

**OCTOBER 26**



TENTATIVE AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Monday, October 26, 1987, 2:00 p.m.

COMMITTEE MEETING ROOM, M-438

1. Approval of Minutes - Meeting September 15, 1987
2. REVIEW OF LEGISLATIVE RULES:
  - a. Board of Medicine - Fees for services rendered by the Board of Medicine
  - b. Water Resources Board - Requirements Governing Water Quality Standards
  - c. Attorney General - Proposed Legislative Rule Pertaining to the Administration of Preneed Burial Contracts
  - d. Tax Department - Telecommunications Tax
  - e. Tax Department - Appraisal of Property for Periodic Statewide Reappraisals for Ad Valorem Property Tax Purposes
  - f. Tax Department - Business Franchise Tax
  - g. Dept. Energy - Surface Mining Reclamation Regulations
3. Other Business:

October 26, 1987

Legislative Rule-Making Review Committee  
(Code §29A-3-10)

2:00 p.m.

Dan Tonkovich,  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Tucker, Chairman  
Boettner  
Holmes  
Tomblin (absent)  
Harman  
Hylton

Knight, Chairman  
Burk  
Murphy  
Givens  
Stiles (absent)  
Pritt

The meeting was called to order by Mr. Tucker, Co-Chairman.

The minutes of the September 15, 1987, meeting were approved.

Mike Mowery, Committee Counsel, reviewed the rule proposed by the Water Resources Board, Requirements Governing Water Quality Standards. Ann Spaner, Assistant Attorney General, representing the Board answered questions from the Committee.

Mr. Hylton moved that the proposed rule be approved. The motion was adopted.

Mr. Tucker informed the Committee that the Department of Energy had requested that the rule proposed by them regarding Surface Mining Reclamation Regulations be postponed. Mr. Hylton explained the reason for the postponement is that new changes proposed in a recently filed rule would supercede the proposed rule presently before the Committee. Mr. Mowery explained some of the problems he had found with the proposed rule presently before the Committee and stated that the recently filed rule would go to public hearing on November 25, 1987.

Mr. Hylton moved that the proposed rule lie over until the Committee's November meeting. The motion was adopted.

Debra Graham, Associate Counsel, reviewed her abstract on the rule proposed by the Board of Medicine, Fees for Services Rendered by the Board of Medicine. Dr. David Heydinger, Director of the Department of Health, explained why the fee increases are necessary.

Mr. Givens moved that the proposed rule be approved. The motion was adopted.

Mr. Tucker told the Committee that he had had a request to have the rule proposed by the Attorney General, Proposed Legislative Rule Pertaining to the Administration of Preneed Burial Contracts, lie over until the November meeting. Roger Price, representing the W. Va. Funeral Director's Association, discussed the proposed rule and the reasons for having it lie over. Tom Hinds, Deputy Attorney General, told members of the Committee that he was prepared to answer questions and that the proposed rule had already been revised based upon comments by the Committee Counsel. Martha Junker, representing Forethought Life Insurance Company, made several suggestions regarding the proposed rule and answered questions of the Committee.

Mr. Givens moved that the proposed rule lie over until the Committee's November meeting. The motion was adopted.

Mr. Knight asked to address the Committee regarding the action taken prior to his arrival on the rule proposed by the Department of Energy. Roger Hall, Administrator of the Department of Energy, answered questions on the proposed rule. Mr. Holmes asked Mr. Mowery if the Committee staff would have time to abstract a rule filed by the Department of Energy after its November public hearing. Mr. Mowery stated that staff has several other rules currently filed which have not been abstracted and that he cannot promise that staff will be able to address any more rules.

Mr. Knight moved that the Committee reconsider its action whereby it laid over the rule proposed by the Department of Energy until the November meeting. The motion was rejected.

Ms. Graham reviewed her abstract on the rule proposed by the Tax Department, Telecommunications Tax. She told the Committee that the Tax Department is requesting that the rule be modified by deleting Section 3.1.3 because experience had shown the provision to be unworkable. Rich Lindroth, representing the Tax Department, answered questions from the Committee.

Mr. Givens moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham briefly reviewed the rule proposed by the Tax Department, Appraisal of Property for Periodic Statewide Reappraisals for Ad Valorem Property Tax Purposes. She reviewed the comments which had been submitted to the Department by the West Virginia Coal Association and the West Virginia Surface Mining Reclamation Association. Don Hebb and Jerry Knight of the Tax Department answered questions regarding the proposed rule.

Mr. Knight moved that the proposed rule lie over to the November meeting. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Tax Department, Business Franchise Tax. Mr. Murphy stated that several problems with the rule had been brought to his attention. Mark Morton, of the Tax Department, addressed those problems.

Mr. Murphy moved that the proposed rule lie over until the Committee's November meeting. The motion was adopted.

Mr. Knight addressed the Committee regarding the issue of whether or not the Child Advocate Office is required to file its rules establishing support guidelines with the Committee.

Mr. Knight moved that Sandy Gilmore, of the Child Advocate Office, be asked to appear at the Committee's Tuesday meeting and that Committee Counsel obtain a copy of the rule filed with the Secretary of State so that the Committee might act upon it as if it had been filed with the Committee. The motion was adopted.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 10-26-87

TIME: 2:00 p.m.

NAME	Present	Absent	Yeas	Nays
Chambers, Robert "Chuck", Speaker				
Knight, Thomas A.	✓			
Burk, Robert W., Jr.	✓			
Givens, Roy E.	✓			
Pritt, Charlotte	✓			
Stiles, Floyd R.				
Murphy, Patrick H.	✓			
Tonkovich, Dan, President				
Tucker, Larry A.	✓			
Boettner, John "Si"	✓			
Harman, C. N.	✓			
Holmes, Darrell E.	✓			
Hylton, Tracy W.	✓			
Tomblin, Earl Ray				
TOTAL				

RE: \_\_\_\_\_  
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REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: Legislative Rule-Making

DATE: October 26, 1987

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
Jerry A. Knight	814 Va. St. E. Charleston W.V. 25301	Tax Department	AS NEEDED
Scott Burgess	"	" "	"
Don Hebb	"	" "	"
Roger K. Price	815 Quannan St. ST. 415 Charleston, WV 25301	W.Va. Funeral Directors Assn. ✓	X
James R. Snyder	1600 Landley Tower Charleston W.V. 25301	APPALACHIAN LIFE INS. CO. ✓	X
Tom Hinder	Atty Gen's Office	✓	✓
Martha Junken	Forethought Center, Gatesville IN 47806 Forethought Life Ins. Co.	Forethought Life Ins. Co. ✓	X
Ann Janer	812 Quarrier St.	Water Resources Bd.	
Jan Taylor	1260 Quarrier	Water Resources Bd.	
Fran Hunter	1260 Quarrier St	" " "	
Robert Whitley		W.Va. Hospital Assn	
B.W. Gallagher	Charleston	Cap Telephone	
ARLIE HUBBARD, JR.	CHAS	COL. GAS TRANS.	
JOHN MONTGOMERY	CHARLESTON	TAX DEPT	AS NEEDED
MARK MARTON	"	"	"
RICHARD LINDROTH	"	"	"
JOHN VAUGHAN	2422 Perrin Charleston	W.VA HOSP ASSN.	
Don Suffer	Clarksburg	Egmont Gas	





**OCTOBER 27**

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Tuesday, October 27, 1987 5:00 p.m.

COMMITTEE MEETING ROOM, M-438

1. Approval of Minutes - Meeting October 26, 1987
2. REVIEW OF LEGISLATIVE RULES:
  - a. Department of Energy - Rules and Regulations Governing Roof Control
  - b. Department of Highways - Transportation of Hazardous Wastes upon the Roads and Highways.
  - c. Insurance Commissioner - Medical Malpractice Loss Experience and Loss Experience Annual Reporting, Series XXIII
  - d. Bd. of Examiners of Land Surveyors - Rules and Regulations for the Practice of Land Surveying in West Virginia
  - e. Racing Commission - Thoroughbred Rules, Series 1
  - f. Racing Commission - Greyhound Rules
  - g. Health Department - Immunization Criteria for Transfer Students
3. Other Business:

October 27, 1987

Legislative Rule-Making Review Committee  
(Code §29A-3-10)

5:00 p.m.

Dan Tonkovich,  
ex officio nonvoting member

Robert "Chuck" Chambers,  
ex officio nonvoting member

Senate

House

Tucker, Chairman  
Boettner  
Holmes  
Tomblin (absent)  
Harman  
Hylton (absent)

Knight, Chairman  
Burk (absent)  
Murphy  
Givens  
Stiles (absent)  
Pritt

The meeting was called to order by Mr. Tucker, Co-Chairman.

The minutes of the October 26, 1987 minutes were approved.

Mr. Knight moved that the rule proposed by the Department of Energy, Rules and Regulations Governing Roof Control, lie over until the next meeting. The motion was adopted.

Jim Youngblood, representative of the Department of Highways, appeared before the Committee to provide answers to questions raised at the Committee's September meeting regarding the rule proposed by the Department of Highways, Transportation of Hazardous Wastes upon the Roads and Highways. He distributed a copy of the U. S. Department of Transportation Rules relating to minimum levels of financial responsibility for motor carriers.

Mr. Murphy moved to amend the proposed rule to include the provisions of the U. S. Department of Transportation regulations. The motion was adopted.

Mr. Youngblood answered questions from the Committee regarding the feasibility of designating certain routes within the State for the transportation of hazardous wastes. The Committee Staff was directed to send a letter to the Commissioner requesting that he develop and implement a plan which designates certain routes throughout the State for the transportation of hazardous waste.

Mr. Youngblood and the Committee discussed who should be the responsible official in the case of an accident in which hazardous waste is discharged. The Staff was directed to ask a representative of the Office of Emergency Services to appear at its next meeting to discuss which officials throughout the State are responsible for clean-up at the site of a hazardous waste spill.

Mr. Murphy moved that the proposed rule lie over until the next meeting. The motion was adopted.

Debra Graham, Associate Counsel, reviewed the rule proposed by the Insurance Commissioner, Medical Malpractice Loss Experience and Loss Experience Annual Reporting, Series XXIII and explained that the agency had agreed to a minor modification. Dan Selby, Consultant to the Insurance Commissioner, spoke on the rule and answered questions from the Committee.

Mr. Knight moved that the proposed rule be approved as modified.

Mr. Harman moved that the rule proposed by the Board of Examiners of Land Surveyors, Rules and Regulations for the Practice of Land Surveying in West Virginia, lie over until the next meeting. The motion was adopted.

Mr. Tucker allowed Henry Sipe, a Licensed Land Surveyor from Elkins, to address the rule proposed by the Board of Examiners of Land Surveyors. Mr. Sipe distributed a letter pointing out four areas of concern regarding the proposed rule. Bryant W. Bowman, Chairman of the Board of Land Surveyors, asked to speak to the Committee and requested that the rule be considered at the Committee's next meeting and not be laid over again. Mr. Tucker directed Staff to place the proposed rule at the top of the agenda for next month's meeting.

Mr. Harman's motion was adopted.

Mr. Knight asked Lois Graham, Executive Secretary of the Racing Commission, if she knew the intent of the Commissioner regarding the rules proposed by the Racing Commission, Thoroughbred Rules, Series I. Ms. Graham said that the Commissioner is still awaiting an opinion from the Attorney General.

Mr. Knight moved that the proposed rule lie over until the next meeting. The motion was adopted.

Mike Mowery, Committee Counsel, briefly reviewed the rule proposed by the Racing Commission, Greyhound Rules.

Mr. Givens moved that the proposed rule be approved. The motion was adopted.

Ms. Graham reviewed the rule proposed by the Health Department, Immunization Criteria for Transfer Students.

Mr. Knight moved that the proposed rule be approved. The motion was adopted.

Mr. Knight inquired of the Staff as to whether or not Sandy Gilmore was to appear before the Committee as requested in the motion at Monday's meeting. Mr. Mowery stated that Ms. Gilmore was out of town and that he had distributed copies of the rule which the Department of Human Services had filed with the Secretary of State regarding child support guidelines as well as a copy of a memo he had prepared on the necessity for the rule to go through the legislative process. Mr. Knight asked Mr. Mowery to abstract the rule according to the prior motion and to invite Ms. Gilmore to the Committee's next meeting. Mr. Tucker suggested that Staff also contact Silas Taylor, Deputy Attorney General, who advised the Department of Human Services that the rule did not have to go through the legislative rule-making review process.

Rich Hartman, Director of the Administrative Law Division of the Secretary of State's office, distributed copies of the index to Code of State Regulations to Committee members.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: Oct. 27, 1987

TIME: 5:00 p.m.

NAME	Present	Absent	Yeas	Nays
Chambers, Robert "Chuck", Speaker				
Knight, Thomas A.	✓			
Burk, Robert W., Jr.				
Givens, Roy E.	✓			
Pritt, Charlotte	✓			
Stiles, Floyd R.				
Murphy, Patrick H.	✓			
Tonkovich, Dan, President				
Tucker, Larry A.	✓			
Boettner, John "Si"	✓			
Harman, C. N.	✓			
Holmes, Darrell E.	✓			
Hylton, Tracy W.				
Tomblin, Earl Ray				
TOTAL				

RE: \_\_\_\_\_  
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REGISTRATION OF PUBLIC  
AT  
COMMITTEE MEETINGS  
WEST VIRGINIA LEGISLATURE

COMMITTEE: Rule-Making Review Com. DATE: Oct. 27, 1987

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly <i>James C. Humphreys</i>	<i>1900 Wash. SE. E City</i>	<i>West Virginia Department Highways</i>	
<i>Cecelia S. Jappell</i>	<i>1800 Washington St. E. Charleston</i>	<i>WV Department of Natural Resources</i>	
<i>Low Abraham</i>	<i>240 Capitol St. Charleston</i>	<i>WV Racing Commission</i>	
<i>JOHN LUKENS</i>	<i>1600 LAIDLEY TOWN</i>	<i>CHARLES TOWN RACES</i>	<input checked="" type="checkbox"/>
<i>Kay Howard</i>	<i>Health Dept</i>	<i>Charleston</i>	
<i>Jim Farris</i>	<i>" "</i>		
<i>TOM HENDERSON</i>	<i>P.O. Box 1627, Parkersburg</i>	<i>W.V.A.L.S.</i>	
<i>Henry Sipe</i>	<i>Elkins</i>	<i>Board Supervisor</i>	<input checked="" type="checkbox"/>
<i>ARLIE HUBBARD, JR</i>	<i>CHAS.</i>	<i>COL. GAS TRANS.</i>	
<i>Cheryl Davis</i>	<i>Chas.</i>	<i>WV Ins. Dept.</i>	
<i>Mark A. Scott</i>	<i>Chas.</i>	<i>WV Dept. of Energy</i>	
<i>Roger T. Hall</i>	<i>1615 Wash St E Chas. WV</i>	<i>WV Dept of Energy</i>	
<i>BRYANT W. Bower</i> <sup>Bowman</sup>	<i>P.O. Box 6 Alum Creek</i>	<i>BOARD OF SUPERVISORS</i>	
<i>Joe Gollehon</i>	<i>Charleston</i>	<i>Patot Corp.</i>	

(3) Copies of all evidence intended to be relied on by the party submitting the motion.

(b) Upon receipt of the motion the Associate Administrator may make a decision denying the petition or modifying the order in whole or in part.

## PART 387 — MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

Sec.	
387.1	Purpose and scope.
387.3	Applicability.
387.5	Definitions
387.7	Financial responsibility required.
387.9	Financial responsibility, minimum levels.
387.11	State authority and designation of agent.
387.13	Fiduciaries.
387.15	Forms
387.17	Violation and penalty.
	Illustration I — Form MCS 90
	Illustration II — Form MCS 82

**AUTHORITY:** Sec. 30, Pub. L. 96-296, 94 Stat. 793; Sec. 108(b)(5), Pub. L. 96-510, 94 Stat. 2767; 23 U.S.C. 315; 49 CFR 1.48 and 301.60.

**§387.1 Purpose and scope.** This part prescribes the minimum levels of financial responsibility required to be maintained by motor carriers of property operating motor vehicles in interstate, foreign, or intrastate commerce. The purpose of these regulations is to create additional incentives to motor carriers to maintain and operate their vehicles in a safe manner and to assure that motor carriers maintain an appropriate level of financial responsibility for motor vehicles operated on public highways.

**§387.3 Applicability.** (a) This part applies to for-hire motor carriers operating motor vehicles transporting property in interstate or foreign commerce.

(b) This part applies to motor carriers operating motor vehicles transporting hazardous materials, hazardous substances, or hazardous wastes in interstate, foreign, or intrastate commerce.

(c) **Exception.** (1) The rules in this part do not apply to a motor vehicle that has a gross vehicle weight rating (GVWR) of less than 10,000 pounds. This exception does not apply if the vehicle is used to transport any quantity of Class A or Class B explosives, any quantity of poison gas, or large quantity of radioactive materials in interstate or foreign commerce.

(2) The rules in this part do not apply to the transportation of nonbulk oil, nonbulk hazardous materials, substances, or wastes in intrastate commerce except large quantity radioactive materials.

**§387.5 Definitions.** As used in this part - **Accident** - includes continuous or repeated exposure to the same conditions resulting in public liability which the insured neither expected nor intended.

**Bodily injury** — means injury to the body, sickness, or disease including death resulting from any of these.

**Cancellations of insurance** — the withdrawal of insurance coverage by either the insurer or the insured.

He may also, prior to making his decision, order such other proceedings under these rules as he deems necessary and may request additional information from the party making the motion.

**Endorsement** — an amendment to an insurance policy.

**Environmental restoration** — restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage or potential for damage to human health, the natural environment, fish, shellfish, and wildlife.

**Evidence of security** — a surety bond or a policy of insurance with the appropriate endorsement attached.

**Financial responsibility** — the financial reserves (e.g., insurance policies or surety bonds) sufficient to satisfy liability amounts set forth in this part covering public liability.

**For-hire carriage** — transportation of property by motor vehicle except when —

(1) the property is transported by a person engaged in a business other than transportation; and

(2) the transportation is within the scope of, and furthers a primary business (other than transportation) of, the person.

**In bulk** — the transportation, as cargo, of property, except Class A and B explosives and poison gases, in containment systems with capacities in excess of 3,500 water gallons.

**In bulk (Class A and B explosives)** — the transportation, as cargo, of any Class A or B explosive(s) in any quantity.

**In bulk (poison gas)** — the transportation, as cargo, of any poison gas in any quantity.

**Insured and principal** — the motor carrier named in the policy of insurance, surety bond, endorsement, or notice of cancellations, and also the fiduciary of such motor carrier.

**Insurance premium** — the monetary sum an insured pays an insurer for acceptance of liability for public liability claims made against the insured.

**Motor carrier** — a common, contract, or private carrier of property by motor vehicle.

**Property damage** — damage to or loss of use of tangible property.

**Public liability** — liability for bodily injury or property damage and includes liability for environmental restoration.

**§387.7 Financial responsibility required.** (a) No motor carrier shall operate a motor vehicle until the motor carrier has obtained and has in effect the minimum levels of financial responsibility as set forth in §387.9 of this part.

(b)(1) Policies of insurance, surety bonds, and endorsements required under this section shall remain in effect continuously until terminated. Cancellations may be effected by the insurer or the insured motor carrier giving 35 days' notice in writing to the other. The 35 days' notice shall



commence to run from the date the notice is mailed. Proof of mailing shall be sufficient proof of notice.

(2) *Exception.* Policies of insurance and surety bonds may be obtained for a finite period of time to cover any lapse in continuous compliance.

(c) Policies of insurance and surety bonds required under this section may be replaced by other policies of insurance or surety bonds. The liability of the retiring insurer or surety, as to events after the termination date, shall be considered as having terminated on the effective date of the replacement policy of insurance or surety bond or at the end of the 35 day cancellation period required in paragraph (b) of this section, whichever is sooner.

(d) Proof of the required financial responsibility shall be maintained at the motor carrier's principal place of business. The proof shall consist of —

(1) "Endorsement(s) for Motor Carrier Policies of Insurance for Public Liability Under Sections 29 and 30 of the Motor Carrier Act of 1980" (Form MCS-90) issued by an insurer(s); or

(2) A "Motor Carrier Surety Bond for Public Liability Under Section 30 of the Motor Carrier Act of 1980" (Form MCS-82) issued by a surety.

(e) The proof of minimum levels of financial responsibility required by this section shall be considered public information and be produced for review upon reasonable request by a member of the public.

(f) All vehicles operated within the United States by motor carriers domiciled in a contiguous foreign country, shall have on board the vehicle a legible copy, in English, of the proof of the required financial responsibility (Forms MCS-90 or MCS-82) used by the motor carrier to comply with paragraph (d) of this section.

(g) Any motor vehicle in which there is no evidence of financial responsibility required by paragraph (f) of this section shall be denied entry into the United States.

**§387.9 Financial responsibility, minimum levels.** The minimum levels of financial responsibility referred to in §387.7 of this part are hereby prescribed as follows:

**SCHEDULE OF LIMITS  
Public Liability**

Type of carriage <sup>1</sup>	Commodity transported	July 1, 1981	Jan. 1, 1985
(1) For-hire (In interstate or foreign commerce).	Property (nonhazardous).	\$ 500,000	\$ 750,000
(2) For-hire and private (In interstate, foreign, or intrastate commerce).	Hazardous substances, as defined in 49 CFR 171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Class A or B explosives, poison gas (Poison A), liquefied compressed gas or compressed gas; or highway route controlled quantity radioactive materials as defined in 49 CFR 173.465.	1,000,000	5,000,000
(3) For-hire and private (In interstate or foreign commerce: in any quantity) or (In intrastate commerce: in bulk only).	Oil listed in 49 CFR 172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in (2) above or (4) below.	500,000	1,000,000
(4) For-hire and Private (In interstate or foreign commerce).	Any quantity of Class A or B explosives; any quantity of poison gas (Poison A); or highway route controlled quantity radioactive materials as defined in 49 CFR 173.465.	1,000,000	5,000,000

NOTE.—The type of carriage listed under numbers (1), (2), and (3) apply to vehicles with a gross vehicle weight rating of 10,000 pounds or more. The type of carriage listed under number (4) applies to all vehicles with a gross vehicle weight rating of less than 10,000 pounds.

**§387.11 State authority and designation of agent.** A policy of insurance or surety bond does not satisfy the financial responsibility requirements of this part unless the insurer or surety furnishing the policy or bond is —

(a) Legally authorized to issue such policies or bonds in each State in which the motor carrier operates; or

(b) Legally authorized to issue such policies or bonds in the State in which the motor carrier has its principal place of business or domicile, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be

served in any proceeding at law or equity brought in any State in which the motor carrier operates; or

(c) Legally authorized to issue such policies or bonds in any State of the United States and eligible as an excess or surplus lines insurer in any State in which business is written, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

**§387.13 Fiduciaries.** The coverage of fiduciaries shall attach at the moment of succession of such fiduciaries.

**§387.15 Forms.** Endorsements for policies of insurance (Illustration I) and surety bonds (Illustration II) must be in the form prescribed by the BMCS and approved by the OMB. Endorsements to policies of insurance and surety bonds shall specify that coverage thereunder will remain in effect continuously until terminated, as required in §387.7 of this part. The endorsement and surety bond shall be issued in the exact name of the motor carrier.

**§387.17 Violation and penalty.** Any person (except an employee who acts without knowledge) who knowingly violates the rules in this part shall be liable to the United States for civil penalty of no

more than \$10,000 for each violation, and if any such violation is a continuing one, each day of violation will constitute a separate offense. The amount of any such penalty shall be assessed by the Director, Bureau of Motor Carrier Safety, by written notice. In determining the amount of such penalty, the Director shall take into account the nature, circumstances, extent, the gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

*file*

COMMENTS ON LAND SURVEY REGULATIONS PROPOSED JULY 31, 1987

1. The proposed regs provide for "increased" fees in three places if raised by the legislature, namely Sections 5.02, 5.04 and 6.01. To provide for a possibility that fees might want to be reduced at some future time, the word "changed" should be substituted for the word "increased" in those three places.

2. In Section 5.04 the proposed regs refer to Section 7.02. As former Section 7.02 has been deleted from the current proposed regs, the reference to 7.02 should be deleted.

3. Sections 6.01, 9.01 9.02 and 9.03 are copied verbatim from the the Code. It would appear unnecessary and improper to incorporate three pages of the Code itself as regulations. To do so might require the regs to be changed every time the Code was amended.

4. Section 10.04 provides for giving special examinations in certain cases. I am unaware of the necessity for this and am not sure if the Code provides for it in Section 30-13A-5 (e).

October 27, 1987.

*F. Henry Sipe*

F. Henry Sipe LLS  
Elkins, W.Va.