

INSTRUCTIONS FOR FILING - WAIVER REQUEST
COAL TRANSPORTATION RULES

The Commission's Rules of Practice and Procedure, 150 CSR Series1, contain specific provisions relating to the filing of formal complaints. The Commission draws from those instructions to provide general direction to those who request a waiver of the Rules for the Transportation of Coal by Commercial Motor Vehicles, 150 CSR Series 27, which became effective July 7, 2004.

1. WHO MAY FILE

Any person, firm, association of persons or entity affected by the Coal Transportation Rules may file for a waiver, substantially in the form attached.

2. GROUNDS FOR WAIVER & SUPPORT REQUIRED

Coal Transportation Rule 1.5.a requires you to show a) hardship resulting from a rule's application, b) unusual difficulty in immediately complying with a rule, or c) other good cause.

No exemption request will be considered unless it is supported by a full and complete justification for the requested Commission action. See Coal Transportation Rule 1.5.a.

The Commission cannot waive a provision that is based on a specific statutory requirement.

3. PUBLICATION REQUIRED

Generally, the Commission requires notice of each waiver petition to be published one time in a newspaper published and of general circulation in the area affected by your operation. Coal Transportation Rule 1.5.b. You may get a list of newspapers which meet this requirement from the West Virginia Secretary of State's office.

You may wish to publish notice and submit an affidavit *with* your application to proceed more quickly. If you wish to do so, a form for a notice is attached to the waiver application.

If you prefer, you may submit a proposed notice with your application for the Commission to review, or you may ask the Commission to draft the notice entirely.

4. NO FILING FEE

There is no filing fee for a waiver petition.

5. IMPROPER COMMUNICATIONS

Your request for a waiver begins a case that will be decided by the PSC. Thus, it is inappropriate for anyone to discuss whether to file such a case with a PSC Commissioner,

Hearing Examiner or Administrative Law Judge.

When a case is pending, no one may have *ex parte* discussions about it with a Commissioner, Hearing Examiner, or Administrative Law Judge. *Ex parte* discussions occur when only some of the persons involved in a case speak with the person who is deciding the case.

6. SERVICE LIST INFORMATION

Your legal name must be printed, and your name must be stated without abbreviation. The Commission deals with people all across the state and from other states. We have learned that abbreviations are not always used the same way.

Everyone in the case must be served with, or sent, a copy of each document. Thus, we need your complete mailing address and phone number. If you do not have an attorney, it is your responsibility to provide a copy of your documents to the other parties. If you are represented by an attorney, your attorney will do this. Commission Staff is always a party, and you may send the Staff Attorney's copy to the same address as the PSC's Executive Secretary.

It is your responsibility to advise the Executive Secretary when your address changes. The PSC cannot send you orders in this case if it does not have your current mailing address.

7. REPRESENTATION BY COUNSEL

If you are represented by an attorney, your attorney's complete name and address must be given, as well as the attorney's West Virginia Bar Identification Number. Out-of-state attorneys need to obtain permission to practice in this state. See PSC Procedural Rule 4.4.a.

As a general matter, West Virginia law requires that a corporation or a limited liability company be represented by legal counsel. The Commission's Procedural Rule 4.4 allows a company or a limited liability company to make preliminary filings, including the initial waiver petition, by either a duly authorized person or an attorney. Choosing to proceed without the benefit of legal counsel does not excuse any filing deficiency.

8. ADDING PARTIES

Depending upon the particular circumstance, it may be appropriate to involve more than one person or entity in a waiver case. Thus, more than one person or entity may file a case. If necessary, the Commission may add a party in a waiver case.

9. REQUESTED RELIEF

You must specifically state what you want the PSC to do.

If you are also seeking emergency or interim relief, this should be clearly stated. You must allege extraordinary facts of immediate and irreparable injury or public interest as would justify the Commission granting interim relief, or emergency action. Interim relief or emergency

action is not granted in the usual course of events.

10. FILING REQUIREMENTS

Requests for waivers must be typewritten or printed on **ONE SIDE** of the paper only. Additional information on separate one-sided sheets may be attached. The Commission's filing system uses standard 8½ x 11 inch paper. The petition must be signed in ink.

Send an original and 12 copies to Sandra Squire, Executive Secretary, Public Service Commission of West Virginia, 201 Brooks Street, P.O. Box 812, Charleston, WV 25323.

If you fax your petition, the number is 304-340-0325. You must fax 2 copies and include a certificate stating that you mailed the original and 12 copies to the Executive Secretary on the same day that you faxed it. See Procedural Rule 4.3.

11. VERIFICATION REQUIRED

The waiver request MUST BE NOTARIZED to be processed.

The notary provision, or verification, is essential because it provides the basis for the Commission to have facts under oath to consider. If you are requesting emergency relief, be sure that your petition is notarized and that the verification is sufficient to cover the essential facts needed to support your request for emergency relief.

12. WHAT HAPPENS AFTER FILING?

When your petition is filed, it is assigned a **case number** and placed on the Commission's docket of active cases. You will be sent a letter acknowledging receipt by the Commission and stating the case number assigned. ***Use this case number on all other documents you send to the Commission to make sure that your documents are placed in the proper case file.*** Shortly after the petition is filed, you may receive an order from the Commission requiring you to publish notice that you have requested the waiver. See Section 3 above.

After your petition is assigned a case number, the Commission will review your case at one of its next meetings. The Commission generally meets once or twice a week, depending upon hearing schedules and necessary deliberations. Please be aware that the Commission may not be able to fully resolve your matter when it first considers the case because notice may not have yet been published, or someone may have asked to participate due to the publication.

Sometimes the Commission will send an inspector to your site. Whether the Commission decides to send an inspector depends upon the particular facts and circumstances of each case.

**PETITION FOR WAIVER
COAL TRANSPORTATION RULES
State of West Virginia
Public Service Commission
Charleston**

TYPE OR PRINT CLEARLY
USING BLACK INK

CASE NO. _____ -COAL-PW (leave blank), Petitioner

(Mr. Mrs. Ms. Entity) _____ (your name)

_____ (your full address)

Petition for waiver of Rule ____ (fill in the specific rule number) of the
Commission's Rules for the Transportation of Coal by Commercial Motor
Vehicles, 150 C.S.R. Series 27, effective July 7, 2004.

The petition of the above-named _____ (your name)
(hereafter referred to as Petitioner) respectfully shows:

1. That Petitioner is (check below)

___ an operator (the person driving a commercial motor vehicle transporting coal on any
public highway in this state). See Coal Transportation Rule 2.7.

___ an owner of a commercial motor vehicle transporting coal on the coal resource
transportation system.

___ a receiver (the person who accepts for unloading coal from any commercial motor
vehicle that has operated on any public highway in this state). See Coal
Transportation Rule 2.9.

___ a shipper (the person who loads coal or causes coal to be loaded into any
commercial motor vehicle that will operated on any public highway in this state).
See Coal Transportation Rule 2.10.

(If there is more than one petitioner, please *identify each petitioner* as an operator, owner,
receiver or shipper.)

2. That Petitioner is

(Here describe how you are affected by the Coal Transportation Rules. If you have received any CRTS permits, list those permit numbers. Use additional sheets if necessary.)

3. That the application of Rule _____ of the Coal Transportation Rules (List the *specific rule* to be waived. Do not list Rule 1.5.a, which is the rule which provides for this waiver process. Instead, name the rule from which you seek relief.)

___ results in a hardship, as is more fully explained below.

___ is unusually difficult to immediately comply with, as is more fully explained below.

___ should be waived for the good cause explained below.

(Here describe *specifically* the facts and circumstances supporting your petition. You may add information on additional sheets, if necessary.)

4. Therefore, Petitioner asks the Commission to waive Coal Transportation Rule _____ (insert the specific Rule number, not Rule 1.5.a) by

(Here describe specifically the relief you need, such as how long the relief is needed, when the relief should start, etc. If only a certain portion of a rule needs to be waived, say which part. For instance, sometimes utilities ask the Commission to change the frequency of how often they need to check a customer's meter. Such a request contains the specific number of times in a year the meter would be read. You may add information on additional sheets, if necessary.)

5. (NOTE: Use this paragraph only if you are requesting emergency relief. You must separately describe the grounds to justify an emergency request. Cross out this paragraph if you are not using it, and initial the marks you made.)

Further, Petitioner asks the Commission to grant emergency relief, specifically that

(Here describe *specifically* the emergency relief that you seek. Emergency relief requires extraordinary facts of immediate and irreparable injury or public interest as could justify interim relief, or emergency action by the Commission, and is not granted in the usual course of events. You may add information on additional sheets, if necessary.)

Dated this _____ day of _____, 20_____.

(Signed) _____
Signature of Petitioner

(Your Full Address) _____

(Phone) _____

(If you have an attorney, his/her name) _____, Attorney, if applicable.

Attorney's Address: _____

THIS FORM MUST BE NOTARIZED

Subscribed and sworn before me this _____ day of _____, 20__.

(Official signature and official seal of notary)

[If Complainant is signing out-of-state, please use verification, Procedural Form No. 12]

PLEASE NOTE:

It is extremely important to notify the Commission of any changes to your address and to promptly retrieve Certified Mail upon notification.

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

CASE NO. 04-____-COAL-PW

____ (insert your name), _____ (insert your town), _____ (insert your county name) County.
Petition for waiver of Rule __ of the Commission's Rules for the Transportation of Coal by Motor Vehicles.

NOTICE OF COAL TRANSPORTATION RULE WAIVER REQUEST

On _____, (insert date, use the phrase "On or about" if necessary) 2004, _____ (insert your name) petitioned the Public Service Commission of West Virginia for a temporary/permanent (choose one) waiver of Rule ____ (insert the specific rule number) of the Coal Transportation Rules, which became effective July 7, 2004. Rule ____ (insert the specific rule number) requires _____ (describe what the rule does).

(Here give a summary of your specific circumstances. That is, describe why you need the waiver.)

If you wish to file written comments on the waiver request or otherwise participate in this proceeding, you must do so within 5 calendar days of the date of this publication, addressed to Sandra Squire, Executive Secretary, P.O. Box 812, Charleston, West Virginia 25323. Your documents should also be forwarded to _____ (insert your name and address. If you are represented by an attorney, instead insert your attorney's name and address here.) So that your documents can be properly filed, they must include this case number: Case Number 04-____-COAL-PW. (If you are publishing your notice *before* filing your waiver application, use a sentence like this instead: So that your documents can be properly filed, note that it is for _____'s (insert your name) application to waive Rule ____ (insert specific rule number) filed on or about _____ (insert the date).)

(Your name)