

Arch A. Moore, Jr.
Governor



State of West Virginia

DEPARTMENT OF HEALTH
CHARLESTON 25305

FILED
1986 JUL 22 AM 10:36
David K. Heydinger, M.D.
Director
Office of Health Services
SECRETARY OF STATE

NOTICE OF EMERGENCY RULE

RULE TITLE: Methods and Standards for Chemical Test for Intoxication West Virginia Board of Health Legislative Rule, Chapter 16-1, Series 10, 1986.

The attached rule is filed as an Emergency Rule. The facts and circumstances constituting the emergency are as follows:

1. Amendments to this rule are necessary to aid in the prosecution of persons arrested for driving under the influence of alcohol (DUI). Prosecuting attorneys, law enforcement officers and the courts have had difficulty with the section of the existing rule governing the procedures for the administration of the chemical tests for intoxication. Also, the courts have had difficulty in understanding procedural requirements for the calibration of breath testing devices. The emergency rule clarifies breath testing procedures and requirements; this is necessary because the chemical test results are the most important component of proof in convincing the court of a defendant's intoxication and in obtaining a DUI conviction. The West Virginia State Police testified before the West Virginia Board of Health that confusion regarding procedures in the existing rule have resulted in the loss of DUI cases.

2. The 1986 Legislature passed legislation which increases the penalties for drunken driving and has added, by statute, that drunken driving includes driving with an alcohol blood level of ten hundredths of one percent or more. The new statute makes it even more critical that this rule, which clarifies breath testing procedures, be adopted on an emergency basis.

3. The amendments to this rule will be beneficial to the State's program against drunk drivers and will clarify important procedures for the benefit of law enforcement officers, the courts and motorists.

David K. Heydinger, M.D.
Director of Health

FISCAL NOTE FOR PROPOSED RULES

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1985 JUL 22 11 19 AM '85
 1985 NOV 15 PM 2:51
 Methods and Standards for Chemical Test for Intoxication

Rule Title:

OFFICE OF THE SECRETARY OF STATE

OFFICE OF THE SECRETARY OF STATE

Type of Rule: Legislative Interpretive Procedural

Agency Health Department Address 1800 Washington Street, East
Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$ 0	\$ 0	\$ 0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates.

Proposed rule amendments will not affect the Health Department's cost of administering this program.

3. Objectives of these rules: The proposed rule amends the present methods and standards related to chemical tests for intoxication pursuant to Chapter 17C, Article 5C of the West Virginia Code related to driving while under the influence of alcohol, controlled substances or drugs.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See attached Emergency Filing Notice

DATE: April 25, 1986
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: Health Department

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1986 JUL 22 AM 10:37
OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

EMERGENCY RULE TITLE: Methods and Standards for Chemical Test for Intoxication

1. Date of filing: _____

2. Statutory authority for promulgating the emergency rule: Chapter 16, Article 1, Section 7

3. Date of filing of proposed legislative rule: _____

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
This proposed rule amends and repeals Methods and Standards Relating to Implied Consent for Chemical Test for Intoxication, West Virginia Board of Health Legislative Rules, Chapter 16-1, Series X, 1983.

5. Has the same or similar emergency rule previously been filed and expired?
No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.
See attached Emergency Filing Notice

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

See B, below

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

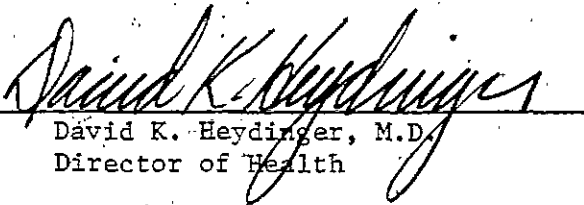
There will be some slight increase to state and local law enforcement agencies resulting from the implementation of procedures for assuring the accuracy of testing devices.

C. Economic Impact on Citizens/Public at Large.

Improved prosecution of charges of driving while under the influence of alcohol; controlled substances or drugs will result in an unknown savings to the public of life and costs associated with accidents.

Date November 14, 1985

Signature of Agency Head or Authorized Representative



David K. Heydinger, M.D.
Director of Health

WEST VIRGINIA BOARD OF HEALTH
RULE ABSTRACT

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1986 JUL 22 AM 10:37

1985 NOV 15 PM 2:51

TITLE:

Methods and Standards for Chemical Test for Intoxica-
OFFICE OF TECHNOLOGY
SECRETARY OF STATE

NUMBER: 16-1, Series 10, 1986

TYPE: Legislative

AUTHORIZING CODE: 16-1-7

RELATED CODE: 17C-5-2 et seq

SCOPE: This rule establishes methods and standards related to chemical tests for intoxication pursuant to Chapter 17C of the West Virginia Code related to driving while under the influence of alcohol, controlled substances or drugs.

-APPLICATION: This rule applies to law enforcement officers, and to persons suspected to be driving a motor vehicle while intoxicated.

ABSTRACT: The proposed rule amends the present rule as follows: A definition section is added. Language related to procedures for testing devices is clarified. The rule is changed for purposes of consistency with statutory changes which have occurred since the rule was promulgated (§§3.2 and 6.1). These amendments are proposed in response to requests from various law enforcement agencies and prosecuting attorneys to clarify and modify certain portions of the present rule which present difficulties of interpretation and administration. A few additional technical changes have been made.

CONTACT PERSON: Kay Howard, Regulatory Services Division, 348-3223.

RESPONSIBLE DIVISION: State Hygienic Laboratory, Dr. John Brough,
Director, 348-3530

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1986 JUL 22 AM 10:37
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

EMERGENCY

WEST VIRGINIA BOARD OF HEALTH
LEGISLATIVE RULES

Methods and Standards for Chemical Test for Intoxication

Chapter 16-1
Series 10
1986

EMERGENCY

WEST VIRGINIA BOARD OF HEALTH
LEGISLATIVE RULES

Methods and Standards for Chemical Test for Intoxication

Chapter 16-1
Series 10
1986

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WEST VIRGINIA BOARD OF HEALTH
LEGISLATIVE RULES

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1986 JUL 22 AM 10:37

Chapter 16-1
Series 10
1986

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Title: Methods and Standards for Chemical Test for Intoxication

Section 1. General

1.1. Scope - This legislative rule establishes the methods and standards relating to implied consent for chemical test for intoxication pursuant to appropriate articles of Chapter 17C of the West Virginia Code.

1.2. Authority - This rule is issued under the authority of Chapter 16, Article 1, Section 7, and is related to Chapter 17C, Article 5, Section 2 et seq of the West Virginia Code.

1.3. Filing Date -

1.4. Effective Date -

1.5. Supersession and Repeal of Former Regulations - This rule supersedes and repeals Methods and Standards Relating to Implied Consent for Chemical Test for Intoxication, West Virginia Board of Health Legislative Rules, Chapter 16-1, Series X, 1983.

Section 2. Application and Enforcement

2.1. Application - This legislative rules shall apply to law enforcement officers as follows: a member of the State department of public safety; any sheriff or deputy sheriff of any county; or any member of a police department in any municipality as defined in Chapter 8, Article 1, Section 2 of the West Virginia Code; and to those persons suspected to be driving a motor vehicle while intoxicated.

2.2. Enforcement - The enforcement of this legislative rule is vested with the director.

Section 3. Definitions

3.1. Accuracy Inspection Test - A test conducted by a certified breath test operator to determine the performance of each breath testing instrument in accordance with the procedures set forth in Section 7.2 of this rule.

3.2. Alcohol Breath Analysis - Chemical testing of a sample of a person's expired breath, using a breath test device designed for this purpose, in order to determine the concentration of ethyl alcohol in the person's blood.

3.3. Chemical Test or Testing - Analysis performed on a biological material, including, but not limited to breath, blood, or urine, to determine the identity or concentration, or both, of particular constituents such as

alcohol or controlled substances. Test procedures may rely on one or more physical or chemical properties of the constituents and utilize instrumental or chemical analysis techniques to accomplish the determination.

3.4. Department - The West Virginia department of health.

3.5. Director - The director of the West Virginia department of health or his or her lawful designee.

3.6. Medical Technician - Shall include persons trained as medical technicians, emergency medical technicians or phlebotomists.

3.7. Simulator Solution - An aqueous standard ethanol solution which, when equilibrated with air in a breath simulator device, produces an air-alcohol mixture of 0.10 grams W/V that can be used to inspect or verify the accuracy of breath test devices.

3.8. Simulator Test - A testing of a sample of simulator solution vapor, using a breath test device in order to determine the accuracy of the breath test device.

3.9. W/V - Weight divided by volume.

Section 4. Preliminary Breath Analysis; Designation of Testing Device; Compliance with Methods and Standards Required

4.1. Each law enforcement agency utilizing a preliminary breath testing device shall designate such testing device for the purpose of administering a preliminary breath analysis pursuant to Chapter 17C, Article 5, Section 5 of the West Virginia Code. Such designation of testing device shall be filed with the department on a form provided by the department.

4.2. Each law enforcement agency shall comply with the methods and the standards established by this rule.

4.3. The department shall maintain a registry of approved testing devices.

4.4. All instruments utilized for the purpose of preliminary breath tests shall be approved in writing by the director.

4.5. Approvals and designations of preliminary breath testing devices in effect at the time this rule becomes effective shall continue in effect.

Section 5. Breath Analysis; Preliminary Breath Test; Standards and Methods

5.1. The use of the approved instrument shall adhere to the manufacturer's specifications for operation and shall include any maintenance specified by the manufacturer.

5.2. The following general methods shall apply in extracting breath for

preliminary breath analysis:

(a) The preliminary breath test shall be administered as soon as possible after the law enforcement officer has a reasonable belief that the person has been driving while under the influence of alcohol.

(b) Where the testing instrument requires contact with the mouth of the tested individual, the law enforcement officer conducting the preliminary breath test shall utilize an individual disposable mouthpiece for each person tested.

(c) The preliminary breath test shall be administered by a law enforcement officer trained and certified as a secondary breath test operator with additional training, theory and practical exercise as recommended by the manufacturer.

5.3. The results of a preliminary breath analysis shall be used solely for the purpose of guiding the officer in deciding whether an arrest should be made.

Section 6: Designation of Secondary Test; Compliance with Methods and Standards Required; Certification of Law Enforcement Officers Required

6.1. Each law enforcement agency as defined herein shall designate a type of test, either breath, blood or urine for the purpose of administering a secondary test incidental to lawful arrest for the offense of driving a motor vehicle in this state while under the influence of alcohol. Such designation of the test shall be filed with the department on a form provided by the department.

6.2. Each law enforcement agency shall comply with the methods and the standards established by this rule.

6.3. The department shall maintain a registry of approved tests inclusive of methods and standards for proper conduct of the tests.

6.4. Secondary test designations in effect at the time this rule becomes effective shall continue in effect.

6.5. Each law enforcement officer administering a secondary breath analysis shall be trained and certified in the procedures of operation for such testing device.

6.6. The department shall certify each operator properly trained in the procedures of operation and shall issue a certificate to each individual so trained.

6.7. As a minimum training requirement each law enforcement officer shall have completed the Basic Training Program for Breath Examiner Specialist Course as prescribed by the United States department of transportation or an equivalent course prior to certification. Such course shall consist of classroom

and laboratory training including review sessions and examinations.

6.8. Each law enforcement officer desiring certification to administer the secondary breath analysis shall apply to the department on a form provided by the department.

6.9. Certifications of law enforcement officers in effect at the time this rule becomes effective shall continue in effect.

Section 7. Breath Analysis; Secondary Breath Test; Standards; Accuracy Inspection Tests; Methods

7.1. Instrument Standards - Instruments for breath alcohol analysis shall meet the following standards:

(a) The designated instrument and any related accessories shall be capable of the collection and the analysis of breath specimens which approach alveolar composition.

(b) The designated instrument shall be capable of analyzing a blank sample and of analyzing a suitable simulator solution, such as air equilibrated with a reference solution of known alcohol content at a known temperature.

(c) The designated instrument shall be capable of the analysis of a simulator solution within accuracy and precision limits of plus or minus 0.01 grams per centum W/V or higher.

(d) The designated instrument shall be capable, in a controlled experiment, of breath alcohol analysis which results in a determination of a person's blood alcohol concentration which has a correlation with his actual blood alcohol concentration as measured on a blood sample taken at approximately the same time as the breath sample.

(e) The instrument shall be capable of breath alcohol analysis which results in a concentration less than 0.01 grams of alcohol per one hundred milliliters of blood when alcohol-free persons are tested.

(f) The designated instrument shall have its accuracy checked in accordance with subsection 7.2 of this rule. Each law enforcement agency shall maintain a record of such accuracy checks including the type of test employed and the date of such accuracy checks. A certified copy of the record of the accuracy inspection test shall be admissible as evidence in any criminal or administrative proceeding as though the original record were offered and that the custodian had been present to testify to the record keeping process and that the individual conducting the test had been present to certify the test result.

(g) Any instrument utilized for the purpose of secondary breath analysis shall be approved in writing by the department. Such instrument shall meet or exceed the standards contained herein.

7.2. Accuracy Inspection Test

7.2.1. Frequency - An accuracy inspection test shall be conducted on every test device by a certified breath test operator at least once every six months, provided, however, that all devices in use at the time this rule becomes effective shall be tested within forty-five days.

7.2.2. Procedures

7.2.2.1. An average deviation test to determine the accuracy of the instrument shall be conducted in the following manner:

- (a) A total of five tests shall be conducted.
- (b) A simulator containing simulator solution shall be used.
- (c) The results of all five tests shall be recorded in a master log which shall be kept for each certified instrument.
- (d) Test results shall be recorded to the third decimal place, if the third decimal place is available.

7.2.2.2. The breath testing device does not pass the accuracy inspection test and shall be removed from service if:

- (a) One or more of the five tests yields a result less than 0.09 per cent W/V or greater than 0.11 per cent W/V; or
- (b) The average deviation derived by adding the absolute values of the differences between the results of the five tests and a constant value of .10 per cent W/V and dividing the total of these absolute values by five exceeds 0.005 per cent W/V.

(c) Example of accuracy inspection test:

<u>Simulator Solution</u>	<u>Reading</u>		<u>Difference (Absolute Value)</u>
.100	.099	=	.001
.100	.104	=	.004
.100	.098	=	.002
.100	.101	=	.001
.100	.102	=	.002
	<u>.010</u>	=	.002
	5		

Average deviation = .002 and .002 is less than .005; therefore the breath test device passes the accuracy inspection test.

7.2.2.3. A breath testing device which has been removed from service for failure to pass an accuracy inspection test shall be adjusted or repaired

and undergo an accuracy inspection test prior to being placed back into service.

7.2.2.4. The certified breath test operator shall perform the procedures set forth in Subsection 7.2.2.1 in accordance with accepted standard procedures for operation specified by the manufacturer of the device.

7.3. Methods - The following general methods shall apply in extracting breath for secondary breath analysis.

(a) The individual being tested shall be under constant observation for a period of twenty minutes before the test is administered to insure that the individual has nothing in his or her mouth at the time of the test and that he or she has had no food or drink or foreign matter in his or her mouth during the observation period.

(b) The individual administering the test shall perform a simulator test to insure that the instrument is in proper working condition at the time the test is being conducted.

(c) The test shall be administered by a certified operator and in accordance with this rule.

(d) The law enforcement officer conducting the secondary breath test shall utilize an individual disposable mouthpiece for each person tested.

Section 8. Blood Analysis; Standards and Methods

8.1. Methods of analyzing blood specimens for ethyl alcohol shall meet the following standards:

(a) The method utilized shall be capable of separating and quantitating ethyl alcohol from the blood specimen.

(b) The method utilized shall be capable of the analysis of a reference sample of known alcohol concentration within accuracy and precision limits of plus or minus 0.01 grams per cent W/V of the true value. These limits shall be applied to alcohol concentrations which are 0.01 grams per cent W/V or higher.

(c) The method utilized shall be capable of blood alcohol analysis which results in a concentration less than 0.01 grams of alcohol per one hundred milliliters of blood when alcohol free persons are tested.

(d) The gas-chromatographic method meets the above standards for testing.

8.2. The methods of extracting blood for alcohol analysis shall be as follows:

(a) The blood shall be drawn only by a licensed doctor of medicine or

osteopathy or by a registered professional nurse or by a trained medical technician at the place of their employment.

(b) Sterile hypodermic needles and syringes shall be used. Sterile disposable units are recommended.

(c) The skin shall not be disinfected with ethyl alcohol. The use of 1-1000 aqueous solution of mercuric chloride, aqueous benzalkonium chloride (zephiran), aqueous merthiolate, or other suitable aqueous disinfectants is acceptable.

(d) The container (tube or vial) must be clean and dry, and have an inert, airtight stopper.

Section 9. Urine Analysis; Methods and Standards

9.1. The methods of analyzing urine specimens for ethyl alcohol shall meet the following standards:

(a) The method utilized shall be capable of separating and quantitating ethyl alcohol from the urine specimen.

(b) The method utilized shall be capable of the analysis of a reference sample of known alcohol concentration within accuracy limits of plus or minus 0.01 grams per cent W/V of the true value. These limits shall be applied to alcohol concentrations which are 0.01 grams per cent W/V or higher.

(c) The method utilized shall be capable of urine alcohol analysis which results in a concentration less than 0.01 grams of alcohol per one hundred milliliters of alcohol free persons are tested.

(d) The gas-chromatographic method meets the above standards for testing.

(e) The quantity of alcohol found in the urine shall be divided by the factor of 1.3 to determine the quantity of alcohol in the blood.

9.2. The methods of extracting urine for alcohol analysis shall be as follows:

(a) The individual shall empty his or her urinary bladder and discard the first specimen.

(b) Following a twenty minute observation period as described in §9.2(c), the individual shall void a sample of his or her urine into a clean dry container with an inert cap. The container shall be capable of holding at least ten milliliters of urine.

(c) The individual being tested shall be under constant observation for a period of twenty minutes before the specimen for alcohol analysis is taken to insure that the individual has nothing in his or her mouth at the time that

EMERGENCY
Board of Health
Legislative Rule 16-1
Series 10, 1986

the specimen is taken and that he or she has no food or drink or other foreign matter in his or her mouth during the observation period.

Section 10. Severability - The provisions of this rule are declared to be severable. If any provision of this rule shall be held invalid, the remaining provisions shall remain in effect.



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
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(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

September 2, 1986

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Health

RULE: Series 10 Methods and Standards for Chemical Test for Intoxication

DATE FILED AS AN EMERGENCY RULE: July 22, 1986

DECISION NO. 17-86

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

KEN HECHLER
Secretary of State

FILED

1986 SEP -2 PM 4:02

OFFICE OF THE
SECRETARY OF STATE

KEN HECHLER
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Special Assistant

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

DECISION

Emergency Rule Decision
(ERD 17-86)

AGENCY: Department of Health
RULE: Series 10 Methods and Standards for Chemical Test for Intoxication

DATE FILED AS AN EMERGENCY RULE: July 22, 1986

- par. 1 The Department of Health has filed as emergency rule amendments to their Series 10 rule titled Methods and Standards for Chemical Test for Intoxication.
- par. 2 The rule establishes such methods to be utilized by law enforcement officials when arresting for DUI as required by Chapter 17c.
- par. 3 The amendments clarify portions of the existing rule as requested by various prosecuting attorneys, law enforcement officers and the courts. A more detailed description is in paragraph 15.
- par. 4 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 5 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 6 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).

- par. 7 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 8 The Department of Health has filed this emergency rule with supporting documents with the Secretary of State on July 22, 1986.
- par. 9 It is the determination of the Secretary of State that the Department of Health has complied with the procedural requirements of WV Code §29A-3-15.
- par. 10 (B) Statutory Authority -- WV Code §17c-5-8 reads in part:
A chemical analysis of a person's blood, breath or urine, in order to give rise to the presumptions or to have the effect provided for in subdivisions (a),(b) and (c) of this section, must be performed in accordance with methods and standards approved by the state department of health. A chemical analysis of blood or urine to determine the alcoholic content of blood shall be conducted by a qualified laboratory or by the state police scientific laboratory of the criminal identification bureau of the department of public safety.
- par. 11 It is the determination of the Secretary of State that the Department of Health has not exceeded its statutory authority by adopting this rule.
- par. 12 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:
(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.
- par. 13 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.
- par. 14 The Department of Health claims this rule is needed to prevent substantial harm to the public interest and for the immediate preservation of the public health and safety.

par. 15 The facts and circumstances as presented by the Department of Health are as follows:

1. Amendments to this rule are necessary to aid in the prosecuting of persons arrested for driving under the influence of alcohol (DUI). Prosecuting attorneys, law enforcement officers and the courts have had difficulty with the section of the existing rule governing the procedures for the administration of the chemical tests for intoxication. Also, the courts have had difficulty in understanding procedural requirements for the calibration of breath testing devices. The emergency rule clarifies breath testing procedures and requirements; this is necessary because the chemical test results are the most important component of proof in convincing the court of a defendant's intoxication and in obtaining a DUI conviction. The West Virginia State Police testified before the West Virginia Board of Health that confusion regarding procedures in the existing rule have resulted in the loss of DUI cases.

2. The 1986 Legislature passed legislation which increases the penalties for drunken driving and has added, by statute, that drunken driving includes driving with an alcohol blood level of ten hundredths of one percent or more. The new statute makes it even more critical that this rule, which clarifies breath testing procedures, be adopted on an emergency basis.

3. The amendments to this rule will be beneficial to the State's program against drunk drivers and will clarify important procedures for the benefit of law enforcement officers, the courts and motorists.

par. 16 As cited in ERD 6-86 par. 17, 18, 19 and 24 and ERD 8-86 par. 19 and 20, this office will rule for approval of those proposals held out to prevent life or injury threatening situations.

par. 17 The Secretary of State determines that the Department of Health has demonstrated the need to make effective this proposal.

par. 18 It is the decision of the Secretary of State that this proposal by the Department of Health is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the Department of Health; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.

par. 19 . This decision shall be cited as Emergency Rule Decision 17-86 or ERD 17-86 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Department of Health, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

Entered _____