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Form #4

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: Division of Motor Vehicles TITLE NUMBER: 91

CITE AUTHORITY: West Virginia Code §17A-2-9, §17C-5A-2, §17C-5A-3a

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, Restriction, 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

#8.20



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

Joe Manchin III  
Governor

June 24, 2005

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

Dear Madam Secretary:

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

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

Sincerely

A handwritten signature in black ink, appearing to read "Danny Ellis".

Danny Ellis  
Cabinet Secretary

DE:sd  
Enclosure

FILED

PROPOSED  
TITLE 91  
LEGISLATIVE RULE  
DIVISION OF MOTOR VEHICLES

2005 DEC 15 P 1:30

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 5

**DENIAL, SUSPENSION, REVOCATION, RESTRICTION OR NONRENEWAL OF  
DRIVING PRIVILEGES**

**§91-5-1. General.**

1.1. Scope. This rule establishes procedures for the denial, suspension, revocation, disqualification, restriction, nonrenewal, administrative appeals and reinstatement of motor vehicle operating privileges.

1.2. Authority. W. Va. Code §§17A-2-9, 17C-5A-2 and 17C-5A-3a.

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.**

3.1. Statutory Provisions - W. Va. 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. W. Va. 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 submit the following:

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

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

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

4. Any other record or other information concerning the applicant or licensee's competency to operate a motor vehicle that he or she would like the Commissioner to consider.

3.2.d The Commissioner, based on standards recommended by the Driver's License Advisory Board, or upon individual review in instances where no standard applies, 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.e . 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 W. Va. 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~~ 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 licensee's choice who is licensed in the United States.

3.3.b. The licensee may, in addition to the medical and or vision report forms, submit any other record or documentation concerning his or her competency to drive for consideration of the Driver License Advisory Board and the Commissioner.

3.3.c. 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.d. 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 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 with conventional lenses 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

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~~ may 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 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 scope of the hearing is to provide the applicant or licensee the opportunity to show that the Division erred in its decision based upon its records or other evidence previously submitted by the licensee. Only evidence previously submitted by the licensee under the provisions of subsection 3.2 or 3.3 of this rule may be considered at the hearing.

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. If an order is not issued within seventy (70) calendar days, the licensee may file a motion with the Commissioner to compel issuance of a decision.

#### **§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 W. Va. Code §17A-10-11.

**§91-5-5. Reinstatement of Driving Privileges of Persons Whose Driver's Licenses Were Revoked under Prior Enactment of W. Va. Code §17C-5-2. Agency Action Upon Receiving Notice of Driving While License is Suspended or Revoked**

~~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 W. Va. Code §17C-5-2 prior to 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 W. Va. Code §17D-4-1 et seq., any person convicted for a subsequent offense under W. Va. Code §17C-5-2 within a period of five (5) years shall also, in light of the former provisions of W. Va. 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.~~

5.1. Pursuant to W. Va. Code §17B-4-3(c), the Division shall upon receipt of a second or subsequent conviction for driving while suspended under the provisions of W. Va. Code §17B-4-3(a) or similar municipal ordinance, extend the period of the suspension for an additional period of one year. This period of time shall begin to toll from the date that the licensee would have otherwise been eligible for reinstatement of his or her license. The determination that the conviction is the second or subsequent conviction shall be based on the records of the Division.

5.2 Pursuant to W. Va. Code §17B-4-3(c), the Division shall, upon receipt of a conviction for driving while his or her license is revoked for a driving under the influence related offense under the provisions of W. Va. Code §17B-4-3(b) or similar municipal ordinance, extend the period of revocation for an additional period of one year. This period of time shall begin to toll from the date that the licensee would have otherwise been eligible for reinstatement of his or her license. The determination that the conviction is for driving while the licensee's privilege to operate a motor vehicle while revoked for a driving under the influence related offense shall be based on the records of the Division.

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

6.1. Statutory Provisions - W. Va. 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 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 W. Va. 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 - W. Va. 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 W. Va. 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 W. Va. 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 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 suspension, revocation, or disqualification or is committed by a licensee with a Commercial Driver's License.

Statute Violated	General Description of Offenses	Point Value
§17C-5-3, §17C-18-1	Reckless Driving	6
§17C-4-2, <u>§17C-4-4,</u> <u>§17C-4-5</u> §17C-18-1	Hit and run involving property damage <del>only</del>	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,	Failure to obey traffic control signals or traffic light signals	3
§17C-18-1 §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 fifteen (15) m.p.h. or more over the posted speed limit.	5
	Speeding in violation of specified or established limits where the speed was ten (10) m.p.h. or more over the posted speed limit but less than fifteen (15) m.p.h. over the posted speed limit.	3
	Speeding in violation of specified or established limits 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.	2
§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,	3

	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	
§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	All other moving violations	2
§17C-14-14	Littering	3
§17B	Operating a vehicle without a proper driver's license or endorsement	2

(The above statutory references are to Chapters, Articles and Sections of the Code of West Virginia, 1931, as amended)

7.3. Traffic Convictions With No Point Value- The abstracts of traffic convictions outlined in

this subsection 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 ten miles per hour or less above the speed limit in accordance with the provisions of W. Va. Code §17C-6-1(g) or (h)

7.3.f. Convictions for offenses which are grounds for a driver's license revocation or suspension.

7.4. Traffic Accidents Not Involving Convictions - Although W. Va. 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 W. Va. 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 W. Va. 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 - W. Va. 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 W. Va. 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 W. Va. 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)~~ or more 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 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.~~ Any suspension received under the provisions of subdivision 7.10.a., 7.10.b., 7.10.c., or 7.10.d of this rule shall run consecutively and any suspension under subdivision 7.10.e. of this rule shall run concurrently.

7.11. Length Of Time Points Maintained On Driving Record - The Division shall 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.

7.12. 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

7.13. Hearings - In accordance with the provisions of W. Va. Code §17B-3-6, any licensee whose license is suspended is entitled to a hearing. The scope of the hearing is whether or not the person whose license is suspended is the same person to whom the citations were issued or that the point total is incorrect. 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.

7.14. Prohibition Against Masking – In accordance with the provisions of W. Va. Code §17E-1-13(g), implementing the requirements of 49 C.F.R. §384.226, all citations accumulated by a licensee who holds a commercial driver's license shall be recorded and retained as a part of the licensee's driver record. The provisions of W. Va. Code §17C-6-1(i) and (j) pertaining to a conviction for a speeding violation ten miles per hour or less over the speed limit committed on an interstate or other controlled access highway does not apply to a licensee who hold a commercial driver's license.

## **§91-5-8. Driver Improvement Course.**

8.1. Procedures - Organizations approved by the Division conduct Driver Improvement courses at various times and locations throughout the State. The Division 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.

8.1.a. Points To Be Deducted Upon Successful Completion - Attendance at any Driver Improvement course is voluntary on the part of the licensee. ~~however, on~~ Upon 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 two 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.

8.1.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.

8.1.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 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.~~

~~8.3.8.2.~~ Graduated Driver Improvement Course- In accordance with the provisions of W. Va. 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~~ 8.2.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 W. Va. 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~~ 8.2.b. Completion of the Graduated Driver Improvement Course shall not affect the provisions of W. Va. 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.~~ 8.2.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 failure to signal intent to pass as provided in §17C-7-3 or impeding traffic as provided in §17C-6-3a, 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.~~ 8.2.c. 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 Review And Driving Re-Examination Of Licensed Drivers.**

9.1. Statutory Provisions - In accordance with W. Va. 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 medical review, vision, written and driving examination. 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 W. Va. 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 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;

9.2.c. A written notice from an adult relative or caregiver 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 or;

9.2.e. A written notice from an officer of the court or an employee of the Division that in his or her judgment there is reason to believe that the licensee is incompetent to drive a motor vehicle. This judgment may be based upon personal observation and/or a review of Division records or any form of the licensee's accident history.

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 ~~consists~~ may consist of a maximum of three four parts.

9.4.a The first part consists of completion of a medical report form by a physician in accordance with Section 3 of this rule.

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

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

9.5. If the licensee fails ~~the~~ any part of 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 W. Va. Code §17B-3-7.~~

9.10. ~~9.9.~~ 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 part three and part four of the examination to determine the licensee's driving ability before the driver's license is reinstated.

~~9.11. 9.10.~~ 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 any part of the examination, or both, requested in accordance with the provisions of W. Va. Code §17B-3-7.

#### **§91-5-10. Suspension or Revocation Following Notice of Returned Check.**

10.1. Statutory Provisions - W. Va. 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. W. Va. 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 W. Va. 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.

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 W. Va. 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 Due Process- 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 W. Va. Code §§17A-2-23, 17A-9-7 and 17B-3-9. The provisions of W. Va. 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.**

11.1. Statutory Provisions - W. Va. 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 W. Va. 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.**

12.1. Statutory Provisions - In accordance with the provisions of W. Va. 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 A valid West Virginia Department of Education Verification of Attendance/Enrollment Form 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 W. Va. 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 W. Va. 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 W. Va. 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 W. Va.

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 W. Va. Code §17B-3-6, pursuant to W. Va. 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 A completed West Virginia Department of Education Reinstatement Authorization Form 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 W. Va. 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 W. Va. 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.**

13.1. Statutory Provisions - The Division is required to suspend the driver's license of any person under the provisions of W. Va. Code ~~§17B-3-3(a)~~ §17B-3-3a and ~~(b)~~ §17B-3-3c 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 W. Va. 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 or violation of a probation order.

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 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 scope 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 W. Va. Code §17B-3-9 apply.~~ The licensee shall pay ~~these~~ the fees provided in W. Va. Code §17B-3-9, 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.**

14.1. The Division shall revoke a licensee's privilege to operate a motor vehicle in accordance with the provisions of W. Va. 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 W. Va. 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 W. Va. 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.

14.5. The division may consolidate issues from multiple suspension, revocation or disqualification order files arising from the same incident or occurrence into one administrative hearing.

### **§91-5-15. Suspending or Restricting a Licensee for Failure to Maintain Court Ordered Child Support Payments.**

15.1. Statutory Provisions- In accordance with the provisions of W. Va. 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 W. Va. 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 W. Va. Code §48A-5A-1 et seq., shall take the following action against an applicant or licensee.

15.2.a. Denial, Nonrenewal or Suspension- In accordance with the provisions of W. Va. 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 W. Va. 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 W. Va. Code §17B-2-11. The provisions of W. Va. 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 W. Va. 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 a hearing conducted in accordance with the provisions of West Virginia Legislative Rules, Division of Motor Vehicles, Administrative Due Process, 91 CSR 1. In accordance with the provisions of W. Va. 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 W. Va. 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 W. Va. 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.

#### **§91-5-16. Alcohol Test and Lock Program**

16.1. Application and Statutory Reference-- This section applies to persons applying for ~~early reinstatement of~~ restricted driving privileges when the person's license has been revoked for a driving under the influence offense or related offenses under the provisions of W. Va. Code §17C-5A-3a and to providers and manufacturers of alcohol test and lock equipment.

16.2. Definitions.

16.2.a. Applicant - Means the person applying for enrollment in the motor vehicle test and lock program as established in accordance with W. Va. Code §17C-5A-3a.

16.2.b. Commissioner - Means the executive officer of the Division of Motor Vehicles appointed by the Governor pursuant to W. Va. Code §17A-2-2 or his or her lawful designee.

16.2.c. Commercial Vehicle - Means any motor vehicle designed or used to transport passengers or property as defined in W. Va. Code §17E-1-3.

- ~~1. If the vehicle has a gross vehicle weight rating of 26,001 pounds or more;~~
  - ~~2. If the vehicle is designed to transport sixteen (16) or more passengers, including the driver;~~
  - ~~3. If the vehicle is transporting hazardous materials and is required to be placarded in~~
- or

~~accordance with Federal Rule 49 C.F.R. part 172, sup part F.~~

16.2.d. Division – Means the division of motor vehicles of this state acting directly or through its duly authorized officers and agents.

~~16.2.d.~~ 16.2.e. Equipment - Means a mechanical or computerized system which prevents the operation of a motor vehicle when, through the system's assessment of the blood alcohol content of the person operating or attempting to operate the vehicle, that person is determined to be under the influence of alcohol.

~~16.2.e.~~ 16.2.f. Final Revocation - Means a license suspension or revocation which has run the full course of administrative and or judicial review. In the context of this section, a person may not participate in the program if the person has any action pending on the offense either criminally or administratively. The revocation must be final.

~~16.2.f.~~ 16.2.g. Law Enforcement Officer - Means a law enforcement officer as defined in W. Va. Code §17C-5-4.

~~16.2.g.~~ 16.2.h. License - Means any permit or license issued by this State which authorizes a person to drive a motor vehicle, or the privilege to operate a motor vehicle.

~~16.2.h.~~ 16.2.i. Participant - Means the person accepted for enrollment in the motor vehicle test and lock program as established in accordance with W. Va. Code §17C-5A-3a.

~~16.2.j.~~ 16.2.i. Passenger Vehicle - Means a Class A vehicle weighing 8,000 pounds or less. ~~which is used for private, noncommercial use.~~

~~16.2.k.~~ 16.2.k. Program - Means the motor vehicle alcohol test and lock program as established in accordance with W. Va. Code §17C-5A-3a.

16.2.l. Safety and Treatment Program - Means the Safety and Treatment Program as established in accordance with W. Va. Code §17C-5A-3.

16.2.m. Service Provider - Means a vendor authorized by Division of Motor Vehicles to provide services related to the program.

16.2.n. Service Center - Means the physical location of a vendor where services related to the program are provided.

### 16.3. Eligibility for Program Participation.

16.3.a. An applicant must ~~be a current resident of West Virginia and~~ hold a West Virginia license. An applicant who holds an out-of-state license or who does not have a license, but who is otherwise qualified for participation in the Program, may obtain a restricted West Virginia license

and participate in the Program by successfully completing all requirements for obtaining a West Virginia license. An applicant who holds an out-of-state license shall surrender the out-of-state license at the time of application.

16.3.b. An applicant must be eighteen (18) years of age or older.

16.3.c. An applicant's license must be revoked for an offense in violation of W. Va. Code §17C-5-1 et. seq. or §17C-5A-1 et. seq. A person whose license is revoked for driving under the influence of controlled substances is not eligible to participate in the program.

16.3.d. An applicant must have served the minimum license revocation period as prescribed by W. Va. Code §17C-5A-3a, and this rule.

1. If the applicant's license has been revoked for a first offense described in W. Va. Code §17C-5A-2 (i), ~~§17C-5A-2 (f)~~ §17C-5-2(d) or §17C-5-2(f), the applicant must serve a minimum revocation period of thirty (30) days before he or she is eligible to participate in the program. The applicant must retain the interlock device in his or her vehicle for a minimum period of five (5) months.

2. If an applicant's license has been revoked for a first offense described in W. Va. Code §17C-5-7, refusal to submit to designated secondary chemical test, the applicant must serve a minimum revocation period of thirty (30) days before he or she is eligible to participate in the program. The applicant must retain the interlock device in his or her vehicle for a minimum period of nine (9) months.

~~3. If an applicant's license has been revoked for a second offense described in W. Va. Code §17C-5A-1 et seq. or §17C-5-1 et. seq., the applicant must serve a minimum revocation period of nine (9) months before he or she is eligible to participate in the program. The applicant must retain the interlock device in his or her vehicle for a minimum period of eighteen (18) months.~~

~~4. If an applicant's license has been revoked for a third offense described in W. Va. Code §17C-5A-1 et seq. or §17C-5-1 et seq., the applicant must serve a minimum revocation period of eighteen (18) months before he or she is eligible to participate in the program. The applicant must retain the interlock device in his or her vehicle for a minimum period of two (2) years.~~

~~5. If an applicant's license has been revoked for more than three (3) offenses described in W. Va. Code §17C-5A-1 et seq. or §17C-5-1 et seq., the applicant must serve a minimum revocation period of eighteen (18) months plus an additional six (6) months for each offense greater than three. The applicant must retain the interlock device in his or her vehicle for a minimum period of two (2) years and an additional one (1) year period for each offense greater than three.~~

~~6. 3. If an applicant's license has been revoked for a first offense described in W. Va. Code §17C-5A-2(m), the applicant must serve a minimum revocation period of sixty (60) days before he or she is eligible to participate in the program. The applicant must retain the interlock device in his or her vehicle for a minimum of ten (10) months. If an applicant's license has been revoked for a first offense described in W. Va. Code §17C-5A-2(f) or §17C-5-2(a), the applicant must serve a~~

minimum revocation period of twelve (12) months before he or she is eligible to participate in the program. The applicant must retain the interlock device in his or her vehicle for a minimum of two (2) years.

4. If an applicant's license has been revoked for a first offense described in W. Va. Code §17C-5A-2(g) or §17C-5-2(b), the applicant must serve a minimum revocation period of six (6) months before he or she is eligible to participate in the program. The applicant must retain the interlock device in his or her vehicle for a minimum of two (2) years.

5. If an applicant's license has been revoked for a first offense described in W. Va. Code §17C-5A-2(h) or §17C-5-2(c), the applicant must serve a minimum revocation period of two (2) months before he or she is eligible to participate in the program. The applicant must retain the interlock device in his or her vehicle for a minimum of one (1) year.

6. If an applicant's license has been revoked for a first offense described in W. Va. Code §17C-5A-2(m) or §17C-5-2(i), the applicant shall serve a minimum revocation period of sixty (60) days before he or she is eligible to participate in the program. The applicant shall retain the interlock device in his or her vehicle for a minimum of ten (10) months.

7. The Division will add one year to the minimum period for the use of the ignition interlock device for each additional previous conviction or revocation within the past ten (10) years.

8. If an applicant's license has been revoked for a second offense described in W. Va. Code §17C-5A-1 et seq. or §17C-5-1 et. seq., the applicant must serve a minimum revocation period of twelve (12) months before he or she is eligible to participate in the program. The applicant must retain the interlock device in his or her vehicle for a minimum period of two (2) years.

9. If an applicant's license has been suspended for a first offense described in W. Va. Code §17C-5A-2(l) or §17C-5-2(h), the applicant must serve a minimum revocation period of thirty (30) days before he or she is eligible to participate in the program. The applicant must retain the interlock device in his or her vehicle for a minimum of six (6) months.

10. If an applicant's license has been revoked for a second offense described in W. Va. Code §17C-5A-2(l) or §17C-5-2(h), the applicant must serve a minimum revocation period of two (2) months before he or she is eligible to participate in the program. The applicant must retain the interlock device in his or her vehicle for a minimum of twelve (12) months.

16.3.e. An applicant must within sixty (60) days of acceptance in the program be enrolled in or have completed the Safety and Treatment Program.

16.3.f. An applicant is not eligible for participation in the program if his or her license has been revoked for an offense described in W. Va. Code §17C-5A-2(f), (g) or (h) where the applicant caused the death or injury of a person. An applicant is not eligible for participation in the Program if his or her license is revoked or suspended for any other reason or has any other suspensions or revocations pending in any jurisdiction as defined in subdivision 16.2.e. of this rule.

~~16.3.g. An applicant is not eligible for participation in the program if his or her license is currently revoked or suspended for any other reason, or have any other suspensions or revocations pending final resolution, in any jurisdiction. An applicant is not eligible for participation in the program if he or she has been convicted of any violation of W. Va. Code §17B-4-3, for driving while the applicant's driver's license was suspended or revoked within the six (6) months period preceding the date of application.~~

~~16.3.h. An applicant is not eligible for participation in the program if he or she has been convicted of any violation of W. Va. Code §17B-4-3, for driving while the applicant's driver's license was suspended or revoked, within the two (2) year period preceding the date of the application. The Division may establish standards whereby the Division will accept or approve participation by driving under the influence offenders in another alcohol test and lock programs which provide the same or substantially similar requirements as the Division's approved alcohol test and lock program.~~

~~16.3.i. An applicant who holds a Class A, B, C or D driver's license is not eligible for participation in the program if his or her driver's license has been revoked for an offense related to W. Va. Code §17C-5-1 et seq., §17C-5A-1 et seq., §17E-1-14 or §17E-1-15 while driving a commercial vehicle.~~

~~16.3.j. An applicant who holds a Class A, B, C or D driver's license, is not eligible for participation in the program if his or her driver's license has been revoked for an offense related to W. Va. Code §17C-5-1 et seq. or §17C-5A-1 et seq. while driving a passenger vehicle installing the equipment in a commercial vehicle. The applicant is not eligible for participation in the program by installing the equipment in a passenger vehicle.~~

#### 16.4. Application Procedures.

16.4.a. An applicant shall complete a program application, agree in writing to the conditions of participation and completion and submit a non-refundable fee of ~~twenty five (\$25.00)~~ one hundred dollars (\$100.00) in the form of a certified check or money order to the Division of Motor Vehicles.

16.4.b. The payment of the application fee shall cause the application to remain valid for a period of six (6) months.

16.4.c. The Commissioner shall either approve the application for participation, subject to the availability of equipment for installation, or shall rule the applicant ineligible for participation based on the criteria prescribed in subsection 16.3.this rule.

16.4.d. An applicant may reapply no more than two (2) times in a six (6) month period. An applicant initially ruled ineligible and subsequently found to be eligible within six (6) months of the initial application is not required to pay the application fee again.

#### 16.5. Applicant Requirements.

16.5.a. The applicant, upon receipt of program entry approval is responsible for completing, signing and returning to the Commissioner, the agreement of conditions of participation and completion, and contacting an approved service provider for installation of the equipment.

16.5.b. A licensed driver shall drive the applicant to the service center in the vehicle in which the equipment is to be installed. The vehicle shall be a Class A passenger type vehicle registered in the State of West Virginia. The applicant shall provide all registration and insurance documents upon request. Insurance information will be subject to random verification. Vehicles manufactured before 1981 are not eligible for installation of the equipment. An inspection may be required to verify the presence of an OBD I (On-Board Diagnostics Generation One) or newer version. No vehicle of any other vehicle class may be used in the program.

16.5.c. The applicant shall complete the orientation and training program provided by the service provider to the satisfaction of the service provider. Any other person who will operate the vehicle while the equipment is installed shall also complete the orientation and training program to the satisfaction of the service provider.

16.5.d. If the vehicle owner is not present at the time of the installation, the applicant shall provide the service provider with a notarized statement of authorization by the vehicle owner allowing the installation of the equipment.

16.5.e. The service provider shall notify the Commissioner of the applicant's successful completion of the orientation and training program and that the equipment was installed in accordance with the criteria established by the Commissioner.

16.5.f. The Commissioner shall issue the applicant a restricted Class E license upon the Commissioner's receipt of the service provider's notification of equipment installation and successful orientation and training. The license shall restrict the applicant to operating only the vehicle or vehicles in which the equipment is installed.

16.5.g. Under no circumstances shall the applicant operate any motor vehicle until the equipment is installed and the applicant has received the specially marked restricted license.

16.5.h. The applicant is responsible for any consequences of operation of the vehicle by persons who have not been trained by the service provider, or who fail to operate the equipment in the manner prescribed by the service provider.

16.5.i. ~~Additional interlock devices may be obtained by a person accepted into the program if that person can show a compelling need for such devices in vehicles used in his or her employment. The installation of additional interlock devices will be restricted to Class A type vehicles. Any person required to participate in this program must have an ignition interlock device installed on every Class A vehicle he or she owns or operates.~~

16.6. Participant Requirements For Continued Eligibility.

16.6.a. The Commissioner may immediately revoke the restricted driving privileges upon notice of any law enforcement officer, Division employee, or service provider of any participant who:

1. Fails to meet the attendance and participation requirements of the Safety and Treatment Program in which the participant is enrolled, if the participant has not already successfully completed the program;

2. Has ~~his or her license suspended or revoked for any other offense~~ received any other suspension or revocation;

3. ~~Upon written notice from any law enforcement officer or service provider that the participant was operating~~ has operated or owned a motor vehicle not containing the required equipment, or was operating a vehicle in violation of any restriction imposed by this rule or the program participation agreement;

4. ~~Upon written notice from any service provider or law enforcement officer that the~~ owns a motor vehicle with equipment in the vehicle ~~that~~ has been altered, tampered with, bypassed or removed without the prior approval of the Commissioner;

5. ~~Upon written notice from any law enforcement officer or service provider that the participant~~ has allowed or caused another person to bypass, or attempt to bypass the equipment or to circumvent the device in any manner;

6. ~~Upon written notice from any law enforcement officer, service provider or Safety and Treatment Program Coordinator that the participant~~ has operated or attempted to operate a motor vehicle under the influence of alcohol or controlled substances;

7. Is has been convicted of any motor vehicle offense contained in W.Va. Code §17B-3-5; ~~or~~

8. Fails to abide by the terms and conditions of the lease agreement with the service provider. A service provider shall not remove a participant from the ~~program~~ Program without prior approval of the Commissioner; or

9. Applies for or obtains a driver's license in any other state during the enrollment or participation period in the Program.

16.6.b. The Commissioner, in conjunction with the Service Provider, may assess applicants for re-entry into the Test and Lock Program or may extend the period of time a participant is required to participate in the Program for violations of the terms and conditions of the Program in accordance with the following criteria:

1. An applicant who is ~~removed~~ disqualified for failure to enroll in or successfully complete the Safety and Treatment Program, but subsequently fully completes the Safety and Treatment Program is eligible for re-entry.

2. An applicant who is ~~removed~~ disqualified for ~~minor offenses that cause~~ driver license suspensions of one hundred twenty (120) days duration or less and has subsequently resolved those suspensions in a timely manner is eligible for re-entry. ~~For the purposes of this section, alcohol-related offenses shall not be considered a minor offense.~~

3. The Commissioner may extend the participant's time in the Program for two (2) months or more, not to exceed a period equal to the original participation time after an evaluation of the frequency and severity of the participant's violations of the terms and conditions of the Program or other offenses. The Commissioner may disqualify the participant for violations occurring during participation in the Program subject to the following:

A. The participant will receive no credit for any minimum revocation time period served or participation time period served prior to the disqualification if the participant is disqualified for a combination of frequent or severe violations; and

B. The participant shall serve a minimum revocation period of twelve (12) months, pay any prior fees owed to the service provider, re-apply for participation in the Program, and retain the Interlock device in his or her vehicle or vehicles for the minimum period described in W. Va. Code §17C-5A-3a and in Subsection 16.3 of this Rule.

4. ~~An applicant shall not be considered for re-entry if the applicant was removed for the following offenses or violations: any alcohol related offenses; driving while his or her driver's license was suspended/revoked; driving a vehicle without the required interlock device; tampering with, bypassing, removing or otherwise circumventing the interlock device or allowing another person to do the same; failure to appear when required for equipment monitoring; registering high blood alcohol content on the interlock device, start violations or failure to retest; or exhibiting behavior of an abusive or threatening nature toward the staff of the Service Provider or this Division. The Commissioner shall disqualify the participant for major violations occurring during participation in the Program including, but not be limited to; any alcohol-related offenses, driving while his or her driver's license was suspended or revoked, driving a vehicle without the required interlock device, tampering with, bypassing, removing or otherwise circumventing the interlock device or allowing another person to do the same, or exhibiting abusive or threatening behavior toward an employee of the Service Provider or Division subject to the following:~~

A. The participant will receive no credit for any revocation or participation time served prior to the disqualification if he or she is disqualified for major violations; and

B. The participant shall then serve a minimum revocation period of twelve (12) months, pay any prior fees owed to the service provider, re-apply for participation in the Program, remit a security deposit to the service provider of an amount not to exceed the cost of the Interlock device, and retain the Interlock device in his or her vehicle or vehicles for the minimum time period described in W. Va. Code §17C-5A-3a and in Subsection 16.3 of this Rule.

#### 16.7. Eligibility For Reinstatement Of License.

~~16.7.a. A participant whose license has been revoked for a first offense as described in W. Va.~~

~~Code §17C-5A-1 et seq. is required to have the equipment in the participant's vehicle for a minimum period of five (5) months, complete the Safety and Treatment Program, and pay all required fees before his or her license may be reinstated.~~

~~16.7.b. A participant whose license has been revoked for more than one (1) offense as described in W. Va. Code §17C-5A-1 et seq. is required to have the equipment in his or her vehicle for a minimum period of one (1) year, complete the Safety and Treatment Program, and pay all required fees before his or her license may be reinstated.~~

~~16.7.c. A participant whose license has been revoked for a refusal to submit to a secondary chemical test is required to have the equipment in his or her vehicle for a minimum period of nine (9) months, and pay all required fees before his or her license may be reinstated.~~

~~16.7.d.~~ 16.7.a. For purposes of this rule eligibility for reinstatement of driving privileges means, completion of the Safety and Treatment Program, expiration of the required period of time in which equipment is required to be installed and payment of all fees including any fees owed to the service provider.

~~16.7.e. A participant who withdraws or is removed from the program shall serve out the remainder of his or her original license revocation period pursuant to W. Va. Code §17C-5A-2. The period of time the participant had the equipment in use with restricted driving privileges shall not count towards fulfilling the requirements of the original revocation period.~~

~~16.7.f.~~ 16.7.b. If a participant has failed to complete the Safety and Treatment Program and pay all required fees by the end of the mandatory equipment usage time period, the participant shall either:

1. Continue to use the equipment while actively enrolled in and completing the Safety and Treatment Program; or,

2. Return all equipment to the service provider and return ~~all licenses~~ his or her license to the Division and shall not operate any motor vehicle until all requirements are met for license reinstatement.

16.8. Notice of Violation of Terms of Program Received After Completion- Upon receipt of sufficient evidence from any law enforcement officer, Division employee, service provider, or by a court document or judgment that the participant has committed a major violation as described in Paragraph 16.6.b.4 of this Rule, the Commissioner shall revoke the licensee's privilege to operate a motor vehicle for a period of one (1) year in accordance with W. Va. Code §17B-3-6(a)(1).

~~16.8.~~ 16.9. Service Provider Standards.

~~16.8.a.~~ 16.9.a. The service provider shall have a minimum of one (1) year experience providing similar service in another jurisdiction.

~~16.8.b.~~ 16.9.b. The service provider shall install only equipment which has been approved for use in the program by the Commissioner. No equipment shall be approved unless:

1. The equipment has been in actual field use for at least six (6) months; and,
2. The equipment has met minimum specifications established by the Commissioner by submission of test data from an independent alcohol-testing laboratory.

~~16.8.c.~~ 16.9.c. The service provider shall initially establish at least one (1) service center to be located in the Charleston, West Virginia area. However, the service provider shall establish additional locations if the Commissioner determines the participation in the program justifies additional locations.

~~16.8.d.~~ 16.9.d. The Commissioner shall prescribe the hours of operation in consultation with the service provider based on the needs of the applicants in the service area, and the needs of the service provider.

~~16.9.~~ 16.10. Program Cost.

~~16.9.a.~~ 16.10.a. The program shall operate on a user fee basis with the cost of the program assumed by the applicant.

~~16.9.b.~~ 16.10.b. The fees for instruction or leasing, monitoring, servicing and de-installation of equipment shall be set by the Commissioner and can not be changed without prior review and approval of the Commissioner, and can only be changed a maximum of one (1) time per year.

~~16.9.c.~~ 16.10.c. The established fees shall be based on average costs and shall not vary according to participant or make of vehicle. Fees shall be uniform at each service center. The service provider shall establish a fee schedule to be applied to indigent participants to be approved by the commissioner.

~~16.9.d.~~ 16.10.d. The manufacturer, service provider and or installer through the contract shall indemnify and hold harmless the State of West Virginia and or its employees and agents from any and all claims, demands, actions and costs whatsoever that may arise out of an act or omission by the manufacturer, service provider, installer, and employee or subcontractor of the service provider in the performance of the agreement.

~~16.9.e.~~ 16.10.e. The manufacturer, service provider and or subcontractor shall maintain comprehensive general liability insurance in the amount of at least one million dollars (\$1,000,000) per occurrence with a three million dollar \$3,000,000 aggregate total. The liability insurance shall cover defects or problems in or with product design, materials, and workmanship during the manufacture, calibration and installation of the equipment. The insurance shall be obtained through an insurer licensed to do business in the State of West Virginia and the policy shall be designed to provide the Commissioner with at least forty-five (45) days prior to written notice of any cancellation, material change or intent to allow coverage to lapse.