

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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APR 19 9 07 AM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

AGENCY: WV Division of Motor Vehicles TITLE NUMBER: 91CSR10

CITE AUTHORITY: WV 17A-2-9, WV 17C-13-6

RULE TYPE: PROCEDURAL _____ INTERPRETIVE X

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____, NO X

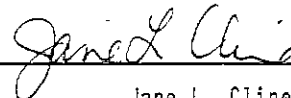
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 91CSR10

TITLE OF RULE BEING ADOPTED: Handicapped Parking Permits

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS May 20, 1996



Jane L. Cline
Commissioner

4.50



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
Division of Motor Vehicles

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

Gaston Caperton
Governor

Fred VanKirk, P.E.
Secretary
Commissioner of Highways

Jane L. Cline
Commissioner

WEST VIRGINIA INTERPRETIVE RULES
DIVISION OF MOTOR VEHICLES
91CSR10

SUMMARY OF CHANGES

1. Code section cites were changed to reflect the 1996 reenactment of WV Code 17C-13-6 by Senate Bill 501 (1996 Regular Session).
2. Several references to handicapped persons were changed to disabled persons.
3. Reference to the \$1.00 fee for temporary placards was deleted pursuant to the above referenced passage of Senate Bill 502.
4. Several references to handicapped placards were changed to removable windshield placards.

SUMMARY OF COMMENTS RECEIVED

1. Mr. Michael W. George, West Union
Suggested a four-year renewal cycle.
2. Mr. Ronald L. Jalbert, Parkersburg
Suggested a four-year renewal cycle.
Suggested that applicants indicate reasons for application.
3. Mr. Gene Defabio, South Charleston
Suggested a four-year renewal cycle.
Suggested eliminating identification cards.

FILED

APR 19 9 07 AM '96

(Proposed)
WEST VIRGINIA INTERPRETATIVE RULES DEPT. OF WEST VIRGINIA
DIVISION OF MOTOR VEHICLES SECRETARY OF STATE
91CSR10

Title: Handicapped Parking Permits

91-10-1 General

1.1 Scope - The rule establishes procedures for issuance of handicapped parking permits for persons with disabilities in accordance with Federal Rule 23 CFR Part 1235 and West Virginia Code 17C-13-6.

1.2 Authority - West Virginia Code 17A-2-9 and 17C-13-6(e).

1.3 Filing Date - April 19, 1996

1.4 Effective Date - May 20, 1996

1.5 Application and Enforcement - This rule applies to persons applying for handicapped parking permits.

91-10-2 Definitions

2.1 Handicapped parking permit means either the special license plate or removable windshield placard issued under the provisions of West Virginia Code 17C-13-6 meeting the specifications prescribed in Federal Rule 23CFR Part 1235.

2.2 Licensed Physician - means any allopathic or osteopathic physician licensed in this state or any other state.

91-10-3 Handicapped Parking Permits - Eligibility

3.1 Eligibility - In accordance with West Virginia Code 17C-13-6, a physically disabled person with limited mobility is any person who is a resident of West Virginia and who suffers from a permanent or temporary physical condition making it unduly difficult and burdensome to walk. In accordance with Federal Rule 23CFR Part 1235.2 (b) and West Virginia Code 17C-13-6(c) (1996 enactment) limited mobility shall be further defined as persons who as certified by a licensed physician:

3.1.1 Can not walk two hundred (200) feet without stopping to rest; or

3.1.2 Can not walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device; or

3.1.3 Are restricted by lung disease to such an extent that the persons forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/Hg on room air at rest; or

3.1.4 Use portable oxygen; or

3.1.5 Have a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association; or

3.1.6 Are severely limited in their ability to walk due to an arthritic, neurological, or other orthopedic condition.

The licensed physician shall certify on the application specifically as to which of the six conditions pertain to the applicant.

91-10-4 Application Procedure

4.2 Application For a Special License Plate

4.1.1 Upon proper application, on the form prescribed by the Commissioner and completion of all requested information, including the physician certification, a person who is a resident of West Virginia with a disability as defined in Section 3 of this Rule, shall be issued one special license plate for a Class A vehicle registered in West Virginia in the applicant's name.

4.1.2 The fee for the issuance of a special license plate shall not exceed the fee charged for a regular issue license plate for the same class or weight of vehicle. However, any application for a duplicate special license plate shall be accompanied by the fee prescribed in West Virginia Code 17A-10-11 and certification that the original plate was lost, stolen, or otherwise unusable.

4.1.3 Upon request, one removable windshield placard may be issued to the applicant who already has a special plate.

4.2 Application For a Removable Windshield Placard

4.2.1 Upon proper application, on the form prescribed by the Commissioner and completion of all requested information, including the physician certification, a person who is a resident of West Virginia with a disability as defined in Section 3 of this Rule shall be issued one removable windshield placard. In accordance with the provisions of West Virginia Code 17A-13-6, there is no fee for the removable windshield placard.

4.2.2 Upon request, the Commissioner may issue one additional removable windshield placard to an applicant who does not have a special license plate. Such additional removable windshield placard shall have the same expiration as the original placard.

4.3 Application For A Temporary Removable Windshield Placard

4.3.1 Upon proper application, on the form prescribed by the Commissioner, and completion of all requested information, including the physician certification, a person who is a resident of West Virginia with a disability as defined in Section 3 of this Rule shall be issued one temporary removable windshield placard for a period of time not to exceed six months.

4.3.2 Upon request, the Commissioner may issue an applicant one additional temporary removable windshield placard.

4.4 Upon application of a West Virginia organization which transports persons with disabilities, the Commissioner shall issue special license plates or removable placards in such a manner as in his or her judgement facilitate the mobility of such organization's customers, patients, students, or persons otherwise placed under the responsibility or care of the organization.

4.5 The removable windshield placard may be used in any vehicle in which a person with a disability is the operator or passenger, regardless of vehicle ownership.

91-10-5 Renewal

5.1 The special license plate shall be renewable each year in accordance with the provisions of West Virginia Code 17A. The Commissioner shall require each registrant to submit recertification from a licensed physician every two years for continued eligibility for the special license plate.

5.2 The removable windshield placard shall be valid for a period of two years. The applicant shall submit certification from a licensed physician for continued eligibility for the removable windshield placard prior to renewal for an additional renewal period.

5.3 The temporary removable windshield placard shall not be renewable. However, the applicant may submit an original application for another temporary removable windshield placard upon certification by a licensed physician.

5.4 The Commissioner may issue a duplicate removable windshield placard upon certification by the applicant that the original removable windshield placard was lost, stolen or otherwise made unusable. The fee for a duplicate removable windshield placard is \$5.00 as prescribed in West Virginia Code 17A-10-11.

91-10-6 Display of Placard

6.1 The placard shall be displayed by hanging it from the front windshield rear view mirror of the vehicle in such a manner that it may be conspicuously visible from the outside of the vehicle. When there is no rear view mirror, the placard shall be displayed on the dashboard to be conspicuously visible from the outside of the vehicle. The placard shall be removed from the rear view mirror whenever the vehicle is in motion.

91-10-7 Identification Cards

7.1 The Commissioner shall issue all holders of handicapped parking permits one identification card to be carried by the person with a disability whenever handicapped parking privileges are exercised. Such card shall be exhibited to any law enforcement officer on demand.

7.2 The Commissioner may issue a duplicate identification card upon certification by the applicant that the original identification card was lost, stolen, or otherwise made unusable.

91-10-8 Reciprocity

8.1 In accordance with Federal Rule 25 CPR Part 1235, and West Virginia Code 17C-13-6(h) (1996 enactment) all removable windshield placards or special license plates issued by any other state or country shall be recognized for the purpose of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities.

91-10-9 Expiration of Old Permits

9.1 The Commissioner shall prescribe the date upon which all handicapped placards or plates previously issued prior to implementation of this rule are invalid. However, at the discretion of the Commissioner such date may be extended in order to facilitate an orderly transition to the new handicapped parking plates and removable windshield placards.

RESPONSE

The Division of Motor Vehicles has evaluated the comments received concerning the implementation of Federal Rule 23 CFR Part 1235 and West Virginia Code 17C-13-6.

1. The two-year renewal cycle will be established for the following reasons;

*West Virginia Code 17C-13-6 (d) provides that the Commissioner shall set the expiration period for a minimum of one year but not more than five years.

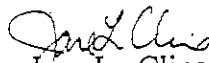
*Persons with disabilities would normally be expected to visit their physician at least every other year so it would not be an unreasonable burden for the applicant to ask the physician to complete a form at the time of a regular appointment. The physician may also complete the form without requiring an office visit

*The agency has witnessed a dramatic increase in the number of issued permits. The volume has increased from approximately 20,000 in 1990 to over 80,000 at present. A significant reason for abuse is the illegal use of permits by other persons. The proposed renewal cycle should help reduce the abuse by shortening the period until the permits expire.

2. The identification card is provided for in West Virginia Code 17C-13-6 (f). The statute requires the applicant to carry the identification card to show a law enforcement officer that the vehicle is actually a disabled person utilizing the handicapped parking place.

3. The application form provides that the Physicians certify the reason why the applicant qualifies for the handicapped parking permit. It is unclear why the applicant should also state why he or she qualifies for a handicapped parking permit as suggested.

In summary, the purpose of the Federal Rule, State Law (WV Code 17C-13-6), and this rule is to increase the mobility of persons with disabilities. It is recognized that the abuse of handicapped parking is widespread and such abuse limits the mobility of persons with disabilities. The most significant aspect of the Federal Rule is the establishment of a renewal cycle with a fixed expiration. While it would certainly be more economical to renew these permits every four years, it is the position of the Division of Motor Vehicles that stricter controls are needed to curb illegal use of these permits. Reduced illegal use will result in more spaces being available for persons with disabilities which is the intent of the Federal and State laws. However, the agency will monitor the effectiveness of the two year cycle and if it appears that it is burdensome, the agency has the authority to change to a longer cycle.


Jane L. Cline
Commissioner

Michael W. George
HC 67, Box 180
West Union, West Virginia 26456-0180

(304) 758-4370

March 22, 1996

Division of Motor Vehicles
Attention: Stephen O. Dale, Room 113
Capitol Complex, Building 3
Charleston, WV 25317

Re: Comment on Rules for Handicapped Parking Permits
17A-2-9, 17C-13-6

Dear Mr. Dale:

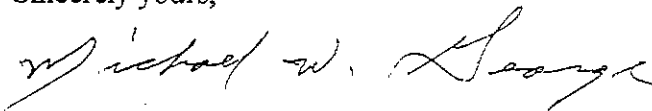
In December 1977 it became necessary for me to retire from The Johns Hopkins University School of Medicine on a total disability. In December 1979 I returned to my home state of West Virginia. I applied for and received a handicapped license tag for my automobile as soon as they became available in the state.

It is my feeling that the rules and codes on the handicapped parking permits is due for revision. Like other disabled persons in West Virginia, my physician filled out and signed the application I first submitted. I have not had to renew that application since that first one although I do still need the permit.

I feel that it would be a burden for my physician to have to fill out an additional form every two years. Therefore, I would suggest that the time period between applications be extended to at least every four years. This would reduce at least some small amount of unnecessary paper work.

Thank you for your work which allows me to respond to this legislation.

Sincerely yours,



Michael W. George

61 Canterbury Drive
Parkersburg, WV 26104

March 25, 1996

Division of Motor Vehicles
Attention: Steve O. Dale, Room 113
Capitol Complex, Building 3
Charleston, WV 25317

RE: Proposed Interpretive Rule Involving Handicap Parking Permits

As the author of Senate Bill 501 which passed the West Virginia Legislature, I endorse the majority of your proposed rules.

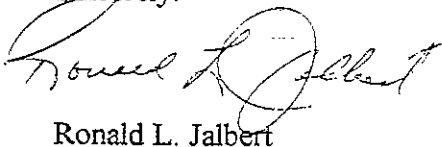
I would propose the renewal period for recertification be four rather than two years in duration for special license plates, as well as for removable windshield placards. I feel persons in wheelchairs, etc. will find two years for recertification to be an undue burden and expensive. The two year recertification will also be a burden on the Division of Motor Vehicles as well. It is my understanding that Ohio presently has a 5 year recertification program.

The application form should require both the applicant and physician to check off one or more specific disability classifications under 91-10-3.1. I plan to amend SB 501 next session and increase the fines for fraudulent applications from \$100.00 to \$400.00 or \$500.00.

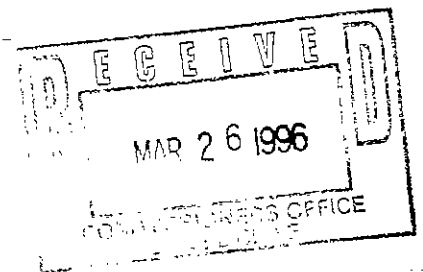
With regards to the ID card, I recommend that the applicant must formally sign their card upon receipt to be valid. If renewals are granted for four years, then a picture ID card should be considered.

What language or policy does the Division plan to use on applications for new special license plates that an individual applied in December of 1996? Will that applicant have a shorter or longer period for recertification if the license plate is renewed at the end of June of 1998? I would favor a longer time period for recertification i.e. longer than two or four years.

Sincerely,



Ronald L. Jalbert



March 14, 1996

Division of Motor Vehicles
Attention : Steven O. Dale, Room 113
Capitol Complex, Building 3
Charleston, WV 25317

Dear Mr. Dale:

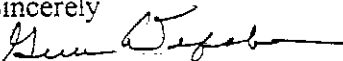
I should like to make the following comments regarding the amended WV Handicapped Law passed this session by the Legislature.

I would like to see the time period the windshield placard and the special license plates be extended to (4) years instead of the two as reported in the bill. I think the two year time period will create an additional burden on persons who need the handicapped parking privilege. Since only those persons who have a continuing functional disability will be awarded the special placard or plate, this should not be a problem. Making the period a two year re-certification period will create an additional financial and time constraint.

I would also like to have considered the elimination of the phrase that the identification card must be carried at all times by the person to whom it was issued and to be presented to a police officer on request. I would suggest instead, that if individuals are fined for illegal parking in handicapped spaces, that an identification could be requested of the driver being fined. Failure then to present a valid identification card would be a significant matter to be considered.

Thank you for allowing me to comment.

Sincerely



Gene Defabio

4901 Kanawha Avenue
South Charleston, WV 25309
Phone: 766-8661



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Charleston, WV 25305-0770

(Plus all the volunteer
help we can get)

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JUN 24 10 42 AM '96

FILED

TO: STEVEN O DALE

AGENCY: DIV MOTOR VEHICLES

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: June 10, 1996

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 10 TITLE: 91 DIV MOTOR VEHICLES

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: *Steven O Dale*

TITLE OF PERSON SIGNING: *Assistant to the Commissioner*

DATE: *June 13, 1996*

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.