its files regarding the consumer at the time of request.

(2) The recipients of any consumer report regarding the consumer which it has furnished:

(a) For employment purposes within a two (2) year period preceding the request.

(b) For any other purpose within a six (6) month period preceding the request.

3.13. If the completeness or accuracy of any item of information contained in his/her file is disputed by a consumer and the dispute is directly conveyed to the department by the consumer, the department will reinvestigate and record the current status of the information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous and irrelevant. If after such reinvestigation the information is found to be inaccurate or can no longer be verified, the department will delete such information from the consumer file.

3.14. When the dispute is not resolved by the department's reinvestigation and the consumer files a statement setting forth his/her side of the dispute, the department will, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification of the summary thereof. The statement may be limited to one hundred (100) words if the department provides the consumer with assistance in writing a summary of the dispute.

3.15. Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation of disputed information, the department will, upon request of the consumer, furnish notification that the item has been deleted to any person specifically designated by the consumer who has within two (2) years prior thereto received a consumer report for employment purposes or within six (6) months prior thereto received a consumer report for any other purpose which contained the disputed information.

3.16. When furnishing a consumer report for employment purposes containing items of information regarding consumers which are matter of public record, the current public record status of each item at the time of issuance of the information is considered to be a complete and up-to-date report.

3.17. A consumer may receive a consumer report from the department without charge if he has been notified by a user of a consumer report issued by the department that his credit rating may be or has been adversely affected by the report. Such request must be submitted within thirty (30) days from the date a consumer receives notification if no charge is to be assessed by the department for such disclosure. Otherwise, the department will impose reasonable charges for a consumer report as provided by Chapter 17A, Article 2, Section 13 of the Motor Vehicle Code.

3.18. When a consumer requests an interview with the department concerning his/her consumer report, the interview will be set during normal business hours and on reasonable notice. If the consumer cannot come to the department, he/she may have a telephone interview providing the interview is preceded by a written request

with proper identification and the consumer assumes the cost of the telephone toll charge.

3.19. The distribution of information by the department, which does not come under the provisions of the Fair Credit Reporting Act, will be governed by the laws of the state. State and federal laws concur that persons requesting information concerning the personal characteristics of an individual must have a legitimate purpose for the information. No person has the right to receive information from an individual's file to satisfy a mere whim or fancy, to engage in a pastime, to create scandal, to degrade another, to injure public morals, or to further any improper or useless end or purpose.

3.20. The department will provide a free flow of information to state and federal authorities who are involved in law enforcement activities. Other governmental agencies may receive information from the files of the department limited to an individual's name, address, former address, place of employment, or former place of employment.

3.21. Persons qualifying to receive information under the provisions of this regulation must apply to the department in writing utilizing the following procedures:

(a) Driver's license information. Submit the full name and address of the licensee. If available, the following additional information is helpful:

- (1) License number assigned the licensee as shown on the operator's or chauffeur's license card;
- (2) If licensee has changed residence, a known previous address of licensee;
- (3) Complete birthdate of licensee; and
- (4) The social security number of licensee.

(b) Vehicle registration or certificate of title information. Submit the correct name and address of the registered owner, whether it be an individual, partnership, trade name, corporation; or the manufacturer's name, year model and serial number of the vehicle; or the class and license number assigned or being displayed on the vehicle; or the West Virginia certificate of title number assigned the vehicle by the Department of Motor Vehicles.

(c) Fees required for information. Submit required fees as follows:

- (1) One dollar (\$1) per request for a driver's license record;
- (2) One dollar (\$1) per request for certificate of title record, regardless of the type of request; i.e., certified or non-certified copies of owner's application for certificate of title; or any single item of information from the owner's application.
- (3) Twenty-five cents (.25) per request for a vehicle registration record.

All fees as aforementioned must accompany requests for information. In the event that requested information is not available from Department of Motor Vehicles, no refund of fees will be returned.