

John D. Rockefeller IV
Governor



L. Clark Hansbarger, M.D.
Director

State of West Virginia

DEPARTMENT OF HEALTH

CHARLESTON 25305

Notice

Legislative Rule: Methods and Standards Relating to
Implied Consent for Chemical Test For Intoxication
Chapter 16-1, Series X (1981)

The above titled legislative rule is hereby submitted to
the Legislative Rule-Making Review Committee.

A handwritten signature in cursive script, reading "L. Clark Hansbarger, M.D.", written over a horizontal line.

L. Clark Hansbarger, M. D.
Secretary
West Virginia Board of Health

November 5, 1981
Entered

FISCAL NOTE FOR PROPOSED RULES

Rule No. 16-1, Series X Subject Methods and Standards Relating to Implied Consent for Chemical Test For Intoxication

Type of Rule: Legislative Interpretive Procedural

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

Authorized Representative L. Clark Hansbarger, M.D. Phone 348-2971

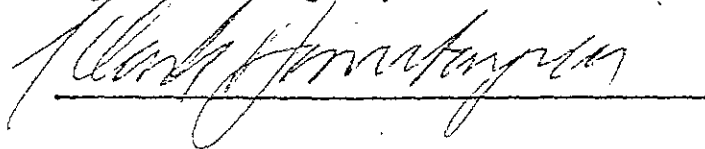
1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ -0-	\$ -0-	\$ 600	\$ 650	\$ 650+
Personal Services	-0-	-0-	500	525	
Current Expense	100	-0-	100	125	
Repairs and Alterations	-0-	-0-	-0-	-0-	
Equipment	-0-	-0-	-0-	-0-	
Others	-0-	-0-	-0-	-0-	

2. Explanation of above estimates. The cost to administer this proposed rule is minimal due to the fact that the only cost involved are for filing and duplicating the rules, the forms, and the certificates. The department has continuing responsibilities for this regulation; therefore no new cost are anticipated.

3. Date November 5, 1982 Agency Health Department

Signature of Agency Head

Signature of Authorized Representative



STATEMENT OF ECONOMIC IMPACT OF PROPOSED RULES OR REGULATIONS

Agency Health Department Methods and Standards Relating
to Implied Consent for Chemical
Rule No. 16-1, Series X Subject Test For Intoxication

1. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government. The economic impact on State government is minimal inasmuch as duplicating and filing cost are the only major cost involved.

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

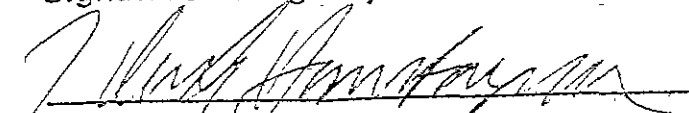
Law-enforcement officers are required to be trained in order to utilize the equipment. The cost of the testing instrument can be offset by Highway Safety grants. Training is provided through Department of Public Safety and some manufacturers.

C. Economic Impact on Citizens/Public at Large.

Little, if any. Convicted individuals must pay fine.

Date November 5, 1982 Agency Health Department

Signature of Agency Head


L. Clark Hansbarger, M. D.

Signature of Authorized Representative

DATE: November 5, 1982
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: Health Department
SUBJECT: INFORMATION TO BE SUPPLIED TO THE COMMITTEE
RULES: Methods and Standards Relating to Implied Consent for
Chemical Test for Intoxication

INFORMATION REQUIRED

1. Please give the citation of the statute which authorizes your promulgation of these rules.

Chapter 16, Article 1, Section 7 of the West Virginia
Code of 1931, as amended and related to 17C, Article 5,
Section 2, et seq of the West Virginia Code of 1931, as
amended.

2. 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:

(29A-3-5)|

- 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. Was the hearing held on the date scheduled and were all interested parties permitted to be heard?

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. Is the transcript of all evidence received preserved and available for public inspection and copying?

n/a

3. For all rules promulgated:

a. When did you file the rules in the State Register together with notice of a hearing time, date and location? (29A-3-5)

August 26, 1982

b. Did you give at least 30 days notice and no more than 60 days notice? (29A-3-7)

Yes (Notice Attached)

c. What other notice, including advertising, did you give of the hearing? (29A-3-5)

Press Release to Capitol News Service and Wire service

(Release Attached)

d. Was the hearing held on the scheduled date? If not, why not?

Yes

e. Was the opportunity given for all interested parties to submit data, objections, suggested amendments, views, evidence or arguments?

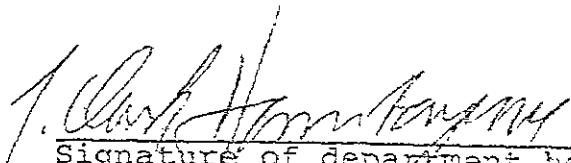
Yes

f. List all persons who appeared at the hearing and what type of comment they made about the proposed rules (for, against, suggested and amendments). Please attach a copy of the minutes of the hearing.

Minutes attached

g. On what date did you file in the State Register notice of your action on the proposed rules together with the text of such rules?

August 26, 1982


Signature of department head,
board chairman or executive
secretary.

(Please attach additional sheets if necessary)

John D. Rockefeller IV
Governor



L. Clark Hansbarger, M.D.
Director

State of West Virginia

DEPARTMENT OF HEALTH
CHARLESTON 25305

Certification

Legislative Rule: Methods and Standards Relating to
Implied Consent for Chemical Test for Intoxication
Chapter 16-1, Series X (1981)

The above titled legislative rule constitutes the official
rule adopted by the West Virginia Board of Health on
October 15, 1982 and filed pursuant to law in the Office
of the Secretary of State, State of West Virginia.



L. Clark Hansbarger, M. D.
Secretary
West Virginia Board of Health

November 5 1982
Entered

WEST VIRGINIA BOARD OF HEALTH
RULE ABSTRACT

TITLE: Methods and Standards Relating to Implied Consent for
Chemical Test for Intoxication

TYPE: Legislative

AUTHORITY AND RELATED CODE: Chapter 16, Article 1, Section 7
and related to Chapter 17C, Article 5, Section 2 et seq of the
West Virginia Code of 1931, as amended.

NUMBER: 16-1, Series X (1981)

SCOPE: These legislative rules establish the methods and standards
relating to implied consent for chemical test for intoxication of
Chapter 17C of the West Virginia Code of 1931, as amended.

APPLICATION: These legislative rules shall apply to law enforce-
ment officers herein defined and shall be limited to a member of
the department of public safety; and sheriff or deputy sheriff
of any county; or a member of a municipal police department in
any Class I, Class II, or Class III city and those persons sus-
pected to be driving a motor vehicle while intoxicated as herein-
after defined. Provided, however, that a member of a police
department in any Class IV city may administer the preliminary
breath test in accordance with the methods and standards of these
regulations and in accordance with Chapter 17C-5-5 of the West
Virginia Code of 1931, as amended. The classification of municipal
corporations shall be in accordance with the provisions of Chapter
8, Article 1, Section 3, of the West Virginia Code of 1931, as
amended.

COMMENTS: These legislative rules amend the 1975 administrative
rules and regulations known by the same title.

CONTACT PERSON IN REGULATORY SERVICES DIVISION: J. E. Richards,
Regulatory Services Division, (348-2411)

RESPONSIBLE OFFICE, DIVISION AND CONTACT PERSON: John Brough,
State Hygienic Laboratory (348-3530)

PROPOSED

WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

Methods and Standards Relating to Implied Consent for
Chemical Test For Intoxication

Chapter 16-1
Series X
(1981)

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

THIS DATE 11-5-82
Administrative Law Division

November 5, 1982

WEST VIRGINIA LEGISLATIVE RULES
BOARD OF HEALTH

Methods and Standards Relating to Implied Consent for
Chemical Test for Intoxication

Chapter 16-1
Series X
(1981)

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WEST VIRGINIA LEGISLATIVE RULE
BOARD OF HEALTH

Chapter 16-1
Series X
(1981)

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

THIS DATE 11-5-82
Administrative Law Division

Subject: Methods and Standards Relating to Implied Consent for Chemical Test for Intoxication

Section 1. General

1.1. Scope - These legislative rules establish 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 of 1931, as amended.

1.2. Authority - These legislative rules are issued under the authority of Chapter 16, Article 1, Section 7, and are related to Chapter 17C, Article 5, Sections 2 et seq of the West Virginia Code of 1931, as amended.

1.3. Filing Date - These legislative rules were promulgated on the 26th day of August 1982, and were filed on the 26th day of August 1982, in the Secretary of State's office.

1.4. Effective Date - These legislative rules became effective on the _____ day of _____ 19____.

Section 2. Supersession and Repeal of Former Regulations - These legislative rules supersede and repeal West Virginia department of health, Chapter 16-1, Series VI (1968) entitled, Methods Standards Relating to Chemical Test for Blood Alcohol Consent Law effective July 1, 1975.

Section 3. Application and Enforcement

3.1. Application - These legislative rules shall apply to law enforcement officers herein defined and shall be limited to a member of the depart-

ment of public safety; any sheriff or deputy sheriff of any county; or a member of a municipal police department in any Class I, Class II, or Class III city and those persons suspected to be driving a motor vehicle while intoxicated as hereinafter defined. Provided, however, that a member of a police department in any class IV city may administer the preliminary breath test in accordance with the methods and standards of these regulations and in accordance with Chapter 17C-5-5 of the West Virginia Code of 1931, as amended. The classification of municipal corporations shall be in accordance with the provisions of Chapter 8, Article 1, Section 3, of the West Virginia Code of 1931, as amended.

3.2. Enforcement - The enforcement of these legislative rules is vested with the director of the West Virginia department of health or his lawful designee.

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

4.1. Each law enforcement agency utilizing a preliminary breath testing device shall designate a 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 of 1931, as amended. Such designation of testing device shall be filed with the West Virginia department of health in a format prescribed by the department.

4.2. Each law enforcement agency shall comply with the methods and the standards established by these regulations.

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

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

5.1. Instruments utilized for preliminary breath tests shall meet the following standards:

(a) The designated instrument shall be capable of the collection and the analysis of breath specimens which are essentially alveolar in composition.

(b) The instrument 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 percent of the true value of such reference sample.

(c) The instrument shall be periodically checked for calibration pursuant to the manufacturer's instructions and in accordance with the standards of these regulations. Each law enforcement agency shall maintain a record of such calibration including the type of test employed and the date of such calibration.

(d) The instrument shall be capable of breath alcohol analysis which results in a concentration less than 0.01 grams of alcohol per one hundred (100) milliliters of blood when alcohol free persons are tested.

(e) Any instrument shall be capable, in a controlled experiment, of obtaining results which have a correlation with the results obtained through use of the secondary method.

(f) Any instrument utilized for the purpose of preliminary breath analysis shall be approved in writing by the West Virginia department of health.

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) The law enforcement officer conducting the preliminary breath test shall utilize an individually wrapped sterile mouthpiece with sputum trap for each person tested.

(c) The preliminary breath test shall be administered by a qualified law enforcement officer. Such qualification shall include as a minimum the completion of a two (2) hour course embracing the legal aspects of breath testing, the theoretical and the practical aspects of breath testing, and the actual practical use of the testing device.

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 on the public streets or highways of this state while under the influence of alcohol. Such designation of the test shall be filed with the West Virginia department of health in a format prescribed by the department.

6.2. Each law enforcement agency shall comply with the methods and

the standards established by these regulations.

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

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

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

6.6. 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.

6.7. Each law enforcement officer desiring certification to administer the secondary breath analysis shall apply to the West Virginia department of health in a format prescribed by the department.

Section 7. Breath Analysis - Secondary Breath Test - Standards and Methods

7.1. 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 are

essentially alveolar in composition.

(b) The designated instrument shall be capable of analyzing a blank sample and of analyzing a suitable reference sample, 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 reference of known alcohol concentration within accuracy and precision limits of plus or minus 0.01 grams per centum 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 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 (100) milliliters of blood when alcohol free persons are tested.

(f) The designated instrument shall be periodically calibrated pursuant to the standards of these regulations and the manufacturer's recommended calibration schedule. Each law enforcement agency shall maintain a record of such calibration including the type of test employed and the date of such calibration.

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

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

(a) The law enforcement officer effectuating the arrest shall observe the individual for twenty (20) minutes before administering the test to insure that the individual has nothing in his mouth at the time of the test and that he has had no food or drink or foreign matter in his mouth during the observation period.

(b) The individual administering the test shall examine the designated instrument to insure that it 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 these regulations.

(d) The law enforcement officer conducting the secondary breath test shall utilize an individually wrapped sterile mouthpiece with sputum trap 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 centum of the true value. These limits shall be applied to alcohol concentrations which are 0.01 grams per centum 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 (100) 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 ~~his~~ their employment.

(b) Sterile hypodermic needles and syringes capable of extracting ten (10) milliliters of blood shall be used. Sterile disposable units are recommended.

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

(d) The container (tube or vial) must be clean and dry, and have an inert, airtight stopper and hold at least ~~ten (10)~~ five (5) milliliters.

(e) An anti-coagulant, such as sodium fluoride citrate, or oxalate shall be used.

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.

(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 (100) milliliters of alcohol when 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 container must be clean and dry and have an inert airtight stopper and hold at least ten (10) milliliters.

(b) The individual shall empty his urinary bladder and discard the first specimen.

(c) The law enforcement officer effectuating the arrest shall personally observe the individual for twenty (20) minutes before the specimen for alcohol analysis is taken to insure that the individual has nothing in his mouth at the time that the specimen is taken and that he has no food or drink or other foreign matter in his mouth during the observation period.

(d) Following the twenty (20) minute observation period the individual shall void a sample of his urine in the container provided.

Section 10. Severability - If any provisions of these rules or the application thereof to any person or circumstance shall be held invalid, such invalidity thereof shall not affect the provisions or application of these rules which can be given effect without the invalid provisions or application, and to this end the provisions of these rules are declared to be severable.

MINUTES

Methods and Standards Relating to Implied Consent for Chemical Test for Intoxication, Chapter 16-1, Series X (1981)

A public hearing was held pursuant to lawful notice at 9:00 a.m. Monday, September 27, 1982 in Room 522, Building 3, 1800 Washington Street, East, Charleston, West Virginia 25305.

Those present were:

Charles Cline, Office of Highway Safety
Sam Femia, Office of Highway Safety
Harry Hill, Office of Highway Safety
William W. Bailey, Jr., Office of Highway Safety
R. S. White M/Sgt. West Virginia Department of Public Safety

Those submitting written comments were:

Alexander M. Ross, Prosecuting Attorney, Upshur County, West Virginia
W. F. Donohoe, Lt. Colonel, Chief of Staff, West Virginia Department of Public Safety

The West Virginia Department of Public Safety proposed the following language for Section 4.1. in order to clarify the permissive "shall" that appears in that section:

4.1. Each law enforcement agency utilizing a preliminary breath testing device shall designate asuch testing device for the purpose of administering a preliminary breath analysis pursuant to Chapter 17C, Article 5, Section 5 of the West Virginia Code of 1931, as amended. Such designation of testing device shall be filed with the West Virginia department of health in a format prescribed by the department.

Mr. Ross proposed the following language for Section 8.2.(a). Such proposed language bring the regulatory language into compliance with the applicable statutory language.

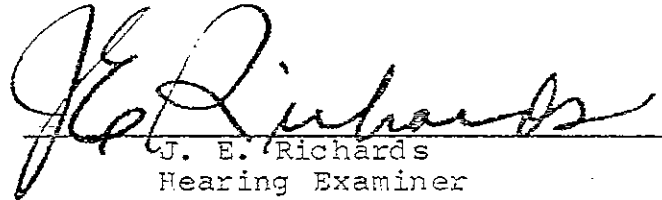
8.2. (a) The blood shall be drawn by a licensed doctor of medicine or osteopathy or by a registered professional nurse or by a trained medical technician at the place of ~~their~~ his employment.

The West Virginia Department of Public Safety proposed a change in the size of blood sample containers in order to facilitate blood sample collections in an appropriate sized vial.

8.2.(d) The container (tube or vial) must be clean and dry, and have an inert, airtight stopper and hold at least five (5) ~~ten (10)~~ milliliters.

There being no other evidence for intoxication the hearing was concluded at 10:30 a.m.

November 5, 1982



J. E. Richards
Hearing Examiner

John D. Rockefeller IV
Governor



L. Clark Hansbarger, M.D.
Director

State of West Virginia

DEPARTMENT OF HEALTH
CHARLESTON 25305

IMMEDIATE RELEASE

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 8/26/82
Administrative Law Division

Charleston - L. Clark Hansbarger, M.D. Director of the West Virginia Department of Health today announced that a public hearing will be held on Monday, September 27, 1982 at 9:00 a.m. in Conference Room 522, Building 3, West Virginia Department of Health, 1800 Washington Street, East, Charleston, West Virginia for the purpose of taking evidence pertaining to the filing of the Regulations for Methods and Standards Relating to Implied Consent for Chemical Test for Intoxication, Chapter 16-1, Series X, (1981).

All persons having evidence or testimony to present should be present or they may submit such evidence in writing to the Regulatory Services Division, Room 416, 1800 Washington Street, East, Charleston, West Virginia 25305 not later than 5:00 p.m. Monday, September 27, 1982.

Doctor Hansbarger stated that copies of the proposed regulations may be obtained by writing or telephoning the Regulatory Services Division at (304-348-2411).

-30-