



Emergency 14

STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
CHARLESTON 25305

A. JAMES MANCHIN
SECRETARY OF STATE

STATE REGISTER FILING

I, Virginia L. Roberts, Commissioner,
Title or Position

Department of Motor Vehicles, hereby submit to record in
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- proposed rules and regulations superseding rules and regulations already on file;
- notice of hearing;
- findings and determinations;
- Amendments to existing Emergency Rules
- ~~rules and regulations; or~~
- other - specify (LEGISLATIVE) () PROCEDURAL () INTERPRETIVE () RULE

This filing pertains to

Chapter 17A
Article 2
Series XIV
Section 5.04, 5.05, 5.06, 5.07
Page No. 4

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE Oct. 7, 1983
Administrative Law Division

- proposed rules and regulations are required to go to Legislative Rule Making Committee;
- proposed rules and regulations are excluded from Legislative Rule Making Committee;

October 7, 1983

Date Submitted

Virginia L. Roberts
Signature of Person Authorizing
this Filing

JOHN D. ROCKEFELLER IV
Governor



VIRGINIA L. ROBERTS
Commissioner

DEPARTMENT OF MOTOR VEHICLES
STATE OFFICE BUILDING
CHARLESTON, W. VA.
25317

October 7, 1983

The Honorable A. James Manchin
Secretary of State
State Capitol Complex
Charleston, West Virginia

Dear Mr. Manchin:

Please find attached two copies of a revision to emergency rules filed by this Department on September 1, 1983. The rules are entitled "Driving Under the Influence; Driver's License Revocation Administrative Hearings," Series XIV. The revision consists of amended subsections 5.04, 5.05, and 5.06 as well as a new subsection 5.07. These changes are reflected on a revised page four which is herewith submitted.

I certify that the attached constitute amendments in the form of a revised page four promulgated and filed on October 7, 1983.

Very truly yours,

A handwritten signature in cursive script that reads "Virginia L. Roberts".

Virginia L. Roberts
Commissioner

VLR:SD/nls

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SECRETARY OF STATE
THIS DATE 10/7/83
Administrative Law Division

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The notice shall contain:

1. A statement of the date, time, and location of the hearing.
2. A statement of the issues involved.
3. A statement as to the consequences of failing to appear at the prescribed date, time and place of the hearing.
4. A statement as to the consequences of failing to timely notify the Commissioner of his intention to challenge the results or operation of the chemical test pursuant the notice requirements of Section 4.

5.04. Failure of Person Requesting Hearing to Appear - The failure of a person requesting a hearing to appear without first obtaining a continuance pursuant to Sections 5.06 or 5.07 shall result in an automatic reinstatement of the revocation and assessment of the costs outlined in Section 8.

5.05. Failure of Arresting Officer to Appear - The failure of the arresting officer to appear without first obtaining a continuance pursuant to Sections 5.06, or 5.07 shall result in an immediate dismissal of the administrative revocation imposed under the provisions of Chapter 17C of the Code.

5.06. Request for Continuance - The arresting officer or the person requesting a hearing may be granted a continuance of a scheduled hearing. The request for continuance shall be in writing, and must be received by the Director of the Safety and Enforcement Division of the Department of Motor Vehicles at least five days prior to the scheduled hearing date. Such requests will be granted if good cause is shown. Good cause shall include such reasons as serious illness, medical appointments, court appearances, or religious holidays of either party.

5.07. Continuance on the Motion of the Commissioner - The Commissioner may postpone or continue a hearing on his own motion. The Commissioner may also grant a continuance on less than five days notice to either party in the circumstances of unexpected personal emergencies.

Section 6. Hearing Procedures

6.01. Representatives - A person requesting a hearing as well as the arresting officer may be represented by an attorney, licensed to practice law in the United States.

6.02. Evidence - The provisions of §29A-5-2 shall apply to questions concerning evidence.

6.03. Hearing Officer - The hearing officer shall have the powers enumerated in §29A-5-1 as well as those granted in these legislative rules.

6.04. Presentation of Evidence and Cross Examination -

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

2. The person requesting the hearing shall have the right to cross examine the arresting officer or any additional witness presented by the arresting officer, unless such cross examination is precluded by the Code or these Legislative Rules.

3. Following the submission of evidence and cross examination, if any, of the arresting officer or witnesses presented by the arresting officer, the person requesting the hearing shall then be given an opportunity to present evidence.

4. The arresting officer shall have the right to cross examine any person who gives testimony.

5. Following the presentation of all evidence, each shall have the right to offer closing arguments.

6.05. Continuation and Adjournment - A hearing in progress may be continued from one day to another or adjourned to a later date by the hearing officer.

Section 7. Transcription of Reported Testimony and Evidence

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

7.02. Request for Transcript - Upon written request, all materials shall be transcribed, and a copy furnished to the person requesting the hearing at his own expense. The Commissioner shall collect a fee of One Dollar and Fifty

Cents for each page transcribed.

Section 8. Assessment of Costs

8.01. Docket Fee - A docket fee of Ten Dollars shall be assessed against the person requesting a hearing.

8.02. Witness Fees - A fee of Fifteen Dollars per witness and Fifteen Cents per mile for each mile necessarily traveled to and from the place of the hearing shall be assessed against the person requesting the hearing for each witness.

8.03. Payment of Fees - Any person filing a request for a hearing who fails to have the Commissioner's order of revocation rescinded or modified to a lesser period of revocation shall be assessed the fees prescribed in 8.01 and 8.02. Payment of these fees if applicable shall be one of the criteria to be met before reinstatement of a license or privilege to operate a motor vehicle can be completed.

Section 9. Subpoenas

In accordance with the provisions of §17C-5A-2 and §17A-2-18 which authorize the Commissioner to issue subpoenas or subpoenas duces tecum, the Commissioner shall have the authority pursuant to §29A-5-1b.

Section 10. Orders or Decisions

10.01. Findings of Fact and Conclusions of Law - shall be made pursuant to Chapter 29A and Chapter 17C of the Code.

10.02. Final Order - Every final order entered by the Commissioner shall be made pursuant to Chapter 29A and Chapter 17C of the Code.