

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

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FILED

JUN 28 PM 3:05

OFFICE OF THE SECRETARY OF STATE

NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

AGENCY: Public Service Commission of West Virginia TITLE NUMBER: 150
~~24-1~~

CITE AUTHORITY: West Virginia Code §§24-1-1, 24-1-7, 24-2-1, 24-2-2

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

§24-1-7

AMENDMENT TO AN EXISTING RULE: YES X, NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: XII

TITLE OF RULE BEING AMENDED: Rules and Regulations for the Government
of Intrastate Rail Transportation

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

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS August 27, 1990

B. J. H. H.

FILED

ABSTRACT OF PROMULGATION HISTORY JUN 26 PM 3:05

SECRET

This rulemaking amends the Commission's Rules and Regulations for the Government of Intrastate Rail Transportation to incorporate changes in federal statute and in decisions of the Interstate Commerce Commission (ICC) since the original adoption of said rules. This amendment is mandatory if the Commission is to retain its certification by the ICC to regulate intrastate rail rates, classifications, rules and practices pursuant to 49 U.S.C. §11501(b)(5)(A).

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHAPTER 24-1
SERIES XII

TITLE: Rules and Regulations for the Government of Intrastate
Rail Transportation

1.00 GENERAL

1.01 SCOPE

- (1) Public Law 96-448, "The Staggers Rail Act of 1980", requires the states which wish to retain jurisdiction over intrastate rail transportation to bring their standards and procedures for regulating railroad rates, classifications, rules and practices into conformity with the Interstate Commerce Act. It is the intent of Congress that railroad companies receive adequate revenues through regulatory encouragement of modal competition, rate flexibility, and relaxed rate reasonableness standards.
- (2) Mindful of this Commission's obligations to safeguard the public's interests, it shall henceforth be the policy of the Public Service Commission of West Virginia to regulate railroad matters in a manner consistent with the standards and procedures set forth by Congress in the Interstate Commerce Act. Moreover, where state and federal standards and procedures differ, federal standards will control, particularly those set forth in the decision of the Interstate Commerce Commission in State Intrastate Rail Rate Authority, 5 I.C.C.2d 680 (1989).

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FILED

JUN 28 PM 3:05

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA, in the City of Charleston on the 28th day of June 1990.

GENERAL ORDER NO. 208.4

IN THE MATTER OF

Rules and Regulations for the
Government of Intrastate Rail
Transportation.

COMMISSION ORDER
PROMULGATING AND ADOPTING FINAL RULE

Promulgation of this rule is necessitated by Section 214 of the Harley O. Staggers Rail Act of 1980, P.L. 96-488, 94 Stat. 1985 (1980), and decisions of the United States Interstate Commerce Commission (ICC), particularly the decisions in Ex Parte No. 388A - State Intrastate Rail Rate Authority - Pub. L. No. 96-488 - Recertification Process. On July 12, 1989 in the aforementioned proceeding the ICC finally adopted procedures for recertification of states to regulate intrastate rail rates, classifications, rules and practices pursuant to 49 U.S.C. §11501(b)(5)(A). Initial five-year certification of this Commission's rules expired on March 25, 1989, but the ICC granted unto the Commission provisional certification pending adoption of final recertification procedures, requiring West Virginia to file its submission for recertification no later than November 17, 1989. This Commission's initial submission was timely filed. The provisional certification was subsequently extended to allow an additional submission. Accordingly, on May 18, 1990, this proceeding was commenced upon the Commission's own motion to accommodate the additional submission.

Also on May 18, 1990, the Commission's Executive Secretary filed copies of the proposed rule, together with Notice of a Comment Period on a Proposed Rule, as well as the Statement of Authority and Fiscal Note, in the State Register in the Office of the Secretary of State, pursuant to West Virginia Code §24-1-7 and §§29A-3-4, 5 and 9. The Executive Secretary further served copies of that order and proposed rule upon all intrastate rail transportation companies subject to the Commission's jurisdiction and upon all other parties of interest by First Class United States Mail. The Commission's order provided that it would receive public comment upon the merits of the proposed rule from any interested party, in writing, on or before June 18, 1990, at 5:00 p.m. As of that date and time the Commission received no public comment upon the merits of its proposed rule.

FINDINGS OF FACT

1. In Ex Parte 388A - State Intrastate Rail Rate Authority, the ICC finally adopted procedures for recertification of states to

regulate intrastate rail rates, classifications, rules and practices pursuant to 49 U.S.C. §11501(b)(5)(A), and granted provisional recertification of this Commission's existing rules pending its submission of additional information.

2. By this proceeding the Commission proposes to adopt specified changes to the rule (attached) in order to reflect statutory changes and ICC decisions since initial certification, and in order to meet the recertification requirements.

3. On May 18, 1990, the Commission caused said rule to be filed in the State Register, gave actual notice to affected carriers, and provided for receipt of written comments on said rule until June 18, 1990, at 5:00 p.m. in the Office of the Executive Secretary.

4. As of said date and time the Commission received no written comment on said rule.

CONCLUSIONS OF LAW

1. After carefully reviewing the proposed final rule, and considering that no public comment was filed thereto subsequent to public notice thereof, the Commission is of the opinion and concludes, as a matter of law, that this rule is reasonable, in the public interest, and should be adopted as the final rule of the Commission.

By virtue of §24-1-7 of the West Virginia Code, final rules adopted by the Commission may not become effective sooner than sixty (60) days after their adoption.

ORDER

IT IS, THEREFORE, ORDERED that:

1. The rule attached hereto be, and hereby is, adopted as a final rule of the Commission, effective August 27, 1990.

It is further ordered that the Executive Secretary of the Commission shall serve two copies of this finally adopted rule with the Office of the Secretary of State for inclusion in the State Register, as required by §29A-1-3(b) of the West Virginia Code.

A True Copy, Teste:



Pamela J. Hicks
Acting Secretary

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA, in the City of Charleston on the 28th day of June 1990.

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Pamela J. Hicks
Acting Secretary

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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§24-1-7

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IF YES, SERIES NUMBER OF RULE BEING AMENDED: XII

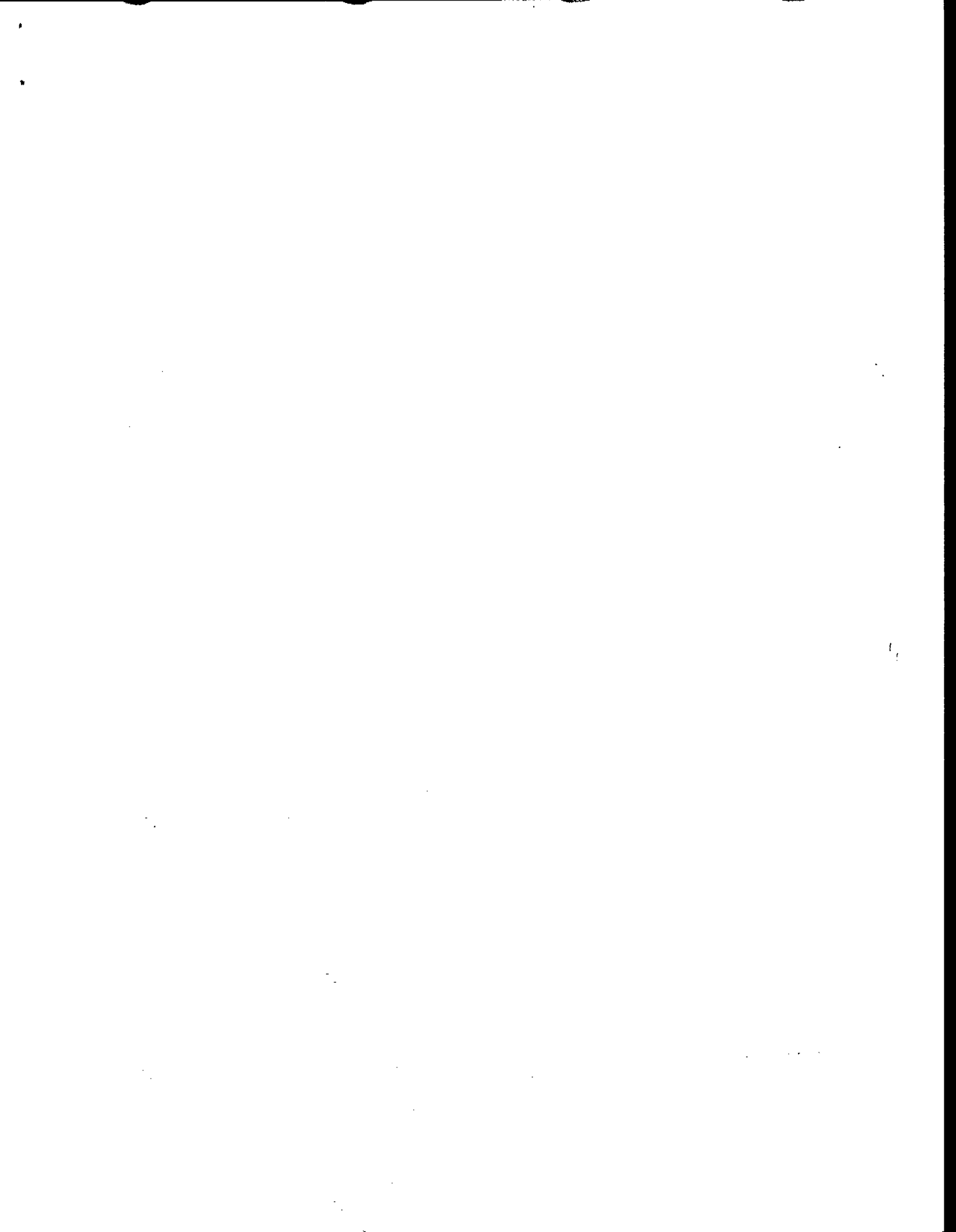
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ESD/HLL



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