

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

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Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Division of Motor Vehicles TITLE NUMBER: 91

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 91 CSR 9

TITLE OF RULE BEING AMENDED: Motor Vehicle Test and Lock Program

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB 2648

SECTION WV Code §64-8-2(b), PASSED ON March 5, 2003

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: April 1, 2003



Authorized Signature



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

Bob Wise
Governor

Fred VanKirk, P. E.
Secretary

August 26, 2002

The Honorable Joe Manchin, III
Secretary of State
State Capitol Building
Charleston, WV 25305

Dear Mr. Secretary:

The Commissioner of Motor Vehicles is hereby authorized to promulgate a proposed rule to repeal the contents of 91 CSR 9, Alcohol Test and Lock Program. The contents of this rule have been amended and merged with 91 CSR 5, Denial, Suspension, Revocation, Restriction or NonRenewal of Driving Privileges, which was previously filed with your office.

Very truly yours,

A handwritten signature in black ink, appearing to read "Fred VanKirk".

Fred VanKirk, P.E.
Secretary/Highways Commissioner



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

1800 Kanawha Boulevard East • Building Three
Charleston, West Virginia 25317-0010

Bob Wise
Governor

Fred VanKirk, P. E.
Secretary

Roger Pritt
Commissioner

Promulgation History

91 CSR 12

Motor Vehicle Test and Lock Program

Rule Cite:	91 CSR 9
Rule Type:	Legislative
Initial Filing:	August 27, 2002
Public Comment Period Expiration:	September 30, 2002
Filing Agency Approved Rule:	October 9, 2002
Rule Authorized as Agency Modified:	Not Applicable
Authorization by Legislature:	March 5, 2003; HB2648, WV Code §64-8-2(b)
Final Filing:	April 1, 2003
Effective Date:	April 1, 2003

A handwritten signature in black ink that reads "Roger Pritt".

Roger Pritt
Commissioner

TITLE 91
-LEGISLATIVE RULES
DIVISION OF MOTOR VEHICLES

SERIES 9
MOTOR VEHICLE ALCOHOL TEST AND LOCK PROGRAM

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STATE OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

~~§91-9-1. General.~~

~~1.1. Scope. This legislative rule establishes a motor vehicle alcohol test and lock program in accordance with the provisions of W. Va. Code §17C-5A-3a.~~

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

1.3. Filing Date. April 1, 2003

1.4. Effective Date. April 1, 2003

~~1.5. Application and Enforcement. This legislative rule applies to persons applying for early reinstatement of restricted driving privileges revoked for a driving under the influence offense under the provisions of W. Va. Code §17C-5A-3a and to providers and manufacturers of alcohol test and lock equipment.~~

1.6. Repeal of Rule. This legislative rule is hereby repealed and the contents moved as amended to West Virginia Legislative Rule 91 CSR 5 Denial, Suspension, Revocation, Restriction, or NonRenewal of Driving Privileges.

~~§91-9-2. Definitions.~~

~~2.1. 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.~~

~~2.2. 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.~~

~~2.3. Commercial Vehicle. Means any motor vehicle designed or used to transport passengers or property.~~

~~2.3.1. If the vehicle has a gross vehicle weight rating of 26,001 pounds or more.~~

~~2.3.2. If the vehicle is designed to transport sixteen (16) or more passengers, including the driver.~~

~~2.3.3. If the vehicle is transporting hazardous materials and is required to be placarded in accordance with Federal Rule 49 C.F.R. part 172, sup part F.~~

~~2.4. 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.~~

~~2.5. Final Revocation. Means a license suspension or revocation which has run the full course of~~

2003rule.09InterlockREPEAL Final File

~~administrative and or judicial review. In the context of this rule, 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.~~

~~2.6. Law Enforcement Officer – Means a law enforcement officer as defined in W. Va. Code §17C-5-4.~~

~~2.7. License – Means any camera card, permit or license issued by this State which authorizes a person to drive a motor vehicle, or the privilege to operate a motor vehicle.~~

~~2.8. 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.~~

~~2.9. Passenger Vehicle – Means a Class A vehicle weighing 8,000 pounds or less which is used for private, noncommercial use.~~

~~2.10. Program – Means the motor vehicle alcohol test and lock program as established in accordance with W. Va. Code §17C-5A-3a.~~

~~2.11. Safety and Treatment Program – Means the Safety and Treatment Program as established in accordance with W. Va. Code §17C-5A-3.~~

~~2.12. Service Provider – Means the vendor authorized by Division of Motor Vehicles to provide services related to the program.~~

~~2.13. Service Center – Means the physical location of the vendor where services related to the program are provided.~~

~~§91-9-3. Eligibility For Program Participation.~~

~~3.1. An applicant must be a resident of West Virginia.~~

~~3.2. An applicant must be eighteen (18) years of age or older.~~

~~3.3. 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.~~

~~3.4. An applicant must have served the minimum license revocation period as prescribed by W. Va. Code §17C-5A-3a, and this rule.~~

~~3.4.1. If the applicant's license has been revoked for a first offense described in W. Va. Codes §§17C-5A-2(i), 17C-5A-2-(l) 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.~~

~~3.4.2. 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.~~

~~3.4.3. 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~~

~~3.4.4. 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.~~

~~3.4.5. 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.~~

~~3.5. An applicant must within sixty (60) days of acceptance in the program be enrolled in or have completed the Safety and Treatment Program. Applicants who have completed the Safety and Treatment Program will have priority for enrollment in the program.~~

~~3.6. An applicant's license must not have been revoked for an offense described in W. Va. Code §§17C-5A-2(f) or (g) where the applicant caused the death or injury of a person.~~

~~3.7. An applicant's license must not be currently revoked or suspended for any other reason, or have any other suspensions or revocations pending final resolution.~~

~~3.8. An applicant must not have been previously enrolled in the program.~~

~~3.9. An applicant must not have 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 application.~~

~~3.10. An applicant who holds a Class A, B, C or D driver's license must not have his or her driver's license 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.~~

~~3.11. An applicant who holds a Class A, B, C or D driver's license, whose 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 is not eligible for participating in the program by installing the equipment in a commercial vehicle. The applicant is however, eligible for participating in the program by installing the equipment in a passenger vehicle.~~

~~§91-9-4. Application Procedures.~~

~~4.1. 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) dollars in the form of a certified check or money order.~~

~~4.2. The payment of the application fee shall cause the application to remain valid for a period of six (6) months.~~

~~4.3. 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 this rule.~~

~~4.4. 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.~~

~~§01-9-5. Applicant Requirements.~~

~~5.1. 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.~~

~~5.2. 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. No vehicle of any other vehicle class may be used in the program.~~

~~5.3. 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.~~

~~5.4. 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.~~

~~5.5. 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.~~

~~5.6. The Commissioner shall issue the applicant a restricted 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 in which the equipment is installed, and only for the purposes of:~~

~~5.6.1. Driving to and from work;~~

~~5.6.2. Incidental driving as a part of employment duties provided that the duties do not include transporting persons for hire;~~

~~5.6.3. Driving to and from school;~~

~~5.6.4. Driving to and from participation in the Safety and Treatment Program;~~

~~5.6.5. Driving to and from the service provider for monitoring and servicing of the equipment; and~~

~~5.6.6. Driving associated with a bona fide medical emergency.~~

~~5.7. 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.~~

~~5.8. 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.~~

~~5.9. 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.~~

~~§01-9-6. Participant Requirements For Continued Eligibility.~~

~~6.1. The Commissioner shall immediately revoke the restricted driving privileges of any participant who:~~

~~6.1.1. 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;~~

~~6.1.2. Has his or her license suspended or revoked for any other offense;~~

~~6.1.3. Upon written notice from any law enforcement officer or service provider that the participant was operating 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;~~

~~6.1.4. Upon written notice from any service provider or law enforcement officer that the equipment in the vehicle has been altered, tampered with, bypassed or removed without the prior approval of the Commissioner;~~

~~6.1.5. 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;~~

~~6.1.6. Upon written notice from any law enforcement officer, service provider or Safety and Treatment Program Coordinator that the participant operated or attempted to operate a motor vehicle under the influence of alcohol or controlled substances;~~

~~6.1.7. Is convicted of any motor vehicle offense contained in W. Va. Code §17B-3-5; or~~

~~6.1.8. 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 without prior approval of the Commissioner.~~

~~§01-9-7. Eligibility For Reinstatement Of License.~~

~~7.1. 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.~~

~~7.2. 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.~~

~~7.3. 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.~~

~~7.4. A participant who is under the age of twenty one (21) at the time of the offense is required to have the equipment in his or her vehicle until the participant reaches the age of twenty (21) or for one (1) year, which ever is longer, complete the Safety and Treatment Program and pay all required fees before his or her license may be reinstated.~~

~~7.5. 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.~~

~~7.6. 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.~~

~~7.7. 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:~~

~~7.7.1. Continue to use the equipment while actively enrolled in and completing the Safety and Treatment Program or,~~

~~7.7.2. Return all equipment to the service provider and return all licenses to the Division and shall not operate any motor vehicle until all requirements are met for license reinstatement.~~

~~§91-9-8. Service Provider Standards.~~

~~8.1. The service provider shall have a minimum of one (1) year experience providing similar service in another jurisdiction.~~

~~8.2. 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:~~

~~8.2.1. The equipment has been in actual field use for at least six (6) months; and,~~

~~8.2.2. The equipment has met minimum specifications established by the Commissioner by submission of test data from an independent alcohol testing laboratory.~~

~~8.3. 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.~~

~~8.4. 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.~~

~~§91-9-9. Program Cost.~~

~~9.1. The program shall operate on a user fee basis with the cost of the program assumed by the applicant.~~

~~9.2. The fees for instruction or leasing, monitoring, servicing and deinstallation 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.~~

~~9.3. 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.~~

~~9.4. 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.~~

~~9.5. 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.~~