

**DIVISION OF
DRIVER PROGRAM REGULATION**

**PART 76
COMMISSIONER'S REGULATIONS
DRIVERS' SCHOOLS**

(Statutory Authority: V & T Law Sections 215, 394)

PART 76

REGULATIONS OF THE COMMISSIONER OF MOTOR VEHICLES DRIVERS' SCHOOLS

(Statutory Authority: Vehicle and Traffic Law Sections 215, 394)

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REGISTRATION PROCEDURE

Section 76.1 Applications.

(a) Every person desiring to engage in the business of conducting a drivers' school shall, prior to engaging in such business, secure a license for such purpose. Applications for a license, either original or renewal, must be made on forms prescribed therefor by the Commissioner of Motor Vehicles. Such forms may be obtained from the drivers' school unit in the central office of the Department of Motor Vehicles, Albany, New York.

(b) Applications should be filed at the drivers' school unit in the central office of the Department of Motor Vehicles, Albany, New York.

(c) Contents of application.

(1) If an application is made by an individual, it must be signed and sworn to by such individual. In the case of a corporation, the application must be signed and sworn to by an officer and the holders of 20 percent or more of the shares thereof, and shall have attached thereto a list of the directors and such shareholders with their names and addresses. In the case of an association, the application shall be signed and sworn to by the president or other chief officer of the association and by the secretary thereof. In the case of a partnership, the application must be signed and sworn to by all partners.

(2) Each application shall also set forth the name and address of a person designated as the manager of the business, who shall be responsible for the daily operation of the drivers' school; and the application shall also be signed by him unless he shall be one of the same persons otherwise required by the provisions of the preceding paragraph to sign the same. In the case of an individual proprietorship, the proprietor, and in the case of a partnership, one of the partners, may be designated as the manager; in all other cases, the person designated as the manager shall be a regular employee of the applicant, whether as an officer thereof or otherwise, performing the functions of a manager of the business.

(3) The application must be fully completed, including the names and addresses of all licensed instructors and, if the applicant, officer, partner, manager or other person signing the same as required has ever used or has ever been known by another name, such name or names must be listed on the application.

(4) A copy of each form used or required pursuant to section 76.8 of this Part must be submitted to the department for approval when application is made.

(5) On an original application, a certified copy of certificate of assumed business name, or copy of the filing receipt obtained from the Secretary of State's office, must be submitted in the event that the business is to be conducted under an assumed name. On a renewal application, such certificate or filing receipt must be submitted only in the event that the business is to be conducted under an assumed name different than the name under which the business was previously conducted.

(76.1 - continued)

(6) Unless such drivers' school shall have been so licensed prior to the effective date of this Part, no license will be issued to a drivers' school under a name or title which is the same as the name or title of any other school holding a license or is a name or title so similar to the name or title of a school holding such license as to tend to confuse or deceive.

(d) Fees.

(1) Each original application for a license to conduct a drivers' school must be accompanied by the appropriate application fee, which shall in no event be refunded.

(2) After approval of an original application, a license will be issued upon payment of the appropriate license fee.

(3) The appropriate fee for a renewal of a license must accompany the renewal application. Such renewal of a license shall be for the period ending on the second 30th day of June following expiration of the last preceding license or renewal.

(4) All fees must be paid by check or money order.

(5) Neither surrender nor revocation or suspension of a license during any license or license renewal period shall entitle the holder of any refund on account of the fees paid therefor.

(e) A drivers' school, which has been licensed for at least five years without any suspension or revocation of its license by this department and which has conducted the three-hour pre-licensing course or other governmental authorized educational program, in each of the five years preceding the date of application to self-certify and to offer the 30-hour course, may apply to administer the instructor's written test, road sign and road tests, to collect a visual acuity report conducted by a health care professional listed in Section 5.2(d) of these regulations, and to certify that an applicant for a Drivers' School Instructor's Certificate (MV-524) has passed such tests. Such application shall list the names and addresses of all instructors who shall administer such tests and shall be amended whenever an instructor is added to or deleted from such list. The thirty-hour course shall be conducted according to a curriculum supplied and monitored by the department.

76.2 Licenses.

(a) Upon approval of an application and of the place of business of the applicant, the commissioner will issue a license to the applicant. Such original license shall be valid until the 30th day of June following the date of its issuance. Such license or current renewal thereof must be conspicuously displayed in the licensee's principal place of business at all times. At the time of issuance of such license or of the first renewal of a license, a permanent license number will be assigned to the applicant which will be inscribed on such license or renewal license and thereafter on each and every renewal of the same.

(76.2 - continued)

(b) No such license shall be issued unless every applicant, officer, partner, manager, shareholder or other person signing the application for license, as required, has furnished satisfactory evidence of good character, reputation, fitness and ability to comply satisfactorily with the regulations affecting drivers' schools.

(c) Except as provided in subparagraph (3) of this subdivision, no license will be issued for a drivers' school or a branch thereof:

(1) if the place of business is within 1,500 feet of a building owned or leased by the State or county in which motor vehicle registrations or licenses to drive motor vehicles are issued to the public;

(2) if the drivers' school is within 1,500 feet of an official New York State road test post in use at the time of the application therefor; nor

(3) if at the time of application for a new license, it shall appear that during the preceding license period a building owned or leased by the state or county in which motor vehicle registrations or licenses to drive motor vehicles are issued to the public or an official New York State road test post has been established within 1,500 feet of such drivers' school or branch thereof, the commissioner may upon consideration of all of the circumstances, including but not limited to the relative location and a reasonable distance, less than 1,500 feet of such building or road test post and the obligations of any lease of the premises occupied by such drivers' school or branch, waive the requirements of subparagraphs (1) and (2) of this subdivision or give such drivers' school, in conjunction with the issuance of such renewal license, a reasonable time to relocate.

(d) No original license will be issued on or after the effective date of this Part for conducting a drivers' school in a city having a population of 250,000 or more unless the place of business is located in either:

(1) a portion of a building;

(2) a store; or

(3) an office devoted exclusively to nonresidential use, except if, through no fault of his own, the licensee is forced to leave his place of business, he shall have three months to relocate at another fixed location and during this interim period he may locate temporarily in quarters which will serve as a place of business upon the approval of the commissioner even though such temporary place of business may not conform to the requirements of this Part. If a portion of a building, store, or office devoted to nonresidential use is required, such facilities must be open to the public for service at definite stated hours. The hours during which such facilities are open to the public for service must be listed with the commissioner and prominently displayed on the front door or front window of the drivers' school. Such facilities shall be manned by personnel whose names and addresses must be on file with the commissioner. If the facilities are shared with another business and are not reasonably free from other visible and/or audible activities, there must be a permanent wall or partition separating the two. The premises must be located in well lighted, easily accessible permanent structure and maintained in a neat, businesslike manner with adequate seating space and furniture provided for the use of the students patronizing the school.

(76.2 - continued)

(e) No license shall be issued for conducting a drivers' school where the place of business is conducted from a house trailer, tent, temporary stand, temporary address, a residence room or residence rooms in a hotel, a bar or grill, billiard hall, gasoline station, garage, through the exclusive facilities of a telephone answering service, or from any other location which in the discretion of the commissioner is not considered to be a suitable facility for the conducting of a drivers' school. A telephone answering service can only be used as an adjunct to a school conducting its business at regularly licensed premises. In the case of a drivers' school dealing exclusively in motorcycle instruction, the place of business may be a bona fide motorcycle dealer's headquarters, but not in the repair service area, provided that all other provisions of this Part are complied with.

(f) No original application nor application for change of location will be approved unless the place of business has adequate office space, a minimum of 50 square feet. If classroom facilities are combined with office space, such total space must be at least 200 square feet. Maximum capacity will be calculated on the basis of 200 square feet for the first 10 or fewer students and 20 square feet for each additional student, with no more than 36 students in any class.

(g) No drivers' school may change its location without prior permission from the commissioner.

(h) No original license will be issued unless there shall be presented therewith evidence of the ownership by the applicant of the premises at which the business of the drivers' school is to be conducted or of a lease or rental agreement with the applicant covering the use of such premises for such business.

(i) No original license will be issued on or after the effective date of this Part unless the applicant or at least one instructor employed by the applicant currently has an MV-524 endorsed for vehicular instruction, has given at least 1,000 hours of behind-the-wheel instruction, and possesses a current valid driver's license. If any applicant or instructor employed by such applicant does not possess such 1,000 hours of behind-the-wheel instruction, he may apply to the commissioner for a waiver. For schools teaching motorcycle operation only a valid certificate of instructor training issued by the Motorcycle Safety Foundation, or any other form of instructor training approved by the commissioner, shall be deemed adequate minimal certification for the applicant or any instructor employed by the applicant.

(j) Licenses are not transferable.

(1) In the event of any change of ownership or interest in a business licensed as a sole proprietorship or partnership which enlarges or brings new persons into the business, a new application for a license must be filed immediately. Such application shall be considered as an application for renewal so long as one or more of the original licensees remains a part owner of the business. There shall be payable upon the filing of such application a license fee at the rate of \$5.00 for each month or fraction thereof from the date of issuance to the second 30th day of June thereafter, which shall not, however, exceed in total amount the sum of \$100, against which there shall be credited, if such application is considered an application for renewal as hereinbefore provided, such amount if any as is arrived at by multiplying by \$5 the number of full months remaining to the date of expiration of the current prior license or renewal issued after November 1, 1977.

(76.2- continued)

(2) In the event of a change through a death or dissolution of a partnership and there is no replacement made, the remaining partner or partners may, upon notifying the district office of the Department of Motor Vehicles, continue in business under the current license. If a new partner or partners are subsequently added, the provisions of paragraph (1) of this subdivision shall apply.

(3) The district office must be notified immediately in the event that arrangements are made for the disposal of the business or the controlling interests therein, by sale or transfer of shares or otherwise, to any person or persons not named in the application for the last current license or renewal license of the business as the owner or co-owner or a controlling shareholder thereof. The commissioner in a proper case may permit continuance of the business by the current licensee, pending processing of the application made by the person or persons to whom the business or any such license therein is to be transferred. Such application by the transferee of such business or interest therein shall be considered as an original application for license and shall comply with all of the provisions of these regulations regarding the application for and issuance of an original license.

(4) Upon the issuance of the new license, the prior license, together with all instructors' certificates issued thereunder will become void and must be surrendered to the district office immediately. With such surrender of license, there shall also be filed a notice on form MV-526 signed by the school manager for each and every instructor whose certificate is so voided, setting forth the name, address and certificate number of such instructor and the total amount of logged time rendered by such instructor in behind-the-wheel instruction for the account of the school.

(k) If the license is lost or destroyed, a duplicate will be issued by the district office upon proof of the facts and payment of the fee of \$2. Such proof shall consist of an affidavit indicating:

- (1) date the license was lost or destroyed; and
- (2) the circumstances involving the loss or destruction.

(l) In case of mutilation of a license, a duplicate will be issued by the district office upon surrender of such mutilated license and the payment of a fee of \$2.

(m) In order to ensure continuity of licenses, a renewal application must be submitted not more than 60 days but at least 30 days prior to the date of expiration of the license being renewed. Failure to file a renewal application within the period specified herein may result in a delay in the issuance of the renewal license, and a period of time in which the applicant would be unlicensed. No renewal application will be accepted after the expiration date of the expiring license.

(n) A license may be surrendered for cancellation, or deposited for safekeeping, at the district office of the Department of Motor Vehicles issuing the license. In all such cases the licensee is required to state in writing the reason for such surrender or deposit.

76.3 Changes In Officers and Addresses.

(a) The district office of the Department of Motor Vehicles must be notified by the licensee in writing within 10 days if there is a change in residence address of any individual owner, partner, officer, manager, director, majority shareholder or employee of any drivers' school.

(b) The district office of the Department of Motor Vehicles must be notified by the licensee in writing within 10 days of any change in the officers, directors or shareholders of any corporation holding a license. Such district office shall also be notified in writing within 10 days of any change in the identity of the manager of the business of the licensee or of a branch office of the licensee. In such case, there shall be supplied in writing with such notice and as to each new officer, director, shareholder or manager the same information as would be required on an original application for a license.

76.4 Branch Offices.

(a) A branch office of a drivers' school is an office in a building other than the main office, utilizing the same business name, where some of the business functions of the drivers' school are transacted. A drivers' school desiring to open one or more branch offices, must do so by filing an application for permission to operate a branch office. If the application is approved, the commissioner will issue a branch office license which must be permanently displayed in such office at all times. Such branch office license will be issued for a period expiring at the same time as the license of such drivers' school; and for the issuance and each renewal thereof there shall be paid a fee of \$1.50 for each full year or any part thereof. Such branch office license shall bear the same permanent number assigned to such school and appearing on such school's original license.

(b) Where the applicant for a branch office is conducting business under an assumed name, and the branch office is to be located in a county other than that in which the business is presently located, the applicant must submit with his application a copy of the certificate of assumed business name, certified by a clerk of the county in which such branch office is to be located, or a copy of the filing receipt obtained from the Secretary of State's office.

(c) No branch office may be moved to a new location without prior permission from the commissioner. If a branch office is discontinued, the license must be surrendered within 10 days after termination of business to the district office which issued such license, together with all certificates of instructors, if any, whose employment by or association with the licensee has been terminated upon the discontinuance of such branch office; there should also be filed a notice on form MV-526 signed by the school manager for each and every instructor whose certificate is so voided, setting forth his name, address and certificate number and the total amount of logged time rendered by such instructor in behind-the-wheel instruction for the account of the school.

(d) Each branch office must be equipped to, and shall, perform at such location substantially the same services as are supplied at the principal place of business.

(e) No branch office license will be issued unless there shall be designated in the application therefor a manager of such branch who shall not be the manager of the main office or of another branch. However, in the case of an individual proprietorship, the proprietor, and in the case of a partnership, one of the partners, if to be actively engaged as the manager of such branch, as certified by the application for such branch license, may be designated as such branch manager.

(f) The issuance of any branch license shall be subject to each and every of the same requirements and conditions as are set forth in section 76.2 of this Part.

76.5 Private Service Bureau Functions.

(a) The business of a private service bureau is that of assisting for hire in securing licenses to drive motor vehicles, including learner's permits, or registrations or titles of motor vehicles as distinguished from giving instructions for hire in the operation of motor vehicles or motorcycles.

(b) Licensed drivers' schools are not required to obtain a private service bureau license in order to exercise the functions of a private service bureau. However, in order to do so such school must notify the commissioner thereof, and must comply with the rules and regulations governing private service bureaus.

REQUIRED RECORDS

76.8 Records and Contracts.

(a) Every licensee shall maintain the following records and shall keep them current by posting each transaction by the close of the third business day following the date of the transaction:

(1) A student record card for each student, which must contain the complete name, address and telephone number, if any, of such student, the number of each written contract entered into by him, if any, description of services rendered with date and time thereof, name of the instructor performing such services, and number of each receipt given to the student. Such cards must be filed and maintained in alphabetic order, but may be maintained in two parts, active and inactive. The student record card may not be removed from such file except for posting transactions.

(2) A permanently bound book, with pages consecutively numbered, to be known as the cash book, to record receipts and disbursements. Such book may be maintained either as one or two volumes. If maintained in two volumes, one volume must be maintained for receipts and the other for disbursements. The date of each receipt, name of the student from whom received, receipt number, and amount received must be entered therein; and the date of disbursement, name of payee, description of each disbursement, and the amount of payment must be entered therein. All copies of receipts, and the invoices relating to such disbursement must be retained by the licensee in support of such entries for a period of at least three years. In the case of a school with one or more branch offices, disbursements and invoices may be maintained at the main office and not at each branch office.

(76.8- continued)

(3) A receipt is to be issued each time monies are paid to the school for instruction, training, materials, or for any service for which it is licensed and may make a charge. Such receipts must show the name and address of the school, the receipt number, the name of the student making the payment, the date of payment, amount paid, service rendered, contract number, if any, and duration of each lesson and be signed by an authorized representative of the school. The name and address of the school and the receipt number must be reprinted. Receipt numbers must be in sequence and repetition of numbers is not permissible. The original of each receipt is to be given to the student or person receiving the service, and the duplicate is to be retained by the school in numeric order.

(4) A licensee may substitute for the entries in the cash book with respect to receipts, as required by paragraph (2) of this subdivision, consolidated entries showing the totals of named instructor's or receiver's duplicate receipts for any one day, provided the entry shows the first and last number of the receipts so issued by any one instructor or receiver. Only one system of recordkeeping of receipts in the cash book, either as provided for by paragraph (2) of this subdivision or as provided for by this paragraph, may be used by any one licensee.

(b) A licensee may, if desired, contract in writing for the furnishing of lessons and other services to a student, but for such purpose may only use a form of contract which has been approved by the commissioner, and shall number and issue such contracts in consecutive numerical order maintaining on file in such numerical order a duplicate of each thereof; and shall enter the number of such contract on the student record card of the student named therein.

(c) No form of contract will be approved by the commissioner unless it contains, preprinted thereon:

(1) the complete name and address of the school and, if the school is operated under a corporate or an assumed name, the name of the proprietor or principal officer thereof;

(2) the contract number;

(3) a statement concerning the number and duration of classroom and behind-the-wheel lessons to be given, other than the three-hour prelicensing course, except that spaces may be provided for those portions which may vary on each individual contract. If the school offers a three-hour prelicensing course, the contract must state that the contract price does not include the fee for the three-hour prelicensing course;

(4) provision for the use of a vehicle, or vehicles, for the student's road test;

(5) a statement of the terms or alternative terms for payment of the tuition fee and for payment of any enrollment or registration fee;

(6) provisions for the insertion of the name and address of the student, the date of the contract, and for the signature of the student and the licensee; and

(76.8- continued)

(7) the following statement: "This agreement constitutes the contract between the school and the student, and no verbal statements or promises will be recognized."

(d) Each written contract made with a student, or if no contract shall be made each receipt issued to a student, shall set forth the following provisions for a refund:

(1) Except for contracts executed by schools licensed by the New York State Education Department and subject to the refund provisions of regulations promulgated by that Department, prepayment for lessons and other services shall be subject to refund as follows: if the student, having given prior notice of at least 24 hours, withdraws from or discontinues a prepaid course of instruction or series of lessons before completion thereof, or from any other service for which prepayment has been made, or if the school is unable or unwilling to complete such prepaid course of instruction, or series of lessons, or to provide such other prepaid service, all payments made by the student to the school shall be refunded except:

(i) an amount equal to the enrollment fee, if any, specified in the contract or expressly receipted for, not to exceed the sum of \$10 or 10 percent of the total, whichever is greater, specified cost of such course of instruction or series of lessons; and

(ii) the school's per-lesson tuition charge for each lesson already taken by the student, which charge shall be determined by dividing the total cost of such course of instruction or series of lessons by the number of lessons included therein.

(e) A duplicating process such as ditto or mimeograph will not be considered to constitute preprinting for the purposes of this section.

(f) The instructor is required to ascertain, before giving behind-the-wheel training, that a student possesses a learner's permit or a driving license.

(g) If behind-the-wheel instruction is carried on in groups rather than with individual students, all contracts and advertisements of the driver training school must so indicate. No more than four persons, including the instructor, may occupy any motor vehicle during a behind-the-wheel instruction period.

(h) No school shall represent or agree, orally or in writing, to give instructions until a license is obtained by the applicant, as a part of an inducement to perform.

(i) If the licensee performs the functions of a private service bureau, records as required in section 77.5 of these regulations, with respect to private service bureaus, must be maintained.

(j) The loss, mutilation or destruction of any records which a drivers' school is required to maintain under this Part must be reported to the commissioner immediately by affidavit stating:

(76.8- continued)

- (1) the date such records were lost, destroyed or mutilated;
- (2) the circumstances involving such loss, destruction or mutilation; and
- (3) the name of the precinct, police office or police department to which such loss or destruction was reported, and the date of such report.

(k) All records and contracts must be retained for three years during which period they shall be subject to inspection by the commissioner or his duly authorized representative at all times during regular stated hours or upon the department's request.

(l) A contract entered into by a drivers' school and by a veteran or other eligible person receiving benefits pursuant to article 34, title 38 of the United States Code, whereby such veteran or other eligible person is a current holder of a certificate of eligibility issued by the Veterans Administration, for a specific course of instruction to be given at such drivers' school, must contain the following statements:

"If a student fails to enter, withdraws, or is discontinued before completion of the course, the sum charged for tuition (fees and other charges) for the completed portion of the course will be: (a) \$10 of the established registration fee; and (b) the stated cost of such textbooks, tools, etc. as have been issued by the school and accepted by the student; and (c) an amount derived from the actual hours of attendance, multiplied by the hourly rate; and (d) an amount derived from such absences as have occurred up to 20 percent of the length of the course multiplied by the hourly rate, except that the hourly rate shall be substituted for such absences as have been made up by scheduled work; and (e) 10 percent of the tuition charged for that portion of the course completed by the student and described in (c) and (d) above. Any money paid to the school by the student, in excess of this sum, will be refunded promptly. A transcript of the student's record will be issued to the student provided all payments have been made in accordance with (a)-(e) above."

The refund provisions so contained in such veteran's contract shall be exclusively applicable thereto and in lieu of the refund provisions otherwise provided for by subdivision (d) of this section.

(m) A licensee may substitute for the cash book required by paragraph (a)(2) of this section, a computer printout showing receipts and disbursements and all other information required by paragraph (a)(2) of this section. If the licensee has one or more branch offices, the printout must distinguish the receipts and disbursements of the main office from each branch. A copy of such computer printout must be maintained at the main office. If the licensee maintains its main office out-of-state, a computer printout pertaining to any branch office located in this state must be maintained at such branch office.

(n) A licensee, who is certified to administer the written, road sign and road tests to instructor applicants, must maintain the applicant's written test, report of road test and visual acuity report for three years.

EQUIPMENT

76.11 School Vehicles.

(a) No vehicle owned or controlled by a drivers' school may be used for the purposes of giving driving instruction until the licensee has obtained from the commissioner a school vehicle identification certificate, which certificate shall be carried in such vehicle or, in the case of a motorcycle, on the instructor's person, at all times while such vehicle is being used either for driving instructions or road tests. When a vehicle owned by an instructor is no longer used for instruction, the school vehicle identification certificate must be surrendered to the licensee who shall surrender it to the district office of the Department of Motor Vehicles.

(b) An application for a record of drivers' school certified vehicles must be made on a form prescribed for such purpose by the commissioner.

(c) A record of drivers' school certified vehicles is required for all additional or substitute vehicles.

(d) All drivers' school vehicles, except motorcycles, must be equipped as follows:

(1) with seat belts for both the student and the instructor or a passive in-car restraint as approved by law, Federal regulation, or by the commissioner, additional rear-view mirror for the use of the instructor, and otherwise equipped in accordance with the Vehicle and Traffic Law. If the operation of such vehicle requires a class A, B or C license, it must also be equipped with an additional side view mirror for the use of the instructor. Seat belts are not required on vehicles which may only be operated by a holder of a class A, B or C license, except for school buses, in accordance with Part 49.2 of these regulations; school buses are required to have seat belts as specified in part 49.6 of these regulations, with the number of such seat belts dependent upon the seating capacity;

(2) with dual controls on foot brakes. Tractor trailer combinations owned or controlled by a drivers' school need not be equipped with dual controls on foot brakes. However, such combination must be equipped with some type of device, such as a trolley brake, which will permit the instructor to bring the vehicle to a halt;

(3) with a sign or signs if used for instruction purposes, containing the words STUDENT DRIVER in letters no less than two inches in height and one-fourth inch stroke, against a background of a contrasting color, visible from both the front and rear, and not obstructed by any other sign. The sign must contain all the letters of the words STUDENT DRIVER. The sign or signs may be one two-faced roof sign, or two roof signs, or a sign on the front and a sign on the rear, or front and rear bumper stickers. The sign may be either permanent or removable. The sign may contain advertising material. Notwithstanding the foregoing, compliance with this paragraph shall not be a prerequisite for the issuance of a record of drivers' school certified vehicles.

76.12 Training Facilities.

If a school is approved to conduct the three-hour prelicensing course, it must meet the requirements of Part 7 of these regulations with regard to training facilities.

INSTRUCTORS & INSTRUCTION

76.15 Instructors.

(a) No drivers' school shall knowingly employ any person as an instructor or in any other capacity whatsoever, who has been convicted of a felony or of any crime involving violence, dishonesty, deceit, indecency, degeneracy or moral turpitude, unless prior approval of the employment of such person has been granted by the commissioner, upon an affidavit or such other proof of the facts as the commissioner shall require.

(b) Unless otherwise specifically authorized by this Part, no person, including the owner, operator, partner or any officer, manager, employee or associate of the licensee, shall give instruction for hire in the operation of motor vehicles unless such person is the holder of a current instructor's certificate issued for such purpose by the commissioner. Such certificate is to be valid for use only in connection with the business of drivers' school listed thereon. An original instructor's certificate may only be issued to a person who can comply with all of the following qualifications:

- (1) is the possessor of a driver's license valid for operation in this State, which license shall authorize, but not be limited to, the type of driving which the person shall be teaching;
- (2) has had at least two years of recent licensed driving experience in New York State or such experience in another state as evidenced by a certified abstract of driving record from such state which licensed driving experience shall include, but not be limited to, experience in the type of driving which the person shall be teaching;
- (3) has a high school or high school equivalency diploma or, subject to the conditions contained in subdivision (q) of this section, a military general equivalency diploma;
- (4) is of a sound mind and good moral character;
- (5) has vision in both eyes, with a minimum of 20/40 corrected vision when looking with both eyes; provided, however, that a person with vision in only one eye may be certified for classroom instruction and may also be certified for in-car instruction if he demonstrates to a license inspector with a student in-car that he has compensated for this loss of vision;
- (6) has both legs and arms, except that this requirement may be waived in any individual case in the discretion of the commissioner, and a certificate issued subject to any reasonable restrictions;

(76.15 - continued)

(7) In order to be approved to conduct the written, road sign and road tests and accept visual acuity reports for instructor applicants, an instructor must have an MV-524 (Drivers' School Instructor's Certificate) and must have completed a course in teaching techniques and methodology (30 hours) in addition to the basic thirty hours instructor's course and have five years of experience as a driving instructor, or the instructor may have an MV-283B (Instructor's Certificate-Permanent) and two years of appropriate experience; and

(8) an instructor must be at least 21 years of age in order to be the supervising driver giving behind-the-wheel instruction where the student driver is the holder of a learner permit. (Added 12/3/03)

(c) Application.

(1) Applications for an instructor's certificate must be made by the person desiring such certificate on forms prescribed by the commissioner and must have endorsed thereon the consent of a licensed drivers' school desiring to employ the applicant. Any applicant for an original driving instructor's certificate must successfully complete a course in driver training and traffic safety, approved by the commissioner, consisting of at least 30 hours, prior to the expiration date of the original certificate issued, except that if the original certificate when issued will expire in less than six months, such course must be completed prior to the expiration date of the first renewal certificate issued. The completion of such course in driver training and traffic safety shall not be required if the holder of a current and valid certification by the Education Department is qualified to give driver education and training instruction in the secondary or higher schools of New York, nor shall such course in driver training and safety be required of the holder of a valid certificate of training issued by the Motorcycle Safety Foundation, or other evidence of motorcycle teacher training approved by the Commissioner in order to be engaged in teaching motorcycle operation; and except that where the course is not available within a reasonable distance from the drivers' school, the commissioner may renew the certificate upon the condition that the applicant complete the first available course, but in no event shall such certificate be renewed without such course more than two times.

(i) If an applicant has failed to meet the condition concerning completion of the required course, no subsequent original certificate may be issued until such course has been successfully completed.

(2) Every original application for an instructor's certificate shall be accompanied by the appropriate annual fee, which shall not be refunded and shall be subject to payment of an annual appropriate renewal fee in cash, check or money order.

(3) Applicants for an instructor's certificate will be required to submit two photographs at least 1½ inches by 1½ inches in size taken not more than 30 days prior to the date of such application or renewal thereof, and also will be subject to an investigation or required to submit additional information as the commissioner may prescribe.

(76.15 - continued)

(d) An applicant for an original instructor's certificate will be required to submit to and pass special eye, written, road sign and road tests which will include a demonstration of ability to instruct, and may be required to submit additional or other proof of his qualifications as an instructor. The written, road sign and road tests, as established by the commissioner, may be given by a motor vehicle employee or a driving instructor approved by the department to give these tests pursuant to paragraph (7) of subdivision (b)(7) of this section. The vision test must be conducted by a health care professional listed in Section 5.2(d) of these regulations. The applicant will be permitted two chances to qualify on each of the tests required on an application except for the road test. A failure on the road test will void the application.

(1) A person holding a driver education instructor's certificate (MV-283) is exempt from the written and road sign tests. Such person, however, is required to take the instructor's road test and vision test.

(2) If an instructor wishes to instruct in a vehicle that requires a higher class license than that which he possesses, he must pass all test requirements in order to obtain the appropriate license. Qualification on the instructor's road test for an appropriate type of vehicle is also required, in all cases, before an instructor's certificate (MV-524) endorsed for instructing on vehicles requiring class 1, 2, 3, 7, 7A, 8 or 8A licenses may be issued.

(e) Instructors' certificates shall be valid until the 30th day of September next following the date of issuance. Upon renewal, the commissioner may, in his discretion, issue a renewal which shall be valid for a two-year period. (Amended 5/26/04)

(f) An instructor's certificate must be surrendered by the instructor to the drivers' school employer who shall surrender it to the proper district office of the Department of Motor Vehicles immediately upon termination of an instructor's services with or by any drivers' school designated on such certificate.

(1) At the time of terminating any instructor's services, the designated school must submit a notice on form MV-526 provided by the department as to the termination of such instructor's services, which notice shall also set forth on the face thereof the name, address and certificate number of such instructor and the total amount of logged time rendered by such instructor in behind-the-wheel instruction for the account of the school. The reason or reasons for the termination of such instructor's services shall be endorsed on the back of such form along with the particulars thereof. A duplicate copy of such form shall be provided by the school to the instructor so terminated.

(2) The surrendered instructor's certificate will be returned to the instructor by the Department of Motor Vehicles upon request, without testing, if the instructor resumes employment prior to the expiration of the certificate. An instructor's certificate may be renewed, without testing, within the period of one year from its date of expiration only if the instructor resumes employment and submits the proper forms and fee. An application received more than one year from the date of expiration of the instructor's certificate would be considered an original application in respect to the testing provisions of subdivision (d) of this section.

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(g) A drivers' school desiring to employ an instructor previously licensed may upon application and payment of a fee of one dollar for each, obtain a copy of the face of any and all notices on form MV-526 previously filed by any other school or schools with respect to the termination of such instructor's services; however, the school may not obtain a copy of the endorsement on any such form or forms setting forth the particulars of the termination of such instructor's services.

(h) Any instructor who loses his certificate must report the loss thereof immediately, in writing, to the proper district office of the Department of Motor Vehicles, and a duplicate will be issued to replace a lost current certificate.

(i) The instructor's certificate must be carried by the instructor at all times while driving instructions are being given or when an instructor is accompanying an applicant for a license to the road test line in a motor vehicle or motorcycle.

(j) The commissioner shall not issue an instructor's certificate to any person who is not employed by or associated with a drivers' school licensed by the commissioner.

(k) No instructor's certificate shall be valid except for the purpose of the giving of instruction by the holder thereof in the course of his employment or association with the drivers' school designated thereon and for the account of such school. The giving of any instruction for hire in violation of the foregoing provisions shall render such instructor's certificate invalid and subject to forfeiture and immediate surrender to the driver's school employer for subsequent surrender to the Department of Motor Vehicles.

(l) Any instructor whose certificate shall be subject to surrender by reason of termination of his services by the drivers' school designated thereon or whose certificate shall be invalidated by reason of violation of the provisions of subdivision (k) of this section, and who shall not promptly surrender such certificate, shall be subject to proceedings upon reasonable notice and departmental hearing for the suspension or revocation of his instructor's certificate.

(m) Qualified and recognized experts in the field of driver training, traffic regulation or motor vehicles may give occasional classroom lectures (not including the three-hour prelicensing course lectures) without holding a valid instructor's certificate. The school shall maintain a record, indicating the name, address, qualifications of the expert and lecture date, and shall make all such records available for inspection by the commissioner if he desires to inspect them.

(n) Denials of instructor's certificate.

(1) No applicant, except in the discretion of the Commissioner, will be issued an instructor's certificate, or a renewal thereof, who has had his driver's license or his out-of-state driver's privilege suspended or revoked within the 24 months immediately prior to the date of application either in New York State or any other state, except that this provision shall not apply to a temporary suspension. No renewal of an instructor's certificate will be issued to an applicant whose last preceding instructor's certificate or any last preceding instructor's certificate, if he held more than one, was not surrendered in pursuance of the provisions of subdivision (f) or (k) of this section.

(76.15 - continued)

(2) An application for instructor's certificate or a renewal thereof may be denied, if in the discretion of the commissioner, such applicant's driving record indicates a lack of the qualities or competence desirable for a driving instructor. No such denial shall be made for a period of less than 30 days nor more than one year, based upon the same occurrences. Any such denial shall not become final until after a hearing if the applicant requests in writing within five days after receipt of notice of such denial a hearing.

(o) Holders of instructors' certificates may be required to attend a group session at which time the Department of Motor Vehicles will brief applicants on any new changes in the regulations and laws or new training techniques, or it may inform them with printed materials through the mail. The applicants for a renewal of an instructor's certificate may also be required to submit to a psycho-physical tests or to a test of their teaching ability. This will be done at the discretion of the commissioner based on the applicant's past record as an instructor.

(p) If an instructor possessing a current instructor's certificate desires to be employed by an additional school or schools, an additional certificate or certificates will be issued for such purpose without fee.

(q) An applicant who does not possess a high school or high school equivalency diploma, but who possesses a military general equivalency diploma, may file an application for an instructor's certificate, provided such application is accompanied by proof that the applicant has filed for a New York State high school equivalency diploma. An instructor's certificate may be issued to such an applicant which shall be conditional upon the applicant submitting proof of having obtained a New York State high school equivalency diploma within six months from the issuance of such certificate.

76.16 Instruction.

(a) Drivers' schools licensed by the commissioner shall provide oral instruction during practical training to include subject matter relating to rules of the road, safe driving practices, driver responsibility, pedestrian safety care and use of automobile safety devices. In addition, the practical training shall include demonstration and actual training in starting, stopping, shifting, turning, backing, parking (except that backing and parking shall not be required in motorcycle instruction), steering, driving in both city and highway traffic (where practicable), and in defensive driving. All of the practical training must be in a vehicle which meets the requirements of the Vehicle and Traffic Law and, if a school-owned or-controlled vehicle, one which meets the requirements of this Part.

(b) The practical behind-the-wheel training consists of actual driving practice while the vehicle is in motion. This will not preclude incidental curbside oral instruction complementing the training being given during the lesson.

(c) No instructor shall give any driving instructions in the operation of a motor vehicle within any area designated by the commissioner as a road test area. However, an instructor may accompany and supervise a student residing within any such road test area from and to his place of residence for the purpose of giving such instruction outside of such road test area without violating the foregoing provisions.

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(d) The instruction may periodically be observed by motor vehicle license inspectors and evaluated as to content and standards.

(e) The driving instructor shall, upon the request of his or her student who is the holder of a class DJ or MJ learner's permit, certify on a form prescribed by the commissioner the number of hours such student has spent operating a motor vehicle while under the immediate supervision of such driving instructor. (Added 12/3/03)

ADVERTISING

76.21 Advertising.

Advertising by drivers' schools must conform to the following:

(a) Schools must not publish, advertise or intimate that a driver's license is guaranteed or assured. The display of signs such as "License or Plates Secured Here" is forbidden, but the words "License Plates Secured" or "License Renewals Secured" may be used, if the intent to operate a private service bureau has been filed with the proper district office of the Department of Motor Vehicles.

(b) Every advertisement of a drivers' school shall show the name and address of the school. The provision in relation to the address of the school shall not be applicable to a sign displayed on the premises of the drivers' school or on a school car or to radio advertising.

(c) A drivers' school may exhibit on its premises or through other advertising media, the wording THIS SCHOOL IS LICENSED BY THE STATE OF NEW YORK. The lettering of such wording shall not be more than one third the size of the lettering of the name of the school as displayed on the sign of advertisement.

(d) The use of the word STATE in any sign or other medium of advertising, except as permitted by subdivisions (c) and (k) of this section, is not allowed.

(e) No drivers' school shall solicit business or cause business to be solicited in its behalf, or display or distribute any advertising materials within a building owned or leased by the State or county in which motor vehicle registrations or licenses to drive motor vehicles are issued to the public, or within 1,500 feet of the entrance to such a building, or within any designated road test area. If, however, any such display by a sign not immediately removable shall be in existence at a time when any office of the State or county for the issuance of motor vehicle registrations or licenses shall be opened within 1,500 feet thereof or shall be within a road test area subsequently established, a reasonable time, considering any lease or rental provisions and other circumstances relating thereto will be provided by the commissioner for the removal thereof. Notwithstanding the foregoing, a motor vehicle may display the sign or signs required by and described in section 76.11(d)(4) of this Part and section 2.2(c) of these regulations.

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- (f) Notwithstanding the provisions of subdivision (e) of this section, advertising on school cars is permitted provided it conforms to the other provisions of this Part.
- (g) No individual, partnership, association or corporation licensed as a drivers' school or as a driving instructor may use or allow the use of any advertisement which would reasonably have the effect of leading people to believe that they are an agent, representative or employee of the Department of Motor Vehicles.
- (h) No drivers' school may make any false or misleading claims or statements in any of its advertising.
- (i) In addition to any other sign or signs required by this Part, a drivers' school must display conspicuously a schedule of fees as filed with the commissioner and a sign reading "Applicant must be given a receipt for all payments." All information required to be posted by sign may be incorporated on one sign.
- (j) Except as provided in subdivision (k) of this section, no drivers' school may use any language stating or tending to imply in any manner that it provides driver education as such term is used and applied in reference to the special qualification for earlier licensing upon successful completion of approved courses in secondary schools or colleges in accordance with the requirements of the Department of Education and Department of Motor Vehicles.
- (k) The simple reference by a drivers' school to its membership in or affiliation with a bona fide organization whose legal name contains the words STATE or DRIVER EDUCATION shall not be considered violative of the provisions of subdivision (d) or (j) of this section; provided that the affiliation of such school with such organization, using the legal organization name or the official emblem of such organization, may be referred to in its advertising only if the lettering of the name of the organization is smaller than that of the name of the drivers' school.
- (l) Any advertisement showing the cost of driving lessons must also contain the duration of each lesson and the number of lessons in characters as large as the cost of each lesson.
- (m) Any listing and any display advertising must contain the name of the drivers' school exactly as it appears on the license issued by the commissioner. In any display advertising, the name of the drivers' school must be in type of no less than one half the size as used in the letters of the largest word in such display advertising. Moreover, any symbol, emblem or other trademark cannot contain initials if those initials would imply affiliation with another entity unless it states "affiliated with" or similar wording.
- (n) The display advertising may contain a description of the services offered but may not contain any unsubstantiated data or claims. Drivers' schools who advertise explicitly or imply that they have more than one office or branch must be fact have such other office or offices or branch or branches. If the department so requests, a drivers' school must substantiate any claims of affiliation, special services, experience or implied promises of particular instructors.

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(o) The drivers' school is hereby declared to be responsible for any advertising of it by its affiliate or affiliates.

(p) If drivers' school services are offered in association with any other entity (e.g., retail store, automobile or motor club, religious or fraternal organization, etc.), the name of the drivers' school must appear in type of at least the same size as that used in the name of the associated entity. In addition, the advertisement must contain the words "in association with" or "affiliated with" or similar wording in order to distinguish between the two entities.

(q) No drivers' school may advertise with a name or endorsement which states or implies that the school is, or is affiliated with, or is a division of, or is approved by, a religious or fraternal organization, an automobile or motor club, a nonprofit foundation or any similar body, group, firm or organization, unless it is established that such endorsing or affiliated entity is indeed established and in existence mainly and primarily for the purpose of serving some function other than the endorsement of a driving school, or other than to provide driving instruction unless it is licensed by the Department of Motor Vehicles as a drivers' school. The drivers' school must also show that such entity derives its primary source of revenue from sources other than drivers' school endorsements, or from sources other than driving instruction unless licensed as a drivers' school by the department.

SUSPENSION, REVOCATION & REFUSAL TO RENEW

76.23 Suspension, Revocation and Refusal to Renew.

(a) The commissioner, or any employee of the Department of Motor Vehicles deputized by him, may suspend or revoke a license or refuse to issue a renewal thereof for any of the following causes:

(1) the conviction of the licensee or any partner, officer, agent or employee of such licensee, of a felony or of any crime involving violence, dishonesty, deceit, indecency, degeneracy or moral turpitude;

(2) where the licensee has made a material false statement or concealed a material fact in connection with his application for the license or a renewal thereof;

(3) where the licensee has failed to comply with any of the provisions of section 394 of the Vehicle and Traffic Law or of the rules and regulations of the commissioner made pursuant thereto;

(4) where the licensee or any partner, officer, agent or employee of such licensee has been guilty of fraud or fraudulent practices in relation to securing for himself or another a license to drive a motor vehicle or motorcycle. The term "fraudulent practices" as used herein shall include, but shall not be limited to, any conduct or representation on the part of the licensee, or any partner, officer, agent or employee of a licensee, tending to induce another or to give the impression that

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a license to operate a motor vehicle or motorcycle, or any other license, registration or service granted by the commissioner, may be obtained by any means other than the ones prescribed by law, or furnishing or obtaining the same by illegal or improper means, or requesting, accepting, exacting or collecting money for such purpose; or

(5) the failure of the licensee or any partner, officer, agent or employee of the licensee to conduct the prescribed tests for instructor applicants in the manner authorized by this department and/or the failure of the licensee or any partner, officer, agent or employee of the licensee to conduct the 30-hour course to instructor applicants according to the curriculum supplied by this department and/or for the number of hours required by this department and this Part.

(b) The commissioner may revoke or suspend such license for causes and violations, as prescribed by this section, occurring during the two license periods immediately preceding the renewal of such license.

(c) The action of the commissioner in refusing to issue a renewal, or revoking or suspending a license or instructor's certificate, may be reviewed in a proceeding under article 78 of the Civil Practice Law and Rules.

CLASSROOM INSTRUCTION

76.30 Applicability of Drivers' School Regulations.

Except as provided in this section, this Part shall be applicable with respect to a course given by a drivers' school to a new driver.

(a) The provision of this Part with respect to required records of a drivers' school shall not be applicable with respect to any student who is taking only the three-hour prelicensing course.

(b) For the purposes of school location, a facility used to provide classroom training only shall not be considered a place of business.

(c) Any classroom used in conjunction with the three-hour prelicensing course must meet the requirements of Part 7 of these regulations.

(d) An instructor of the three-hour prelicensing course must also meet the requirements of Part 7 of these regulations.

76.31 Violations.

A violation of any regulation with respect to a classroom training course authorized pursuant to Part 7 of these regulations, shall be considered to be a violation of this Part, and shall be a ground for suspension or revocation of a drivers' school license or instructor's certificate.