



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

7/26/2023 2:39:51 PM

Office of West Virginia
Secretary Of State

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

AGENCY: Motor Vehicles TITLE-SERIES: 91-06
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 91-06 Dealer Licensing

PRIMARY CONTACT

NAME: Adam Holley
ADDRESS: PO Box 17200
Charleston, WV 25314
EMAIL: adam.holley@wv.gov
PHONE NUMBER: 304-926-0708

CITE STATUTORY AUTHORITY: 17 A-2-9 17 A-6-2a 17 A-6-Sa 17 A-6-3 17 A- 6B-13 17 A-6C-17 and 17 A-6D-15

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

This Legislative Rule Establishes Requirements For Licensing Of Motor Vehicle Dealers, Wrecker/Dismantler/Rebuilders, License Services, Automobile Auctions, Vehicle Leasing And Rental Companies And Administrative Due Process.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/23/2023

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/23/2023

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS:

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This Legislative Rule Establishes Requirements For Licensing Of Motor Vehicle Dealers, Wrecker/Dismantler/Rebuilders, License Services, Automobile Auctions, Vehicle Leasing And Rental Companies And Transportation Network Companies, All Of Whom The Division Is Required To License. It Also Provides Guidance For The Division In Dealing With Unlicensed Entities.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This Legislative Rule Establishes Requirements For Licensing Of Motor Vehicle Dealers, Wrecker/Dismantler/Rebuilders, License Services, Automobile Auctions, Vehicle Leasing And Rental Companies And Transportation Network Companies, All Of Whom The Division Is Required To License. It Also Provides Guidance For The Division In Dealing With Unlicensed Entities.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			0
Personal Services			0
Current Expenses			0
Repairs and Alterations			0
Assets			0
Other			0
2. Estimated Total Revenues			0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jennifer A Rutherford -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 91
LEGISLATIVE RULE
DIVISION OF MOTOR VEHICLES

SERIES 6
DEALER LICENSING

§ 91-6-1. General.

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

1.2. Authority. -- West Virginia Code §§17A-2-9, 17A-6-2a, 17A-6-5a, 17A-6-3, 17A- 6B-13, 17A-6C-17 and 17A-6D-15.

1.3. Filing Date. – ~~March 29, 2022.~~

1.4. Effective Date. – ~~March 29, 2022.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on ~~August 1, 2027~~ August 1, 2029.

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

§ 91-6-2. Definitions.

2.1. "Class D" refers to a dealership in the business of selling and leasing new and used motor vehicles.

2.2. "Class DUC" refers to a dealership in the business of selling used motor vehicles.

2.3. "Class DTR" refers to a dealership in the business of selling trailers and/or house trailers.

2.4. "Class DRV" refers to a dealership in the business of selling recreational vehicles.

2.5. "Class F" refers to a dealership in the business of selling motorcycles.

2.6. "Class WDR" refers to the business of wrecking, dismantling, and/or rebuilding of motor vehicles.

2.7. "Class AA" refers to a business of running an automobile auction business.

2.8. "Dealer Services" means the dealer services section of the ~~d~~Division of ~~m~~Motor ~~v~~ehicles.

2.9. "Division" means the West Virginia Division of Motor Vehicles.

§ 91-6-3. Application for License to Sell, Lease, Rent, and Auction Motor Vehicles.

3.1. All applications for a license to deal in motor vehicles, including the selling, renting, or leasing of new and/or used motor vehicles, operating an automobile auction business, and operating as a wrecker/dismantler/rebuilder of motor vehicles, shall be submitted on the form approved by the Commissioner, which contains all information required by W. Va. Code §17A-6-4, the certificate of insurance described in §17A-6-4(a) and the bond payable to the State described by §17A-6-4(f). The applicant shall provide all information with as much detail as required and must pay the required fee. If the applicant fails to do so, the Division may return the application to the applicant without further processing. An inspection of the proposed location will be performed and any other investigation the commissioner considers necessary before a license will be approved.

3.2. If an applicant wishes to engage in more than one class of dealership, a separate license certificate must be obtained for each type of dealership.

3.3. All licensees identified in any section of this rule must participate in the Division's electronic lien and title program.

§ 91-6-4. License Services - General.

4.1. Application for License.

4.1.a1. In accordance with the provisions W. Va. 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 purpose of this rule the term, "persons processing Division of Motor Vehicles 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 may not be employed by more than one dealership to be exempted from the licensing requirements of this rule.

4.1.b2. All applications for a license shall be submitted in a format approved by the Commissioner. 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.e3. The licensee shall file an application for renewal of a license with the Division at least thirty (30) days prior to the expiration of the current license. The licensing period is January 1 to December 31. If the renewal application is not filed at least thirty (30) days prior to the expiration of the license, any documents submitted to the Division after December 31 will not be processed until the renewal application is completed.

4.1.d4. For the purpose of this section, the term applicant, has the following meaning; a person operating in his or her own name or under the 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's name.

4.2. Established Place of Business.

4.2.~~a~~1. The License Service shall contain the equipment required to conduct a business including a computer, printer, internet service, desk, chairs and filing facilities for the maintenance of records.

4.2.~~b~~2. The office location may be self-standing or in a residence. The office shall have a valid telephone number and valid email address listed in the name of the License Service.

4.2.~~e~~3. The License Service licensee shall keep all records on the premises.

4.2.~~d~~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 to facilitate inspection by the Division. An employee of the License Service shall be present during posted business hours.

4.2.~~e~~5. State and other political subdivision requirements.

~~4.2.5.a.~~ Each office location shall possess all current State and local licenses applicable to a business of the type being conducted.

~~24.2.5.b.~~ Each office location shall meet all local zoning requirements for the business location.

~~34.2.5.c.~~ The licensee shall display all tax licenses in the office.

~~44.2.5.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.~~a~~1. In accordance with the provisions of the W. Va. Code §17A-6B-2 a bond in the penal sum of twenty-five thousand (\$25,000.00) dollars, payable to the State, is required. The licensee shall have the bond completed on the form prescribed by the Commissioner. 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.~~b~~2. The licensee shall secure the surety bond with the corporate surety from a bonding company licensed to do business in the state of West Virginia.

4.3.~~e~~3. The licensee shall obtain the surety bond in the trade name under which the License Service is being operated.

4.3.~~d~~4. The surety bond shall run concurrently from the date the license is issued or renewed to the expiration of the license.

4.3.~~e~~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.~~f~~6. The Commissioner shall immediately revoke the License Service license upon cancellation of the bond and without proper replacement of the bond.

4.3.~~g~~7. The licensee shall notify the Division and the bonding company of any change in any information contained in the application for the security bond.

4.3.~~h~~8. The Division may notify the bonding company of audit discrepancies or revocation or suspension proceedings against the licensee.

4.4. Issuance of Temporary Registration Plates.

4.4.~~a~~1. The licensee shall make application for temporary registration plates in the manner prescribed by the Division.

4.4.~~b~~2. 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.

4.4.~~e~~3. The Division shall not issue any additional temporary registration plates to the licensee if the licensee's application shows one hundred (100) or more temporary registration plates on hand from the previous allotment assigned to the licensee.

4.4.~~d~~4. 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.

4.4.~~e~~5. 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.

4.4.~~f~~6. ~~The licensee shall not issue a temporary registration plate for a vehicle which has been purchased from a licensed West Virginia dealer. However, a~~ A licensee may process title and registration work on behalf of a West Virginia licensed dealership. A licensee may issue a temporary registration plate for vehicles entering West Virginia from another state or jurisdiction irrespective of the place of purchase.

4.4.~~g~~7. 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.

4.4.~~h~~8. The licensee shall not issue a temporary registration plate containing any misstatement of fact.

4.4.~~i~~9. The fee charged by the licensee for a temporary registration plate shall not exceed \$5.00 as prescribed by W. Va. Code §17A-6B-10(h).

4.4.~~j~~10. An itemized receipt shall be submitted to the division with the title or registration paperwork.

4.4.~~k~~11. 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 W. Va. Code §17A-6B-10(f).

4.4.~~j~~12. The Commissioner may grant the authority to issue permanent registration plates to a license service company, if that license service meets certain qualifications prescribed by the Division. Any license service company authorized to issue permanent registration plates will be required to maintain a penalty bond in the amount of One Hundred Thousand (\$100,000.00) dollars at all times.

4.5. License Service Record Keeping and Document Processing.

4.5.~~a~~1. In addition to the records as required by W. Va. Code §17A-6B-10 and this rule, the licensee shall maintain a record or log of all work accepted by the License Service for a period of three (3) years from the date of the transaction. The record shall include the name and address of the customer, the vehicle identification information, the type of transaction, the date of transaction and/or any activity relating to the transaction. The licensee shall provide each customer with an itemized receipt, retain a duplicate copy for the licensee's records, and submit such receipt to the division with the documents to be processed.

4.5.~~b~~2. In accordance with the provisions of W. Va. 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 a measure of compliance.

4.5.~~e~~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.

4.5.~~d~~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.

4.5.~~e~~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.

4.5.~~f~~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.

4.6. Noncompliance with Statute, Rule or Policy.

4.6.~~a~~1. The licensee, as a condition of licensing, agrees to abide by all statutes, or rules, policies and procedures established by the Division to provide for the most efficient processing of work.

4.6.~~b~~2. The Commissioner may suspend the processing of a License Service's documents due to noncompliance with any statute, rule, policy, or procedure.

4.6.~~e~~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. Dealership Premises.

5.1. Established Place of Business for All Classes of Dealers. If an established place of business is required by statute, it must include all of the following:

5.1.a1. A permanent structure, owned or leased and actually occupied or to be occupied by licensee/applicant;

5.1.b2. Easily accessible to the public and in compliance with all state laws and municipal ordinances;

5.1.e3. Have adequate facilities to keep, maintain and preserve records, papers and documents necessary to carry on the business and in such a way as to be available for inspections by the commissioner at all reasonable times, either on site or electronically; ~~and~~

5.1.e3.ai. To comply with the above paragraph, the dealership must inform the Division of its hours of operation and the hours must be posted at the dealership location. If the dealership changes the hours of operations or plans to be closed for an extended period of time, the licensee must notify the Division.

5.1.e3.ii. A person who is authorized to do business on behalf of the dealership as listed on the license application must be present during the hours of operation.

5.1.d4. The license certificate, insurance certificate, and surety bond shall be prominently displayed in the dealership office.

5.2. Additional Requirements for Established Place of Business for a Class DUC. In addition to the requirements stated in 5.1, a Class DUC must also have the following:

5.2.a1. A permanent structure, owned or leased and actually occupied or to be occupied by licensee/applicant to be used ~~solely~~ for the purpose of selling used motor vehicles;

5.2.a1.ia. A “permanent structure” means a building permanently affixed to a foundation and has fixed utility connections.

5.2.a1.ii. The licensee must submit utility bills in the name of the business or licensee/applicant to prove they occupy the permanent structure.

~~5.2.b. A display area, outside or inside, or a combination thereof, of at least one thousand two hundred (1,200) square feet to be used exclusively for the display of vehicles offered for sale by licensee;~~

~~5.2.c. A valid telephone number listed in the name of the business;~~

~~5.2.d. 5.2.2.b A valid email address for the business; and~~

~~5.2.f. Must be open to the public at least twenty (20) hours per week, with least ten (10) of those hours between 9:30 a.m. and 8:30 p.m., Monday through Saturday, and five (5) of those hours must be between~~

~~9:30 a.m. and 5:00 p.m. Monday through Friday. If a dealership needs to alter its hours either temporarily or permanently, the licensee must notify dealer services.~~

~~5.2.g. 5.2.e3.~~ Licensee may enter into a written agreement to utilize an off-site service facility as long as the requirements of paragraph 2 above are met; and

~~5.2.h. 5.2.d4.~~ If licensee also possesses a Class DTR or F license, house trailers, trailers or motorcycles may be sold on the same premises but a Class DUC licensee may not sell vehicles of other classes on the same premises unless acquired by trade.

~~5.2.i. Farm machinery may also be sold on the premises.~~

~~5.2.j. Accessory, gasoline or oil, or storage departments may be maintained on the premises if they are operated for purposes of carrying on the business.~~

~~5.2.k. 5.2.e5.~~ The license certificate, insurance certificate, and surety bond shall be displayed in the dealership office in a manner that is plainly visible to the public.

~~5.2.l. 5.2.f6.~~ The licensee shall keep the display area free of junk, junk vehicles, scrap iron and trash of all types.

~~5.2.m. 5.2.g7.~~ The licensee shall keep the display area free of any hazardous condition which would endanger the public.

~~5.2.n. 5.2.h8.~~ If a licensee fails to maintain posted hours of operation on a regular basis thereby preventing the division from inspecting ~~their~~ records, and is not reachable by telephone, and fails to maintain ~~they~~ the display lot and place of business in such a way that by all appearances the business is not active, it shall be considered abandoned and the license certificate may be revoked.

~~5.2.o. 5.2.i9.~~ Trailer type structures shall have a foundation and be fully underpinned and be suitable for the purpose of operating the business of the dealership.

~~5.2.p. 5.2.j10.~~ No licensee shall sell motor vehicles at multiple locations without a separate certificate for each location.

~~5.2.q. 5.2.k11.~~ A licensee may obtain a permit in the manner described in section 6 below to display and sell motor vehicles off premises and may only display and sell motor vehicles off premises with such a permit.

5.3. Additional Requirements for Established Places of Business Class D. In addition to the requirements set forth in 5.1, a Class D must also have the following:

5.3.a1. A permanent structure owned or leased and actually occupied or to be occupied by licensee/applicant to be used solely for the purpose of selling used motor vehicles as 1 above except the location is to be used for the display and selling of new motor vehicles or new and used motor vehicles;

5.3.b2. A valid telephone number listed in the name of the business;

5.3.e~~3~~. A valid email address for the business; and

5.3.d~~4~~. Must be open to the public at least twenty (20) hours per week, with least ten (10) of those hours between 9:30 a.m. and 8:30 p.m., Monday through Saturday, and five (5) of those hours must be between (9:30 a.m. and 5:00 p.m. Monday through Friday. If a dealership needs to alter its hours either temporarily or permanently, the licensee must notify dealer services.

5.3.e~~5~~. Licensee may enter into a written agreement to utilize an off-site service facility as long as the requirements of paragraph 2 above are met.

5.3.f~~6~~. If licensee also possesses a Class DTR or F license, house trailers, trailers or motorcycles may be sold on the same premises but the Class D licensee may not sell vehicles of other classes on the same premises unless acquired by trade.

5.3.g~~7~~. Farm machinery may also be sold on the premises.

5.3.h~~8~~. Accessory, gasoline or oil, or storage departments may be maintained on the premises if they are operated for purposes of carrying on the business.

5.3.i~~9~~. The license certificate, insurance certificate, and surety bond shall be prominently displayed in the dealership office.

5.3.j~~10~~. The licensee shall keep the display area free of junk, junk vehicles, scrap iron and trash of all types.

5.3.k~~11~~. 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.

5.3.l~~12~~. The licensee shall keep the display area free of any hazardous condition which would endanger the public.

5.3.m~~13~~. The division may cancel or revoke the license of any licensee that abandons the place of business. There is a rebuttable presumption that the licensee has abandoned the place of business if the dealership is regularly closed during the posted hours of operation thereby preventing the division from inspecting their records, the licensee is not reachable by telephone, the display lot and place of business are not maintained in such a way that by all appearances the business is not active.

5.3.n~~14~~. Trailer type structures shall have a foundation and be fully underpinned and be suitable for the purpose of operating the business of the dealership.

5.3.o~~15~~. No licensee shall sell motor vehicles at multiple locations without a separate certificate for each location.

5.3.p~~16~~. A licensee may obtain a permit to display and sell motor vehicles off premises and may only display and sell motor vehicles off premises with such a permit.

§ 91-6-6. Off-Premises Permits.

6.1. 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 or participate at an industry wide public vehicle shows and exhibitions unless the Commissioner grants an off-premises permit. The licensee shall request approval at least ten (10) days prior to the date the temporary location is to be established.

6.2. Term of Approval. The Commissioner may approve subject to the following:

6.2.a1. Display Only. An off-premises permit for display only of vehicles may be approved for a period of time not to exceed one (1) year. The Commissioner may renew the permit for the succeeding year for the recurrent display of vehicles at any one specific location. An applicant for renewal shall submit an application to the Commissioner at least thirty days prior to the expiration of the permit. Any applicant denied the issuance or non-renewal of an off-premises permit for display only may appeal the denial to the Motor Vehicle Dealer Advisory Board created in accordance with W.Va. Code §17A-6-18a.

6.2.b2. Display and Sale. An off-premises permit for the display and sale of vehicles may be approved for a period of time not to exceed ten (10) days. The Commissioner shall not issue more than eight (8) display and sale permits to a licensee in one fiscal year, for the recurrent display and sale of vehicles at any one specific location.

6.3. Display of Approval Certificate. The licensee shall display the certificate of approval for the off premises permit in a conspicuous place at the temporary additional dealer location.

6.4. Reciprocal Out of State Dealer Off Premises Permit. In accordance with the provisions of W. Va. Code §17A-6-5a, dealers licensed in adjacent states which allow West Virginia dealers to display and sell vehicles at industry wide public vehicle shows and exhibitions may be permitted the same privileges in West Virginia subject to the following:

6.4.a1. The dealer applies for a permit at least ten days prior to the date of the show or exhibition;

6.4.b2. The permit is valid for the length of the show or exhibition not to exceed ten days;

6.4.e3. The Division's decision whether or not to approve a request may or not be appealed administratively to the Division, and is subject only to the jurisdiction of a West Virginia Circuit Court;

6.4.d4. The dealer agrees to be subject to the consumer protection laws of West Virginia and subject to any civil penalties assessed by the Division in accordance with W. Va. Code § 17A-6-25a;

6.4.e5. The dealer pays the initial licensing fee required of West Virginia dealers of similar class by certified check or money order;

6.4.f6. The dealer posts a bond of twenty-five thousand dollars which otherwise comports with the requirements of W. Va. Code §17A-6-4 made payable to the Division of Motor Vehicles in lieu of participation in the dealer recovery fund.

6.4.g7. The industry wide public vehicle show or exhibition has a minimum of three West Virginia dealers as participants.

§ 91-6-7. Dealer Special Plates.

7.1. Each licensed dealer will receive hard plates with the dealer class and number permanently printed on the plate. Stickers with the month and year of the plate's expiration will accompany the plates. It is the dealer's responsibility to properly affix the stickers to the plates.

7.2. Upon renewal of the dealership's license certificate, new stickers will be sent to the dealer by the division with a new expiration date, and again it will be the dealer's responsibility to properly affix the stickers to each of his or her plates.

7.3. Failure to properly affix the stickers described above will result in a citation upon a first offense, and if the sticker is not properly affixed to the plate(s) within ten (10) days of receipt thereof, may result in additional action in accordance with W.Va. Code §17A-6-18.

§ 91-6-8. Vehicle Leasing Companies Lessor License.

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

8.2. The application shall include:

8.2.~~a~~1. A non-refundable fee of two hundred and fifty (\$250) dollars;

8.2.~~b~~2. An application completed in a manner prescribed by the Commissioner and sworn to by the lessor, or if the lessor is a corporation by an officer authorized to execute the documents;

8.2.~~c~~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;

8.2.~~d~~4. A bond in the penal sum of twenty-five thousand (\$25,000.00) dollars, payable to the State, from a corporate surety authorized to do business in this state, to ensure that the applicant will not, in the conduct of his or her business, made any fraudulent representation which causes a financial loss to any purchaser, seller, financial institution, agency, or the state of West Virginia. The bond shall be effective on the date the license certificate is issued. A licensee shall keep the bond in full force and effect at all times. The surety on the bond may cancel the bond upon giving thirty days notice to the commissioner and thereafter is relieved of liability for any breach or condition occurring after the effective date of the cancellation; and

8.2.~~e~~5 Any other documents or records as the Commissioner may require to verify the information provided on the application, and/or the financial condition of the applicant or its leasing business.

8.3. 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.

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

8.5. A lessor license certificate may be renewed each year, on a form prescribed by the Commissioner, for a fee of one hundred (\$100) dollars. All applications for the renewal of any license certificate shall be filed with the Commissioner at least thirty (30) days before the expiration of the license. A licensee who fails to file an application for renewal at least thirty days before the expiration of the dealer license is required to pay the original license fee prescribed in subdivision 6.2.a of this rule.

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

8.7. 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.

8.8. 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.

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

8.10. 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 W. Va. Code §17A-3-4(b)(6) may be cancelled or revoked upon the failure of the lessor licensee to timely remit the paper fees and taxes in the required amount. The cancellation or revocation of these types of title or registration documents shall be pursuant to W. Va. Code §17A-9-7.

8.11. Any publication 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 the application or any information submitted with the application except in response to a valid subpoena or subpoena duces tecum issued pursuant to law.

§ 91-6-9. Temporary Registration Plates.

9.1. 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.

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

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

9.4. 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 time for which a temporary plate is valid.

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

9.6. 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 W. Va. Code §17A-6-15(f).

9.7. If the temporary registration plates are issued electronically, the information needs to be verified before the plate is issued. The electronic system will issue temporary plates in random order and will record them electronically.

9.8. A dealership may submit title, tax and registration work through a licensed West Virginia license service.

§ 91-6-10. Dealer Franchise Agreement.

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

10.2. 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.

§ 91-6-11. Unlicensed Dealers.

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

11.2. Any titles presented to the division for processing by a person who has been identified by the division as an unlicensed dealer will not be processed.

11.3. The civil penalties provided by W. Va. 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 W. Va. Code §17A-6-3 has occurred. A rebuttable presumption exists that a person is engaged in the business of a dealer if he or she sells ten or more used motor vehicles or five or more vehicles of any other type of vehicle requiring a license to engage in the business of selling the vehicle in a twelve (12) month period. The Commissioner may request any additional information or investigation he or she considers necessary before levying any civil penalty.

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

11.4.a~~1~~. A statement of the offense the person committed;

11.4.b~~2~~. A summary of the facts on which the finding of a violation was made;

11.4.e~~3~~. The amount of the civil penalty which is being levied; and

11.4.d~~4~~. An order that the person:

11.4.4.a1. Cease and desist from all future violations and pay the civil penalty; or

11.4.4.b2. 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.

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

11.6. 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.

11.7. 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.

11.8. 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 the evaluation, the Commissioner shall consider:

11.8.a~~1~~. The severity of the violation and or its impact on the public;

11.8.b~~2~~. The number of similar or related violations;

11.8.e~~3~~. Whether or not the violations were willful or intentional; and

11.8.d~~4~~. Any other facts considered appropriate.

11.9. 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 W. Va. Code §17A- 6-3.

11.10. 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.

11.11. Any officer of a corporation that is found to have committed a violation of W. Va. 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.

§ 91-6-12. Administrative Appeals Of Commissioner's Orders Or Decisions.

12.1. 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 W. Va. Code §§17A-6-1 et seq.; 17A-6B-1 et seq.; or 17A-6C-1 et seq. and/or this legislative rule, may request a hearing in accordance with the provisions of West Virginia Legislative Rules, Division of Motor Vehicles, 91CSR1, Administrative Due Process.

12.2. The applicant or licensee may request a stay of the commissioner's order for good cause pending the outcome of the hearing. The request must be in writing and must state the specific reason or reasons why the order should be stayed. The stay will be granted or denied at the commissioner's discretion.

§ 91-6-13. Daily Passenger Rental Car Tax.

13.1. A daily passenger rental car tax of one dollar for each rental day or part of a day of the rental transaction contract is imposed on the rental of daily passenger vehicles in accordance with the provisions of W. Va. Code §17A-3-4(b)(11). For the purposes of this section, a daily rental transaction is defined as one twenty-four-hour period within the terms of the contract rental day regardless of time of contract start or finish. Contracts for less than a twenty-four-hour period are also defined as a transaction. This tax is in addition to the taxes imposed by W. Va. Code §11-15-1 et seq and §11-15a-1 et seq. The Daily Passenger Rental Car Business licensee shall collect the tax on each vehicle rental transaction originating in this state regardless of where the vehicle is titled or registered and shall remit all taxes collected to the Division of Motor Vehicles on a monthly basis.

§ 91-6-14. Dealer Recovery Fund.

14.1. The Dealer Recovery Fund Control Board shall consider only claims submitted for the purposes enumerated in W. Va. Code §17A-6-2a (h). The Board will not consider claims for attorney fees, accrued interest, punitive damages or claims submitted by or on behalf of a person or financial institution that lends money or credit to a dealer and holds the dealer's inventory as collateral or payment of the loan or credit, commonly referred to as floor planners.

14.2. Any dealer who is exempted from the surety bond requirement in accordance with W. Va. Code §17A-6-2a(c)(1) who subsequently is subject to a claim, civil penalty, suspension or revocation shall, within 30 days of notice to the licensee from the Division, obtain a new surety bond and shall maintain the bond for a period of three licensing years before the dealer would qualify again for the exemption.

§ 91-6-15. Transportation Network Company Permits.

15.1. This section implements W. Va. Code § 17-29-1 et seq. providing a process for Transportation Network Companies to obtain permits and operate in this state.

15.1.a.1. A Transportation Network Company (TNC) is a corporation, partnership, sole proprietorship, or other entity that is licensed pursuant to Article 29 of Chapter 17 of the West Virginia Code and operating in West Virginia that uses a digital network to connect transportation network company riders to transportation network company drivers who provide prearranged rides. A transportation network company does not control, direct or manage the personal vehicles or transportation network company drivers that connect to its digital network, except where agreed to by written contract. Effective July 1, 2016 the West Virginia Division of Motor Vehicles will start issuing Transportation Network Company (TNC) permits to allow such companies to provide prearranged rides.

15.2. On or after July 1, 2016, any company, partnership, sole proprietorship, or any other entity that wishes to operate as a TNC in West Virginia must first obtain a permit from the division by completing an application on a form prescribed by the commissioner and submitting it to the Division along with a fee of \$1000.00.

15.3. Each TNC must submit a renewal application together with the \$1,000.00 application fee, each fiscal year. The renewal application must be filed at least 30 days prior to the expiration of the fiscal year.

15.4. The TNC shall submit to the Division together with the permit application its policies and procedures for compliance with the statutory prohibitions against driver drug and/or alcohol use; solicitation and street hails; cash tips; and discrimination and accessibility. It shall also provide its policies and procedures for vetting the drivers it allows to use its network in accordance with W. Va. Code § 17-29-12 through W. Va. Code § 17-29-17, and proof of insurance required by W. Va. Code § 17-29-8 and vehicle safety.

§ 91-6-16. Dealer Conduct on Division Premises and Engaging with Division Employees.

16.1. Every motor vehicle dealer and employee therefor, shall conduct themselves in a professional manner on division premises and shall treat division employees, including field inspectors, with professional courtesy and respect.

16.2. Any motor vehicle dealer, or employee thereof, who intentionally disrupts the peaceful conduct of division business in any way, or verbally abuses a division employee, including shouting, cursing, name-calling, or in any other way harasses a division employee, shall be refused service for 24 hours.