

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

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Form #2

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Department of Transportation, Division of Highways TITLE NUMBER: 157

RULE TYPE: Legislative; CITE AUTHORITY §22-18-7(a)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 7

TITLE OF RULE BEING AMENDED: Transportation of Hazardous Wastes Upon
the Roads and Highways

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

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 24, 1998 AT 12:00 P.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

C. Cameron Lewis
WV Division Of Highways
710 Central Avenue
Charleston, WV 25302

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Samuel H. Beverage

Samuel H. Beverage, P.E.
Commissioner of Highways

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$3.80



**WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION**

1900 Kanawha Boulevard East • Building Five • Room 109
Charleston, West Virginia 25305-0440 • 304/558-0444

Cecil H. Underwood
Governor

Samuel G. Bonasso, P. E.
Secretary

July 21, 1998

Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Dear Secretary Hechler:

Proposed Amendments to a Legislative Rule
and Notice of Comment Period
Division of Highways, Series 7

The attached information is being submitted by the Commissioner of Highways with my consent and agreement in accordance with the provisions of Chapter 5G, Article 1 of the State Code.

This amendment of an existing legislative rule is being filed to update the W. Va. Code authority and to update the incorporation references to federal as well as state code and rules due to the recent enactment of statute.

Yours truly,

A handwritten signature in black ink that reads "S. G. BONASSO".

Samuel G. Bonasso, P.E.
Secretary

SGB:Mc
Attachments

Division of Highways, Series 7
Transportation of Hazardous Wastes
Upon the Roads and Highways
Proposed Amendments to a Legislative Rule

SUMMARY OF PROPOSED RULE:

Series 7 provides general rules for the transportation of hazardous waste by vehicle upon the roads and highways of West Virginia. These rules are applicable if the transportation requires a manifest under Section 6 of the rules of the West Virginia Division of Environmental Protection implementing the Hazardous Waste Management Act.

STATEMENT OF CIRCUMSTANCES:

This amendment of an existing legislative rule is being filed to update the W. Va. Code authority and to update the incorporation references to federal as well as state code and rules due to the recent enactment of statute.

FISCAL NOTE FOR PROPOSED RULES
July 21, 1998

Rule Title: Series 7, Transportation of Hazardous Wastes
Upon the Roads and Highways

Type of Rule: Legislative Interpretive Procedural

Agency Division of Highways
Address Building 5, 1900 Kanawha Boulevard, East,
Charleston, West Virginia 25305-0430

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Personal Services	0.00	0.00			
Current Expense	0.00	0.00			
Repairs & Alterations	0.00	0.00			
Equipment	0.00	0.00			
Other	0.00	0.00			
Estimated Total Cost	0.00	0.00	0.00	0.00	0.00

2. Explanation of above estimates:

These rule changes do not impact any annual or fiscal year costs.

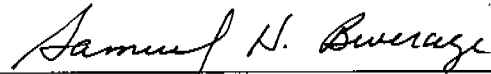
3. Objectives of this rule:

This amendment of an existing legislative rule is being filed to update the W. Va. Code authority and to update the incorporation references to federal as well as state code and rules due to the recent enactment of statute.

4. Explanation of Overall Economic Impact of Proposed Rule.
 - A. Economic Impact on State Government
No economic impact.
 - B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens:
No economic impact.
 - C. Economic Impact on Citizens/Public at Large.
No economic impact.

5. Contact Person and Telephone Number.
Mr. C. Cameron Lewis
Phone - 558-6266

July 21, 1998



Samuel H. Beverage, P.E.
Commissioner of Highways

LEGISLATIVE RULES
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

INDEX TO

SERIES 7

TRANSPORTATION OF HAZARDOUS WASTES UPON THE ROADS AND HIGHWAYS

Section 1. General

- 1.1 Scope
- 1.2 Authority
- 1.3 Filing Date
- 1.4 Effective Date
- 1.5 Enforcement
- 1.6 Incorporation by Reference

Section 2. Definitions

- 2.1 Terms
 - 2.1.1 Authorized
 - 2.1.2 C.F.R.
 - 2.1.3 Hazardous Waste Management
 - 2.1.4 Highway Transporter
 - 2.1.5 Offer
 - 2.1.6 Person
 - 2.1.7 Shipper
 - 2.1.8 Transport Vehicle
 - 2.1.9 Transporter
 - 2.1.10 Uniform Hazardous Waste Manifest
 - 2.1.11 Vehicle Inspection

Section 3. Uniform Hazardous Waste Manifest System

- 3.1 General Requirements
- 3.2 Number and Delivery of Copies
- 3.3 Transporting Waste from Small Quantity Generators
- 3.4 Transfers to Foreign Consignees - Required Information
- 3.5 Destination

Section 4. Recordkeeping

- 4.1 Record Retention - General Requirements
- 4.2 Record Retention - Foreign Shipments - Requirements
- 4.3 Automatic Periods of Retention

Section 5. Transportation Requirements

- 5.1 Regulations
- 5.2 Out of Service
- 5.3 U. S. EPA Identification Number Required
- 5.4 U. S. EPA Identification Number Application - Procedure

Section 6. Discharges

- 6.1 Immediate Procedures
 - 6.2 Removal of Waste - Emergency Measures
 - 6.3 Required Notices
 - 6.4 Written Report
 - 6.5 Clean Up
 - 6.6 Obligation
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JUL 22 10 54 AM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 157
LEGISLATIVE RULES
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

SERIES 7
TRANSPORTATION OF HAZARDOUS WASTES UPON THE ROADS AND HIGHWAYS

§157-7-1. General.

1.1. Scope. - These legislative rules and regulations apply to all persons offering and/or transporting hazardous waste by vehicle upon the roads and highways of this State if the transportation requires a manifest under Section 6 of the ~~regulations~~ rules of the Division of Environmental Protection implementing the Hazardous Waste Management Act. (~~West Virginia Administrative Regulations Title 33 of the Legislative Rules, Division of Environmental Protection, Office of Waste Management, Series 35 20, or by 40 CFR Parts 266, Subpart M; 273, "Universal Waste"; or 279, "Used Oil".~~)

1.2. Authority. - W. Va. Code ~~§20-5E-7(a)~~ 22-18-7(a).

1.3. Filing Date. -

1.4. Effective Date. -

1.5. Enforcement. - The Commissioner of Highways delegates the enforcement authority granted to him in the Hazardous Waste Management Act to the Enforcement Division as identified in the above section.

1.6. Incorporation by Reference. - Whenever federal statutes or regulations ~~or state statutes or regulations~~ are incorporated into these regulations, the reference is to the statute or regulation in effect ~~on the date of enactment of the legislation authorizing these regulations.~~ as of July 1, 1997. Whenever state statutes or regulations are incorporated into these regulations, the reference is to the statute or regulation in effect as of July 1, 1998.

§157-7-2. Definitions.

2.1. Terms. - Other than those terms defined in the following section, the terms used in these regulations shall have the same meaning ascribed to them in the regulations promulgated by the Director of the Division of Environmental Protection pursuant to the State Hazardous Waste Management Act.

2.1.1. "Authorized" - any person and/or transport vehicle who has received an EPA Identification Number from the U.S. Environmental Protection Agency which enables that person to transport or offer hazardous waste for transportation by highway vehicle upon the roads and highways of the state of West Virginia.

2.1.2. "C.F.R." - means Code of Federal Regulations.

2.1.3. "Hazardous Waste Management" - the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes.

2.1.4. "Highway Transporter" - a person engaged or authorized to engage in off-site transportation of hazardous waste by road and highway.

2.1.5. "Offer" - that moment when the shipper (generator) certifies the uniform hazardous waste manifest.

2.1.6. "Person" - any individual, trust, firm, joint stock company, public, private or government corporation, partnership, association, state or federal agency, the United States government, this State or any other state, municipality, county commission or any other political subdivision of a state or any interstate body.

2.1.7. "Shipper" - any person transporting, and/or offering hazardous waste for off-site management by highway transporter.

2.1.8. "Transport Vehicle" - includes an automobile, van, tractor, trailer or semitrailer, portable tank, cargo tank, or any combination thereof, propelled or drawn by mechanical power and used upon the roads and highways for the transportation of hazardous waste or authorized to transport hazardous waste.

2.1.9. "Transporter" - any person accepting hazardous waste for transportation on the roads and highways of this state.

2.1.10. "Uniform Hazardous Waste Manifest" - the shipping document EPA form 8700-22 and, if necessary, EPA form 8700-22A, originated and signed by the generator in accordance with the instructions included in the Appendix to 40 C.F.R. Part ~~262-20(a)~~.

2.1.11. "Vehicle Inspection" - inspection by a Division of Highways representative working in his official capacity, including inspection of the uniform hazardous waste manifest, driver requirements, vehicle safety requirements, and/or cargo packaging requirements.

§157-7-3. Uniform Hazardous Waste Manifest System.

3.1. General Requirements. -

3.1.1. Any person who offers or transports hazardous waste for off-site treatment, storage, or disposal must prepare a Manifest OMB control number 2050-0039 on EPA form 8700-22, and EPA form 8700-22A in accordance with Sections ~~6~~ 5 and ~~10~~ 6 of the regulations of the Division of Environmental Protection implementing the State Hazardous Waste Management Act or 40 CFR 262, and 263, as amended.

3.1.2. Before transporting the hazardous waste, the highway transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the shipper (generator). The highway transporter must return a signed copy to the generator before leaving the generator's property.

3.1.3. The highway transporter must ensure that the manifest accompanies the hazardous waste.

3.1.4. Before accepting hazardous waste from a rail transporter, a highway transporter must sign and date the manifest and provide a copy to the rail transporter.

3.2. Number and Delivery of Copies. - A highway transporter who delivers a hazardous waste to another transporter or to the designated facility must:

3.2.1. Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and,

3.2.2. Retain one copy of the manifest in accordance with Section 4; and,

3.2.3. Give the remaining copies of the manifest to the accepting transporter or designated facility.

3.3. Transporting Waste from Small Quantity Generators. - A transporter transporting hazardous waste from a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month need not comply with the requirements of this section or those of CFR 40 263.22 provided that:

3.3.1. The waste is being transported pursuant to a reclamation agreement as provided for in CFR 40 262.20(e);

3.3.2. The transporter records, on a log or shipping paper, the following information for each shipment;

3.3.3. The name, address, and U.S. EPA identification Number of the generator of the waste;

3.3.4. The quantity of waste accepted;

3.3.5. All DOT required shipping information;

3.3.6. The date the waste is accepted; and

3.3.7. The transporter carries this record when transporting waste to the reclamation facility; and

3.3.8. The transporter retains these records for a period of at least three (3) years after termination or expiration of the agreement.

3.4. Transfers to Foreign Consignees - Required Information. - Transporters who transport hazardous wastes out of the United States must:

3.4.1. Indicate on the manifest the date the hazardous waste left the United States, and,

3.4.2. Sign the manifest and retain one copy in accordance with Section 4 of these regulations; and,

3.4.3. Return a signed copy of the manifest to the generator.

3.5. Destination. -

3.5.1. The highway transporter must deliver the entire quantity of hazardous waste which he has accepted from a generator or a transporter to:

3.5.1.a The designated facility listed on the manifest; or,

3.5.1.b The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or,

3.5.1.c The next designated transporter; or,

3.5.1.d The place outside the United States designated by the generator.

3.5.2. If the hazardous waste cannot be delivered in accordance with paragraph (a) of this section, the highway transporter must contact the generator for further direction and must revise the manifest according to the generator's instructions.

§157-7-4. Recordkeeping.

4.1. Record Retention - General Requirements. - A highway transporter of hazardous waste must keep a copy of the manifest signed by the generator, himself, and the next designated transporter or the owner or the operator of the designated facility for a period of three (3) years from the date the hazardous waste was accepted by the initial transporter.

4.2. Record Retention - Foreign Shipments - Requirements. - A transporter who transports hazardous waste out of the United States must keep a copy of the manifest indicating that the hazardous waste left the United States for a period of three (3) years from the date the hazardous waste was accepted by the initial transporter.

4.3. Automatic Periods of Retention. - The periods of retention referred to in this Section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator and/or the West Virginia Division of Highways.

§157-7-5. Transportation Requirements.

5.1. Regulations. - No person will transport or offer and no transporter will accept hazardous waste in this state except in accordance with: a) the requirements of these regulations; and, b) the Division of Environmental Protection regulations implementing the Hazardous Waste Management Act, all applicable regulations of the Federal Environment Protection Agency 40 C.F.R. 262, 263, 266 Subpart M, 273, "Universal Waste", and 279, "Used Oil", and the Federal Highway Administration Department of Transportation as set forth in 49 C.F.R. Parts 171 through 173, 177 through 179, 49 C.F.R. 387 - Minimum levels of financial responsibilities for motor carriers, and 49 C.F.R. 390 through 397 as amended, all of which rules and regulations are incorporated by reference.

5.2. Out of Service. - Every hazardous waste transporter or authorized hazardous waste transporter operating upon the roads and highways of this state must be in compliance with all applicable rules and regulations enforced by the West Virginia Division of Highways. If any of these Rules and Regulations are in violation by a highway transporter, the Division of Highways representative conducting vehicle inspections may deem the driver, vehicle and cargo out-of-service until all said violations are corrected and the driver, vehicle and/or cargo are deemed to be in compliance prior to permitting the vehicle to continue its journey.

5.3. U.S. EPA Identification Number Required. - A transporter must not transport hazardous wastes without having received an Environmental Protection Agency identification number from the Administrator, if required by the West Virginia Division of Environmental Protection rules implementing the Hazardous Waste Management Act.

5.4. U.S. EPA Identification Number Application - Procedure. - A transporter who has not received an Environmental Protection Agency identification number may obtain one by applying to the Administrator using EPA Form 8700-12. Upon receiving the request, the Administrator will assign an EPA identification number to the transporter.

§157-7-6. Discharges.

6.1. Immediate Procedures. - In the event of a discharge of hazardous waste during transportation, the highway transporter must take appropriate immediate action to protect human health and the environment (e.g., notify local authorities, dike the discharge area).

6.2. Removal of Waste - Emergency Measures. - If a discharge of hazardous waste occurs during transportation and an official (state, local government, or Federal agency) acting within the scope of his official responsibilities determines that immediate removal of the waste is necessary to protect human health or the environment, that official may authorize the removal of the waste by transporters who do not have EPA identification numbers and without the preparation of a manifest.

6.3. Required Notices. - A highway transporter who has discharged hazardous waste must give notice to:

- 6.3.1. The West Virginia Division of Highways
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305
Telephone: (304) 558-3028; twenty-four hours
a day;
- 6.3.2. The West Virginia Division of Environmental
Protection
Office of Waste Management
1260 Greenbrier Street
Charleston, West Virginia 25311
Telephone: 800-642-3074
- 6.3.3. The National Response Center 1-800-424-8802
or (202) 426-2675, but only if:
 - 6.3.3.a A person is killed; or,
 - 6.3.3.b A person receives injuries
requiring hospitalization; or,
 - 6.3.3.c Total property damage from the
spill exceeds \$50,000; or,

- 6.3.3.d The discharge involves radioactive waste and/or materials; or,
- 6.3.3.e The discharge involves shipment of etiologic agents; or,
- 6.3.3.f The situation, in the judgment of the carrier, should be reported.

6.3.4. The notice shall contain the following information:

- 6.3.4.a Name of reporter;
- 6.3.4.b Name and address of carrier;
- 6.3.4.c Phone number where reporter can be reached;
- 6.3.4.d Date, time and location of spill;
- 6.3.4.e Extent of injuries, if any;
- 6.3.4.f Type and quantity of hazardous waste involved, if any;
- 6.3.4.g Description of incident and whether a continuing danger to life exists at the scene.

6.4. Written Report. -

6.4.1. Within fifteen (15) calendar days of the date of discovery of the discharge of any quantity of hazardous waste, the highway transporter shall file a written report, as specified in 49 CFR 171.16, as amended, with the West Virginia Division of Highways, the West Virginia Division of Environmental Protection, and the United States Department of Transportation.

6.4.2. The report shall contain the following information:

- 6.4.2.a All information required by Section 6.3(d).4;

- 6.4.2.b The location of the discharge in relation to surface water, public water supplies, groundwater, wildlife inhabitants, and agricultural production;
- 6.4.2.c The quantity and description of the hazardous waste removed and the disposition of that material;
- 6.4.2.d The disposition, quantity and description of the unremoved hazardous waste;
- 6.4.2.e A copy of the hazardous waste manifest shall be attached to the report.

6.5. Clean Up. - A highway transporter shall clean up any hazardous waste discharge that occurs during transportation or take such action as may be required or approved by Federal, State or local officials in consultation with the West Virginia Division of Highways or West Virginia Division of Environmental Protection charged with implementation of the West Virginia Hazardous Waste Management Act so that the hazardous waste discharge no longer presents a hazard to human health or the environment prior to releasing the transporter.

6.6. Obligation. - Nothing in this section shall relieve a highway transporter of the obligation of complying with applicable sections of the Legislative rule "Special Regulations" of the Office of Water Resources.