



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL
RULE**

AGENCY: Underground Facilities Damage Prevention Board TITLE-SERIES: 214-02

RULE TYPE: Procedural Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: RULES OF PROCEDURE FOR COMPLANTS
AND CONTESTED CASES BEFORE THE WEST
VIRGINIA UNDERGROUND FACILITIES
DAMAGE PREVENTION BOARD

CITE STATUTORY AUTHORITY: 24C-1-2A 24C-1-9E1

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

July 1, 2023

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jerry Poage -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

**TITLE 214
PROCEDURAL RULE
WEST VIRGINIA UNDERGROUND FACILITIES DAMAGE PREVENTION BOARD

SERIES 2
RULES OF PROCEDURE
FOR COMPLAINTS AND CONTESTED CASES BEFORE THE
WEST VIRGINIA UNDERGROUND FACILITIES DAMAGE PREVENTION BOARD**

§214-2-1. General.

1.1. Scope. -- This rule establishes the procedures for complaints, informal dispositions of complaints, and formal hearings before the West Virginia Underground Facilities Damage Prevention Board.

1.2. Authority. -- W.Va. Code §24C-1-2a and W.Va. Code §24C-1-9(e)(1)

1.3. Filing Date. -- JUNE 1, 2023.

1.4. Effective Date. -- JULY 01, 2023.

1.5. Applicability. -- This rule applies to any person that is subject to the jurisdiction of the one-call system and the West Virginia Underground Facilities Damage Prevention Board.

§214-2-2. Filing of a Complaint.

2.1. Any person may file a complaint with the Board alleging a violation of W.Va. Code 24C-1-1 et seq. The complainant shall file the complaint in writing, the complaint shall be verified, and shall include, at a minimum, the following:

2.1.a. Complainant's Name.

2.1.b. Complainant's Business, if any.

2.1.c. Complainant's Email Address.

2.1.d. Complainant's Physical Address.

2.1.e. Complainant's Phone Number.

2.1.f. Date of Complaint.

2.1.g. Date of Alleged Violation.

2.1.h. Location of Alleged Violation.

2.1.i. Type of Alleged Violation.

2.1.j. Documentary Evidence, if any.

2.1.k. Name of Alleged Violating Entity (if known).

2.1.1. Violator's Phone Number (if known).

2.1.m. Violator's Email Address (if known).

§214-2-3. Investigation of Complaints.

3.1. The Board shall conduct any reasonable inquiry or investigation it considers necessary to determine the truth and the validity of the allegations set forth in a verified complaint in a manner consistent with the provisions of W.Va. Code §24C-1-1 et seq.

3.2. Any person who is found to have violated the provisions of W.Va. Code §24C-1-1 et seq. by failing to notify the one-call system shall be issued a citation and subject to training required by the Board, the civil penalties provided for in W.Va. Code §24C-1-9, or both.

3.3. A citation issued to a person shall be set forth in the name of the Board.

3.4. Any person to whom a citation is issued who (a) challenges the validity of or the verified allegations contained within a citation, (b) does not complete the training as ordered, or (c) who does not satisfy the civil penalties, may, within 30 days of the receipt of a citation, request a hearing before the Board.

§214-2-4. Hearing Procedure.

4.1. Any person who desires a hearing must present a written demand for such to the Board within 30 days of issuance of a citation.

4.2. When the Board or its authorized designee is presented with such a demand for a hearing, it shall schedule a hearing within forty-five (45) days of receipt by it of such written demand unless postponed to a later date by mutual agreement.

4.3. Civil penalties may be instituted against any person by the Board when probable cause exists for believing that the individual may have engaged in conduct, practices or acts that are in violation of the provisions of W.Va. Code §24C-1-1 et seq. or the Board's rules. Civil penalties may be based upon information received by way of a verified written complaint filed with the Board and further information gathered by the Board or its authorized designee in the process of investigating such complaint. Civil penalties may also be based upon information received solely through investigative activities undertaken by the Board.

4.4. A Notice of Hearing shall be served upon the demanding party at least thirty (30) days prior to the date of hearing.

4.5. Hearings shall be conducted as follows:

4.5.1. Any party to a hearing shall have the right to be represented by an attorney, duly qualified to practice law in the state of West Virginia, or to represent his or herself.

4.5.2. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded from the hearing.

4.5.3. Any party to a hearing may appear with witnesses to testify on his or her behalf; may be heard in person, by counsel or both; may present such other evidence in support of his or her position as deemed appropriate by the Board and, when appropriate, may cross-examine witnesses called by the Board

in support of the citation.

4.5.4. The hearing shall be held at such time and place as is designated by the Board, but no hearing shall be conducted unless and until at least thirty (30) days written notice thereof has been served upon the demanding party and/or his or her attorney in person; or if he or she cannot be found or if he or she does not reside in this state, such notice may be served by the publication thereof once a week for three successive weeks in a newspaper published in this state; or such notice may be served by registered or certified mail.

4.5.5. The hearing shall be open to the general public, unless requested to be closed to the public by the demanding party.

4.5.6. The hearing shall be conducted by a quorum of the Board.

4.5.7. A record of the hearing, including the citation(s), if applicable, the notice of hearing, all documentary evidence, and testimony in support thereof shall be made and a transcript thereof maintained in the Board's files. Upon request, a copy of the transcript shall be furnished to any party by the transcriptionist at his or her own expense.

4.5.8. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

4.5.9. Where a hearing is held upon demand of any person to whom a citation is issued, the demanding party shall have the burden of proof.

4.5.10. Motions for a continuance of a hearing may be granted upon a showing of good cause.

§214-2-5. Transcription of Testimony and Evidence.

5.1. All testimony, evidence, arguments and rulings on the admissibility of testimony and evidence shall be transcribed. The Board shall have the responsibility to make arrangements for the transcription of the reported testimony and evidence, and each party to the hearing shall bear their own expense in obtaining a copy of such transcription.

5.2. A transcript of the hearing shall be provided to all members of the Board for review at least ten (10) days before the vote is taken on its decision in any matter.

§214-2-6. Submission of Proposed Findings of Fact and Conclusions of Law.

6.1. Any party may submit proposed findings of fact and conclusions of law at a time and manner designated by the Board.

§214-2-7. Conferences; Informal Disposition of Complaints.

7.1. At any time during an investigation, the Board may dismiss the complaint if it determines that there is not sufficient evidence to warrant further proceedings.

7.2. At any time prior to the hearing or thereafter, the Board may hold conferences for the following purposes:

7.2.1. To dispose of procedural requests, prehearing motions or similar matters;

214CSR2

7.2.2. To simplify or settle issues by consent of the parties; or,

7.2.3. To provide for the informal disposition of cases by stipulation or agreement.

7.3. The Board may cause such conferences to be held on its own motion or by the request of a party.

7.4. The Board may also initiate or consider stipulation or agreement proposals with regard to the informal disposition of cases and may enter into such stipulations and/or agreements without conference.

§214-2-8. Orders.

8.1. Any final order entered by the Board following a hearing conducted pursuant to these rules shall be made pursuant to the provisions of W.Va. Code §29A-5-3. Such orders shall be entered within forty-five (45) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts, and shall contain findings of fact and conclusions of law.

8.2. The findings of fact and conclusions of law must be approved by a majority of the Board either by a poll or vote at a meeting before a final order is entered. A copy of the final order approved by a majority of the Board shall be served upon the demanding party and/or his or her attorney of record, if any, within ten (10) days after entry by the Board by personal service or by registered or certified mail.

§214-2-9. Appeal.

9.1. An appeal from any final order entered in accordance with these rules shall comply with the provisions of W.Va. Code §29A-6-1 et seq.