

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

Form #7

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DEC 27 9 42 AM '94

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AN EMERGENCY RULE**

AGENCY: PUBLIC SERVICE COMMISSION OF WEST VIRGINIA TITLE NUMBER: 150

CITE AUTHORITY: WEST VIRGINIA CODE §§24-1-7, 24A-3-4, 24A-4-1, 24A-5-5(j)  
and 49 CFR PARTS 180 and 382

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 9

TITLE OF RULE BEING AMENDED: RULES AND REGULATIONS FOR THE GOVERNMENT  
OF MOTOR CARRIERS AND PRIVATE COMMERCIAL CARRIERS

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

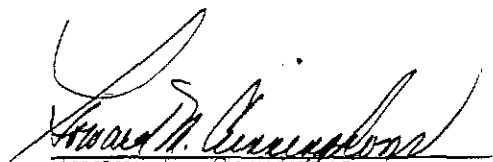
TITLE OF RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

These rules implement a uniform nationwide rule for safety, maintenance and the integrity of intermediate bulk containers and cargo tanks under 49 CFR Part 180. Additionally, the rules promulgated by the United States Department of Transportation under 49 CFR Part 382 provide for controlled substance and alcohol use and testing for them in drivers of commercial motor vehicles. The Federal rules are to become effective January 1, 1995. The rules were not finalized until late in the year. The Transportation Division of the Public Service Commission was not apprised of the proposed rules until after August, 1994. Accordingly, it has become necessary to promulgate the rules on an emergency basis in order to substantially comply with the enforcement of the protocol therein.

Use Additional Sheets If Necessary.

  
Howard M. Cunningham  
Executive Secretary

10.40

TITLE 150  
LEGISLATIVE RULES  
PUBLIC SERVICE COMMISSION

SERIES 9  
RULES AND REGULATIONS FOR THE GOVERNMENT OF  
MOTOR CARRIERS AND PRIVATE COMMERCIAL CARRIERS

§150-9-1. General.

1.1. Scope. -- These rules govern all common or contract motor carriers for hire of passengers or property over the public highways of this State, unless otherwise exempt from regulation by §24A-1-3 of the West Virginia Code, pursuant to §§24-2-1 and 24A-1-1. Moreover Rule 2.3 applies to motor carriers and private commercial carriers subject to the Commission's jurisdiction.

1.2. Authority. -- W.Va. Code §§24-2-2, 24A-2-3, 24A-3-4, 24A-3-6 and 24A-5-5

1.3. Filing Date. -- December 27, 1994

1.4. Effective Date. --

1.5. Intent.

Pursuant to the powers vested and the authority given under Chapter 24A, of the West Virginia Code, the Public Service Commission of West Virginia issues the following rules and regulations governing the transportation of persons and property for hire by motor vehicle upon or over the public highways of this State. These rules are intended to insure adequate service to the public; to protect the safety and welfare of the traveling and shipping public in their use of transportation agencies by motor vehicle; to preserve, foster and regulate transportation and permit the coordination of transportation facilities; and to provide the traveling and shipping public transportation agencies rendering stabilized service at just and reasonable rates. Moreover, Rule 2.3 is also intended to apply to all motor carriers and private commercial carriers subject to the Commission's jurisdiction.

1.6. Saving clause.

The adoption of these rules and regulations shall in no way preclude the Public Service Commission from altering or amending them in whole or in part, or from requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion, or upon the application of any motor carrier. Furthermore, these rules shall not relieve in any way a motor carrier or private commercial carrier from any of its duties under the laws of this State. These rules and regulations

are intended to supplement applicable statutes and do not replace or substitute any of the provisions of such statutes.

#### 1.7. Application of rules.

a. These rules shall apply to all common or contract motor carriers for hire of passengers or property over the public highways of this State, unless otherwise exempt from regulation by §24A-1-3. Rule 2.3 shall apply to all motor carriers and private commercial carriers subject to the Commission's jurisdiction. These rules shall apply to persons and motor vehicles engaged in intrastate and interstate commerce to the extent permitted by the constitution and laws of the United States.

b. Modification of, or exemption from rules. -- If hardship results from the application of any rule herein prescribed, or if unusual difficulty is involved in immediately complying with any rule, application may be made to the Commission for the modification of the particular rule or for temporary exemption from its provisions: **Provided**, That no application for such modification or exemption shall be considered by the Commission unless there is submitted therewith a full and complete justification for such action.

#### 1.8. Definitions.

a. Commission. Whenever in these rules and regulations the words "Commission" or "Public Service Commission" occur, such word or words shall, unless a different intent clearly appears from the context, be taken to mean the Public Service Commission of West Virginia.

b. Motor vehicle. The term "motor vehicle" means, and includes, any automobile, truck, tractor, truck-tractor, trailer, semitrailer, motorbus, taxicab, and any self-propelling motor-driven motor vehicle, or any combination thereof, used upon any public highway in this State for the purpose of transporting persons or property.

c. Public highway. The term "public highway" means any public street, alley, road, or highway or thoroughfare of any kind in this State used by the public.

d. Person. The term "person" means and includes any individual, firm, co-partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee or personal representative thereof.

e. Common carrier by motor vehicle. The term "common carrier by motor vehicle" means any person who undertakes, whether directly or by lease or any other arrangement, to transport passengers or property, or any class or classes of property, for the general public over the highways of this State

by motor vehicles for hire, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail, water, or air and of express or forwarding agencies, and leased or rented motor vehicles, with or without drivers.

f. Contract carrier by motor vehicle. The term "contract carrier by motor vehicle" means any person not included in subdivision e of this section, who under special and individual contracts or agreements, and whether directly or by lease or any other arrangement, transports passengers or property over the highways of this State by motor vehicles for hire.

g. Motor carrier. The term "motor carrier" includes both a common carrier by motor vehicle and a contract carrier by motor vehicle.

h. Exempt carrier. The term "exempt carrier" means any person operating a motor vehicle exempt from the provisions of Chapter 24A, Code of West Virginia, by Article 1, Section 3, thereof.

i. Power unit. The Term "power unit" means any vehicle which contains within itself the engine, motor, or other source of power by which said vehicle is propelled.

j. I.C.C. The letters "I.C.C." mean the Interstate Commerce Commission.

k. D.O.T. The letters "D.O.T." mean the United States Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety.

l. Driveaway operation. The words "driveaway operation" mean an operation in which any vehicle or vehicles, operated singly or in lawful combination, new or used, not owned by the transporting motor carrier, constitute the commodity being transported.

m. NARUC. The letters "NARUC" mean the National Association of Regulatory Utility Commissioners.

n. Operations within the borders of this state. The term "operations within the borders of this State" mean interstate of foreign operations to, from, within or traversing this State.

o. CFR. The letters "CFR" mean the Code of Federal Regulations.

p. Private commercial carrier. The term "private commercial carrier" means and includes any person who undertakes, whether directly or by lease or other arrangement, to transport property, including hazardous materials as defined in rules and regulations promulgated by the commission, for himself over the

public highways of this state, in interstate or intrastate commerce, for any commercial purpose, by motor vehicle with a gross vehicle weight rating of ten thousand one pounds or more, by motor vehicle designed to transport more than fifteen (15) passengers, including the driver; or by any motor vehicle used to transport hazardous materials in a quantity requiring placarding under federal hazardous material regulations as adopted by the commission.

## §150-9-2. Rules and regulations applicable to all motor carriers.

### 2.1. Practice and procedure.

The Rules of Practice and Procedure adopted by the Commission where appropriate and applicable shall apply to all motor carriers.

### 2.2. Filing of tariffs and rate schedules.

2.2.1. Filing required -- All schedules, rules, regulations, special contracts and other charges, or modifications of the same, for the transportation of persons or property for hire by motor vehicles shall not become effective until filed with the Commission.

2.2.2. Manner of filing -- Tariffs containing all the rates, rules and regulations of each motor carrier shall be filed in the manner prescribed by the commission in "Rules and Regulations for the Government of the Construction and Filing of Tariffs of Public Utilities and Common Carriers by Motor Vehicles", and such other amendments or modifications that may have been, or may hereinafter be, adopted.

2.2.3. Forms for filing -- The Commission will, upon application, furnish proper forms to be used for the filing of tariffs and applications for changes in rates, fares and charges. (M.C. Form No. 48).

### 2.3. Safety rules and regulations.

Every motor carrier subject to the Commission's jurisdiction and every private commercial carrier subject to the Commission's jurisdiction shall, without regard to whether said carrier is engaged in intrastate or interstate commerce, establish, maintain, and operate said motor carrier's vehicles, equipment, and cargo in conformity with the safety rules and regulations promulgated by the U.S. Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety, published in Title 49 CFR parts 171, 172, 173, 177, 178, 180, 325, 350, 382, 383, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, and 399 ~~in effect on the effective date of these rules~~ as amended January 1, 1995; and in Title 40 CFR part 262 in effect on the effective date of these rules. Copies of said rules and regulations may be obtained from the Superintendent of

Documents, U.S. Government Printing Office, Washington, D.C. 20402.

#### 2.4. Insurance.

The Rules and Regulations Governing the Filing and Approval of Surety bonds, Policies of Insurance, Qualifications as a Self-Insurer, or other securities and agreements by common and contract carriers by motor vehicles adopted and prescribed by M.C. General Order No. 6-F, dated April 5, 1978, and such other amendments to such rules and regulations that may hereinafter be adopted, shall apply to all motor carriers. The Insurance Rules and Regulations are published in separate pamphlet form and will be furnished upon request.

#### 2.5. Uniform system of accounts and record retention.

2.5.1. All Class I and II common and contract motor carriers of passengers and property are required to keep the "Uniform System of Accounts" promulgated by the Interstate Commerce Commission, as published in Title 49 CFR parts 1206 and 1207, and in effect on the effective date of these rules.

#### 2.5.2. Definitions.

a. Class I. -- Carriers having average annual gross carrier operating revenues (including interstate and intrastate) of three million dollars (\$3,000,000) or more from motor carrier operations.

b. Class II. -- Carriers having average annual gross carrier operating revenues (including interstate and intrastate) of five hundred thousand dollars (\$500,000) but less than three million dollars (\$3,000,000) from motor carrier operations.

c. All Class I and II common and contract motor carriers of passengers and property are required to retain and preserve records in accordance with the rules of the Interstate Commerce Commission, as published in Title 49 CFR part 1220, and in effect on the effective date of these rules.

#### 2.6. Applications, documents, and other papers.

Applications, documents, and other papers shall be filed with the Commission upon the forms prescribed by Section 10 of this Series, except that the Commission may accept such other form of application, document, or paper, as the Commission may deem proper, if such application, document, or other paper contains the same information required by the prescribed form. Each such application, document, or paper shall be accompanied by the applicable filing fee required under Rule 2.7. If no filing fee is indicated in said rule for the filing of a specific

category of application, document, or paper, said filing may be made free of charge.

#### 2.7. Filing fees.

a. Application for a certificate of convenience and necessity or for a contract-carrier permit. -\$100.00

b. Application for the reinstatement of a suspended certificate or a suspended permit. -\$75.00

c. Application for the transfer of a certificate or a permit. -\$50.00

d. Application for the amendment of a certificate or a permit. -\$75.00

e. Application to abandon service under a certificate. -\$15.00

f. Application for authority to adopt or change a trade-name under a certificate or permit. -\$25.00

g. Application for the transfer of several certificates and/or permits. -\$50.00

#### 2.8. Publication of notice of hearings.

Notice of hearings must be published in accordance with the order setting the matter for hearing. A certificate from the publisher must be filed with the Commission on or before the day of hearing.

#### 2.9. Violation of motor vehicle laws.

The violation of any law contained in Chapters 17, 17A, 17B, 17C, 17D, or 17E of the West Virginia Code, pursuant to the provisions of §24A-2-5(d) and §24A-3-3(d), either as admitted by the motor carrier or as provided in a criminal proceeding, or as admitted by the motor carrier or as proved in a Commission proceeding by a preponderance of the evidence, shall be sufficient cause for the suspension and/or revocation of the authority of any motor carrier operating under the jurisdiction of the Public Service Commission.

#### 2.10. Uniform vehicle identification cards or stamps.

Uniform Vehicle Identification Cards or Stamps shall be issued only in the name under which a certificate or permit is held or under which authority or exempt status from the Interstate Commerce Commission is held.

#### 2.11. Transfer of cards or stamps.

The transfer of Uniform Vehicle Identification Cards or ICC identification stamps issued by this Commission shall be authorized, subject to the following rules, restrictions, and limitations:

a. A fee of one dollar (\$1.00) will be charged and collected for the transfer of each Uniform Vehicle Identification Card, provided that the old card is returned to this Commission at the time of the transfer. If the old card is not returned a new Uniform Vehicle Identification Card must be issued for the new vehicle at an issuance fee of three dollars (\$3.00).

b. Transfers will be permitted only from one motor vehicle to another motor vehicle owned by the same authorized carrier.

c. A Uniform Vehicle Identification Card issued for a motor vehicle which is replaced by a carrier may be used on the replacement equipment for a period of not more than ten (10) days before a proper transfer is made by the Commission upon application of the carrier.

d. The transfer of ICC identification stamps, issued by the Commission, from one vehicle to another shall be permitted one time only for a replacement vehicle provided the Commission is given prior notice of the transfer.

2.12. Requirement that motor carrier use and display authorized trade name and certificate and/or permit number(s).

No motor carrier shall use any trade name or any fictitious name unless such name is authorized for such carrier's use by order of the Commission. Except where otherwise provided herein, a motor carrier shall display its authorized trade name (or where no such trade name is authorized, the name in which authority is held) and at least one of its certificate or permit numbers on each side of each motor vehicle it operates. The letters of the carrier's name shall be not less than three inches in height. Temporary placards may be used for leased equipment subject to this section: Provided, however, That this rule shall not apply to vehicles operated in specialized limousine service as defined in Rule 5.1.c.

2.13. Acquisition of cards of transferees.

Transferees of certificates of convenience and necessity or contract carrier permits, shall acquire the Uniform Vehicle Identification Cards and pay the annual assessment prescribed by law within sixty (60) days after the date of the order authorizing such transfer or the authority transferred shall be suspended; Provided, however, That the Commission may grant an extension of time upon good cause being shown therefor.

2.14. Surrender of Uniform Vehicle Identification Cards by transferor.

Uniform Vehicle Identification Cards issued to any carrier that is subsequently authorized to transfer its authority shall be surrendered to the Commission within sixty (60) days after the date of the order authorizing such transfer.

2.15. Resident interstate carriers.

Each motor carrier, resident or domiciled in West Virginia, operating exclusively under authority granted to it by the Interstate Commerce Commission, shall pay an assessment fee of three dollars, (\$3.00) for each Uniform Vehicle Identification Stamp issued for each power unit, and shall list each trailer, or semi-trailer, used under such authority on P.S.C. W.Va. M.C. Form 4, but will not be required to pay the special assessment fee provided in subsections (b), (c), and (d) of §24A-6-6 of the West Virginia Code for the particular capacity of vehicle; and each motor carrier, resident or domiciled in West Virginia, operating both interstate under authority granted to it by the Interstate Commerce Commission and intrastate under authority granted to it by the Commission, shall pay an amount equal to that proportion of the special assessment fee (provided in subsections (b) (c) and (d) of §24A-6-6 for that particular capacity of vehicle) that the gross operating revenue derived from each such carrier's intrastate operation in West Virginia bears to the gross operating revenue derived from all its operation, both intrastate and interstate, in West Virginia.

2.16. Interruption of service.

In all cases of interruption of the regular service of any motor carrier to which these Rules are applicable, where such interruptions are continued or likely to continue over a period of more than forty-eight (48) hours, written notice shall, within forty-eight (48) hours after the commencement of said interruption, be filed with the office of the Executive Secretary of the Commission of the character, cause, and probable duration of the same.

2.17. Suspension of certificates and permits because of carrier's failure to apply for and obtain uniform vehicle identification card and to pay special assessment.

a. Pursuant to the requirements imposed upon motor carriers by §§24A-6-4 and 24A-6-6 of the West Virginia Code, every motor carrier shall, by July 1st of each year, have applied for and have obtained at least one (1) Uniform Vehicle Identification Card and have paid the special annual assessment imposed upon said motor carrier, for the fiscal year commencing on said July 1st.

b. If, by August 1st of said fiscal year, a motor carrier has still failed to apply for and to obtain at least one

(1) Uniform Vehicle Identification Card or has failed to pay the special annual assessment imposed upon said carrier, the Commission, through its Staff, shall notify said carrier, in writing, that all of its certificates and permits will be automatically suspended on October 1st of said fiscal year if said carrier, by said date, either has failed to apply for and to obtain at least one (1) Uniform Vehicle Identification Card or has failed to pay said special annual assessment.

c. Every certificate, and every permit, which lacks an explicit expiration date shall be automatically suspended, effective October 1st of each year, until further order of the Commission, and all operations under said certificate or permit shall be automatically suspended, if the holder of said certificate or permit, by that date, either has failed to apply for and to obtain at least one (1) Uniform Vehicle Identification Card for, or has failed to pay the special annual assessment for, the fiscal year in which said date falls.

d. By October 8th of said fiscal year, the Commission shall send a letter by certified mail to every motor carrier holding a certificate or permit which, according to Commission records, was automatically suspended on October 1st pursuant to this Rule. Said letter shall inform said carrier that its operations have, in fact, been suspended and that it may have its suspension lifted, expeditiously, if it tenders proper payment for the special annual assessment(s) and applies for and obtains Uniform Vehicle Identification Cards prior to November 1st of said fiscal year. The Commission may expeditiously lift the suspension of each carrier which complies with the requirements set forth in said letter.

e. If said motor carrier fails, by November 1st of said fiscal year, to tender proper payment for the applicable annual assessment(s) or fails by that date to obtain Uniform Vehicle Identification Cards, the Commission may, on its own motion, commence proceedings to revoke all operating authority held by said carrier.

f. All letters and documents relevant to motor carriers who were suspended on October 1 of a fiscal year in accordance with Rule 2.17.c shall be maintained in the office of the Executive Secretary of the Commission. Such records shall include copies of all warning letters, notice of the actual suspension, all subsequent correspondence with the motor carrier or its representatives, and any other relevant documents, properly stamped and dated upon receipt.

2.18. Prohibition of unauthorized operations and unauthorized charges by common and contract carriers; penalties and sanctions.

a. No common carrier by motor vehicle shall operate within this State without first having obtained certificate of convenience and necessity from the Commission.

b. No common carrier by motor vehicle shall operate outside the territory or routes set forth in its certificate(s).

c. No contract carrier by motor vehicle shall operate within this State without first having obtained a permit from the Commission.

d. No contract carrier by motor vehicle shall operate outside of the territory or routes set forth in its permit(s).

e. No motor carrier shall charge, demand, collect, or receive a greater or less or difference remuneration for the transportation of passengers or property, or for any service in connection therewith, than the rates, fares, and charges which have been legally established and filed with the Commission; nor shall any such carrier refund, remit, discount or rebate in any manner or by any device any portion of the rates, fares, and charges required to be collected by the tariffs on file with or ordered by the Commission.

f. Any common carrier or contract carrier which operates motor vehicles for hire over the public highways of this State without first having obtained either a certificate of convenience and necessity or a contract carrier permit, as the case may be, from the Commission, shall be subject to criminal penalties, as well as to administrative sanctions imposed by the Commission, pursuant to Chapter 24 and 24A of the West Virginia Code.

2.19. Parties to committing a violation of motor carrier law.

No person shall commit, attempt to commit, conspire to commit, or knowingly aid or abet in the commission of, any act which is prohibited by Chapter 24A of the West Virginia Code or by the rules set forth in this Series.

2.20. Acquisition of stock incorporated motor carriers; issuance of stock by incorporated motor carriers.

(a) No person shall, before obtaining the Commission's consent and approval to do so, acquire, either directly or indirectly, a majority of the common stock of any incorporated common carrier or incorporated contract carrier organized and doing business in this State.

(b) No incorporated common carrier, and no incorporated contract carrier, shall issue stocks and stock certificates, or other evidence of interest or ownership unless, in addition to other requirements of law, said carrier shall

first have secured from the Commission an order authorizing the issue, stating the amount thereof and the purposes to which the issue or the proceeds thereof are to be applied, and stating that, in the opinion of the commission, the issue is reasonably required for the purposes specified in the order: **Provided**, That the issuance of stocks and stock certificates or other evidence of interest or ownership by a corporation which devotes one (1) or more of its divisions to the provision of a public service set forth in §24-2-1 of the West Virginia Code shall be exempted from the requirements hereof when the gross revenues generated by all such divisions represent less than twenty-five percent (25%) of the gross revenues generated by the corporation.

#### 2.21. Consummation of transfer of certificates and permits.

(a) Within a reasonable period of time after the date of a Commission order approving the transfer of a certificate or permit, the proposed transferor and the proposed transferee shall inform the Commission in writing as to whether said transfer has, in fact, been consummated, and, if so, upon what date it was consummated.

(b) If, within a reasonable period of time after the date of said order, the proposed transferor and the proposed transferee notify the Commission that they have not consummated said transfer, or if, by the end of said period, at least one of said parties fails to notify the Commission, in writing, as to whether said transfer has been consummated, the Commission shall enter such further orders in the case as the Commission may deem appropriate.

#### 2.22. Descriptions of operating authority in applications and orders.

(a) Every application for a certificate or permit which is filed with the Commission shall contain an unambiguous description of the total territory within which, or the total route along which, the holder of said certificate or permit proposes to operate.

(b) Every certificate or permit shall have the operating authority set forth therein described either in terms of territory or in terms of routes, but not both.

(c) With the exceptions of present or past municipal boundaries, every component of the description of a route or territory in a certificate or permit which is being issued, transferred, or amended must be readily ascertainable by reference to the applicable county road maps most recently issued by the West Virginia Department of Highways. Every highway route listed in a certificate or permit shall conform, in an unambiguous fashion, to the latest designation by the West Virginia Department of Highways.

(d) No reference to unincorporated communities shall be made in certificates or permits issued by the Commission.

(e) Every application involving the issuance, transfer, or amendment of a certificate or permit, which application describes operating authority in terms of routes (rather than in terms of territory), shall be accompanied by copies of the most recent county road maps (or portions thereof) issued by the West Virginia Department of Highways applicable to said routes, with said routes visibly marked on said maps.

(f) If an application for a certificate or permit or an application for the Commission's approval of the transfer of a certificate or permit or an application for the amendment of a certificate or permit does not conform to the requirements set forth in this rule, said application shall not be processed unless and until it is amended to comply with this rule.

2.23. Rates, fares, and charges by common carriers and contract carriers.

(a) Every common carrier and every contract carrier shall file tariffs reflecting the rates, fares, and charges approved by the Commission for said carriers.

(b) No contract carrier shall collect, from a customer, rates, fares, or charges, which are less than the lowest rates, fares, or charges approved or permitted by the Commission for common carriers providing substantially the same service along any route on which, or within any part of the territory in which (as the case may be), said contract carrier is authorized to operate.

2.24. Mandatory transfer of certificate or permit after death of holder(s).

Within three (3) years after the death of one (1) or more holders of a certificate or permit, the personal representative of each such holder shall either apply to the Commission for the approval of the transfer of said certificate or permit or apply to the Commission for the approval of the discontinuance of operations under said certificate or permit. Provided, however, That this rule shall not apply to a certificate or permit held by joint tenants until all joint tenants have died.

2.25. Inspection and examination of land, buildings, equipment, records and papers of motor carriers.

Employees of the Commission are authorized to enter upon, to inspect, and to examine any and all lands, buildings, and equipment of motor carriers and to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents of such carriers. Every motor carrier shall submit its

accounts, books, records, memoranda, correspondence, and other documents for inspection and copying, and shall submit its lands, buildings, and equipment for examination and inspection, to any employee of the Commission upon the oral or written request of such employee.

**§150-9-3. Rules and regulations applicable to particular carriers.**

3.1. Exempt carriers.

An intrastate carrier that is exempt by the provisions of §24A-1-3 will be issued a certificate of exemption upon presentation of proof that such carrier operates exclusively in the transportation of an exempt commodity.

3.2. Special terms, conditions and limitations to certificates authorizing the transportation of general commodities.

Certificates of convenience and necessity issued to common carriers of property by motor vehicles for the transportation of commodities generally shall be subject to the following rules, restrictions, and limitations, unless the order issuing such certificate clearly states that a different meaning is intended:

a. A certificate authorizes operations only under the name in which it is issued.

b. A certificate authorizing the transportation of "general commodities" includes the right to transport all types of property capable of, or suitable for, transportation by ordinary motor vehicle, but, unless specifically so provided in the certificate, does not authorize the use of special facilities or special motor vehicles in the transportation of any commodity, nor the transportation of:

1. Commodities which by reason of length, width, weigh, height, size, or other physical characteristic, require the use of special devices, facilities or equipment for their loading or unloading; or

2. Commodities which require special facilities or special motor vehicle for adequate, efficient or safe transportation, or for protection, except as against heat or cold.

c. The term "special facilities," as used in paragraph (b) of this Rule, means facilities in addition to or other than those required or used in ordinary packing, crating, or handling, and the term "special motor vehicle," as used in the same paragraph, means a motor vehicle so designed and constructed, or equipped with appliances so designed and constructed, as to provide facilities other than those afforded by the floors, sides

and tops of ordinary motor vehicles. The following, among others, are deemed to be special motor vehicles or motor vehicles embodying special facilities: tank trucks, dump trucks, armored trucks, household goods moving vans, pole trailers, and "haul-a-ways" or trucks designed especially for hauling automobiles or similar articles.

d. In the event of any conflict between the special terms, conditions, and limitations set forth in the various items above and the provisions in the main body of a certificate the latter shall govern in all instances.

### 3.3. Binding estimates by carriers of household goods.

a. Upon a request filed by a shipper, every common carrier of household goods shall provide a binding estimate for transportation and related services furnished by said carrier in accordance with the following criteria:

1. Every binding estimate must be in writing and must be signed by representatives of both the shipper and the carrier;

2. Every binding estimate, or any revision thereof, which is made under the provisions of this rule, shall remain effective and binding for a period of up to sixty (60) days after said estimate is presented to the shipper;

3. Every binding estimate is limited to the origin, destination, and additional stops, if any, specified on it. The binding estimate is further limited to the quantities and/or services specified therein;

4. Any binding estimate may be revised, through the written, mutual agreement of the shipper and the carrier, at any time during its effective period, up to and including the date upon which the shipment is tendered to the carrier for transportation; and

5. Prior to loading the tendered shipment, the carrier may revise the binding estimate if the origin, destination, additional stops, quantities and/or services, or any part thereof, have been added, changed or deleted by the shipper.

b. Provided, however, that upon a request by the shipper, the carrier shall agree to provide price certainty by basing charges on the binding estimate, as set forth above, plus any additional services requested or required after loading, or on the actual weight and tariff charges in effect on the last day on which services were performed, whichever option produces the lesser total charge. This option must be stated in writing and initialed by representatives of both the shipper and the carrier, and shall be effective for the same period as the binding estimate.

3.4. Binding estimates by carriers of mobile or modular homes.

a. Upon a request filed by a customer, every common carrier of mobile or modular homes shall provide a binding estimate for transportation and related services furnished by said carrier in accordance with the following criteria:

(1) Every such binding estimate must be in writing and must be signed by a representative of both the customer and the carrier.

(2) Every such binding estimate, or any revision thereof, which is made under the provisions of this rule, shall remain effective and binding for a period of up to sixty (60) days after said estimate is presented to the customer.

(3) Every such binding estimate is limited to the origin, destination and other services specified therein, which shall include, but not be limited to, the cost of trip permits, bulldozer service, wrecker service, tolls, and flag vehicles.

(4) Any such binding estimate may be revised, through written mutual agreement of the customer and the carrier, at any time during its effective period, up to and including the date upon which the shipment is tendered to the carrier for transportation.

(5) Prior to moving the home, the carrier may revise the binding estimate if the origin, destination, and/or any part thereof, have been added, changed or deleted by the customer.

b. Provided, however, that the provisions of this rule shall not apply to expenses for labor and materials resulting from mechanical failure in the customer's equipment. Such expenses and delays shall be borne by the customer unless otherwise agreed by the parties in writing.

3.5. Printed invoice by carrier of mobile or modular homes required.

Except for charges made pursuant to binding estimates in compliance with Rule 3.4, no charge shall be made by a carrier of mobile or modular homes to a customer for the transportation of mobile or modular homes or for any services incidental to such service unless such charge is upon a printed, sequentially numbered invoice executed in duplicate. One such copy of the invoice shall be presented to said customer prior to payment. A copy of each invoice shall be retained by the carrier for a period of at least two (2) years after the last date of service by the carrier to the customer. The following information, but no other information, shall appear on the invoice:

a. The name, trade name or logo, if any, of the carrier and the address of its base of operation.

b. The date and time the request for service was received and the name, address, and telephone number of the customer.

c. The date, time, and place of departure of the carrier's vehicle.

d. The place from which the mobile or modular home was transported.

e. The date and time that the carrier's vehicle arrived at the place where the mobile or modular home was located.

f. The place to which the mobile or modular home was transported and the time that it arrived there.

g. The date and time that the carrier's vehicle returned to the base of operations or was dispatched pursuant to the next call, whichever came first.

h. A description of the mobile or modular home, including, but not limited to, its length, width, brand name, and serial number.

i. An itemization of the charges for connection, transportation, and any other services rendered pursuant to the carrier's tariff.

j. The rates and charges in the carrier's tariff on file with the Commission (which may appear on the back of the invoice if referenced on the front in bold letters).

k. The following words which must appear on the front of the invoice in bold capital letters:

**THE RATES AND CHARGES FOR THE TRANSPORTATION OF MOBILE AND MODULAR HOMES, AND FOR SERVICES INCIDENTAL THERETO, ARE REGULATED BY THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA. IF YOU FEEL THAT YOU HAVE BEEN CHARGED UNFAIRLY, YOU MAY COMPLAIN TO THAT AGENCY.**

l. A line for the signature of the customer, if he or she was available before, while, or after the vehicle was moved.

**§150-9-4. Rules and regulations applicable to motor carriers transporting passengers over regular routes (buses).**

4.1. Regular routes.

No motor vehicle operated under a certificate for the transportation of passengers over regular routes (bus) shall be operated for hire over any route other than that authorized under such certificate: **Provided, however,** That whenever any portion of such route is temporarily closed for construction, repair, or other reason, said vehicle may operate over the most direct and practicable detour, and such operation shall be under the same rules and regulations as applied to the original route.

#### 4.2. Time schedules.

No motor vehicle to which the provisions of this section are applicable shall be operated on any time schedule other than that approved by the Commission: **Provided, however,** That nothing herein shall be construed to prohibit the operation, in addition to the service described in the schedule in effect at the time, of special or extra trips over said route, or any part thereof, during rush hours or other extraordinary circumstances to care for additional business occasioned by an unusual condition.

#### 4.3. Time schedule changes by the Commission.

The Commission reserves the right to arrange or rearrange time schedules so as to prevent congestion and competition injurious to public welfare, or to make connections with other transportation agencies. Such time schedule changes shall be made by first giving ten (10) days notice to the carrier affected thereby.

#### 4.4. Time schedule revisions by urban or suburban bus carriers.

a. Carriers subject to the provisions of this section, except where exempt by federal law, desiring to revise time schedules shall file with the executive secretary revised time schedules in accordance with M.C. Form No. 36, at least thirty (30) days prior to the effective date of such revision. In addition, whenever such revised time schedules provide for a lesser number of bus trips over the territory affected, there shall be attached to the revised time schedule a narrative summary of the changes involved in such language as would readily be understood by the riding public. The aforementioned narrative summary shall be published in a newspaper, or newspaper, of general circulation in the area affected at least thirty (30) days prior to the effective date of the time schedule change. The carrier shall post notices in all buses operating over the routes affected for a period of at least thirty (30) days prior to the effective date thereof. Such notices shall be in large print; shall be clearly visible to passengers boarding or leaving the bus; shall clearly set forth the buses affected and the date the change becomes effective; and shall be in the form as set forth in Section 10 of this series (M.C. Form 39).

b. The carriers shall file an affidavit with the Commission which states the dates and mode of posting: **Provided, however,** That any protest to the proposed revision must be received by the Executive Secretary not later than seven (7) days prior to the effective date of said revised schedule.

c. The Commission may, in its discretion and for good cause shown, by order allow such revision upon less time than the notices herein specified.

d. The Commission may, in its discretion and for good cause shown, institute an investigation into the propriety of any such discontinuance or time schedule change either before or after such discontinuance or time schedule becomes effective.

e. The provisions of this rule shall apply to all time schedule changes except those involving the discontinuance of trips for which authority has been granted for a specified period of time.

#### 4.5. Time schedule revisions by intercity bus carriers.

a. Intercity bus carriers subject to the provisions of this section desiring to revise time schedules, except where exempt by federal law, shall file with the executive secretary revised time schedules in accordance with M.C. Form No. 36, at least thirty (30) days prior to the effective date of such revision. In addition, whenever such revised time schedules provide for a lesser number of bus trips over the territory affected, there shall be attached to the revised time schedule a narrative summary of the changes involved in such language as would readily be understood by the riding public. The aforementioned narrative summary shall be published in a newspaper, or newspapers, of general circulation along the route affected by the revised time schedule at least thirty (30) days prior to the effective date of the time schedule change. An affidavit of publication showing compliance with the aforesaid publication requirement shall be filed with the executive secretary within thirty (30) days after the date of publication.

b. The carrier shall post notices in all bus terminals or commission agencies located on routes affected by revised time schedules for a period of at least thirty (30) days prior to the effective date thereof. Such notices shall be in large print; shall be clearly visible to patrons at the terminals or commission agencies; shall clearly set forth the buses affected and the date the change becomes effective; and shall state that the public may protest the schedule changes by writing the executive secretary at least seven (7) days prior to the effective date.

c. Protest to the proposed revision must be received by the executive secretary no later than seven (7) days before the effective date of said revised schedule.

d. Such revised time schedules shall be effective date unless the carrier shall have received notice that the proposed revision or a part thereof has been suspended. Such notice shall be by letter, telephone or telegram from the Executive Secretary at least three (3) days prior to the effective date of such revision.

e. The Commission may, in its discretion and for good cause shown, by order allow such revision upon less time than the notices herein specified.

f. The Commission may, in its discretion and for good cause shown, institute an investigation into the propriety of any such discontinuance or time schedule change either before or after such discontinuance or time schedule becomes effective.

g. The provisions of this rule shall apply to all time schedule changes except those involving the discontinuance of trips for which authority has been ranted for a specified period of time.

#### 4.6. Reserve equipment.

Carriers subject to the provisions of this section shall be authorized to register as reserve equipment such motor vehicles as are maintained for the sole purpose of replacing other motor vehicles temporarily withdrawn from service, and shall pay the special annual assessment of three dollars (\$3.00) for each Uniform Vehicle Identification Stamp issued for such reserve equipment: Provided, however, That the number of motor vehicles registered as reserve equipment shall not exceed either ten percent (10%) of the number of motor vehicles registered as regular equipment, or two (2) motor vehicles, whichever is greater.

#### 4.7. Destination signs.

Each motor vehicle to which this section is applicable which is operated over a regular route shall have attached to the front thereof a sign with letters or figures not less than three inches in height designating the destination of such vehicle. In no case shall such sign be attached to the windshield of the vehicle so operated.

#### 4.8. Sanitation.

All motor vehicles to which this section is applicable shall be maintained in a safe, clean, and sanitary condition at all times.

#### 4.9. Conversation by operator.

The operator of the motor vehicle to which this section is applicable shall not converse with passengers or others while the

vehicle is in motion, except as may be necessary in his or her employment as operator.

4.10. Transportation of property.

Common carriers of passengers by motor vehicle for hire operating over regular routes are permitted to transport property if the total weight of any one parcel or package does not exceed one-hundred (100) pounds. The transportation of property under the provisions of this rule shall not be permitted to interfere with the transportation of luggage for passengers. However, no carrier shall be required to transport luggage in excess of fifty (50) pounds for any one passenger without charge.

4.11. Special or charter party service by common carriers of passengers by motor vehicle over regular routes and serving the public generally.

a. Nothing in these rules or regulations shall be construed or administered so as to deprive any common carrier of the right to operate in special or charter party service over the routes or in territory over which, or in which, such common carrier is specifically authorized to operate in his or its certificate from this Commission: **Provided, however,** That each and every said common carrier in its special or charter party operation shall be subject to and governed by these rules and regulations in all respects where they do not conflict with federal law or with authority heretofore granted in the certificate held by such common carrier.

b. The term "special or charter parties," as used herein, means a group of persons who, pursuant to a common purpose and under a single contract, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group to a specified destination.

c. **Tariff --** Each motor carrier desiring to render special or charter party service shall file with the Commission a tariff, or supplement to existing tariffs, providing rates for such special services.

d. **Origin Territory --** Any common carrier of passengers by motor vehicle subject to this section may transport special or charter parties (a) which originate at any point or points on the regular route or routes authorized to be served by such carrier, or (b) which originate at any point or points within the territory served by its regular route or routes. These provisions shall not apply to the transportation of charter parties composed of the physically handicapped or of minor children who may not with convenience and safety be transported without the use of special facilities and/or the services of specially trained personnel required to be supplied by the motor carrier.

e. Destination Territory -- Common carriers of passengers by motor vehicle subject to this section may transport special or charter parties to any point or place within the State of West Virginia; special or charter parties may not be transported from the destination territory to the origin territory described in paragraph d. of this Rule except on return movement of the same special or charter party as provided herein.

f. Limitations of Service -- No common carrier of passengers by motor vehicle subject to this section shall transport special or charter parties as herein defined between the same points or over the same route so frequently as to constitute a regular scheduled or non-scheduled service.

**§150-9-5. Rules and Regulations Applicable To Motor Carriers Transporting Passengers And Property In Taxicab or Limousine Service.**

5.1. Definitions of "taxicab", "limousine", and "specialized limousine service"; transportation of persons and property by taxicabs and limousines.

a. A "taxicab" is a vehicle equipped with at least three (3) doors which is used to transport a passenger or passengers between variable points over irregular routes on an immediate or short-notice basis for compensation, which is determined on a mileage, time, or zone basis.

b. A "limousine" is a vehicle, equipped with at least three (3) doors and with seating for at least five (5) passengers, which is used either (a) to transport a passenger or passengers between fixed points, such as airports and hotels or motels, for compensation, which is usually a predetermined fixed charge or (b) to transport a passenger or passengers in specialized limousine service.

c. "Specialized limousine service" is the transportation of a passenger or passengers between variable points over irregular routes in specially equipped or luxury vehicles, for compensation, which is usually determined on a mileage or hourly basis.

d. A vehicle operated or licensed as a taxicab shall not be operated as a limousine. A vehicle operated or licensed as a limousine shall not be operated as a taxicab.

e. A limousine may also be used for transportation of baggage and parcels when such transportation is incidental to the transportation of passengers by that vehicle.

f. A taxicab or limousine may be used for the transportation of property to the extent permitted by Rule 5.12.

5.2. One-party operation.

When a person or persons engage a taxicab for transportation under the zone or mileage rates fixed by approved tariffs, no other person, or persons, may be transported in such taxicab unless, before the trip is started, the driver of such taxicab obtains the consent of the original passenger, or passengers, to pick up additional passengers on the trip. In the event such permission is not so obtained before the trip is started, the driver shall not seek such permission in the course of the trip, and no additional persons shall be picked up thereon. Service shall not be denied to any person because of the refusal of such person to grant such permission. In the event such permission is obtained, as aforesaid, the additional passengers so transported by such taxicab shall be charged the rates fixed by applicable tariffs for the distance they are transported; however, this condition shall not apply to taxicabs operating from railroad passenger stations or intercity bus stations when there are more persons desiring transportation by taxicabs than there are taxicabs to render such transportation.

### 5.3. Stopovers.

When two or more passengers, not members of the same party, are being transported in taxicab service, no stopover for the purpose of permitting any passenger, or passengers, to leave and return to the cab, shall be made until any other passenger, or passengers, have been delivered to his, or their destination.

### 5.4. Refusal of transportation.

No person, or persons, shall be denied taxicab service merely because such person desires transportation in a direction or to a destination other than that in which, or to which, the driver desires to operate.

### 5.5. Serving the entire area.

The certificate holder shall not direct any taxicab driver or limousine driver to serve any specific area other than the complete territory authorized under that certificate and for which a tariff has been filed with and approved by the Commission.

### 5.6. Unauthorized persons within taxicabs.

No person other than the driver shall be allowed within any taxicab unless such person is a fare-paying passenger actually being transported, except when the training or supervision of a driver is authorized by the certificate holder.

### 5.7. Responsibility for servicing and maintenance.

The holder of a certificate authorizing operation in taxi service shall be responsible for the servicing and maintenance of each vehicle operated under such certificate and that

responsibility shall not be delegated to a driver, except as provided in Rule 5.8(a) and P.S.C. W.Va. M.C. Form No. 55. Nor shall any driver be required to pay for such servicing or maintenance, except as provided in Rule 5.8(a) and P.S.C. W.Va. M.C. Form No. 55.

5.8. Taxicab leasing; leased equipment.

a. No certificate holder shall lease or rent a motor vehicle to the driver thereof for use as a taxicab except as provided by P.S.C. M.C. Form No. 55.

b. The holder of a certificate authorizing operation in taxi service may lease any or all equipment necessary or convenient for operations under said certificate. The lessor of such equipment shall not be directly or indirectly involved in the operation of said equipment, which shall remain under the exclusive direction and control of the certificate holder (lessee) for the duration of the lease.

5.9. Solicitation of bus passengers.

No certificate holder subject to this section and no employee of such certificate holder shall at any time solicit persons waiting at bus stops.

5.10. Display of rates.

There shall be displayed on every motor vehicle subject to this section the zone, mileage, meter, back-mileage, and other rates approved by this Commission for the operation of such vehicle. Such rates shall be clearly visible from the outside of the right side of such vehicle. If such vehicle is operated under a zone tariff, there shall be posted within such vehicle a map clearly visible to occupants in the rear, and showing the territory served with the zones outlined thereon and the applicable fares stated thereon. This rule may be waived for good cause shown in the case of specialized limousine service.

5.11. Marketing equipment.

On every motor vehicle subject to this section there shall be a sign on each side displaying the name or trade name of the motor carrier and the city or town from which such carrier is authorized to operate under its certificate. Every motor carrier subject to this section shall also comply with Rule 2.12. Rule 5.11 may be waived for good cause shown in the case of specialized limousine service.

5.12. Transportation of property.

Common carriers by motor vehicle of passengers in taxicab or limousine service are permitted to transport packages, food, and other items of personal property which may be conveniently and

reasonably transported by taxicabs or limousines. The transportation of property under the provisions of this rule shall not be permitted to interfere with the transportation of passengers and their luggage.

5.13. Inspection facilities.

Every motor carrier subject to regulation under this section shall provide sufficient facilities and assistance to Transportation Division personnel for the purpose of conducting vehicle safety inspections. Such facilities shall include the use of a lift and floor jack.

5.14. Twenty-four (24) hour service.

A common carrier by motor vehicle of passengers in taxicab service shall provide service to the public twenty-four (24) hours per day, seven (7) days per week, unless this requirement is expressly waived by the Commission.

5.15. Taxicab metering.

Every motor carrier of passengers by taxicab shall be required to equip each vehicle operated by it for the transportation of passengers in taxicab service with a taximeter which shall be used for computation of taxicab fares according to the carrier's authorized tariff, unless this requirement is expressly waived by the Commission.

5.16. Taxicab and limousine inspection.

Every vehicle registered by a motor carrier of passengers by taxicab or limousine shall, prior to said vehicle's registration with the Commission, be inspected for compliance with the Commission's safety rules and regulations. Said vehicle shall not be so registered until it is in compliance with said rules and regulations.

**§150-9-6. Rules and Regulations Applicable To Motor Carriers Transporting Wrecked And/Or Disabled Motor Vehicles (Wreckers).**

6.1. Printed invoice required.

No charge shall be made to a customer for wrecker service or services incidental to wrecker service unless such charge is upon a printed, sequentially numbered invoice executed in duplicate. One such copy of the invoice shall be presented to said customer prior to payment. A copy of each invoice shall be retained by the carrier for a period of at least two (2) years after the last date of service by the carrier to the customer. The following information, but no other information, shall appear on the invoice:

a. The name, trade name or logo, if any, of the carrier and the address of its base of operation.

b. The date and time the request for service was received and the name, address and telephone number of the party requesting wrecker service.

c. The name, address and telephone number of the owner of lessee of the towed vehicle.

d. The license plate number of, and the date, time, and place of departure of, the wrecker.

e. The place from which the towed vehicle was transported.

f. The date and time that the wrecker arrived at the place where the towed vehicle was located.

g. The place to which the towed vehicle was transported and the time that it arrived there.

h. The date and time that the wrecker returned to the base of operations or was dispatched pursuant to the next call, whichever came first.

i. The make and license plate number of the towed vehicle.

j. An itemization of the charges for towing, storage time, or any other service rendered pursuant to the carrier's tariff.

k. The rates and charges in the carrier's tariff on file with the Commission (which may appear on the back of the invoice if referenced on the front in bold letters).

l. The following words which must appear on the front of the invoice in bold capital letters:

**THE RATES AND CHARGES FOR WRECKER SERVICE, AND FOR SERVICES INCIDENTAL THERETO, ARE REGULATED BY THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA. IF YOU FEEL THAT YOU HAVE BEEN CHARGED UNFAIRLY, YOU MAY COMPLAINT TO THAT AGENCY.**

m. A line for the signature of the customer or person requesting service if he or she was available before, while, or after the vehicle was towed.

n. Any additional information required by the carrier to identify the vehicle, driver, or customer more specifically.

6.2. Charge for capacity required.

In no case shall the charge for a wrecker vehicle be greater than the charge for a wrecker vehicle of the capacity needed to perform the service.

#### 6.3. Storage charge.

No charge shall be made to a customer for storage service ancillary to towing, unless the carrier has complied with Rule 6.10 and has, prior to the storage of the vehicle in question, filed with the Commission the lawful rates and charges for such service. Charges for "inside storage" shall be assessed pursuant to the carrier's tariff and shall be assessed only if a customer's vehicle has been stored inside a roofed building. All other storage shall be considered "outside storage". All such inside storage and all such outside storage shall comply with the provisions of Rule 6.10.

#### 6.4. Marking equipment.

There shall be a sign, with letters or figures not less than three inches in height, on each cab door of every wrecker vehicle, displaying the name of the carrier and the city, town or location of its base of operation.

#### 6.5. Revolving light.

Every wrecker vehicle must be equipped with a revolving or strobe flashing lighted lamp visible under normal atmospheric conditions from a distance of five-hundred (500) feet. The lamp must be situated on top of the cab or other position, where it can be seen by those approaching the wrecker vehicle from any direction. (NOTE: Before installing the lamp required by this rule, the carrier must obtain an Emergency Vehicle Permit as required by Chapter 17C, Code of West Virginia, and Administrative Regulations promulgated thereunder by the Department of Motor Vehicles. West Virginia law also designates the color of the lens for an emergency vehicle light.)

#### 6.6. Highway cleanup.

Every wrecker vehicle must carry a broom and shovel and the driver and/or helper of the wrecker shall, when servicing a wreck leaving debris upon the highway, cleanup and remove that debris upon the highway that is susceptible to being removed by a broom and shovel.

#### 6.7. Special equipment.

Every wrecker vehicle subject to regulation under Section 6 shall be equipped with the following:

- a. Fire axe, or single-bitted axe and crowbar;

b. First aid kit complying with Title 49 CFR §393.96(c) as amended;

c. Fire extinguisher (charged);

d. Chock blocks; and

e. Safety flares and safety triangles.

6.8. Twenty-four (24) hour service.

A common carrier by motor vehicle of wrecked and/or disabled motor vehicles shall provide service twenty-four (24) hours per day, seven (7) days per week unless this requirement is expressly waived by the Commission.

6.9. Type of wrecker equipment.

Every motor carrier engaged in the business of towing of wrecked or disabled motor vehicles shall meet the following specifications, unless said specifications are expressly waived by the Commission:

a. One Ton wrecker.

1. A truck chassis with a manufacturer's rated capacity of at least ten thousand (10,000) pounds, gross vehicle weight. Mounted on the chassis must be a complete commercially manufactured crane and winch having a manufacturer's capacity rating of at least four (4) tons.

2. At least 100 feet (with a tolerance of twenty-five percent [25%]) of 3/8" diameter cable attached to the wrecker winch.

3. A tow sling which must be commercially manufactured and designed to prevent damage to vehicle.

Electric or hand crank winches do not satisfy the requirements of Rule 6.9.

b. Two (2) ton wrecker.

1. A truck chassis with a manufacturer's rated capacity of at least fifteen thousand (15,000) pounds, gross vehicle weight.

Mounted on the chassis must be a complete commercially manufactured crane and twin winch having a manufacture's capacity rating of at least ten (10) tons.

2. At least 100 feet (with a tolerance of twenty-five percent [25%]) of 7/16" diameter cable attached to each wrecker winch.

3. A tow sling which must be commercially manufactured and designed to prevent damage to vehicle.

c. Three (3) ton wrecker.

1. A truck chassis with a manufacture's rated capacity of at least twenty-four thousand (24,000) pounds, gross vehicle weight.

Mounted on the chassis must be a complete commercially manufactured crane and twin winch having a manufacture's capacity rating of at least twenty (20) tons.

2. At least 200 feet (with a tolerance of twenty twenty-five percent [25%]) of cable, on each winch, at least 9/16" in diameter.

3. Airbrakes designed to lock the rear wheels automatically upon failure, and to supply air to disabled vehicles.

4. A tow sling which must be commercially manufactured and designed to prevent damage to vehicle.

d. Slide back carrier (light).

1. A truck chassis with a manufacturer's rated capacity of at least ten thousand (10,000) pounds, gross vehicle weight with 102" CA dimension. Mounted on the chassis must be a complete commercially manufactured hydraulic operated slide back carrier with a manufacturer's capacity rating of at least four (4) tons and a minimum length of 17 feet.

2. One (1) hydraulic winch of not less than four (4) tons capacity.

3. A minimum of 30 feet of 3/8" diameter cable.

e. Slide back carrier (heavy).

1. A truck chassis with a manufacturer's rated capacity of at least fifteen thousand (15,000) pounds, gross vehicle weight with 102" CA dimension. Mounted on the chassis must be a complete commercially manufactured hydraulic operated slide back carrier with a manufacturer's rating of at least six (6) tons and a minimum length of 18 feet.

2. Fifty (50) feet of 3/8" diameter cable.

6.10. Storage places for towed vehicles.

a. No operating authority issued by the Commission to a carrier by motor vehicle engaged in the business of towing, hauling, or carrying wrecked or disabled vehicles, hereinafter

referred to in this Rule as "wrecker operator", shall in any way diminish the wrecker operator's responsibility to store its towed vehicles in accordance with Chapter 17, Article 23, of the West Virginia Code, and all lawful rules and regulations promulgated pursuant thereto. The fact that the Commission has jurisdiction over the towing of wrecked vehicles shall not in any way diminish the authority of the West Virginia Department of Highways, or of its Commissioner, to regulate any and all storage, be it temporary or permanent, of junked, dismantled, or wrecked motor vehicles, or parts thereof, which have been towed by wrecker operators.

b. No wrecker operator shall store, or deliver to a place of storage, any towed motor vehicle or part thereof unless the place of storage is either (a) a structure fully enclosed by walls and a roof, (b) a salvage yard duly licensed by the Commissioner of Highways, pursuant to §17-23-3 of the West Virginia Code, or (c) a facility which is completely enclosed by a fence, or other suitable barrier, which is both (i) reasonably capable of preventing the theft of the stored vehicles or parts thereof, and (ii) at least eight (8) feet in height.

c. A wrecker operator shall not store, or deliver to a place of storage, a motor vehicle, or part thereof, which is junked or dismantled or so wrecked that it is not reasonably capable of being returned to an operable condition, unless the place of storage is either (a) a structure fully enclosed by walls and a roof, (b) a salvage yard which has been both (i) issued a license by the Commissioner of Highways, pursuant to §17-13-3 of the West Virginia Code and (ii) issued a salvage-yard permit by the county planning commission or other appropriate county agency having jurisdiction over the place of storage, or (c) a facility which is operated as a place for the occasional, but temporary, storage of junked, dismantled, or totally wrecked motor vehicles, or parts thereof, in compliance with paragraph (d) of this Rule.

d. A wrecker operator may temporarily store a junked, dismantled, or totally wrecked motor vehicle, or part thereof, in a facility owned by that operator if (a) the facility is completely enclosed by a fence, or other suitable barrier, which is both (i) reasonably capable of preventing the theft of the stored vehicle or part thereof and (ii) at least eight (8) feet in height; (b) that vehicle, or part thereof, is both (i) stored at least twenty (20) feet from the paved section of the nearest street, road, or highway, and (ii) completely secluded from view from any and all nearby points off the premises, or completely covered by some form of opaque material; and (c) no more than three (3) such vehicles are stored at the same time at the same facility.

e. For the first thirty (30) days during which a wrecked vehicle is stored, the burden of demonstrating that the vehicle is not reasonably capable of being returned to an

operable condition shall be upon the Commission or its employees. When that initial thirty-day storage period has passed, the burden of proof shall shift to the wrecker operator, which must then either (a) demonstrate that the vehicle is reasonably capable of being returned to an operable condition or (b) ensure that the vehicle is stored at one of the places of storage described in paragraph (c) of this section.

#### 6.11. Wheel-lift or roll-back wrecker service.

Wheel-lift or roll-back wrecker service shall be provided by the carrier and charged to the customer only if either (1) the customer or a law enforcement agency has requested such service and has affixed a signature to the applicable invoice or (2) a recognized industry publication or the manufacturer of the customer's vehicle has specified such service to be necessary of the proper towing of the customer's vehicle. The specification of this type of service in publications of the American Automobile Association shall be sufficient for purposes of this rule.

### §150-9-7. Rules Applicable To Motor Carriers Transporting Solid Waste.

#### 7.1. Application of rules.

The rules in this section shall apply to all motor carriers engaged in the transportation by motor vehicle for hire of trash, rubbish, and garbage for customers over the public highways of this State. The term "trash, rubbish, and garbage" in this section shall be synonymous with the term "solid waste" herein and shall include any garbage, paper, litter, refuse, cans, and bottles; sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility; other discarded material; carcasses of any dead animal or any other offensive or unsightly matter; and solid, liquid, semisolid, or contained liquid or gaseous material resulting from industrial, commercial, mining, or community activities; but shall not include solid or dissolved material in sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article five, chapter twenty, of the West Virginia Code, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended.

#### 7.2. Conditions of service.

a. A common carrier of solid waste shall not be required to pick up trash, rubbish, or garbage unless it has been placed by the customer at curbside or roadside of a public highway or public access route serving the customer's premises. Provided, however, that a carrier shall make exceptions to this rule, upon prior request, for households solely occupied by

persons incapacitated by age or illness, or where circumstances make compliance impractical or unreasonable.

b. All carriers of solid waste shall maintain all motor vehicles used in the transportation of trash, rubbish, and garbage in a proper and sanitary operating condition.

c. All carriers of solid waste shall provide and maintain a regularly scheduled pickup service. Exceptions to the regularly scheduled pickup service shall be made only for reasons beyond the carrier's control. The carrier shall give each residential customer the schedule of pickup service to be provided.

d. A carrier of solid waste shall negotiate with a residential customer a separate and/or additional charge for the occasional pickup of junked, abandoned, or unwanted materials, other than the normal weekly accumulations of trash, rubbish, and garbage, or such matters or materials that cannot be reasonably or conveniently picked up during the regularly scheduled operation.

e. To allow its customers to communicate with it, each carrier of solid waste shall be reachable by telephone during normal business hours.

f. A carrier solid waste or its employees may, but are not required to, accept payment of bills along the operating route.

g. Each carrier of solid waste shall establish at least two payment options, including the United States Mail and a designated place convenient to a majority of the carrier's customer.

h. A carrier of solid waste shall not be required to pick up trash, rubbish, or garbage which is not in a suitable, waterproof container with a loaded weight of fifty (50) pounds or less. For purposes of this rule, the term "container" shall include plastic bags and garbage cans.

i. Without receiving additional compensation, a carrier of solid waste may refuse to pick up more trash, rubbish, or garbage than may reasonably be expected to have been generated by one customer or household. In order to invoke a specific limit, however, with respect to the collection of trash, rubbish, and garbage from a customer or household, however, the carrier must apply for and obtain the Commission's approval of a specific per-bag rate or charge applicable to situations in which the customer household generates a quantity or weight of trash, rubbish, and garbage that is in excess of said reasonable generation.

j. Carriers of solid waste are encouraged to apply for the Commission's approval of either optional or mandatory

usage-sensitive rates (for example, a per-bag rate). If a carrier's Commission-approved tariff includes a usage-sensitive rate as a customer option, the carrier may be authorized to charge a flat rate covering the weekly pickup of the contents of a certain number of containers per customer household; in such cases, the customers would be required to pay usage-sensitive rates for weekly accumulations above the established container limit.

k. A carrier of solid waste shall not be required to empty containers in which burning has taken place.

l. A carrier of solid waste shall be responsible for cleaning up any trash, rubbish, or garbage spilled by it when making pickups.

m. Nothing in this Rule shall be construed to require a carrier of solid waste to collect or transport materials that the landfill used by that carrier refuses to accept.

#### 7.3. Termination of service for nonpayment of bill.

a. Unless otherwise provided in the tariff of a carrier of solid waste, a bill is due at the end of the period of service for which a bill, coupon, or voucher, as the case may be, has been issued. Upon providing written notice, as hereinafter set forth in this Rule, a carrier of solid waste may terminate service to any customer who has failed to pay any one bill within thirty (30) days after the due date.

b. Notice of termination of service shall be in writing and shall be given by United States Mail at least seven days prior to the termination of service. Such notice shall specifically inform the customer that his service will terminate as of a specified date.

#### 7.4. Participation in recycling programs.

a. By January 1, 1994, every common carrier engaged in the transportation of solid waste shall participate in a recycling program applicable to at least twenty (20) percent of the waste stream generated by said carrier's customers.

b. By January 1, 2000, every such common carrier shall participate in a recycling program applicable to at least thirty (30) percent of the waste stream generated by said carrier's customers.

c. To recover additional estimated costs associated with the recycling program, any such carrier may apply for the approval of a surcharge to be applied to some or all of said carrier's customers.

7.5. Furnishing list of residential customers, or of nonsubscribing residents, to solid waste authorities.

Every common carrier of solid waste shall, on an annual basis, provide a listing of its residential customers, including names and service addresses or, in the alternative, a listing of the names and addresses of nonsubscribing residents in its service area, to each county or regional solid waste authority having jurisdiction in the carrier's operating territory. The express purpose of this Rule is to assist such authorities in enforcing §20-9-9 of the West Virginia Code and other applicable laws.

#### §150-9-8. Temporary Authority.

8.1. Temporary authority. -- The Commission will grant temporary authority upon an application for a permit to operate as a common or contract carrier where it appears that the granting of such authority will not operate to the detriment of any authorized common or contract carrier serving the territory and where the Commission has reason to believe that no common or contract carrier would protest the application for such authority.

#### 8.2. Publication of notice.

Except in cases of emergency, no temporary authority will be granted under the provisions of Rule 8.1 until notice of the application for such authority has been published not less than three (3) days prior to the granting of such authority in a newspaper of general circulation in the county, or counties, or operation. Such notice shall be published in the form as prescribed in Section 10, Form No. 40, of these rules.

#### 8.3. No presumption.

The granting of any authority under Rule 8.1 shall not create a presumption that corresponding permanent authority will be granted.

#### 8.4. Surrender of uniform vehicle identification cards.

In the event that an applicant receives authority under Rule 8.1 but corresponding permanent authority is denied following a hearing on the application, the applicant shall surrender all P.S.C. Uniform Vehicle Identifications Cards to the Commission and no refund of any fees or assessments, or portions thereof, shall be made.

#### 8.5. Required conditions for temporary authority-contract carrier.

The Commission will not grant temporary authority to operate as a contract carrier under Rule 8.1 unless it is established to the satisfaction of the Commission that the rates to be paid will not be less than those charged by common carriers for similar service; that the vehicles of the applicant will not replace

those of any authorized common or contract carrier; and that there is no common carrier service available for such transportation. The Commission may accept an affidavit signed by such proper person or official of a company that desires the services of the applicant. The affidavit shall be in the form and effect as prescribed under the provisions of Section 10, Form No. 33.

#### 8.6. Application not binding.

Acceptance of any application under the Rules and Regulations provided herein shall not be considered as binding upon the Commission to grant the authority for which application is made. Acceptance of an affidavit as prescribed in Rule 8.5 and as set forth by Section 10, Form No. 33, shall not be conclusive but the Commission may require such further evidence as it deems necessary.

#### 8.7. Fees and assessments.

The fees and assessments for carriers authorized under Rule 8.1 shall be the same as for carriers with permanent authority.

### **§150-9-9. Leased Equipment.**

#### 9.1. Leasing of equipment by motor carriers.

A motor carrier of passengers or property may acquire by lease the entire amount of equipment operated under its authority.

#### 9.2. Uniform vehicle identification cards.

Uniform Vehicle Identification Cards must be obtained in the name of the carrier under whose authority the equipment is to be operated.

#### 9.3. Construction of lease.

No lease of vehicles shall be construed to confer upon the lessee any right to operate under the authority held by the lessor.

#### 9.4. Certificate of lease.

No leased equipment may be operated by any common or contract carrier until a Certificate of Lease as prescribed in Section 10, Form No. 31, is filed with the Commission, and the lessee common or contract motor carrier obtains in its name a Uniform Vehicle Identification Card and/or pays the prescribed special annual assessment for the vehicle so leased.

#### 9.5. Control of leased equipment.

Equipment leased by a common or contract carrier from a supplier shall be under the exclusive direction and control of such carrier for the duration of the lease.

9.6. Single-source leasing.

A motor carrier of property may acquire, from a particular person or entity that is not regulated by the Commission, both equipment and a driver or drivers in a single transaction, through the use of a written lease, if and only if all of the following requirements are met:

(a) The lease agreement must recite, and the surrounding facts must reflect, that the leased equipment and driver are exclusively committed to the lessee's use for the term of the lease for any purpose consistent with the provisions of the lease;

(b) The lease agreement must provide, and the surrounding facts must reflect, that the lessee has exclusive dominion and control over the transportation service conducted by the leased equipment and driver during the term of the lease;

(c) The lessee must obtain public liability insurance or otherwise accept responsibility to the public for any injury caused in the course of performing the transportation service conducted by it with the leased equipment and driver during the term of the lease, in accordance with the Commission's rules and regulations governing insurance for motor carriers;

(d) The leased equipment must display appropriate identification showing operation by the lessee during the performance of such transportation (see Rule 2.12);

(e) The lessee must accept responsibility for, and bear the cost, of, the compliance of both said driver and said equipment with the Commission's safety rules and regulations during the term of the lease;

(f) The lessee must bear the risk of damage to cargo, subject to any right of action said lessee may have against the lessor for the latter's negligence;

(g) The term of the lease must be for a minimum period of thirty (30) days; and

(h) A copy of the lease must be carried in the leased equipment during the term of said lease, and must be presented, upon demand, to the Commission's Utility Inspector for inspection thereof.

§150-9-10. Forms.

The following forms are hereby adopted for use in the administration of motor carrier law. The Commission may accept papers in forms other than those prescribed if such papers contain the necessary information and are prepared with good workmanship. The forms prescribed hereby may be altered from time to time to permit the use of a different year or date designation or as otherwise may be deemed convenient or necessary:

(1) P.S.C. W.VA. M.C. Form No. 1 -- Application for and issuance of Uniform Vehicle Identification Cards for property carriers operating partially or wholly in intrastate commerce.

(2) P.S.C. W.VA. M.C. Form No. 2-B -- Application for and issuance of Uniform Vehicle Identification Stamps for property or passenger carriers operating in interstate and intrastate commerce.

(3) P.S.C. W.VA. M.C. Form No. 2-B -- Affidavit of a carrier in applying for Uniform Vehicle Identification Stamps when such carrier claims to be operating exclusively in interstate commerce in the transportation of commodities exempt from the jurisdiction of the Interstate Commerce Commission. (See Form No. 30)

(4) P.S.C. W.VA. M.C. Form No. 3 -- Application for an issuance of Uniform Vehicle Identification Cards for all exclusively intrastate passenger carriers.

(5) P.S.C. W.VA. M.C. Form No. 4 -- Form used by each carrier when paying the assessment fee required by §24A-6-6.

(6) P.S.C. W.VA. M.C. Form No. 5 -- Application for permit to operate as a contract carrier of property by motor vehicle.

(7) P.S.C. W.VA. M.C. Form No. 6 -- Application for a certificate of convenience and necessity to operate as a common carrier of property by motor vehicle.

(8) P.S.C. W.VA. M.C. Form No. 7 -- Application for a certificate of convenience and necessity to operate as a common carrier of passengers in taxicab service.

(9) P.S.C. W.VA. M.C. Form No. 8 -- Application for a certificate of convenience and necessity to operate as a common carrier of passengers by motor vehicle over regular routes, or between fixed termini.

(10) P.S.C. W.VA. M.C. Form No. 9 -- Application for authority to suspend operation as a common or contract carrier of passengers or property.

(11) P.S.C. W.VA. M.C. Form No. 10 --  
Application for authority to discontinue operation as a common or contract carrier of property or passengers, and for the cancellation of the certificate or permit.

(12) P.S.C. W.VA. M.C. Form No. 11 --  
Application for approval of the transfer and assignment of certificate(s) of convenience and necessity and/or permits [to be completed by the present holder of certificate(s) and/or permit(s)].

(13) P.S.C. W.VA. M.C. Form No. 11-A --  
Application for approval of the transfer and assignment of certificate(s) of convenience and necessity and/or permits [to be completed by the proposed holder of certificate(s) and/or permit(s)].

(14) P.S.C. W.VA. M.C. Form No. 17 -- Notice of cancellation of motor carrier policies of insurance.

(15) P.S.C. W.VA. M.C. Form No. 18 -- Notice of cancellation of motor carrier surety bonds.

(16) P.S.C. W.VA. M.C. Form No. 21 --  
Application for authority to self-insure.

(17) P.S.C. W.VA. M.C. Form No. 22-A --  
Endorsement for motor carrier policies of insurance for bodily injury liability and property damage liability.

(18) P.S.C. W.VA. M.C. Form No. 23 --  
Endorsement for motor common carrier policies of insurance for cargo liability.

(19) P.S.C. W.VA. M.C. Form No. 24-A --  
Certificate of insurance for motor carrier policies of insurance for bodily injury and property damage liability.

(20) P.S.C. W.VA. M.C. Form No. 25 --  
Certificate of insurance for motor common carrier policies of insurance for cargo liability.

(21) P.S.C. W.VA. M.C. Form No. 26 -- Claim for exemption of motor vehicles used in the transportation of U.S. mail or newspapers.

(22) P.S.C. W.VA. M.C. Form No. 30 -- Affidavit of a carrier in applying for Uniform Vehicle Identification Stamps when such carrier claims to be operating exclusively in interstate commerce in the transportation of commodities exempt from the jurisdiction of the Interstate Commerce Commission. (To be used in conjunction with Form No. 2-B).

- (23) P.S.C. W.VA. M.C. Form No. 31 --  
Certificate of lease.
- (24) P.S.C. W.VA. M.C. Form No. 33 -- Affidavit  
of contractor for temporary authority.
- (25) P.S.C. W.VA. M.C. Form No. 34 -- Tariffs of  
rates, rules, and regulations by common carriers of passengers.
- (26) P.S.C. W.VA. M.C. Form No. 35 -- Tariffs  
of rates, rules, and regulations by common carriers of property.
- (27) P.S.C. W.VA. M.C. Form No. 36 -- Time  
schedules of common carriers of passengers operating over regular  
routes.
- (28) P.S.C. W.VA. M.C. Form No. 39 -- Notice of  
time schedule changes for posting in buses.
- (29) P.S.C. W.VA. M.C. Form No. 40 -- Notice of  
application for temporary authority.
- (30) P.S.C. W.VA. M.C. Form No. 41 -- Claim for  
exemption of motor vehicles used in transportation of coal from  
mining operations to loading facilities.
- (31) P.S.C. W.VA. M.C. Form No. 42 -- Claim for  
exemption of motor vehicles used in transportation of  
agricultural or horticultural products, livestock, poultry, and  
dairy products.
- (32) P.S.C. W.VA. M.C. Form No. 44 -- Out of  
Service Vehicle Sticker.
- (33) P.S.C. W.VA. M.C. Form No. 45-A -- Motor  
Carrier bodily injury liability and property damage liability  
surety bond.
- (34) P.S.C. W.VA. M.C. Form No. 46 -- Motor  
common carrier cargo liability surety bond.
- (35) P.S.C. W.VA. M.C. Form No. 48 and 19-A  
(Small carrier) -- Application for change in rates.
- (36) P.S.C. W.VA. M.C. Form No. 49 -- Violation  
notice.
- (37) P.S.C. W.VA. M.C. Form No. 50 -- Uniform  
trash, rubbish and garbage tariff.
- (38) P.S.C. W.VA. M.C. Form No. 52 -- Taximeter  
Inspection Report.

(39) P.S.C. W.VA. M.C. Form No. 54 -- Transit Authority Exemption.

(40) P.S.C. W.VA. M.C. Form No. 55 -- Taxicab Driver's Daily Manifest.

(41) P.S.C. W.VA. M.C. Form No. 56 -- Citation and Complaint.

(42) P.S.C. W.VA. M.C. Form No. 57 -- Incident Report -- Hazardous Material.

(43) P.S.C. W. VA. M.C. Form No. 58 -- Driver/Vehicle Report.

(44) P.S.C. W.VA. M.C. Form No. 59 -- Carrier Safety/Compliance Review Form.

NOTE: P.S.C. W.VA. M.C. Forms Nos. 2, 7, 12, 12, 14, 15, 16, 19, 20, 22, 24, 27, 28, 29, 32, 37, 38, 43, 45, 47, 51, and 53 are obsolete and no longer in use.

**FORMS MAY BE OBTAINED FROM THE SECRETARY OF STATE'S OFFICE**

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules and Regulations for the Government of  
Motor Carriers and Private Commercial Carriers

Type of Rule: Legislative

Agency: Public Service Commission of West Virginia

Address: 201 Brooks Street  
P. O. Box 812  
Charleston, WV 25323

1. Effect of Proposed Rule:

These rules should have no effect on the costs of the Public Service Commission or of the State of West Virginia.

2. Objectives of these Rules:

The rules propose to implement uniform standards and procedures under Title 49 CFR Part 180 for the safety and integrity of intermediate bulk containers and cargo tanks in the motor carrier industry and under Title 49 CFR Part 382 to provide for testing and safety programs to reduce accidents due to use of controlled substances and/or alcohol by drivers of commercial motor vehicles.

3. Explanation of Overall Economic Impact of Proposed Rules:

A. Economic Impact on State Government:

These rules will not increase the costs of state government.

B. Economic Impact on Citizens/Public at Large:

No significant impact is anticipated on citizens or the public at large.

Date: December 27, 1994

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_  
Chairman, Public Service Commission of  
West Virginia

ABSTRACT OF PROMULGATION HISTORY

The United States Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety, has, over the years, established rules and regulations governing safe operation of commercial vehicles upon the nation's highways. These rules and regulations are modified from time to time to address particular issues raised by vehicle construction, operation and maintenance as well as driver focused problems.

The Federal rules are applied nationally to effectuate a uniform application of regulation and enforcement that is likewise uniform for purposes envisioned by the rules. Selectivity is to be discouraged among the several states' regulatory process.

# Public Service Commission

Richard E. Hitt, General Counsel



201 Brooks Street, P.O. Box 812  
Charleston, West Virginia 25323

Phone: (304) 340-0317  
FAX: (304) 340-0372

December 23, 1994

Judy Cooper, Director  
Administrative Law Division  
Secretary of State's Office  
Building 1, Suite 157K  
1900 Kanawha Blvd. E.  
Charleston, WV 25305-0771

Re: Emergency Motor Carrier Rulemaking

Dear Judy:

Enclosed is a rulemaking concerning our Motor Carrier rules. Federal regulations take effect January 1, 1995 which the Commission will be responsible for administering. The purpose of this rulemaking is to reference those federal regulations in our rules. It is my understanding that when these rules become final, we will send you a diskette that contains the reformatted rule. If you have any questions or concerns, please do not hesitate to contact either me or, in my absence, Meyishi Blair.

Sincerely,

A handwritten signature in cursive script that reads "Richard E. Hitt".

Richard E. Hitt  
General Counsel

REH/cbd  
Enclosure



KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

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help we can get)

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**STATE OF WEST VIRGINIA**

**SECRETARY OF STATE**

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

February 1, 1995

**NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE**

AGENCY: Public Service Commission

RULE: Amendments, Series 9 Rules and Regulations for the Government of Motor Carriers and Private Commercial Carriers

DATE FILED AS AN EMERGENCY RULE: December 27, 1994

**DECISION NO. 3-95**

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

OFFICE OF THE SECRETARY OF STATE

FEB 1 3 23 PM '95

FILED



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Secretary of State

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**SECRETARY OF STATE**

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**EMERGENCY RULE DECISION  
(ERD 3-95)**

AGENCY: Public Service Commission  
RULE: Amendments, Series 9, Rules and Regulations for the Government  
of Motor Carriers and Private Commercial Carriers  
FILED AS AN EMERGENCY RULE: December 27, 1994

- par. 1 The Public Service Commission (PSC) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 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. 3 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(b))].
- par. 4 (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. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The PSC filed this emergency rule with supporting documents with the Secretary of State December 27, 1994.

par. 7 It is the determination of the Secretary of State that the PSC has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §24-3-4 reads:

*The commission is hereby vested with power and authority, and it shall be its duty, to supervise and regulate contract carriers by motor vehicle for the purpose of promoting safety of their operation as transportation agencies upon the highways; to regulate and supervise the accounts and method of keeping the same; to prescribe such rules and regulations as it may deem necessary to carry out the provisions of this chapter; and to supervise and regulate contract carriers by motor vehicle in all matters affecting the relationship between such carriers and the traveling and shipping public.*

par. 9 It is the determination of the Secretary of State that the PSC has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (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. 11 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. 12 The facts and circumstances as presented by the PSC are as follows:

These rules implement a uniform nationwide rule for safety, maintenance and the integrity of intermediate bulk containers and cargo tanks under 49 CFR Part 180. Additionally, the rules promulgated by the United States Department of Transportation under 49 CFR Part 382 provide for controlled substance and alcohol use and testing for them in drivers of commercial motor vehicles. The Federal rules are to become effective July 1, 1995. The rules were not finalized until late in the year. The Transportation Division of the Public Service Commission was not apprised of the proposed rules until after August, 1994. Accordingly, it has become necessary to promulgate the rules on an emergency basis in order to substantially comply with the enforcement of the protocol therein.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "to meet a federal deadline."

par. 14 This decision shall be cited as Emergency Rule Decision 3-95 or ERD 3-95 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Public Service Commission, the Attorney General and the Legislative Rule Making Review Commission.

  
\_\_\_\_\_  
KEN HECHLER  
Secretary of State

Entered \_\_\_\_\_

OFFICE OF THE SECRETARY OF STATE

FEB 1 3 23 PM '95

FILED