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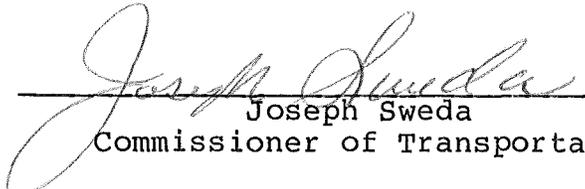
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Revisor of Statutes
Bureau

STATE OF WISCONSIN)
OFFICE OF THE COMMISSIONER OF TRANSPORTATION) SS

I, Joseph Sweda, Commissioner of Transportation and custodian of the official records, do hereby certify that the annexed rules relating to the general operations of the Office of the Commissioner of Transportation were duly approved and adopted by this office on June 26, 1986.

I further certify that this copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Office of the Commissioner of Transportation at 4802 Sheboygan Avenue, in the City of Madison, Wisconsin, this 26th day of June, 1986.



Joseph Sweda
Commissioner of Transportation

7-1-86

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ORDER OF THE OFFICE OF
THE COMMISSIONER OF TRANSPORTATION
RENUMBERING, AMENDING AND CREATING RULES

Revisor of Statutes
Bureau

Relating to rules concerning the general operations.

Analysis prepared by the Office of the Commissioner of
Transportation:

The bulk of the proposed rule represents changes which resulted from the reorganization of the-then Transportation Commission into the Office of the Commissioner of Transportation. Many of the changes in terminology and the numbering which reflect the name change are technical in nature. However, there are several changes which are substantive.

Amendments to TC 1 include the renumbering of the chapter and all its sections, the delineation of a hearing examiner's power and authority to compel compliance with orders issued by the examiner, an indication of the authority of an examiner to sequester witnesses at hearings and the setting forth of a procedure whereby interested parties ("intervenor") may petition for permission to present arguments or submit briefs after a proposed order has been rendered by a hearing examiner.

Amendments to TC 2 include the renumbering of the chapter and all its sections, provision for the office retention of applications and supporting materials as opposed to the current practice of returning the applications to the applicants after 45 days, provision of a 10 working day determination period in which to grant or deny an application, the inclusion of a more specific request for information with regard to felony convictions in the application form and the implementation of an administrative revocation procedure to be applied to abandoned motor carrier authorities.

Amendments to chapters TC 3, TC 4 and TC 5 include the renumbering of the chapters and all their sections and, where amendment to existing regulatory language occurs, merely reflects the name change and hence, are technical in nature.

Creation of chapter OCT 6 provides the procedure by which water carrier certificates of convenience and necessity will be granted or amended. The process requires the applicant to publish notice in a newspaper in the area in which a transportation service is proposed and provides a means by which interested parties may protest the granting of a certificate.

Fiscal Estimate:

There is no overall fiscal effect anticipated from the adoption of this rule. There may be a minimal decrease in revenues attributable to the provision of public documents to the general public. However, this decrease will have no net impact in light of the proposed reduction of expenditures for postage and handling that will be realized in the Motor Carrier Bureau.

Initial Regulatory Flexibility Analysis:

There is no fiscal effect on "small business" as defined in s. 227.016(1)(a), Stats., anticipated from the adoption of these rules.

Pursuant to the authority vested in the Office of the Commissioner of Transportation by section 189.02(1), Stats., the commissioner proposes to renumber chapters TC 1 to TC 5, Wis. Adm. Code; to amend OCT 1.01(1) through (4), OCT 1.02(1), OCT 1.03(2), OCT 1.04(2), OCT 1.04(5), OCT 1.05(3), OCT 1.06(4) and (5), OCT 1.07(1), (2) and (3), OCT 1.08(3), OCT 1.10(3), OCT 1.11(1), OCT 1.13(1), (2) and (3), OCT 1.14(2) and (3), OCT 2.01(1), (2)(a) and (c), OCT 2.02, OCT 2.04(1)(b), OCT 2.05(6), OCT 3.01(1) and (2), OCT 3.02(2) and (3)(a), OCT 3.02(4), OCT 3.02(6), OCT 3.03(3)(a), OCT 3.04, OCT 3.05, OCT 3.06, OCT 3.07, OCT 3.08, OCT 3.09(1), OCT 3.11(2) through (6), OCT 3.12, OCT 3.13, OCT 3.16(1), (2) and (3), OCT 3.17(5), OCT 4.01(2), OCT 5.07(2)(b), OCT 5.10(2), Wis. Adm. Code; to repeal and recreate OCT 1.11(2), OCT 2.01(4), OCT 2.03, OCT 3.01(3), Wis. Adm. Code; and to create OCT 1.001, OCT 1.04(7), OCT 1.04(8), OCT 2.001, OCT 2.015, OCT 2.025, OCT 2.07, OCT 2.08, OCT 2.09, OCT 2.10, OCT 2.11, OCT 2.12, OCT 3.001, OCT 4.001 and ch. OCT 6, Wis. Adm. Code, affecting the general operations of the office in its administration of the powers granted to the office by chapters 66, 84, 88, 175, 189 to 195, 218, 342, 343, 348 and 349 and s. 20.917, Stats., as follows:

SECTION 1. CHAPTERS TC 1 to 5 are renumbered OCT 1 to 5.

SECTION 2. OCT 1.001 is created to read:

OCT 1.001 DEFINITION. For purposes of this chapter:

(1) "Office" means the Office of the Commissioner of Transportation.

SECTION 3. OCT 1.01(1) through (4) are amended to read:

OCT 1.01 COMMUNICATIONS AND DOCUMENTS ADDRESSED TO OFFICE.

(1) All written communications and documents should be addressed to the Transportation Commission of Wisconsin Office of the Commissioner of Transportation, Hill Farms State Office Transportation Building, 4802 Sheboygan Avenue, P.O. Box 7957, Madison, WI 54707-7957.

(2) Documents shall be served upon the ~~commission~~ office by deposit in the first class mail or by delivery in person, ~~in either case, date of service shall be the day when it is received by the commission.~~ When service is made upon the office the date of service shall be the day when the document is received by the office.

(3) Office hours are 7:45 a.m. to 4:30 p.m., Monday through Friday. Offices are closed on Saturdays and Sundays, Martin Luther King Jr.'s Birthday, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve afternoon day, Christmas, New Year's Eve afternoon day, New Years, Good Friday afternoon, Memorial Day, and other days as designated by the governor.

(4) The time within which an ~~act~~ action is to be ~~done~~ taken as provided in any rule or order promulgated by the ~~commission office,~~ when expressed in days, shall be computed by excluding the first day and including the last, except if the last day falls on a day the office is closed, the ~~act~~ action may be ~~done~~ taken on the next day it is open. When an ~~act~~ action is to be ~~done~~ taken in less than 10 days and the period contains both a Sunday and a legal holiday, the period shall be increased to 12 days. Legal holidays are those listed in sub. (3).

SECTION 4. OCT 1.02(1) is amended to read:

OCT 1.02 PARTIES. (1) Parties who seek ~~commission office~~ approval for permits, exemptions or other relief are applicants. Those opposing applicants are objectors.

SECTION 5. OCT 1.03(2) is amended to read:

OCT 1.03(2) When the general public may be injured by the ~~commission's~~ office's action, written notice of hearing shall be mailed to the clerk of each incorporated city, town or village in the area affected.

SECTION 6. OCT 1.04(2) is amended to read:

OCT 1.04(2) The examiner, at any time prior to the commencement of a hearing, may require the parties or their counsel to appear at a pre-hearing conference for the purpose of simplification and clarification of issues or consideration of other matters

which may expedite or aid in the disposition of the proceeding, and issue orders as necessary to carry out the ~~aforestated~~ purposes of this chapter. All stipulations made at ~~such~~ a pre-hearing conference shall be made a matter of record and control subsequent proceedings.

SECTION 7. OCT 1.04(5) is amended to read:

OCT 1.04(5) Members of the ~~commission~~ office staff appear neither in support of nor opposition to any cause, but solely to discover and present facts pertinent to the issues.

SECTION 8. OCT 1.04(7) is created to read:

OCT 1.04(7) Failure to comply with any order issued under sub. (2) or s. OCT 1.09 by any of the parties without good cause shown for the failure to comply shall result in sanctions being imposed by the examiner. Sanctions which shall be imposed include:

(a) An order that the matters for which the initial order was made or any other designated facts shall be taken to be established for the purposes of the hearing in accordance with the claim of the party obtaining the order;

(b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the disobedient party from introducing designated matters in evidence; or

(c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

SECTION 9. OCT 1.04(8) is created to read:

OCT 1.04(8) At the request of any of the parties or on the examiner's own motion, the examiner may order the sequestering of witnesses.

SECTION 10. OCT 1.05(3) is amended to read:

OCT 1.05(3) If a party, having failed to appear at a hearing, shows good cause for ~~such~~ the failure to the ~~commission~~ commissioner within 10 days after the final order is issued, the ~~commission~~ commissioner may set aside the order and afford further opportunity to be heard.

SECTION 11. OCT 1.06(4) and (5) are amended to read:

OCT 1.06(4) Any party who is dissatisfied with an examiner's ruling may submit comments explaining their position to the

~~commission~~ commissioner during the period set for receiving comments on the proposed order. If there is no proposed order, comments shall be filed within 15 days after the close of the period for receiving evidence. The ~~commission~~ commissioner shall review those comments prior to issuing a final order.

(5) Petitions or written communications addressed to the ~~commission~~ commissioner not admissible as evidence may be filed, but will not be considered evidence.

SECTION 12. OCT 1.07(1), (2) and (3) are amended to read:

OCT 1.07 TRANSCRIPTS. (1) A stenographic, electronic or other record of oral proceedings shall be made by the agency office. A written transcript of the record shall be prepared only as deemed necessary by the agency office, and unless otherwise prepared by the agency office for its own use, shall not be prepared at the specific request of any person unless needed by that person for appeal or court review purposes, or other valid reasons.

(2) Except as otherwise provided by statute, if a transcript has been prepared by the agency office for its own use, copies may be furnished to all interested parties upon payment of a fee of 50 15 cents for each page, ~~paid in advance~~. If no transcript of the record has been prepared by the agency office and a specific request for a transcript is made, the party making the request shall be responsible for all reasonable costs incurred by the agency office in transcribing the record and in preparation of the transcript. Any party who on the basis of a verified petition can establish to the satisfaction of the agency office the need for a transcript and financial inability to pay for a copy, may be furnished a copy free of cost. No fee shall be assessed against government bodies.

(3) If a proceeding has been recorded, the ~~commission~~ office may substitute a copy of the tapes for a transcript request if no petition for judicial review has been filed. The cost per tape shall be \$11.00 paid in advance, unless otherwise provided by statute.

SECTION 13. OCT 1.08(3) is amended to read:

OCT 1.08(3) Briefs shall be no more than 10 pages, typed in double space on 8½ x 11 inch paper, unless the examiner provides otherwise. Three copies of the brief shall be filed with the ~~commission~~ office and one copy mailed or delivered in person to each of the other parties.

SECTION 14. OCT 1.10(3) is amended to read:

OCT 1.10(3) A hearing is closed when evidence is closed and when after the proposed decision is issued any period fixed for filing of briefs, comments or presentation of oral argument has

expired. If the time for filing briefs or comments has expired and the briefs or comments of one or more parties are not filed within ~~such~~ that time, the ~~commission~~ commissioner may proceed to final determination of the proceeding.

SECTION 15. OCT 1.11(1) is amended to read:

OCT 1.11 COMMENTS ON PROPOSED DECISIONS. (1) If a proposed decision is prepared and circulated, comments shall be filed within 15 days of deposit in the first class mail or delivery in person unless a different period is specified by the examiner or ~~commission~~ the commissioner.

SECTION 16. OCT 1.11(2) is repealed and recreated to read:

OCT 1.11(2) Oral argument shall be held only where directed by the commissioner.

(a) Requests for oral argument made by parties admitted to the proceeding prior to preparation and circulation of the proposed decision shall be included with the comments on the proposed decision.

(b) Requests for oral argument made by an intervenor not admitted as a party to the proceeding prior to preparation and circulation of the proposed decision shall be directed to the commissioner and shall be filed within 5 days of deposit of the proposed decision in the first class mail or delivery in person to the parties to the proceeding. One copy of the request for oral argument by an intervenor under this paragraph shall be deposited in the first class mail or delivered in person to each of the other parties. Parties already admitted to the proceeding shall have until the end of the comment period provided in sub. (1) to file comments on the admission of the intervenor as a party to the proceeding. Comments on a request made under this paragraph may be included with the comments filed under sub. (1) or filed separately. Oral argument directed by the commissioner to be held under this paragraph shall be limited to relevant questions of law and the application of policy by the office.

SECTION 17. OCT 1.13(1), (2) and (3) are amended to read:

OCT 1.13 OFFICE RECORDS. (1) ~~Commission~~ Office records shall be open and available to the public as required by ch. 19, Stats.

(2) Written requests for copies of ~~commission~~ office records shall be addressed to the ~~chairman~~ commissioner or to the legal custodian of records.

(3) The fee shall be ~~75¢~~ 15¢ per page, paid in advance if more than \$5.00. No fee shall be assessed against government bodies.

SECTION 18. OCT 1.14(2) and (3) is amended to read:

OCT 1.14(2) The following types of ~~commission~~ office actions shall not require an environmental impact statement:

(3) Any action not specifically categorized in subs. (1) and (2) is presumed not to be a major action which may significantly affect the human environment. The ~~commission~~ office shall consider on an individual basis, any action not categorized in subs. (1) and (2) brought to its attention, and may determine that a screening worksheet is required to determine whether an environmental impact statement is needed.

SECTION 19. OCT 2.001 is created to read:

OCT 2.001 DEFINITION: For purposes of this chapter:

(1) "Office" means the Office of the Commissioner of Transportation.

SECTION 20. OCT 2.01(1), (2) (a) and (c) are amended to read:

OCT 2.01 APPLICATIONS FOR MOTOR CARRIER AUTHORITY. (1) Applications for motor carrier authority may be obtained from the Transportation Commission Office of the Commissioner of Transportation, Hill Farms State Office Transportation Building, 4802 Sheboygan Avenue, P.O. Box 7957, Madison, Wisconsin 53707-7957.

(2) (a) The name or names of the applicant as as shown on their the certificate of insurance policy required by ch. Trans. 176 to be filed with the Wisconsin Department of Transportation, their social security number and date of birth.

(2) (c) Information on the applicant's financial status; its past experience in the transportation industry, including safety and service; and whether the applicant or its principals have been convicted of a felony within the past 5 years. If the applicant or its principals have been convicted of a felony within the past 5 years, a summary of the circumstances of the conviction. This summary shall include the offense involved, where the offense took place and the name of the court which rendered the verdict, the disposition of the case or present status of the convicted applicant or its principals and any other relevant information concerning the conviction.

SECTION 21. OCT 2.01(4) is repealed and recreated to read:

OCT 2.01(4) All original application materials shall be retained permanently by the office.

SECTION 22. OCT 2.015 is created to read:

OCT 2.015 REVIEW OF AND DETERMINATION ON APPLICATIONS.

(1) If a "complete application" is received by the office, review and final determination shall be made within 10 working days. The time period specified in this subsection shall be calculated beginning the day the complete application is received by the office.

(2) If an application is received by the office which is incomplete in some manner, the applicant shall be notified. The notification shall explain why the application is incomplete and indicate what actions are necessary to be taken by the applicant. The applicant shall have 45 days from the date of notification by the office to complete the application. If the application is completed within the time period specified in this subsection, then review and determination as provided for in sub. (1) shall occur. If the application is not completed within the time period specified in this subsection, then the application and all supporting materials will be returned to the applicant.

(3) For purposes of this section, "complete application" means an application:

(a) Which contains all the information required in s. OCT 2.01(2);

(b) On which the department of transportation has indicated that the insurance requirements of ss. 194.41 and 194.42, Stats., have been fulfilled;

(c) Which indicates compliance with the fitness and ability requirements of ch. 194, Stats.; and

(d) Which is accompanied by the appropriate fee as set forth in s. 194.04, Stats.

SECTION 23. OCT 2.02 is amended to read:

OCT 2.02 CHANGE OF ADDRESS. A carrier authorized under ch. 194, Stats., shall notify the ~~commission~~ office in writing of a change in their principal place of business within 30 days of the change.

SECTION 24. OCT 2.025 is created to read:

OCT 2.025 CORPORATE NAME CHANGE. A carrier authorized under ch. 194, Stats., which changes its corporate name shall file a copy of the articles of amendment or restated articles of incorporation

filed in the office of the secretary of state pursuant to ss. 180.54 or 180.827, Stats. Upon receipt of the documents required in this section, the office shall issue an amended authority in the new corporate name. No fee shall be charged for issuance of an amended authority under this section.

SECTION 25. OCT 2.03 is repealed and recreated to read:

OCT 2.03 MODIFICATION OR TRANSFER OF OWNERSHIP: (1) A carrier authorized under ch. 194, Stats., shall file an amended application which indicates a modification or transfer of ownership prior to the modification or transfer becoming effective if:

(a) In the case of a sole proprietorship,

1. A partnership is created;
2. A corporation is organized; or
3. A transfer is made to the transferor's spouse

(b) In the case of a partnership,

1. Individual partners are added or eliminated; or
2. A corporation is organized.

(c) In the case of a corporation, the corporation is dissolved and the ownership reverts to the incorporators of the dissolved corporation.

(2) The office may approve a modification or transfer of ownership under this section if it finds:

- (a) That the authority to be modified or transferred is in good standing and is not abandoned under s. OCT 2.07; and
- (b) That, in the case of a transfer under sub. (1)(a)3 above, the proposed transferee is fit, willing and able to provide the transportation authorized.

SECTION 26. OCT 2.04(1)(b) is amended to read:

OCT 2.04(1)(b) An amended application filed pursuant to s. ~~OC~~ OCT 2.03, provided that ~~a minimum of 25% of the owners, except owners of stock, remain the same and the original license authority is canceled and a new license authority is substituted therefor.~~ When a new authority is issued under this subsection a new "licensed carrier" (L.C.) number will also be issued.

SECTION 27. OCT 2.05(6) is amended to read:

OCT 2.05(6) For the purpose of ~~s. TC 2.05~~ this section only, a carrier who subleases or interchanges power units it has on lease shall be considered the owner of the leased equipment for the purpose of subleasing or interchanging that equipment.

SECTION 28. OCT 2.07 is created to read:

OCT 2.07 ABANDONED AUTHORITY. (1) A carrier authorized under ch. 194, Stats., shall be presumed to have abandoned authority where, for a period of two years, the carrier has not had on file an appropriate certificate for a policy of insurance or an approved contract of insurance as required by s. 194.41, Stats., or a current order exempting the carrier from the insurance undertaking requirements as provided by s. 194.42, Stats.

(2) Upon good cause being shown, a motor carrier may obtain permission from the office to suspend operation for a period of more than two years. Where permission is obtained under this subsection, a motor carrier authority shall be presumed to have been abandoned upon expiration of the granted suspension period unless the carrier requests a further suspension period or provides evidence of current operation.

SECTION 29. OCT 2.08 is created to read:

OCT 2.08 AUTHORITY REVOCATION. A motor carrier authority granted under ch. 194, Stats., which is presumed to be abandoned under OCT 2.07 shall be revoked upon a finding, after notice to the carrier and an opportunity to be heard, that service under the motor carrier authority has been abandoned under the provisions of section 194.46, Stats. Failure of a motor carrier to respond within 20 days after notice is given under this section shall result in a finding that the motor carrier authority has been abandoned and shall be revoked without hearing.

SECTION 30. OCT 2.09 is created to read:

OCT 2.09 CARRIERS ENTERING ARMED FORCES. A motor carrier authority granted under ch. 194, Stats., held by any person who has entered the armed forces of the United States during a national war emergency shall not be presumed to have been abandoned under OCT 2.07 until 6 months after the authorized carrier's discharge from military service, or until a later date that the commissioner considers appropriate under the circumstances.

SECTION 31. OCT 2.10 is created to read:

OCT 2.10 AUTHORITY CANCELLATION. A carrier authorized under ch. 194, Stats., who wishes to have its motor carrier authority

cancelled shall notify the office in writing specifically requesting that the authority be cancelled. The request shall be signed by the carrier, its authorized agent or in the case of a partnership, the general partners. Upon receipt of an acceptable request to cancel an authority the authority shall be cancelled effective immediately.

SECTION 32. OCT 2.11 is created to read:

OCT 2.11 REVOCATION OR SUSPENSION OF AUTHORITIES AND PERMITS.

(1) The office, pursuant to s. 194.46, Stats., may revoke or suspend an authority or permit issued under ch. 194, Stats., if after opportunity to be heard the commissioner determines that the motor carrier:

(a) Does not have on file with the department of transportation proof of continuous bond or insurance coverage in the amounts specified in s. 194.41, Stats., or ch. Trans. 176 or has not maintained a continuous exemption from insurance undertaking granted by the department of transportation as provided for in s. 194.42, Stats.

(b) Is unfit to carry on operations by reason of noncompliance with department of transportation motor carrier safety regulations.

(c) Is unfit to carry on operations by reason of its reliability and service records.

(2) For purposes of sub. (1)(b) and (c), a pattern of safety violations or a pattern of unreliable or inadequate service will be sufficient to warrant suspension or revocation of an authority or permit.

(3) Any authority suspended under this section shall be reinstated upon expiration of the suspension period. In the case of a permit suspended under this section, the permit shall be reinstated upon expiration of the suspension period except in the case where the permit itself has expired. A motor carrier whose authority has been revoked under this section may apply for a new authority in the manner provided for in s. OCT 2.01 one year from the date of revocation.

SECTION 33. OCT 2.12 is created to read:

OCT 2.12 INVESTIGATIONS. (1) The office may employ an investigator who shall enforce the provisions of ch. 194, Stats. and this chapter.

(2) Pursuant to s. 194.11, Stats., the investigator may at any time enter the facilities and other property located within this state occupied by any motor carrier and any motor vehicle operated in this state by any motor carrier.

(3) The investigator shall file with the office a report detailing the results of any investigation. Violations may be reported to the state patrol for the purpose of issuing citations or the investigator may file a complaint in the office of the district attorney in the county where the violation occurred. The report to the office may result in a hearing as provided for in s. OCT 2.11 to determine whether any motor carrier authorities or permits should be revoked or suspended.

(4) Any person may file with the office a complaint alleging a violation of ch. 194, Stats. After a complaint is filed on forms provided by the office, an investigation shall be carried out under this section.

SECTION 34. OCT 3.001 is created to read:

OCT 3.001 DEFINITION. For purposes of this chapter:

(1) "Office" means Office of the Commissioner of Transportation.

SECTION 35. OCT 3.01(1) and (2) are amended to read:

OCT 3.01 DIRECT CHARGES - GENERAL. (1) The direct charges referred to in this chapter are the charges made by the ~~commission~~ office pursuant to s. 195.60(1), Stats.

(2) Direct charges are made for expenses attributable to the performance of the ~~commission's office's~~ office's regulatory duties which are directly and strictly attributable to the investigations known as cost cases. Direct charges shall include such expenses as travel and salary, but shall not include overhead expenses, whether or not specifically identifiable with an investigation. Expenses not directly charged shall be considered in the remainder assessment.

SECTION 36. OCT 3.01(3) is repealed and recreated to read:

OCT 3.01(3) The supporting records for charges made are:

(a) Monthly time distribution sheets for the time of office staff members. These consist of summaries of charges made, derived from weekly time sheets which record activities performed each day according to docket number.

(b) Monthly travel expense accounts for the travel expenses of office staff members. These charges are made from these expense accounts and are itemized each day according to docket number.

SECTION 37. OCT 3.02(2) and (3) (a) are amended to read:

OCT 3.02(2) Charges are made on an hourly basis, computed to the nearest half-hour. The hourly ~~rate~~ charge for each employe is

obtained by dividing the individual's annual salary rate by the appropriate number of standard working hours for the year determined by adding to the individual's base hourly salary rate the cost of time off with pay and the cost of fringe benefits.

(3) (a) The time of all persons engaged directly on an investigation, whether in the offices or on the property of the railroad, ~~in the offices of the commission on the office premises,~~ or elsewhere, including ~~traveling~~ travel time, shall be charged. There shall be included, in addition to time spent on the investigation, or in rendering the service, the time devoted to preparing summaries and exhibits and writing and typing reports; also, the time spent in hearings.

SECTION 38. OCT 3.02(4) is amended to read:

OCT 3.02(4) No direct charges are made for the time of ~~commissioners~~ the commissioner and staff acting in a supervisory capacity.

SECTION 39. OCT 3.02(6) is amended to read:

OCT 3.02(6) When the ~~commission~~ office finds it necessary to engage the services of people, not members of its regular staff, for consulting advice or for particular projects arising out of investigations, the cost to the ~~commission~~ office of these services shall be chargeable to the railroad under investigation.

SECTION 40. OCT 3.03(3) (a) is amended to read as follows:

OCT 3.03(3) (a). ~~Commissioners~~ The commissioner.

SECTION 41. OCT 3.04 is amended to read:

OCT 3.04 PROCEDURE FOR BILLING AND COLLECTION OF DIRECT CHARGES. (1) (a) ~~The practice of the commission office shall make an express finding of necessity for an investigation of the books, accounts, practices and activities, or an appraisal of the property of any railroad, and of the intention to assess costs incurred thereby by the office.~~

(b) Notice of finding and notice of the existence of the resulting statutory duty to pay the expenses reasonably attributable to the contemplated investigation or appraisal are served upon the affected railroad by the ~~commission~~ office.

SECTION 42. OCT 3.05 is amended to read:

OCT 3.05 FORMS-GENERAL. The forms named in this chapter are listed by title, and may be obtained from the ~~Transportation Commission of Wisconsin~~ Office of the Commissioner of Transportation, 4802 Sheboygan Avenue, P. O. Box 7957, Madison, Wisconsin 53707-7957.

SECTION 43. OCT 3.06 is amended to read:

OCT 3.06 LIST OF FORMS. The following forms may be obtained from the ~~Commission~~ office:

(1) ~~State Commission~~ Wisconsin Annual Report Class I Railroads.

(2) ~~State Commission~~ Wisconsin Annual Report Class II Railroads.

(3) ~~State Commission~~ Wisconsin Annual Report Class III Railroads.

SECTION 44. OCT 3.07 is amended to read:

OCT 3.07 NUMBER CROSSINGS. All railroads operating in the state of Wisconsin over public highway grade crossings are required to number ~~all such~~ the crossings in this state and submit the information to the ~~commission~~ office.

SECTION 45. OCT 3.08 is amended to read:

OCT 3.08 CROSSING CHANGES. All railroads shall submit to the ~~commission~~ office an annual statement of changes at railroad-highway crossings including openings, closings, separations, and changes in protective devices.

SECTION 46. OCT 3.09(1) is amended to read:

OCT 3.09 PLANS. (1) All railroads operating in Wisconsin shall submit to the ~~commission~~ office for its approval detailed circuit plans and a description of the operations and functions to be performed by signals for any proposed highway-railroad grade crossing signal installation and for proposed changes in existing installations.

SECTION 47. OCT 3.11(2) through (6) are amended to read:

PCT 3.11(2) All railroads operating in Wisconsin shall submit to the ~~Commission~~ office by June 1, 1983, a simple drawing delineating the installation with a tabulation and description of the signal units involved for each railroad-highway crossing signal installation in operation in the state on January 1, 1983.

(3) All signal installations placed in service after January 1, 1983, including alteration of existing installations which change the number of signal units, shall be reported to the ~~com-~~ mission office by the railroads with a drawing and unit tabulation which includes the date the installation or alteration was completed.

(4) All railroads operating in Wisconsin shall submit to the ~~commission~~ office by June 1, 1983, the maintenance costs for calendar year 1982 for all railroad-highway crossing signal installations in Wisconsin as drawn from accounting records maintained in accordance with the Interstate Commerce Commission Uniform System of Accounts including assignable labor and material additives and a statement of the total signal units involved in these costs. In some cases, units and costs in adjoining states may be included where cost reports cannot readily be separated. This information shall be provided for each fourth year anniversary after 1982.

(5) Using the cost information and lists of signal units, the ~~commission~~ office ~~will~~ shall determine the average dollar value per unit maintenance cost in Wisconsin for crossing signal installations for the year 1982.

(6) ~~the~~ The average dollar value per unit applied to the total units per crossing ~~will~~ shall be the maintenance cost for the crossing and the basis for paying railroad claims for the maintenance pursuant to s. 195.28, Stats.

SECTION 48. OCT 3.12 is amended to read:

OCT 3.12 INITIAL REPORTS. Upon occurrence of any accident-incident in Wisconsin involving a railroad, resulting in death, substantial damages or significant hazard to the public, a report shall be made by the railroad involved to the ~~commission~~ office as soon as practicable but not later than within 24 hours of the occurrence or before 4 p.m. of the first business day following the occurrence.

SECTION 49. OCT 3.13 is amended to read:

OCT 3.13 MONTHLY REPORTS. The federal railroad administration in accordance with 49 CFR 225 Accident/Incident Reporting Standards requires each railroad company to submit a monthly report of railroad accidents-incidents. Each railroad company operating in Wisconsin shall submit to the ~~commission~~ office a copy of these applicable to its Wisconsin operation on or before the filing date as required by federal regulation.

SECTION 50. OCT 3.16(1), (2) and (3) are amended to read:

OCT 3.16 EXEMPTIONS. (1) Materials used by a railroad for repair or construction just prior to and during the period that work is in progress, and railroad structures and facilities necessary for the operations of trains for which it is impracticable to provide the minimum clearances, are exempted from the provisions of ~~ss. PSC 82.03 and 812.04 [TC 3.15(2) to (5)]~~ s. OCT 3.15(2) to (5).

(2) Upon written application and after public hearing, the

commission office may grant exemption from the clearances requirements of this chapter upon a finding that the clearances proposed will does not imperil life or limb and that public interest requires or or permits such clearance. The findings and order granting exemption shall be in writing and shall contain complete provisions and requirements as to the clearances to be maintained.

(3) Wherever any overhead structure or any part thereof is less than 22 feet above the top of the rail, every railroad corporation or industry shall maintain telltales of suitable construction installed over each track at such distances from the obstruction as shall provide adequate security against accident; except that if the commission office finds that the installation of a telltale at any particular place would be impracticable or would result in an increased hazard to either the public or an employe and that either or both such factors outweigh the safety benefit which would result from the installation of a telltale, the commission office may enter an order providing an exemption from this subsection. Such exemption shall be ordered by the commission office only after written application and public hearing.

SECTION 51. OCT 3.17(5) is amended to read:

OCT 3.17(5) It is recognized that these regulations cannot cover all contingencies and accordingly the commission office may, on application or on its own motion, modify, grant exceptions to, or prescribe higher standards than the rules contained herein in this chapter.

SECTION 52. OCT 4.001 is created to read:

· OCT 4.001 DEFINITION. For purposes of this chapter:

(1) "Office" means Office of the Commissioner of Transportation.

SECTION 53. OCT 4.01(2) is amended to read:

OCT 4.01(2) The commission office shall make available to all state agencies an up-to-date table of the applicable rates for moving household goods in weight categories from 0 - ~~10,000~~ 15,000 lbs., a distance from 0 - 500 miles.

SECTION 54. OCT 5.07(2)(b) is amended to read:

OCT 5.07(2)(b) Pleadings shall be addressed to:

Office of the Commissioner of Transportation
Railroad Tariff Bureau
Hill Farms State ~~Office~~ Transportation Building
4802 Sheboygan Avenue
P. O. Box 7957
Madison, Wisconsin 53707-7957.

SECTION 55. OCT 5.10(2) is amended to read:

OCT 5.10(2) COMMUNICATIONS. All communications shall be in writing and shall be addressed to:

Office of the Commissioner of Transportation
Railroad Tariff Bureau
Hill Farms State ~~Office~~ Transportation Building
4802 Sheboygan Avenue
P. O. Box 7957
Madison, Wisconsin 53707-7957.

SECTION 56. OCT 6 is created to read:

Chapter OCT 6

WATER CARRIERS

OCT 6.01 DEFINITION. For purposes of this chapter:

(1) "Office" means the Office of the Commissioner of Transportation.

(2) "Water Carrier" means a common carrier of passengers or property by water as set forth in s. 195.45, Stats.

OCT 6.02 WATER CARRIER APPLICATION.

(1) APPLICATION FOR A CERTIFICATE. Application for a certificate of convenience and necessity to operate as a water carrier shall be made to the Office of the Commissioner of Transportation, Hill Farms State Transportation Building, 4802 Sheboygan Avenue, P. O. Box 7957, Madison, WI 53707-7957, upon the forms prescribed for that purpose provided by the office.

(2) FILING FEE. An application for a certificate of public convenience and necessity shall be accompanied by a nonrefundable filing fee of forty dollars. This fee shall be paid by cash, check or money order made payable to the Office of the Commissioner of Transportation.

(3) PUBLICATION OF NOTICE. Upon an initial determination by the Office that the basic entry requirement set out in s. OCT 6.03 may be satisfied, the applicant shall be furnished with copies of the official notice that application has been made which the applicant shall publish in a newspaper of general circulation in each county through or in which the proposed service shall be rendered. Prior to publication, the applicant shall examine the notice and

notify the office of applicant's approval of the form and content of the notice or submit a revised notice to the office.

(4) CONTENTS OF NOTICE. The notice shall contain:

(a) The correct legal name of the applicant;

(b) The applicant's address;

(c) An accurate and complete description of the operations and transportation services proposed to be rendered in sufficient detail to give full notice to the public and other water carriers;

(d) A statement to the effect that a certificate to engage in the proposed operations and transportation services may be granted without hearing unless a petition for hearing is made by an interested party and is filed with the office within 20 days of publication of the notice provided for in sub. 3.

(5) PROOF OF PUBLICATION. Proof of publication from the newspaper in which the notice was published shall be filed with the office within 10 days after publication. The applicant shall file a receipt from the newspaper showing the publication fees have been paid and a copy of the notice.

OCT 6.03 REQUIREMENTS FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

(1) BASIC ENTRY REQUIREMENTS. In order to obtain a certificate of public convenience and necessity which authorizes service under s. 195.45, Stats., the applicant shall prove:

(a) That the proposed operations or transportation services to be performed are in the public interest;

(b) There is a present and future public need for the proposed service;

(c) The applicant has and will have the financial ability to conduct the proposed operations; and

(d) The applicant is otherwise fit to conduct the proposed operation.

(2) NOTICE OF HEARING. Where an application is protested and a petition for hearing is filed with the office pursuant to s. OCT 6.02(4)(d), the matter may be set for hearing and the parties notified in the manner prescribed in s. OCT 1.03.

(3) NEED FOR THE PROPOSED SERVICE. Where no petition for hearing is received pursuant to s. OCT 6.02(4)(d), the applicant

shall submit verified statements from representative shippers or passengers who expect to use the proposed service in order to prove that a public need exists for the proposed service. The sponsors must state the following information:

(a) For what purpose or occasion they expect to use the proposed service.

(b) To and from what points they expect to use the proposed service.

(c) How often they expect to use the proposed service.

(d) For freight shippers only, the volumes of product they expect to ship using the proposed service.

(e) Any additional information which may explain how the proposed service will meet needs that are not currently being met by existing service.

(4) VERIFICATION OF SPONSOR STATEMENTS. Statements filed under sub. (3) shall be signed and verified by the sponsoring individual, or an authorized employee thereof who is knowledgeable about the sponsor's business and operations. The office may require the sponsor to supply additional information, and may reject statements that, in the judgement of the office, lack authenticity.

(5) FINANCIAL FITNESS. To determine financial capability, the office shall assess the applicant's overall liquidity, capital structures and profitability, based on the most recent income statement and balance sheet available. The office shall consider the following ratios in assessing the applicant's overall financial capability.

(a) Liquidity

1. Current ratio:
$$\frac{\text{Current assets}}{\text{Current liabilities}}$$
2. Quick ratio:
$$\frac{\text{Current assets less merchandise inventory}}{\text{Current liabilities}}$$
3. Working capital ratio:
$$\frac{\text{Current assets less current liabilities}}{\text{Average daily operating expenses}}$$

(b) Capital structure.

1. Capitalization ratio:
$$\frac{\text{Net capitalized assets}}{\text{Total capitalization including long-term debt}}$$
2. Debt to equity ratio:
$$\frac{\text{Long-term debt}}{\text{Long-term debt plus equity}}$$

(c) Profitability

1. Operating ratio:
$$\frac{\text{Operating expenses}}{\text{Operating revenues}} \times 100$$
2. Return on stockholder's equity:
$$\frac{\text{Net income after interest and taxes}}{\text{Stockholder's equity less intangibles}}$$
3. Return on net transportation investment:
$$\frac{\text{Net operating income}}{\text{Average net investment plus working capital}}$$

(6) APPLICANTS PERFORMANCE. The office shall evaluate each applicants financial capability individually on the basis of overall performance in the three major categories set out in sub.

(5). Applicants need not prove sufficiency under each ratio to be considered financially capable. Applicants shall have the opportunity to submit additional relevant information addressing deficiencies in any of the areas identified by the office. The staff of the office shall advise applicants requesting assistance in providing the necessary financial information.

(7) GENERAL FITNESS. Applicants shall state in writing that they have a general knowledge of applicable state statutes and rules and that they intend to comply with them. Proof of past failure to comply with those laws may constitute sufficient grounds upon which to restrict a grant of authority or deny an application.

(8) BURDEN OF PROOF. Applicants shall make an initial showing that the entry requirements set forth in sub. (1) have been met. If the application is protested and a hearing is held, the burden shifts to the objector to present evidence tending to disprove a material element of the applicant's initial showing. Objectors challenging the application based on lack of need for the proposed service shall make an affirmative showing that existing service is sufficient to meet the public convenience and necessity.

Effective Date:

The renumbering and amendment of Ch. TC 1 through TC 5, and the creation of Ch. OCT 6, Wis. Adm. Code, shall become effective on the first day following publication in the Wisconsin Administrative Register pursuant to s. 227.026(1), Stats.

Dated at Madison, Wisconsin, 6-26-86

By the Office of the Commissioner of Transportation.


Joseph Sweda, Commissioner of Transportation