

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

Form #3

Do Not Mark In This Box

**FILED**

2003 NOV 21 P 3: 59

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Public Service Commission TITLE NUMBER: 150

CITE AUTHORITY: W. Va. Code 17C-17A-3(c), -5(k), -6(d), -7, -8(1), -8(3), -9(f)(4)

AMENDMENT TO AN EXISTING RULE: YES  NO

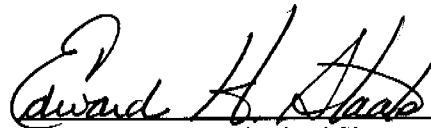
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 27

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

## **SUMMARY OF PROPOSED RULE**

These rules were required by the recent legislation (Senate Bill 583). The rules set forth the Commission's permitting application process; how to report coal shipments; the Commission's administrative process; the sanctions which will be imposed for violations; how appeals can be made from the Commission's orders; how commercial vehicles and their loads can be impounded; the requirements for certified scales; the safety requirements for vehicles and operators; the requirements for business records; a public toll free number to report poor driving or law violations; and forms to apply for a CRTS Permit or to ship or receive coal.

**STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE PROPOSED  
RULE**

The Coal Transportation Rules were required by Senate Bill 583. This legislation represents the balancing of interests among coal haulers, coal producers, coal receivers, residents who live along coal highways, as well as travelers of those roads.

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: November 21, 2003

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No ) Public Service Commission  
201 Brooks Street, P.O. Box 812  
Charleston, West Virginia 25301/25323  
304/340-0300

LEGISLATIVE RULE TITLE: Rules and Regulations for the Transportation of Coal by  
Commercial Motor Vehicle

1. Authorizing statute(s) citation W. Va. Code 17C-17A-3(c), -5(k), -6(d), -7, -8(1), -8(3),  
-9(f)(4)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
August 28, 2003

b. What other notice, including advertising, did you give of the hearing?  
Statewide publication of the notice of the comment period. Several press releases. Posted the  
notice of the comment period and the emergency rules on the Commission's internet web site.  
Prior to the issuance of the emergency rules, the Commission posted its draft emergency rules  
on its web site. It also conducted public workshops concerning the draft emergency rules on  
August 12 in Logan, August 14 in Beckley and August 22 in Fairmont.

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
October 6, 2003

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons  
for amendments.

Attached     X     No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

November 21, 2003

---

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Richard E. Hitt, General Counsel  
Public Service Commission  
201 Brooks Street, P.O. Box 812

---

Charleston, West Virginia 25310/25323  
304/340-0317 phone  
304-340-0372 fax  
rhitt@psc.state.wv.us

---

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

same

---

---

---

---

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

not applicable

---

---

---

---

b. Date of hearing or comment period:

not applicable

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

not applicable

d. Attach findings and determinations and reasons:

Attached not applicable

Attachment to Questionnaire  
Question No. 2.d.

The Public Service Commission received comments on the emergency rules from the following:

Savage Services Corporation  
Amherst Industries, Inc.  
3-D Management Services, Inc.  
United Mine Workers of America  
Internal Revenue Service  
Union Carbide Corporation  
West Virginia Coal Association  
West Virginia Manufacturers Association  
West Virginia Natural Resources Transporters Association

The reasons for the changes to the emergency rules are set forth in the Commission's order which accompanies the rules.

## FISCAL NOTE

P.S.C.  
Series 27

M.C. GENERAL ORDER NO. 72

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

### I. OBJECTIVES OF THE RULE

The purpose of this rulemaking is to modify the Commission's emergency rules regarding the transportation of coal by commercial motor vehicle. The Legislature recently enacted W. Va. Code Article 17A, Chapter 17C, which authorized the Coal Resource Transportation System, or CRTS. The CRTS is a road system upon which coal trucks can haul loads heavier than the weights allowed upon other state maintained highways. To counterbalance this authority to haul the heavier weights, the Legislature established a new administrative regime to issue permits to the trucks operating on the CRTS, as well as to encourage compliance through a sanctions process. The Public Service Commission is empowered to administer the administrative sanctions process; the enhanced criminal sanctions will be administered by the state court system. W. Va. Code §§ 17C-17A-9, -10, -11.

### II. COST OF IMPLEMENTING THE PROPOSED RULE

There are costs to implement this new statutory regime. Employees were transferred to the Public Service Commission from the Division of Highways. The Legislature established that certain of those costs would be handled through the Division of Highways State Road Fund. See W. Va. Code § 17A-17B-4. Some of those costs are borne through fees assessed to the coal truck haulers. See Coal Transportation Rule 3.20, citing W. Va. Code §§ 17C-17A-3(b)(5), -5(b).

The Legislature also authorized the Commission to establish fees to recover some of the costs of the Commission's administrative processes. Those fees are described in the Commission's rules.

### III. THE EFFECT THIS MEASURE WILL HAVE ON THE COSTS OR REVENUES OF STATE GOVERNMENT (Information required by fiscal notes for either house of the Legislature.)

This rulemaking will have an effect on the revenues of state government. The fees established by the Commission are not sufficient to recover its expected costs. It is not yet known whether the fees paid by coal haulers will be sufficient to cover the remaining costs of the program.

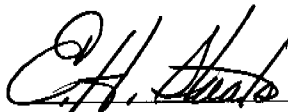
**IV. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS**

The impact of this rulemaking on the state government and its residents could be substantial. This legislation represents the balancing of interests among coal haulers, coal producers, coal receivers, residents who live along coal highways, as well as travelers of those roads. As yet, though, the impact is not fully known because roads in the CRTS system have not been finally designated.

**DATE:** 11-21-03

**AGENCY:** Public Service Commission

**SIGNATURE OF  
AUTHORIZED REPRESENTATIVE**

  
\_\_\_\_\_  
E.H. Staats, Chairman  
Public Service Commission

**SAVAGE**

Savage Services Corporation  
354 Table Rock Road  
Oakland, MD 21550

(301) 334-5324  
Fax (301) 334-1823

RECEIVED

2003 SEP -2 AM 9:12

W VA PUBLIC SERVICE  
COMMISSION August 28, 2003  
SECRETARY'S OFFICE

WV Public Service Commission  
Attn: Sandy Squire  
201 Brooks Street  
Post Office Box 812  
Charleston, WV 25323

*MC 6072*

RE: PSC Workshop of August 22, 2003

Dear Ms. Squire:

I attended the PSC workshop in Fairmont, West Virginia, Friday August 22<sup>nd</sup> and posed some questions to Mike Browning. A few days later, I received a call from Kevin McGraw and we discussed my concerns. He advised me to send a letter to you in regard to some of my concerns so the issues could be addressed.

First of all, I am the operations manager for Savage Services Operation in Oakland, Maryland. We transport coal from Mettiki coal preparation plant in Maryland to the Mount Storm Power Station (VEPCO) in Grant County, West Virginia. Not only do we transport the coal via truck, but we also operate the automated coal loading and unloading systems at the mine and power plant respectively. We have an automated truck loading system in which the trucks are automatically loaded and weighed on a set of certified scales to a pre-determined weight. The transactions are captured by a computer system and this serves as the binding weights for billing purposes to our customer Mettiki and the end user VEPCO. This scale is checked twice per day with another certified scale at Mettiki to ensure accuracy. The Mettiki scale also serves as a backup in case of any failure of the loading scale. The unloading facility at the power plant is automated also, however, there is no means of weighing the product at this facility. My question pertains to the fact that, in this instance, we are both the shipper (Maryland) and receiver (West Virginia). Since the shipping weights are binding contractually, I need to know if we can use this information to comply with the receiver reporting requirements as outlined in SB 583 verses installing a similar scale and data collection system at the receiving facility. Please keep in mind we are the shipper, hauler and receiver in this situation. Depending on power demands, we typically haul 350 to 450 loads per day.

Secondly, how do you suggest handling a situation in which you encounter a lapse of service to the system on the shipper's or receiver's side due to power interruption, scale breakdown, system failure, etc., which would prohibit the collection of data until repaired and not necessarily shut down the operation.

*Chairman  
Admin  
trans  
legal  
Special  
Studies  
James*

**SAVAGE**

Savage Services Corporation  
354 Table Rock Road  
Oakland, MD 21550

(301) 334-5324  
Fax (301) 334-1823

RECEIVED

2003 SEP -2 AM 9:12

W VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

WV Public Service Commission  
Attn: Sandy Squire  
RE: PSC Workshop of August 22, 2003  
August 28, 2003

Page 2

Lastly, given our specific circumstances, what would be required to comply with section 4.5 of SB 583? We currently display the loading information to the driver and he writes the information down on a load sheet. Would this load sheet suffice for a Coal Transaction Report? Or what would need to be done to comply?

We would gladly welcome a visit to our operation in order for you to tour our facilities and better understand our operation. Please feel free to contact me with any questions or concerns. I look forward to hearing from you in the near future.

Very truly yours,



William M. "Mike" DeVilder  
Operations Manager

WMD/no

RECEIVED

AMHERST INDUSTRIES, INC.

MC 60 72

2003 SEP - 8 AM 11:48

2 PORT AMHERST DRIVE  
CHARLESTON, WV 25306-6699  
PHONE 304-926-1100  
FAX 304-926-1136  
WRITER'S DIRECT #

W VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE  
September 5, 2003

CERTIFIED #7001-1940-0005-4667-4769  
RETURN RECEIPT REQUESTED

Mr. Mike Browning  
Executive Secretary  
West Virginia Public Service Commission  
Post Office Box 812  
Charleston, WV 25323

RECEIVED  
03 SEP - 8 AM 9:45  
W VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

Dear Mr. Browning

This letter is to confirm our conversation August 18<sup>th</sup> of this year pertaining to the new West Virginia State bill dictating the new truck weights governing coal haulage. As I explained to you this past Monday, Amherst Industries' property lies at the mouth of Campbell's Creek just under the Route 60 bridge. Our property is bisected by the two turnpike bridges which span the Kanawha River.

The coal which comes to our facility comes out of Campbell's Creek from Point Lick. The distance from our property to the Point Lick cleaning plant (the place which all coal is cleaned and processed) is six (6) miles. The trucks are loaded and weighed over electronic load-cells at the cleaning plant site. Each driver and truck is identified by a designated card reader. When each truck is weighed the gross, tare and net weights are recorded and grouped with each trucks coded card. The coal is trucked the six miles out of Campbell's Creek to the Amherst facility. At this time, the trucks dump the coal into the stockpile area(s) or directly into the barge.

Amherst has no designated or certified scales to re-weigh the trucks coming into the property. There have been instances where Amherst has taken duplicated weight tickets provided by the mine site scales and kept the coal separated for blending purposes. The driver simply put the ticket in a mailbox adjacent to the stockpile area. At the end of the day Amherst and the mine compare total tonnage and the number of truck loads. The mine site receives a composite sheet at the end of the day showing each loaded trucks tonnage for each trip made to the Amherst property.

If the receiver is to work with the PSC and its personnel to curtail the number of overloaded trucks on the road, then duplicated truck tickets is a way for Amherst to help.

*Chairman  
Admin.  
kans  
egal  
35  
Yane*

Mr. Mike Browning  
September 5, 2003  
Page Two

The tonnage that goes to barge does not warrant putting in a set of scales to compare with the origin weights. In our case this is cost prohibitive. The increased cost to cover capital expenditures and operating costs necessary to operate a set of scales would make us non-competitive with the other barge load-out facilities on the Kanawha River.

There is one possible option available for weighing inbound trucks. Shamblin Stone has a set of scales that is used for weighing sand, stone, gravel and other aggregates. The loaded coal trucks could be weighed prior to entering the stockpile area or barge loading area. I do not know if their computer is set up to electronically send truck weights daily or not. Also, who is going to bear the extra costs. As a receiver, we cannot afford extra costs like these and still remain competitive with the other load-outs on the Kanawha River.

Please reply, giving me your insight and suggestions as to what options might be available for us prior to October 1.

Sincerely yours,



George W. Jones, III  
Environmental Manager

3-D Management Services, Inc.

P.O. Box 186

Madison, WV 25130

304-369-9286

Fax 304-369-2685

RECEIVED

2003 SEP -9 AM 11:28

W VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

September 8, 2003

Mike Browning  
Public Service Commission of WV  
P. O. Box 812  
Charleston, WV 25323-0812

MC 60 72

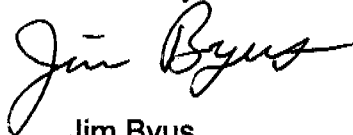
Re: Shippers and Receivers of Coal on CRTS

Dear Mr. Browning

Per our contract agreement with Coal River Energy, LLC, 3-D Management Services, Inc. (U-5037-98A), is not responsible for shipping or receiving coal. Coal River Energy, LLC is responsible for trucking the coal from Tiny Creek No. 2 Mine to the Coal River Energy plant.

If you have any question, please contact me at 304-369-9286.

Sincerely,



Jim Byus  
Office Manger

Travimaw  
legal  
trans  
SS  
Admin  
Jame

*Wilson*

# United Mine Workers of America

✓

CECIL E. ROBERTS  
INTERNATIONAL PRESIDENT



TELEPHONE  
(703) 208-7220  
FAX (703) 208-7132

RECEIVED

2003 SEP 26 AM 9:11

UNITED MINE WORKERS' HEADQUARTERS  
8315 LEE HIGHWAY

**Fairfax, VA**

22031-2215

WEST VIRGINIA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

September 23, 2003

Sandra Squire, Executive Secretary  
Public Service Commission  
P. O. Box 812  
Charleston, WV 25323

Dear Ms. Squire:

Attached are the United Mine Workers of America's (UMWA's) comments to the West Virginia Public Service Commission's M.C. General Order No. 72 - Proposed Rules and Regulations for the Transportation of Coal by Commercial Motor Vehicle.

The proposed rule as written is unacceptable to the UMWA. I respectfully request that you carefully review our comments and incorporate our recommendations into the final Rule.

Sincerely,

Cecil E. Roberts

cc: Edward H. Staats, Chairman, Public Service Commission  
R. Michael Shaw, Commissioner, Public Service Commission  
Martha Y. Walker, Commissioner, Public Service Commission  
Carlo Tarley, UMWA International Secretary-Treasurer

*Chairman  
legal  
trans  
SS  
Admin  
Jame*

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

RECEIVED

2003 SEP 26 AM 9:11

W. VA. PUBLIC SERVICE  
COMMISSION  
SECRETARIAT'S OFFICE

M. C. GENERAL ORDER NO. 72

Rules and Regulations for the Transportation  
of Coal by Commercial Motor Vehicle

COMMENTS OF INTERNATIONAL UNION,  
UNITED MINE WORKERS OF AMERICA,  
ON PROPOSED COAL HAULING REGULATIONS

The following comments are submitted pursuant to the Notice of Comment issued by the Commission on August 28, 2003 inviting comments upon what will become 150 C.S.R. §27-1 et seq. Pursuant to that notice, the International Union, United Mine Workers of America ("UMWA") submits the following comments. Based on a review of the underlying code provisions,<sup>1</sup> and the regulations proposed by the Public Service Commission by Order dated August 28, 2003.

The UMWA commends the Commission on its efforts to promote the safety of coal truck operation and protections of the communities and individuals who are exposed to the dangers and nuisances inherent in large overweight coal trucks. In return for the CRTS system, the Legislature provided a complex enforcement scheme with many redundancies, all of which are intended to result in a high degree of compliance and successful enforcement. The redundancies in the enforcement mechanism, for example, requiring weights to be reported both at the beginning and ending point of the shipment, represent an effort to escape the past. Notwithstanding the efforts of the Commission, however, the UMWA submits that many important enforcement mechanisms are unduly compromised in the proposed regulations. For

---

<sup>1</sup>West Virginia Code §17C-17A-1 et seq. and §17C-17B-1 et seq.

the strict enforcement envisioned by the Legislature to become a reality, full compliance must become the rule. Each exception proposed by the Commission to the enforcement program may be reasonable when viewed in a particular context. However, the numerous exceptions to the enforcement scheme as envisioned by the Legislature encourages, we respectfully submit, non-compliance and sends the wrong message to an industrial environment where violations have been the rule rather than the exception. Exceptions should be narrow and granted only grudgingly. The central problem with the proposed regulations is that by offering a variety of exceptions, the proposal can be read to suggest that effective enforcement will once again become the exception and non-compliance will remain the rule.

1. Delay in enforcement of reporting requirements for shipments on non-CRTS highways until July 1, 2004 is contrary to the statute and will delay implementation of the heart of the enforcement mechanisms provided in the legislation.

The keystone of the enforcement mechanism is the requirement of the daily reporting of the tonnage and other facts concerning shipments of coal. The statute, West Virginia Code §17C-17A-6 (a) directs the Public Service Commission ("Commission") to adopt rules "for timely and accurate disclosure of all shipments of coal made upon any public highway of this state." Subsection (b) makes every coal truck on a public highway subject to the provisions of the law. Subsection (c) mandates that "every receiver of coal transported on a public highway ... shall report to the commission the weight of shipments and other data related to shipments as required by rules promulgated by the commission." In its findings, the Commission states:

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 a sufficient ambiguity which has led it to provide for a transition period for the state-maintained public highways which would not [be] part of the CRTS system.

Conclusion of Law No. 6 at page 6. Counsel could find no "ambiguity" in the statute regulations or explanation which provides any basis for concluding that the daily reporting requirements can be delayed eight months after the date, October 1, 2003. The daily reporting requirements for shipments on the CRTS become effective on that date. This is especially necessary to coordinate reporting with the other mechanisms go into effect on October 1, 2003.

2. Minimal fines for not reporting.

The reporting from both the shipping and receiving is central to the entire enforcement program. Without reporting the enforcement status quo that the Legislature agreed to end in return for the exceptional treatment afforded to the industry by the CRTS system cannot be achieved.

Although the statute imposes what seem to be hefty "administrative sanctions"<sup>2</sup> on the statutory scheme generally, the statute itself is silent on any penalty for non-reporting daily tonnage. The Commission proposes in §4.11 an administrative penalty of "up to \$100 per shipment." Especially in light of the maximum \$100 penalty is "peanuts" in the context of the importance of the reporting requirement. The slap on the wrist \$100 fine proposed for failure to even report suggests that, at least up to a distant point, it may be less expensive for the owner to risk repeated \$100 fines instead of complying.

3. Exception from weighing requirement for shippers.

Section 4.8.a of the proposed regulations excuses shippers from having to weigh the coal before it is shipped so long as their estimates prove to be good estimates. If they are not good estimates, then the shipper "accepts responsibility for monetary administrative penalties imposed

---

<sup>2</sup>West Virginia Code §17C-17A-9.

for excess weight under §17C-17A-9. While this proposal is understandable, if adopted it will defeat the redundancy -- in this case weighing the truck at the beginning and ending point of the shipment -- built into the enforcement. The history of enforcement in this area explains why the Legislature established multiple enforcement schemes.

4. Hardship cases.

Section 1.5 allows for "a temporary or permanent exemption waiver" "from the application of any rule contained herein" upon showing of (1) "unusual difficulty ... involved in immediately complying with any rule," or (2) "upon other good cause shown." The regulation then lays out a bare bones procedure for obtaining waivers which itself provides for no public notice. It simply requires the unilateral filing of a position statement. Given the nuisance dimensions of the coal hauling problem, at the least, notice to the neighborhood affected and the persons who drive the roads affected should be given, by postings and newspaper advertisements, as is specifically done in the area of environmental regulations.

More importantly, the standards to be applied for any exception need to be strict and need to be stated in the rule. For example, "other good cause shown" could mean virtually anything. While we disagree with the concept of exceptions, if they are to become part of the scheme, strict guidelines and notice and opportunity of the affected public to participate are essential.

5. Vagueness of training and vehicle checking procedures.

Section 3.17 requires undefined safety checks "as required by Commission personnel" and §4 requires unspecified training lasting twenty-four hours. Given the danger to the community of a 120,000 pound truck traveling on country roads in close proximity to dwellings, pedestrians and other traffic, the truck safety requirements and training programs need to be

spelled out in great detail so that all parties concerned will know what is expected of them. The Commission should consider borrowing of some federal standards such as those established by National Transportation Safety Board or the Mine Safety and Health Administration as to surface mine trucks.

6. Impoundment provisions.

The statute<sup>3</sup> requires, by the use of the word "shall," impoundment, of trucks and their contents, if the permit has been altered or a law enforcement officer issues a criminal citation to the "owner, lessee or borrower" of the vehicle in question.

The proposed regulations, by contrast, provide that the motor vehicle and its load "may be impounded, but only as to the "owner" of the vehicle. This excludes the "lessee or borrower" of a vehicle operating on the CRTS subject to monetary fines under §17C-17A-10. While the statute allows for impoundment when either the "owner, lessee or borrower of a vehicle is charged" with violating the foregoing section with respect to overload, the proposed regulations, §8.1.b, provide for impoundment only when the "owner" of the vehicle is charged. This is an important omission because few "owners," only those from out of state, are subject to impoundment. Thus, by dropping "lessee or borrower," the impoundment remedy in the situation of a violation of §17C-17A-10, giving rise to monetary fines, is, except as to non-resident "owners," written out of the law by the proposed regulations. With all due respect, the Commission's proposal removes a powerful incentive for compliance.

---

<sup>3</sup>Section 17C-17A-9E as to forgery, etc. and criminal citations, and 17C-17A-1(d) for overweight trucks.

7. Notice to and involvement of the public.

The proposed regulations say nothing about public access to the reports filed with the PSC, the identify of permit holders or their records of violations. All of this information should be available. However, whatever is or is not available should at least be specified and the means of access should be clearly spelled out. To the extent such information is filed electronically, reasonable access should be offered to the public.

Another area where full disclosure is needed would be any contracts made under §13 pertaining to improvements in roads or bridges. The persons affected by special arrangements between the Commission and a private business should be notified as to the existence of such arrangements and allowed access to them.

**GENERAL COMMENTS REGARDING**

**BRIDGES AND ROADS**

There has been very substantial publicity of the studies being done by the Department of Highways relating to the conditions of the roads, and particularly of the bridges, in the areas affected by the new rules. Those findings indicate that a very substantial number of bridges, as well as many roads, are not in a condition to handle the additional haulage weight. The United Mine Workers of America, International Union believes that the taxpayers should not be burdened with the additional costs caused by increased weight on the roads and bridges of the State of West Virginia. Consequently, only when explicit and enforceable provisions are adopted to require the coal companies and haulage companies using particular bridges and roads to fully undertake, with

appropriate surety, the full and complete cost of maintenance and repair regarding those bridges and roads can a fair and appropriate haulage system be developed. Absent such concrete assurances, the burden will unfairly fall to the taxpaying public. We strongly disagree with any such additional burdens to the general public as a result of this new legislative scheme. These considerations must be addressed in advance of the adoption of any new regulatory framework.

Conclusion

The Commission should reconsider the points mentioned herein and adopt the suggestions concerning effective enforcement and deterrence, safety and training, and public disclosure.

Respectfully submitted,



Cecil E. Roberts  
UMWA International President

Wilson



COMMUNICATIONS AND LIAISON

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

September 30, 2003

PUBLIC SERVICE COMMISSION OF WV  
TRANSPORTATION DIVISION  
DIRECTOR'S OFFICE

OCT 03 2003

West Virginia Public Service Commission  
Mr. Franklin G. Crabtree, Director  
Transportation Division  
201 Brooks Street  
Charleston, WV 25323-0812

8072

RECEIVED

Dear Mr. Crabtree:

The purpose of this letter is to submit a recommendation for inclusion in the final rules and regulations for initiation of Senate Bill No. 583, as follows:

**Recommendation:**

Require the CRTS Permit Applicant to include a "Copy of current Form 2290, Federal Highway Use Tax Return." Form 1, Application for CRTS Permit, currently contains a list of five (5) items required as attachments. Form 2290 can be included on this list as a required attachment.

**Benefits -**

- To the State of West Virginia: Tax collected from Form 2290's is trust fund money and is redistributed to the States.
- To the Applicant/Taxpayer: (1) Applicant will realize additional weight must be claimed on Form 2290. This will enhance correct completion and compliance with Form 2290 tax and relieve taxpayer burden of additional penalties and interest for incorrect or delinquent returns; (2) Each individual/business will pay the proper amount of tax, rather than those complying with the laws paying more than those purposely avoiding compliance with the laws.
- To the Internal Revenue Service: This will assist with IRS' responsibility for insuring compliance in filing and paying taxes due on Form 2290. The resulting benefit to IRS directly relates to benefits for the State of West Virginia and the applicants/taxpayers.

**Background**

Internal Revenue Code Section 4481 imposes a Federal Highway Use Tax (Form 2290 tax) on any registered highway motor vehicle having a taxable gross weight of at least 55,000 pounds.

For the purpose of Section 4481, taxable gross vehicle weight is the total actual unloaded weight of a vehicle fully equipped for service 2) actual unloaded weight of any trailers or semi trailers fully equipped for service, and 3) the weight of the maximum load customarily carried on the vehicle.

Chairman  
Legal  
Trans  
SS  
Admin  
Jame

RECEIVED  
OCT 03 2003  
3:03 PM  
SECTION 4481  
IRS OFFICE

The rate of tax varies from \$100 for a vehicle weighing 55,000 pounds to \$550 for vehicles over 75,000 pounds. The tax is paid annually by filing Form 2290 by August 31. **Currently before a vehicle can be registered within the State of West Virginia, proof of payment must be shown for the Section 4481 highway use tax. A stamped copy of Form 2290 Schedule 1 is used as proof of payment.**

Form 2290 covers the period July 1 through June 30. If during this period gross vehicle weight increases, a new Form 2290 must be filed showing the increased tax rate. The Form 2290 and additional tax due must be filed and paid by the end of the month following the vehicle's first use.

Under current West Virginia law, most tractor-trailers should be registered at gross vehicle weight of 80,000 pounds. However, all single unit two and three axle trucks are limited to a maximum of 56,000 to 63,000 GVW.

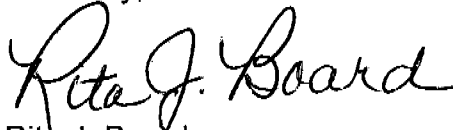
Senate Bill 583 authorizes increase in weight that exceed 75,000 pounds on all-single unit and tractor trailer trucks. Section 3.12.c of Senate Bill 583 requires the applicant to provide a copy of the current vehicle registration.

Past experiences have shown some registrants fail to claim proper vehicle weights when filing Form 2290. We believe by requiring a current copy of Form 2290 showing category V, GVW over 75,000 pounds for CRTS special permitted vehicles, would benefit all parties involved.

We hope your agency feels this recommendation warrants serious consideration. We are very willing to meet with members of your staff to further discuss this matter. Such a meeting would provide an opportunity to review Form 2290 and steps involved in determining its correctness.

I will contact your office in approximately one week to discuss this recommendation and a date convenient for meeting. If you want to discuss this at an earlier time, please do not hesitate to call me at 304-420-6372.

Sincerely,



Rita J. Board

Governmental Liaison - West Virginia

RECEIVED

03 OCT -3 PM 4: 03

W VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

Wilson

Y



**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

#7099-3400-0011-1813-5752

**Union Carbide Corporation**

A Subsidiary of The Dow Chemical Company  
PO Box 8004  
437 MacCorkle Ave SW  
South Charleston, WV 25303  
U.S.A

October 3, 2003

Public Service Commission of WV  
Mr. James Williams, Executive Director  
PO Box 812  
Charleston, West Virginia 25303

**RE: Union Carbide Corporation - South Charleston Operations  
Comments to Public Service commission Emergency Rule  
Rules and Regulations for the Transportation of Coal  
by Commercial Motor Vehicles (150 CSR Series 27-1, et seq.)**

RECEIVED  
2003 OCT - 6 PM 1:19  
WV PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

Dear Mr. Williams:

Union Carbide Corporation South Charleston Operations is a "receiver" of coal which is transported over any coal resource transportation road as required by the proposed Public Service Commission emergency rule entitled "Rules and Regulations for the Transportation of Coal by Commercial Motor Vehicles (150 CSR Series 27-1, et seq.).

We have no objections to the registration requirements, which we complied with in our letter of 9-29-03. However, we do not believe the reporting requirements in the above-referenced PSC Rule are necessary and add value to Union Carbide as a receiver of coal shipments. We believe the current contracts and agreements between the suppliers and Union Carbide are adequate.

The following specific comments are respectfully submitted:

1. Union Carbide, as a coal receiver, currently does not have dedicated scales (by the WV Division of Labor) for weighing coal trucks.
2. Coal weight tickets are sometimes not received at the time of delivery since the delivery company is different from our coal supplier.
3. The operating staff has many duties and may not be available at the unloading area when the coal is delivered at the site.
4. The time the coal is delivered is not currently tracked, and the tracking would not appear to be a value-added task.
5. The requirement for daily reporting would require a designated person to send or enter the requested information and would require one or more persons are designated for backup coverage.

Please call me at (304) 747-3623 or call the listed contact with any questions.

Sincerely,

**J. A. Amos**  
Joe A. Amos  
Regulatory Affairs Leader  
West Virginia Operations

Chairman  
legal  
trans  
SS  
Admin  
Jace



# West Virginia Coal Association

PO Box 3923, Charleston, WV 25339 ■ (304) 342-4153 ■ Fax 342-7651 ■ www.wvcoal.com

October 6, 2003

6072

Public Service Commission  
Brooks Street  
Charleston, West Virginia 25301

Please find enclosed our comments in response to the Emergency Rules for the Transportation of Coal by Motor Vehicles; Series 27.

We appreciate your time and effort in reviewing these comments.

Sincerely,

William B. Raney  
President

Enclosure

RECEIVED  
03 OCT - 6 PM 2:41  
W VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

Chairman  
Legal  
trans  
SS  
Admin  
Jame

**Comments of the West Virginia Coal Association to the Public Service Commission's Proposed Emergency Rules For the Transportation of Coal By Motor Vehicles; Series 27; October 6, 2003**

---

On behalf of the West Virginia Coal Association and our member companies, we appreciate the opportunity to comment on the Emergency Rules, and offer the following observations and recommendations:

First and foremost, it's important to note the coal industry remains a viable component of the state's economic base. Over the past several decades we have emerged as one of the world's leading marketers of one of the world's most desired base fuels for household and industrial energy. WV coal is consumed by 26 states along with the District of Columbia and is shipped to over 20 foreign destinations.

As an industry, we are responsible for thousands of good paying jobs along with the infusion of millions of payroll and tax dollars into local and statewide economies. Our ability to effectively compete in domestic and international markets is influenced in large measure by our extractive technologies, our seasoned and professional work force along with the ability to move our product efficiently throughout the state's transportation infrastructure i.e. rail, river and trucks.

The coal industry, together with the state's natural resource haulers, were active in the passage of SB 583 and are committed to work with the PSC, DoH, Legislature and the Executive towards a smooth transition and implementation of this comprehensive law.

As a general observation and comment, we fully embrace the underlying premise accurately stated by the PSC on page 2. of the "Background and Discussion" of the Commission Order issued on the 28<sup>th</sup> day of August, 2003: "...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 essence of this premise -- the ability to haul at increased weights in exchange for increased penalties and enforcement -- reflects the central principle embraced by everyone involved and should remain in clear focus as rules and policies are developed and this program proceeds forward: This premise remains vitally important today as we proceed with the implementation of SB 583.

It is also noteworthy to reference the enormity and technical nature of the work associated with the implementation of SB 583, including DoH, and their charge to carefully evaluate all bridges and road segments that may qualify for special designation or upgrade to the administrative challenge and task associated with the transfer of resources, personnel and developing the enforcement mechanisms and programs. As eager as the industry is to haul weights consistent with those established by SB 583, we are also mindful of the relatively short, if not unrealistic, timeframes built into SB 583 to complete the work necessary to fully implement the program.

We now move to our specific comments:

**Draft Rule 150-27-3. Permit Applications for the CRTS.**

**Section 3.18.** We support the early public position of the Commission regarding the 5 coals per ton assessment placed on coal transported over the CRTS. This assessment should only be placed on the amount of coal which exceeds 88,000 pounds. We believe this position is consistent with SB 583.

03 OCT - 6 PM 2:41  
RECEIVED  
W VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

**Draft Rule 150-27-4 Reporting of Coal Shipments.**

**Section 4.4.** We support the Commission's phase-in approach with respect to reporting of coal shipments by shippers and receivers of coal in counties outside of the fifteen county CRTS. We believe that requiring statewide reporting of coal shipments was merely an unintended consequence of attempting to consolidate several drafts or versions of SB 583 before final passage. It certainly violated the basic premise upon which SB 583 was developed, i.e., the ability to haul increased weights in exchange for increased reporting, penalties and enforcement! Producers and shippers outside of the fifteen counties designated CRTS area are not afforded the opportunity to haul increased weights and therefore should not be subjected to such a higher level of enforcement!

**Sections 4.5/4.6/4.7/4.8/4.9 (Electronic Reporting Generally).** Although we support the provision requiring shippers to estimate weights, we would respectfully submit that requiring Shippers to report daily (electronically) as set forth in the Commission's Rule is impractical and could add unnecessary costs to the transportation of WV coal. Therefore we recommend that the Commission revise its rules by requiring Shippers to report to the Commission on a weekly or bi-weekly basis all information collected in the ordinary course of the Shipper's business, reflecting the weight of each truck the Shipper loaded or caused to be loaded with coal for transportation on a CRTS highway during the preceding week. This recording and reporting method would satisfy the statute's mandate that the weight of all shipments of coal made by commercial motor vehicle upon a CRTS highway of the state be timely and accurately disclosed. Upgrades to the communications and computer systems currently available are being made at each location before most coal facilities are able to submit reports as provided in the Commission Rule. Although we do not yet have sufficient information on which to estimate the costs that will be associated with making or maintaining such system upgrades, we believe that such costs will be substantial. One of the challenges in designing and implementing the electronic reporting system is the need for such a system to be able to distinguish between trucks that have traveled over a public highway to reach the receiver and must be reported to the Commission and those that have not traveled over a public highway and should not be reported to the Commission. We ask the Commission to be mindful of these issues and work with the industry towards more effective and cost efficient means of reporting coal shipments in a timely and accurately manner.

**Section 4. Reportable Information** The reported data that will be generated pursuant to this section represents data that could be used by competing entities to gain a business advantage over one another and could be used to threaten public safety or health. Therefore we urge the Public Service Commission to recognize the exempt nature of the reported data and manage it appropriately.

Under the West Virginia Code, 29B-1-4 the categories of information specifically exempt from disclosure pursuant to the WV Freedom of Information Act are delineated. Specifically subparagraph (1) provides,

Trade secrete, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which give its users an opportunity to obtain business advantage over competitors.

The gross weight in pounds of coal shipments represents a direct correlation to coal sales and coal purchase data that is subject to use by competitors for the purpose of undermining existing business relationships. Those who are engaged in the sale and purchase of coal traditionally handle such voluminous data in a confidential manner to maintain a competitive advantage over others in the business. It is imperative to the stability of the coal industry that such data be maintained as confidential and not subject to scrutiny by competitors.

The WV Supreme Court has provided in the AT&T Communications of West Virginia, Inc. v. The Public Service Commission of West Virginia, that:

RECEIVED  
03 OCT 16 PM 2:41  
WEST VIRGINIA PUBLIC SERVICE COMMISSION  
SERVICES OFFICE

The PSC's standard for determining the likely harm from disclosure is governed by the Freedom of Information Act, W.Va. Code, 29B-1-1, et seq. [1977]. The general policy of this act is to allow as many public records as possible to be available to the public. Recognizing the needs of business for privacy of some information, the Legislature has created an exception for "trade secrets" . . . The party claiming that certain information is protected by this exception has the burden of making a credible showing that a trade secret, expressly defined, is in jeopardy. Queen v. West Virginia Univ. Hosps., 179 W.Va. 95, 365 S.E. 375 (1987) (burden of proof rests on party claiming exemption); Robinson v. Meritt, 180 W.Va. 26, 375 S.E.2d 204 (1988) (clear and convincing evidence required).

423 S.E.2d 859, 863 (1992).

A demonstration of the need for such privacy may necessarily involve disclosing terms and conditions of confidential coal sales and purchase agreements, as well as other business confidential data which are not appropriate for inclusion in these comments

As the PSC considers this request, it is essential to note that we recognize the public nature of enforcement data and are not proposing the PSC withhold all enforcement data, but that which is sensitive to the shippers' and receivers' conduct of commerce and should be protected by the trade secret exemption.

**Section 4.8.a** We support the rule change allowing "Shippers" to "estimate" the weight of coal loaded for shipment. The cost of compliance with the original requirement was particularly burdensome as evidenced by a the response of fifteen coal producing companies who reported a total of sixty-four (64) shipping sites that do not presently have scales. Without the change to this provision, the approximate cost to this group of shippers would be approximately eight (8) million dollars. This estimate is based on (\$125,000 per mine site) to install certifiable truck scales at each shipper site. However, it would not be possible to install truck scales at many of the smaller mine sites due to the steepness of the terrain where these mines are located and the lack of sufficient space to accommodate such scales. The data that is collected for internal purposes is gathered from certified truck scales at the receiving preparation plant or loading dock.

#### **Draft Rule 150-27-10 Vehicle Operations and Safety**

**Section 10.1** We recommend the following language be added to this section: "or be designed" . It would then read: Any vehicle or combination of vehicles transporting coal upon the public highways of this state shall be securely covered "or be designed" to prevent the escape of the load of any trip...

Rationale: Certain coal trucks are of special design that "prevent the escape of the load."

**Section 10.2** We recommend this section be revised to allow a "Coal Truck Drivers Certification" (CTDC), issued by the West Virginia Office of Miners' Health, Safety & Training, to meet the requirements of this section or be deemed equal to this specialized training. The CTDC was developed by the West Virginia Board of Miner Training, Education, and Certification and more than adequately meets the safety aspects of operating a coal truck on public highways.

We note with interest that the Commission has maintained highway safety as a high priority. We respectfully request the Commission to work with the industry and DoH with this shared goal in mind to assist in the identification of the most appropriate routes for intrastate coal transportation. Currently, there is a major impediment which precludes the cost efficient transportation of coal over the interstate system. This causes routes which are ordinarily restricted to passenger vehicles to become viable coal transportation routes. We encourage the Commission to work with the appropriate groups to remedy this situation. It is our understanding that several states have the ability to haul coal, as well as other products and commodities on interstate systems in excess of 80,000 pounds. It would enhance public safety to provide West Virginia with this same ability.

Lastly, we point to the elevated confusion that currently exists which has frustrated the October 1<sup>st</sup> implementation of this program. Shippers, transporters, receivers and enforcement personnel are all affected. To avoid further and prolonged conflict, we recommend the Commission to immediately rescind its rules subject to this comment period or simply amend the effective date so it coincides with the subsequent Final Order of the DOH Commissioner which places the CRTS in operation. This will alleviate the majority of confusion which reigns today and is consistent with SB 583, that requires Emergency Rules to be filed by October 1, but does not require these rules to be operative or to take effect on that date.

Similarly, because of the confusion and matters of timing we ask the permits be issued, but not be considered operational until the final CRTS is put in place by the subsequent Final Order of the DoH Commissioner. This would allow the permits to be effective for a full twelve months from the date the shippers, transporters and receivers could effectively use the benefits of the new law. This would also assist in assuring compliance with all permitting requirements at the time the final CRTS becomes effective.

Thank you for your consideration of our concerns and the information set forth in this letter. We would welcome the opportunity to further discuss these issues with the Commission.

*Wilson*

LAW OFFICES  
**ROBINSON & McELWEE PLLC**

Edward J. George  
DIRECT DIAL NO. (304) 347-8319  
E-MAIL: [ejg@ramlaw.com](mailto:ejg@ramlaw.com)

P. O. BOX 1791  
CHARLESTON, WEST VIRGINIA 25326

CLARKSBURG OFFICE  
P. O. BOX 128  
CLARKSBURG, WEST VIRGINIA 26302  
TELEPHONE (304) 622-6022  
TELEFAX (304) 622-6065

TELEPHONE (304) 344-5800  
TELEFAX (304) 344-9566

600 UNITED CENTER  
500 VIRGINIA STREET, EAST  
CHARLESTON, WEST VIRGINIA 25301

October 6, 2003

**BY HAND DELIVERY**

Mrs. Sandra Squire  
Executive Secretary  
West Virginia Public Service Commission  
201 Brooks Street  
Charleston, West Virginia 25301

*6072*

RECEIVED  
2003 OCT - 6 PM 3:41  
W. VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

**Re:** The West Virginia Public Service Commission's Rules and Regulations for the Transportation of Coal by Commercial Motor Vehicle, 150 C.S.R. 127-1, et seq.

Dear Mrs. Squire:

Please find enclosed herewith the Comments of the West Virginia Manufacturers Association ("WVMA") on the West Virginia Public Service Commission's Rules and Regulations for the Transportation of Coal by Commercial Motor Vehicles, 150 C.S.R. 127-1, et seq. ("Rules"). The WVMA is comprised of manufacturing companies throughout the State of West Virginia which are affected by the Rules.

The WVMA is appreciative of this opportunity to submit its comments on the Rules and hopes that the Commission considers the recommendations and suggestions of the WVMA in order to meet the Legislature's intent for the safe transportation of coal by commercial motor vehicle in West Virginia.

Thank you for your assistance in this matter.

Very truly yours,

*Edward J. George*

Edward J. George  
Counsel for the West Virginia Manufacturers Association

*Chairman  
legal  
trans  
SS  
Admin  
Jaw*

EJG/acb  
Enclosures

cc: Ms. Karen S. Price (w/encl.)  
WVMA Members

**Comments of the  
THE WEST VIRGINIA MANUFACTURERS ASSOCIATION  
on the Proposed  
RULES AND REGULATIONS FOR THE TRANSPORTATION OF COAL  
BY COMMERCIAL MOTOR VEHICLES  
150 C.S.R. 27 -1, et seq.**

2003 OCT -6 PM 3:41  
WVMA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

RECEIVED

**I. Introduction**

On August 28, 2003, the West Virginia Public Service Commission ("Commission") entered General Order No. 72, ("Order"), thereby issuing emergency Rules and Regulations for the Transportation of Coal by Commercial Motor Vehicles, 150 C.S.R. 27-1, et seq. ("Rules") which became effective on October 1, 2003. The written comment period on this rulemaking, however, closes on October 6, 2003.

These comments are being submitted by and on behalf of the West Virginia Manufacturers Association ("WVMA"). The WVMA is comprised of small, medium and large manufacturing companies located throughout the State of West Virginia and is devoted to the advancement of industrial manufacturing activities and related businesses in West Virginia, while maintaining a desire to protect the public health and safety. The WVMA frequently offers comments on rules and regulations that are of interest to its members. The Commission's Rules affect WVMA members who are receivers of coal that has been transported by commercial motor vehicles. Accordingly, the WVMA submits the following comments.

**II. General Comments**

The Rules impose obligations and liabilities, which became effective on October 1, 2003, on shippers and receivers of coal transported by commercial motor vehicle on the Coal Resource Transportation System ("CRTS"). On October 1, 2003, the West Virginia Department of

Transportation (“DOT”) released its interim designation of the CRTS which, however, will still take months to finalize and designate. Moreover, under the Regulation of Coal Transportation Act, W.Va. Code §17A-17A-1, et seq. (the “Act”), the final designation of the CRTS is not required until January 1, 2004. According to the Rules, on October 1, 2003 receivers must register and begin weighing and reporting commercial motor vehicles transporting coal on the CRTS. Without knowing which roads comprise the CRTS, there is considerable confusion among shippers, receivers and transporters of coal as to how and when the Rules must be complied with during this interim period. The WVMA is concerned about the interim time between the two agencies’ regulations and designations and the fact that the Rules are enforceable absent a final configuration of the CRTS. The Commission recognizes that the ambiguities in the Act, which mandates an effective date of October 1, 2003 but allows the DOT until January 1, 2004 to designate the CRTS, made it impossible to enforce the Rules on October 1, 2003. As such, there is a lack of confidence and vagueness facing the regulated community as to how to comply with the Rules. Therefore, the WVMA urges the Commission to stay the Rules until the DOT’s finalization and designation of the CRTS is completed.

### **III. Reporting of Coal Shipments**

With regard to the requirements for the reporting of coal shipments under Section 4 of the Rules, the WVMA submits the following comments.

#### **1. 4.1 & 4.4**

Under these sections, the Commission requires that shippers and receivers of coal transported by commercial motor vehicle register with the Commission no later than the date they are required to report coal shipments under the Rules. Some WVMA member industries receive coal shipments

by river barge. However, in emergency situations such as when a river becomes non-navigable due to freezing or flooding, the companies may receive coal transported by commercial motor vehicle. The WVMA strongly recommends that the Commission add an exemption provision to the registration requirements accommodating such emergency situations by not requiring receivers to register with the Commission if shipments received by commercial motor vehicle in any calendar year do not exceed ten (10) days.

2. 4.2

Under this section, the Commission requires that shippers and receivers timely and accurately report the gross weight in pounds of every coal shipment by commercial motor vehicle, including the date and time when the shipment was weighed. This requirement provides no meaningful regulatory benefit and is overly burdensome to receiving facilities. Most receivers do not currently track the time of coal deliveries. In addition, operators on the receiving end have many responsibilities which often prohibit their availability to be present to take receipt. This provision will only serve to require additional trained personnel to track and monitor every coal shipment received, creating a great cost to the receiving facilities and really adding nothing by way of public safety. The WVMA recommends that this section be revised so that reports do not include the time when the shipment was weighed.

3. 4.7

This section requires that shippers and receivers of coal submit a report, which includes the gross weight in pounds of every coal shipment by commercial motor vehicle and the date and time of when the shipment was weighed, by 4:00 p.m. the next business day following the date of shipment. This requirement is overly burdensome and restrictive for receivers. The next day

reporting requirement does not allow the receivers enough time to accurately weigh, record and submit the proper information as required by the Rule. This daily reporting requires trained employees to track, record and report this information.

In addition, some WVMA member industries utilize coal for combustion in boilers to generate process steam. There is a range of boiler sizes among the member companies. The receipts of coal may range from zero to many trucks per day or week. The reporting requirements, as written in the Rule, creates an unnecessary burden for receivers who only receive a small number of shipments per week/month. The WVMA recommends that the Commission revise this section to require weekly reporting, i.e. by 4:00 p.m. on the first business day following the week of shipments received, and a tiered system whereby low quantity receivers can accumulate shipments and report on a frequency more appropriate to the number of shipments received on a daily, weekly or monthly basis.

4. 4.8

The Commission requires under Section 4.8 that shippers and receivers weigh the gross vehicle weight of each coal shipment. The Commission has allowed for shippers of coal to weigh the vehicles by either scales certified by the West Virginia Division of Labor (“DOL”) or by estimating the weight, provided certain guidelines are followed. Yet, the receivers are required to weigh the vehicles only by certified scales. This requirement imposes a great cost to the receiving facilities, as not all receivers currently have dedicated certified scales by the DOL for weighing coal shipments. As such, the WVMA urges the Commission to revise this section so that receivers are not restricted to only weighing coal shipments with certified scales.

Furthermore, the option to allow the shippers to estimate the coal shipment weight is not provided for in the Act. The Commission stated in its Order that this exception is justified as not all shippers are currently capable of using certified truck scales before the coal is shipped on public highways. However, as stated hereinabove, all receivers are not currently capable of using certified scales either. In addition, this less-accurate weighing option for shippers does not meet the legislative requirements under the Act. Under the reporting requirements, the Commission “must establish special recording and reporting methods for timely and accurate disclosure of all shipments of coal made by commercial motor vehicles upon a public highway of this state.” W.Va. Code §17C-17A(6)(d). (emphasis added). Clearly, the Legislature intended for the accurate disclosure of all shipments, which can only be assessed by the shipper. Any assessment by the receiver is only accurate as to the weight of the vehicles at the point the coal was received - - not at the point when it was shipped. As such, to meet the intent of the Legislature an accurate weight must be taken at the time of the shipment, before the coal is received, by only using certified scales and not by an estimation.

In addition, the exception for shippers to estimate weights undermines the primary purpose of the Act. Foremost, the regulation of the commercial transportation of coal is intended to protect the public health and safety. The Legislature found that “local residents are exposed on a daily basis to the dangers associated with sharing the road with a large number of those vehicles [coal trucks]” W.Va. Code §17C-17A-1(a)(2). As such, the Legislature mandated additional safety protections for the public sharing the roads with coal hauling vehicles. W.Va. Code §17C-17A-1(a)(7). The Commission’s Rules do not contemplate this intent as they allow for an inaccurate weighing of coal before it is transported across public highways. By only requiring that receivers accurately weigh

the coal, the Commission is placing the public safety in jeopardy every time an inaccurate estimate by a shipper allows an overweight coal truck on the roads. Although the shipper will be penalized for the overload, the damage will have already occurred by allowing the overweight haulers to proceed to the receiver. In other words, the Commission's Rules are not preventative, but only punitive in nature. If the shippers were required to accurately weigh the vehicles by certified scales, the overweight vehicles would be kept off of the highways. Therefore, the WVMA strongly recommends that the Commission revise the Rules and require shippers to weigh coal shipments only with certified scales.

5. 4.9

This section requires that receivers report to the Commission the shipper's bill of lading which is to be provided by the transporter of the coal. This requirement is overly burdensome to receivers and is difficult, if not impossible, to comply with. In instances where the transporter is different from the shipper, the shipper's bill of lading is normally not received in a timely manner by the transporter. Therefore, the receivers should not be responsible for submitting the shipper's bill of lading to the Commission. The WVMA suggests that this requirement be deleted from the Rules.

**III. Record Retention**

Although the Rules set forth the information required to be reported by the receivers of coal, they do not indicate the length of time that such records are to be maintained. Record retention policies of member companies vary as to how long various types of records must be retained. The WVMA recommends that a reasonable retention period of two (2) years be instituted for record retention.

#### **IV. Administrative Procedures**

In its Order setting forth the Rules, the Commission stated that the Act fails to specify the administrative process for hearings and appeals for the Commission's regulation of coal transported by commercial motor vehicles. As the United States and West Virginia Constitutions require that each person receive due process for such procedures, the WVMA commends the Commission for setting forth its own administrative provisions in the Rules. However, the WVMA urges the Commission to encourage the Legislature to revisit this issue and set forth administrative procedures and appellate review in the Act.

Under Section 5.7 of the Commission's administrative provisions, when a hearing is requested the Commission will only provide for one proceeding for all persons subject to an administrative sanction in a particular cited incident. Only one proceeding for all persons involved is not appropriate. Constitutional Due process allows each person the right to relief and to deny and oppose any sanctions issued upon him or her. One proceeding for all persons involved in a particular incident may not provide for each person's due process rights. As such, the WVMA recommends that this provision be revised so that individual due process rights are preserved. In addition, the same provision provides that when one person requests a hearing and another does not, the Commission may proceed to impose administrative penalties against the party who does not request a hearing. This provision also impairs the due process rights of an individual who may not be aware of the requests of other persons involved in the same incident. As such, the WVMA strongly suggests that this language be deleted from the Rules.

**V. Inspection of Business Records**

Under Section 11, the Commission allows for the inspection of all trucking related records of shippers, vehicle operators, vehicle owners and receivers engaged in the transportation of coal. As written, this provision may allow for an overly broad inspection of business records not related to the transportation of coal by commercial motor vehicle. As such, the WVMA recommends that this section be revised to restrict the inspection of business records to only those records which pertain to transportation of coal by commercial motor vehicle. In addition, the WVMA suggests that the provision be revised to only allow for inspections in the coal shipping or receiving areas of the affected facility.

**VI. Conclusion**

The WVMA appreciates this opportunity to comment on the Rules and urges the Commission to give full consideration.

Respectfully submitted on October 6, 2003.

**WEST VIRGINIA MANUFACTURERS ASSOCIATION**  
By Counsel

**ROBINSON & McELWEE PLLC**

cc: Karen S. Price, President  
West Virginia Manufacturers Association  
2001 Quarrier Street  
Charleston, West Virginia 25311

Members, WVMA

Comm/CW



# WEST VIRGINIA NATURAL RESOURCES TRANSPORTERS ASSOCIATION

1620 Kanawha Boulevard East, Suite 4A, Charleston, WV 25311

October 6, 2003

WV Public Service Commission  
Attn: Rick Hitt  
P.O. Box 812  
201 Brooks Street  
Charleston, WV 25323

RECEIVED  
03 OCT -7 PM 1:37  
WV PUBLIC SERVICE COMMISSION  
LEGAL DIVISION

GO ME 22

Dear Mr. Hitt:

The WVNRTA would like to request a change in the renewal dates for the coal haulage permits in the CRTS. We propose a January 1 annual renewal date for the permits. Due to the fact that SB 583 will not be fully implemented until January 1, 2004, we feel this is a reasonable request.

The coal transporters have major expenses in June for the purchase of state vehicle license at a cost of \$1132.75 per truck. In August transporters are required to pay Federal Highway Use Tax in the amount of \$550.00 per truck. Extending the CRTS sticker renewal to January 1, would give our coal haulers financial recovery time.

Your consideration of this request will be appreciated. We look forward to your response.

Sincerely yours,

*Ted Berry*

Ted Berry, Executive Director  
WVNRTA

RECEIVED  
2003 OCT -7 PM 3:44  
WV PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

OLB:dkh  
cc: Mike Browning

Thum  
Transp  
SS  
Admin.  
legal  
Law

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 21<sup>st</sup> day of November, 2003.

M.C. GENERAL ORDER NO. 72

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

COMMISSION ORDER

Having considered comments, the Commission modifies its emergency rules and promulgates legislative rules governing the transportation of coal by commercial motor vehicle.

BACKGROUND

In the 2003 Regular Session of the Legislature, Senate Bill Number 583 was passed, which, among other things, transferred weight enforcement responsibility for all commercial motor vehicles from the Division of Highways within the Department of Transportation to the Public Service Commission; authorized the Coal Resource Transportation System (CRTS) to be established; empowered the PSC to develop and enforce the system for permitting vehicles upon the CRTS; and authorized PSC employees to enforce speeding laws with regard to commercial motor vehicles. See W. Va. Code § 17C-17A-1 et seq. That legislation also imposed statewide reporting requirements on coal shippers and receivers. W. Va. Code § 17C-17A-6.

The CRTS is a road system upon which coal trucks can haul loads heavier than the weights allowed upon other state maintained public highways. To counterbalance this authority to haul the heavier weights, the Legislature established a new administrative regime to issue permits to the trucks operating on the CRTS, as well as to encourage compliance through a sanctions process. The Public Service Commission is empowered to administer the administrative sanctions process; the enhanced criminal sanctions will be administered by the state court system. W. Va. Code §§ 17C-17A-9, 10, and 11.

Senate Bill 583 required the Commission to have emergency rules in effect October 1, 2003. W. Va. Code § 17C-17A-5(k), and 7. In mid-July 2003, the Commission posted draft rules on its internet site and issued press releases announcing that the draft rules were available for public inspection. In August 2003, the Commission conducted workshops in Logan, Beckley and Fairmont, where it presented its overview of the legislation, its draft rules, and received a number of public comments and questions. In addition, the Commission received written comments on its draft rules.

On August 28, 2003, the Commission issued its emergency rules which established, among other provisions, the permitting process, the shipper and receiver reporting process, and the administrative procedures for the administrative sanctions.

Thereafter, the Commission received the following comments on the emergency rules:

September 2, 2003	Savage Services Corporation
September 8, 2003	Amherst Industries, Inc.
September 9, 2003	3-D Management Services, Inc. <sup>1</sup>
September 26, 2003	United Mine Workers of America
October 3, 2003	Internal Revenue Service
October 6, 2003	Union Carbide Corporation
October 6, 2003	West Virginia Coal Association
October 6, 2003	West Virginia Manufacturers Association
October 7, 2003	West Virginia Natural Resources Transporters Association

### DISCUSSION

The comments will be addressed at the pertinent part of the rule discussion below. For convenience of reference, the Commission provides the section headings.

#### **150-27-1. General.**

The West Virginia Coal Association suggested that the October 1, 2003, effective date, which is set forth in Rule 1.4, be immediately rescinded. Comments p. 4. It urged that the statute required the Commission to have its emergency rules filed by October 1, 2003, but that statute did not require the Commission's rules to be in effect on that date. The Association also suggested that, to avoid confusion, the PSC's rules should take effect at the

---

<sup>1</sup> 3-D Management Services, Inc. advised that, per contract, it does not ship or receive coal. Ltr. p. 1. It did not comment on any specific rule. Id.

same time as the order from the Division of Highways which finally designated the CRTS.

The Manufacturers Association likewise urged the Commission to stay the emergency rules until the Department of Highway's finalization and designation of the CRTS. Comments p. 2.

The Commission concludes that the Coal Association's position that W. Va. Code § 17C-17A-5(k) only required the Commission to have its rules filed on October 1<sup>st</sup>, but not in effect, is an interpretation of the statute which cannot be reconciled with W. Va. Code § 17C-17A-11, which states that the criminal and administrative penalties take effect on October 1<sup>st</sup>. The Commission would be incapable of imposing administrative penalties without first establishing a process.

Since the Legislature made clear when the penalties take effect, the Commission cannot reconsider and stay its rules until the CRTS is finally designated by the Division of Highways. The Commission's rules are necessary for the enforcement of the administrative penalty provisions.

The United Mine Workers suggested that public notice be given of all applications, pursuant to Rule 1.5, for a waiver of any provision of the Coal Transportation Rules. Comments p. 4. The Commission finds this suggestion reasonable and shall adopt it. Notice of any waiver application shall be provided as a Class I legal advertisement in a newspaper duly qualified by the Secretary of State, published and of general circulation in the area affected.

The United Mine Workers also suggested that the standards for a waiver be strict and stated in the rule. Comments p. 4. Rule 1.5 states that no request will be considered unless it is supported by a full and complete justification. Further, it states that a waiver may be requested if a hardship results from the application of any rule, or if unusual difficulty is involved in immediately complying with any rule, or upon other good cause shown. Still further, the rule states that, to the extent that a rule is based on a specific statutory requirement, the Commission is unable to waive such a provision. The Commission concludes that these statements are sufficient for the protections that the UMW requested. These cases, by their very nature, must be decided upon the individual facts and circumstances presented. The Commission notes that the UMW did not provide any specific language or standards for the Commission to consider, in place of the standards just discussed.

**150-27-2. Definitions.**

No comments were made regarding this portion of the rules.

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

Rule 3.17 requires that permitted commercial motor vehicles undergo safety checks and other inspection requirements. Comments pp. 4-5. The United Mine Workers asked that the details of the safety checks and inspections be set forth in the rules. And, the UMW suggested that the Commission consider borrowing some federal standards, such as those established by the National Transportation Safety Board or the Mine Safety & Health Administration.

In Rule 3.3.a of the Commission's Rules Governing Motor Carriers, Private Commercial Carriers, and the Filing of Evidence of Insurance and Financial Responsibility by Motor Carriers, 150 Series 9, motor carriers are required to establish, maintain and operate their vehicles, equipment and cargo in conformity with safety rules and regulations promulgated by the U.S. Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety. The Commission shall not specifically list the elements of those federal safety requirements in the Coal Transportation Rules. If the federal authorities changed the requirements, until the Commission's Coal Transportation Rules were subsequently revised, commercial motor carriers could find themselves with seemingly conflicting regulations.

The Internal Revenue Service suggested that the Commission require permit applicants to attach Form 2290, Federal Highway Use Tax Return, to their permit applications. (The permit application is designated by these rules as Coal Transportation Form 1.) Ltr. pp. 1-2. The amount of the tax is calculated on a vehicle's gross taxable weight. Id. Before a vehicle can be registered in West Virginia, proof must be provided that this tax has been paid. Id. p. 2. A stamped copy of Form 2290 provides this proof. Id.

The Commission shall not adopt the IRS's suggestion. Form 1 must be supported by a copy of the current vehicle registration, West Virginia business license, proof of corporate status from the Secretary of State's office, and lease agreement, if applicable. Further, in addition to completing the form, the applicant has to verify that the applicant has insurance as required by state law, each vehicle has a current state inspection sticker, each vehicle will have a total combined axle rating capacity equal to or greater than the maximum weight for which the permit is sought, each vehicle will be operated only by a driver with a valid commercial driver's license, and that the application is true and complete.

Federal Form 2290 is required to support the application for a vehicle's registration. Moreover, the CRTS permit application contains a statement under oath that each vehicle will have a total combined axle rating capacity equal to or greater than the maximum weight for which the permit is sought. In this respect, the required verification to the Commission's form provides information similar to that on the federal tax form. Furthermore, Form 1 already requires applicants to attach several other documents. One of them is the vehicle's registration, and that form must be supported by Federal Form 2290. For all of these reasons, the Commission will not require the filing of federal tax Form 2290 with a CRTS permit application.

The Coal Association suggested that the CRTS permits be issued now, but those permits would not be operational until the final order from the Division of Highways which places the CRTS in operation. Comments p. 4. For the same reasons as the Commission explained above regarding the effective date for these rules, the Commission cannot grant the requested relief.

The West Virginia Natural Resources Transporters Association asked that the permit renewal date be changed to January 1, since Senate Bill 583 will not be fully implemented until January 1, 2004. Ltr. p. 1. The Association noted that coal transporters have major expenses in June each year to purchase their state vehicle license, which is more than \$1100 per truck. In August, transporters are required to pay the federal highway use tax. Extending the CRTS permit renewal to January 1 would give coal haulers financial recovery time, it urged. Id.

Rule 3.3 sets the initial permitting period as October 1, 2003, through September 30, 2004. Thereafter, permitting periods run from October 1 through September 30 of the following year. An initial permitting period beginning in October is consistent with the Legislature's requirement that the Commission have its emergency rules in place no later than October 1, 2003.

However, the Natural Resources Transporters' request is reasonable, and the Commission can accommodate it by extending the initial permit period to 15 months. The permits for the initial permitting period will be issued and valid from October 1, 2003, through December 31, 2004. Thereafter, the Commission will establish the permit year to be January 1 through December 31 for subsequent years.

On its own motion, the Commission has added a new section, Rule 3.20, relating to the fees which the Commission established in these rules. Rule 3.20 states that the Commission-established fees will be deposited in the Public Service Commission's Fund. W. Va. Code Chapter 17C, Article 17A expressly sets forth that certain fees established by

statute – specifically, the five cents per ton of coal hauled in excess of 88,000 pounds in W. Va. Code § 17C-17A-3(b)(5) and the permit fees in W. Va. Code § 17C-17A-5(b) – are to be paid to the CRTS road fund. Thus, Rule 3.20 makes clear that the other fees, which are the fees which the Commission established in these Coal Transportation Rules to cover some of the costs of the PSC administrative processes, are separate from the statutorily-created fees and shall be deposited in the Public Service Commission's Fund.

#### **150-27-4. Reporting of coal shipments.**

Savage Services Corporation advised that it is both the shipper and the receiver of coal, which is loaded at a site with a certified scale. Ltr. p. 1. However, a certified scale is not available at the receiving location, which has an automated unloading facility. Id.

The Commission concludes that Savage Services may consider filing a request for a waiver, pursuant to Coal Transportation Rule 1.5.

Savage Services also asked what would happen if there were a problem which would prohibit the collection of data until its equipment was repaired, but would not necessarily shut down the operation. Ltr. p. 1. Without specific facts to assess, the Commission cannot determine this issue with certainty, but perhaps this, too, would be an instance in which it would be appropriate to consider requesting a waiver. If a waiver could not be timely filed, the Commission will give appropriate consideration to such a problem in the sanctions process.

Amherst Industries, Inc. similarly advised that it loads coal at a cleaning plant, then trucks the coal six miles to a barge-loading facility or a stockpile. Ltr. p. 1. The truck is weighed when the coal is loaded, but a certified scale is not available at the barge-loading facility or the stockpile. Amherst said that the tonnage that goes to barge does not warrant the cost of putting in scales, and to install scales would make its facility non-competitive with other Kanawha River barge load-out facilities. Id. p. 2. Amherst could provide a duplicate weight ticket from when the truck was loaded. Id. p. 1. Or, it might be able to use nearby scales at Shamblin Stone, although it does not know the costs involved for that alternative. Id. p. 2.

The Commission cannot reasonably fashion rule provisions that would cover each of these unique fact situations. The Commission would consider requests like Amherst's on a case by case basis, upon a written request for a waiver.

For coal shipments which are not transported on the CRTS, Rule 4.4 requires reporting to begin on July 1, 2004. The United Mine Workers said this was contrary to W.

Va. Code § 17C-17A-6(b), which makes every coal truck on a public highway subject to reporting on October 1, 2003. Comments pp. 2-3. Although the Commission found ambiguity in the statute, the UMW disagreed, writing that there was no ambiguity to provide any basis for delaying the reporting requirements for non-CRTS highways for eight months, or until July 1, 2004. The UMW said that reporting on the other public highways was necessary on October 1 to coordinate with the statute's other mechanisms that go into effect on October 1, 2003.

On the other hand, the West Virginia Coal Association supported the Commission's phase-in for reporting for shipments over non-CRTS roads. Comments p. 2. It said that requiring statewide reporting was an unintended consequence of consolidating several drafts of the bill before final passage. Id. Producers and shippers outside the 15-county CRTS area are not afforded the opportunity to haul heavier loads, and, therefore, should not be subjected to a higher level of enforcement, the Association said. Id.

The UMW has not raised any position with respect to non-CRTS reporting that the Commission did not consider, when it issued the emergency rules. Accordingly, the Commission is not persuaded to reconsider. As the Commission noted when it issued the emergency rules, these rules are subject to legislative rulemaking review, and 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 the reporting requirements off-CRTS. Comm'n Order p. 3 (Aug. 28, 2003).

The United Mine Workers also disagreed with the administrative penalty of up to \$100, set forth in Coal Transportation Rule 4.11, for the failure to timely or accurately report coal shipments. Comments p. 3. The UMW noted that the statute was silent as to the amount of the penalty, and argued that the amount set by the Commission was "peanuts" in the context of the importance of the reporting requirement.

The Commission is not persuaded to modify the administrative penalty based upon the UMW's characterization. At this point, the precise number of shipments is not known, but this number is expected to be substantial. Moreover, the Commission notes that the penalty applies to each shipment, not to each shipper. Accordingly, the cumulative effect of penalties could become substantial. The Commission also recognizes that there could be a range in the severity of infractions relating to timeliness or completeness of the reports. Accordingly, it is reasonable to state that the penalty amount is up to \$100.

The Commission intends that the penalty be sufficient to encourage compliance. If, upon experience, the amount of the administrative sanction appears insufficient, the Commission will revisit this issue.

The United Mine Workers also noted that the rules are silent regarding public access to the reports filed with the PSC. Comments p. 6. It asked that coal shipment reports, the identity of permit holders and the records of violations all be made available to the public.

However, the Coal Association expressed concern that the shippers' and receivers' reports might contain information which could be used by competing entities to gain a business advantage. Comments p. 2. The gross weight in pounds of coal shipments represents a direct correlation to coal sales and coal purchase data, and competitors could use such information to undermine existing business relationship, it said. Id. Thus, the Association urged that this information could meet the trade secret test of W. Va. Code § 29B-1-4(1), so that it would be exempt from public disclosure. Id. p. 3. The Association recognized the public nature of the enforcement data that the Commission would have. Id.

The Commission is a state agency, and, as a general rule, its records are open to the public pursuant to the Freedom of Information Act, see generally W. Va. Code § 29B-1-1 et seq., unless those records fall within one of the exemptions from disclosure set forth in W. Va. Code § 29B-1-4. Accordingly, the Commission will be guided by the FOIA's provisions when determining questions of public access to requested information.

The Legislature similarly recognized that certain information which is made available to the Commission may be exempt from the public disclosure obligations of the Freedom of Information Act. W. Va. Code § 17C-17A-3(b)(1) states as follows:

The commission 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. This provision may not be construed to authorize the commission to reveal trade secrets or other confidential financial information of those persons inspected; however, the commission may use any weight measurement records as evidence of violation of this article.

See Coal Transportation Rule 11.

Union Carbide Corporation said its South Charleston operations is a receiver of coal. Ltr. p. 1. It does not object to registering with the Commission as a receiver and has done so. However, Union Carbide said the reporting requirements were not necessary and did not add value to Carbide as a receiver of coal shipments. Id. It said it does not have dedicated scales to weigh coal trucks, and its operating staff may not always be available at the unloading area when the coal is delivered. Id. Union Carbide also said that the time the coal

is delivered is not tracked, and tracking the time would not appear to be a value-added task. Id.

The Manufacturers Association also wrote that many receivers do not track the time that a coal shipment is received, and that the time a shipment is received provided no regulatory benefit. Comments p. 3. It, too, asked the Commission to modify the reports to exclude Rule 4.2's time element. Id.

To meet the statute's requirements to assess timeliness, the Commission requires that coal shipment reports contain the time. To meet the statute's requirement for daily reporting, the Commission used a 4 p.m. next-day deadline for each day's report. See Rule 4.7. If the reporting rules pose a hardship for Union Carbide, pursuant to Rule 1.5, it may file for a waiver.

The Manufacturers Association urged that requiring the report by 4 p.m. the next day did not allow enough time to accurately weigh, record and submit the proper information. Comments pp. 3-4. It also suggested that the report be allowed to be filed weekly. Id. p. 4. And, for small quantity receivers, the Manufacturers Association suggested a tiered reporting system, whereby those receivers could report on a frequency more appropriate to the number of shipments received on a daily, weekly or a monthly basis. Id.

Like Union Carbide, if the reporting rules pose a hardship for a member of the Manufacturers Association, pursuant to Rule 1.5, the individual receiver may file for a waiver.

Similarly, the West Virginia Coal Association asked the Commission to consider allowing shippers to report weekly or biweekly. Comments p. 2. The Association said such reporting would satisfy the statutory mandate for timely and accurate reporting. Id.

As the Commission noted for Union Carbide and the Manufacturers Association, the individual shipper may wish to apply for a waiver. Although the Commission has responded to several of these concerns by suggesting that it may be appropriate to apply for a waiver, the Commission also reminds the commenters that applicants have to provide public notice, they have to justify the reasons for a waiver, and to the extent the rule is based on a specific statutory requirement, the Commission is unable to waive such a provision.

The Manufacturers Association advised that some members receive coal by barge, but use trucks when the river is frozen or flooded. Comments pp. 2-3. It asked the Commission to add an exemption for these emergencies, so that these receivers do not have

to register with the Commission, if truck shipments do not exceed 10 days in any calendar year. Id. p. 3.

The Commission shall not exempt receivers who take shipments by truck, when barge deliveries are temporarily halted. The registration requirements for these manufacturers are not onerous, but are fairly simple to complete. See Coal Transportation Rule 4.1 & Form 2. Moreover, when circumstances require that deliveries be made by truck, it may be that the haulers will already be familiar with the process. In that circumstance, it will not be an unreasonable burden to require the routine reporting for these shipments. Indeed, it appears to cause more of a disruption to establish a new "part-time" class of receivers who do not have to report, as the Manufacturers Association requests. Furthermore, it is conceivable that coal delivery terms can change from contract to contract. Perhaps some receivers will have a combination of truck and barge deliveries. In such a case, it would be quite difficult to sort out which truck deliveries were required to report and which ones were not.

The Manufacturers Association noted that Rule 4.8 allows shippers to estimate their weight, so long as the estimating method 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 agrees to accept responsibility for any monetary administrative penalty imposed for excess weight. Comments pp. 4-6. The Manufacturers Association asked that a similar alternative be provided for receivers who do not have scales.

Furthermore, the Association noted that the statute does not provide for such an exception, but rather the statute requires that shipments be accurately reported. The Commission's exception undermines the intent of the statute, which is to protect the public health and safety, because overweight trucks are permitted on the roads, subject only to punitive administrative penalties for being overweight, after the coal has been delivered. The Association urged that the better course was to require the coal loads to be weighed with certified scales before trucks enter the public roads.

The Commission appreciates these comments by the Manufacturers Association. The Commission considered such a scenario when it developed the estimating provision for coal shippers. The Commission was careful to require that the estimating method be reasonable, that the truck and its load not exceed legal limits, that the weight would be determined by the receiver's certified scales, and that the shipper agreed to accept any administrative penalties imposed for excess weight. During the several workshops, the Commission learned that at many small mine sites, the terrain is such that it is not possible to install certified scales. In some instances, electrical power is unavailable. However, the Commission has not been presented with similar facts for receiving sites. The arguments

from receivers have generally been for matters of convenience, i.e., an employee is not always on duty at the receiving location. The Commission has also heard that some receivers do not take in enough coal to justify the cost of certified scales. However, some of these receivers have suggested that their shipments could be weighed at nearby certified scales. Thus, it appears to the Commission that the present reporting requirements for receivers is workable. If undue hardship is involved, a receiver may apply for a waiver.

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

**150-27-6. Administrative sanctions regarding coal shipments.**

**150-27-7. Appeals of administrative sanctions.**

The Manufacturers Association commended the Commission for setting out its own administrative procedures in the rules. Comments p. 7. However, it also asked the Commission to urge the Legislature to revisit this issue and set forth administrative procedures and appellate review in the statute. Id.

The Commission shall not adopt this suggestion. As was explained in the Commission's August 28, 2003, order, the Legislature did not specify the administrative processes to be used for the sanctions system. Comm'n Order pp. 2-3. The Legislature did, though, empower the Commission to propose rules regarding the implementation of the requirements of the legislation. W. Va. Code § 17C-17A-5(k). Pursuant to that directive, the Commission developed the processes which are set forth in these rules, and those processes include an appeal to the West Virginia Supreme Court which parallels the statutory provisions which exist in Chapters 24 and 24A for review of Commission orders issued in utility and motor carrier regulation.

The Manufacturers Association specifically questions Rule 5.7, which provides that one hearing will be provided for all persons subject to administrative sanctions in a particular cited incident who have filed a request for a hearing. Comments p. 7. The Association asserts that providing one hearing may not provide due process. Id.

The Commission disagrees. The essential elements of due process are notice and an opportunity to be heard. When the hearing has been set, all affected persons will be notified and given an opportunity to be heard. The fact that a shipper, transporter and/or receiver may be heard in a consolidated proceeding does not vitiate or dilute individual due process rights.

The Commission has made grammatical changes in Rule 5 of the emergency rules. Also, the Commission has modified the language in several sections in Rule 6. That

language stated that a revocation of a commercial driver's license was to be in effect for one year. The Commission has eliminated that provision. The effective period of time for revocation of a commercial driver's license should be governed by the policies of the Department of Motor Vehicles. The one-year period applies when a person cannot reapply for a CRTS permit. The Commission has made the relevant changes through Rule 6.

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

The United Mine Workers suggested that the statute requires commercial motor vehicle impoundment for certain actions by an owner, lessee or borrower, yet the Coal Transportation Rules are permissive and apply only to the owner. Comments p. 5. The Commission disagrees with the UMW's interpretation.

Not all overweight vehicles may be impounded, pursuant to the legislation. Rule 8.1 reads "may" because it states that impoundment can occur *if* it is determined that one or both of two specific situations has occurred. Then, Rules 8.1.a and 8.1.b set out those situations. Both of those rules state that if those certain situations have occurred, then the vehicle and its load *shall* be impounded. Neither Rule 8.1.a nor Rule 8.1.b are permissive.

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

No comments were made regarding these provisions.

**150-27-10. Vehicle operations and safety.**

Rule 10.1 requires that vehicles transporting coal be securely covered to prevent escape of the load. Comments p. 3. The Coal Association asked that this provision be modified because certain truck designs prevent the escape of the load without using a cover. The Commission shall adopt this requested change.

Rule 10.2<sup>2</sup> requires 24 hours of specialized training for commercial vehicle operators, and the UMW suggested that these requirements be detailed, the same as it asked for the safety inspections in Rule 3.17 to be detailed. For the same reasons as discussed with respect to Rule 3.17, the Commission declines to change the rule.

The Coal Association asked that Rule 10.2 be modified to allow a Coal Truck Drivers Certification, issued by the West Virginia Office of Miners' Health, Safety & Training, to

---

<sup>2</sup> The United Mine Workers' comments referred to Section 4. However, the 24 hours of mandatory specialized training appears in Rule 10.2.

meet the training requirement. Comments p. 3. The Commission will allow that certificate in lieu of the first eight hours of the 24-hour training requirement.

**150-27-11. Business records.**

The Manufacturers Association noted that the Coal Transportation Rules were silent as to the length of time that records need to be kept. Comments p. 6. Among its members, the record retention policies varied. Id. The Association suggested that the Commission require that records be kept for two years. Id.

The Commission shall adopt a records retention requirement, as the Manufacturers Association suggests. For guidance, the Commission looked to Rule 3.4 of the Commission's Rules Governing Motor Carriers, Private Commercial Carriers, and the Filing of Evidence of Insurance and Financial Responsibility by Motor Carriers, 150 C.S.R. Series 9, which provides the records retention policies for motor carriers. In these Coal Transportation Rules, the Commission shall require records to be retained for three years, the same as the Commission requires financial records to be retained under the Motor Carrier Rules.

The Manufacturers Association also suggested that the Commission's rules allow for overly broad inspections of business records. Comments p. 8. The Association asked that the Commission only allow inspection of those records which pertain to truck transportation of coal, and the inspections should only be allowed in the coal shipping or receiving areas of the affected facility. Id.

The Commission does not presume to know where each shipper and receiver maintains its records and will not dictate that those records must be moved to the shipping or receiving areas if they are maintained elsewhere. Also, the rule allows inspection of "all trucking-related records of shippers, vehicle operators, vehicle owners and receivers engaged in the transportation of coal." In the Commission's estimation, this language is sufficiently narrow to meet the concern raised by the Association.

**150-27-12. Public toll free number.**

No comments were made about this section.

**150-27-13. Forms.**

See the discussion of the IRS's request to add Form 2290, Federal Highway Use Tax Return, as an attachment to Form 1 above, under the heading **150-27-3. Permit**

**Applications for the coal resource transportation system.** Further, the Commission changed the dates on Form 1 for the permit period.

In addition, the Commission has corrected occasional typographical errors in the emergency rules.

### FINDINGS OF FACT

1. In the 2003 Regular Session of the Legislature, Senate Bill Number 583 was passed, effective March 8, 2003, which, among other things, transferred weight enforcement responsibility for all commercial motor vehicles from the Division of Highways within the Department of Transportation to the Public Service Commission; authorized the Coal Resource Transportation System (CRTS) to be established; empowered the PSC to develop and enforce the system for permitting vehicles upon the CRTS; and authorized PSC employees to enforce speeding laws with regard to commercial motor vehicles. See W. Va. Code § 17C-17A-1 et seq.

2. Senate Bill Number 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. W. Va. Code § 17C-17A-12.

3. The CRTS is a road system upon which coal trucks can haul loads heavier than the weights allowed upon other state maintained public highways. To counterbalance this authority to haul the heavier weights, the Legislature established a new administrative regime to issue permits to the trucks operating on the CRTS, as well as to encourage compliance through a sanctions process. The Public Service Commission is empowered to administer the administrative sanctions process; the enhanced criminal sanctions will be administered by the state court system. W. Va. Code §§ 17C-17A-9, 10, and 11.

4. Senate Bill 583 required the Commission to have emergency rules in effect October 1, 2003. W. Va. Code § 17C-17A-5(k), -7. In mid-July 2003, the Commission posted draft rules on its internet site and issued press releases announcing that the draft rules were available for public inspection. In August 2003, the Commission conducted workshops in Logan, Beckley and Fairmont, where it presented its overview of the legislation, its draft rules, and received a number of public comments and questions. In addition, the Commission received written comments on its draft rules.

5. On August 28, 2003, the Commission issued emergency Coal Transportation Rules which established, among other provisions, the permitting process, the shipper and

receiver reporting process, and the administrative procedures for the administrative sanctions.

6. Thereafter, the Commission received the following comments on the emergency rules:

September 2, 2003	Savage Services Corporation
September 8, 2003	Amherst Industries, Inc.
September 9, 2003	3-D Management Services, Inc.
September 26, 2003	United Mine Workers of America
October 3, 2003	Internal Revenue Service
October 6, 2003	Union Carbide Corporation
October 6, 2003	West Virginia Coal Association
October 6, 2003	West Virginia Manufacturers Association
October 7, 2003	West Virginia Natural Resources Transporters Association

#### CONCLUSIONS OF LAW

##### **150-27-1. General.**

1. The Coal Association's position that W. Va. Code § 17C-17A-5(k) only required the Commission to have its rules filed on October 1<sup>st</sup>, but not in effect, is an interpretation of the statute which cannot be reconciled with W. Va. Code § 17C-17A-11, which states that the criminal and administrative penalties take effect on October 1<sup>st</sup>.

2. Since the Legislature made clear when the penalties take effect, the Commission cannot reconsider and stay its rules until the CRTS is finally designated by the Division of Highways. The Commission's rules are necessary for the enforcement of the administrative penalty provisions.

3. The United Mine Workers suggestion that public notice be given of all applications, pursuant to Rule 1.5, for a waiver of any provision of the Coal Transportation Rules is reasonable and the Commission should adopt it.

4. Although the Union criticized Rule 1.5, the United Mine Workers did not provide language for the Commission to consider, in place of the standards set forth in Rule 1.5. The Commission should not make any changes to the standards set forth in that rule.

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

5. Motor Carrier Rule 3.3.a requires that motor carriers establish, maintain and operate their vehicles, equipment and cargo in conformity with safety rules and regulations promulgated by the U.S. Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety. If the federal authorities changed the requirements, until the Commission's Coal Transportation Rules were subsequently revised, commercial motor carriers could find themselves with seemingly conflicting regulations. Therefore, the Commission should not adopt the United Mine Workers' suggestion to specifically set forth the safety requirements in Coal Transportation Rule 3.17.

6. The Commission should not adopt the IRS' suggestion that Form 2290, Federal Highway Use Tax Return, be required with Form 1 (the CRTS permit application) because Form 1 requires a copy of the current vehicle registration, and the annual vehicle registration application must be supported by Form 2290. Further, Form 1 must be supported by the applicant's verified statement that each vehicle will have a total combined axle rating capacity equal to or greater than the maximum weight for which the permit is sought. In this respect, the required verification to the Commission's form provides information similar to that on the federal tax form.

7. The Commission should not adopt the Coal Association's suggested that the CRTS permits be issued now, but not be operational until the final order from the Division of Highways which places the CRTS in operation, for the same reasons as the Commission explained regarding the effective date for these rules.

8. The Natural Resources Transporters's request to make the permit applications due in January is reasonable and should be granted. Therefore, the Commission should adjust the initial period for the permits to be October 1, 2003, to December 31, 2004. Thereafter, the Commission should establish the permit year to be January 1 through December 31.

9. The Commission should add a new section, Rule 3.20, relating to the fees which were established in these rules and which are separate from the fees created by W. Va. Code Chapter 17C, Article 17A.

**150-27-4. Reporting of coal shipments.**

10. The Commission should not reconsider its decision to phase-in the reporting requirement for non-CRTS roads. The UMWA did not raise any arguments that the Commission had not already considered when it issued its emergency rules. These rules are

subject to legislative rulemaking review, and 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 the reporting requirements off-CRTS. Comm'n Order p. 3 (Aug. 28, 2003).

11. The Commission should not reconsider its decision to set the administrative penalty as up to \$100, in Coal Transportation Rule 4.11, for the failure to timely or accurately report coal shipments, based upon the UMWA's characterization. At this point, the precise number of shipments is not known, but this number is expected to be substantial. Moreover, the penalty applies to each shipment, not to each shipper. Accordingly, the cumulative effect of penalties could become substantial. Further, there could be a range in the severity of infractions relating to timeliness or completeness of the reports.

12. The Commission is a state agency, and, as a general rule, its records are open to the public pursuant to the Freedom of Information Act, see generally W. Va. Code § 29B-1-1 et seq., unless those records fall within one of the exemptions from disclosure set forth in W. Va. Code § 29B-1-4. Accordingly, the Commission should be guided by the FOIA's provisions when determining questions of public access to requested information.

13. The Commission should not delete the time requirement because the statute requires the statute requires that reports be timely made. The statute also requires that reports be filed daily. The Commission needs to know when shipments were received to assess whether reports meet these standards.

14. The Commission should not allow receivers who primarily receive coal by barge to be excluded from the statute's requirements because they may only receive coal by truck in emergencies, i.e. when the river is frozen or flooded. The Manufacturers Association's request to create a class of "part-time" receivers appears disruptive and unworkable.

15. The Commission should not allow receivers to estimate the weight of their deliveries because the Commission has not been presented with facts and circumstances justifying an alternate weighing method, as was presented by shippers, who sometimes cannot install scales due to the site's terrain, or who do not have access to electricity.

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

**150-27-6. Administrative sanctions regarding coal shipments.**

**150-27-7. Appeals of administrative sanctions.**

16. The Commission should not adopt the Manufacturers Association's suggestion to urge the Legislature to set forth administrative procedures and appellate review in the statute. As was explained in the earlier Commission order, the Legislature did not specify the administrative processes to be used for the sanctions system, the Legislature did, though, empower the Commission to propose rules regarding the implementation of the requirements of the legislation. Comm'n Order pp. 2-3; see W. Va. Code § 17C-17A-5(k). Pursuant to that directive, the Commission developed the processes which are set forth in these rules.

17. The essential elements of due process are notice and an opportunity to be heard. When the hearing has been set, all affected persons will be notified and given an opportunity to be heard.

18. The Commission has made grammatical changes in Rule 5.

19. The Commission eliminated from Rule 6 the language stating that a revocation of a commercial driver's license was to be in effect for one year. The effective period of time for revocation of a commercial driver's license should be governed by the policies of the Department of Motor Vehicles. Instead, the one-year period applies when a person cannot reapply for a CRTS permit. The Commission has made the relevant changes through Rule 6.

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

20. The Commission should not revise Rule 8.1 as requested by the United Mine Workers. Not all overweight vehicles may be impounded, pursuant to the legislation. Rule 8.1 reads "may" because it states that impoundment can occur *if* it is determined that one or both of two specific situations has occurred. Then, Rules 8.1.a and 8.1.b set out those situations. Both of those rules state that if those certain situations have occurred, then the vehicle and its load *shall* be impounded. Neither Rule 8.1.a nor Rule 8.1.b are permissive.

**150-27-10. Vehicle operations and safety.**

21. The Coal Association's request that Rule 10.1 be modified to allow the use of trucks which have been designed to prevent the escape of the load is reasonable and should be adopted.

22. The UMWA's request that the requirements for specialized training be spelled out should not be adopted, for the same reasons as set forth above relating to Rule 3.17.

23. The Coal Association's request to allow a Coal Truck Drivers Certification, issued by the West Virginia Office of Miners' Health, Safety & Training, to meet the training requirement is reasonable and should be granted in part. The Commission will allow that certificate in lieu of the first eight hours of the 24-hour training requirement.

**150-27-11. Business records.**

24. The Manufacturers Association's request for a records retention requirement is reasonable and should be granted. The Commission shall require that records be retained for three years.

25. The Manufacturers Association's request that records inspection only be allowed in the coal shipping or receiving areas of the affected facility is not reasonable and should not be adopted. The Commission does not presume to know where each shipper and receiver maintains its records and will not dictate that those records must be moved to the shipping or receiving areas if they are maintained elsewhere.

26. In addition, the Commission corrected occasional typographical errors in the emergency rules.

ORDER

IT IS THEREFORE ORDERED that the Commission approves and promulgates these Rules and Regulations for the Transportation of Coal by Commercial Motor Vehicles, 150 C.S.R. Series 27, and submits these rules to the Legislature pursuant to West Virginia Code §§ 29A-3-9 and 29A-3-15.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission file a copy of the text of these 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 by those offices.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

A True Copy, Teste:



CLW/lfg  
MCGO72ca.wpd

Sandra Squire  
Executive Secretary



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

FILED

2003 NOV 21 P 3:59

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**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 legislative-proposed 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~~November, 2003

1.4. Effective Date - - ~~October 1~~ \_\_\_\_\_, 2003

1.5. Application of Rules

1.5.a. 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 cCommission 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 cCommission is unable to waive such a provision.

1.5.b. Notice shall be provided of each waiver application as a Class I legal advertisement in a newspaper duly qualified by the Secretary of State, published and of general circulation in the area affected.

**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~~ the W. Va. 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~~ December 31, 2004. Subsequent permitting periods shall run from ~~October 1~~ January 1 through ~~September 30~~ December 31 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 the 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 an 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 the owner or the commercial motor vehicle, not both. A permit modification shall not change the expiration date of the permit.

3.20 All fees established by these rules shall be deposited into the Public Service Commission Fund. The statutory fees which are set forth in W. Va. Code § 17C-17A-3(b)(5) and 17C-17A-5(b) are to be paid to the CRTS road fund.

**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 the West Virginia Office of Miners'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 receipt. 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~~ Division 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~~ Transportation Division 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 section 5, "Administrative process for issuing 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~~ should indicate ~~if that~~ the offense occurred on the coal resource transportation system and. ~~If so, the citation~~ should identify the road by number and the approximate location of the violation.

5.1.c. The citation ~~must~~ should 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~~ may 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~~ may 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 sanctions 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 W. Va. Code 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 W. Va. Code § 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. An owner is prohibited

from applying for a CRTS permit for a period of one year following the revocation. 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. An owner is prohibited from applying for a CRTS permit for a period of one year following the revocation. ~~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 W. Va. Code 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. An owner is prohibited from applying for a CRTS permit for a period of one year following the revocation.

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 W. Va. 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 W. Va. Code 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. An owner is prohibited from applying for a CRTS permit for a period of one year following the revocation.

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., (W. Va. Code § 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., (W. Va. Code § 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 or be designed 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. Provided further that the Commission will accept a Coal Truck Driver's Certification issued by the West Virginia Office of Miners' Health, Safety & Training in lieu of the first eight hours of the twenty-four hour training requirement.

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.**

11.1. 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.

11.2. Records required by these rules shall be retained for three years.

**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><b>150 CSR 27</b></p> <p><b>FORM 1</b></p> <p><b>Application for CRTS Permit</b></p> <p>October 1, _____ through September 30, _____  January 1, _____ through December 31, _____</p>	<p><b>(PSC Use Only)</b></p> <p><b>PSC Permit No.:</b> _____</p> <p><b>Processed By:</b> _____</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 1<sup>st</sup> 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.

AFFLIANT \_\_\_\_\_

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](http://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](http://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/](http://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](http://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/](http://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 <sup>st</sup>	92.00	147.00	275.00	458.00
After November 30 <sup>th</sup>	83.00	133.00	250.00	417.00
After December 31 <sup>st</sup>	75.00	120.00	225.00	375.00
After January 31 <sup>st</sup>	67.00	107.00	200.00	333.00
After February 28 <sup>th</sup>	58.00	93.00	175.00	292.00
After March 31 <sup>st</sup>	50.00	80.00	150.00	250.00
After April 30 <sup>th</sup>	42.00	67.00	125.00	208.00
After May 31 <sup>st</sup>	33.00	53.00	100.00	167.00
After June 30 <sup>th</sup>	25.00	40.00	75.00	125.00
After July 31 <sup>st</sup>	17.00	27.00	50.00	83.00
After August 31 <sup>st</sup>	8.00	13.00	25.00	42.00

EXAMPLE 1: To register two Class D trucks on October 1<sup>st</sup>:

\$ 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 2<sup>nd</sup> :

\$125.00	Processing Fee (2 trucks)
\$267.00	Special Permit Fee
	(\$ 67.00 – 1 Class A truck after January 31 <sup>st</sup>
	\$200.00 – 1 Class C truck after January 31 <sup>st</sup> )
<hr/>	
\$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.

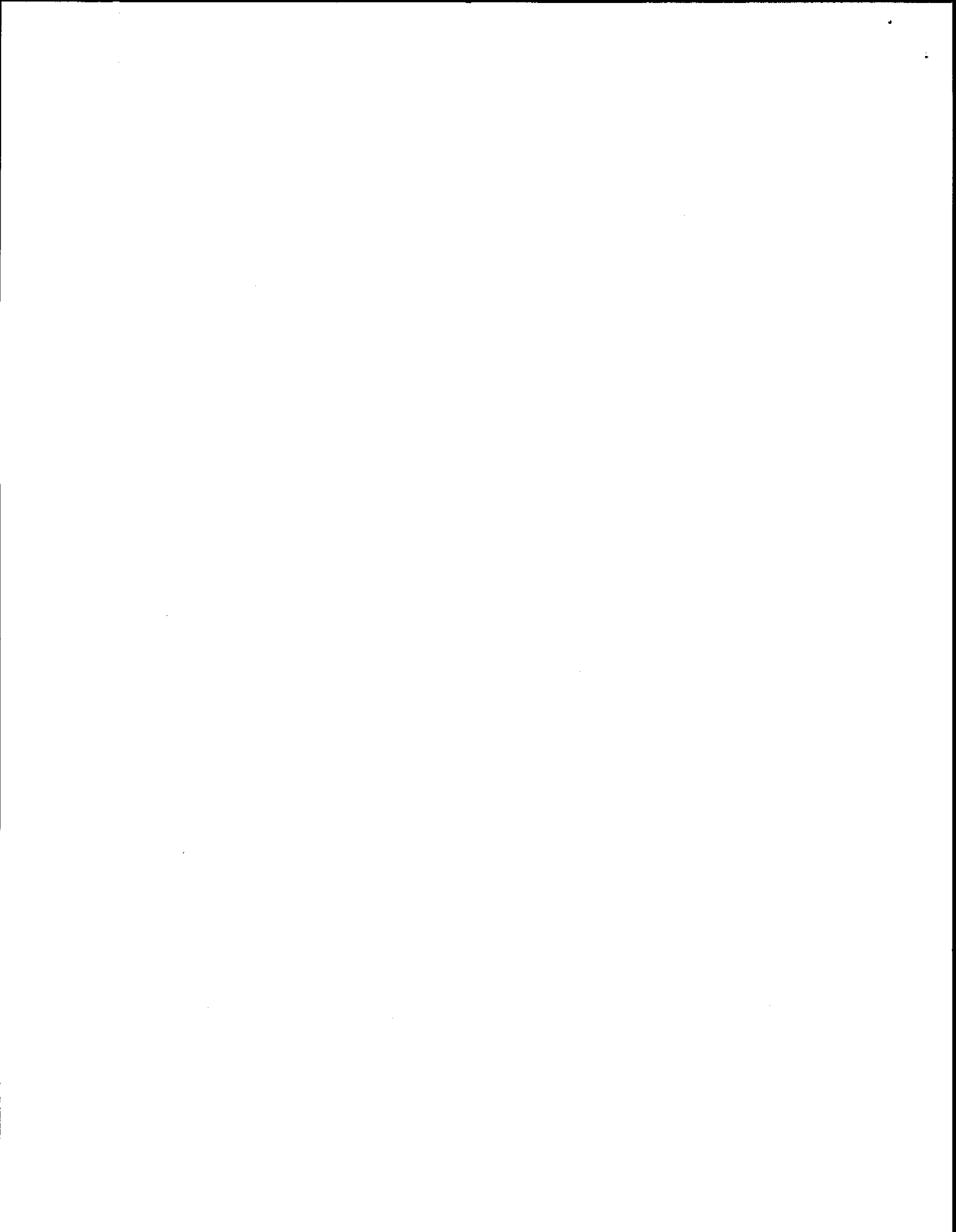
AFFIANT \_\_\_\_\_

SWORN TO AND SUBSCRIBED BEFORE ME THIS \_\_\_\_\_ DAY OF , \_\_\_\_\_ 20\_\_\_\_\_

NOTARY PUBLIC \_\_\_\_\_

MY COMMISSION EXPIRES \_\_\_\_\_ 20\_\_\_\_\_

COUNTY \_\_\_\_\_ STATE \_\_\_\_\_



# Public Service Commission

Richard E. Hitt, General Counsel



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

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

November 21, 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: Series 27  
Coal Truck Rules

Dear Judy:

Enclosed are sixteen copies (one for you, fifteen for the Rule-Making Review Committee) of the following: Form 3; Summary of Proposed Rule; Statement of Circumstances; Fiscal Note; Legislative Questionnaire; public comments; the agency adopted Rule, and the Commission Order which explains the agency's disposition of the public comments.

Please contact me if there are any problems or questions.

Thank you in advance for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard E. Hitt", written over a large, stylized flourish.

Richard E. Hitt

RDH/ljm

Enclosures

