

ARKANSAS STATE HIGHWAY
AND
TRANSPORTATION DEPARTMENT

Maurice Smith, Director
Telephone (501) 569-2000



P.O. Box 2261
Little Rock, Arkansas 72203

April 25, 1990

Secretary of State's Office
ATT: Rick
State Capitol Building
Little Rock, AR 72201

RE: Rules filed March 16, 1990

Gentlemen:

Through a clerical error copies of Rules 11.5 and 10.8 were physically omitted from the package of rules filed on that date on behalf of the Commission. As you can see from the copy of the Commission order that was attached to and filed with these rules, it was the intent of the Commission to file Rules 11.5 and 10.8 concurrent with those that were actually brought to your office.

Please attach the enclosed copy of Rules 11.5 and 10.8 to the package of rules originally filed. We would like to consider these rules that were inadvertently omitted to have the same effective date as those that were actually filed. If there is a problem in considering the effective date of Rules 11.5 and 10.8 to be twenty days after March 16, 1990, please advise me as soon as possible. If not, we will consider them to be effective April 5, 1990, which was the effective date of all those that we originally filed.

Thank you for your cooperation in this matter.

Very truly yours,

Treeca J. Dyer
Staff Attorney

TJD/jm

Enclosure

ARKANSAS REGISTER



FILED
AR. REGISTER DIV.
90 MAR 16 PM 2:37

W.J. "BILL" McCuen
SECRETARY OF STATE
LITTLE ROCK, ARKANSAS

BY _____

Transmittal Sheet

W.J. "Bill" McCuen
Secretary of State
State Capitol
Little Rock, Arkansas 72201-1094

For Office
Use Only:

Effective Date 4-15-90 Code Number 001.01.90--001

Name of Agency Arkansas State Highway Commission

Department Legal Division

Contact Person Treeca J. Dyer Telephone 569-2275

Statutory Authority for Promulgating Rules ACA 823-2-403

Intended
Effective Date

- ☐ Emergency
☒ 20 Days
After Filing
☐ Other

Legal Notice Published

Final Date for Public Comment

Filed With Legislative Council

Reviewed by Legislative Council

Adopted by State Agency

Date

1-2-90

1-15-90

1-5-90

NA

3-15-90

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance With Act 434 of 1967 As Amended.

A handwritten signature in dark ink, appearing to read "Robert Dyer", is written over a horizontal line.

SIGNATURE

Chief Counsel

TITLE

March 16, 1990

DATE

NON-CONTROVERSIAL RULE CHANGES

Rule 1.5 (a) How Addressed. All communications should be addressed to the Commission, as follows: "Arkansas State Highway Commission, P. O. Box 2261, Little Rock, AR 72201."

Rule 2.1 Typographical Specifications.

Except as otherwise provided, all pleadings, documents, and papers to be filed under these rules shall be printed or typewritten, with a clear margin at the top and bottom. If typewritten, they shall be on paper 8 1/2 x 11 inches in size. Where exhibits may require a larger sheet, those exhibits should be subject to reduction so that they may be clearly placed upon paper no larger than 8 1/2 x 11 inches.

Rule 2.2 Copies.

Except when otherwise required in specific instances, there shall be filed an original and nine copies of every pleading, document, or paper required or permitted to be filed under these rules.

Rule 3.2 Formal Complaints; Copies.

The original of each formal complaint, amended or supplemental formal complaint, or cross complaint, must be accompanied by copies in sufficient number to enable the Commission to serve one copy upon each defendant, and retain nine copies in addition to the original.

Rule 15.5 (b) Handling by Carrier. Every such carrier which receives a written claim for loss or damage to property transported by it shall pay, decline, or make a firm compromise settlement offer in writing to the claimant within 120 days after receipt of the claim by the carrier or its agent; provided that, if for reasons beyond the control of the carrier the claim cannot be processed and disposed of within 120 days after the receipt thereof, the carrier shall at that time and at the expiration of each succeeding 30-day period while the claim remains pending, advise the claimant in writing of the status of the claim and the reasons for the delay in making final disposition thereof, and send a copy of such letter to the Arkansas State Highway Commission, P. O. Box 2261, Little Rock, AR 72203.

Rule 15.8 Mobile Home Carriers-Customers' Complaints to Commission. For all mobile home movers certificated by this Commission, both the Pre-move Inspection Record required by Rule 15.7 and the customer's copy of the freight bill shall contain the following language on the front side of the bill or record, in bold-face type:

NOTICE TO OWNER

CLAIMS

All claims and complaints not resolved to your satisfaction may be reported to the Arkansas State Highway Commission for investigation.

Arkansas State Highway Commission
P. O. Box 2261
Little Rock, AR 72203
Telephone: (501) 569-2355

**AMENDMENT TO RULE 11.4 - APPLICATIONS FOR TRANSFER
OR LEASE OF CERTIFICATE OR PERMIT**

Certificates, permits, and licenses shall not be assigned, transferred, or leased without prior authorization of the Commission and on written application.

- The application for transfer or lease must be accompanied by:
- (a) The name and address or location of the principal office or place of business of each of the applicants;
 - (b) A full and complete financial statement giving detailed information concerning the financial condition of the transferee. If the transferee is a partnership, a complete financial statement giving detailed information concerning the financial condition of each of the partners; if the transferee is a corporation, a copy of a certificate of good standing from the Secretary of the State in which the corporation is domiciled, and a financial statement of the corporation;
 - (c) A statement completely describing the authority sought to be transferred, including commodities authorized to be transported and the routes authorized to be served;
 - (d) A statement describing all property to be sold, transferred or assigned, and the amount to be paid therefor;
 - (e) A copy of all contracts, agreements and other stipulations between the transferee and transferor;
 - (f) If the transferee is not a resident of this State, a written designation of a resident agent for service of process.
 - (g) If any party to the transfer of a certificate or permit is acting in a fiduciary capacity, proof of his authority to so act;
 - (h) A statement from the State Treasurer, Commissioner of Revenues or County Collector to the effect that there are no outstanding and unpaid taxes of any nature;
 - (i) A joint affidavit that there are no unpaid taxes, station rents, wages, or other indebtedness incident to the vendor's operation, or if such is not the case will be assumed by the vendee;
 - (j) Remittance of statutory filing fee.

No transfer or lease of the certificate or permit, or any part thereof, shall be granted by the Commission unless there has been filed with the Commission a statement by the Treasurer of the State of Arkansas and/or the Commissioner of Revenues, or his authorized deputy, certifying that there are no delinquent taxes outstanding against the transferor or against the certificate or permit sought to be transferred.

The transfer, lease, or assignment of the permit, certificate, or license shall not be authorized when the Commission finds that the action will be inconsistent with the public interest or will have the effect of destroying competition or creating a monopoly. The transfer, lease, or assignment will not be authorized where it appears that reasonably continuous service under the authority or that part of the authority granted by the permit, certificate, or license which is sought to be transferred has not been rendered by the current holder of the permit, certificate, or license prior to the application for transfer, assignment, or lease.

Prior to the sale of a business or the addition of partners by any individual or business holding a certificate or permit, such change in the ownership structure of the carrier shall be reported to the Commission in writing. Prior to the sale of stock in a publicly traded corporation, such sale shall be reported to the Commission if the sale will constitute fifty percent (50%) or more of the outstanding shares or stock in the corporation in one transaction or in a series of related transactions. The Commission shall review the sale of the stock or the addition of a partner, or any other change in the ownership structure of the business operating in intrastate commerce under a certificate or permit issued by this Commission. Such documentation as is necessary for a full and complete review of the change in the ownership structure may be requested from the business by the Commission.

Prior to the hypothecation of a certificate or permit, or the pledge of any assets of a business holding intrastate authority from this Commission, a notice of the hypothecation or pledge of the assets shall be filed with the Commission. The Commission will acknowledge receipt of the notice of hypothecation, and may request additional documentation as is necessary for a full and complete review of the pledge of the asset of the certificate or permit.

NEW RULE 1.16 - CRITERIA FOR REVIEW OF APPLICATIONS

In reviewing any application for a new certificate or permit, the following criteria shall be used to determine whether the present or future public convenience and necessity will be served by the granting of such application:

- (1) the ability of the applicant and his sense of responsibility towards the public;
- (2) the financial condition of the applicant;
- (3) the current level of service being maintained by any carrier authorized to provide such service;
- (4) the stability of the applicant organization and the likelihood of permanent and continuous service being provided by the applicant;
- (5) the effect of the proposed service upon other forms of transportation;
- (6) the lack of service for a specific need within the area or business community; and
- (7) any other matters tending to show the need, or lack of need, of the proposed service.

**NEW RULE 11.13 - APPLICATIONS OF COMMON CARRIERS
FOR ARMORED CAR SERVICE; CONTENTS; APPROVAL**

Applications of Common Carriers for Armored Car Service; Contents; Approval.

Armored car companies making application for intrastate authority may apply as common carriers, notwithstanding the fact that contracts may be or have been entered into between the applicant and shippers. Armored car companies are expressly allowed as common carriers to enter into an unlimited number of contracts with shipping financial institutions.

Contracts entered into between armored car common carriers and shippers shall be subject to review by the Commission. Review of contracts shall include but not be limited to: (1) uniformity of rates between shippers, taking into consideration the location, frequency of service, and minimum delivery clauses; (2) conformity with filed tariffs; (3) duration of contracts; (4) cancellation clauses, including any opportunity to cure service complaints; (5) adequacy of service provided; (6) any terms requiring exclusive use of the armored car carrier's services. Contract provisions as to schedule of stops and size of shipments will not be reviewed.

AMENDMENT TO RULE 3.15 - PROTESTS AGAINST APPLICATIONS

(a) Content. A protest against the granting of any application filed before the Commission shall set forth specifically the grounds upon which the protestant relied and shall further state concisely the interest of the protestant in the proceeding.

(b) Time of Filing. Any protest or intervention must be filed with the Commission on or before the 10th day following the date of notice of application, pursuant to Section 3.14(b).

(c) Verified Statements. Verified statements of the protestant and each known supporting witness shall be filed with the Commission at a time set out in the written policy and procedure of the Commission. The requirement of a verified statement may be waived at the discretion of the Commission upon written request by the protestant. Verified statements of the protestant shall contain but not be limited to the following:

- I. Legal name and business address.
- II. Identity and qualifications of testifying witness.
- III. Specific pertinent conflicting authority.
- IV. Pertinent terminals and communications network.
- V. Pertinent Equipment.
- VI. Type of service offered (e.g., LTL, bulk, interline, etc.).
- VII. Traffic subject to diversion if application is granted, including specific information on attempts of the protestant to secure the business of the supporting shipper.
- VIII. Any other information pertinent to the application.
- IX. Verification and Certificate of Service.

(d) Witness List. A list of witnesses who will appear on behalf of the protestant shall be filed with the Commission at a time set out in the written policy and procedure of the Commission. Only those witnesses whose names appear on the list supplied by the protestant shall be allowed to testify at the hearing before the Commission; other witnesses may be allowed to testify by leave of the Commission.

A list of witnesses filed by the protestant shall be exchanged with the applicant at a time set out in the written policy and procedure of the Commission. Failure to provide the other party or parties with a list of witnesses to be called may be grounds for dismissal or postponement of the case.

(e) When Rule Disregarded. For good cause shown, an application may be set down for hearing without awaiting the filing of a protest or a reply thereto, and may also be disposed of without regard to subsection (c) of this rule unless a hearing is required by the Motor Carrier Act.

AMENDMENT TO RULE 3.14 - APPLICATIONS

(a) Contents. Forms of applications for certificates, permits, and transfers may be obtained from the Commission upon request. An application filed with the Commission shall set forth with specificity the grounds upon which the application is made, the interest of the applicant and the subject matter, and the relief sought by the applicant.

(b) Date of Filing. The official date of filing of any application with the Commission shall be the third calendar day after the date contained within the notice of filing sent to the newspaper for publication and all interested parties. This date shall be used for purposes of calculating all dates upon which other matters to be filed as part of the application process are due.

(c) Verified Statements. The verified statement of the applicant and each known supporting witness shall be filed with the Commission at a time set out in the written policy and procedure of the Commission. The requirement of a verified statement may be waived at the discretion of the Commission upon written request by the applicant.

1. Verified statement of the applicant shall contain but not be limited to the following:

- I. Legal name and business address.
- II. Identity and qualifications of testifying witness.
- III. Authority sought.
- IV. (A) General scope of presently authorized operations (attach copies of pertinent operating rights).
- (B) Duplicating authority resulting from grant of application.
- (C) Dual operations resulting from grant of application.
- (D) Affiliation with other carriers and persons affiliated with carriers (indicate pertinent MC numbers and docket number of finance proceedings; identify common and contract carriers as such).
- V. Pertinent terminal facilities and communications network.
- VI. Pertinent equipment.
- VII. Safety Program.
- VIII. Service now provided to supporting witnesses.
- IX. Type of service offered (e.g. LTL, bulk, multiple delivery, et cetera).
- X. Financial data (current balance sheet and income statement).
- XI. Feasibility of operation.
- XII. Any other information deemed pertinent.
- XIII. Argument (if desired).
- XIV. Verification.
- XV. Certificate of Service and list of parties names and addresses.

2. Verified statements of supporting shippers shall contain but not be limited to the following:

- I. Legal name and business address of supporting party or firm.
- II. Identity and qualifications of testifying witness.
- III. General description of the business of the supporting shipper and its operations.
- IV. The specific commodity shipped or received by that business.
- V. The volume and frequency of traffic.
- VI. The amount of traffic to be tendered to the applicant, giving specific or representative origins and destinations.
- VII. How the traffic now moves in intrastate commerce.
- VIII. The type of service required from the applicant (e.g., bulk, LTL, multiple delivery, etc.).
- IX. The existing service available and specific information on discrepancies in service from currently authorized carriers.
- X. Similar applications supported, including pertinent docket numbers.
- XI. Any other information deemed pertinent by the witness.
- XII. Verification and Certificate of Service.

(d) Witness List. A list of witnesses to be called by the applicant in support of its application shall be filed with the Commission at a time set out in the written policy and procedure of the Commission. Only those witnesses whose names appear on the list supplied by the applicant will be allowed to testify at the hearing before the Commission; other witnesses may be allowed to testify by leave of the Commission.

A list of witnesses filed by the applicant shall be exchanged with the protestants at a time set out in the written policy and procedure of the Commission. Failure of the applicant to provide the protestants or other parties with the list of witnesses to be called may be grounds for dismissal or postponement of the case.

(e) Refiling After Denial. When an application for a permit or certificate has been denied in whole or in part, or has been granted, and an order of the Commission granting the same has been quashed or set aside, another application by the same petitioner or applicant over the same route or territory will not be considered by the Commission within ninety (90) days from the date of the order denying the same or the judgment of the court quashing or setting aside the order.

**RULE 11.5 - APPROVAL OF LEASE OF
CERTIFICATE OR PERMIT**

Unless unusual circumstances are found by the Commission, a lease of operating rights will not be approved for longer than a period of one year. During this time the parties shall be expected to consider and determine whether or not they want to enter into a transaction of sale and purchase of the rights conferred under the certificate or permit.

At the end of the lease period, lessee shall file with the Commission a statement of intent as to the plans of the lessee as they pertain to future use of the permit. Should the lessee request an extension of operating rights beyond the one year approved herein, such extension shall be requested in the statement filed by the lessee at the end of the lease period.

RULE 10.8 - DISCONTINUATION OF SERVICE

Whenever no business is conducted under any permit, certificate, or license issued by the Commission for a period of one (1) year, such failure to render reasonably continuous service under the authority shall subject the holder of such authority to a hearing. The hearing will be for the purpose of determining whether or not the authority shall be continued or cancelled.

All holders of any permits, certificates, or licenses shall report discontinuance of service to the Commission on forms provided, if there has been no use of the pertinent authority or any part thereof for a period of one year or longer.

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OFFICE OF
ARKANSAS STATE HIGHWAY COMMISSION

IN RE: RULES AND REGULATIONS GOVERNING)
APPLICATIONS AND PROCEDURES FOR)
INTRASTATE AUTHORITY.)

REPORT AND ORDER

90 MAR 16 PM 2:44
CASE NO. 87-144
FURTHER SUPPLEMENTED

W.J. "BILL" MCCUEH
SECRETARY OF STATE
LITTLE ROCK, ARKANSAS

BY _____

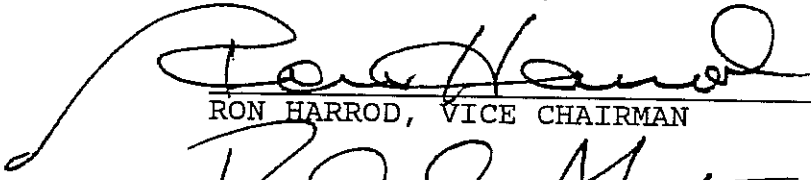
After examination of the proposed rules of practice and procedure before the Arkansas State Highway Commission, it has been determined by the Commission, after deliberation and after due notice of public hearing on January 23, 1990 at 9:00 A.M., in the hearing offices of the Arkansas State Highway Commission, that the proposed rules of practice and procedure should be, and the same are, hereby adopted and amended, in accordance with Exhibit A attached hereto and incorporated herein by reference.

IT IS ORDERED, that said Rules 3.14, 3.15, 11.4, 11.5, 1.5(a), 15.5(b), 15.8, 2.1, 2.2 and 3.2 shall be amended, Rule 10.1(d) shall be repealed, and Rules 1.16, 11.13, 10.8 shall become effective twenty (20) days after filing of said rules with the Office of the Secretary of State.

Entered this 15th day of March, 1990.

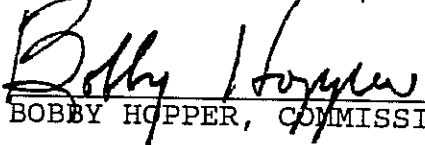
BY THE COMMISSION:

RAYMOND PRITCHETT, CHAIRMAN

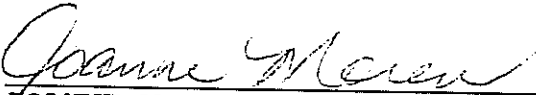

RON HARROD, VICE CHAIRMAN


RODNEY E. SLATER, COMMISSIONER


L. W. "BILL" CLARK, COMMISSIONER


BOBBY HOPPER, COMMISSIONER

ATTEST:


JOANNE MOREN

MANAGEMENT PROJECT ANALYST