



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Parkways Authority

RULE TYPE: Legislative

TITLE-SERIES: 184-05

RULE NAME: RULES SUPPORTING ELECTRONIC
TOLL COLLECTION AND
ENFORCEMENT

CITE AUTHORITY: W. Va. Code §§17-16D-5, 17-16D-8, 17-
16D-14

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

Yes

Lori Ann Suite -- 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.

184CSR5
TITLE 184
LEGISLATIVE RULE
WEST VIRGINIA PARKWAYS AUTHORITY

SERIES 5
RULES SUPPORTING ELECTRONIC TOLL COLLECTION AND ENFORCEMENT

§184-5-1. Introduction.

1.1. Scope. -- The Electronic Toll Collection Act (the “ETCA”) in Article 16D, Chapter 17 of the Code of West Virginia authorizes the West Virginia Parkways Authority (the “Authority”) to collect and enforce tolls electronically for the use of roads, highways, and bridges. These legislative rules are required by the ETCA and support electronic toll collection and enforcement. Specifically, these rules codify the administrative fees the Authority shall assess for each notification of each separate violation of the ETCA. These rules also provide administrative hearing procedures for challenging a notice of violation. Finally, these rules require the Authority to publish interior transponder mounting guidelines on its agency website.

1.2. Authority. -- W. Va. Code §§17-16D-5, 17-16D-8, 17-16D-14.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2030.

§184-5-2. Definitions.

2.1. “Administrative fee,” in the context of the ETCA, means the fee codified in §184-5-3 of these rules, which the Authority shall assess for each notification of each separate violation of the ETCA, pursuant to W. Va. Code §17-16D-5. Nothing in these rules shall limit the Authority’s general power to charge, fix, and revise, from time to time, tolls or fees for transit under §17-16A-6(a)(8) of the West Virginia Parkways Authority Act.

2.2. “Authority” means the West Virginia Parkways Authority, an agency established in the West Virginia Department of Transportation pursuant to the West Virginia Parkways Authority Act, W. Va. Code §17-16A-1 *et seq.*

2.3. “ETCA” means the Electronic Toll Collection Act, W. Va. Code §17-16D-1 *et seq.*

2.4. “Transponder” means the electronic toll collection device referenced in W. Va. Code §17-16D-8 that is affixed to the front windshield of a vehicle and transmits information to a device located in a toll lane or otherwise used at a toll collection facility in connection with the Authority’s electronic collection of tolls or charges.

§184-5-3. Administrative Fee.

3.1. Pursuant to W. Va. Code §17-16D-5, the Authority shall assess a reasonable administrative fee for each notification of each separate violation of the ETCA, as follows:

3.1.1. No administrative fee shall be assessed where a violation is paid in-person or online within 30 calendar days of the violation.

3.1.2. If the violation is not paid within 30 calendar days, the Authority shall assess a \$10.00 administrative notice fee for each notice of violation mailed to the vehicle owner.

3.1.3. If the violation is not paid within 60 calendar days, the Authority shall assess an additional \$15.00 administrative notice fee for each notice of violation mailed to the vehicle owner and a \$25.00 administrative fee for each separate violation set forth therein.

3.2. The Authority may refer a delinquent account to collections where the tolls and administrative fees owed are not paid within 90 calendar days of the violation.

§184-5-4. Administrative Hearing Procedures.

4.1. A vehicle owner who receives a notice of violation under the ETCA and desires to contest the violation may request an informal or formal administrative hearing procedure from the Authority.

4.1.1. Informal Administrative Hearing Procedure. Within 30 calendar days of receiving a notice of violation under the ETCA, a vehicle owner may request an informal administrative hearing to contest the violation by letter or other writing addressed to the Executive Director, West Virginia Parkways Authority, 3310 Piedmont Road, Charleston, West Virginia 25306. Matters thus presented, if their nature warrants, may be negotiated and settled by the Executive Director or some other duly authorized employee without formal hearings. If the matters cannot be resolved satisfactorily to all parties, the proceeding is held to be without prejudice to the right of the vehicle owner to assert without delay a formal administrative contest of the violation, whereupon the informal proceeding will be discontinued. No form of informal contest is prescribed, but the letter or other writing must contain a clear and concise statement of the facts and the specific relief sought. The name of the vehicle owner shall be stated in full, together with his or her address and contact information, and the name, address, and contact information of his or her attorney, if any.

4.1.2. Formal Administrative Hearing Procedure. Within 30 calendar days of receiving a notice of violation under the ETCA, a vehicle owner may request a formal administrative hearing to contest the violation by mailing a verified complaint to the Executive Director, West Virginia Parkways Authority, 3310 Piedmont Road, Charleston, West Virginia 25306. The verified complaint shall be in a form required by the West Virginia Rules of Civil Procedure and shall set forth plainly and distinctly the grounds for contesting the violation and the relief sought. The name of the vehicle owner shall be stated in full, together with his or her address and contact information, and the name, address, and contact information of his or her attorney, if any. The West Virginia Rules of Civil Procedure may be found at the following link: <https://www.courts.wv.gov/legal-community/court-rules/rules-civil-procedure-contents>. The requirements for a verified complaint may be found at the following link: <https://code.wvlegislature.gov/56-4-6A/>.

4.1.2.a. Presiding officer; records. The Executive Director of the Authority or his or her designee shall be the presiding officer and shall be responsible for all administrative and clerical duties relating to hearings and maintaining all records, pleadings, and papers pertaining thereto.

4.1.2.b. Answers or Responsive Pleadings. Within 30 days after receipt of a verified complaint, the Authority shall answer or otherwise respond to the verified complaint, informing the vehicle owner of the nature of the Authority's defenses or reason for the decision or action underlying the notice of violation. The Authority shall serve the answer or response on the vehicle owner or his or her attorney either by in-person delivery or by registered or certified mail.

4.1.2.c. Stipulations or Agreed Facts. The parties to any formal administrative hearing procedure may, by stipulation in writing filed with the presiding officer, agree upon the facts, or any portion thereof, involved in the controversy, which stipulation shall be recorded and used at hearings.

4.1.2.d. Hearings; Notices. When issue is joined by the service of an answer on the vehicle owner, the presiding officer shall designate a time and place for a hearing, which shall occur at the West Virginia Parkways Authority, 3310 Piedmont Road, Charleston, West Virginia 25306, unless the parties mutually agree on an alternative location. The presiding officer shall give all parties not less than 10 calendar days' notice of the time and place of hearing, which may be served upon the parties in accordance with the provisions of W. Va. Code §29A-7-2.

4.1.2.e. Evidence; Burden of Proof; Rules Applicable. The parties must prove the existence of the facts as alleged in their pleadings by a preponderance of the evidence. The presiding officer shall hear such proof of facts as he or she may deem proper and reasonable, and may make such investigation and enter such order as the facts justify and the circumstances may require. The presiding officer shall be bound by the West Virginia Rules of Civil Procedure and the West Virginia Rules of Evidence in conducting hearings. All evidence, including records and documents in the possession of the Authority may be duly offered and made a part of the record in a contested proceeding. Every party to the proceeding shall be afforded adequate opportunity to rebut or offer countervailing evidence.

4.1.2.f. Official Notice. The presiding officer may take official notice of any generally recognized fact or any established technical or scientific fact; but parties shall be notified either before or during the hearing or by full reference in preliminary reports or otherwise, of the facts so noticed, and they shall be afforded an opportunity to contest the validity thereof.

4.1.2.g. Examination. Witnesses shall be examined under oath in the manner and form, and in the order designated by the presiding officer. If the presiding officer so directs, or any party in interest so requests, the testimony given shall be reduced to writing or such other form of recording as the presiding officer may direct. Should any party in interest request a transcript of the proceedings or should the presiding officer direct that a transcript be prepared, then sufficient copies shall be made and delivered to each party making such request, and at the expense of the person making the request.

4.1.2.h. Depositions. The testimony of any witness may be taken by deposition at the instance of a party with the consent of the presiding officer. The presiding officer may, of his or her own motion, order testimony to be taken by deposition at any stage of the administrative proceeding.

4.1.2.i. Decisions. Every decision of the presiding officer in a contested case shall be in writing accompanied by findings of fact and conclusions of law.

4.1.2.j. Service of Notices, Subpoenas and Decisions. All notices shall be served in accordance with the provisions of W. Va. Code §29A-7-2. Every decision when made by the presiding officer shall be documented in the Authority's files and a copy served forthwith in accordance with the provisions of W. Va. Code §29A-7-2.

4.1.2.k. Judicial Review. A final order of the presiding officer may be appealed by a vehicle owner in accordance with the State Administrative Procedures Act, W. Va. Code §29A-5-4.

4.2. Sole Recourse. The foregoing administrative hearing procedures are a vehicle owner's sole recourse at law for contesting a notice of violation issued under the ETCA.

§184-5-5. Interior Transponder Mounting Guidelines.

5.1. The Authority shall publish interior transponder mounting guidelines on its agency website, explaining how to properly affix a transponder to the front windshield of a vehicle.