

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 7th day of May, 2004.

M.C. GENERAL ORDER NO. 72

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

COMMISSION ORDER

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

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

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

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

Following a public comment period, by Order issued November 21, 2003, the Commission issued its legislative rules for consideration by the Legislative Rule Review Committee. Those rules were reviewed by the Committee and on January 26, 2004, the Commission submitted a revised version of its legislative rules reflecting the changes requested by the West Virginia Rule Review Committee.

In the 2004 regular session of the Legislature, the Legislature passed Senate Bill No. 399 which authorized the rule submitted to the Legislative Rule Committee on November 21, 2003 as modified on January 26, 2004. The Legislature also enacted a separate bill, Senate Bill No. 673, which made certain changes to Senate Bill No. 583, affecting the Commission rules. In particular, that statute eliminated the requirement in Senate Bill No. 583 for shippers and receivers to report coal shipments statewide. Instead, for coal shipments off the CRTS, Senate Bill No. 673 only requires receivers who receive coal shipments in excess of 88,000 pounds to report the receipt of such a shipment within twenty-four hours to the Commission. In light of the clear legislative intent expressed in Senate Bill No. 673, the Commission issues these rules as its final rules in the legislative rule review process to accommodate the changes authorized by Senate Bill No. 399 and Senate Bill No. 673.

W. Va. Code § 24-1-7 provides that no rule or regulation issued by the Commission shall become effective until sixty days after its adoption or until the effective date proposed by the Commission, whichever is later. Although that section of the Code goes on to exempt the Commission from legislative rule review process, this particular rulemaking is subject to legislative rule review. Under the legislative rule review process, the Commission could propose these rules to become effective within thirty days. See, W. Va. Code § 29A-3-13. However, to be cautious given the conflict between W. Va. Code §§ 29A-3-13 and 24-1-7, the Commission will propose these rules to become effective sixty days after their issuance.

IT IS THEREFORE ORDERED that the Commission approves and promulgates these rules and regulations as final legislative rules pursuant to W. Va. Code § 29A-3-13.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission file a copy the text of these rules, with the forms required by the Secretary of State's office, with the Office of the Secretary of State.

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

upon Commission Staff by hand delivery.

IT IS FURTHER ORDERED that this matter is closed and that this proceeding be stricken from the Commission's open docket.

Rules for the Transportation of Coal by Commercial Motor Vehicles

150-27-1. General.

1.1. Scope

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

1.2. Authority

This legislative-proposed rule is authorized by Senate Bill No. 583 passed March 8, 2003, and in effect from the date of passage; W. Va. Code, §§17C-17A-3(c); 17C-17A-5(k); 17C-17A-6(d); 17C-17A-7; 17C-17A-8(1); 17C-17A-8(3); 17C-17A-9(f)(4).

1.3. Filing Date - - May 7, 2004

1.4. Effective Date - - July 7, 2004

1.5. Application of Rules

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

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

150-27-2. Definitions.

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

system".

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

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

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

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

2.6. "Mining operation" means any activity related to extraction of coal regulated under the provisions of the West Virginia Code.

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

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

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

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

2.11. "Ton" means 2,000 pounds.

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

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

3.1. This special permit process applies to commercial motor vehicles

utilized to transport coal at the enhanced weight levels provided in W. Va. Code §17C-17A-5 on a coal resource transportation road as designated by the Division.

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

3.3. The initial permitting period shall run from October 1, 2003, through December 31, 2004. Subsequent permitting periods shall run from January 1 through December 31 of the following year.

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

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

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

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

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

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

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

Post Office Box 812
Charleston, West Virginia 25323

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

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

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

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

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

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

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

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

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

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

3.12.d. a statement that the vehicle, as configured, has a total combined

axle rating capacity equal to or greater than the maximum amount of weight for which a special permit is sought; and,

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

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

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

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

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

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

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

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

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

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

150-27-4. Reporting of coal shipments.

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

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

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

4.4. Reports concerning shipments of coal upon a coal resource transportation road shall be submitted using one of the following methods:

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

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

4.5. Reports concerning shipments of coal upon a coal resource transportation road shall be submitted electronically in the order listed below and shall specify:

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

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

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

4.5.d. Receiver ID: up to 10 character alphanumeric, Commission assigned identifier for the receiver - usually the WV Permit number assigned by the West Virginia Office of Miners' Health Safety & Training;

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

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

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

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

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

4.6. In order to constitute timely reporting under the statute and these rules concerning shipments of coal upon a coal resource transportation road, shippers and receivers must meet the following requirements:

4.6.a. Shipper. A shipper must submit its report by 4:00 p.m. of the

next business day following the date of shipment. Business days will be considered Monday through Friday excluding official state or federal holidays.

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

4.7. In order to constitute accurate reporting under the statute and these rules concerning shipments of coal upon a coal resource transportation road, shippers and receivers must meet the following requirements:

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

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

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

4.9. An owner of a commercial motor vehicle who transports coal on a coal resource transportation road in this state shall report to the Commission all citations issued to an operator of that vehicle for an unsafe vehicle condition or for speeding or other unsafe vehicle operation. Reports must be submitted to the Commission's Transportation Division no later than 10 business days following issuance of the citation.

4.10. Any receiver receiving any vehicle transporting coal in excess of 88,000 pounds on any non-coal resource transportation highway shall file a report with the Commission, identifying the vehicle and its driver within twenty-four hours of being received. The report may be mailed by first class mail, postmarked within twenty-four hours of the coal shipment being received, signed by an authorized representative of the receiver,

addressed to the

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

4.11. If a shipper, receiver or owner fails to timely or accurately report as required by these rules, he or she shall be subject to an administrative penalty of up to \$100 per shipment.

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

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

4.13. The imposition of an administrative penalty is final unless a request for a hearing is received by the Commission within twenty days from the receipt of the notice. If a hearing is requested, the procedures under section 5, "Administrative process for issuing administrative sanctions" will be followed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.7. If a hearing is requested, the request must be in writing and received by the Executive Secretary no later than twenty days from the receipt of the notice of violation. The request for hearing must include a copy of the citation. In addition, the request must identify whether the person is a shipper, owner or lessee, driver, or receiver. There will be one proceeding for all persons subject to administrative sanctions in a particular cited

incident who have filed a request for hearing. For example, if both the operator and owner request a hearing concerning a particular violation, the Commission will provide one hearing at which they would both appear. If one person requests a hearing and another does not, the Commission may proceed to impose administrative sanctions against a party that does not request a hearing. Requests for hearing must be delivered to:

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

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

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

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

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

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

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

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

6.1. Administrative sanctions.

In additions to other penalties provided by law, the following administrative sanctions, which are contained within W. Va. Code §17C-17A-9, shall be imposed for various violations occurring upon the coal resource transportation system. These sanctions become effective for violations occurring on or after October 1, 2003.

6.1.a. Shipper and excess weight.

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

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

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

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

2. The owner shall have all state-issued hauling permits then in force suspended by the Commission for a period of ninety days for the first offense, six months for the second offense, and revoked for the third offense: provided, that the owner can avoid these penalties by presenting to the Commission, within 5 days of the offense, a

permit that has expired for less than 30 days prior to the offense. An owner is prohibited from applying for a CRTS permit for a period of one year following the revocation. If there is no permit then in force, the owner shall have his or her commercial motor vehicle registration suspended by the Department of Motor Vehicles for a period of ninety days for the first offense, six months for the second offense and revoked for the third offense.

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

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

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

2. The owner shall have the special permit suspended by the Commission for a period of three days for the first offense, thirty days for the second offense and revoked for the third offense. An owner is prohibited from applying for a CRTS permit for a period of one year following the revocation.

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

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

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

2. The owner shall have all state-issued permits then in force suspended by the Commission or, if applicable, the commissioner of highways for a period of twelve months for the first offense, two years for the second offense and revoked for the third offense. An owner is prohibited from applying for a CRTS permit for a period of one year following the revocation.

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

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

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

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

6.1.g. Altered, forged or counterfeited permit.

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

6.1.h. Bribes.

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

6.1.i. Aiding and abetting.

Any person who aids or abets another person's attempt to avoid any suspension provided herein shall have his or her driver's license, including a commercial driver's license, suspended by the Department of Motor Vehicles for a period of sixty days for the first offense, one hundred and twenty days for the second offense and six months for the third offense and shall have his or her state-issued business license suspended by the tax commissioner for a period of three months for the first offense, six months for the second offense and one year for the third offense.

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

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

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

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

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

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

150-27-7. Appeals of administrative sanctions.

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

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

8.1. A commercial motor vehicle and its load shall be impounded by a law enforcement officer pursuant to this section.

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

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

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

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

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

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

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

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

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

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

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

150-27-10. Vehicle operations and safety.

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

10.2. An operator who has less than two years commercial driving experience; shall not operate a commercial motor vehicle transporting coal upon the coal resource transportation system until he or she has received twenty-four hours mandatory specialized training requirements for commercial vehicle operators. Provided that existing operators with less than two years commercial driving experience on October 1, 2003, shall have six months within which to complete the specialized training. Provided further that the Commission will accept a Coal Truck Driver's Certification issued by the West Virginia Office of Miners' Health, Safety & Training in lieu of the first eight hours of the twenty-four hour training requirement.

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

in the commercial motor vehicle being placed out of service.

150-27-11. Business records.

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

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

150-27-12. Public toll free number.

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

150-27-13. Forms.

Form 1 Application for CRTS Permit

Form 2 Shipper and Receiver Registration

<p>150 CSR 27</p> <p>FORM 1</p> <p>Application for CRTS Permit</p> <p>January 1, _____ through December 31, _____</p>	<p>(PSC Use Only)</p> <p>PSC Permit No.: _____</p> <p>Processed By: _____</p>
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SECTION 1 - APPLICANT INFORMATION

1) Legal Name: _____

2) Mailing Address: _____

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

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

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

Name _____ Title _____

Address _____ Phone Number _____

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

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

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

General Partnership _____ Limited Liability Partnership* _____ Association* _____

Limited Partnership* _____

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

10) WV Taxpayer ID Number*: _____

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

11) Federal Employer ID Number: _____

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

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

14) USDOT Number: _____

15) Is applicant lessee? ___Yes ___No (If yes, copy of lease agreement must be attached.)

SECTION 2-VEHICLE INFORMATION

(PSC Use Only)

1) Truck/Tractor:

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

Year, Make and Model _____ Issuing State _____

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

Empty Weight _____

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

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

.....
SECTION 2 - ADDITIONAL VEHICLE LISTING

(PSC Use Only)

1) Truck/Tractor:

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

Year, Make and Model _____ Issuing State _____

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

Empty Weight _____

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

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

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

SECTION 3-FEE SCHEDULE

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

_____ **TOTAL AMOUNT DUE**

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

“West Virginia Public Service Commission”

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

Remember to attach: 1) Copy of current vehicle(s) registration.
2) Copy of current West Virginia business license.

- 3) Copy of current proof of corporate status on file with Secretary of State's office (if applicable).
- 4) Copy of current lease agreement(s) (if applicable).
- 5) Payment of correct fees in certified funds.

.....

VERIFICATION

I swear (or affirm) that:

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

AFFIANT _____

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

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

INSTRUCTIONS FOR COMPLETING FORM 1

SECTION 1-APPLICANT INFORMATION

- 1) This will be the applicant's complete legal name, including the trade name of the business, if a trade name is used. (Example: John B. Doe doing business as John's Coal Hauling.) If the applicant is a corporation, the complete corporate name should be used, including trade name if applicable.
- 2 through 6) These questions will show all contact information for the applicant.
- 7) The contact person/Agent of process must be the properly designated person of an applicant for receiving Notice of Violation or other legal process, if any. All corporations must use the agent of process designated to the WV Secretary of State's office.

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

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

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

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

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

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

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

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

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

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

WV Workers Compensation Division

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

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

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

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

SECTION 2-VEHICLE INFORMATION

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

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

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

SECTION 3-FEE SCHEDULE

The fees should be figured as follows:

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

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

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

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

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

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

VERIFICATION

The applicant should sign on the line marked "AFFIANT."

The application must be notarized in order to be processed.

150 CSR 27
Form 2
Shipper and Receiver Registration

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

Please Print or Type the Requested Information Below

PARENT COMPANY INFORMATION

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

SITE INFORMATION

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

SITE CONTACT INFORMATION - LIST ONLY ONE PERSON

NAME	TITLE
E-MAIL ADDRESS	
PHONE NUMBER	FAX NUMBER

COAL REPORTING - SUPPLEMENTAL SITE INFORMATION

DAYS AND HOURS OF OPERATION	
NUMBER OF TRUCKS YOU LOAD ON AN AVERAGE DAY	
NUMBER OF TRUCKS YOU UNLOAD ON AN AVERAGE DAY	
LIST SITES YOU SHIP COAL TO / RECEIVE COAL FROM ON A REGULAR BASIS	
<hr/>	
DO YOU CURRENTLY HAVE SCALES? YES <input type="checkbox"/> NO <input type="checkbox"/>	ARE YOUR SCALES COMPUTERIZED? YES <input type="checkbox"/> NO <input type="checkbox"/>
IF SCALES ARE COMPUTERIZED, WHO IS YOUR VENDOR?	
CONTACT INFORMATION FOR VENDOR:	
<hr/> <hr/> <hr/>	
DETAILS:	
<hr/> <hr/> <hr/>	
ARE YOU CURRENTLY SET UP TO COLLECT DATA ELECTRONICALLY FOR INTERNAL PURPOSES? YES <input type="checkbox"/> NO <input type="checkbox"/>	
DO YOU HAVE COMMUNICATION LINES TO YOUR SITE? YES <input type="checkbox"/> NO <input type="checkbox"/>	
WHAT KIND OF COMMUNICATION LINES DO YOU CURRENTLY HAVE?	
<hr/>	

WEB INFORMATION

DO YOU PLAN TO USE ON-LINE DATA ENTRY OR FILE TRANSFER?		NOTE: If you chose Data Entry , you must fill out the requested information below in its entirety.
<small>INTERNAL COORDINATOR (Please list only ONE person. This person is to be used as a contact person to the PSC in order to request changes in users or password information, etc. A ONE WORD password will need to be listed below for this person to use when any requests are to be made. A web e-mail address will also need to be provided.)</small>		
NAME	PASSWORD	
WEB E-MAIL ADDRESS		
USER INSTRUCTIONS:: Please list each user's below. You may have up to 5 users. An account will be set up for each user listed.		
1.		
2.		
3.		
4.		
5.		
IMPORTANT, PLEASE READ <small>Access to the entry screen will require a valid user id and password. If an employee who has had access to a user id and password for a site leaves the company, it is the company's responsibility to notify the PSC and have the password changed or the user id revoked.</small>		

VERIFICATION

IMPORTANT, PLEASE READ AND SIGN <small>To complete registration, verification must be signed and notarized.</small>	
I swear (or affirm) that this application has been prepared or examined by me, a legally responsible representative of the applicant, and to the best of my knowledge is true, correct and complete. Further, if I am a shipper of coal on the CRTS and elect to report weights based on estimates, I accept responsibility for administrative penalties if weights exceed legal limits and timely reports are not made to the Commission. I agree to provide the Commission with notice of changes in my reporting information as they occur.	
AFFIANT _____	
SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____, 20____	
NOTARY PUBLIC _____	
MY COMMISSION EXPIRES _____ 20____	
COUNTY _____ STATE _____	