



STATE OF WEST VIRGINIA
 OFFICE OF THE SECRETARY OF STATE
 CHARLESTON 25305

A. JAMES MANCHIN
 SECRETARY OF STATE

STATE REGISTER FILING

I, E. DANDRIDGE McDONALD, CHAIRMAN,
 Title or Position

PUBLIC SERVICE COMMISSION, hereby submit to record in
 Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- () proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- () proposed rules and regulations superseding rules and regulations already on file;
- () notice of hearing;
- () findings and determinations;
- () rules and regulations; or
- (X) other - specify (Emergency Legislative Rule)

This filing pertains to

Chapter 24
 Article 1
 Series VIII
 Section 1.23(e)
 Page No. B-12

- () proposed rules and regulations are required to go to Legislative Rule Making Committee;
- (X) proposed rules and regulations are excluded from Legislative Rule Making Committee;

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

THIS DATE June 10, 1983
 Administrative Law Division

May 20, 1983
 Date Submitted

[Signature]
 Signature of Person Authorizing
 this Filing

IN THE MATTER OF REVISION OF THE
RULES AND REGULATIONS FOR THE
GOVERNMENT OF RAILROAD SAFETY
AND SANITATION.

EMERGENCY RULE

STATEMENT OF AUTHORITY:

These rules are legislative rules as defined in West Virginia Code §§29A-1-2(d) and (i). These rules relate to the authority of the Public Service Commission under West Virginia Code §§24-1-1, 24-2-1, 24-2-1a, 24-2-2, 24-2-7(a), 24-2-9, 24-2-13, 24-3-1, 31-28-1, 31-2B-2, 31-2B-3, 31-2B-4, and 31-2B-5. The Public Service Commission is authorized to issue rules and regulations as may be necessary to carry out the provisions of Chapter 24 and Article 2B of Chapter 31 of the West Virginia Code, including all of the aforementioned Code sections, by West Virginia Code §24-1-7.

ABSTRACT OF PROMULGATION HISTORY

The Public Service Commission of West Virginia hereby files this notice of final adoption of the emergency rule attached hereto.

On June 10, 1983, the Commission entered an Order finally adopting such emergency rule to become effective immediately upon filing in State Register. These rules amend Rule 1.23(e) of the Commission's Rules and Regulations for the Government of Railroad Safety and Sanitation.

STATEMENT OF FACT AND CIRCUMSTANCES

In the recently concluded legislative session, the West Virginia Legislature passed, on March 9, 1983, Senate Bill No. 228, effective 90 days from passage. Said Bill amends Chapter 31 of the West Virginia Code by adding thereto a new Article 2B. Article 2B requires certain illumination to be maintained at the rear of all cabooses. The article also provides for enforcement of such illumination requirements by the Public Service Commission.

Rule 1.23(e) of the Commission's Rules and Regulations for the Government of Railroad Safety and Sanitation addresses illumination requirements for cabooses. As of the effective date of Senate Bill 228, June 7, 1983, the Commission's Rule will no longer be in compliance with the law of the State. Standard rulemaking procedures would not result in promulgation of a finally adopted rule on or before the effective date of this Bill. Chapter 29A of the West Virginia Code. Therefore, it is necessary for the Commission to adopt this emergency rule in order to comply with the requirements of Senate Bill 228. A proposed rule to amend Rule 1.23(e) of the Commission's Rules and Regulations for the Government of Railroad Safety and Sanitation will be promulgated in the near future.

EMERGENCY RULE

1.23(e) CABOOSES ON RIDER CARS - OTHER THAN YARD CABOOSES:

(e) Illumination equipment for railroad cabooses.

- (1) There shall be maintained at the rear end of all cabooses, while cabooses are being pushed during the hours of darkness, either a handheld or installed backup light which shall have sufficient candlepower to illuminate the track for a distance of at least two hundred fifty feet under clear atmospheric conditions. Securing and maintaining said lights shall be the responsibility of the railroad.
- (2) The provisions of Rule 1.23(e)(1) shall only apply to all local or mine run cabooses. Runs originating from without the State of West Virginia shall be exempt from the requirements of the rule.
- (3) Rule 1.23(e)(1) shall be effective June 7, 1983, provided; that railroads shall have until June 4, 1984 to achieve full compliance with the rule.
- (4) Enforcement - Railroad safety inspectors of the Commission shall have authority to examine cabooses for compliance with these rules. If a

railroad violates the provisions of Rule 1.23(e) (1) it will be, according to West Virginia Code §21-2B-5, guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars for each violation; provided that the railroad shall not be in violation of Rule 1.23(e)(1) if the defect is corrected at the first point maintenance supplies are available, or if repairs are needed, the first point at which materials and repair facilities are available and repairs can be made.

- (5) Rule 1.23(e) shall not be interpreted as imposing individual responsibility upon any railroad employee for damage to caboose backup lights while the employee is engaged in handling the lights as required by Rule 1.23(e)(1).

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE June 10, 1983
Administrative Law Division



STATE OF WEST VIRGINIA
PUBLIC SERVICE COMMISSION
CHARLESTON, 25305

C E R T I F I C A T I O N

I, E. Dandridge McDonald, Chairman of the West Virginia Public Service Commission, do hereby certify that the rules and regulations contained herein are lawfully proposed legislative rules of the West Virginia Public Service Commission.

E. Dandridge McDonald

May 26, 1983
Date

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE *June 10, 1983*
Administrative Law Division