

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Division of Motor Vehicles TITLE NUMBER: 91

CITE AUTHORITY: West Virginia Code §17A-2-9 and §17C-5A-2

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 91 CSR 5

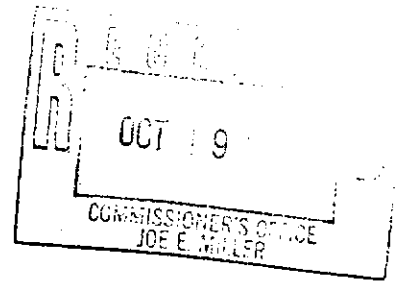
TITLE OF RULE BEING AMENDED: Denial, Suspension, Revocation or NonRenewal of
Driving Privileges.

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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


Authorized Signature



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

*State Capitol - Room MB-49
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610
(304) 347-4840
(304) 347-4919 FAX*

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*Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel*

*Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant*

October 16, 2000

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Joe E. Miller
Motor Vehicles, Division of
Capitol Complex
Building 3, Room 113

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Denial, Suspension, Revocation or Nonrenewal of Driving Privileges, 91CSR5**

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

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

Joe E. Miller
Page 2
October 16, 2000

If the first page of this form indicates that your agency has agreed to modify the proposed rule in accordance with a motion adopted by the Committee, your agency should consult with the Committee's counsel on the preparation of the modifications. By Monday, October 30, 2000, your agency must file 1 copy of your modified rule with the Secretary of State's office and 10 copies with the Legislative Rule-Making Review Committee.

W.Va. Code §29A-3-12 requires that this Committee submit its report to the full Legislature by Monday, March 5, 2001, and by that time all bills of authorization must be ready for introduction. The date that you filed your modified rule in the Secretary of State's office must be included in the Bill of Authorization.

Please disregard this notice if you have already filed your final, modified rule. Committee rules state that a copy of this letter must be on file for each agency filing a rule.

Very truly yours,



Teri Anderson
Administrative Assistant



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

Cecil H. Underwood
Governor

Samuel H. Beverage, P. E.
Acting Secretary

July 25, 2000

The Honorable Ken Hechler
Secretary of State
State Capitol
Charleston, West Virginia 25305

Dear Mr. Secretary:

The Commissioner of Motor Vehicles is hereby authorized to promulgate emergency and proposed amendments to 91 CSR 5, relating to Denial, Suspension, Revocation or Nonrenewal of Driving Privileges.

Please contact the Division of Motor Vehicles if additional information is required.

Sincerely,

A handwritten signature in cursive script that reads "Samuel H. Beverage".

Samuel H. Beverage, P.E.
Secretary

SHB/sd

FILED
Nov 2 3 52 PM '00
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

(PROPOSED)
WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF MOTOR VEHICLES
91CSR5

Title: Denial, Suspension, Revocation, or Nonrenewal of Driving Privileges

§91-5-1. General

- 1.1 Scope - This rule establishes procedures for the denial, suspension, revocation, nonrenewal, administrative appeals and reinstatement of motor vehicle operating privileges.
- 1.2 Authority - West Virginia Code §17A-2-9 and §17C-5A-2.
- 1.3 Filing Date -
- 1.4 Effective Date -

§91-5-2. Application and Enforcement

- 2.1 Application - This rule applies to motor vehicle operators licensed by the Commissioner of Motor Vehicles.
- 2.2 Enforcement - Enforcement of this rule is vested with the Commissioner of Motor Vehicles or the Commissioner's lawful designee.

§91-5-3. Denial of Driving Privileges for Medical Reasons (~~Revised 1998~~)

3.1 Statutory Provisions - West Virginia Code §17B-2-3 provides that the Division of Motor Vehicles shall not issue a driver's license to any person when the Commissioner of Motor Vehicles has good cause to believe that the operation of a motor vehicle on the highways of this State by person would be inimical to public safety or welfare. West Virginia Code §17B-3-6 authorizes the Division to suspend the driver's license of any person without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee is incompetent to drive a motor vehicle.

In view of these statutory provisions, the Division shall not issue or renew a driver's license for any person when the Commissioner determines that the person is incompetent to drive a motor vehicle, or when the Commissioner has good cause to believe that the operation of a motor vehicle on the highways of this State by the person would be inimical to public safety or welfare, unless the application for the license is accompanied by a letter of explanation in such detail as the Commissioner may require concerning the mental or physical condition of the applicant at the time of application.

3.2 Procedures for Original, Renewal, or Duplicate Applications for License - The Commissioner, after reviewing the letter of explanation provided for in subsection 3.1 of this rule, may:

3.2.a. Approve the application for license;

3.2.b. Approve the application for license, and impose appropriate restrictions as the applicant's physical or mental condition may require; or

3.2.c. Require the applicant to present one or both of the following forms as prescribed by the Commissioner to the Driver's License Advisory Board a:

1. Medical Report Form completed by a physician of the applicant's choice who is licensed in the United States;

2. Medical Report Form completed by a Board Certified Physician in the appropriate medical specialty for the condition under consideration; or

3. Vision Examination Report Form completed by an optometrist or ophthalmologist of the applicant's choice who is licensed in the United States.

The Commissioner, upon receipt of the advice of the Driver's License Advisory Board, may take the action indicated in subdivisions 3.2.a or 3.2.b of this rule, refuse the application or order the suspension of the license.

3.2.d. If an application for driver's license, or application for renewal of driver's license is refused by the Commissioner because of a physical or mental condition, the Commissioner shall notify the applicant within seventy (70) calendar days from the date of application or renewal by certified or registered mail, return receipt requested. The applicant is entitled to a hearing on the refusal by the Commissioner to issue or renew a driver's license.

3.3 Procedures for Medical or Vision Review - As provided by West Virginia Code §17B-3-6, the Division may suspend the driver's license of a licensee without a preliminary hearing upon a showing by its records or other sufficient evidence that the licensee is incompetent or otherwise not qualified to operate a motor vehicle.

3.3.a. The Division may upon written notice of five days require the licensee to present on the form prescribed by the Commissioner to the Driver's License Advisory Board a:

1. Medical Report Form completed by a physician of the licensee's choice who is licensed in the United States;
2. Medical Report Form completed by a Board Certified physician in the appropriate medical specialty for the condition under consideration;
3. Vision Examination Report Form completed by an optometrist or ophthalmologist of the licensee's choice who is licensed in the United States.

3.3.b. The Commissioner, after reviewing the Medical Report or Vision Examination Report and the recommendation of the Driver's License Advisory Board, may:

1. Determine that the licensee is competent to drive a motor vehicle;
2. Determine that the licensee is competent to drive a motor vehicle if certain appropriate restrictions are imposed and impose such restrictions as the licensee's physical or mental condition may require; or
3. Determine that the licensee is incompetent to drive a motor vehicle, that no appropriate restrictions can be imposed under which the licensee could competently operate a motor vehicle, and order the suspension of the license until such time as the licensee is permitted to submit further information to determine whether or not he or she is competent to drive a motor vehicle.

3.3.c. The Commissioner shall immediately make and enter an order suspending the license upon making a determination that the licensee is incompetent to drive a motor vehicle. Should the Commissioner further determine that the continued operation of a motor vehicle by the licensee presents a clear and immediate danger to the licensee and others, the suspension shall remain in effect until the outcome of any hearing requested or until the end of the period of the suspension. The Division shall mail the licensee a copy of the order by registered or certified mail, return receipt requested.

3.4 Standards for Medical or Vision Review

3.4.a. Medical - The Driver's License Advisory Board shall evaluate each medical case referred to it on an individual basis and make recommendations to the Commissioner for his or her decision.

3.4.b. Vision- ~~The State Police~~ Division shall test each applicant for licensing to

determine if the applicant has no serious visual defects and a visual acuity of at least 20/40 in both eyes with or without conventional corrective lenses. For the purposes of this rule, conventional corrective lenses including surgical intraocular transplants and contact lenses are acceptable for meeting the visual acuity requirements. Special equipment or special lens arrangements are not considered conventional for the purposes of this rule.

1. Applicants who do not meet the minimum visual acuity level or who show serious visual defects shall submit a vision examination form to the Division. The form shall be completed by an ophthalmologist or optometrist of the applicant's choice who is licensed in the United States. The Division shall approve the applicant as eligible for licensing if the ophthalmologist or optometrist certifies that the applicant's vision:

A. can be corrected to a visual acuity level of at least 20/60 in one eye;

B. that there is no evidence of disease or rapid deterioration of vision ~~and~~; and

C. that the applicant can, in the opinion of the ophthalmologist or optometrist, safely operate a motor vehicle with appropriate restrictions.

2. The Driver's License Advisory Board shall consider any applicant whose vision can not be corrected to a visual acuity level of at least 20/60 in one eye, but who has been evaluated by an ophthalmologist or optometrist as being able to safely operate a motor vehicle. The Board may consider peripheral vision, depth perception and color recognition in its recommendation to the Commissioner. Additionally, the Commissioner may prescribe a traffic environment vision test be administered to the applicant or licensee by designated ~~officers of the State Police~~ employees of the Division.

3.5 Administrative Due Process -Any applicant or licensee may appeal the Commissioner's decision of denial, suspension, restriction or non renewal of driving privileges by requesting a hearing. Any request for hearing shall not stay the original order in accordance with the provisions of West Virginia Legislative Rules, Division of Motor Vehicles, Administrative Due Process, 91 CSR 1.

~~3.5.a. The applicant or licensee has ten (10) calendar days from the date he or she receives notice of refusal to issue, renew or suspension of a license to request a hearing. The applicant or licensee shall file the written request with the Commissioner in person or by registered or certified mail, within ten days after receipt of a copy of the order that the applicant or licensee wishes to contest. The hearing shall be before the Commissioner or an authorized deputy or agent of the Commissioner. All of the pertinent provisions of West Virginia Code §29A-5-1 et seq., apply to the hearing. The Commissioner shall hold the hearing as early as practical in the county where the applicant or licensee resides unless the Commissioner or the~~

~~Hearing Examiner and the applicant or licensee agree that the hearing may be held in some other county. The Commissioner may postpone or continue any hearing at his or her discretion or at the request of the applicant or licensee upon a showing of good cause.~~

~~3.5.b. For the purpose of conducting the hearing, the Commissioner has the power and authority pursuant to West Virginia Code §17B-3-6 to issue subpoenas and subpoenas duces tecum which shall be issued in accordance with the provisions of West Virginia Code §29A-5-1.~~

~~3.5.c.~~ 3.5.a. The scope of the hearing is whether the applicant or licensee is competent to operate a motor vehicle on the public streets and highways of this state or whether operation of a motor vehicle by the applicant or licensee would be inimical to public safety or welfare.

~~3.5.d.~~ 3.5.b. After the hearing and consideration of all the testimony and evidence in the case, the Commissioner shall within seventy (70) calendar days, make and enter an order affirming, rescinding, or modifying his or her earlier order. ~~The Commissioner shall mail the applicant or licensee a copy of the order by registered or certified mail, return receipt requested.~~

~~3.5.e. If the Commissioner, after the hearing, does make and enter an order affirming his or her earlier order of denial, suspension, restriction or non-renewal, the applicant or licensee is entitled to judicial review as set forth in Chapter 29A of the West Virginia Code.~~

§91-5-4. Reinstatement of Suspended Registration

4.1 Procedures - The Division shall destroy any license plate received in accordance with any of the provisions of the West Virginia Motor Vehicle Safety Responsibility Law, Chapter 17D of the Code. Accordingly, upon reinstatement of any registration within the registration period, the registrant shall make application for a duplicate or substitute registration or license plate upon the form prescribed for that purpose and remit the fee required by West Virginia Code §17A-10-11.

§91-5-5. Reinstatement of Driving Privileges of Persons Whose Driver's Licenses Were Revoked under Prior Enactment of West Virginia Code §17C-5-2.

5.1 Procedures - Any person whose driver's license has been revoked may apply for restoration of driving privileges at the end of the period of revocation or minimum period of revocation as the case may be. Any person whose driving privileges were revoked for a conviction under West Virginia Code §17C-5-2 prior to ~~it~~ its reenactment in 1981 may request in writing to have his or her driving privileges restored. In addition to filing proof of financial responsibility as required by the West Virginia Code §17D-4-1 et seq., any person convicted for a subsequent offense under West Virginia Code §17C-5-2 within a period of five (5) years shall also, in light of the former provisions of West Virginia Code §17C-5-2 obtain and file with the Division written request letters from five persons in the applicant's community. Each of these

letters shall state that the writer has known the applicant personally for more than five years; that the applicant has not driven a motor vehicle during the period of revocation; that in the writer's opinion the applicant is not likely to repeat the offense for which the license was revoked; that the public safety does not require that the applicant's license be revoked any longer; and that the applicant has not, to the knowledge of the writer, been addicted to the use of intoxicating beverages or narcotic drugs or used them during the preceding five years. The Commissioner shall hold all hearings upon the written request for restoration of driving privileges in accordance with the provisions of Division of Motor Vehicles Rule Administrative Due Process 91CSR1.

§91-5-6. Suspending a West Virginia Resident's License Upon Conviction in Another State or jurisdiction.

6.1 Statutory Provisions - West Virginia Code §17B-3-3 authorizes the Commissioner to suspend a resident's license upon conviction for a traffic offense in another jurisdiction.

6.2 Procedures - The Division shall suspend or revoke the driving privileges of any resident of this state upon receiving notice of conviction for ~~an~~ a traffic offense in another jurisdiction, which if committed in this state, would be grounds for the mandatory suspension or revocation of driving privileges.

6.3 If the records of the Division disclose that a conviction is the second or subsequent conviction for the same offense in this or any other jurisdiction, the Division shall suspend or revoke the resident's driving privileges in the same manner as if the traffic offense had occurred in this State.

6.4 The Division shall restore driving privileges only after the licensee has complied with all the provisions of the West Virginia Code and this rule in the same manner that would be required if the licensee had been convicted in this State.

§91-5-7. The Point System

7.1 Records - West Virginia Code §17B-2-14 requires that the Division keep records in order that an individual record of the licensee showing the convictions of such licensee is readily ascertainable and available for consideration by the Division upon any application for renewal of license "and at other suitable times" consistent with the provisions of West Virginia Code §17B-3-6 (3). Accordingly, a record keeping system to be known as the Point System and to be administered by the Division's Driver Improvement Section is established in this section.

7.2 Offenses - Point Total - When any licensee of the State of West Virginia who has reached the age of eighteen years or older or has obtained a level three full license, is convicted in the State of West Virginia or, pursuant to the provisions of West Virginia Code §17B-3-3, in any other jurisdiction, of any of the following offenses involving a motor vehicle, which conviction has become final, the Division ~~will~~ shall enter the offense and the point total shown

opposite the offense on the licensee's driver record maintained by the Division of Motor Vehicles. However, the division shall not record any conviction which is received more than one year from the date of conviction unless the nature of the offense by statute requires mandatory revocation.

<u>Statute Violated</u>	<u>General Description of Offenses</u>	<u>Point Value</u>
§17C-5-3, §17C-18-1	Reckless Driving	6
§17C-4-2, §17C-18-1	Hit and run involving property damage only	6
§17C-6-1	Speeding in school zone	6
§61-5-17	Fleeing from an officer in a vehicle	8
§17C-12-7, §17C-18-1	Passing stopped school bus	6
§17C-3-4, §17C-12-5, §17C-18-1	Failure to obey stop signs and other traffic signs and control devices, except failure to obey traffic control signals	3
§17C-3-5, §17C-3-7, §17C-18-1	Failure to obey traffic control signals or traffic light signals	3
§17C-7-2, §17C-7-6, §17C-18-1	Driving to left side of roadway	3
§17C-6-1, §17C-18-1	Driving too fast for conditions, failure to keep vehicle under control or hazardous driving	3
§17C-6-1, §17C-6-4, §17C-18-1	Speeding in violation of specified or established limits where the speed was in excess of 75 <u>fifteen (15) m.p.h. or more over the posted speed limit except on highways where established speed limit is 65 m.p.h. and conviction was in excess of 80 m.p.h.</u>	6 <u>5</u>
§17C-6-1, §17C-6-4,	Speeding in violation of specified or established limits where the speed was not in excess of 75 <u>ten (10) m.p.h. or more over the posted speed limit but</u>	3

less than fifteen (15) m.p.h. over the posted speed limit.

~~§17C-18-1~~

Speeding in violation of specified or established limits 2
where the speed was five (5) mph or more over the posted
speed limit but less than ten (10) m.p.h. over the posted speed limit.

§17C-9-1, §17C-9-2, §17C-9-3, §17C-9-4, §17C-9-5, §17C-10-2, §17C-12-6, §17C-18-1	Failure of driver to yield right of way	3
§17C-8-2, §17C-8-3, §17C-8-4, §17C-18-1	Improper right-hand and left-hand turns	2
§17C-7-3, §17C-18-1	Failure of driver of overtaking vehicle to give audible signal, or failure to pass to the left at a safe distance, or driving to the right before safely clear of the overtaken vehicle, or failure of the driver of overtaken vehicle to give way to the right, or driver of overtaken vehicle increasing speed before being completely passed by the overtaking vehicle	3
§17C-7-5 §17C-18-1	Passing in face of oncoming traffic	3
§17C-7-7, §17C-18-1	Passing in no-passing zone	3
§17C-12-1	Failure to obey signal indicating approaching train	3
§17C-15-1, §17C-15-2, §17C-18-1	Operation of vehicle without lighted lamps or lights when required to be lighted	2

§17C-7-10, §17C-18-1	Following too closely	2
§17C-14-5, §17C-18-1	Operation of a vehicle with more than three persons in the front seat	2
§17C-14-2, §17C-18-1	Improper backing	2
§17C-7-8, §17C-18-1	Driving wrong way on one-way street, highway or roadway	3
§17C-8-6, §17C-8-8, §17C-8-9, §17C-8-10, §17C-18-1	Improper turning movements, or improper signals, or no signals	2
17C (The above statutory references are to Chapters, Articles and Sections of the Code of West Virginia, 1931, as amended)	All other moving violations	2

7.3 Traffic Convictions With No Point Value - The abstracts of traffic convictions outlined in this subsection are not considered moving violations and consequently have no point value in the administration of the Driver Improvement Program:

7.3.a. Convictions for operating vehicles on the highways of this or any other state with defective or improper equipment;

7.3.b. Convictions for operating vehicles on the highways of this or any other state in violation of the weight, height, length and width provisions of West Virginia Code;

7.3.c. Convictions for operating a vehicle on the highways of this or any other state with improper registration;

7.3.d. Convictions for operating a vehicle on the highways of this or any other state with an expired vehicle inspection decal or certificate; and

7.3.e. Convictions for operating a vehicle on a controlled access highway of this or any other state at a speed of ~~less than~~ less than ten miles per hour or less above the speed limit in accordance with the provisions of West Virginia Code ~~§17C-19-2~~ §17C-6-1(g) or (h)

7.4 Traffic Accidents Not Involving Convictions - Although West Virginia Code

§17B-2-14 provides the Division to keep records on traffic accidents, the Division will not assign points for any traffic accident not involving a conviction. However, when a licensee has accumulated sufficient points to result in a review of his or her record as outlined in Subsection 7.12 of this rule, the Division may consider records on file in the Division of any accident not involving a conviction.

7.5 Traffic Convictions - The Division shall note the appropriate number of points indicated in Subsection 7.2 of this rule on the driver record of any licensee convicted of any of the offenses listed in Subsection 7.2 in West Virginia Circuit, Magistrate or Municipal Court. Consistent with the provisions in West Virginia Code §17B-3-3 the Division shall charge any licensee of the State of West Virginia convicted in any other state, municipality of another state or in the District of Columbia of any offense described in Subsection 7.2 of this rule in violation of any statute or ordinance of such other state, municipality of another state or District of Columbia with the appropriate number of points shown in Subsection 7.2 of this rule opposite the description of the offense. A conviction includes a finding of guilt, a plea of guilty or a plea of nolo contendere.

7.6 Forfeiture of Bail Or Deposited Collateral - Consistent with the provisions of West Virginia Code §17B-3-4 requiring that all Circuit, Magistrate, and Municipal Courts provide the Division with certified abstracts of judgments on convictions, for the purposes of the point system, a forfeiture of bail or collateral deposited to secure a licensee's appearance in court, which has not been vacated, is equivalent to a conviction.

7.7 Points assigned for Same Occurrence - When a licensee is convicted of two or more offenses arising out of the same occurrence, the Division shall assign points for only one of the offenses. When there is a difference in the point values of the offenses, the Division shall assign the greater point value.

7.8 Revocations - West Virginia Code §17B-3-5 provides that certain convictions shall result in an automatic revocation, as opposed to suspension, of the driver's license of the person convicted. The Division records these convictions on the licensee's driver record with no assignment of points. The Division assesses points for reckless driving convictions unless three convictions occur within a period of twenty-four months. In these cases, the licensee is subject to the mandatory revocation in accordance with West Virginia Code §17B-3-5(5). When any person is convicted in the State of West Virginia for an offense for which no point value is assigned but for which a certified abstract of judgment on the conviction is required and furnished to the Division under the provisions of West Virginia Code §17B-3-4 the Division shall note the conviction, without point value, on the driver record of the licensee.

7.9 Driver Improvement Notice- The Division shall notify any licensee whose record shows a total of six (6) to eight (8) points that the licensee has accumulated a number of traffic convictions over a short period of time and that the licensee should be aware of the consequences of additional traffic law violations.

~~7.10 Accumulation of Twelve or More Points - The Division shall undertake a review of the licensee's driver record when the licensee has accumulated twelve or more points. The Division shall base this review on a consideration of all facts and circumstances including the driver's record, police reports, accident reports, and convictions for which no point values were recorded as well as any other information pertaining to the licensee on file with the Division. After an evaluation of the licensee's driver record, the Division may;~~

The Division shall suspend a licensee's privilege to operate a motor vehicle upon the accumulation of twelve or more points in accordance with the following schedule:

7.10.a. When a licensee accumulates twelve to thirteen points, the period of suspension is thirty days.

7.10.b. When a licensee accumulates fourteen to fifteen points, the period of suspension is forty-five days.

7.10.c. When a licensee accumulates sixteen to seventeen points, the period of suspension is sixty days.

7.10.d. When a licensee accumulates eighteen to nineteen points, the period of suspension is ninety days.

7.10.e. When a licensee accumulates twenty or more points, the Division shall suspend the licensee's privilege to operate a motor vehicle until his or her driving record reflects less than twelve points.

7.10.f. Any additional points accrued while suspended in accordance with the schedule in this subdivision will result in additional periods of suspension to run consecutively.

~~7.10.a. advise the licensee that continued violation of traffic laws will result in suspension of the licensee's privilege to operate a motor vehicle;~~

~~7.10.b. place the licensee on probation for a period not to exceed one (1) year under the conditions as the Division feels is necessary; or~~

~~7.10.c. suspend and/or place on probation the licensee's privilege to operate a motor vehicle for a combined period not to exceed one (1) year.~~

~~If the Division determines that some action is to be taken, it shall be because, as specified in West Virginia Code §17B-3-6, the Division has determined that the licensee has~~

~~been convicted with such frequency of serious offenses against traffic regulations governing the movement of motor vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways or is a habitually reckless or negligent driver of a motor vehicle.~~

7.11 Length Of Time Points Maintained On Driving Record - The Division shall ~~maintain the total number of points, if any, accumulated by any licensee on the licensee's driver record for a period of two years from the date of the conviction. Thereafter, the Division shall eliminate the points but the record of convictions shall remain, so that if at any future time the licensee accumulates sufficient points to cause the Division to review the licensee's driver record, the Division may consider the convictions if determining the action, if any, to be taken following such review. The Division shall also eliminate the point totals accumulated by any licensee who; remove the points assessed for a conviction two years from the date of the conviction. However, the conviction shall remain a part of the drivers record.~~

~~7.11.a. after review is placed on probation and successfully completes the period of probation;~~

~~7.11.b. after review is placed on suspension, and who completes all requirements for reinstatement and successfully completes any period of probation; or~~

~~7.11.c. is placed on probation or suspension as a result of a hearing and who completes all requirements for reinstatement and successfully completes any probationary period.~~

7.12 Effective Starting Time For Period of Suspension - The suspension of any driver's license under the Driver Improvement Program is effective ten days from the mailing of the notice of suspension. The Division shall calculate eligibility for reinstatement in accordance with Division of Motor Vehicles Rule, Eligibility for Reinstatement Following Suspension or Revocation, 91CSR16.

7.13 Hearings - In accordance with the provisions of West Virginia Code §17B-3-6, any licensee whose license is suspended or placed on probation is entitled to a hearing. The licensee shall request a hearing in accordance with the provisions of Division of Motor Vehicles Rule, Administrative Due Process 91CSR1, and the Division shall conduct the hearing as provided in the rule. ~~When a hearing is requested, the Division shall give the licensee notice of the time and place of hearing. The Division shall hold the hearing as early as practical. The Commissioner may postpone or continue any hearing on his or her own motion or upon the application of the licensee for good cause shown. The notice of hearing shall advise the licensee of the matters to be considered at the hearing. After the hearing the Division shall either rescind its order of suspension or probation or affirm the suspension or probation of the license. If the suspension is rescinded, but the Division feels that some lesser action is appropriate, the Division may place the licensee on probation under conditions established by the Division for a period not to exceed one year from the date of rescission of the suspension.~~

~~7.14 Judicial Review - Any licensee whose driver's license is, or remains, suspended after a hearing held in accordance with the provisions of this Section or Division of Motor Vehicles Rule Administrative Due Process 91CSR1, or who after a hearing is placed, or remains, on probation under conditions established by the Division, is entitled to seek judicial review in accordance with the provisions of West Virginia Code §29A-5-4 and any other remedies provided by law for the review of the action taken by the Division.~~

~~7.15 Applying For Reinstatement, Or Relief Of Probation - Any licensee whose license is suspended, or who is placed on probation may, at any time during the period of suspension, or probation request reinstatement of the suspended license, or to be relieved from the probation.~~

~~Upon receipt of any request, the Division may make any investigation it considers appropriate and may amend the previous action.~~

§91-5-8. Driver Improvement Course

8.1 Procedures - Organizations approved by the Division of Motor Vehicles conduct Driver Improvement courses at various times and locations throughout the State. The Division of Motor Vehicles shall approve the course, which is not to exceed fifteen (15) hours but shall consist of at least seven (7) hours of instruction time. The approved organization shall certify the instructors conducting these courses.

~~8.2~~ 8.1.a Points To Be Deducted Upon Successful Completion - Attendance at any Driver Improvement course is voluntary on the part of the licensee however, on successful completion of a course, the Division shall deduct three points from the total points shown on the driver record of the licensee who has reached the age of eighteen years or older or obtained a level three full driver's license. The Division shall deduct points for completing a course once during any five year period, if the licensee has eleven (11) points or less, and has no outstanding violations which would place the licensee over the eleven (11) point level. The Division shall not deduct points from any licensee's record when the licensee has attended and received a certificate from a driver improvement course prior to accumulating any points on his or her driver record.

~~8.3 Professional Truck Driver Course - In order for the Division to deduct points that have been assessed against a licensee who holds a valid commercial driver's license, the licensee must successfully complete an approved Professional Truck Driver Course. All requirements outlined in Sections 8.1 and 8.2 of this rule apply to the Professional Truck Driver Course.~~

8.4 8.1.b The Division shall remove three points from the licensee's record after the licensee submits a certificate from the instructor of the course to the Division of Motor Vehicles, showing that the course has been completed by the licensee.

~~8.5~~ 8.1.c Although the Division shall subtract three points from the driver record, the record of all convictions involving motor vehicles shall remain so that if at any future time sufficient points are accumulated to cause the Division to require another review, the Division may consider the conviction for which the points were eliminated along with all other convictions of record in the Division in determining the action, if any, the Division will take following the review.

8.2 Professional Truck Driver Course - In order for the Division to deduct points that have been assessed against a licensee who holds a valid commercial driver's license, the licensee ~~must~~ shall successfully complete an approved Professional Truck Driver Course. All requirements outlined in Sections 8.1 and 8.2 of this rule apply to the Professional Truck Driver Course.

8.3 Graduated Driver Improvement Course- In accordance with the provisions of West Virginia Code §17B-2-3a(j)(2)(G), any level 2 licensee under the age of eighteen who has been convicted of a moving traffic offense or violation of the terms and conditions of a level two intermediate drivers license shall complete an approved graduated driver improvement course prior to obtaining a level 3 full license. The course shall consist of at least four hours of instruction specifically designed for younger drivers.

8.3.a. Completion of the Graduated Driver Improvement Course shall not remove the record of conviction from a licensee's record. In accordance with the provisions of West Virginia Code §17B-2-3a(j)(2)(H), the privilege to operate a motor vehicle of any licensee who holds a graduated driver's license shall be revoked until the licensee's eighteenth birthday or longer if applicable, upon the second conviction for a moving traffic violation or violation of the terms and conditions of a level two intermediate license.

8.3.b. Completion of the Graduated Driver Improvement Course shall not affect the provisions of West Virginia Code §17B-2-3a(k)(1)(B) which establishes a prerequisite of conviction free driving for the twelve months immediately preceding the date of application for a level three full license.

8.3.c. A licensee who is convicted of either improper backing or operation of a vehicle without lighted lamps or lights when required to be lighted, may apply to the division for relief of the calculation of the one year of conviction free driving upon completion of the course. Course completion, if not contrary to federal graduated driver license program certification rules shall negate the effect of the minor moving violation for the purposes of calculating eligibility for a level three full license.

8.3.d. Completion of the driver improvement course as provided in subsection 8.1 of this rule may substitute for the requirements of this subdivision if a Graduated Driver Improvement Course is not available. However, a licensee under the age of eighteen who completes the course as substitution may repeat the course for the purposes of point reduction

after obtaining a level three full license.

§91-5-9. Procedures For Medical And Driving Re-Examination Of Licensed Drivers
(Revised 1998)

9.1 Statutory Provisions - In accordance with West Virginia Code §17B-3-7, the Division of Motor Vehicles may require a re-examination of a licensed driver. The Division, having good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed, may upon written notice of at least five days require the licensee to submit to a vision, written and driving examination. ~~by the State Police.~~ Upon the conclusion of the examination, the Division shall take action as may be appropriate and may suspend or revoke the license of that person or may issue a license subject to restrictions as provided under West Virginia Code §17B-2-10. The Division may suspend or revoke the license of the licensee if he or she refuses or neglects to submit to the examination.

9.2 Good Cause- For the purposes of this rule, good cause ~~shall mean~~ means:

9.2.a. A written notice from any law enforcement officer stating that he or she observed the licensee operating a motor vehicle in a manner which may cause harm to the licensee or others;

9.2.b. A written notice from a licensed medical practitioner that in his or her professional judgement the licensee has a physical, medical or emotional condition which jeopardizes the licensee's ability to operate a motor vehicle; ~~or~~

9.2.c. A written notice from an adult relative or care giver with an immediate knowledge of the licensee's driving ability or medical condition that impairs the licensee's ability to operate a motor vehicle. However, the Division shall not enter an immediate suspension or revocation of the licensee's driving privilege based solely on notice from an adult relative or care giver until a medical or driving reexamination has been completed; or

9.2.d. A written notice from an employee of a rehabilitation facility's driver education, driver training or other similar program, that in his or her judgement, the licensee is incompetent to drive a motor vehicle.

9.3 The Division of Motor Vehicles shall mail the notice of re-examination to the licensee's most recent driver license address on file with the Division by certified or registered letter. The notice shall contain the time and place designated for the re-examination and, also, shall contain a brief explanation that the Division may impose a suspension or revocation if the licensee fails to appear and submit to the re-examination as directed by the notice.

9.4. The re-examination ~~administered by the State Police~~ consists of three parts.

9.4.a. The first part covering physical qualifications consists of a vision test and color blindness test and an inquiry into any physical disability. In addition to the physical qualifications, the ~~examining officer~~ driver examiner conducts a personal interview with the licensee.

9.4.b. The second part of the re-examination consists of a written test composed of questions of equal value. The licensee shall answer correctly a minimum of 70% of the questions covering motor vehicles' laws, rules of the road, highway warnings, traffic signs and signaling devices to pass the re-examination. The examiner may administer the written test verbally if the licensee is determined by the examiner to be illiterate. The reference document for the material on the test is the official Driver's Handbook as prescribed by the Division of Motor Vehicles.

9.4.c. The third part of the re-examination is the driving test that is given to new applicants applying for driver's licenses in this state. A passing score is the same as required for new applicants. The examiner shall not give the driving test if the licensee fails to exhibit the minimum physical ability to operate a motor vehicle.

9.5. If the licensee fails the re-examination, the Division shall suspend his or her license and notify the licensee of the suspension. The Division shall send the notice by certified or registered mail and the suspension is effective four days after the date of the suspension order.

9.6. The licensee is not eligible for a second re-examination until the expiration of thirty days from the date of the failed reexamination. The licensee shall make a request, by letter or in person, to the Division of Motor Vehicles, for the opportunity to take subsequent re-examinations.

9.7. If a licensee fails a second re-examination, the licensee is not eligible for a re-examination until sixty days have expired from the date of the previous re-examination. If a licensee fails a third re-examination, the licensee is not eligible for the fourth re-examination until six months have elapsed. Failure of four consecutive re-examinations is grounds for permanent revocation and the licensee is not eligible for additional testing until one year from the last re-examination date.

9.8. If the licensee fails to pass the re-examination because of failure to meet the visual qualifications, the Division shall not grant a further examination until he or she submits adequate evidence of visual improvement.

9.9. Upon showing of good cause the Division may request any licensee to submit a medical report of a recent medical examination. The licensee shall submit the report on forms prescribed by the Division of Motor Vehicles in accordance with Section 3 of this rule. After review of the submitted medical report, the Division shall determine whether or not the license

should be suspended in accordance with the provisions of West Virginia Code §17B-3-7.

9.10. If the driver's license is suspended because of a physical condition and the licensee subsequently submits a satisfactory medical report, the Division may require the licensee to submit to a re-examination of the licensee's driving ability before the driver's license is reinstated.

9.11 The Division may suspend or revoke the driver's license of a licensee who refuses or neglects to submit to a driver re-examination or physical examination, or both, requested in accordance with the provisions of West Virginia Code §17B-3-7.

§91-5-10 Suspension or Revocation Following Notice of Returned Check ~~(Revised 1998)~~

10.1 Statutory Provisions - West Virginia Code §17A-2-16 authorizes the Division to suspend or revoke any and all registration cards, permits, driver's licenses and registration plates issued to the person, firm or corporation by whom or on whose account any required fees shall have been determined to remain unpaid after reasonable notice and demand. West Virginia Code §17A-2-23 authorizes the Division to apply a penalty fee in addition to any other penalty imposed by the West Virginia Code. In accordance with the provisions of West Virginia Code §17A-3-14, the Division shall suspend without prior notice, any vehicle registration paid for by a check which is returned for insufficient funds. The notice and demand procedures in this rule does not apply to vehicle registration suspensions.

10.2 Determination of Unpaid Fee or Tax - Upon receipt of any check returned to the Division unpaid for any reason, the Division shall consider the required fee unpaid. If after reasonable notice the fee or tax remains unpaid, the Division shall suspend or revoke the license or registration paid for with the check.

10.3 Reasonable Notice and Demand - Upon the Division's receipt of a check or checks which are returned unpaid for any reason by the check maker's financial institution, the Division shall mail a proposed notice of suspension or revocation to the maker of the check and the licensee or registrant, if different from the check maker. The notice of proposed suspension or revocation shall give the check maker ten (10) days to redeem the face amount of the check and pay any penalty fees.

10.4 Suspension or Revocation - If after ten (10) days, the account remains unpaid, the proposed suspension or revocation of licenses or registrations is effective. The licensee or registrant has ten (10) days to surrender the suspended or revoked licenses or registrations to the Division.

10.5 Failure to Surrender Documents - In accordance with the provisions of West Virginia Code §17A-9-7 the Division shall notify the Superintendent of the State Police to secure possession of any registration plate or other document which the licensee has failed to surrender

and return them to the Division.

10.6 Administrative Hearing Due Process - ~~Upon the written request of the licensee or registrant within ten (10) days of the date of mailing of the notice of proposed suspension, or revocation the Commissioner shall afford the licensee or registrant the opportunity for an administrative hearing. The scope of the hearing is limited to whether or not the required fees in question have been paid to the Division. The Commissioner may postpone or continue any hearing on his or her own motion or upon the application of the licensee or registrant for good cause shown.~~ The licensee or registrant is entitled to due process in accordance with the provisions of West Virginia Legislative Rules, Division of Motor Vehicles, Administrative Due Process, 91CSR1

10.7 Penalty and Reinstatement Fee - The licensee or registrant shall pay the fees as set forth in West Virginia Code §§17A-2-23, 17A-9-7 and 17B-3-9. The provisions of West Virginia Code §17A-9-7 also provide for an additional serve order fee if the State Police is ordered to secure the suspended or revoked licenses or registrations.

10.8 Payment - A licensee or registrant shall pay all fees required under the provisions of this rule by certified check, money order or cash.

§91-5-11 Suspension Under Nonresident Violator Compact ~~(Revised 1998)~~

11.1 Statutory Provisions - West Virginia Code §17B-1C-1 et seq authorizes this State's entry into the Nonresident Violator Compact. In accordance with the Compact, each compact member state agrees to allow motorists to accept a traffic citation for certain violations and proceed without delay and without the posting of bond or payment of fine regardless of whether the motorist is a resident of the jurisdiction in which the citation was issued.

11.2 Failure to Comply - Under the provisions of the Nonresident Violator Compact, the Division shall suspend the operating privileges of West Virginia drivers who fail to comply with the terms of certain citations issued by other compact states. The Division shall not act on any failure to comply report transmitted to the division more than six months from the date of the offense.

11.3 Notification - When another state notifies the Division that a West Virginia licensee has not complied with a traffic citation, the Division shall send the licensee a proposed order of suspension by certified mail return receipt requested. The licensee shall submit to the Division proof of compliance with the terms of the citation within forty-five (45) days.

11.4 Proof of Compliance with the Terms of the Citation - Proof of compliance means certification from the out of state court having jurisdiction that the fine and court costs have been fully satisfied or a certification from the court showing that the citation was dismissed, or the licensee adjudicated not guilty. Proof of compliance does not mean personal representation, or

copies of money orders, personal checks, or certified checks.

11.5 Failure to Respond - If the Division does not receive proof of compliance within the required forty-five (45) days, it shall suspend the licensee's privilege to operate a motor vehicle until such time as proof of compliance with the terms of the citation is received.

11.6 Administrative hearing - Upon the written request of the licensee within ten(10) days of receipt of the proposed order of suspension, the Commissioner shall afford the licensee the opportunity for an administrative hearing in accordance with the provisions of West Virginia Legislative Rules, Division of Motor Vehicles, Administrative Due Process, 91 CSR 1. The scope of the hearing is whether or not the person having a license suspended is the person to whom the citation was issued.

11.7 Reinstatement - Penalty fees under the provisions of West Virginia Code §17B-3-9 apply to the suspension of driving privileges for failure to comply with the terms of a citation from a compact member state. The reinstatement of a suspended driver's license requires the payment of these fees, in addition to compliance with the terms of the citation in accordance with Section 11.4 of these rules to the satisfaction of the out of state court.

91-5-12 Suspension or Denial of License under Student Attendance Law (~~Revised—
1998~~)

12.1 Statutory Provisions - In accordance with the provisions of West Virginia Code §17B-3-6(10) and §18-8-11, the Division of Motor Vehicles shall deny a driver's license or instruction permit or suspend a driver's license or instruction permit previously issued to any person under the age of eighteen who cannot present:

12.1.a. A certificate of graduation issued to the person from a secondary high school or a general education development certificate;

12.1.b. Documents showing that the person is enrolled in and making satisfactory progress towards a high school diploma or a general education development certificate;

12.1.c. Certification from the attendance director or chief administrator of the county that the person is excused from the requirements of West Virginia Code §18-8-11; or

12.1.d. Certification of enrollment in an institution of higher education as a full time student in this state or any other state.

12.2 Notification - Upon notification that a person under the age of eighteen years has failed to comply with West Virginia Code §18-8-11, the Division of Motor Vehicles shall check to determine if the person has a driver's license or instruction permit. If the person is licensed, the Division shall send a notice of suspension by certified mail to the licensee's address of record,

return receipt requested. The notice of suspension shall inform the licensee that his or her license shall be suspended thirty (30) days after the date upon which the letter was mailed, unless the licensee can show documentation of compliance with West Virginia Code §18-8-11 prior to the date of suspension. The notice shall also advise the licensee that he or she is entitled to a hearing before the county superintendent of schools or his or her designee or before the appropriate private school official concerning whether or not the licensee's withdrawal from school was due to circumstances beyond the control of the licensee, making the licensee eligible for a waiver from the provisions of West Virginia Code §18-8-11.

12.3 Administrative Hearing - Upon written request of the licensee within ten (10) days of receipt of the notice of suspension, the Commissioner shall afford the licensee the opportunity for an administrative hearing in accordance with West Virginia Legislative Rules, Division of Motor Vehicles, Administrative Due Process, 91CSR1. The scope of the hearing pursuant to Means v. Sidiropolis 401 S.E.2D Page 447 (W. Va. 1990) is to determine if there is a question of improper identity, incorrect age or some other bookkeeping error.

12.4 Reinstatement - The Division shall reinstate any license which has been suspended under West Virginia Code §17B-3-6, pursuant to West Virginia Code §18-8-11, after the licensee pays all applicable fees and shows that he or she has:

12.4.a. Reached the age of eighteen;

12.4.b. A certificate of graduation issued to the person from a secondary high school or general education development certificate;

12.4.c. Documents showing that the person is enrolled in and making satisfactory progress towards a high school diploma or a general education development certificate;

12.4.d. Certification from the attendance director or chief administrator of the county that the person is excused from the requirements of West Virginia Code §18-8-11; or

12.4.e. Certification of enrollment in an institution of higher education as a full time student in this state or any other state.

12.5 Issuance of a license to applicants under eighteen - Any applicant for a driver's license or instruction permit who is under the age of eighteen years shall provide documentation of compliance with West Virginia Code §18-8-11 to the Division of Motor Vehicles in order to obtain a license or permit. Documentation includes verification of enrollment from the public or private school in the form of written notice from the head of the school. During those months when school is not in session, a copy of the licensee's latest report card is proof of compliance if the report card was the last one issued for the previous school year.

§91-5-13 Suspension Under Resident Violator Program (~~Revised 1998~~)

13.1 Statutory Provisions - The Division is required to suspend the driver's license of any person under the provisions of West Virginia Code §17B-3-3(a) and (b) upon receipt of notification from a Circuit, Magistrate or Municipal Court of this State that the licensee has either failed to appear in court when charged with a violation of the West Virginia Code or has failed to pay all fines assessed as a result of being convicted of the violation. The Division shall not act on any failure to comply report transmitted to the Division more than one year from the date of the offense.

13.2 Notification - Upon notification of noncompliance with the terms of the citation from a Circuit, Magistrate or Municipal Court, the Division shall send the licensee an order of suspension to the address of record by certified mail, return receipt requested. The order of suspension shall indicate that the licensee's privilege to operate a motor vehicle is suspended until proof of compliance with the citation is submitted and all applicable fees are paid.

13.3 Proof of Compliance - Proof of compliance means certification from the court in the form of a satisfaction of judgement receipt which shows that the fine and court costs have been satisfied, or a letter from the ~~magistrate or~~ municipal court which indicates that the requirements of the citation have been met. Proof of compliance does not mean personal representation, copies of money orders, personal checks, or certified checks.

13.4 Failure to Respond - If the Division does not receive proof of compliance, the licensee's privilege to operate a motor vehicle shall remain suspended until such time as the Division receives proof of compliance with the terms of the citation from the licensee, and the appropriate fees are paid.

13.5 Administrative Hearing - Upon the written request of the licensee within ten (10) days of receipt of the proposed order of suspension, the Commissioner shall afford the licensee the opportunity for an administrative hearing. The cope of the hearing is whether or not the person having a license suspended is the same person to whom the citation was issued.

13.6 Reinstatement - Subsequent to the suspension of a driver's license for failure to comply with the terms of the citation, penalty fees under the provisions of West Virginia Code §17B-3-9 apply. The licensee shall pay these fees, in addition to providing proof of compliance with the citation prior to reinstatement of a suspended driver's license.

§91-5-14 Driving Under the Influence; ~~Administrative Hearings (Revised, 1998)~~

14.1. The Division shall revoke a licensee's privilege to operate a motor vehicle in accordance with the provisions of West Virginia Code §17C-5-7 and §17C-5A-1 et seq if the licensee drives under the influence of alcohol, controlled substances or drugs, refuses to submit to a designated secondary chemical test, or commits any other related offense found within West

Virginia Code §17C-5-7 and §17C-5A-1 et seq.

14.2. The Division shall disqualify a licensee from operating a commercial motor vehicle in accordance with West Virginia Code §§17E-1-13, 17E-1-14 and 17E-1-15 if the licensee drives a commercial motor vehicle while under the influence of alcohol, controlled substances or drugs, while having a blood alcohol concentration of four hundredths of one percent or more by weight, or if the licensee refuses a chemical test to determine blood alcohol concentration or the presence of other drugs.

14.3. A revocation of a licensee's privilege to operate a motor vehicle and a disqualification of commercial driving privileges arising out of the same offense shall run concurrently.

14.4 Any licensee whose license is revoked, suspended or disqualified under this rule is entitled to an administrative hearing in accordance with West Virginia Legislative Rule, Division of Motor Vehicles, Administrative Due Process, 91 CSR 1. The Division shall reinstate the revocation, suspension and/or disqualification of any licensee's privilege of operating a motor vehicle and assess all hearing costs against any licensee who fails to appear at an administrative hearing without first obtaining a continuance. The failure of an arresting officer to appear at an administrative hearing does not relieve the licensee from his or her obligation to appear.

~~14.1 Application This section applies to hearings requested by persons whose license or privilege to operate a motor vehicle has been revoked pursuant to an offense described in West Virginia §17C-5-1 et seq. and §17C-5A-1 et seq.~~

~~14.2 Definitions The following definitions apply in the interpretation and enforcement of this section.~~

~~14.2.a. Arresting Officer Means any law enforcement officer as described in West Virginia Code §17C-5-4.~~

~~14.2.b. Commissioner Means the executive officer of the Division of Motor Vehicles appointed by the Governor pursuant to West Virginia Code §17A-2-2, or the Commissioner's lawful designee.~~

~~14.2.d. Licensee Means any person licensed, or required to be licensed by West Virginia or any other jurisdiction to operate a motor vehicle on the roads or highways of this State.~~

~~14.2.c. Hearing Means the administrative procedures conducted by the Commissioner pursuant to West Virginia Code §17C-5A-1 et seq. and §29A-5-1 et seq. and this section as applied to contested cases arising out of the enforcement of administrative revocations~~

~~imposed under the provisions of West Virginia Code 17C-5A-1 et seq.~~

~~14.3 Challenge of the Secondary Chemical Test~~

~~14.3.a. Notification—Any licensee requesting a hearing under the provisions of West Virginia Code §17C-5A-2 and who intends to challenge the results of any secondary chemical test of blood, breath or urine, or intends to cross-examine the individual or individuals who administered the test or performed the chemical analysis, shall notify the Commissioner of his or her intent. The licensee shall submit the notification in writing, either in person or by mail to the Commissioner in Charleston, West Virginia, at least ten days prior to the hearing date.~~

~~14.3.b. Admissibility—If a licensee fails to comply with the notice requirements of Subdivision 14.3.a of this rule means that the results of the secondary test, if any, will be admissible as though the licensee and the Commissioner had stipulated the admissibility of the results of the test.~~

~~14.3.c. Exceptions—The Commissioner shall not invoke the provisions of Subdivision 14.3.b of this rule in the case of a licensee who is not represented by counsel unless the communication from the Commissioner to the licensee establishing a time and place for hearing also informed the person of the consequences of his or her failure to timely notify the Commissioner pursuant to Subdivision 14.3.a of this rule.~~

~~14.4 Request for Hearing~~

~~14.4.a. Initial Notice of Procedures—The order of revocation shall also include a:~~

~~1. Statement of the issues involved. In accordance with the provisions of West Virginia Code §17C-5A-1a, upon receipt of a notice of conviction, the only issue the Commissioner may consider if a hearing is requested is whether or not the person named in the order of revocation is the same person named in the transcript of the conviction;~~

~~2. Statement that the licensee's request for hearing shall be made as prescribed in Subdivision 14.4.b of this rule;~~

~~3. Statement that the licensee shall notify the Commissioner if there is an intent to challenge the results or operation of the secondary chemical test as prescribed in Subdivision 14.3.a of this rule; and~~

~~4. Statement of the costs associated with the hearing which the licensee may incur, as prescribed in Subsection 14.7 of this rule.~~

~~14.4.b. Request For Hearing – A licensee shall submit a request for hearing in writing to the Commissioner in Charleston, West Virginia, either in person or by registered or certified mail, return receipt requested. The licensee shall make the request within ten days from the date on which the order of revocation's mail receipt was signed. However, in cases where the registered or certified mail is not signed for, the provisions of West Virginia Code §17A-2-19 apply. If the licensee requesting the hearing intends to challenge the results or operation of the secondary chemical test, the licensee shall notify the Commissioner of that action as prescribed in Subsection 14.3 of this rule.~~

~~14.4.c. Notice of Hearing – The Commissioner shall send the notice of hearing to the licensee requesting the hearing by registered mail or certified mail, return receipt requested.~~

~~The notice shall contain a:~~

- ~~1. Statement of the date, time, and location of the hearing;~~
- ~~2. Statement of the issues involved;~~
- ~~3. Statement as to the consequences of failing to appear at the prescribed date, time and place of the hearing; and~~
- ~~4. Statement as to the consequences of failing to timely notify the Commissioner of the licensee's intention to challenge the results or operation of the secondary chemical test pursuant to the notice requirements of Subsection 14.3 of this rule.~~

~~14.4.d. Failure of Licensee Requesting Hearing to Appear – The Division shall automatically reinstate the revocation and the assessment of costs outlined in Subsection 14.7 of this rule if the licensee fails to appear without first obtaining a continuance pursuant to Subdivisions 14.4.f or 14.4.g of this rule.~~

~~14.4.e. Failure of Arresting Officer to Appear – If the arresting officer fails to appear without first obtaining a continuance pursuant to Subdivisions 14.4.f or 14.4.g of this rule the Division shall immediately dismiss the administrative revocation imposed under the provisions of West Virginia Code §17C-5A-1 et seq. Provided, that if the arresting officer encounters an emergency situation requiring his or her services en route to a hearing, the hearing officer shall not dismiss the pending administrative revocation if the arresting officer or his or her agency notifies the hearing examiner no later than 15 minutes after the scheduled start of the hearing. The hearing examiner, upon notification, shall either delay the start of the hearing or postpone the hearing.~~

~~14.4.f. Request for Continuance – The Commissioner may grant the arresting officer or the licensee requesting a hearing a continuance of a scheduled hearing. The arresting~~

~~officer or licensee shall make the request for continuance in writing, and it must be received by the Commissioner of the Division of Motor Vehicles at least five days prior to the scheduled hearing date. The Commissioner shall grant the requests if good cause is shown. Good cause shall include such reasons as serious illness, medical appointments, court appearances, or religious holidays of either party. In no case may the Commissioner grant either party more than two continuances except as provided in Subdivision 14.4.g of this rule.~~

~~14.4.g. Continuance on the Motion of the Commissioner – The Commissioner may postpone or continue a hearing on his or her own motion. The motion shall be for good cause including, but not limited to, docket management, availability of hearing examiners or other essential personnel, or mechanical failure of essential equipment, ie recording equipment, file storage equipment etc. The Commissioner may also grant a continuance on less than five days notice to either party in the circumstances of unexpected personal emergencies of the attorney, licensee, arresting officer or key witnesses. A continuance for a personal emergency is not a continuance under the provisions of Subdivision 14.4.f of this rule.~~

~~14.5. Hearing Procedures~~

~~14.5.a. Representatives – A licensee requesting a hearing as well as the arresting officer may be represented by an attorney, licensed to practice law in West Virginia.~~

~~14.5.b. Evidence – The provisions of West Virginia Code §29A-5-2 apply to questions concerning evidence.~~

~~14.5.c. Hearing Officer – The hearing officer has the powers enumerated in West Virginia Code §29A-5-1 as well as those granted in this rule.~~

~~14.5.d. Presentation of Evidence and Cross Examination –~~

~~1. The arresting officer carries the burden of proof and therefore, has the initial opportunity to present evidence.~~

~~2. The licensee requesting the hearing has the right to cross examine the arresting officer or any additional witnesses presented by the arresting officer, unless the cross examination is precluded by the West Virginia Code or this Rule.~~

~~3. Following the submission of evidence and cross examination, if any, of the arresting officer or witnesses presented by the arresting officer, the hearing examiner shall give the licensee requesting the hearing an opportunity to present evidence.~~

~~4. The arresting officer has the right to cross examine any person who gives testimony.~~

~~5. Following the presentation of all evidence, each party has the right to offer closing arguments.~~

~~14.5.e. Continuation and Adjournment - The hearing examiner may continue a hearing in progress from one day to another or adjourn to a later date.~~

~~14.6 - Transcription of Reported Testimony and Evidence~~

~~14.6.a. Content of Transcript - All testimony, evidence, arguments, and rulings on the admissibility of testimony and evidence shall be reported by stenographic notes and characters or by mechanized means.~~

~~14.6.b. Request for Transcript - Upon written request, the Commissioner shall have all materials transcribed and a copy furnished to the licensee requesting the hearing at his or her own expense. The Commissioner shall collect a fee of One Dollar and Fifty Cents for each page transcribed.~~

~~14.7 - Assessment of Costs~~

~~14.7.a. Docket Fee - The Commissioner shall assess a docket fee of Ten Dollars against the licensee requesting a hearing.~~

~~14.7.b. Witness Fees - The Commissioner shall assess a fee of Fifteen Dollars per witness and Fifteen Cents per mile for each mile necessarily traveled to and from the place of the hearing against the licensee requesting the hearing.~~

~~14.7.c. Payment of Fees - The Commissioner shall assess any licensee filing a request for a hearing who fails to have the Commissioner's order of revocation rescinded or modified to a lesser period of revocation the fees prescribed in Subdivisions 14.7.a or 14.7.b of this rule. The licensee shall pay all applicable fees before the Commissioner can complete reinstatement of a license or privilege to operate a motor vehicle.~~

~~14.8 - Subpoenas~~

~~In accordance with the provisions of West Virginia Code §17C-5A-2 and §17A-2-18 which authorize the Commissioner to issue subpoenas or subpoenas duces tecum, the Commissioner may issue subpoenas or subpoenas duces tecum pursuant to West Virginia Code §29A-5-1b.~~

~~14.9 - Orders or Decisions~~

~~14.9.a. Findings of Fact and Conclusions of Law - The Commissioner shall make findings of fact and conclusions of law pursuant to West Virginia Code §17C-5A-1 et seq. and~~

~~§29A-5-1 et seq.~~

~~14.9.b. Final Order- The Commissioner shall make and enter every final order pursuant to West Virginia Code §17C-5A-1 et seq. and §29A-5-1 et seq.~~

~~14.9.c. Right of Appeal- In accordance with the provisions of West Virginia Code §17C-5A-2(q) the licensee is entitled to judicial review as set forth in Chapter 29A of this Code.~~

§91-5-15. Suspending or Restricting a Licensee for Failure to Maintain Court Ordered Child Support Payments. (New 1998)

15.1. Statutory Provisions- In accordance with the provisions of West Virginia Code §48A-5A-1 et seq. and §17B-3-6(a), the Division is required to suspend or restrict the driving privileges of any person upon notification from a Circuit Court of this state that the person has failed to pay overdue child support or comply with subpoenas or warrants relating to paternity or child support proceedings. The provisions of West Virginia Code §48A-5A-5c prohibits the Division from issuing or renewing a driver's license to any person who fails to certify that he or she does not have a child support obligation or that he or she is not more than six months in arrearage, and is not the subject of a child support related subpoena or warrant. This rule is implemented to conform to the mandates of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and in accordance with *Dababhah v. West Virginia Board of Medicine*, No. 27751 slip op (W. Va. 2000).

15.2. Types of Action Against License- The Division, in accordance with the provisions of West Virginia Code §48A-5A-1 et seq, shall take the following action against an applicant or licensee.

~~15.2.a. Denial or Nonrenewal- The Division shall not issue or renew the driver's license of an applicant who fails to certify that he or she does not have a child support obligation, that any obligation is not more than six months in arrearage, and is not the subject of a child support related subpoena or warrant will not be issued a driver's license. The Division shall notify the applicant by regular mail that his or her application has been denied.~~

~~15.2.b.~~ 15.2.a. Denial, Nonrenewal or Suspension- In accordance with the provisions of West Virginia Code §17B-3-6(10),the Division shall deny, refuse to renew or suspend the driver's license of a licensee upon receipt of:

1. A Court order suspending the license; or
2. Certification from the Child Support Enforcement Division that the licensee has failed to comply with a new or modified Court order that stayed a previous suspension.

15.2.c. Restriction- In accordance with the provisions of West Virginia Code §48-5A-5(a) and 17B-2-10(b), the Division shall, upon receipt of the Court's order restricting the licensee, restrict the licensee to the operation of a motor vehicle for transportation to and from work, work related driving, or to and from a court approved education or training program subject to the following;

1. Within ten (10) days of the effective date of the Division's order of restricted driving privileges, the licensee shall surrender his or her current license to the Division for issuance of a specially marked restricted license. For the purposes of this rule, the Division shall issue the restricted license as a duplicate license under the provisions of West Virginia Code §17B-2-11. The provisions of West Virginia Code §17B-3-9 not requiring surrender of license apply only when a driver's license is suspended or revoked.

2. The Division shall suspend the driver's license of a licensee who fails to surrender the current license and pay the required duplicate license fee until proof of compliance with the child support order is received and the licensee pays the reinstatement fees as provided in Subsection 15.7 of this rule.

3. The Division shall immediately suspend the driver's license of any licensee who violates the terms of the restricted license as provided in Subsection 5.6 of this rule.

4. The Division shall reinstate the licensee's full driving privileges in accordance with Subsection 5.7 of this rule.

15.3. Notification- The Division shall send the licensee an order of nonrenewal, suspension or restriction of driving privileges upon notice from a Circuit Court ordering suspension or restriction of driving privileges. The Division shall send the order to the licensee's address of record by certified or registered mail, return receipt requested.

15.4. Term of Denial, Nonrenewal, Suspension or Restriction- In accordance with the provisions of West Virginia Code §48A-5A-5(b), the license action ordered by the Court continues until the Child Support Enforcement Division provides the Division with either a Court order withdrawing the license action or certification that the licensee is in compliance with the court order for the payment of current child support and arrearage.

15.5. Administrative Appeal- A licensee who believes that the license suspension order has been directed to the licensee in error may request an hearing conducted in accordance with the provisions of West Virginia Legislative Rules, Division of Motor Vehicles, Administrative Due Process, 91 CSR 1.

~~The licensee shall submit the request for a hearing in writing to the Commissioner in person or by certified or registered mail, return receipt requested. The licensee shall submit the~~

~~request within ten (10) days from when he or she received the order of suspension or restriction order. The licensee must make a preliminary showing in his or her request, that a possibility exists that he or she is not the person named in the Court order before the Division grants a request for hearing. In cases where the certified or registered mail is not signed for, the provisions of West Virginia Code §17A-2-19 apply for the purpose of determining if a hearing request is timely. In accordance with the provisions of West Virginia Code §48A-5A-5(a), the Division does not have jurisdiction to modify, remand, reverse or stay a court order to take action against a license. Therefore, the scope of any administrative appeal is limited to the sole purpose for the licensee to present evidence that he or she is not the person named in the Court Order.~~

15.6. Driving While Suspended or in Violation of Restriction-

15.6.a. The provisions West Virginia Code §17B-4-3 apply to a licensee convicted of driving while his or her license has been suspended for nonpayment of child support. The conviction, if it is the second conviction for driving while suspended or revoked, shall automatically extend the period of suspension for an additional one (1) year from and after the date the licensee would have been otherwise entitled to have his or her driver's license reinstated.

15.6.b. The Division shall suspend the license of any person who violates the terms of the restricted license. The license suspension continues in effect until the Child Support Enforcement Division provides the Division with either a Court order withdrawing the license action or certification that the licensee is in compliance with the court order for the payment of current child support and arrearage and the payment of all fees.

1. The Division shall automatically suspend the license of a licensee who is convicted of violating the terms of a restricted driver's license until the licensee meets the terms of reinstatement. The administrative appeal provisions of Subsection 5.5 of this rule apply.

2. The Division shall automatically suspend the license when the Division receives notice from any law enforcement officer that a licensee has violated the terms of a restricted license until the licensee meets the terms of reinstatement. The administrative appeal provisions of Subsection 15.5 of this rule shall govern any request for hearing.

15.7. Reinstatement of License- In accordance with the provisions of West Virginia Code §48A-5A-5(b), the suspension or restriction of a license continues until the Court or the Child Support Enforcement Division files with the Division either a court order restoring the license or a Child Support Enforcement Division certification attesting to compliance with court orders for the payment of current child support and arrearage. Proof of compliance shall not mean Court documents which do not contain the signature of the Circuit Court judge or family law master, unsigned notice from the Child Support Division, copies of certified checks, personal checks, money orders or personal representation. A person whose license was suspended shall prior to reinstatement pay all fees assessed as a result of the suspension. A person whose license

was restricted shall surrender the restricted license and pay for a duplicate license.

