



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
Deputy Secretary of State

RICHARD S. STEPHENSON
Deputy Secretary of State

Telephone: (304) 345-4000
Corporations: 345-8000

FILED

1985 AUG -5 PM 1:42

WILLIAM H. HARRINGTON
Chief of Staff

RICH O. HARTMAN
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

PROPOSED RULES

STATE REGISTER FILING

=====

AGENCY Department of Motor Vehicles

CONTACT PERSON Steven O. Dale PHONE 348-3981

TYPE OF RULE Legislative

TITLE OF RULE Motor Vehicle Inspection Manual

CHAPTER 17A ARTICLE 2 SERIES XII

AUTHORITY 17A-2-9

CHECK APPLICABLE ITEMS BELOW TO SHOW KIND OF ACTION BEING TAKEN

NEW RULE

NOTICE OF HEARING

AMENDMENTS TO EXISTING RULE

NOTICE OF AGENCY APPROVAL
(legislative rules only)

REPEAL OF EXISTING RULE

NOTICE OF AGENCY ADOPTION
(interpretive & procedural
rules only)

NOTE: ALL FILINGS REQUIRE ONLY
ONE COPY, EXCEPT FINAL
FILING OF RULES WHICH
REQUIRES AN ORIGINAL AND
A COPY.

FINAL FILING

FIRST EMERGENCY FILING

SECOND EMERGENCY FILING



FILED

1985 AUG -5 PM 1:42

DEPARTMENT OF MOTOR VEHICLES

STATE OFFICE BUILDING
CHARLESTON, W. VA.
25317

SECRETARY OF STATE

ARCH A. MOORE, JR.
Governor

L. W. BECHTOLD
Commissioner

NOTICE OF AGENCY APPROVAL

LEGISLATIVE RULE: Chapter 17A-2, Series XII, Motor Vehicle
Inspection Manual

The attached legislative rules constitute the official rules approved by the Department of Motor Vehicles on the 5th day of August, 1985 and filed pursuant to law with the West Virginia Secretary of State and the Legislative Rule-Making Review Committee.

L. W. Bechtold
Commissioner of Motor Vehicles

FILED

FISCAL NOTE FOR PROPOSED RULES FILED

1985 AUG -5 PM 1:42

1985 JUN -7 AM 10:52

Rule Title: Motor Vehicle Inspection Manual
~~SECRETARY OF STATE~~ ~~SECRETARY OF STATE~~

Type of Rule: Legislative Interpretive Procedural

Agency Department of Motor Vehicles Address 1800 Washington St., East
Charleston, WV 25317

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates.
Implementation of these rules will have no fiscal impact on the State. The Motor Vehicle Inspection Program is already in place. These rules only amend existing rules.

3. Objectives of these rules:
Implementation of these rules will provide.

1. General updating of the Manual (Last revision 1975)
2. Enhanced penalties for inspection station violations to protect vehicle owners.
3. Guidelines for construction and equipment of special motor vehicles.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

Inspection stations licensed after the effective dates of these rules will be required to have heating, telephone, and restroom facilities.

C. Economic Impact on Citizens/Public at Large.

These rules will provide the general public with more protection against fraud and abuse of the Motor Vehicle Inspection Program by inspection stations.

Date June 7, 1985

Signature of Agency Head or Authorized Representative



L. W. Bechtold
Commissioner

(Proposed)
WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF MOTOR VEHICLES
CHAPTER 17A-2
SERIES XII

FILED
1985 JUN -7 AM 10:58

SECRETARY OF STATE

Title: Motor Vehicle Inspection Manual

Section 1. General

1.1 Scope - These legislative rules relate to the Motor Vehicle Inspection Manual.

1.2 Authority - §17A-2-9.

1.3 Filing Date -

1.4 Effective Date -

1.5 Repeal of Former Rule - These legislative rules repeal West Virginia Legislative Rules "Department of Motor Vehicles, Chapter 17A-2, Series XII, Motor Vehicle Inspection Manual, (1964) amended," as filed May 19, 1965.

Section 2. Application and Enforcement

2.1 Application - These legislative rules apply to the administration and enforcement of the motor vehicle inspection laws of this State.

2.2 Enforcement - Enforcement of these legislative rules is vested with the Commissioner of Motor Vehicles or lawful designee.

Section 3. Motor Vehicle Inspection Manual

3.1 Incorporate by Reference - The Commissioner of Motor Vehicles hereby incorporates by reference the Official Motor Vehicle Inspection Manual as promulgated by the Superintendent of Public Safety revised, 1986.

FILED

1935 AUG -5 PM 1:42

SECRETARY OF STATE

FILED

1935 JUN -7 AM 10:58

SECRETARY OF STATE

(Proposed)
WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF MOTOR VEHICLES
CHAPTER 17A-2
SERIES XII

Subject: Motor Vehicle Inspection Manual

INDEX

	Page
Section 1. General	1
Section 2. Application and Enforcement	1
Section 3. Motor Vehicle Inspection Manual	1

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Department of Motor Vehicles.

Subject: Proposed legislative rule incorporating by reference an updated version of the Motor Vehicle Inspection Manual

PERTINENT DATES

Filed for public hearing: June 7, 1985
Date of public hearing: July 24, 1985
Filed following public hearing: August 5, 1985
Filed LRMRC: August 5, 1985
Filed as emergency:

ABSTRACT

The proposed rule is a short, one-page document which incorporates by reference the "Official Motor Vehicle Inspection Manual" of the West Virginia State Police, as promulgated by the Superintendent of the Department of Public Safety.

The manual itself is lengthy, and contains numerous changes in the procedures governing motor vehicle inspections.

On page six of the revised manual, a section headed "General Inspection Requirements" has been altered with respect to vehicles exempt from inspection. The manual formerly exempted vehicles classified and registered as Class "X" (farm use). Presumably this language is omitted because the Code makes no reference to a Class "X" registration. The omitted language is evidently obsolete or erroneous.

A significant change appears at the bottom of page six of the revised manual in that the manual omits language which heretofore prohibited the reinspection of a rejected vehicle by another station. Prior to this revision, a rejected vehicle could only be reinspected by the station which had earlier rejected it.

On page seven of the revised manual there is a listing of states which have reciprocity with West Virginia. The current revision omits the State of Georgia from this list.

Also on page seven, the fee which may be charged for inspection and issuance of the sticker has been increased from \$3.50 to \$4.50. This reflects a change in W. Va. Code, §17C-16-6, as amended by 1977 legislative session.

On page eight of the revised manual, loss of stickers by inspection stations are required to be reported to the area supervisor and the Department of Public Safety in South Charleston. The former language of the manual required a report of such loss to the nearest state police detachment rather than the area supervisor. Also on page eight of the revised manual, a change in ownership or in location of an inspection station requires notification in writing to the area supervisor whereas such notice had not been earlier required.

New language has been added on page nine of the revised manual to accommodate the change which allows a rejected vehicle to be reinspected by a different station. The new language on page nine makes it clear that only one rejection sticker is to be issued per vehicle, and that a rejection sticker will thereafter be removed only if the vehicle passes inspection.

Beginning on page ten, the revised inspection manual sets forth the minimum requirements for an inspection station. In addition to previous standards, the revised manual also requires that all stations be equipped with restroom facilities and be heated in the winter months, and that all stations have a telephone.

Prior regulations required an inspection station to have one qualified mechanic for each inspection lane in addition to an inspector mechanic. The revised language, on page eleven, requires each station "to have at least one qualified inspector mechanic for each operated inspection lane."

Also on page eleven, changes have been made in the list of minimum tools and equipment which must be available. Under the change, five types of tools formerly required are now only recommended.

On page fifteen of the revised manual there are additions to the list of responsibilities of an inspection station owner or operator. The first new requirement is notification of the area supervisor within forty-eight hours whenever a station changes inspector mechanics. The second change requires owners of public stations to conduct inspections without delay and states that inspections will take precedence over other work performed.

Also on page fifteen, a new reference appears with regard to "numeral inserts", these being the interchangeable numbers placed on the inspection sticker to reflect its date of expiration. Under the old manual, stickers were punched according to the month of expiration rather than being altered by the addition of numeral inserts.

On page seventeen of the revised manual, dealing with stickers and supplies, new language has been added requiring that inserts be stored in one place and inspection stickers in another.

On page eighteen, the provisions for replacement of unused stickers have been altered by adding a note which advises that there will be no replacement of inspection stickers purchased by fleet stations.

New language has been added on page nineteen to reflect the use of the numeral inserts. It provides for punching the month or year box of the sticker whereas prior regulations provided only for the punching of a month box. Further, the new language establishes that no substitute is to be used in place of a numerical insert provided by the Traffic Research and Safety Division.

On page twenty-two, a change has been made in the revised manual to reflect the increase in the inspection charge from \$3.00 to \$4.00.

A technical change in reporting appears on page twenty-three of the revised manual with the additional requirement that the inspection station number be stamped or written on the log sheet upon completion and before mailing to the Traffic Research and Safety Division.

On page twenty-five of the revised manual, the portion of the manual dealing with signs and posters has been altered by eliminating language which prohibited the display of any sign, placard or card relating to official inspections.

On page twenty-six, under the provisions dealing with penalties, a new paragraph is inserted in the revised manual which allows the Superintendent of the Department of Public Safety, after hearing and review, to reduce any penalty, substitute a probationary period for any penalty, or design such alternate penalty "as may better serve the circumstance of any grievance."

Beginning on page twenty-eight of the revised manual, changes are made in the penalties for inspection violations. For the sale or gift of a sticker the prior manual called for permanent suspension of a certificate of appointment. Under the revision, the penalty is expanded to apply not only to the owner or operator holding a certificate of appointment, but a mechanic guilty of the offense shall also have his inspector mechanic's card cancelled permanently.

For the offense of affixing a sticker without proper inspection and approval, the application of penalties is again broadened to cover any owner, operator or mechanic.

Penalties for the offense of keeping of inaccurate records have been rewritten without substantive change.

Also on page twenty-eight of the revised manual, new language has been added making it a violation to make a fraudulent entry on log sheets. A first offense by an owner, operator or mechanic may result in a one-year suspension. A second offense within five years is punishable by permanent

suspension.

The penalties for operating a dirty garage have been rewritten without substantive change.

The penalty for a third or subsequent offense of loss of stickers may result in a permanent suspension of the certificate of appointment. Under the prior manual it would appear that such permanent suspension was mandatory rather than discretionary.

On page twenty-nine of the revised manual, changes have been made in the penalties for conducting inspections at locations other than those designated and approved. Under the old manual a certificate of appointment could be suspended for a period not to exceed ninety days. Under the revised manual, a first offense would be punishable for a period not to exceed one year, which was the penalty for a second offense under the old manual. Further, the penalty for a second or subsequent offense mandates a permanent suspension of the certificate of appointment, which was the penalty for a third offense under the old manual.

For failure to follow official inspection procedure, under the new manual the penalties for second, third, and subsequent offenses have been expanded to apply to the inspector mechanic as well as the owner or operator.

On page twenty-nine of the revised manual five new subsections have been added. First, proposing or doing unnecessary repairs will result in permanent suspension for a guilty owner, operator or mechanic. Second, the new language states that an owner or operator will be responsible for the actions of his employees and subject to the same penalties applicable to such employees. Third, new language makes it a violation to refuse to inspect a vehicle without proper cause, calling for a possible one year suspension for a first offense and a permanent suspension for a second or subsequent offense. Fourth, Under the new language it is a violation punishable by a possible permanent suspension for an owner to change locations or cancel his appointment without notifying the area supervisor and the Traffic Research and Safety Division. Finally, a new violation is defined as failure to have an adequate supply of stickers. Placing a sticker which is noncurrent will bring about a three-month suspension for the first offense and a two-year suspension for second or subsequent offenses. For the first offense of failing to have proper stickers on hand, an offender will receive a letter of warning, and second or subsequent offenses could result in a six-month suspension.

On page thirty-two of the revised manual, a complete list of items to be inspected appears. Two new requirements have been added, requiring the person inspecting the vehicle to check the certificate of insurance and remove the old sticker before beginning the physical inspection of the vehicle. The procedure for verifying a certificate of insurance is set forth on page thirty-three of the revised manual.

On page thirty-six, under body and sheet metal, new language would require a check of the overall condition of the frame. Further, bumpers must be present if equipped from the manufacturer, and if replaced, must be original equipment or a replica thereof. Wooden bumpers are not acceptable.

New reasons for rejection are also set forth on page thirty-seven of the new manual. These include cracked, broken or rusted-through frame, defective fifth-wheel connections, hazardous rust holes, rust holes in the floor board which allow gases to enter the car, and abnormal protrusions from the body of the car. The new language also states that repairs made to the body of the vehicle must be of a permanent nature, such as body putty and not tape.

With regard to the inspection of brakes, a change appears on page forty of the revised manual. Under the new language, brake fluid cannot be lower than the manufacturer's prescribed level. The old language required brake fluid to be within one inch of the top of the master cylinder.

On page forty-one of the revised manual, the "minimum disc brake pad thickness table" has been deleted.

Under steering, on page forty-three of the revised manual, there is a new requirement calling for a circular steering wheel with an outside diameter of not less than thirteen inches.

On page forty-six, new language defines lakepipes and makes them illegal. Further, new language deals with locations for discharging exhaust fumes to the rear or sides of vehicles.

On page fifty-eight of the revised manual, the requirement that the dimmer switch be located on the floor of the vehicle has been eliminated.

On page sixty-two, defective spokes in wheels has been added as a basis for rejection. New language also would allow two conventional tires and two radial tires to pass inspection if a radial tire and a conventional tire are not on the same axle. Further, one snow tire could not be used in combination with a radial or conventional tire on the same axle.

The "Minimum Requirements for Construction and Equipment of Special Motor Vehicles", which appears after page 233 in the Revised Manual, is new.

AUTHORITY

Statutory authority: W.Va. Code, §§17A-2-9 and 17C-16-4

W.Va. Code, §17A-2-9(b) is a general authority of the Commissioner

of the Department of Motor Vehicles to promulgate rules and regulations. That subsection reads as follows:

(b) The commissioner is hereby authorized to adopt and enforce such rules and regulations as may be necessary to carry out the provisions of this chapter and any other laws the enforcement and administration of which are vested in the department.

Within the chapter dealing specifically with inspections, the Commissioner is authorized by W.Va. Code, §17C-16-4(a) to promulgate rules and regulations governing annual inspections:

(a) The commissioner of motor vehicles shall once each year require that every motor vehicle, trailer, semitrailer, and pole trailer registered in this state be inspected and that an official certificate of inspection and approval be obtained for each such vehicle.

Such inspections shall be made and such certificates obtained with respect to the mechanism, brakes, and equipment of every such vehicle as shall be designated by the commissioner.

The commissioner is hereby authorized to make necessary rules and regulations for the administration and enforcement of this section . . .

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

As indicated above, The Commissioner of the Department of Motor Vehicles is charged by statute with the administration and enforcement of the laws requiring the annual inspection of motor vehicles. The Superintendent of the Department of Public Safety is responsible for the actual inspections under W.Va. Code, §17C-16-5:

The superintendent of the department of public safety shall be responsible for the inspection as provided in this article and shall prescribe requirements and qualifications for official inspection stations. He shall inspect and designate such stations and shall issue permits therefor and furnish instructions and all necessary forms thereto for the inspection of vehicles as herein required and the issuance of official certificates of inspection and approval . . .

The "Official Motor Vehicle Inspection Manual", as prepared by the Superintendent in compliance with the above-cited Section Five, would be adopted by the Commissioner of Motor Vehicles under the proposed legislative rule, so as to allow him to carry out his duties of administration and enforcement.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes. The statute speaks in general terms of the inspection of "the mechanism, brakes, and equipment" of vehicles [W.Va. Code, 17C-16-4(a)]. This annual vehicle inspection is the statutory tool designed to carry out the legislative intent set forth in W.Va. Code, §17C-16-1, which states that a vehicle is not to be driven or moved on any highway unless it is "in good working order and adjustment as required in this chapter and said vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon any highway." A uniform, thorough and efficient system of inspection could not be achieved without the adoption of rules and regulations filling in the technical details omitted through the use of the general language in the statute.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

On page 6 of the new inspection manual, Class "T" trailers and "antique" vehicles are exempt from inspection requirements. Although these vehicles have been historically exempt under prior regulations, it would appear that there is no statutory authority for such exemption. Under W.Va. Code, §17C-16-4, the Commissioner of Motor Vehicles is required to inspect "every motor vehicle, trailer, semitrailer, and pole trailer registered in this State . . ." [Emphasis added].

On page 14 of the new manual, under "Change of Ownership (Exception)", a station may continue to operate under certain circumstances following the death of the owner. (Ordinarily, a change of ownership requires a new application to be made at least 30 days in advance of the change.) This section allows a widow or surviving member of the immediate family to continue operating, "providing a qualified mechanic is employed to conduct the inspection." Since other changes in the manual appear to make a distinction between "a qualified mechanic" and an "inspector mechanic" and to require a qualified inspector mechanic for each operated inspection lane, this section should be altered to reflect those changes.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes. See Section II of this abstract, above.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes. Several of the changes in the new manual are specifically intended to increase the convenience of the general public; i.e.; requiring all stations to have heating, telephone, and restroom facilities. .

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No. The manual appears to be clearly written in fairly simple, non-technical language. Those parts of the manual dealing with inspection procedures from a mechanical standpoint are well-illustrated.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.