

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #5

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FILED

2012 JAN 17 PM 4: 58

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Public Service Commission of West Virginia TITLE NUMBER: 150

CITE AUTHORITY: W. Va. Code §§24-1-1, 24-1-7, 24-2-1 and 24-2-2.

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____ X _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W. Va. Code §§24-1-7

AMENDMENT TO AN EXISTING RULE: YES X NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 8

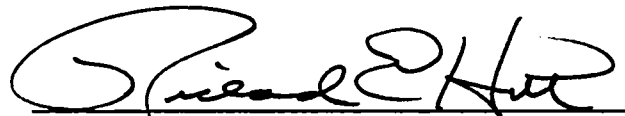
TITLE OF RULE BEING AMENDED: RULES AND REGULATIONS FOR THE GOVERNMENT
OF RAILROAD SAFETY AND SANITATION

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE

EFFECTIVE DATE OF THIS RULE IS 3-19-12



Authorized Signature

APPENDIX B
FISCAL NOTE FOR RULES

Rule Title: **150 C.S.R. 8, Rules for the Government of Railroad Safety and Sanitation**

Type of Rule: Exempt Legislative Interpretive Procedural Emergency

Agency: Public Service Commission of West Virginia

Address: 201 Brooks Street
Charleston, West Virginia 25301

Phone Number: Richard E. Hitt, 304-340-0450 Email: rhitt@psc.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There will be no significant implementation cost relating to this rulemaking for the State of West Virginia. The Commission does not anticipate additional costs to be incurred as a result of this rulemaking.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			N/A
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			N/A

Rule Title: **150 C.S.R. 8, Rules for the Government of Railroad Safety and Sanitation**

Rule Title: **150 C.S.R. 8, Rules for the Government of Railroad Safety and Sanitation**

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

Not applicable.

MEMORANDUM

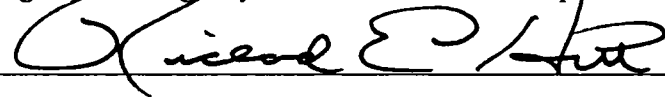
Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The effect of this rulemaking is to consider new provisions relating to certain walkways adjacent to railroad tracks and to remove provisions that have been declared preempted by federal law.

Date: _____

1/17/12

Signature of Agency Head or Authorized Representative



Summary of the Rule

The Public Service Commission of West Virginia proposed revisions to the Rules and Regulations for the Government of Railroad Safety and Sanitation, 150 C.S.R. Series 8, to 1) delete provisions that a federal district judge declared to be preempted by federal law and 2) add rules relating to certain walkways along railroad tracks.

In addition, the Commission proposal corrects typographical errors, conforms the Railroad Rules to the current numbering and formatting requirements, and simplifies the title by removing “and regulations.” None of the changes described in this paragraph are intended to effect any substantive modification to the Commission Railroad Rules.

Statement of Circumstances

On August 28, 2003, the Public Service Commission of West Virginia decided that it should apply its safety regulations relating to sanitary facilities to intrastate cabooses and shoving platforms. Comm'n Order pp. 1-18, General Invest. into whether CSX Transp. is complying with the RR Rules, Case No. 96-0075-R-GI (Aug. 28, 2003). The Commission Order was challenged in federal court. In an Order entered on May 10, 2004, a federal district judge declared several provisions of the Railroad Rules to be preempted by federal law. The Commission has proposed to delete the preempted provisions from the Railroad Rules.

Moreover, the Commission opened Case Number 10-0190-R-GI in 2010 to receive preliminary comments about whether the Commission should amend the Railroad Rules regarding certain railroad walkways. Having reviewed initial and reply comments and specific language for proposed amendments, and having conducted a public conference to further examine the various positions, the Commission opened General Order Number 189.4 to consider revising the Railroad Rules as they relate to certain walkways.

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 17th day of January, 2012.

GENERAL ORDER NUMBER 189.4

In the Matter of proposed revisions to the Rules and Regulations for the Government of Railroad Safety and Sanitation, 150 C.S.R. Series 8.

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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COMMISSION ORDER

The Commission adopts final revisions to its Rules for the Government of Railroad Safety and Sanitation, 150 C.S.R. Series 8.

BACKGROUND & DISCUSSION

Sanitary facility revisions

On August 28, 2003, the Commission decided it should apply its safety regulations relating to sanitary facilities to intrastate cabooses and shoving platforms. Comm'n Order at 1-18, General Invest. into whether CSX Transp. is complying with the RR Rules, Case No. 96-0075-R-GI (Aug. 28, 2003). The Commission Order was challenged in federal court.

In an Order entered on May 10, 2004, a federal district judge declared Railroad Rules 1.1 and 1.5 (as applicable to sanitary facilities on locomotives and cabooses (including shoving platforms)); 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15 and 1.16 (as applicable to sanitary facilities on locomotives and cabooses (including shoving platforms)); 1.29; 1.30; and 8.8¹ to be preempted by federal law. Order at 1-2, CSX Transp. & Norfolk Southern Ry. Co. v. Public Serv. Comm'n & United Transp. Union, Civil Action No. 2:96-0630 (S.D. W. Va. May 10, 2004).

¹ There is no Rule 8.8 in the Commission Railroad Rules, but Railroad Rule 8 is preceded with the citation "§150-8-8," with "150" referring to the rules promulgated by this Commission, the first "-8" to Series 8 of the Commission rules (being the Railroad Rules), and the second "-8" to Section 8 (commonly referred to as Railroad Rule 8), which relates to the Adoption of Federal Regulations. Railroad Rule 8 has only three subsections.

Although the Commission has not enforced the relevant sanitation rules relating to intrastate shoving platforms and cabooses since the federal litigation was pending, the relevant sanitation rules were not removed from the Railroad Rules.

On March 31, 2011, the Commission proposed amendments to reflect that various provisions of the Railroad Rules were declared to be preempted by federal law. Gen. Order No. 189.4 & Att. B. No objections were made to those proposed revisions. Today, the Commission adopts as final rules the amendments that were proposed relating to the federal court decision.

Walkways provisions

On March 31, 2011, the Commission proposed revisions to the Railroad Rules as they relate to certain walkways, to streamline the title of the Railroad Rules by removing “and regulations” as the Commission has done to various other rule titles, to correct typographical errors and to conform the Railroad Rules to the current numbering and formatting requirements of the Secretary of State. Gen. Order No. 189.4 & Att. B; Rule 6.5 of the Standard Size and Format for Rules and Procedures for Publication of the State Register or Parts of the State Register, 153 C.S.R. § 6-5. Public notice was provided, written comments were filed, evidence was received, and written arguments were filed after the hearing.

The Commission conducted an evidentiary hearing on July 18, 2011, and received testimony from Brent Boggs, a member of the Brotherhood of Locomotive Engineers and a member of the West Virginia House of Delegates from Braxton County; Richard Inclima, Director of Safety for the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters; Mark Mewshaw, West Virginia State Legislative Director for the United Transportation Union; and Jeffrey McCracken, Assistant Vice President of Maintenance and Structures for Norfolk Southern Corporation. The Commission developed a record containing 185 pages of transcript and 52 pages of hearing exhibits.

The parties filed briefs and supplemental materials on August 31, 2011, and September 1, 6, 13 and 16, 2011.

The changes to correct typographical errors and update the Railroad Rules to current numbering and formatting requirements are unopposed and self-explanatory. The Commission will not, therefore, address those changes in detail in this Order.

Only the walkways provisions in Railroad Rule 4 generated any substantive disagreement. In summary, the unions asked the Commission to require that smaller rocks be provided in areas where employees regularly walk, and the railroads responded that ballast size is selected to provide sufficient drainage and structure to support the track, smaller ballast will often negatively affect track structure and drainage, and the

Federal Railroad Authority, not the Commission, has jurisdiction regarding track structure.

The West Virginia Railroad Association, Norfolk Southern Railway Company and CSX Transportation, Inc. do not dispute that walking on smaller ballast is more comfortable for employees and are not opposed to a reasonable Commission rule that provides for employee comfort. RR Supplemental Brief at 13 & Ex. 6 (Aug. 31, 2011). The railroads argued that instead of inflexibly mandating ballast sizes and walkway specifications, the Commission should allow engineers to balance the interests of safety and comfort. In Exhibit 6 to their Supplemental Brief, the railroads proposed a rule 1) with recommended, not mandatory, standards for walkways in yards, 2) that requires railroads to make specific engineering judgments before departing from the recommended practices for walkways in yards, and 3) that requires reasonably suitable, adequate and comfortable walkways in yards where employees regularly work. If constructed of ballast rock, the railroads proposed that walkways in yards be composed of American Railway Engineering and Maintenance of Way Association (AREMA) #5 ballast, which is about a 0.75" to 1" stone. The railroads also suggested that flexibility be allowed on a showing that the recommended practice would compromise track drainage or the integrity of track structure or require the rail carrier to violate federal regulations. Id.

In response, the United Transportation Union applauded the railroads' recognition that smaller ballast should be placed in walkways in yards, but argued that the rest of the railroad proposal gave rail carriers a blank check to determine which ballast to use. The union argued that an "informed engineering judgment" could be nothing more than an engineer saying that large ballast should be used at a particular location. Union Reply Brief at 1 (Sept. 2, 2011).

The union supported the language changes proposed by the Commission. Union Post-Hearing Comments at 8 (Sept. 1, 2011). The railroads suggested different language in certain portions. RR Supplemental Brief at 14 & Ex. 6.

The Commission will now address specific proposals to amend the Railroad Rules. The railroads proposed that the following statement of purpose be added:

4.1 a. Purpose. The purpose of these rules is to establish the recommended standards of practice for the construction and maintenance of walkways in railroad yards. These rules are not to be construed as being either an employee safety statute or a blanket, inflexible order requiring all rail carriers in all circumstances to construct or reconstruct all walkways in exact accordance with these rules. These recommended standards of practice are not intended to imply that other practices may not be considered safe under the circumstances of particular situations. However, the Commission requires that any rail carrier subject to these rules make

specific engineering judgments about its walkways and yards before departing from these recommended standards.

RR Supp. Brief Ex. 6 at 1. The Commission will add a statement of purpose to Railroad Rule 4, but will not adopt the entire railroad proposal. First, we note that our Railroad Rules clearly are not statutes. To the extent that the railroads argue that our Railroad Rules do not involve employee safety, we disagree. The Union correctly noted that the Commission Railroad Rules are safety provisions. Union Reply Brief at 2. Indeed, the title, Rules for the Government of Railroad Safety and Sanitation, 150 C.S.R. Series 8, makes self evident, as has been the case since the Railroad Rules were adopted decades ago, that our Railroad Rules relate to safety.

The union presented lay testimony as to the long-term effects of walking on large ballast. The union did not, however, follow these anecdotal statements with objective medical evidence showing a pattern of employee injuries in West Virginia related to walking on large ballast. Adding a statement of purpose relating to walkways in yards should not foreclose the possibility that such a connection may be made.

Further, our responsibility to provide for public safety is not limited to consideration of individual medical conditions. We find that the evidence showed that yard conditions should be improved to provide a safe working environment for railroad employees. The July 2010 minutes of CSX's Grafton Terminal Safety Committee reflect a decision made in May 2010 that walking ballast would be provided in the Grafton yard in June 2010. Tr. at Union Ex. B. The May and June 2011 minutes reflect that walking ballast still needed to be provided in the Grafton yard. Tr. at Union Exs. C & D. Mark Mewshaw testified that walking ballast was provided just a few weeks prior to the Commission hearing in July 2011. Tr. at 105-09 (M. Mewshaw). We are not satisfied that it took more than a year for reasonable safety measures to be implemented at the Grafton yard.

We have been persuaded that West Virginia's terrain limits the ability of railroads to always provide walkways of the recommended width and ballast size, particularly in coal yards in the mountainous regions of the state. Tr. at 152-54, 160-61 (McCracken) & RR Ex. 2. The Commission will provide some flexibility relating to walkways, which we discuss more fully below in connection with the waiver provision.

The Commission will, therefore, adopt the following statement of purpose:

The purpose of Rule 4 is to establish the standards of practice for the construction and maintenance of walkways. The provisions of Rule 4 are not to be construed as inflexible mandates requiring all rail carriers in all circumstances to construct or reconstruct all walkways in exact accordance with these rules. Rule 4.3 acknowledges that walkways do not have to be constructed in exactly the same way. Railroads are required to comply with the standards set out in Rule 4 when possible, taking into consideration

topographical limitations and compliance with applicable federal requirements.

To clarify when the revised standards apply, the Commission has add language to informational heading of Railroad Rule 4.1.a.

The railroads proposed that 4.1.b, the Commission's general walkways provision, be modified this way:

Walkways Generally. Each rail carrier shall provide reasonably suitable and adequate walkways adjacent to its tracks in all switching areas, ~~both within and without~~ yard limits where railroad employees are regularly required to walk in the performance of their duties; ~~and.~~ All such walkways shall be maintained and kept reasonably free of trash and debris and provide as comfortable a walking surface as may be appropriate in prevailing conditions.

In their post-hearing pleadings, the union did not oppose these changes. The Commission finds that the proposed revisions are reasonable and will adopt the railroad proposal.

The railroads proposed that 4.1.c, the Commission's private industry requirements provision, be modified this way:

Private Industry Requirements. Each railroad shall require private industry utilizing railroad transportation service to provide ~~safe~~ suitable and adequate walkways adjacent to its tracks in all switching areas, ~~both within and without~~ yard limits where railroad employees are regularly required to walk in the performance of their duties; and all such walkways shall be maintained and kept reasonably free of trash and debris and provide as comfortable a walking surface as may be appropriate to prevailing conditions.

In their post-hearing pleadings, the union did not oppose these changes. The Commission likewise finds that the proposed revisions are reasonable and will adopt the railroad proposal.

The railroads proposed that 4.1.d, relating to walkway surface levels along mainline or branchline tracks, be deleted. Because new Commission-proposed 4.1.g, relating to other tracks, covers where walkways should be in relation to tracks outside of yards, we agree that 4.1.d should be eliminated.

The railroads offered several revisions to new Commission-proposed 4.1.f, relating to new yard tracks, and the Commission will address them in detail.

October 1, 2011, was inserted as the effective date in the railroad's alternative rule. Instead, we shall use the effective date of the revised Railroad Rules.

The railroads suggested the addition of an introductory phrase to the sentence suggesting appropriate walkways materials. This proposal is reasonable and will be adopted by the Commission.

The railroads proposed several changes that recommended, instead of mandated, the use of specified materials; deleted the requirement that walkways be at least two feet in width and be kept reasonably clear of obstructions; and added a provision allowing rail carriers to depart from the requirements "on making the informed engineering judgment that the use of these materials would compromise track drainage, the integrity of track structure, or otherwise require the rail carrier to violate federal track safety standards or federal regulations." The Commission is not persuaded that these revisions are reasonable. We stress that safety is always our primary goal. The railroads may seek a waiver, as is explained more fully below, when they believe that circumstances justify a deviation from the usual requirements.

The railroads also suggested that Commission-proposed new 4.1.g, relating to other tracks, be deleted entirely. We disagree. Under this rule, the Commission may require the construction or improvement of walkways outside of a yard in areas where employees regularly work when such construction or improvement is necessary for employee safety. We recognize the Federal Railroad Administration's jurisdiction relating to mainline tracks, and we do not expect this rule to be frequently invoked. Given the limitations of West Virginia's terrain, however, rail carriers have had to employ unusual track configurations, such as middle track – track in between two mainline tracks where coal cars are sent temporarily so that excess cars can leave the track. Tr. at 160-61 (J. McCracken). Similarly, coal yards with multiple tracks are sometimes immediately adjacent to multiple main lines because of the proximity of mountain slopes or waterways. *Id.* at 143, 147, 149 (J. McCracken). We will not foreclose the possibility that the Commission may need to consider walkways requirements in unusual circumstances such as these. In recognition that the Commission does not expect to be regularly involved in walkways requirements outside of yards, new 4.1.g contains several limiting factors: 1) notice and hearing are required, 2) feasibility will be considered, and 3) Commission deliberations will only relate to instances when employees are regularly exposed to a safety hazard.

After reviewing the evidence and legal argument submitted in this proceeding, the Commission will delete reference to "the effective date of the revised rule" from new 4.1.g to provide sufficient flexibility to require the construction or improvement of a walkway when the Commission determines, after notice and hearing, that construction or improvement of a walkway where employees regularly work is feasible and justified upon particular facts and circumstances. Because our goal is safety, it is not in the public interest to limit our review of other track to newly constructed track.

We also prefer "determined to be" in place of "deemed" in the last sentence of new 4.1.g, to clarify that a Commission determination will have to be made regarding whether any other period is sufficiently "regular" for the invocation of Commission authority under new 4.1.g.

The railroad suggested that Commission-proposed 4.3, the waiver provision, be deleted. We disagree. Our state's terrain and the age of several yards² requires us to acknowledge that certain deviations from the yard walkways standard are necessary. We appreciate the railroad concern about the costs to the Commission, the unions and the railroads to process waiver cases for routine circumstances. The Commission will, therefore, hold that railroads are not required to provide walkways of at least two feet in width in existing yards when there is not sufficient space to do so. We neither require railroads to remove track in existing yards to meet the two-foot minimum requirement, nor do we require a waiver petition relating to the two-foot minimum width for existing yards. We do expect railroads to promptly upgrade walkways in existing yards to meet the standards contained in Rule 4 where there is sufficient space to do so. Moreover, when the two-foot minimum width cannot be achieved, we expect railroads to make improvements consistent with the standards contained in Rule 4 as circumstances will reasonably allow.

The difficulty in meeting the two-foot minimum width was made clear to us in the evidence presented at the hearing. If there are additional situations that can be addressed by a general Commission waiver ruling, as we have just provided, railroads may petition for a general ruling. To the extent that any waiver cases are necessary, the Commission prefers to handle similar fact patterns at the same time.

The railroads proposed that the compliance provision state that the walkway rules do not apply during maintenance activities and unusual weather events:

~~Rail carriers shall be excused from complying with the provisions of these walkway rules~~ These recommended practices shall have no application during maintenance activities or any period of heavy rain or snow, derailments, rock and earth slides, washouts and similar weather or seismic conditions, and during a reasonable period afterward to allow a return to compliance.

We find the language proposed by the railroads to be reasonable and will adopt it, except that we will use "walkway rules" in place of "recommended practices."

² Many yards were constructed more than 75 years ago when yards were built with 13-foot centers, instead of the current standard of 14 feet from the center of one track to the center of the next track. Tr. at 133, 175 (J. McCracken).

In the enforcement provision, the railroads proposed several changes, among them replacing "alleged violation" with "failure to follow these recommended practices." "Alleged violation" is simple and straight-forward; we prefer it.

The Commission-proposed enforcement rule requires that a complaint of an alleged violation contain a statement that a reasonable, good faith effort has been made to address the problem with the rail carrier. The railroad proposes that the Commission also require a written statement that the railroad has not made specific engineering judgments that justify a departure from the walkways requirements. We agree with the union that it is unreasonable to place a burden on the employees or other parties to prove that the railroad has not made specific engineering judgments about its walkways. Union Reply Brief at 2. Moreover, a departure from the requirements will most likely involve a "specific engineering judgment" by the railroad and the reasonableness of such judgment will likely be an issue in a complaint proceeding. We will not adopt the language proposed by the railroads relating to the enforcement rule.

FINDINGS OF FACT

1. On March 31, 2011, the Commission proposed amendments to its Railroad Rules. Gen. Order No. 189.4 & Att. B.
2. No objections were made to the Commission-proposed amendments relating to the federal court decision, to streamline the title, to correct typographical errors or to update the Railroad Rules to current numbering and formatting requirements.
3. CSX's Grafton Terminal Safety Committee decided in May 2010 that walking ballast would be provided in the Grafton yard in June 2010. Tr. at Union Ex. B.
4. Walking ballast was provided in the Grafton yard just a few weeks prior to the Commission hearing in July 2011. Tr. at 105 (M. Mewshaw).
5. Because of the limitations presented by West Virginia's terrain, rail carriers have had to sometimes employ unusual track configurations, such as middle track or yard track immediately adjacent to main line track. Tr. at 143, 147, 149, 160-61 (J. McCracken).

CONCLUSIONS OF LAW

1. The Commission should adopt the unopposed amendments relating to the federal court decision, to streamline the title, to correct typographical errors and to update the Railroad Rules to current numbering and formatting requirements.

2. As the title, Rules for the Government of Railroad Safety and Sanitation, 150 C.S.R. Series 8, makes self evident, our Railroad Rules relate to safety. Safety is always the Commission's primary goal.

3. Yard conditions should be improved to provide a safe working environment for railroad employees.

4. West Virginia's terrain limits the ability of railroads to always provide yard walkways that comply with the provisions of the Railroad Rules, particularly in coal yards in the mountainous regions of the state. Tr. at 152-54, 160-61 (McCracken) & RR Ex. 2.

5. Because rail carriers have had to sometimes employ unusual track configurations as a result of West Virginia's terrain, the Commission should not foreclose the possibility that the Commission may need to consider walkways requirements outside of rail yards.

6. Because our goal is safety, it is not in the public interest to limit our review of other track to newly constructed track.

7. Railroads should not be required to provide walkways of at least two feet in width in existing yards when there is not sufficient space to do so.

8. Railroads should not be required to remove track in existing yards to meet the two-foot minimum requirement.

9. Railroads should promptly upgrade walkways in existing yards to meet the standards contained in Rule 4 where there is sufficient space to do so.

10. When the two-foot minimum width cannot be achieved, railroads should make improvements consistent with the standards contained in Rule 4 as circumstances will reasonably allow.

11. To the extent that any waiver cases are necessary, the railroads should present similar fact patterns at the same time.

ORDER

IT IS THEREFORE ORDERED that the Rules for the Government of Railroad Safety and Sanitation, 150 C.S.R. Series 8, including Table 150-8A, that appear in Attachment A to this Order are adopted as final Commission rules.

IT IS FURTHER ORDERED that Attachment B to this Order is a blackline version of the final rules showing changes from the previous final rules to the final rules adopted today.

IT IS FURTHER ORDERED that that the revised Rules for the Government of Railroad Safety and Sanitation, 150 C.S.R. Series 8, including Table 150-8A, shall be effective sixty days from the date of this Order, or on March 19, 2012.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall file a copy of this Order and the final rules, together with the required forms, with the Secretary of State of West Virginia.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall serve a copy of this Order by electronic service on all railroads operating in West Virginia that have filed an e-service agreement, by United States First Class Mail on all railroads that have not filed an e-service agreement, and on Commission Staff by hand delivery.

IT IS FURTHER ORDERED that the Executive Secretary serve a copy of this Order upon the Consumer Advocate Division, the United Transportation Union and the Brotherhood of Locomotive Engineers and Trainmen by electronic service if they have filed an e-service agreement and by United States First Class Mail if they have not filed an e-service agreement.

IT IS FURTHER ORDERED that upon entry of this Order this case shall be removed from the Commission's docket of open cases.

A True Copy, Teste:


Sandra Squire
Executive Secretary

CLW/sk
go1894cb.doc

**TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION**

**SERIES 8
RULES FOR THE GOVERNMENT
OF RAILROAD SAFETY AND SANITATION**

Attachment A

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2012 JAN 17 PM 4:58

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§150-8-1. General.

1.1. Scope. – The rules hereinafter set forth do not purport to be all inclusive and are in addition to and not in derogation of any previous orders of the Commission pertaining to railroad safety and sanitation. These rules govern the provision, construction and maintenance of sanitation and shelter facilities for railroad company employees, pursuant to West Virginia Code §24-2-1; provided, however, that these rules are not applicable to sanitary facilities on locomotives and cabooses, including shoving platforms.

1.2. Authority. – W. Va. Code §§24-1-1, 24-1-7, 24-2-1 and 24-2-2.

1.3. Filing Date. – January 17, 2012.

1.4. Effective Date. – March 19, 2012.

1.5. Applicability – The following rules shall apply to all Public Utilities operating railroads, in whole or in part within the borders of the State of West Virginia, and to all persons employed by such corporations and performing their work in the State of West Virginia, except in cases in which the Commission shall otherwise order; provided, however, that these rules are not applicable to sanitary facilities on locomotives and cabooses, including shoving platforms.

Every company to which these rules apply shall cause to be provided and maintained for its employees the sanitation and shelter specified and required by these rules, or any subsequent Orders or amendments thereto issued by the Commission.

1.6. Definitions – For the purpose of these rules, the following definitions shall govern:

1.6.a. Bunk or Section House: Any building or portion thereof, excepting a family dwelling, in which persons employed by railroad companies are furnished sleeping or living accommodations.

1.6.b. Camp Car: Any sleeping, dining, kitchen, recreation car or cars or house trailer or camp trailers, on or off rail, furnished for the use of employees.

1.6.c. Commission: The Public Service Commission.

1.6.d. Company: A common carrier railroad as an employer.

1.6.e. Dressing Room: A room used by employees either as a dressing room or as a rest room, or for both purposes.

1.6.f. Drinking Water: Water from a supply under the jurisdiction of a health authority.

1.6.g. Employee: Any person employed by a company to which these rules apply.

1.6.h. Health Authority: A public health authority having jurisdiction.

1.6.i. Locomotive: Each motive power unit operated singly or in multiples.

1.6.j. Number of employees: Unless otherwise specified, the average number of employees employed on any one shift.

1.6.k. Railroads: Common carrier railroads.

1.6.l. Regularly: Unless otherwise specified, at least five (5) days per week, one (1) shift per day.

1.6.m. Signal Headquarters: A place where signal employees are regularly required to be and remain on duty during their shift.

1.6.n. Station: A facility where freight or passenger traffic is ordinarily received and delivered.

1.6.o. Switching service: Moving cars from one track to another track or to different positions on the same track. It includes the moving of cars in the make-up and break-up of trains; also moving of cars on industrial switching tracks or interchange tracks, and the general movement of cars within terminals or at junctions.

1.6.p. Terminal: A facility where engine and train crews in yard and train service and switchmen, switchtenders, maintenance of way employees, signal employees, car clerks, or other company employees are required to report for or be relieved from duty.

1.6.q. Toilets: Fixtures such as flush, chemical, dry hopper toilets, or privies for the purpose of defecation, unless otherwise specified.

1.6.r. Usual Place of Employment: The place where an employee works with a reasonable measure of continuity.

1.6.s. Yard: A group of tracks used for the making or breaking up of trains or classification of cars.

1.7. Drinking Water – General Requirements:

1.7.a. Where water is supplied by the railroads for cooking and drinking purposes under these rules, it shall, where and when available, be from a public supply under the jurisdiction of a state Department of Health. Water supplied from a private supply shall meet the standards for drinking and human consumption of a state Department of Health.

1.7.b. An adequate supply of drinking water shall be made available to all employees as herein provided.

1.7.c. Where drinking water is supplied, suitable sanitary containers shall be used, conveniently placed for the use of employees, but not in toilet rooms. Each container shall be equipped with a sanitary fountain, faucet or other dispenser.

1.7.d. All containers used to furnish drinking water shall be thoroughly cleansed as often as is necessary to assure a sanitary and palatable drinking water supply.

1.7.e. The common drinking cup is prohibited. Either single service containers or drinking fountains with sanitary angle head shall be used in lieu thereof.

1.8. Drinking Water – Required Locations:

1.8.a. Running Facilities: Drinking water containers shall be provided, and drinking water shall be available for use on the following equipment when in use:

1.8.a.1. All locomotives.

1.8.a.2. Baggage cars (when employees are required to work en route) unless other facility is reasonably available.

1.8.a.3. Cabooses.

1.8.a.4. Camp cars.

1.8.b. Stationary Facilities: Drinking water, according to the foregoing specifications, shall be available if employees are on duty regularly for periods of time long enough to make such facility reasonably necessary, at the following locations:

1.8.b.1. All terminals.

1.8.b.2. All yard offices.

1.8.b.3. All stations where a public water supply is locally available (except where water is otherwise reasonably accessible).

1.8.b.4. All shops and engine rooms.

1.8.b.5. All signal or section headquarters in terminals and all bunk or section houses where an approved supply is locally available.

1.8.b.6. All lunch rooms operated by railroad on railroad property.

1.8.b.7. Camp cars.

1.9. Toilets - General Requirements:

1.9.a. Where running water and sewer or septic tank connections are reasonably available, flush-type toilets and urinals shall be maintained as hereinafter set forth.

1.9.b. Chemical toilets or privies may only be used when it is impractical to install inside toilet and urinal facilities.

1.9.c. All permanent privies shall be constructed and maintained so that there will be no cracks or open spaces in that portion of the superstructure between the seat and floor or between the floor and the pit, vault, or space where the cans are kept. Every privy shall be provided with a door and such door shall be self-closing. The lids over the seats shall be so constructed as to fall into closed position when the seat is not occupied. The pit, vault or space where the cans are kept shall be ventilated to the outside air by means of a stack protected at its Outlet end by screens. Individual seats shall be provided in accordance with the ratio hereinafter set forth.

1.9.d. Every flush toilet shall have a rim flush bowl or be so constructed as to prevent the accumulation of fecal matter on the bowl. The bowl shall be constructed

of vitrified glazed earthenware, enameled metal, or other smooth finished material, impervious to moisture. No pan, plunger or washout water closets are permitted except that pan or double-pan types are permitted for running facilities. Every flush toilet shall have a separate hinged seat, made of a material other than metal, which does not absorb moisture or which shall be finished with varnish or other substances resistant to moisture.

1.9.e. Every urinal shall be made of vitrified glazed earthenware, enameled metal, or other smooth finished material, impervious to moisture. Every urinal shall be flushed from a water supplied tank or through a flush valve. Water may be allowed to run continuously over trough urinals. Slab urinals are not permitted.

1.9.f. Rule 1.9 is not applicable to locomotives and cabooses, including shoving platforms.

1.10. Toilets – Specifications:

1.10.a. Separation: No toilet room shall be connected with any room in which meals are taken, unless separated from said room by a self-closing door, maintained in operating condition. Separate toilet facilities shall be provided for each sex, whenever practicable, and each toilet room shall be plainly marked as such.

1.10.b. Compartments: Each water closet in toilet rooms containing more than one water closet, together with one or more urinals, shall be in individual compartments.

1.10.c. Ventilation: Every toilet room shall be adequately ventilated.

1.10.d. Lighting: All toilet facilities shall be provided with adequate lighting, where power is available.

1.10.e. Heating: Except privies, chemical and dry hopper toilets, every toilet room shall be kept adequately heated.

1.10.f. Screens: All outside windows, ventilators, and other outside openings, shall be screened. Toilet rooms shall be kept free of insects and vermin, insofar as possible.

1.10.g. Rule 1.10 is not applicable to locomotives and cabooses, including shoving platforms.

1.11. Toilets – Number Required:

1.11.a. Adequate toilet facilities, conveniently located, shall be provided for all employees and for each sex, whenever practicable. Such facilities shall be maintained in a usable and sanitary condition at all times.

1.11.b. The following table shall be used as a guide in determining the adequacy of toilet facilities:

Number of Employees	Minimum Number of Facilities
1 to 10 persons	1 toilet
11 to 25 persons	2 toilets
26 to 49 persons	3 toilets
50 persons or over	4 toilets + 1 toilet for each 25 additional persons or fraction thereof over 75

1.11.c. Whenever urinals are provided, one urinal may substitute for one toilet, provided the number of toilets shall not be reduced to less than two-thirds (2/3) of the number shown in the foregoing table.

1.11.d. Supplies: An adequate supply of toilet paper with holder shall be supplied by the employer for each toilet.

1.11.e. Sanitary Napkins: In all toilet rooms used by women, the Company shall permit the installation of dispensing machines for sanitary napkins. Covered receptacles shall be provided for the disposal of such napkins.

1.11.f. Rule 1.11 is not applicable to locomotives and cabooses, including shoving platforms.

1.12. Toilets – Location of:

1.12.a. Running Facilities:

1.12.a.1. Baggage cars, when employees are required to work en route and no other facilities are available.

1.12.a.2. Camp cars, when no other toilet is available.

1.12.b. Stationary Facilities: Toilets, according to the foregoing specifications, shall be available if employees are on duty regularly for periods of time long enough to make such facility reasonably necessary at the following locations:

1.12.b.1. All terminals.

1.12.b.2. All yard offices.

1.12.b.3. All stations (except where other facilities are otherwise reasonably accessible).

1.12.b.4. All engine houses and shops.

1.12.b.5. All signal or section headquarters in terminals and all bunk or section houses.

1.12.b.6. Camp cars, when no other toilet is available.

1.12.b.7. Crossing watchman locations, where practicable, and where such facilities are not otherwise readily and conveniently located.

1.12.b.8. Other locations where switchtenders, yardmen, trainmen, and other railroad employees report for or are relieved from duty.

1.13. Washing Facilities – General Requirements:

Adequate facilities for maintaining personal cleanliness shall be provided for all employees as hereinafter specified. The same shall be convenient for the employees for whom they are provided and shall be maintained in a sanitary condition by the Railroad Companies. Rule 1.13 is not applicable to locomotives and cabooses, including shoving platforms.

1.14. Washing Facilities – Specifications:

1.14.a. Wash basins or lavatories shall be made of vitrified glazed earthenware, vitreous enameled metal, or other smooth finished material, impervious to moisture.

1.14.b. Twenty-four (24) inches of trough or circular wash basin shall be considered the equivalent of one wash basin. The trough or circular wash basin shall not be equipped with a plug or stopper.

1.14.c. Spring-closing hand-operated faucets are prohibited in trough basins or circular basins.

1.14.d. Rule 1.14 is not applicable to locomotives and cabooses, including shoving platforms.

1.15. Washing Facilities – Number Required

1.15.a. The following table shall be used as a guide in determining the adequacy of washing facilities:

Number of Employees	Minimum Number of Facilities
1 to 10 persons	1 basin
11 to 24 persons	2 basins
25 to 49 persons	3 basins
50 persons or over	4 basins + 1 basin for each 25 employees or fraction thereof over 75

1.15.b. At least one (1) wash basin shall be located convenient to each toilet room.

1.15.c. Rule 1.15 is not applicable to locomotives and cabooses, including shoving platforms.

1.16. Washing Facilities – Location of:

1.16.a. Running Facilities: Baggage cars (where employees are assigned for work en route and no other facilities are available).

1.16.b. Stationary Facilities:

Washing facilities, according to the foregoing specifications, shall be available, if employees are on duty regularly for periods of time long enough to make such facility reasonably necessary at the following locations:

1.16.b.1. All terminals.

1.16.b.2. All yard offices.

1.16.b.3. All engine houses and shops.

1.16.b.4. All signal or section headquarters in terminals and all bunk or section houses where an approved supply of running water is locally available.

1.16.b.5. Places convenient to lunch rooms, designated as such.

1.16.b.6. Camp cars, when no other washing facility is available.

1.16.b.7. Other locations where switchtenders, yardmen, trainmen, and other railroad employees report for or are relieved from duty.

1.16.c. Supplies:

1.16.c.1. Water shall be available and hot water shall be supplied at all terminals, yard offices, engine houses and shops.

1.16.c.2. Mechanical drying facilities, including mechanical roller towel, or individual towels, either paper or cloth, shall be provided. (The use of common towels is prohibited).

1.16.c.3. Waste receptacles shall be provided for used towels and other discardable materials.

1.16.c.4. Soap, or wet or dry chemical hand cleaner, or other suitable cleansing agent shall be supplied.

1.16.c.5. All supplies shall be adequate to meet the needs for which they are intended, and shall be maintained by the employer.

1.17. Showers – General Requirements:

1.17.a. Showers shall be required when, in the judgment of this Commission, such facilities are necessary at specified locations to protect employees whose work involves exposure to poisonous, infectious or irritating material or to excessive dirt, heat fumes or vapors or other materials or substances injurious to health.

1.17.b. Such shower facilities shall be provided in conjunction with adequate and necessary lockers or dressing room facilities.

1.17.c. Showers shall be maintained in a sanitary condition at all times by the Railroad Companies.

1.18. Showers – Specifications:

1.18.a. Showers shall be provided with a spray fixture, connected to an ample supply and pressure of hot and cold water, preferably mixed by a mixing valve.

1.18.b. Each shower room or compartment shall be constructed of material impervious to moisture.

1.18.c. Each shower compartment shall not be less than thirty-two (32) inches in width and thirty-two (32) inches in depth.

1.19. Locker Rooms – Lockers:

1.19.a. General Requirements – Locker Rooms:

1.19.a.1. Locker Rooms, except those in camp cars, shall have not less than eighty (80) square feet of floor space for the first ten (10) employees, or fraction thereof, and for each additional employee, not less than four (4) additional square feet shall be added thereto. Employees, as used herein, refers to employees to whom lockers have been assigned.

1.19.a.2. Necessary furniture, such as benches and tables, shall be provided.

1.19.a.3. Such locker rooms shall be properly lighted, heated and ventilated at all times.

1.19.b. General Requirements – Lockers:

1.19.b.1. Individual lockers for employees shall be provided when requested by such employees and deemed necessary by the Commission.

1.19.b.2. Lockers shall be not less than fifteen (15) inches wide, eighteen (18) inches deep and seventy-two (72) inches high, exclusive of legs or other base. The lockers shall be equipped with a shelf and with not less than one (1) clothes hook for each side or equivalent hanger bar, and also sufficient openings in the door for purposes of ventilation.

1.20. Dressing Rooms:

1.20.a. Where six (6) or more women, who are required to change clothing, are employed at any one time, a dressing room shall be provided for their use.

1.20.b. Where more than one (1) but less than six (6) women, who are required to change clothing, are employed and a dressing room is not provided, room space shall be provided, properly screened for privacy and made suitable for the use of women employees, in lieu of a dressing room.

1.20.c. Dressing rooms shall be conveniently located for the workers for whose use they are intended.

1.21. Bunk Rooms - Camp Cars and Dormitories:

1.21.a. The walls, floors and ceilings of bunk rooms, camp cars and dormitories shall be so constructed as to provide protection from outside weather elements and to permit their being readily cleaned and they shall be kept cleaned and in good repair. Wood floors shall be raised above the ground sufficiently to allow airspace beneath them.

1.21.b. Ventilation shall be provided by window opening directly to the outside air.

1.21.c. During the period between May 1 and November 1, all outer doors and windows shall be equipped with screens.

1.21.d. Adequate heating facilities and fuel shall be provided, with which employees may maintain a comfortable temperature, as weather conditions may require.

1.21.e. Lighting by windows or acceptable artificial illumination shall be provided.

1.21.f. When assigned to a section crew or signal crew, such crew shall be responsible for the cleanliness and sanitation.

1.22. Bunk Rooms or Dormitories:

1.22.a. Bunk rooms or dormitories shall be of such area to provide at least fifty (50) square feet of floor space for each person, with a ceiling height of not less than seven (7) feet, except where double bunks are used at least thirty (30) square feet of floor space shall be provided each person accommodated.

1.22.b. Where beds, bunks or cots are provided, they shall be equipped with proper mattresses. Such beds, bunks or cots shall be raised twelve (12) inches, above the floor and be located two (2) feet or more from the side of any other bed, bunk or cot located in the same room and have at least twenty-seven (27) inches of clear space above it.

1.23. Camp Facilities:

Where camp cars, house trailers or railroad passenger cars are furnished for sleeping purposes, the Commission may designate the number of men to be housed in each car.

1.24. Shelter:

When an employee works regularly at a location (other than a repair track), where shelter is not otherwise available, it shall be provided, if requested by such employee and if deemed necessary by the Commission.

1.25. Lunch Rooms – General Requirements:

Lunch rooms provided by the Company shall be adequately ventilated, reasonably heated, properly screened, provided with the necessary covered receptacles for the disposal of waste matter and shall be kept clean and in good care.

1.26. Camp Cars – Provision of Meals:

1.26.a. When kitchen cars or other camp facilities for heated meals are furnished by the Company, they shall be provided with adequate equipment for cooking and refrigeration.

1.26.b. In lunch rooms where food is served by the Company for employees, the food, equipment and facilities shall be subject to the same inspection and regulation as is required in public eating places, generally consistent with the rules and regulations of the State Department of Health pertaining to public food establishments.

1.26.c. Employees and workers handling and serving food in lunch rooms, described in 1.26.b, shall be subject generally to those rules and regulations of the State Department of Health, which are necessary for the sanitary handling of food.

1.26.d. Concessionaire facilities provided by the company in lieu of direct company operations shall comply with these regulations with respect to adequate space, adequate food handling facilities and cleanliness.

1.27. Caboose or Rider Cars – Other than Yard Caboose:

In addition to requirements of the preceding rules, cabooses or rider cars shall be subject to the following requirements:

1.27.a. They shall be equipped with a stove or other heating equipment that will provide a minimum temperature of 65 degrees F., from October 1 to May 15. A sufficient amount of fuel will be available for each trip or shift.

1.27.b. Their windows and doors shall be weather stripped during cold weather and from May 1 to October 15, all caboose windows (except cupola windows),

and doors shall be equipped with screens, where cabooses are used as sleeping quarters by crews laying over at away-from-home terminals.

1.27.c. They shall be maintained in a clean and sanitary condition. When assigned to a crew, such crew shall be responsible for the cleanliness and sanitation.

1.27.d. They shall be lighted by electricity or other acceptable means.

1.27.e. Illumination equipment for railroad cabooses:

1.27.e.1. There shall be maintained on the rear end of all cabooses, while cabooses are being pushed during the hours of darkness, either a handheld or installed backup light which shall be sufficient candlepower to illuminate the track for a distance of at least two hundred fifty (250) feet under clear atmospheric conditions. Securing and maintaining said lights shall be the responsibility of the railroad.

1.27.e.2. The provisions of Rule 1.27.e.1 shall only apply to all local or mine run cabooses. Runs originating from without the State of West Virginia shall be exempt from the requirements of the rule.

1.27.e.3. Rule 1.27.e.1 shall be effective from June 7, 1983, provided; that railroads shall have until June 7, 1984 to achieve full compliance with the rule.

1.27.e.4. Enforcement - Railroad safety inspectors of the Commission shall have authority to examine cabooses for compliance with these rules. If a railroad violates the provisions of Rule 1.27.e.1, it will be, according to West Virginia Code §21-2B-5, guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars (\$500) for each violation; provided that the railroad shall not be in violation of Rule 1.27.e.1 if the defect is corrected at the first point maintenance supplies are available, or if repairs are needed, the first point at which materials and repair facilities are available and repairs can reasonably be made.

1.27.e.5. Rule 1.27.e shall not be interpreted as imposing individual responsibility upon any railroad employee for damage to caboose backup lights while the employee is engaged in handling the lights as required by Rule 1.27.e.1.

1.28. Cabooses or Rider Cars – Other than Those Used in Road Service:

In addition to the requirements of the preceding rules, cabooses or rider cars shall be subject to the following requirements:

1.28.a. They shall be equipped with a stove or other heating equipment that will provide a minimum temperature of 65 degrees F., from October 1 to May 15. Sufficient fuel for each trip or shift shall be available.

1.28.b. Their windows and doors shall be weather stripped, as required by the season of the year.

1.28.c. Windows on all cabooses shall be washed at reasonable intervals.

1.28.d. They shall be maintained in a clean and sanitary condition. When assigned to a crew, such crew shall be responsible for the cleanliness and sanitation.

1.29. The present facilities mentioned in Rules 1.5 through 1.29 shall be deemed adequate unless upon a specific complaint the Commission shall find otherwise.

§150-8-2. – Rules Relating To Accident Reporting.

2.1. All accidents occurring on railroads in this State shall be reported in accordance with the rules set forth in this Section 2.

2.2. Adoption and Filing of Reports:

The present rules of the United States Department of Transportation, Federal Railroad Administration, governing the reporting of railroad accidents, together with any amendments or changes in said rules or forms which may hereafter be promulgated by said agency are hereby adopted as the rules and forms of this Commission governing the reporting of railroad accidents within the State of West Virginia.

The aforementioned Federal Rules and Forms to be used are listed in the Code of Federal Regulations (CFR) Title 49 – Transportation, Part 225 – RAILROAD ACCIDENTS/INCIDENTS: REPORTS CLASSIFICATION AND INVESTIGATIONS. Whenever such reports are submitted to the Federal Railroad Administration, identical copies of each must be submitted simultaneously to this Commission.

2.3. Reports for Information of Commission Only – Written Application for Access:

Accident reports made by railroads in compliance with these rules shall be for the information of the Commission and shall not be open to public inspection except upon prior written approval by this Commission of an application, which shall state with full particularity how the information will be used and how such use will contribute to the promotion of safety in railroad operation. Each such request will be in substantially the form prescribed by the Federal Railroad Administration in 49 CFR Section 225.11,

substituting the name of the Public Service Commission of West Virginia in the heading thereof. No such request will be granted until the Commission is satisfied that such inspection will not result in a violation of Section 4 of the Federal Accident Reports Act, as stated in 49 CFR Section 225.7(b).

2.4. Previous Orders Canceled and Superseded:

All previous orders of this Commission relating to railroad accident reports are hereby canceled and superseded.

§150-8-3. – Rules Relating To Clearances.

3.1. The minimum clearance requirements for railroads hereinafter prescribed shall hereafter be observed in this State in all construction of tracks or structures adjacent to tracks. These requirements shall not apply to repairs, renewals, maintenance, extensions or additions, in substantially the same location and within the general plan of existing installations, provided that existing clearances shall not be reduced. No railroad shall operate any cars, trains, motors, engines, or other rolling equipment over its own or other tracks, except as hereinafter provided, on which overhead or side clearances, or clearances between tracks are less than the minimum prescribed in this Section 3, if such tracks or structures adjacent to such tracks are constructed subsequent to the effective date hereof.

3.2. For the purpose of these rules, the definitions set forth below will govern:

3.2.a. Height of a Freight Car is the distance between the top of rail and the top of the running board.

3.2.b. Side of a Freight Car is that part or appurtenance of a car at the maximum distance measured at right angles from the center line of the car (including the hardware).

3.2.c. Width of a Freight Car is twice the distance from the center line to the side of a car as defined herein.

3.2.d. Overhead Clearance is the vertical distance from the level of the top of the highest rail to a structure or obstruction above.

3.2.e. Side Clearance is the shortest distance from the center line of track to a structure or obstruction at the side of track.

3.3. Overhead Clearance:

The minimum overhead clearance above railroad tracks, which are used or proposed to be used for transporting freight cars, shall be twenty-two (22) feet, except that the minimum overhead clearance for tipples and facilities for loading and unloading bulk commodities may be not less than eighteen (18) feet. Structures constructed prior to 1970 may be maintained at such clearances as were lawful at the time of construction. The clearances provided in this Section shall not apply to the electric wires and equipment required over present and future tracks for the operation of trains by electric energy, provided the carriers concerned promulgate and enforce rules that prohibit any employee from being on the top of cars while being operated under lower clearances than provided for in this section.

3.4. The overhead clearance above top of rail of such tracks located inside of buildings may be reduced to eighteen (18) feet, provided that this clearance shall apply only to tracks within the building, and further provided, that when an overhead clearance of less than twenty-two (22) feet exists on tracks inside such building, all cars, trains, motors, engines or other equipment shall be brought to a stop before entering such building. In switching movements requiring a number of continuous entries, stops shall be required only upon the initial entry.

3.5. Unless otherwise provided herein, overhead clearances authorized in this section are applicable only to tracks on which freight cars having a height not exceeding fifteen (15) feet seven (7) inches are transported.

3.6. Freight cars not exceeding a height of fifteen (15) feet seven (7) inches may be transported provided that the tracks over which such operations are conducted exhibit throughout the route an overhead clearance as required in subsection 3.3 of these rules.

3.7. If freight cars of a height greater than fifteen (15) feet seven (7) inches are transported or proposed to be transported, minimum overhead clearances shall be increased by an amount of not less than such additional height; provided, however, that box or other house cars over fifteen (15) feet seven (7) inches in height are exempted from this subsection when the top running boards have been removed, ladders and hand brakes lowered, cars painted, stenciled, or otherwise modified in compliance with the provisions of Section 231.24 CFR Title 49 Part 231 – RAILROAD SAFETY APPLIANCE STANDARDS.

3.8. Side Clearances:

Minimum side clearances from center line of tangent railroad tracks, which are used or proposed to be used for transporting freight cars, except as hereinafter prescribed, shall be as shown in Table 150-8A found at the end of these rules.

3.9. Reserved

3.10. Reserved

3.11. Side clearances specified herein shall not apply to car retarders, derails, switch point protectors, rails and similar appurtenances projecting three (3) guard inches or less above top of rail.

3.12. All minimum side clearances prescribed in this section are for tangent tracks. Structures adjacent to curved tracks shall have additional side clearances compensating for curvature at the rate of one (1) inch for each degree of curvature.

3.13. Minimum side clearances authorized in this section are applicable to tracks on which freight cars having a width not greater than ten (10) feet ten (10) inches are transported.

3.14. The overhead and side clearances prescribed in this rule may be decreased

3.14.a. for structures adjacent to an industry track or for through railway bridges or railway turntables to the extent defined by a straight line extending diagonally downward from a point four (4) feet from the center line of track at twenty-two (22) feet above top of rail to a point eight (8) feet from the center line of track at eighteen (18) feet above top of rail and

3.14.b. for tunnels to the extent defined by a curved line with a radius of eight (8) feet from a point four (4) feet from the center line of track at twenty-two (22) feet above top of rail to a point eight (8) feet from the center line of track at fifteen (15) feet zero and seven-eighths (0-7/8) inches above top of rail.

3.15. Clearances between Parallel Tracks:

The minimum distance between the center lines of parallel tracks shall be fourteen (14) feet except as hereinafter provided.

3.16. The center line of any track, except a main track or a passing track, parallel and adjacent to a main track or a passing track, shall be at least fifteen (15) feet from the center line of such main track or passing track; provided, however, that where a passing track is adjacent to and at least fifteen (15) feet distant from the main track, any other track may be constructed adjacent to such passing track with clearance prescribed in subsection 3.15 of these rules.

3.17. The center line of any ladder track, constructed parallel to any other adjacent track, shall be at least fifteen (15) feet from the center line of such other track and the center lines of parallel ladder tracks shall be at least eighteen (18) feet apart.

3.18. The minimum distance between the center lines of parallel team, house and industry tracks shall be thirteen (13) feet.

3.19. Main siding and yard tracks constructed prior to 1970 with distance of not less than thirteen (13) feet between track centers may be extended without increasing such distances.

3.20. Other Conditions and Obstructions Adjacent to Tracks: No merchandise, material or other articles shall be permitted to remain either on the ground or on platforms adjacent to any track owned or leased by railroads at a distance less than eight (8) feet six (6) inches from the center line of track: **Provided, however,** That nothing herein shall be construed as restricting the temporary distribution of materials or the performance of work on, over or adjacent to tracks, when such distribution or performance is necessary in the construction or maintenance of facilities or equipment, provided such distribution and performance shall be carried out within a reasonable time under conditions reasonably necessary to provide for safety of all concerned, including proper notice by train order, message or bulletin.

A suitable line or other marker should be maintained at a distance of eight (8) feet six (6) inches from the center line of track, on all platforms, excluding passenger platforms, to indicate the space along edge of the platform which must be kept clear of merchandise, material or other articles.

3.21. Lading on Open Top Cars:

When shipments are to be moved that are loaded on open top cars and which exceed the dimensions (i) shown in the Tables in Section No. 1 of the A.A.R. Loading Rules¹ or (ii) shown in RAILWAY LINE CLEARANCES,² a copy of the instructions containing any special restrictions applying to the movement shall be furnished to the Conductor of each train handling the shipment and to each Division Superintendent and each Chief Train Dispatcher affected. All such shipments, with the exception of multi-

¹ Association of American Railroads, Operations and Maintenance Department, Mechanical Division, Rules Governing the Loading of Commodities On Open Top Cars and Trailers, Effective January 1, 1976, as amended, supplemented and revised.

² The publication RAILWAY LINE CLEARANCES, published annually by the Railway Equipment and Publication Company, as amended, supplemented and revised.

level automobile rack cars either loaded or unloaded or cars transporting automobile underframes or cars transporting highway trucks or trailers, shall be placarded on the placard board on each side of the car with an appropriate clearance card.

No member of the train crew shall be required to ride the cars handling such shipments.

When such shipments or the train handling such shipments are to be yarded on a yard track, the yardmaster shall be given sufficient advance notice to enable him to take the necessary precautions to safeguard employees in the yard.

3.22. Exceptions:

Nothing herein shall be construed as preventing the movement of material over tracks when such material is necessary in the construction or maintenance of such tracks, nor in the movement of special work equipment used in the construction, maintenance or operation of the railroad; provided such movements shall be carried on under such conditions as are necessary to provide for the safety of all concerned.

3.23. If in any particular case, exemption from any of the requirements herein is deemed necessary by the railroads concerned, the Commission will consider the application of such carrier for such exemption when accompanied by a full statement of the conditions existing and the reason why such exemption is asked. Any exemption so granted will be limited to the particular case covered by the application.

3.24. The Commission reserves the right to modify any of the provisions of these rules in specific cases when, in the Commission's opinion, public safety, convenience or necessity would be served by so doing.

3.25. Prior Orders:

The requirements of this section supersede all regulations governing clearances between tracks of railroads and for obstructions adjacent to such tracks heretofore promulgated, provided, however, that any exemption or deviation heretofore granted and now in force and effect shall not be affected by this order and shall remain in force and effect until further order of the Commission.

§150-8-4. Rules Relating To The Construction, Reconstruction And Maintenance Of Walkways Adjacent To Railroad Trackage: And Removal Of Debris, Trash, Etc.

4.1. Purpose: The purpose of Rule 4 is to establish the standards of practice for the construction and maintenance of walkways. The provisions of Rule 4 are not to be

construed as inflexible mandates requiring all rail carriers in all circumstances to construct or reconstruct all walkways in exact accordance with these rules. Rule 4.3 acknowledges that walkways do not have to be constructed in exactly the same way. Railroads are required to comply with the standards set out in Rule 4 when possible, taking into consideration topographical limitations and compliance with applicable federal requirements.

4.1.a. Existing yard tracks: Each railroad shall provide reasonably safe and adequate walkways adjacent to its tracks in all switching areas within yard limits where railroad employees are regularly required to walk in the performance of their duties. All such walkways shall be maintained and kept reasonably free of trash and debris and provide as comfortable a walking surface as may be appropriate to prevailing conditions.

4.1.b. Private industry requirements: Each railroad shall require private industry utilizing railroad transportation service to provide suitable and adequate walkways adjacent to its tracks in all switching areas within yard limits where railroad employees are regularly required to walk in the performance of their duties; and all such walkways shall be maintained and kept reasonably free of trash and debris and provide as comfortable a walking surface as may be appropriate to prevailing conditions.

4.1.c. Water flow prohibited: Except for direct impingement of rain or snow, no wastewater or process water of any composition may be allowed to flow onto or over walkways used by railroad employees in performance of duties. Appropriate ditches, conduits, culverts and piping must be used for conducting all wastewater, both storm and industrial, clear of both tracks and walkways referenced in these rules.

4.1.d. Vegetation control: Encroachment of vegetation (including but not limited to weeds, brush, and tree limbs) must be controlled at side of tracks generally to a distance of eight (8) feet from the center of the track, and overhead generally to a distance of eighteen (18) feet above top of rail. However, nothing herein shall be construed to impose restrictions which are more or less stringent than the applicable federal regulations.

4.1.e. New yard tracks: Rail carriers shall provide walkways adjacent to those portions of yard tracks constructed after March 17, 2012, where rail carrier employees regularly work on the ground performing switching service. To create a suitable, adequate, and comfortable surface on which to walk, such walkways may be surfaced with reasonably uniform asphalt, concrete, planking, grating, native material, crushed material, or other similar material. When crushed material is used, one hundred (100) percent of the material must be capable of passing through a one-and-one-half (1½) inch sieve and at least ninety (90) percent of the material must be capable of passing through a one (1) inch square sieve opening, provided, however a de minimis variation shall not be a violation of this rule in an instance where the rail carrier has made a good

faith effort to comply with the percentage requirements. Smaller crushed material is preferable and should be used where drainage and durability issues do not arise. Material that is three-quarters (3/4) inch or less in size is recommended for switching lead tracks. Such walkways must have a reasonably uniform surface and must be maintained in a safe condition without compromising track drainage. Further, such walkways shall be a minimum width of two (2) feet and shall be kept reasonably free of spilled fuel oil, sand, posts, rocks and other hazards or obstructions.

4.1.f. Tracks other than yards: In cases where the Commission finds, after notice and hearing, that rail carrier employees who regularly work adjacent to a portion of track are exposed to safety hazards due to the lack of a walkway or to the condition of a walkway, the Commission may order a rail carrier to construct, when feasible, a walkway adjacent to a portion of track or require a rail carrier to modify an existing walkway in conformance with the standards set forth above for New Yard Tracks within a reasonable period of time. For purposes of this subdivision, "regularly" shall mean at least five (5) days per week, one (1) shift per day or any other period determined to be "regularly" enough by the Commission to warrant an Order pursuant to this rule.

4.2. Bridges and trestles: All railroad owned or leased bridges and trestles constructed after January 15, 1970, the effective date of General Order No. 164, where switching is regularly performed and railroad employees are regularly required to walk in the performance of their duties, shall be equipped with walkways and handrails.

4.3. Waivers: Deviation from the provisions of this Section 4 may be authorized by the Commission for any specific installations for good cause upon application by a railroad, which application shall include a full statement of the conditions which prevail at the time and place involved, and reasons why deviation is deemed necessary.

4.4. Compliance: These walkway rules shall have no application during maintenance activities or any period of heavy rain or snow, derailments, rock and earth slides, washouts and similar weather or seismic conditions, and during a reasonable period afterward to allow a return to compliance.

4.5. Enforcement: No formal complaint of an alleged violation of these walkway rules may be filed until the filing party has attempted to address the alleged allegations with the rail carrier. Any complaint of an alleged violation of these walkway rules shall contain a written statement that the filing party has made a reasonable, good faith attempt to address the alleged violation with the rail carrier and shall comply with the Commission Rules of Practice and Procedure, 150 C.S.R. Series 1.

§150-8-5. Rules Relating To The Filing Of Rules And Regulations Of The Operating Departments Of Railroad Corporations.

5.1. Each railroad corporation operating in the State of West Virginia shall file the existing rules and regulations of the operating department and any future changes or revisions thereof in accordance with the provisions of rule 5.3 of this Section 5.

5.2. Reserved.

5.3. Each railroad operating in the State of West Virginia shall file with the Commission any change or reissue, in whole or in part, of its rules and regulations of the Operating Department within thirty (30) days after any change.

§150-8-6. Rules Relating To Safety Programs.

6.1. Each railroad corporation operating in the State of West Virginia shall file with the Executive Secretary of the Commission its safety rules and regulations.

§150-8-7. Rules Relating To Inspection Of Trackage, Roadbeds, Bridges And Other Structures: And To Maintenance And Repairs Of Bridges And Other Structures.

7.1. Except in cases of emergency, in instances where passenger trains are to be operated over tracks which do not serve regularly scheduled passenger movements, and where the maximum authorized speed for freight traffic over such tracks is less than thirty-five (35) miles per hour, then such tracks shall be inspected within forty-eight (48) hours prior to the operation of such passenger trains.

7.2. Bridges and other structures on main line or branch lines shall be inspected at least once a year by a qualified bridge inspector.

7.3. If, on inspector's report, the Public Service Commission has reasonable ground to believe that any of the bridges, or other structures are in a condition which renders them dangerous, unfit, or unsafe, the Commission shall immediately give to the superintendent, or other executive officer of the company operating such railroad, notice of the condition thereof, and of the repairs or reconstruction necessary to place them in a safe condition. The Commission may prescribe the time within which such repairs or reconstruction must be made, and the maximum speed at which trains may be operated over such dangerous or defective bridge, or other structure, until the repairs or reconstruction required are made. The Commission may forbid the running of trains over such defective bridge, or other structure, if it is of the opinion that such action is necessary and proper; provided, however, that the railroad affected thereby, shall have the right to a hearing to determine whether or not such prohibition is necessary and proper.

7.4. Tracks Owned by Entities Other than Railroad Companies:

7.4.a. This rule shall apply to all railroad track owned by an entity other than a railroad company over which a railroad company moves railroad cars in the conduct of business.

7.4.b. Track shall be maintained free of debris which

7.4.b.1. could impair proper drainage of track bed, or

7.4.b.2. could prevent proper inspection of track components.

7.4.c. For purposes of subdivision 7.4.b.,

7.4.c.1. "debris" shall include, but not be limited to, coal, slate, waste, sludge, mud and water.

7.4.c.2. "track components" shall include, but not be limited to, joint bars, bolts, spikes, tie plates, crossties and ballast.

7.4.d. Each drainage or other water carrying facility under or immediately adjacent to the road bed must be maintained and kept free of obstruction, to accommodate expected water flow for the area concerned.

7.5. Switches:

7.5.a. All manually-thrown switches found defective must be repaired or lubricated as indicated by the construction and requirements of said switch, to correct the existing defect within twenty-four (24) hours of date inspected, excluding Saturdays, Sundays and holidays.

7.5.b. All hard-to-throw switches not found to be defective must be made less hard to throw, repaired or lubricated, if necessary, within seventy-two (72) hours of date inspected, excluding Saturdays, Sundays and holidays; provided that said switch shall, after repair, lubrication or other maintenance be in full compliance with the requirements of 49 CFR 213.135.

7.5.c. For each yard area the affected railroad company shall appoint an employee who normally and regularly works within the yard area to either:

7.5.c.1. accompany said inspector in the performance of the switch test, or

7.5.c.2. select a qualified, readily available, employee to accompany the inspector in the performance of the switch test.

§150-8-8. Enforcement Of Federal Regulations.

8.1. General:

The federal statutes listed below, and the regulations promulgated thereunder by the United States Department of Transportation, subject to enforcement by the Federal Railroad Administration (FRA), also listed below, are designed to promote and enhance railroad safety for employees and the public. The Commission is empowered to enforce these federal provisions by virtue of a cooperative agreement with FRA. The lists of federal statutes and regulations are provided for illustrative purposes only. The extent of the Commission authority is to be construed from the terms of the cooperative agreement itself and may not be limited by either of the following illustrative lists.

8.2. Federal Statutes:

PL 91-458 – Federal Railroad Safety Act of 1970 (Act October 16, 1970)

PL 93-633 – The Hazardous Materials Transportation Act or Rail Safety Improvement Act of 1974 (Act January 3, 1975)

PL 94-348 – Federal Railroad Safety Authorization Act of 1976 (Act July 8, 1976)

PL 95-574 – Federal Railroad Safety Authorization Act of 1978 (Act November 2, 1978)

PL 96-423 – Federal Railroad Safety Authorization Act of 1980 (Act October 10, 1980)

8.3. Federal Regulations:

CFR 49 Chapter 1 – Research and Special Programs Administration, Department of Transportation.

Subchapter B – Hazardous Materials Transportation

Part 107 – Hazardous Materials Program Procedures

Subchapter C – Hazardous Materials Regulations

Part 171 – General Information, Regulations and Definitions

Part 172 – Hazardous Materials Table and Hazardous Materials Communications Regulations

Part 173 – Shippers – General Requirements for Shipments and Packagings

Part 174 – Carriage by Rail

Part 178 – Shipping Container Specifications

Part 179 – Specifications for Tank Cars

CFR 49 Chapter 11 – Federal Railroad Administration, Department of Transportation

Part 210 – Railroad Noise Emission Compliance Regulations

Part 212 – State Safety Participation Regulations

Part 213 – Track Safety Standards

Part 214 – Bridge Worker Safety Rules

Part 215 – Railroad Freight Car Safety Standards

Part 217 – Railroad Operating Rules

Part 218 – Railroad Operating Practices

Part 219 – Control of Alcohol and Drug Use

Part 220 – Radio Standards and Procedures

Part 221 – Rear End Marking Device

Part 223 – Safety Glazing Standards

Part 225 – Railroad Accidents/Incidents

Part 228 – Hours of Service of Railroad Employees

Part 229 – Railroad Locomotive Safety Standards

Part 230 – Locomotive Inspection

Part 231 – Railroad Safety Appliance Standards

Part 232 – Railroad Power Brakes and Drawbars

Part 233 – Signal System Reporting Requirements

Part 234 – Grade Crossing Signal System Safety

Part 235 – Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System or Relief from the Requirements of Part 236

Part 236 – Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices and Appliances:

Part 240 – Qualification and Certification of Locomotive Engineers

When additional federal statutes and additional federal regulations relating to railroad safety are enacted or issued, they also shall be enforced by the Public Service Commission.

§150-8-9. Reserved

§150-8-10. Rules Relating To Minimum Motor Vehicles Standards.

10.1. The motor vehicles provided by the railroad company and used to transport one (1) or more workers to and from their places of employment, or during the course of their employment, shall be maintained in a safe condition and operated in a safe manner at all times, whether or not used upon a public highway. Motor vehicles shall be equipped with safe and adequate space heating devices or appliances capable of maintaining a temperature of at least sixty (60) degrees Fahrenheit in those areas of the vehicle where workers will be required to ride.

10.2. When transporting employees, the following requirements shall govern:

10.2.a. Tools and equipment shall be secured in racks or boxes, when vehicle is en route and shall be loaded, removed and carried in such manner so that the equipment will not be transported in the same compartment with the workers, unless in a closed compartment, securely attached to the vehicle to prevent tools and equipment from shifting during travel time of the vehicle.

10.2.b. No explosives, injurious chemicals or pesticides shall be hauled on any vehicle while engaged in transporting workers. This rule shall not prohibit the driver and a qualified powder crew from riding in a vehicle in which explosives are being hauled.

10.2.c. Gasoline and other low flash point liquids shall not be hauled on vehicles transporting workers except in closed safety containers, and provided that such containers are carried in a safe, suitable location outside of the passenger compartment. Such containers shall be carried as far away from the passenger compartment as possible, said containers shall not block the exits from the vehicle, and shall be firmly secured to prevent shifting.

§150-8-11. Rules Relating To Right-Of-Way Drainage.

11.1. Except where the roadbed extends through or by swampland, the company or person operating the railroad shall make and keep open ditches or drains along such roadbed of depth, width and grade sufficient to conduct water accumulating at the sides of the roadbed from the building or operation of the railroad to some proper outlet.

§150-8-12. Rules Relating To Track Motor Car.

12.1. Every individual, firm or corporation, operating or controlling any railroad which is a common carrier, shall equip each of its track motor cars with:

12.1.a. An electric headlight of sufficient candlepower to enable the operator of the car to plainly discern any track obstruction, landmark, warning sign or grade crossing at a distance not less than three hundred (300) feet, under normal weather conditions.

12.1.b. A red rear light with sufficient candlepower to be plainly visible at a distance not less than three hundred (300) feet, under normal weather conditions.

12.1.c. A windshield equipped with a device, which must be kept in good working order, with which the operator can clean rain, snow and other moisture from the windshield.

12.1.d. A canopy or top adequate to protect the occupants of the car from sun, rain, snow or other inclement weather.

§150-8-13. Time Limits For Correcting Violations.

13.1. Where no other time limit is imposed by these Rules, violations of these Rules and defects reported to the railroad shall be corrected within thirty (30) days of notification unless the railroad requests and receives from the Commission an extension of time to effect such corrections, or unless the Commission, in cases involving danger to human health and safety, requires correction in less than thirty (30) days. Nothing in this subsection shall affect the enforcement powers set forth in rule 7.3.

TABLE 150-8A

Description	Minimum Side Clearances
a. All structure and obstructions above the top of the rail except those hereinafter specifically mentioned	8'0"
NOTE: Posts, poles, pipes, warning signs and similar obstructions should, where practicable, have a side clearance of ten (10) feet.	
b. Platforms eight (8) inches or less above top of rail.....	5'0"
c. Platforms four (4) feet or less above top of rail	6'4"
d. Switch boxes, switch-operating mechanisms and accessories necessary for the control and operation of signals and inter lockers projecting four (4) inches or less above the top of rail	3'0"
e. Signals and switch stands three (3) feet or less above top of rail and located between tracks where not practicable to provide clearances otherwise prescribed	6'0"
f. Through bridges supporting track affected, tunnels, water columns and oil columns	8'0"
g. The clearances for	
1. through bridges supporting track affected,	
2. water barrel platforms and refuge platforms on bridges and trestles not provided with walkways,	
3. handrails,	
4. water barrels,	
5. water columns,	
6. oil columns,	
7. block signals,	
8. cattle guards, and	
9. stock chutes, when all or portions thereof are four (4) feet or less above top of rail, may be decreased to the extent defined by a line extending diagonally upward from a point level with top of rail and five (5) feet six (6) inches distant laterally from center line of track; provided, however, that the minimum clearance for handrails and water barrels on bridges with walkways shall be seven (7) feet nine (9) inches, and provided further, the minimum clearance for fences of cattle guards shall be six (6) feet nine (9) inches.	

TABLE 150-8A (Cont'd)

NOTE: Unless previously approved by the Commission, the clearances authorized in this section, except as provided for handrails and water barrels, are not permitted on through bridges where the work of trainmen or yardmen require them to be upon the decks of such bridges for the purpose of coupling and uncoupling cars in the performance of switching service on a switching lead.

Public Service Commission

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January 17, 2012

Judy Cooper, Director
Administrative Law Division
Secretary of State's Office
Building 1, Suite 157K
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0771

Via Hand Delivery

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JAN 17 PM 4:58

FILED

Re: Public Service Commission; Rules for the Government of Railroad Safety and Sanitation, 150 C.S.R. Series 8.

Dear Ms. Cooper:

Enclosed for filing is a copy of final rules in the above series. The rules are promulgated under the Commission's existing rulemaking authority, exempt from legislative rulemaking review pursuant to W. Va. Code §24-1-7.

Also enclosed are a notice of agency adoption, a fiscal note, a summary of the rule, a statement of circumstances, and a blackline showing changes from the proposed rule to the final rule adopted today.

Because the Commission is not part of the Cabinet structure, the Commission Order is the evidence of the approval of the filing by the agency head, Chairman Michael A. Albert.

Please date stamp the enclosed three extra copies of the filing packet and return them with our messenger. If you have any questions or if there are any problems please bring them to my attention.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Richard E. Hitt".

Richard E. Hitt
General Counsel

cc: Cynthia L. Wilson, Law Clerk