

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Public Service Commission of WV TITLE NUMBER: 150 C.S.R.

RULE TYPE: Emergency Legislation CITE AUTHORITY: Senate Bill No. 583

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 PROPOSED: 27

TITLE OF RULE BEING PROPOSED: Rules and Regulations for the Transportation of Coal by
Commercial Motor Vehicles

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON October 6, 2003 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Sandra Squire, Executive Secretary

Public Service Commission of WV
201 Brooks Street
P. O. Box 812

Charleston, WV 25323

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



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**Rules and Regulations for the Transportation of Coal
by Commercial Motor Vehicles**

150-27-1. General.

1.1. Scope

The following rules govern the transportation of coal upon public highways by commercial motor vehicles. The rules set forth the various requirements for the administrative processes and procedures to be followed by the regulated entities.

1.2. Authority

These emergency rules are authorized by Senate Bill No. 583 passed March 8, 2003, and in effect from the date of passage; West Virginia Code §§17C-17A-3(c); 17C-17A-5(k); 17C-17A-6(d); 17C-17A-7; 17C-17A-8(1); 17C-17A-8(3); 17C-17A-9(f)(4).

1.3. Filing Date - - August 28, 2003

1.4. Effective Date - - October 1, 2003

1.5. Application of Rules

If hardship results from the application of any rule contained herein or if unusual difficulty is involved in immediately complying with any rule, or upon other good cause shown, application may be made to the commission for the modification of the rule or for a temporary or permanent exemption waiver from its provisions. Provided, that no application for modification or exemption will be considered by the commission unless there is submitted therewith a full and complete justification for such action. Furthermore, to the extent the rule is based on a specific statutory requirement, the commission is unable to waive such a provision.

150-27-2. Definitions.

2.1. A "coal resource transportation road" means a road designated by the department of transportation as safe and sufficient to allow vehicles hauling coal to carry a greater gross and axle weight of up to one hundred and twenty thousand pounds, with a five percent variance. Together these designated roads comprise the "coal resource transportation system".

2.2. "Coal" or "coal by-products" means the mineral in raw or clean state and includes synthetic fuel manufactured or produced for which credit is allowable under 26 U.S.C. §29 of the Internal Revenue Code (1996). Ash, scrubber sludge and other residue of coal burning shall not be considered coal or coal by-products.

2.3. "Commercial motor vehicle" means, for the purpose of these rules, a motor vehicle, with a gross vehicle rating of ten thousand one pounds or more, used to transport coal on the public highways for commercial purposes.

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

2.5. "Division" means the Division of Highways within the Department of Transportation.

2.6. "Mining operation" means any activity related to extraction of coal regulated under the provisions of this code.

2.7. "Operator" means the person driving a commercial motor vehicle transporting coal on any public highway of this state;

2.8. "Person" means any individual, partnership, firm, society, association, trust, corporation, other business entity or any agency, unit or instrumentality of federal, state or local government.

2.9. "Receiver" means the person who accepts for unloading coal from any commercial motor vehicle that has operated on any public highway in this state;

2.10. "Shipper" means the person who loads coal or causes coal to be loaded into any commercial motor vehicle that will operate on any public highway in this state;

2.11. "Ton" means 2,000 pounds.

2.12. "Vehicle owner" means the person who as owner or lessee of a commercial motor vehicle employs, contracts or otherwise directs a driver to operate that vehicle on a public highway of this state for the purpose of transporting coal.

150-27-3. Permit Applications for the coal resource transportation system.

3.1. This special permit process applies to commercial motor vehicles utilized to transport coal at the enhanced weight levels provided in West Virginia Code

§17C-17A-5 on a coal resource transportation road as designated by the Division.

3.2. An annual permit must be obtained for each commercial motor vehicle that operates upon the coal resource transportation system.

3.3. The initial permitting period shall run from October 1, 2003, through September 30, 2004. Subsequent permitting periods shall run from October 1 through September 30 of the following year.

3.4. The permittee will be required to comply with the weight limits established by the Division on any particular road within the coal resource transportation system.

3.5. The application will be made by the owner of the vehicle, who is the person in whose name the vehicle is registered. This requirement is subject to modification pursuant to section 3.6. The owner shall verify that the information contained within the application is true and accurate.

3.6. If the vehicle is leased to another, other than the operator, then the lessee shall be deemed the owner under these rules and shall make the application. If the lessee is also the operator, the owner must file the application.

3.7. The application will indicate the owner's or lessee's name, street and mailing address, and telephone number. If the application is by any entity other than a sole proprietor, then the application must designate a person legally responsible for receiving notices and for compliance with these rules. If the application is submitted by a business, the application must indicate that the applicant is registered to do business in the State of West Virginia.

3.8. The application must be made on a completed Form 1, which is attached to these rules. The form must be signed by a legally responsible individual whose signature must be acknowledged before a notary public.

3.9. The written application must be submitted to the Transportation Division and, if mailed, sent to:

Public Service Commission
Transportation Division
Attn: Coal Permit Application
201 Brooks Street

Post Office Box 812
Charleston, West Virginia 25323

3.10. The application must be accompanied by the appropriate fee (see Form 1) which can be paid in cash if in person, otherwise by money order, other certified cash instrument or any other form of payment approved by the Commission.

3.11. In addition to the application fee payable to the Commission of \$100 for one vehicle and \$25 for each additional vehicle, the applicant will remit to the Commission the following special permit fee, whichever is applicable, as required by West Virginia Code §17C-17A-5. Such fee shall be paid by money order, other certified cash instrument, or any other form of payment approved by the Commission. The special permit fee will be prorated as indicated on the instruction sheet to Form 1. The special permit fees are as follows:

3.11.a. A single unit truck having one steering axle and two axles in tandem arrangement shall be limited to a maximum gross vehicle weight of 80,000 pounds with a tolerance of 5% and shall pay a special permit fee annually of \$100.00;

3.11.b. A single unit truck having one steering axle and three axles in tridem arrangement shall be limited to a maximum gross vehicle weight of 90,000 pounds with a tolerance of 5% and shall pay a special permit fee annually of \$160.00;

3.11.c. A tractor-semi trailer combination with five axles shall be limited to a maximum gross vehicle weight of 110,000 pounds with a tolerance of 5% and shall pay a special permit fee annually of \$300.00;

3.11.d. A tractor-semi trailer combination with six or more axles shall be limited to a maximum gross vehicle weight of 120,000 pounds with a tolerance of 5% and shall pay a special permit fee annually of \$500.00.

3.12. The application shall require a verification which must include the following:

3.12.a. a statement that the vehicle has a current state inspection sticker, if required, from the state where vehicle is registered;

3.12.b. a statement that the owner has insurance as required by state law;

3.12.c. a copy of the current vehicle registration;

3.12.d. a statement that the vehicle, as configured, has a total combined axle rating capacity equal to or greater than the maximum amount of weight for which a special permit is sought; and,

3.12.e. a statement that the vehicle will be operated only by a operator with a valid commercial driver's license.

3.13. If a permit is granted, the Commission will return a stamped approved permit to the applicant and will provide a special permit indicium sticker to be used on the permitted commercial motor vehicle. During operation, the commercial motor vehicle must, at all times, carry the original Commission approved permit.

3.14. The special permit indicium sticker, which is issued with the approved application, shall be permanently affixed immediately below the window glass on the top of the door on the operator's side of the commercial motor vehicle.

3.15. In the event a special permit indicium is lost, destroyed, stolen, or is otherwise unusable, the permit indicium will be replaced by the Transportation Division upon the submission of a copy of the original application/permit; an affidavit attesting the facts of the situation; and, a replacement fee of \$25.

3.16. As a condition of receiving a special permit for the coal resource transportation system, any operator shall submit the vehicle for weighing by portable or stationary scales as required. Any operator or owner of a commercial motor vehicle or combination of vehicles who refuses to comply with weighing or safety requirements forfeits all privileges granted by the special permits.

3.17. As a condition of receiving a special permit, commercial motor vehicle owners and operators shall submit permitted commercial motor vehicles to safety checks and other commercial motor vehicle inspection requirements as required by Commission personnel.

3.18. Shippers shall remit to the Commission by the 10th day of each month a payment of 5 cents per ton applied to the total tonnage of coal involved in each shipment in excess of 88,000 pounds during the preceding month. For example, if a truck shipment has a gross weight of 100,000 pounds and the truck has a tare weight of 40,000 pounds, the 5¢ would be imposed on 60,000 pounds (5¢ times 30 tons or \$1.50). The Commission shall deposit the revenue from such fees in the coal resource transportation fund. Payments

should be mailed to:

Public Service Commission
Attn: Executive Director
201 Brooks Street
Post Office Box 812
Charleston, West Virginia 25323

3.19. The permits issued pursuant to these rules are specific both as to owner and commercial motor vehicle. If either of these two elements of the permit changes, then the permit shall be void and a modified permit shall be required. If a commercial motor vehicle having a valid permit is sold or registered to a different person, the new owner must either apply for a modified permit or obtain a new permit. If an owner wishes to transfer a valid permit to a different vehicle (rather than obtain a completely new permit for such different vehicle), the owner must apply for a modified permit. The fee for modifying a permit shall be \$25.00. A permit modification shall apply only to owner or commercial motor vehicle, not both. A permit modification shall not change the expiration date of the permit.

150-27-4. Reporting of coal shipments.

4.1. All shippers and all receivers of coal which is transported over any coal resource transportation road must register with the Commission by providing the information required on Form 2 (attached hereto) no later than the date they are required to report coal shipments under these rules.

4.2. Shippers and receivers shall report timely and accurately the gross weight in pounds of every coal shipment by commercial motor vehicle, including the date and time when the shipment was weighed. Receivers of coal shipments who are residential, school, or hospital end users are not required to report.

4.3. Shippers and receivers transporting coal in a commercial motor vehicle over any coal resource transportation road shall begin reporting on October 1, 2003.

4.4. The registration and reporting requirements are effective October 1, 2003 for shipments of coal upon a coal resource transportation road. All other shippers and receivers of coal, which is transported upon public highways that are not part of the coal resource transportation system, shall begin reporting on July 1, 2004. All such shippers and receivers shall register, as set forth in Rule 4.1., no later than July 1, 2004.

4.5. Reports shall be submitted using one of the following methods:

4.5.a. ASCII semicolon delimited file transferred to a site provided to individual shippers and receivers by the Commission; OR

4.5.b. Manual entry via a Commission provided internet application which will be provided after users register. Access to the web form will require a user ID and password provided by the Commission if requested on Form 2.

4.6. Reports shall be submitted electronically in the order listed below and shall specify:

4.6.a. Transaction Number: up to 25 character alphanumeric, a unique identifier for the transaction beginning with the reporter's site ID;

4.6.b. Shipper Transaction Number: up to 25 character alphanumeric, beginning with the shipper's site ID - the shipper's transaction number;

4.6.c. Shipper ID: up to 10 character alphanumeric, Commission assigned identifier for the shipper - usually the WV Permit number assigned by Miner's Health Safety & Training;

4.6.d. Receiver ID: up to 10 character alphanumeric, Commission assigned identifier for the receiver - usually the WV Permit number assigned by Miner's Health Safety & Training;

4.6.e. Source: 1 character alphanumeric, this is being reported by the - S for shipper or R for receiver;

4.6.f. CRTS Permit Number: up to 13 character alphanumeric, overweight permit number (if applicable, otherwise a space);

4.6.g. Shipment Date & Time: mm/dd/yyyy hh:mm (24 hour military time), when the shipment was weighed;

4.6.h. Gross Weight: up to 6 digit numeric, weight in pounds;

4.6.i. CRTS Shipment: 1 character alphanumeric, A for All, P for Partial, or N for None.

4.7. In order to constitute timely reporting under the statute and these rules, shippers and receivers must meet the following requirements:

4.7.a. Shipper. A shipper must submit its report by 4:00 p.m. of the next business day following the date of shipment. Business days will be considered Monday through Friday excluding official state or federal holidays.

4.7.b. Receiver. A receiver must submit its report by 4:00 p.m. of the next business day following the date of shipment. Business days will be considered Monday through Friday excluding official state or federal holidays.

4.8. In order to constitute accurate reporting under the statute and these rules, shippers and receivers must meet the following requirements:

4.8.a. Shipper. A shipper may weigh the gross vehicle weight of each coal shipment by scales certified by the Department of Labor or may weigh and report the weight by estimate, provided that the method of estimating weight is reasonably accurate, the gross vehicle weight does not exceed legal limits, the weight of the truck and its load will be determined by the receiver using certified scales, and the shipper accepts responsibility for monetary administrative penalties imposed for excess weight as provided for in W. Va. Code §17C-17A-9.

4.8.b. Receiver. A receiver shall determine and report the gross vehicle weight of such coal shipment with scales certified by the Division of Labor.

4.9. Shippers shall provide a bill of lading to the operator before leaving the site. The information on the document shall include the shipper transaction number, the shipper ID number, the gross vehicle weight, the coal weight, the date and time of shipment, and the origin of the shipment and destination. The document shall be available for inspection by law enforcement personnel and shall be presented to the receiver for communication of the shipper transaction number and shipper ID number for the receiver report to the Commission.

4.10. An owner of a commercial motor vehicle who transports coal on the public roads of this state shall report to the Commission all citations issued to an operator of that vehicle for an unsafe vehicle condition or for speeding or other unsafe vehicle operation. Reports must be submitted to the Commission's Motor Carrier Section no later than 10 business days following issuance of the citation.

4.11. If a shipper, receiver or owner fails to timely or accurately report as

required by these rules, he or she shall be subject to an administrative penalty of up to \$100 per shipment.

4.12. When the Commission staff becomes aware of untimely and/or inaccurate reports, a notice of violation will be issued by letter directed to the shipper, receiver and/or vehicle owner. The notice will be issued by the staff, establishing the amount of administrative penalty. The letter shall provide that the penalty be paid no later than twenty days after receipt. The payment of the penalty should be mailed to:

Public Service Commission
Attn: Executive Director
201 Brooks Street
Post Office Box 812
Charleston, West Virginia 25323

4.13. The imposition of an administrative penalty is final unless a request for a hearing is received by the Commission within twenty days from the receipt of the notice. If a hearing is requested, the procedures under "administrative sanctions" will be followed.

150-27-5. Administrative process for issuing administrative sanctions.

5.1. An enforcement officer of the Commission shall issue a uniform citation for violations of law involving commercial motor vehicles.

5.1.a. A copy of the citation will be returned to the Transportation Division, weight enforcement unit.

5.1.b. The citation must indicate if the offense occurred on the coal resource transportation system. If so, the citation should identify the road by number and the approximate location of the violation.

5.1.c. The citation must indicate whether there is a Commission-issued special permit for the commercial motor vehicle to operate on the coal resource transportation system, and if so, the number of the permit.

5.1.d. If the commercial motor vehicle is cited for being overweight, the weight of vehicle as determined by the bill of lading, a coal transaction report, or scales must be indicated on the citation.

5.1.e. The citation must indicate the number of axles of the commercial

motor vehicle.

5.1.f. If the operator of a commercial motor vehicle is cited for speeding, the posted speed limit and the speed of the vehicle must be indicated.

5.1.g. The citation should identify the shipper transaction number (Rule 4.6.b. and 4.9) of the shipment.

5.2. Upon receipt of a copy of the citation involving a coal shipment on a coal resource transportation road, the staff will issue a notice of violation no later than 30 days from the date of the citation.

5.3. Upon receipt of information from a coal shipment report that indicates that a violation has occurred, the staff will issue a notice of violation no later than 30 days from the receipt of such information.

5.4. A written notice of violation will be provided to the shipper, owner, and driver by letter, sent by certified mail or personally served, informing them of the sanction to be imposed and their rights under West Virginia Code §17C-17A-9.

5.5. If a hearing is not requested as provided herein, the notice of violation shall become a final order of the Commission.

5.6. The Commission can take administrative notice of a magistrate court conviction at any time during the administrative sanction process and impose administrative sanctions against the party convicted without further process.

5.7. If a hearing is requested, the request must be in writing and received by the Executive Secretary no later than twenty days from the receipt of the notice of violation. The request for hearing must include a copy of the citation. In addition, the request must identify whether the person is a shipper, owner or lessee, driver, or receiver. There will be one proceeding for all persons subject to administrative sanctions in a particular cited incident who have filed a request for hearing. For example, if both the operator and owner request a hearing concerning a particular violation, the Commission will provide one hearing at which they would both appear. If one person requests a hearing and another does not, the Commission may proceed to impose administrative sanctions against a party that does not request a hearing. Requests for hearing must be delivered to:

Public Service Commission of WV
Attn: Executive Secretary

201 Brooks Street
Post Office Box 812
Charleston, West Virginia 25323

5.8. Upon receipt of the request for hearing, the Secretary's office shall give the request a case number designation. The request will be forwarded to the employees designated by the Commission to conduct hearings.

5.8.a. Initial hearings will be conducted by an employee of the Commission designated to issue final orders of the Commission for violations under West Virginia Code Chapter 17C, Article 17A. The proceedings will be electronically recorded by audio and/or video equipment or by such other method as determined by the Commission. The rules of evidence will not apply. Enforcement personnel can appear and participate without counsel. Hearings will be in Charleston, W.Va. Individuals can appear and represent their own interests. However, third parties, who are not lawyers admitted to practice in this state, cannot represent the interests of others.

5.8.b. Decisions will be made by written order, dated and signed by a hearing officer. An initial decision shall become a final order of the Commission if an appeal is not timely filed as herein provided.

5.8.c. Appeals to these decisions may be made to the Division of Administrative Law Judges by filing an appeal within 10 days of the initial decision in the Executive Secretary's Office. Appeals will be assigned to an individual Administrative Law Judge who will review the record. The Administrative Law Judge will have the right to adopt, modify, or reject the initial decision. As deemed necessary, the Administrative Law Judge can conduct further hearing proceedings. Further proceedings can either be electronically recorded or taken by a court reporter at the discretion of the Administrative Law Judge. The Administrative Law Judge will issue a final order containing findings of fact and conclusions of law.

5.8.d. If a violation is found, the violator shall pay the costs of the Commission proceedings as follows:

1. initial proceeding, \$150; and,
2. an additional fee for an appeal proceeding involving an Administrative Law Judge, \$300.

150-27-6. Administrative sanctions concerning coal shipments.

6.1. Administrative sanctions.

In additions to other penalties provided by law, the following administrative sanctions shall be imposed for various violations occurring upon the coal resource transportation system. These sanctions become effective for violations occurring on or after October 1, 2003.

6.1.a. Shipper and excess weight.

If a shipper of coal loads coal in an amount which causes the gross weight of the commercial motor vehicle to be in excess of the lawful weight limits established in Article 17A of Chapter 17C, then the shipper shall pay an administrative penalty per pound, for the first and subsequent offenses, in accordance with the schedules set forth in 17C-17A-10. For example, if the vehicle is 10,000 pounds overweight, the penalty would be \$700 (10,000 pounds x 7 cents).

6.1.b. Operator, owner without a special permit and in violation of weight limits.

If a commercial motor vehicle is operated on a coal resource transportation road with a gross vehicle weight in excess of the lawful maximum weight for a coal resource transportation road without a special permit, the operator and owner of the vehicle shall be subject to the following administrative penalties.

1. The operator shall have his commercial driver's license suspended by the Department of Motor Vehicles for a period of ninety days for the first offense, six months for the second offense, and one year for the third offense: provided, that the operator can avoid these penalties by presenting to the Commission, within 5 days of the offense, a permit that has expired for less than 30 days prior to the offense.

2. The owner shall have all state-issued hauling permits then in force suspended by the Commission for a period of ninety days for the first offense, six months for the second offense, and revoked for the third offense: provided, that the owner can avoid these penalties by presenting to the Commission, within 5 days of the offense, a permit that has expired for less than 30 days prior to the offense. If there is no permit then in force, the owner shall have his or her commercial motor vehicle registration suspended by the Department of Motor Vehicles for a period of ninety days for the first offense, six months for the second offense and revoked for the third offense.

6.1.c. Operator, owner with a special permit and in violation of weight

limits.

If a commercial motor vehicle is operated on a coal resource transportation road with a gross vehicle weight in excess of the lawful maximum weight for a coal resource transportation road allowed by the special permit, the operator and owner of the vehicle shall be subject to the following administrative penalties.

1. The operator shall have his commercial driver's license suspended by the Department of Motor Vehicles for a period of three days for the first offense, thirty days for the second offense, and six months for the third offense.

2. The owner shall have the special permit suspended by the Commission for a period of three days for the first offense, thirty days for the second offense and revoked for the third offense. A revocation will remain in effect for one year.

6.1.d. Operator, owner with a suspended special permit and in violation of weight limits.

If a commercial motor vehicle with a suspended special permit is operated upon a coal resource transportation road in excess of the weight limits imposed by Article 17 of Chapter 17C, the operator and owner of the vehicle shall be subject to the following administrative penalties.

1. The operator shall have his commercial driver's license suspended by the Department of Motor Vehicles for a period of six months for the first offense, twelve months for the second offense, and two years for the third offense: provided, that if the operator is also the owner, the owner penalties shall also apply.

2. The owner shall have all state-issued permits then in force suspended by the Commission or, if applicable, the commissioner of highways for a period of twelve months for the first offense, two years for the second offense and revoked for the third offense.

6.1.e. Operator with a permit who speeds upon a coal resource transportation road.

An operator of a commercial motor vehicle that has a special permit and is charged with a violation of West Virginia Code §17C-6-1 upon a coal resource transportation road shall have his or her commercial driver's license suspended by the Department of Motor Vehicles for a period of three days for the first offense, thirty days for

the second offense and revoked for the third offense. A revocation will remain in effect for one year.

6.1.f. Falsifying information in the acquisition of a special permit.

If any person falsifies information relating to the acquisition of a special permit, then that person shall have his or her driver's license, including a commercial driver's license, suspended by the Department of Motor Vehicles for a period of sixty days for the first offense, one hundred and twenty days for the second offense and six months for the third offense. Further, if the person is regulated pursuant to Article 17A, Chapter 17C, the person's state-issued business license shall be suspended by the commissioner of the state tax division for a period of six months for the first offense, one year for the second offense and two years for the third offense.

6.1.g. Altered, forged or counterfeited permit.

Any person who fabricates or displays an altered, forged or counterfeited permit shall have his or her driver's license, including a commercial driver's license, suspended by the Department of Motor Vehicles for a period of sixty days for the first offense, one hundred twenty days for the second offense and revoked for the third offense. In addition, without hearing, the Commission or its law enforcement employees may immediately confiscate an altered, forged or counterfeited permit, or a permit used by someone other than the applicant or for another vehicle. Upon the issuance of a citation alleging a violation of this subsection, the vehicle and its load shall be impounded as provided in these rules.

6.1.h. Bribes.

Any person that bribes or attempts to bribe an employee of the State or who gives such an employee a gift, gratuity, entertainment, loan, favor or other thing of monetary value for the purpose of avoiding any penalties permitted in these rules shall have his or her state-issued special permit suspended by the Commission for a period of sixty days for the first offense, one hundred and twenty days for the second offense and revoked for the third offense.

6.1.i. Aiding and abetting.

Any person who aids or abets another person's attempt to avoid any suspension provided herein shall have his or her driver's license, including a commercial driver's license, suspended by the Department of Motor Vehicles for a period of sixty days

for the first offense, one hundred and twenty days for the second offense and six months for the third offense and shall have his or her state-issued business license suspended by the tax commissioner for a period of three months for the first offense, six months for the second offense and one year for the third offense.

6.2. In the case of multiple violations by a permittee, shipper, operator or receiver, the Commission may direct that any imposed suspension under these rules be served concurrently or consecutively, taking into account the frequency of violations committed during the inclusive time periods, or in the same course of misconduct if the Commission determines that sufficient mitigating or aggravating circumstances are present.

6.3. Without providing a hearing, the Commission may immediately suspend a person from obtaining special permits or operating under special permit authority for failure to pay a fee required under this article or these rules until proper payment is received.

6.4. For the purpose of applying the enhanced penalty provisions of these administrative sanctions, the penalty(ies) for the second or subsequent offenses shall be applicable whenever such offenses occur within the twelve month period immediately following the date of the final order assessing the first penalty.

6.5. A copy of the Commission's final order imposing administrative sanctions will be sent to the violator. Upon the receipt of notice of the Commission's action, the state agency responsible for administering the penalty will promptly administer the appropriate sanction.

6.6. Monetary penalties are payable to the Commission no later than 10 days after the date the order that imposes the penalty becomes final. The payment of penalties should be mailed to:

Public Service Commission
Attn: Executive Director
201 Brooks Street
Post Office Box 812
Charleston, West Virginia 25323

150-27-7. Appeals of administrative sanctions.

Petitions for appeal of Administrative Law Judge decisions may be made to the Supreme Court by filing a petition of appeal within 30 days from the date of the final order. The filing of an appeal will not stay the effect of a final order. A motion for stay

must be filed with the Court if a stay is sought.

150-27-8. Impoundments of vehicle and its load.

8.1. A commercial motor vehicle and its load may be impounded by a law enforcement officer if it is determined that one or both of the following has occurred.

8.1.a. If a law-enforcement officer determines that a permit has been altered, forged or counterfeited or used in violation of its terms or conditions, which shall mean used in a commercial motor vehicle different than that identified in the application or permit or by an owner or lessee other than the applicant, the permit shall be immediately confiscated, the permit indicium shall be removed, and the commercial motor vehicle and its load shall be impounded pursuant to the following procedure pending a hearing by the Commission.

8.1.b. If a law-enforcement officer issues a criminal citation to an owner of a commercial motor vehicle operating on the coal resource transportation system, for a violation under West Virginia Code §17C-17A-10, then the officer shall impound the vehicle and its load.

8.2. The impoundment of a commercial motor vehicle and its load shall be in accordance with the following procedure.

8.2.a. The Commercial motor vehicle and its load shall be taken to a storage facility capable of and willing to store the commercial motor vehicle and its load.

8.2.b. The owner of the commercial motor vehicle shall be responsible for the payment of any storage fees.

8.2.c. For a violation under subsection 9.1.a., (17C-17A-9(e)), the commercial motor vehicle will be impounded until a hearing is conducted. After the hearing and issuance of a final order, the vehicle and its load will be released provided the owner thereof has complied with the Commission's order.

8.2.d. In the event the commercial motor vehicle is impounded for a weight violation under subsection 9.1.b., (17C-17A-10) the vehicle shall not be released until the owner has:

1. been acquitted of the charge;

2. been found guilty of the charge and paid any fine assessed under subsection (a) or (b) of West Virginia Code §17C-17A-10; or,

3. furnished cash or surety bond in at least double the amount of the fine which may be assessed the offender under subsections (a) or (b) of West Virginia Code §17C-17A-10 conditioned upon the payment of any fine and costs assessed for the violation. Provided, however, that a commercial motor vehicle shall not be impounded under this subsection if the owner is a resident of or has a principal place of business located in this state and the vehicle has been duly licensed in the state.

150-27-9. Scales for weighing coal shipments.

9.1. All certified scales used to weigh coal shipments under these rules must be approved and inspected on a regular basis by the Division of Labor.

9.2. In any hearing involving administrative sanctions, a current certification of scales and/or speed detection equipment establishes a rebuttable presumption that the equipment is accurate.

150-27-10. Vehicle operations and safety.

10.1. Any vehicle or combination of vehicles transporting coal upon the public highways of this state shall be securely covered to prevent the escape of the load on any trip exceeding a total distance of one mile on any public highway.

10.2. An operator who has less than two years commercial driving experience, shall not operate a commercial motor vehicle transporting coal upon the coal resource transportation system until he or she has received twenty-four hours mandatory specialized training requirements for commercial vehicles operators. Provided that existing operators with less than two years commercial driving experience on October 1, 2003, shall have six months within which to complete the specialized training.

10.3. Operators of commercial motor vehicles on the coal resource transportation system shall be subject to drug and alcohol testing. Such testing may be required by an enforcement officer based upon reasonable cause or it may be the result of random testing established by the Commission. Refusal to submit to such testing shall result in the commercial motor vehicle being placed out of service.

150-27-11. Business records.

The Commission's employees may, during normal business hours, conduct inspections of all trucking related records of shippers, vehicle operators, vehicle owners and receivers engaged in the transportation of coal. Copies of records shall be provided to Commission employees upon request.

150-27-12. Public toll free number.

The public may report poor driving or law violations by calling a toll free number maintained by the Commission, 1-866-SEE-TRUX. Each commercial motor vehicle which has received a special permit to transport coal on the coal resource transportation system must clearly display the toll free number on the vehicle, in characters of a minimum height of six inches, visible from each side and the rear of the vehicle.

150-27-13. Forms.

- Form 1 Application for CRTS Permit
- Form 2 Shipper and Receiver Registration

<p>150 CSR 27</p> <p>FORM 1</p> <p>Application for CRTS Permit</p> <p>October 1, _____ through September 30, _____</p>	<p>(PSC Use Only)</p> <p>PSC Permit No.: _____</p> <p>Processed By: _____</p>
---	--

SECTION 1 - APPLICANT INFORMATION

1) Legal Name: _____

2) Mailing Address: _____

3) Physical Address (if different from mailing address): _____

4) Telephone: _____ 5) Fax: _____ 6) E-mail: _____

7) Contact person/Agent for service of process*:

Name _____ Title _____

Address _____ Phone Number _____

*Person certified by company to receive Notice of Violation or other legal notification.

8) Is applicant registered to do business in West Virginia? _____ Yes _____ No

9) Applicant is: Sole Proprietorship _____ Limited Liability Company* _____ Corporation* _____
 General Partnership _____ Limited Liability Partnership* _____ Association* _____
 Limited Partnership* _____

*Proof of registration with Secretary of State's Office must be attached. See instructions for further details.

10) WV Taxpayer ID Number*: _____

*A copy of your West Virginia business license must be attached.

11) Federal Employer ID Number: _____

12) WV Miner's Health, Safety & Training Permit Number: _____

13) Workers Compensation Policy Number: _____ Effective dates of policy: _____

14) USDOT Number: _____

15) Is applicant lessee? _____ Yes _____ No (If yes, copy of lease agreement must be attached.)

SECTION 2-VEHICLE INFORMATION

(PSC Use Only)

1) Truck/Tractor:

V.I.N. Number _____ License Plate Number: _____

Year, Make and Model _____ Issuing State _____

Gross Vehicle Weight Rating _____ Date of Most Recent State Inspection _____

Empty Weight _____

- 2) Number of Axles: _____ Class A(Single unit truck having one steering axle and two axles in tandem, with a GVWR of 80,000 lbs.)
 _____ Class B(Single unit truck having one steering axle and three axles in tandem, with a GVWR of 90,000 lbs.)
 _____ Class C(Tractor-semitrailer combination with five axles and a GVWR of 110,000 lbs.)
 _____ Class D(Tractor-semitrailer combination with six or more axles and a GVWR of 120,000 lbs.)

(Note: A copy of the current vehicle registration must be attached to this application.)

SECTION 2 - ADDITIONAL VEHICLE LISTING

(PSC Use Only)

1) Truck/Tractor:

V.I.N. Number _____ License Plate Number: _____

Year, Make and Model _____ Issuing State _____

Gross Vehicle Weight Rating _____ Date of Most Recent State Inspection _____

Empty Weight _____

- 2) Number of Axles: _____ Class A(Single unit truck having one steering axle and two axles in tandem, with a GVWR of 80,000 lbs.)
 _____ Class B(Single unit truck having one steering axle and three axles in tandem, with a GVWR of 90,000 lbs.)
 _____ Class C(Tractor-semitrailer combination with five axles and a GVWR of 110,000 lbs.)
 _____ Class D(Tractor-semitrailer combination with six or more axles and a GVWR of 120,000 lbs.)

(Note: A copy of the current vehicle registration must be attached to this application.)

.....
This page may be copied as necessary, for purposes of multiple vehicle registration.

SECTION 3-FEE SCHEDULE

FEES TO BE PAID: _____ Processing fee(\$100.00 for 1st vehicle registered, then \$25.00 for each additional vehicle)
 _____ Special Permit fee for vehicle
 (see the fee schedule on Page 6)
 _____ **TOTAL AMOUNT DUE**

Payment must be in cash or certified funds.
 All certified funds should be made out to the order of:

“West Virginia Public Service Commission”.

.....
Return application with payment to: West Virginia Public Service Commission
710 Central Avenue
Charleston, WV 25302
ATT: CRTS Permits
304-558-3723

- Remember to attach:**
- 1) Copy of current vehicle(s) registration.
 - 2) Copy of current West Virginia business license.
 - 3) Copy of current proof of corporate status on file with Secretary of State’s office (if applicable).
 - 4) Copy of current lease agreement(s) (if applicable).
 - 5) Payment of correct fees in certified funds.

.....
VERIFICATION

I swear (or affirm) that :

- 1) Each above-named applicant has insurance as required by applicable state law.
- 2) Each above-named vehicle has, and any attached trailer will have, a current state inspection sticker from the registration state.
- 3) Each above-named vehicle, as configured, will have a total combined axle rating capacity equal to or greater than the maximum amount of weight for which this special permit is sought.
- 4) Each above-named vehicle will be operated only by a driver with a valid commercial drivers license.
- 5) This application has been prepared or examined by me, and to the best of my knowledge is true, correct and complete.

AFFIANT _____

Sworn to and subscribed before me this _____ day of _____, 20_____

NOTARY PUBLIC _____
 My commission expires _____, 20_____
 County _____ State _____

INSTRUCTIONS FOR COMPLETING FORM 1

SECTION 1-APPLICANT INFORMATION

1) This will be the applicant's complete legal name, including the trade name of the business, if a trade name is used. (Example: John B. Doe doing business as John's Coal Hauling.) If the applicant is a corporation, the complete corporate name should be used, including trade name if applicable.

2 through 6) These questions will show all contact information for the applicant.

7) The contact person/Agent of process must be the properly designated person of an applicant for receiving Notice of Violation or other legal process, if any. All corporations must use the agent of process designated to the WV Secretary of State's office.

8) The applicant must be registered with any applicable state and/or Federal agency, as required by law. This information will be verified before a CRTS permit is issued to the applicant.

9) The applicant must indicate their company tax status, as registered with the WV State Tax Department. All categories marked with an asterisk (*) must be registered with the office of the WV Secretary of State. The applicant must attach a copy of their certificate of incorporation to the CRTS. For more information on registering a corporation, call:

Corporations Division
WV Secretary of State
Building 1, Room W-151
1900 Kanawha Boulevard East
Charleston, WV 25305-0770
304-558-8000
www.wvsos.com

10) All applicants must have a West Virginia Taxpayer ID Number, which is the identifying number on a business license issued by the WV State Tax Department. A copy of the applicant's WV business license must be attached to this application. For more information, call:

WV State Tax Department
P.O. Box 3784/1206 Quarrier Street
Charleston, WV 25337-3784
(304)558-3333 or 1-800-982-8297
www.state.wv.us/taxdiv

11) All applicants that employ anyone other than themselves must have a Federal Employer ID Number, issued by the Internal Revenue Service. For more information, call:

Internal Revenue Service
1-800-829-3676
www.irs.gov/

12) All applicants must be registered with the WV Office of Miner's Health, Safety and Training. For more information, call:

WV Office of Miner's Health, Safety and Training
1615 Washington Street East
Charleston, WV 25311-2126
304-558-1425

13) All applicants must be in good standing with the WV Workers Compensation Division. For more information, call:

WV Workers Compensation Division
Underwriting Unit
P.O. Box 3064/4700 MacCorkle Avenue SE
Charleston, WV 25334-3064
Phone: 304-926-5000
Fax: 304-926-1996
www.state.wv.us/BEP/wc

14) All applicants must have a U.S. Department of Transportation (DOT) safety rating number. For more information, contact:

U.S. Department of Transportation
304-347-5935 or 800-832-5660
www.fmcsa.dot.gov/

15) If the applicant is leasing equipment from other individuals or companies, a copy of the lease agreement must be attached.

SECTION 2-VEHICLE INFORMATION

The following information must be included for each vehicle to be registered:

- A) Vehicle Identification Number
- B) Year, make and model of power unit.
- C) Manufacturer gross vehicle weight rating.
- D) Empty weight.
(Note: If registering a tractor-trailer unit, use the combined GVWR ratings and empty weights.)
- E) Current license plate number of power unit.
- F) The state that issued the current license plate number of the power unit.
- G) The date of the most recent state inspection for the power unit.
- H) The number of axles on each truck or truck-trailer combination.

A copy of the vehicle registration for the current year must be attached to the application.

SECTION 3-FEE SCHEDULE

The fees should be figured as follows:

- 1) There is a processing fee of \$100.00 for the first vehicle registered, plus \$25.00 for each additional vehicle.
- 2) There is a Special Permit fee for each vehicle, based on the fee schedule below.

	CLASS A	CLASS B	CLASS C	CLASS D
ANNUAL FEE:	\$100.00	\$160.00	\$300.00	\$500.00
After October 31 st	92.00	147.00	275.00	458.00
After November 30 th	83.00	133.00	250.00	417.00
After December 31 st	75.00	120.00	225.00	375.00
After January 31 st	67.00	107.00	200.00	333.00
After February 28 th	58.00	93.00	175.00	292.00
After March 31 st	50.00	80.00	150.00	250.00
After April 30 th	42.00	67.00	125.00	208.00
After May 31 st	33.00	53.00	100.00	167.00
After June 30 th	25.00	40.00	75.00	125.00
After July 31 st	17.00	27.00	50.00	83.00
After August 31 st	8.00	13.00	25.00	42.00

EXAMPLE 1: To register two Class D trucks on October 1st:

\$ 125.00	Processing Fee (2 trucks)
\$1,000.00	Special Permit Fee (2 Class D vehicles x \$500.00)
\$1,125.00	Total fees to be paid.

EXAMPLE 2: To register one Class A truck and one Class C truck on February 2nd:

\$125.00	Processing Fee (2 trucks)
\$267.00	Special Permit Fee
	(\$ 67.00 – 1 Class A truck after January 31 st)
	\$200.00 – 1 Class C truck after January 31 st)
\$392.00	Total fees to be paid.

VERIFICATION

The applicant should sign on the line marked "AFFIANT".
 The application must be notarized in order to be processed.

150 CSR 27
Form 2
 Shipper and Receiver Registration

MAIL TO:
 Public Service Commission of WV
 PO Box 812
 Charleston, WV 25323

Please Print or Type the Requested Information Below

PARENT COMPANY INFORMATION

COMPANY NAME	
COMPANY ADDRESS (PO Box or Number and Street)	
CITY, STATE, ZIP CODE	
COMPANY PHONE NUMBER	COMPANY FAX NUMBER
COMPANY AGENT (List only ONE person.)	

SITE INFORMATION

WV PERMIT NUMBER (MHS&T)			TAX ID		
TYPE: CHOSE ONLY ONE OF THE OPTIONS LISTED: SHIPPER <input type="checkbox"/> RECEIVER <input type="checkbox"/> BOTH <input type="checkbox"/>					
SITE NAME					
ADDRESS					
CITY, STATE, ZIP CODE				SITE PHONE NUMBER	
COUNTY	DOH DISTRICT	LATITUDE HR MIN SEC	LONGITUDE HR MIN SEC		
DESCRIPTION OF LOCATION (Give detailed driving directions to site.)					

SITE CONTACT INFORMATION - LIST ONLY ONE PERSON

NAME	TITLE
E-MAIL ADDRESS	
PHONE NUMBER	FAX NUMBER

COAL REPORTING - SUPPLEMENTAL SITE INFORMATION

DAYS AND HOURS OF OPERATION

NUMBER OF TRUCKS YOU LOAD ON AN AVERAGE DAY

NUMBER OF TRUCKS YOU UNLOAD ON AN AVERAGE DAY

LIST SITES YOU SHIP COAL TO / RECEIVE COAL FROM ON A REGULAR BASIS

DO YOU CURRENTLY HAVE SCALES?

YES NO

ARE YOUR SCALES COMPUTERIZED?

YES NO

IF SCALES ARE COMPUTERIZED, WHO IS YOUR VENDOR?

CONTACT INFORMATION FOR VENDOR:

DETAILS:

ARE YOU CURRENTLY SET UP TO COLLECT DATA ELECTRONICALLY FOR INTERNAL PURPOSES?

YES NO

DO YOU HAVE COMMUNICATION LINES TO YOUR SITE?

YES NO

WHAT KIND OF COMMUNICATION LINES DO YOU CURRENTLY HAVE?

WEB INFORMATION

DO YOU PLAN TO USE ON-LINE DATA ENTRY OR FILE TRANSFER?

NOTE: If you chose **Data Entry**, you must fill out the requested information below in its entirety.

INTERNAL COORDINATOR (Please list only ONE person. This person is to be used as a contact person to the PSC in order to request changes in users or password information, etc. A ONE WORD password will need to be listed below for this person to use when any requests are to be made. A web e-mail address will also need to be provided.)

NAME	PASSWORD
------	----------

WEB E-MAIL ADDRESS

USER INSTRUCTIONS:
Please list each user's below. You may have up to 5 users. An account will be set up for each user listed.

- 1.
- 2.
- 3.
- 4.
- 5.

IMPORTANT, PLEASE READ
Access to the entry screen will require a valid user id and password. If an employee who has had access to a user id and password for a site leaves the company, it is the company's responsibility to notify the PSC and have the password changed or the user id revoked.

VERIFICATION

IMPORTANT, PLEASE READ AND SIGN
To complete registration, verification must be signed and notarized.

I swear (or affirm) that this application has been prepared or examined by me, a legally responsible representative of the applicant, and to the best of my knowledge is true, correct and complete. Further, if I am a shipper of coal on the CRTS and elect to report weights based on estimates, I accept responsibility for administrative penalties if weights exceed legal limits and timely reports are not made to the Commission. I agree to provide the Commission with notice of changes in my reporting information as they occur.

AFFIANT _____

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____ 20____

NOTARY PUBLIC _____

MY COMMISSION EXPIRES _____ 20____

COUNTY _____ STATE _____

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 August, 2003.

M.C. GENERAL ORDER NO. 72

RULES AND REGULATIONS FOR THE
TRANSPORTATION OF COAL BY
COMMERCIAL MOTOR VEHICLES;
SERIES 27

COMMISSION ORDER

By this Order, the Commission is issuing emergency rules to become effective October 1, 2003, governing the transportation of coal by commercial motor vehicles.

Background and Discussion

In the 2003 Regular Session of the Legislature, Senate Bill No. 583 was passed effective March 8, 2003. That legislation was comprehensive in nature and has many components including the requirement of special permits for oversize or overweight loads; transfer of weight enforcement responsibility for all commercial motor vehicles from Department of Transportation, Division of Highways, to the Public Service Commission; the establishment and regulation of a Coal Resource Transportation System (CRTS); permitting of vehicles upon the CRTS; administering administrative penalties for violations occurring upon the CRTS; and, authorizing Public Service Commission employees to enforce speeding laws with regard to commercial motor vehicles.

This particular rulemaking deals with the Commission's responsibility to administer and enforce coal transportation upon the CRTS. The reporting requirements of shippers and receivers is required statewide.

As to trucks transporting coal off the CRTS, the Public Service Commission will enforce existing law as to coal truck weights throughout the State effective October 1, 2003. Effective July 1, 2003, the public highways this State that had been designated for maximum gross weight vehicle loads of 80,000 pounds have a tolerance of 10%, meaning that if a road was designated at 80,000 pounds, the gross vehicle weight limit is now 88,000 pounds. For

all other State maintained roads, the Commissioner of Highways by December 31, 2003, can review and establish new weight limits. See, S.B. 583, W. Va. Code §17C-17-11d.

Senate Bill No. 583 also directed the Commissioner of Highways to designate an interim CRTS no later than July 1, 2003. That interim designation is subject to public notice and comment with the final designation occurring no later than January 1, 2004. See, S.B. 583, W. Va. Code §17C-17A-12. Article 17A of Senate Bill No. 583 deals with operations and enforcement upon the CRTS. The Public Service Commission has the responsibility of assuring that trucks operating upon the CRTS are complying with the weight limits established by the Commissioner of Highways. The Public Service Commission is required to meet this responsibility by creating a permitting system and imposing administrative penalties for violations.

The CRTS was intended to be a road system that would allow coal trucks to haul weights exceeding the weights allowed upon other state maintained public highways. In return for the authority to operate at excess weights, the Legislature established an entirely new administrative regime for permitting trucks to operate upon the system as well as enforcing violations that may occur thereon which would be administered by the Commission. The administrative sanctions, which will be administered by the Public Service Commission, and the criminal sanctions, which will be administered by the State court system, which are applicable to the CRTS, take effect October 1, 2003.

The Commission believes that it is obligated under Senate Bill No. 583 to have emergency rules in effect October 1, 2003, which is the date that the administrative sanctions take effect. Senate Bill No. 583, W. Va. Code §17C-17A-5(k). The Commission has established a new permitting process, whereby trucks can be permitted to operate upon the CRTS. The Commission has also established an administrative process for administering penalties. When and if the system is designated and becomes operative, the Commission rules will be in effect and will govern activities upon the CRTS.

The Commission believes that the Legislature intended that all shippers and all receivers of coal transported by commercial motor vehicle, upon public highways throughout the State, must submit daily reports to the Public Service Commission which report the coal shipments made upon those highways. See, S.B. 583, W. Va. Code §§17C-17A-1(b); 17C-17A-3(b)(4); 17C-17A-6.

Furthermore, Senate Bill No. 583 establishes specific administrative penalties that are to be applied to specific violations. See, S.B.583, W. Va. Code §17C-17A-9. The Commission has placed those administrative penalties in these rules. The Commission has also created an administrative process where someone accused of violating the law will be

entitled to a fair hearing while at the same time making efficient use of the Commission's existing resources. Senate Bill No. 583 does not specify the administrative processes for hearings nor does it contain a reference to Chapter 24 which is the general legal framework for the Commission's regulation of public utilities. The Commission has created a procedure which it believes to be efficient and effective before the agency and has provided for an appeal to the Supreme Court which is similar to statutory provisions that exist in Chapter 24 for review of Commission orders issued in utility regulation. For example, See, W. Va. Code §24-5-1.

Senate Bill No. 583 also directs the Commission to promulgate rules and regulations which, among other things, establish fees for processing permit applications to operate on the CRTS (S.B. 583, W. Va. Code §17C-17A-5(e)); establish penalties for inaccurate or untimely reporting of coal shipments (S.B. 583, W. Va. Code §17C-17A-6); and, establish fees to be paid by entities who have been found to be in violation of CRTS provisions which represent the cost of administrative hearing processes (S.B. 583, W. Va. Code §17C-17A-9(f)(4)). The Commission has established reasonable fees pursuant to this statutory authority.

In mid-July, 2003, the Commission posted draft rules on its internet site and made a number of press releases announcing that draft rules were available for public inspection. Also on August 12, 2003, the Commission conducted afternoon and evening workshops in Logan where it presented its overview of the legislation, its draft rules, and received a number of public comments and questions. Similar workshops were conducted in Beckley on August 14, 2003, and in Fairmont on August 22, 2003.

As a result of the Commission's interpretation of the legislative intent in Senate Bill No. 583, the public comment received at the workshops that were conducted by the Commission, and the need for the public and industry to have rules in place as soon as possible before the effective date of October 1, 2003, the Commission is issuing these emergency rules.

Although the Commission will not discuss each rule provision, the Commission believes that two major issues should be identified. First, although the Commission believes that the law as written requires shippers and receivers to report coal shipments occurring throughout the State, the Commission believes there is sufficient ambiguity which has led it to provide for a transition period for the state maintained public highways which would not part of the CRTS system. Reporting by shippers and receivers for the transportation of coal over roads which are not designated as part of the CRTS will begin July 1, 2004. Since these emergency rulemakings will be subject to legislative rule review, the Commission believes that the transition period will allow the Legislature to revisit this issue, if it so desires, and to express its intent as to the application of reporting requirements off-CRTS.

Furthermore, the Commission believes that both shippers and receivers must separately report weights of coal transactions. The Commission believes that this point is emphasized by the Legislature granting the receiver immunity from administrative penalties provided that the receiver accurately reports a coal transaction. However, the Commission is aware that not all shippers are capable of using certified truck scales at the mine site before the coal is shipped on the public highway. Therefore, the Commission has allowed the shipper the option of either weighing the coal with certified scales or providing an estimate subject to certain conditions. Those conditions include that the method of weighing is reasonably accurate, that the gross vehicle weight does not exceed legal limits, that the weight of the truck and its load will be determined by the receiver using certified scales, and that the shipper will accept responsibility for monetary administrative penalties imposed for excess weights if excess weights are found on the basis of the receiver's reported weight. The Commission intends by this provision to allow shippers some flexibility in their business arrangements, while at the same time providing an incentive to shippers to comply with weight limits on public highways. Since the coal transaction will have at least one weighing by certified scales, the Commission believes that this system meets the purpose of the legislative intent.

The Commission believes that Senate Bill No. 583 intended that shippers and receivers of coal, and owners and drivers of trucks would all be subject to administrative penalties under certain circumstances. The Commission has tried to define "owner" in these rules in such a way as to prevent an owner from attempting to transfer responsibility to a driver by way of lease agreements.

Finally, so that Commission employees, who will issue initial decisions, and Administrative Law Judges can effectively enforce these rules, the Commission will designate such personnel to hear cases and issue final orders on behalf of the Commission as provided in these rules and W. Va. Code §24-1-4.

FINDINGS OF FACT

1. In the 2003 regular session of the Legislature, Senate Bill No. 583 was passed effective March 8, 2003.
2. Senate Bill No. 583 directed the Commissioner of Highways to designate an interim CRTS no later than July 1, 2003. That interim designation is subject to public notice and comment with the final designation occurring no later than January 1, 2004. See, S.B. 583, W. Va. Code §17C-17A-12.
3. The CRTS was intended to create a road system that would allow coal trucks

to haul weights exceeding the weights allowed upon other state maintained public highways. In return for the authority to operate at excess weights, the Legislature established an entirely new administrative regime for permitting commercial motor vehicles to operate upon the system as well as for enforcing violations that may occur thereon. That enforcement would be administered by the Commission.

4. Administrative sanctions, which will be administered by the Public Service Commission, and the criminal sanctions, which will be administered by the State court system, which are applicable to the CRTS, take effect October 1, 2003.

5. Senate Bill No. 583 does not specify the administrative processes for hearings nor does it contain a reference to Chapter 24 which is the general legal framework for the Commission's regulation of public utilities.

6. In mid-July, 2003, the Commission posted draft rules on its internet site and made a number of press releases announcing that draft rules were available for public inspection. Also on August 12, 2003, the Commission conducted afternoon and evening workshops in Logan which it presented its overview of the legislation, its draft rules, and received a number of public comments and questions. Similar workshops were conducted in Beckley on August 14, 2003, and in Fairmont on August 22, 2003.

7. The Commission is aware that not all shippers are capable of using certified truck scales at the mine site before the coal is shipped on the public highway. Therefore, the Commission has allowed the shipper the option of either weighing the coal with certified scales or providing an estimate subject to certain conditions.

CONCLUSIONS OF LAW

1. The Public Service Commission has the responsibility of assuring that commercial motor vehicles operating upon the CRTS are complying with the weight limits established by the Commissioner of Highways. The Public Service Commission is required to meet this responsibility by creating a permitting system and imposing administrative penalties for violations.

2. The Commission is obligated under Senate Bill No. 583 to have emergency rules in effect October 1, 2003, which is the date that the administrative sanctions take effect. Senate Bill No. 583, W. Va. Code §17C-17A-5(k).

3. The Commission concludes that the Legislature intended that all shippers and all receivers of coal transported by commercial motor vehicle, upon public highways

throughout the State, must submit daily reports to the Public Service Commission which report the coal shipments made upon those highways. See, S.B. 583, W. Va. Code §§17C-17A-1(b); 17C-17A-3(b)(4); 17C-17A-6.

4. The Commission has created a procedure which it believes to be efficient and effective before the agency and has provided for an appeal to the Supreme Court which is similar to statutory provisions that exist in Chapter 24 for review of Commission orders issued in utility regulation. For example, See, W. Va. Code §24-5-1.

5. Senate Bill No. 583 directs the Commission to promulgate rules and regulations which, among other things, establish fees for processing permit applications to operate on the CRTS (S.B. 583, W. Va. Code §17C-17A-5(e)); establish penalties for inaccurate or untimely reporting of coal shipments (S.B. 583, W. Va. Code §17C-17A-6); and, establish fees to be paid by entities who have been found to be in violation of CRTS provisions which represent the cost of administrative hearing processes (S.B. 583, W. Va. Code §17C-17A-9(f)(4)). The Commission has established reasonable fees pursuant to this statutory authority.

6. Although the Commission believes that the law as written requires shippers and receivers to report coal shipments occurring throughout the State, the Commission concludes there is sufficient ambiguity which has led it to provide for a transition period for the state maintained public highways which would not part of the CRTS system. Reporting by shippers and receivers for the transportation of coal over roads which are not designated as part of the CRTS will begin July 1, 2004. Since these emergency rulemakings will be subject to legislative rule review, the Commission believes that the transition period will allow the Legislature to revisit this issue, if it so desires, and to express its intent as to the application of reporting requirements off-CRTS.

7. A shipper may estimate weight subject to conditions that include that the method of weighing is reasonably accurate, that the gross vehicle weight does not exceed legal limits, that the weight of the truck and its load will be determined by the receiver using certified scales, and that the shipper will accept responsibility for monetary administrative penalties imposed for excess weights if excess weights are found. The Commission intends by this provision to allow shippers some flexibility in their business arrangements, while at the same time providing an incentive to shippers to comply with weight limits on public highways. Since the coal transaction will have at least one weighing by certified scales, the Commission believes that this system meets the purpose of the legislative intent.

8. The Commission concludes that Senate Bill No. 583 intended that shippers and receivers of coal, and owners and drivers of trucks would all be subject to administrative

penalties under certain circumstances. The Commission has tried to define "owner" in these rules in such a way as to prevent an owner from attempting to transfer responsibility to a driver by way of lease agreements.

9. Finally, so that Commission employees, who will issue initial decisions, and Administrative Law Judges can effectively enforce these rules, the Commission will designate such personnel to hear cases and issue final orders on behalf of the Commission as provided in these rules and W. Va. Code §24-1-4.

IT IS THEREFORE ORDERED that the attached emergency legislative rules be promulgated, to become effective October 1, 2003, as Commission emergency legislative Rules and Regulations Governing the Transportation of Coal by Commercial Motor Vehicle; Series 27.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission file a copy of the text of the emergency rules, with the forms attached, with the offices of the Secretary of State and the Legislative Rule-making Review Committee together with the forms required to be filed by the Secretary of State's office.

IT IS FURTHER ORDERED that a comment period shall be established in this matter and that comments concerning the attached rules shall be filed with the Public Service Commission on or before October 6, 2003, at 4:00 p.m. All interested parties who so file shall set forth specific comments regarding the proposed Rules and Regulations for the Transportation of Coal by Commercial Motor Vehicle.

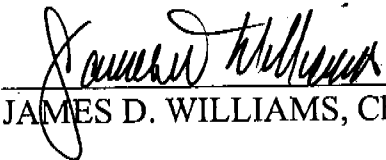
IT IS FURTHER ORDERED that the Commission employees who will be designated to issue initial decisions and the Administrative Law Judges who will issuing orders pursuant to this rulemaking are hereby designated to hold hearings, take evidence at such hearings, subpoena witnesses, administer oaths, take testimony, require the production of documentary evidence and exercise such other powers and perform such other duties as may be related to conducting and issuing decisions relating to these rules as if they were final orders of the Commission.

IT IS FURTHER ORDERED that the Executive Secretary shall cause a copy of the attached notice to be published once in a newspaper duly qualified by the Secretary of State, published and of general circulation in each of the cities of Beckley, Bluefield, Charleston, Clarksburg, Elkins, Fairmont, Huntington, Keyser, Lewisburg, Logan, Martinsburg, Morgantown, Moundsville, Parkersburg, Point Pleasant, Welch, Wheeling, Weirton, and Williamson, making due return to this Commission of proper certification of publication immediately after publication. Any person wishing to submit comments concerning this

rulemaking shall do so no later than October 6, 2003, at 4:00 p.m., by submitting such comments to Sandra Squire, Executive Secretary, P. O. Box 812, Charleston, West Virginia 25323.

IT IS FURTHER ORDERED that the Executive Secretary shall cause a true and accurate copy of this emergency rule to be posted upon the Commission's website and shall provide copies of these proposed rules to interested parties that request copies of the same.


MARTHA Y. WALKER, Commissioner


JAMES D. WILLIAMS, Chairman

MCGO.72.wpd

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

M. C. GENERAL ORDER NO. 72
Rules and Regulations for the Transportation
of Coal by Commercial Motor Vehicle

NOTICE OF COMMENT

During the 2003 regular session of the Legislature, Senate Bill No. 583 was passed which governs the transportation of coal by commercial motor vehicles upon public highways in this State. Among other things, the legislation transferred weight responsibility for all commercial motor vehicles from the Department of Transportation to the Public Service Commission. In addition, the legislation calls for the creation of a special road system to handle excess coal weights which will be designated by the Commissioner of Highways. The Public Service Commission is obligated to issue permits for trucks operating upon that system. In addition, the Public Service Commission is directed to enforce violations such as, weights and speeding, which occur upon the system. The legislation also gives the Commission responsibility for enforcing speeding laws relating to commercial motor vehicles.

On August 28, 2003, the Commission issued emergency legislative rules to become effective October 1, 2003, M. C. General Order No. 72.

A copy of M. C. General Order No. 72 is available upon the Commission's website at www.psc.state.wv.us. In addition, copies of the emergency rulemaking can be obtained from the Commission Secretary's office upon request. The Commission has established a comment period and has directed that any person interested in filing comments concerning the rules should do so on or before October 6, 2003, at 4:00 p.m. by filing such comments with Sandra Squire, Executive Secretary, P. O. Box 812, Charleston, WV 25323.

PUBLIC SERVICE COMMISSION OF WV



Public Service Commission

Richard E. Hitt, General Counsel

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Charleston, West Virginia 25323

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August 28, 2003

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

Re: Rules and Regulations for the Transportation
of Coal by Commercial Motor Vehicle; 150 C.S.R. 27
Emergency Legislative Rules

Dear Judy:

Enclosed is a copy of the emergency legislative rules filed with you today with a Notice of Comment Period. As indicated on the form, the Commission is seeking comments by October 6, 2003, by 4:00 p.m. to be filed in its Executive Secretary's office.

I have enclosed a copy of the order, and as you can see from that order, we have elected to cause state-wide publication to be made of the comment period.

If you have any questions or if there are any problems, please bring them to my attention.

Sincerely,

Richard E. Hitt
General Counsel

REH/cbd

Enclosure

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