

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #7

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**FILED**

Jul 20 1 51 PM '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 §§ 24-2-1, 24-2-2, 24A-5-5, 24A-6B-1  
and Public Law No. 101-615

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 23

TITLE OF RULE BEING FILED AS AN EMERGENCY: Rules and Regulations  
Implementing a Uniform Registration and Permitting Program for Motor  
Carriers Transporting Hazardous Materials.

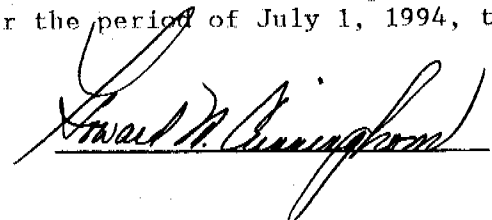
THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

These rules implement a uniform registration and permitting program for motor carriers of hazardous materials, as authorized in the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA). As a result of that Act and the recommendations of a working group assembled by the Secretary of the U.S. Department of Transportation, West Virginia was chosen as one of four states to implement this program as a pilot project for the remaining states. The initial registration year for the program began July 1, 1994. However, the rules for the program were not finalized by the US DOT until November 17, 1993. State authorization for the Commission's participation was passed on March 10, 1994, to become effective 90 days from passage. Finally, the final draft recommendations from the working group were not received until May 13, 1994.

Accordingly, it has become necessary to promulgate these rules on an emergency basis in order to substantially comply with the uniform procedures established under the program, one of which is to implement the initial registration year for the period of July 1, 1994, to June 30, 1995.

Use Additional Sheets If Necessary.



## FISCAL NOTE FOR PROPOSED RULES

**Rule Title:** Rules and Regulations Implementing a Uniform Registration and Permitting Program for Motor Carriers Transporting Hazardous Materials.

**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.

These rules will likely increase revenues collected by the agency by an unknown amount.

### **2. Explanation of above estimates:**

The registration and permitting program established by these rules will be implemented with existing agency staff and resources, such as a base state motor carrier insurance registration program which is presently administered by the Commission.

It is anticipated that the first year of this program will produce new revenues to the agency, since it requires companies registering thereunder to pay an annual fee of \$50.

In subsequent years, if the program is expanded on a national basis, carriers will also be required to pay an apportioned vehicle fee of up to \$50 per vehicle.

At this time it is unknown how many carriers and vehicles may be affected by this program. However, the Commission's staff has estimated that first year revenues from the four-state pilot project may approach \$100,000.

### **3. Objectives of these rules:**

These rules propose to implement uniform standards and procedures for the identification, registration and permitting of motor carriers transporting hazardous materials in and through West Virginia.

4. **Explanation of Overall Economic Impact of Proposed Rules:**

A. **Economic Impact on State Government:**

While these rules will not increase the costs of state government, depending upon the number of hazardous materials carriers operating in West Virginia they could produce additional revenues in the first year of approximately \$100,000.

B. **Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:**

No economic impact on political subdivisions or specific groups of citizens is anticipated. The new registration program will require each motor carrier company transporting hazardous materials in West Virginia to pay a \$50 registration fee. If the program is expanded beyond the pilot project (beyond June 30, 1995) carriers will also have to pay an apportioned vehicle fee, depending on the percentage of hazardous materials activity, of up to \$50 per vehicle.

C. **Economic Impact on Citizens/Public at Large:**

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

Date: July 20, 1994

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_

ABSTRACT OF PROMULGATION HISTORY

In 1990 the Congress of the United States substantially amended 49 U.S.C. App. 1801 et seq. by setting forth standards by which states can elect to participate in a uniform program to register and permit motor carriers transporting hazardous materials.

Section 22 of this new law, Public Law No. 101-615, the Hazardous Materials Uniform Safety Act of 1990 (HMTUSA), empowered the Secretary of the United States Department of Transportation (US DOT) to promulgate regulations, based on recommendations of a working group of state and local officials, industry members and environmentalists (the Alliance). Based on Alliance recommendations on November 17, 1993, US DOT promulgated regulations and established a four-state pilot program to test uniform procedures. West Virginia was chosen as one of the four states to implement the pilot program, the first registration year for which is from July 1, 1994, through June 30, 1995.

In its Regular Session in 1994, the West Virginia Legislature authorized the Public Service Commission to implement this new program by promulgating appropriate rules. West Virginia Code § 24A-6B-1.

On July 20, 1994, in M.C. General Order No. 68, the Commission promulgated emergency rules to implement a uniform registration and permitting program for motor carriers transporting hazardous materials. Written comments on the emergency rules may be submitted to the Commission's Executive Secretary by 5:00 p.m., August 22, 1994.

**TITLE 150  
LEGISLATIVE RULE  
PUBLIC SERVICE COMMISSION**

**SERIES 23  
RULES AND REGULATIONS IMPLEMENTING  
A UNIFORM REGISTRATION AND PERMITTING PROGRAM  
FOR MOTOR CARRIERS TRANSPORTING HAZARDOUS MATERIALS**

**§150-23-1. General.**

1.1. Scope -- Section 22 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) mandates that states wishing to register and permit motor carriers which transport hazardous materials must do so using uniform procedures and forms.

This Commission is obligated to safeguard the public interest. Therefore it shall henceforth be the policy of the Public Service Commission of West Virginia to implement a uniform registration and permit program for hazardous materials for motor carriers operating within the borders of this state. The registration and permit program shall be consistent with the uniform procedures and forms set forth by the Secretary, United States Department of Transportation. The specific uniformity requirements for the program will also be established by the Secretary of Transportation through a federal rulemaking process, through an Alliance of affected states and interests, and through a governing board.

The overall objective of the program is the promotion of safety in the transportation of hazardous materials in West Virginia and other states. The uniform procedures established in this program seek to enhance public health and safety by increasing compliance with state registration and permitting requirements for the highway transportation of hazardous materials.

1.2. Authority -- West Virginia Code 24A-6B-1; and Section 22 of the Hazardous Materials Transportation Uniform Safety Act of 1990.

1.3. Filing Date -- July 20, 1994

1.4. Effective Date --

**§150-23-2. Definitions.**

2.1. "Alliance" means the working group of state, local, industry and environmental officials established by the Secretary, U.S. Department of Transportation that developed recommendations for the uniform procedures and forms that would be included in the federal regulations.

2.2. "Base State" means the state in which a motor carrier must obtain a registration and/or permit.

2.3. "Base State Agreement" means the agreement among participating jurisdictions electing to register or to permit motor carriers and/or shippers of hazardous materials.

2.4. "Commission" means the West Virginia Public Service Commission.

2.5. "Consumer Complaints" means alleged motor carrier violations made by the public which may trigger an investigation of a motor carrier.

2.6. "Cross-matching of Data" means comparison of available data from two or more independent sources (e.g. Motor Carrier Safety Assistance Program inspections and hazardous material motor carrier registrations).

2.7. "Desk Audit" means review of a company's records sent by the company to the Commission generally triggered by a suspected compliance violation.

2.8. "Hazardous Materials" means:

2.8.1. hazardous materials of a type and amount that requires the transport vehicle to be placarded pursuant to 49 C.F.R. 172;

2.8.2. "hazardous substances" and/or "marine pollutants" when transported in bulk packaging as defined in 49 C.F.R. 171.8; or

2.8.3. hazardous waste of a type and amount that requires the shipment to be accompanied by a Uniform Hazardous Waste Manifest contained in 40 C.F.R. 262, including "state designated hazardous wastes." State designated hazardous wastes are additional hazardous wastes that have been officially determined by states that have been authorized by the United States Environmental Protection Agency to manage Resource Conservation Recovery Act (RCRA) programs within their respective states.

2.9. "Inspection" means physical examination and certification of specific vehicles, tanks, containers, cargo, and/or drivers.

2.10. "Motor Carrier" means a person that owns or operates one or more motor vehicles that transport hazardous materials.

2.11. "On-Site Audit" means an on-site examination of a company's records to verify information on which a permit is based, and to determine compliance with the state uniform program requirements.

2.12. "On-Site Review" means an on-site examination of a carrier's or shipper's operation, including physical inspections and review of the company's operating systems.

2.13. "Participating State" means a state or a political subdivision that has elected to participate in the uniform program and has ratified this election by becoming a signatory to the base state agreement.

2.14. "Person" means all entities including, but not limited to, natural persons, sole proprietorships, corporations, partnerships, and federal, state and local government agencies.

2.15. "Principal Place of Business" means the state in which a motor carrier maintains its central records relating to the transportation of hazardous materials; or the state in which the motor carriers has the plurality of its mileage.

2.16. "Registration Year" means a period of 12 consecutive months, beginning on July 1 of a particular year and ending on June 30 of the following year during which a registration issued pursuant to the uniform program remains valid.

2.17. "Reports" means periodic reports that describe the motor carrier's activities.

2.18. "Roadside Inspections" means inspection of vehicles and drivers while en-route, primarily at weigh stations and ports of entry.

2.19. "Shipper" means a person that causes hazardous materials to be transported.

2.20. "Spot Checks" means inspection of vehicles and drivers by law enforcement officers based on probable cause or statutory authority.

2.21. "State" means one of the 50 states or the District of Columbia.

2.22. "Subcontractor" means a person or entity with whom a transporter of hazardous materials contracts to perform a service related to the transport of hazardous materials.

2.23. "Terminal" means a facility owned, leased or operated by the applicant where:

2.23.1. the applicant's motor vehicles used to carry hazardous materials are loaded, unloaded or dispatched incidental to transportation;

2.23.2. the applicant's motor vehicles used to carry hazardous materials are cleaned, maintained and inspected;

2.23.3. the applicant's motor vehicles used to carry hazardous materials are fueled or repowered;

2.23.4. the applicant stores hazardous materials incidental to transportation; or

2.23.5. the applicant maintains records concerning vehicle maintenance files, and hours-of-service records related to the transportation of hazardous materials.

2.24. "Uniform Application" means the uniform motor carrier registration and permit application form established under the uniform program.

2.25. "Uniform program" means the program developed by the Alliance for the uniform state registration and permitting of hazardous materials transportation.

#### **§150-23-3. Preemption.**

This program will preempt and supersede any hazardous material or hazardous waste transportation registration or permitting program administered or enforced by any state agency, city, county, or other political subdivision of the state.

#### **§150-23-4. Implementation.**

On the effective date of these rules, the Commission shall implement the uniform registration and permitting program in accordance with the regulations defined in the Alliance report submitted to the Secretary of the U.S. Department of Transportation. All persons who transport hazardous materials into or through West Virginia shall apply for a uniform hazardous materials registration and permit from the Commission.

A registration or permit issued by the Commission pursuant to the uniform program shall be accepted as valid, and legally enforceable, in all participating jurisdictions; provided that if a court of competent jurisdiction should determine that a state, political subdivision, or Indian tribe may not enjoin or otherwise restrain the operation of an unqualified hazardous materials motor carrier in their state, the provision for reciprocity established in this section shall be deemed non-reversible and null and void. If this should occur, non-base states shall not be required to honor permits issued by base states.

#### **§150-23-5. Base state agreements.**

The Commission may enter into agreements with federal agencies, a national repository, or other participating states as necessary to allow the reciprocal registration and permitting of carriers transporting hazardous material or hazardous waste. The agreements may include procedures for determining a base state, the collection and distribution of registration fees, dispute

resolution, the exchange of information for reporting and enforcement purposes, and other provisions necessary to fully implement, administer, and enforce the uniform program.

**§150-23-6. Base state selection.**

6.1. The base state for a motor carrier covered by this section shall be determined in the following manner:

6.1.1. If a motor carrier does not operate in a state that is a participating jurisdiction, this section does not apply and the motor carrier need not identify a base state for purposes of the uniform program.

6.1.2. If a motor carrier operates only in a state or states that are participating jurisdictions but require only a registration, the motor carrier's base state shall be:

6.1.2.a. the state that is the motor carrier's principal place of business, if such state is a signatory to the base state agreement, or

6.1.2.b. if the state that is the motor carrier's principal place of business is not a signatory to the base state agreement, the state that is a signatory to the agreement in which the motor carrier records a plurality of total miles traveled.

6.2. If a motor carrier operates in one or more states that are participating jurisdictions and require a national permit, the motor carrier's base state shall be:

6.2.1. the state that is the motor carrier's principal place of business, if such a state is a participating jurisdiction and requires the national permit; or

6.2.2. if the state that is the motor carrier's principal place of business is not a signatory to the base state agreement or does not require the national permit, the state that is a signatory and requires the national permit in which the motor carrier records a plurality of the total miles traveled.

6.3. If a motor carrier operates in one or more states that are participating jurisdictions and that require the part III business disclosure for hazardous waste carriers, the motor carrier's base state shall be identified in the manner set forth above. If the base state does not require the part III business disclosure, such jurisdiction shall, for purposes of conducting the business disclosure investigation, subcontract with the jurisdiction that:

6.3.1. is a participating jurisdiction;

6.3.2. requires the part III business disclosure; and

6.3.3. is the participating jurisdiction in which the motor carrier records a plurality of total miles traveled.

6.4. A motor carrier may request that the Alliance Governing Board approve a participating jurisdiction as the base state other than that identified by the method set forth in this section, if, and only if, the following criteria are satisfied:

6.4.1. such request is not based on an attempt by the motor carrier to circumvent any requirement of this section or avoid enforcement of this section by its current base state or any other signatory to the agreement;

6.4.2. approval of the request will improve administration of this section; and

6.4.3. the Alliance Governing Board consults with the jurisdiction that would otherwise be the base state and such jurisdiction concurs with the motor carrier's request.

6.5. Once a base state has been identified in accordance with the method in this subsection, the jurisdiction identified as the base state shall accept all the responsibilities of a base state for such motor carrier.

#### **§150-23-7. Single trip permits.**

The Commission shall not issue single-trip permits that authorize or imply any authority to transport hazardous materials under this program. A motor carrier will not have the option of circumventing the full permit application process through the issuance of single trip permits.

#### **§150-23-8. Owner/operator vehicles.**

8.1. A permitted motor carrier that transports hazardous materials under its permit using owner/operator vehicles is responsible for the operations of such vehicles and drivers, including all assurances and certifications contained in the uniform permit, as if such vehicles were owned and operated by the permitted motor carrier and the driver was employed by the motor carrier, and including providing information on the owner/operator that would be required in the part III business disclosure for hazardous waste transporters. Violations of hazardous materials transportation requirements that result from the operations of owner/operator vehicles while operating under a motor carrier's permit authority shall be viewed as violations by the permitted motor carrier and shall be reported to the base state at the time of future application or renewal of the national permit.

8.2. This section does not apply to instances in which a motor carrier subcontracts with a second motor carrier for the transportation of hazardous materials. In such a case, the subcontractor must have its own registration and/or permit

pursuant to the uniform program. For purposes of this subsection, a subcontractor shall be a person or entity with whom a transporter of hazardous materials contracts to perform a service related to the transport of hazardous materials.

**§150-23-9. Uniform program application.**

The uniform application form must be filled out in its entirety by the motor carrier and returned to the Commission for processing. Processing shall not begin until the application is complete. The Commission shall use uniform application forms which are acceptable to the Alliance and the Secretary.

**§150-23-10. Hazardous materials registration - Part I.**

10.1. Applicability.

No person may transport by motor carrier any hazardous material in any participating jurisdiction requiring registration of hazardous materials transportation unless that person maintains a valid registration pursuant to this uniform program.

10.2. Uniform Application.

The registration section is part I of the uniform application. A motor carrier shall register in its base state.

10.3. Registration year.

The registration period begins on July 1 of each year. A registration shall remain valid for one year from the date of issuance.

10.4. Fees not prorated.

Fees collected under this system will not be prorated for partial year operations.

10.5. Fee structure.

The registration fee structure will be based on a company's apportioned per vehicle (power unit) hazardous material transportation activity within each state. The level of hazardous material transportation activity within a state shall be based on two factors: the percent of activity in the state and the percentage of the motor carrier's total activity that involves the transport of hazardous materials.

**§150-23-11. Apportioned vehicle registration fees.**

11.1. Initial year waiver of registration fee.

In the year beginning July 1, 1994 and ending June 30, 1995 the apportioned registration fee for West Virginia and Ohio will be waived.

## 11.2. Calculation Formula.

Beginning July 1, 1995, an apportioned vehicle registration fee shall be paid by affected carriers. The fee shall be calculated by multiplying the percentage of West Virginia transportation by the percentage of hazardous material transportation multiplied by the total number of vehicles the carrier operates multiplied by a per vehicle fee of \$50.

## 11.3. State percentage.

A carrier shall determine its percentage of West Virginia transportation by dividing the number of miles it traveled in West Virginia under the international registration plan during the previous year by the number of miles it traveled nationwide under the international registration plan during the previous year. If a carrier operates only in West Virginia, it must use 100 percent of the miles traveled as its percentage of West Virginia transportation. If a carrier does not register its vehicles through the international registration plan, it must calculate the number of miles traveled in the manner required under the international registration plan. A carrier must add all fleet miles together.

## 11.4. Hazardous material percentage.

A carrier shall determine its percentage of hazardous material transportation by using a method based on general percentage ranges or actual percentages. A carrier shall determine its percentage of hazardous material transportation as follows:

11.4.1. For less-than-truckload shipments, it must divide the weight of the carrier's hazardous material and hazardous waste shipments transported during the previous year by the total weight of all shipments transported during the previous year.

11.4.2. For truckload shipments, it must divide the number of shipments transported during the previous year for which placarding, marking, or manifesting, was required by the Code of Federal Regulations, title 49, part 172, by the total number of all shipments transported during the previous year.

11.4.3. A carrier that transports both truckload and less-than-truckload shipments of hazardous material or hazardous waste must determine its percentage of hazardous material transportation by calculating the percentage of business that is hazardous material transportation on a proportional basis with the percentage of business that is not hazardous material transportation.

11.4.4. A carrier may use data from its most recent complete fiscal year or the most recent complete calendar year in

calculating the percentages required in this subdivision for transportation conducted during the previous year.

11.5. Processing fee.

Beginning July 1, 1994, each motor carrier will be charged a processing fee of \$50.00 for processing the motor carrier's registration. The Commission will process the registration form from each carrier for which it serves as the base state.

11.6. Fee collection and distribution for participating states.

The Commission will collect registration fees for West Virginia and all states which are participating in the uniform registration program and in which the motor carrier transports hazardous materials. The Commission will distribute fees to the appropriate states.

11.7. Audits.

The Commission will conduct the necessary audits to ensure that the motor carrier is accurately reporting its hazardous materials transportation activity.

**§150-23-12. Hazardous materials permit - Part II**

12.1. Uniform application.

The permit section for hazardous materials is part II of the uniform application.

12.2. Base state.

A motor carrier shall apply to its base state for a uniform permit. The uniform permit confers on a motor carrier the authority to transport hazardous materials in all states that participate in the uniform program.

12.3. Permit validation and recertification.

The uniform permit shall be valid for a period of three years or until a motor carrier fails to renew its registration, whichever occurs first. At the beginning of the second and third year of the permit period, the motor carrier, as part of the annual registration process, shall certify that its current operations are not substantially different from its operations on the date it obtained its permit. A motor carrier shall recertify its compliance with applicable laws and regulations in part II of the uniform application when it renews its annual registration. Failure to comply with the certifications in part II is cause for denial, suspension or revocation of the permit. If there is a substantial change in the motor carrier's operations during the permitting period, the Commission will review the changes and the motor carrier will be given due process to obtain a permit.

## 12.4. Permit processing.

Upon receipt of a permit application, the Commission shall process the application for the permit for each motor carrier for which it serves as the base state. If it is deemed necessary, the Commission may conduct any pre-permitting investigation or audit. When processing is complete, the Commission will issue a credential form to the motor carrier. A copy of the credential form must be kept inside the cab of each vehicle that transports hazardous materials.

## 12.5. Application certification.

In the permit application the motor carrier must certify that each vehicle and driver complies with the vehicle-specific and driver-specific requirements.

## 12.6. Certification compliance.

The Commission may conduct additional investigations into a motor carrier's operation prior to issuing a permit to determine that the motor carrier has, in fact, complied with the certifications in the application.

## 12.7. Failure to comply.

Failure of a motor carrier to comply with the certifications in the application is grounds for denying, suspending, or revoking a permit. Proprietary information related to commercial relationships, routes, and specific products and financial information gathered on individual motor carriers as part of the permitting process shall be confidential and may only be used by the Commission, other states in which the motor carrier operates, and the national repository for purposes of enforcing the permitting requirements.

**§150-23-13. Hazardous waste permit - Part III.**

## 13.1. Uniform application.

The hazardous waste permit is part III of the uniform application.

## 13.2. Applicable quantity.

All quantities of hazardous waste that require the use of the federal uniform hazardous waste manifest are subject to the uniform state program. Carriers applying for hazardous waste permits must complete part III of the uniform application.

## 13.3. Affected carriers.

The Commission shall not require motor carriers to apply for the part III permit of the uniform program, which applies only to motor carriers that transport hazardous waste, to conduct

operations exclusively in West Virginia. However, if interstate motor carriers whose registration state is West Virginia transport hazardous waste into or through states that require the part III permit, then they will be required to apply for the part III permit from the Commission.

#### 13.4. Background investigations.

The Commission may contract with outside vendors or other participating states to provide the service of conducting the required part III permit background investigations for the Commission.

### §150-23-14. Certification of information - Part IV

#### 14.1. Uniform application.

Part IV is a section that certifies that the motor carrier provided accurate information in filling out the uniform application. The applicant must complete part IV before the uniform application will be processed by the Commission.

#### 14.2. Credential copies.

If the motor carrier has complied with all the program requirements, the base state shall issue the motor carrier a credential sheet as evidence of the registration and permit. The motor carrier shall maintain a copy of the credential form in each vehicle it uses to transport a hazardous material or hazardous waste, and shall display the company registration number on shipping papers for all hazardous material loads of a type or quantity that requires the vehicle to be placarded in accordance with the code of federal regulations, title 49, part 172.

### §150-23-15. Grants and revenues.

#### 15.1. Funding.

The Commission may accept and disburse federal or state funds available for the purpose of implementing, administering, and enforcing the uniform program.

#### 15.2. National repository surcharge.

The Commission may include a surcharge on registration fees that is earmarked for maintenance of a national repository.

#### 15.3. Revenue dedication.

Revenues generated through registration and processing fees shall be dedicated to purposes that enhance the safe transportation of hazardous materials as mandated in HMTUSA.

**§150-23-16. Suspension, revocation, and denial.**

The Commission may suspend or revoke a registration and permit issued under this section, or order the suspension of the transportation of hazardous material or hazardous waste in West Virginia by a carrier who has obtained a notice of registration and permit from another participating state under the uniform program if the Commission determines that such carrier made a materially false or misleading statement in the uniform application, or that such carrier's conduct constitutes a serious or repeated violation of statutes or rules governing the transportation of hazardous material or hazardous waste. The Commission may not issue a notice of registration and permit to a carrier if the Commission determines that such carrier's conduct would constitute grounds for suspension or revocation under this subdivision. A motor carrier who wishes to contest a denial, suspension, or revocation is entitled to reasonable notice and an opportunity to be heard.

**§150-23-17. Enforcement.**

The Commission is authorized to inspect or examine any commercial motor vehicle or facility operated by a motor carrier who transports hazardous material or hazardous waste in this state, and may require the production of papers, books, records, documents, or other evidentiary material necessary to determine if a motor carrier is accurately reporting its hazardous material transportation operations and is otherwise complying with the uniform program. The Commission may use subpoenas, depositions and other civil discovery powers authorized by the laws of West Virginia. The Commission may also conduct investigations and audits necessary to determine if a carrier is entitled to a permit or to make suspension or revocation determinations.

17.1. Penalties for violation of hazardous materials transportation requirements, including but not limited to those established pursuant to the uniform program, shall be the penalties established by the law of the participating jurisdiction in which the violation occurs. Nothing in this part shall affect the continuing force of any penalty imposed by a participating jurisdiction for violation of law prior to the effective date of this part.

17.2. A participating jurisdiction that is not the base state for a motor carrier may take any appropriate action against a motor carrier authorized under the jurisdiction's law, up to and including suspension of the motor carrier's authority to transport hazardous materials within the jurisdiction.

17.3. A participating jurisdiction that has taken enforcement action against a motor carrier may determine the length of time that any such penalty applies and the conditions that must be satisfied prior to its removal.

17.4. For cause, the base state may suspend a registration or permit issued pursuant to the uniform program and may establish the conditions that must be satisfied prior to the removal of any such suspension.

17.5. For cause, the base state may revoke a registration or permit issued pursuant to the uniform program. If a registration or permit is revoked, before again transporting hazardous materials, the motor carrier must reapply for a new registration or permit pursuant to the forms and procedures of the uniform program.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

A. RENEE COE  
Deputy Secretary of State

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Executive Assistant

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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

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(Plus all the volunteer  
help we can get)

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August 17, 1994

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

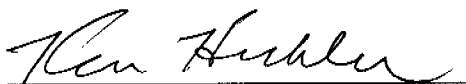
AGENCY: Public Service Commission

RULE: New Rule, Series 23, Rules & Regulations Implementing a Uniform Registration and Permitting Program for Motor Carriers Transporting Hazardous Materials

DATE FILED AS AN EMERGENCY RULE: July 20, 1994

DECISION NO. 12-94

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 WEST VIRGINIA  
SECRETARY OF STATE

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KEN HECHLER  
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Deputy Secretary of State

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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

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(Plus all the volunteer  
help we can get)

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### DECISION

### EMERGENCY RULE DECISION (ERD 12-94)

AGENCY: Public Service Commission  
RULE: New Rule, Series 23, Rules & Regulations Implementing a Uniform  
Registration & Permitting Program for Motor Carriers Transporting  
Hazardous Materials

FILED AS AN EMERGENCY RULE: July 20, 1994

- par. 1 The Public Service Commission (PSC) has filed the above new 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 July 20, 1994 and is not required to file with the LRMRC.

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 §24A-6B-1 reads in part:

*(a) The commission shall have power and authority to promulgate rules implementing a hazardous materials transportation registration and permitting program for operators of motor vehicles transporting hazardous materials upon or over the public highways within the borders of this state.*

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 registration and permitting program for motor carriers of hazardous materials, as authorized in the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA). As a result of that Act and the recommendations of a working group assembled by the Secretary of the U.S. Department of Transportation, WV was chosen as one of 4 states to implement this program as a pilot project for the remaining states. The initial registration year for the program began July 1, 1994. However the rules for the program were not finalized by the US DOT until November 17, 1993. State authorization for the Commission's participation was passed on March 10, 1994, to become effective 90 days from passage. Finally, the final draft recommendations from the working group were not received until May 13, 1994.

Accordingly, it has become necessary to promulgate these rules on an emergency basis in order to substantially comply with the uniform procedures established

under the program, one of which is to implement the initial registration year for the period of July 1, 1994, to June 30, 1995.

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). . . "time limitation".

par. 14 This decision shall be cited as Emergency Rule Decision 12-94 or ERD 12-94 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

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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