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DEPARTMENT OF MOTOR VEHICLES
STATE OFFICE BUILDING
CHARLESTON, W. VA.
25305

JOHN D. ROCKEFELLER IV
Governor

VIRGINIA L. ROBERTS
Commissioner

February 22, 1984

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

Dear Mr. Manchin:

Please be advised that this letter constitutes notice that the Department of Motor Vehicles is extending the effective period of emergency legislative rules pertaining to DUI administrative hearings pursuant to §29A-3-15(b). Please find attached two copies of these emergency rules designated Series XIV. The Department has initiated rule-making procedures for permission to promulgate permanent rules pursuant to §29A-3-15(b)(2).

Very truly yours,

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

Virginia L. Roberts
Commissioner

VLR:SOD/bh

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

THIS DATE Feb. 22, 1984
Administrative Law Division

Obsolete by
Reg. Filed 4-4-84



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

Emergency

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;
- (x) ~~rules and regulations;~~ or Extension of Emergency Rules
- () other - specify (LEGISLATIVE () PROCEDURAL () INTERPRETIVE () RULE

This filing pertains to

Chapter 17A
 Article 2
 Series XIV
 Section I through 10
 Page No. 1 through 6

FILED IN THE OFFICE OF
 A. JAMES MANCHIN
 SECRETARY OF STATE
 THIS DATE Feb. 22, 1984
 Administrative Law Division

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

February 22, 1984
 Date Submitted on Authorization
Virginia L. Roberts
 Signature of Person Authorizing
 this Filing

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE Sept. 1, 1983
Administrative Law Division

(EMERGENCY LEGISLATIVE RULES)
DRIVING UNDER THE INFLUENCE

DRIVERS' LICENSE REVOCATION ADMINISTRATIVE HEARINGS

Chapter 17A-2
Series XIV
1983

Emergency

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

THIS DATE Feb. 22, 1984
Administrative Law Division

(EMERGENCY)
WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF MOTOR VEHICLES

Chapter 17A-2
Series XIV
1983

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

THIS DATE Feb 22, 1984
Administrative Law Division

Subject: Driving Under the Influence; Drivers' License Revocation Administrative
Hearings

Section 1. General

1.01. Scope - These legislative rules relate to a hearing requested by a person whose license or privilege to operate a motor vehicle has been revoked under an administrative proceeding pursuant to §17C-5A-1 or a refusal to submit to a secondary chemical test pursuant to §17C-5-7.

1.02. Authority - These legislative rules are issued under the authority of §17A-2-9.

1.03. Filing Date - These legislative rules were promulgated on September 1, 1983, and were filed on September 1, 1983 in the Office of the Secretary of State.

1.04. Effective Date - These legislative rules become effective on September 1, 1983.

Section 2. Application and Enforcement

2.01. Application - These legislative rules apply to hearings requested by persons whose license or privilege to operate a motor vehicle has been revoked pursuant to an offense described in Chapter 17C, Article 5, and 5A of the Code.

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

Section 3. Definitions - The following definitions shall apply in the interpretation and enforcement of these legislative rules.

3.01. Arresting Officer - Means any law enforcement officer as described in §17C-5-4.

3.02. Code - Means the Code of West Virginia of 1931, as amended.

3.03. Commissioner - Means the executive officer of the Department of Motor Vehicles appointed by the Governor pursuant to §17A-2-2, or lawful designee.

3.04. Hearing - Means the administrative procedures conducted by the Commissioner pursuant to Chapter 17C and Chapter 29A of the Code and these legislative rules as applied to contested cases arising out of the enforcement of administrative revocations imposed under the provisions of Chapter 17C of the Code.

Section 4. Challenge of the Secondary Chemical Test

4.01. Notification - Any person requesting a hearing under the provisions of §17C-5A-2 and who intends to challenge the results of any secondary chemical test of blood, breath or urine, or intends to cross-examine the individual or individuals who administered the test or performed the chemical analysis, shall notify the Commissioner. Such notification must be submitted in writing, either in person or by mail to the Commissioner in Charleston, West Virginia, at least ten days prior to the hearing date.

4.02. Admissibility - Failure to comply with the notice requirements of Section 4.01 shall mean that the results of the secondary test, if any, will be admissible as though the person and the Commissioner had stipulated the admissibility of such evidence.

4.03. Exceptions - The provisions of 4.02 shall not be invoked in the case of a person who is not represented by counsel unless the communication from the Commissioner to the person establishing a time and place for hearing also informed the person of the consequences of his failure to timely notify Commissioner pursuant to Section 4.01.

Section 5. Request for Hearing

5.01. Initial Notice of Procedures - The order of revocation shall also include:

1. A statement of the issues involved.
2. A statement that a request for hearing must be made as prescribed in Section 5.02.
3. A statement that the Commissioner must be notified if there is an intent to challenge the results or operation of the chemical test as prescribed in Section 4.
4. A statement of the costs associated with the hearing which may be incurred, as prescribed in Section 8.

5.02. Request For Hearing - A request for hearing must be submitted in writing to the Commissioner in Charleston, West Virginia either in person or by registered or certified mail, return receipt requested. The request must be made within ten days from the date on which the order of revocation's mail receipt was signed. However, in cases where the registered or certified mail is not signed for, the provisions of §17A-2-19 shall apply. If the person requesting the hearing intends to challenge the results or operation of the chemical test, notice of such action must be made as prescribed in Section 4.

5.03. Notice of Hearing - The notice of hearing shall be sent to the person requesting the hearing by registered or certified mail, return receipt requested.

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.

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

THIS DATE 10/7/83
Administrative Law Division

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.