

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In this Box

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**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Division of Public Safety TITLE NUMBER: 81

CITE AUTHORITY West Virginia Code §17C-15-48

AMENDMENT TO AN EXISTING RULE: YES  NO

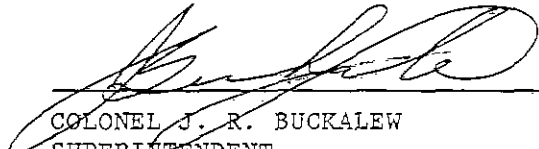
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: IV

TITLE OF RULE BEING PROPOSED: Modified Vehicle Inspections

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
COLONEL J. R. BUCKALEW  
SUPERINTENDENT

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Modified Vehicle Inspections

Type of Rule:  Legislative  Interpretive  Procedural

Agency Division of Public Safety Address 725 Jefferson Road  
South Charleston, WV 25309

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ -0-	\$ -0-	\$46,996	\$23,498	\$23,498
Personal Services			31,335	15,668	15,668
Current Expense			7,384	3,692	3,692
Repairs and Alterations			-0-	-0-	-0-
Equipment			-0-	-0-	-0-
Other			8,277	4,138	4,138

2. Explanation of above estimates: During the current fiscal year, we estimate that a total of \$46,996 in expenses will be incurred in implementing the modified vehicle inspection program. After initial implementation, we estimate that costs will be reduced by 50%.

3. Objectives of these rules: These rules are implemented in accordance with West Virginia Code §17C-15-48(i) and are intended to govern the mandated inspection procedures for modified vehicles and to ensure that all such inspections are performed in a consistent manner.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government. The fee for the modified vehicle sticker is \$10.00. We anticipate that this fee will generate \$50,000.00 annually, which will be deposited into the Motor Vehicle Inspection Fund to offset costs associated with the inspection program for modified vehicles. In addition, it is estimated that \$4,500.00 in state sales tax revenue will also be generated.

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

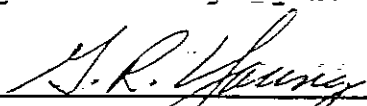
The inspection fee to be charged by inspection stations is \$15.00. We estimate that a total of \$75,000.00 in revenue will be realized by those stations performing the modified vehicle inspections.

C. Economic Impact on Citizens/Public at Large.

Each citizen having a modified vehicle will be required to pay \$25.90 for a state inspection of said vehicle (\$10.00 for sticker; \$15.00 for inspection; and \$.90 state sales tax).

Date: 11-4-91

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_  
LIEUTENANT COLONEL G. R. YOUNG  
DEPUTY SUPERINTENDENT  
WEST VIRGINIA STATE POLICE

DATE: January 6, 1992

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Division of Public Safety (State Police)

LEGISLATIVE RULE TITLE: Modified Vehicle Inspection

1. Authorizing statute(s) citation West Virginia Code §17C-15-48

2. a. Date filed in State Register with Notice of Hearing:

November 4, 1991

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of <sup>Comment Period:</sup> ~~XXXXXXXXXX~~ November 4, 1991

December 4, 1991

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached x No comments received         

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

January 6, 1991

f. Name and phone number of agency person to contact for additional information:

First Sergeant R. D. Blankenship

725 Jefferson Road

South Charleston, West Virginia 25309

746-2124

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A



Department of Public Safety  
(West Virginia State Police)  
725 Jefferson Road  
South Charleston, West Virginia 25309

Gaston Caperton  
Governor

Colonel J. R. Buckalew  
Superintendent

COMMENTS RECEIVED AND AMENDMENTS MADE TO  
WEST VIRGINIA STATE POLICE  
LEGISLATIVE RULE  
SERIES IV  
FILING

The attached letter of recommended changes received from the Legislative Rule-Making Review Committee was reviewed and all changes were incorporated into the proposed rule.

Colonel Buckalew

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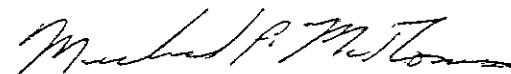
However, none of the provisions of the bill require or limit certain dealers or inspection stations to perform modified vehicle inspections. Although the bill is silent as to whom may perform the inspections, the Committee believes that the Division's position is unduly burdensome on both the owners of vehicles and new vehicle dealers and is unreasonably restrictive upon existing official inspection stations. Because S. B. 4 does not require new vehicle dealers to perform modified vehicle inspections nor does it limit official inspection stations from performing modified vehicle inspections, the Committee opines that the Division has exceeded its authority in promulgating the emergency rule in addition to abrogating the intent of the Legislature. Accordingly, the Committee recommends that the Division file an emergency amendment to the emergency rule to coincide with the authority granted to the Division and to reflect Legislative intent. The Committee desires to avoid revisiting this issue again during the 1992 Regular Session. Therefore, suggested changes are enclosed for your review.

None of the recommendations contained herein in any way restrict or limit the Committee's authority to further review the proposed rule when filed with the Committee nor does the omission from this letter of any other issue contained in the emergency rule signify approval of the remaining provisions of the rule.

If you have any questions or if I may be of further assistance, please feel free to contact me at 340-3286. Thank you in advance for your prompt consideration of this matter.

Members of the Legislative  
Rule-Making Review Committee

By Counsel,



Michael P. McThomas, Esq.

ENCLOSURE

cc: President Keith Burdette  
Speaker Robert "Chuck" Chambers  
Secretary Ken Hechler  
Rene' Coe  
Tom Heywood  
Major General Joseph J. Skaff  
Lieutenant Colonel G. R. Young

In lieu of the emergency rule sections 2.2, 2.2.1, 2.2.2 and 2.2.3, the Legislative Rule-Making Review Committee recommends that all inspection stations be permitted to perform modified vehicle inspections and suggests the following language to accomplish this intent:

2.2 Modified vehicle inspections may only be conducted by qualified inspector mechanics at certified inspection stations.

In addition, the following definition of modified vehicle should be used to avoid confusion as to which vehicles are required to be inspected:

3.3 "Modified vehicle" means any vehicle with a gross vehicle rating of less than 10,000 pounds which has been raised or lowered from the original manufacturer's specifications or configuration by the installation of a suspension lift kit, body lift kit, or tires which are three (3) sizes or more above the maximum size recommended by the manufacturer.

## SUMMARY OF RULE EFFECTS

The Legislative Rule of the West Virginia State Police governing the inspection of modified vehicles was written in compliance with §17C-15-48 of the Code of West Virginia, as amended, during the Second Extraordinary Session, 1991, of the West Virginia Legislature, and prescribes the requirements necessary for the selection of inspection stations and the inspection procedures as provided by the authority granted therein.

Section 1 is a **General** section, identifying the rule's scope and the statutory authority under which the rule was promulgated.

Section 2 specifies the **General Requirements** for establishing what vehicles are to be inspected, determining inspection sites, identifying inspector mechanics and allowing for modified vehicle inspection emblems.

Section 3 provides **Modified Vehicle Inspection Definitions** used in the inspection procedures.

Section 4 details the **Modified Vehicle Inspection Requirements** for the fuel system, vehicle body, vehicle frame, brake system, steering system, suspension system, exhaust system, wheels and tires, and miscellaneous.

This Legislative Rule provides the guidelines under which the inspection of modified vehicles are to be conducted. This rule effects an undetermined number of citizens of West Virginia who own and operate vehicles modified in such a manner as to require inspection under §17C-15-48.



Department of Public Safety  
(West Virginia State Police)  
725 Jefferson Road  
South Charleston, West Virginia 25309

Gaston Caperton  
Governor


Colonel J. R. Buckalew  
Superintendent

Major General Joseph J. Skaff  
Secretary of Public Safety  
Box 2930  
Capitol Building  
Charleston, West Virginia 25305

Dear General Skaff:

Attached are the procedures for modified vehicle inspections as required by the Committee Substitute for Senate Bill 4. These procedures require you review and approval before submission to the Secretary of State's Office.

Sincerely yours,


  
COLONEL J. R. BUCKALEW  
SUPERINTENDENT

JRB:CRB

Attachment

Approval is requested for the attached Legislative Rule, Department of Public Safety, Division of Public Safety, Chapter 17C-15, Series IV.

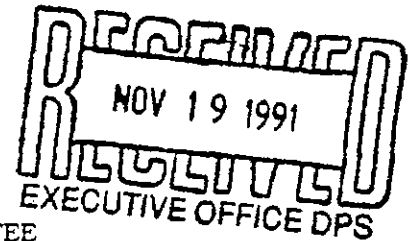
APPROVED/~~DISAPPROVED~~

  
JOSEPH J. SKAFF  
Secretary  
Department of Public Safety



WEST VIRGINIA LEGISLATURE  
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Room M-152, State Capitol  
Charleston, West Virginia 25305  
(304) 340-3286



Senator William R. Wooton, Co-Chairman  
Delegate David Grubb, Co-Chairman

Debra A. Graham, Counsel  
Michael McThomas, Associate Counsel  
Marie Nickerson, Admr. Assistant

November 15, 1991

Colonel J. R. Buckalew, Superintendent  
Division of Public Safety  
725 Jefferson Road  
South Charleston, WV 25309

Re: Emergency Rule Relating to Modified Vehicle Inspections

Dear Colonel Buckalew:

Upon review of the Division of Public Safety emergency rule, 81 CSR 4, relating to inspection of modified vehicles, the members of the Legislative Rule-Making Review Committee find certain provisions unacceptable and contrary to the intent of the Legislature. Pursuant to W.Va. Code §29A-3-15(f), the Committee has the authority to recommend such action as it may deem proper, with respect to any emergency rule, to the agency proposing the emergency rule, the Legislature or the Secretary of State. Accordingly, the Committee recommends that the Division submit an emergency amendment to the emergency rule to reflect the legislative intent of Senate Bill 4 (2nd Extraordinary Session 1991).

Specifically, the emergency rule requires that new vehicle dealers perform modified vehicle inspections and limits the ability of other official inspection stations to conduct such inspections by placing the burden upon the inspection stations to prove that an inspector mechanic at that location has a good working knowledge of original manufacturer's specifications. The emergency rule further places an additional burden upon the owner of the modified vehicle by requiring the person to bring the vehicle to a dealer of the same make of the vehicle, and then only if no new dealer is located in the vehicle owner's county may the person obtain an inspection at a specially authorized modified vehicle inspection station.

The Committee does not dispute the authority of the Division to promulgate an emergency rule governing the complete safety inspection of modified vehicles and other rules as necessary to fully enforce and implement the provisions of the law.

Colonel Buckalew  
Page Two

Furthermore, it is my understanding that the proposed language with the suggested changes will be acceptable to the inspection stations and new vehicle dealers subject to the rule. Accordingly, the Committee respectfully requests that the Division file an emergency amendment to the emergency rule with the Secretary of State incorporating the Committee's recommendations.

If you have any questions or if I may be of further assistance, please feel free to contact me at 340-3286. Thank you in advance for your prompt consideration of this matter.

Members of the Legislative  
Rule-Making Review Committee

By Counsel,



Michael P. McThomas, Esq.

ENCLOSURE

cc: President Keith Burdette  
Speaker Robert "Chuck" Chambers  
Secretary Ken Hechler  
Rene' Coe  
Tom Heywood  
Major General Joseph J. Skaff  
Lieutenant Colonel G. R. Young  
Marvin Gray  
Ruth Lemon

In lieu of the emergency rule sections 2.2, 2.2.1, 2.2.2 and 2.2.3, the Legislative Rule-Making Review Committee recommends that certified inspection stations meeting the following minimum standards be permitted to perform modified vehicle inspections in accordance with the following:

2.2 Upon the submission of a completed application, the Superintendent of Public Safety may grant certified inspection stations the authority to perform modified vehicle inspections in accordance with this section 2.2.

2.2.1 To the extent that at least two qualified applicants are available, each county shall have a minimum of two modified vehicle inspection stations.

2.2.2 To the extent that at least a minimum number of qualified applicants are available, each county shall have one modified vehicle inspection station for every four thousand registered vehicles within that county.

2.2.2.1 The Superintendent first shall allocate the number of modified vehicle inspection stations based upon the geographic location of the certified inspection stations submitting applications to ensure accessibility of modified vehicle inspection stations throughout a county.

2.2.2.2 If the number of qualified applicants exceeds the number of modified vehicle stations allotted to a particular county, the Superintendent shall grant authority to perform modified vehicle inspections first based upon geographic location to ensure accessibility of modified vehicle inspection stations throughout the county. The remainder of qualified applicants will be randomly selected by the Division of Public Safety.

2.2.3 In order to be qualified to be a modified vehicle inspection station, a certified inspection station must continue to meet the following minimum standards:

2.2.3.1 The certified inspection station must have been a certified inspection station for the three consecutive years immediately preceding the submission of the application;

2.2.3.2 The certified inspection station must not have been suspended by the Division of Public Safety from performing inspections for the three consecutive years immediately preceding the submission of the application;

2.2.3.3 The certified inspection station must have two licensed inspector mechanics other than the owner of the station.

2.2.3.4 The certified inspection station must be at least a certified two-car inspection station.

2.2.3.5 Each licensed inspector mechanic who will be performing modified vehicle inspections must have a minimum of three years experience as an inspector mechanic and may not have been suspended by the Division of Public Safety.

2.2.4 The Superintendent of the Division of Public Safety may certify additional modified vehicle inspection stations to operate in any particular county if the Superintendent determines that the number of modified vehicle inspection stations in a particular county is insufficient to meet the demand for modified vehicle inspections.

2.2.5 For purposes of this section 2.2, a completed application shall consist of a signed application form demonstrating the criteria contained in section 2.2.3 of this section. Application forms will be prescribed by the Division of Public Safety.

# West Virginia Automobile & Truck Dealers Association



POST OFFICE BOX 2028  
CHARLESTON, WEST VIRGINIA 25327  
TELEPHONE 304 343-4158  
800 888-4158  
Fax Number 343-8474  
RUTH LEMMON  
Executive Vice President

December 2, 1991

Honorable Ken Hechler  
W.Va. Secretary of State  
Administrative Law Division  
State Capitol  
Charleston, W.Va. 25303

Dear Mr. Hechler:

Responding to the emergency rules filed by the West Virginia Department of Public Safety dealing with the inspections of modified vehicles, we, the West Virginia Automobile & Truck Dealers Association would like to file the following comments:

Dangers that exist through the modifications to the suspension and steering systems are contrary to the training that our service technicians receive, both from the manufacturers and the regular inspection training they are accustomed to.

Some of the modifications could be held in conflict with the original design and engineering of the vehicles. This could possibly constitute a safety problem that our technicians would not be able to detect prior to certifying that a vehicle is safe and road-worthy. Our technicians are trained on specific engineering of specific makes and models, depending on the franchises held by the dealership they are employed by. They cannot always justly determine to what degree the change or modification may impact the safety and road-worthiness of a vehicle.

We are requesting that the State Police, through their ability to work with the U.S. Department of Transportation, submit specific guidelines for all makes and models that have been modified. We would also recommend that the DPS consult with the various manufacturers' engineers to determine what can safely be altered and still maintain the integrity of the original vehicle design. These guidelines will ensure the safety of not only the operators of the vehicles, but the general motoring public as well.

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1991 DEC -3 PM 2:37  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

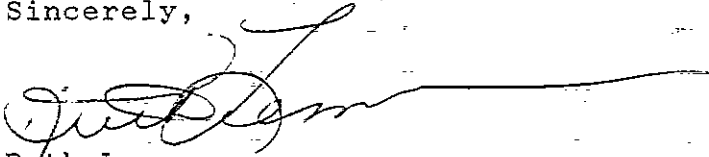
Further, we are opposing the specific requirement that only "new vehicle dealers" be permitted to do inspection on modified vehicles. This was not the intent of the legislation passed. There is also concern for the discrimination against the independent inspection stations and the liability that the new vehicle dealerships could possibly assume.

The Association would be willing to work with all concerned organizations and departments to develop a safe and workable program for modified vehicles. Our intent is not to deprive the individual of their right to make those changes they desire to their vehicles, but rather to protect the intent of the legislation passed as well as our dealer members.

Should the need arise, I will formally request a public hearing prior to the approval of the proposed regulations. Please notify me if I should make any additional requests.

Thank you for your interest in this matter.

Sincerely,



Ruth Lemmon  
Executive Vice President

cc: Col. Jack Buckelew, DPS  
Senator Mike Withers  
Members of Rule Making Review