STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
Office of the Secretary of State
Edward S. Inman, III, Secretary of State

Rules and Regulations Filing Form

1. Name and Address of Agency
Rhode Island Division of Public Utilities and Carriers
89 Jefferson Blvd. Warwick

2. Title of These Rules and Regulations
Fuel Price Emergency Surcharge Program Rules
For Towers, Taxicabs and Limited Public Motor Vehicles, Water Carriers

3. Statutory Source of Authority to Issue These Rules
R.I.G.L. 42–35–3

4. Purpose of New Rules and Regulations or Ammendments
Prescribe rules for the implementation of an emergency fuel surcharge for regulated taxicabs, limited public motor vehicles and water carriers of passengers (ferries).

5. Type of Filing
- ☐ A. Emergency
- ☐ B1. Amendment 42–35–3
- ☑ B2. Adoption 42–35–3
- ☐ B3. Repeal 42–35–3
- ☐ C. Technical Revision
- ☐ D. Refile 42–35–4.1

Date of Public Notice: 08/03/2001
Date of Public Hearing: 08/22/2001

6. Documents Filed
(all filings must include entire regulation)
- ☑ A. New Rule and Regulation
- ☐ B. Amended Rules and Regulations
- ☐ C. Technical Revision
- ☐ D. Refiling Existing Regulations
- ☐ E. Emergency
- ☐ F. Repealed

**If yes to B1 or C in section 5, identify the amended sections or revision(s) and the original date of filing:*

7. Agency Code

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8. Certification
I hearby certify that the attached rules and regulations were adopted in accordance with the Administrative Procedures Act (42–35) and that they are true copies of this Department, attest,

Name: Terrence E. Meres

Title: Rules Coordinator

John Spurto, Jr.
Notary Public Comm. Exps. 8/14/05

Subscribed and sworn before me this 5Th day of April, 2002

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Fuel Price Emergency Surcharge Program Rules

Towers
Taxicabs and Limited Public Motor Vehicles
Water Carriers

Introduction:

Under R.I.G.L. §42-35-3, an agency promulgating new rules or regulations must (a) give at least thirty (30) days notice of its intended action; (b) afford all interest persons reasonable opportunity to submit data, views or arguments, either orally or in writing; (c) demonstrate the need for the adoption of the rule; and (d) determine whether such action would have a significant adverse economic impact on small business or any city or town.

The Division of Public Utilities and Carriers (the "Division") endeavored to fulfill all of the requirements set forth in R.I.G.L. §42-35-3. However, the circumstances under which this rule was promulgated, prevented the Division from complying with these requirements precisely.

On July 13, 2001, The Rhode Island General Assembly passed Senate Bill 01-0978, as amended, which was enacted as Public Law Chapter 307.

This law, which, in part, amends R.I.G.L. §39-12-13, requires the Administrator of the Division of Public Utilities and Carriers to

> "...implement a gasoline price emergency surcharge program whereby a person licensed under this chapter to perform 'drive away-tow away operations' shall be permitted to impose and collect a surcharge, not to exceed fifty cents ($.50) per towing job, during periods when it is determined that the average price of gasoline in this state exceeds one dollar and fifty cents ($1.50) per gallon."

In addition, this law, amends R.I.G.L. §39-14-2.2, and requires the Administrator of the Division of Public Utilities and Carriers to

> "...implement a gasoline price emergency surcharge program whereby a taxicab or limited public motor vehicle licensed under this chapter shall be permitted to impose and collect a surcharge, not to exceed fifty cents ($.50) per fare, during periods when it is determined that the average price of gasoline in this state exceeds one dollar and fifty cents ($1.50) per gallon."

This law also amends R.I.G.L. §39-12-13, and requires the Administrator of the Division of Public Utilities and Carriers to

> "...implement a diesel price emergency surcharge program whereby a person licensed under R.I.G.L. section 39-3-3, 39-3-3.1, or 39-3-4 to perform as a

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'commom (sic) carrier of persons and/or property upon water between termini within the state' shall be permitted to impose and collect a surcharge, not to exceed fifty cents ($.50) for each passenger and vehicle carried, during periods when it is determined that the average retail price of diesal (sic) fuel in this state exceeds one dollar and twenty cents ($1.20) per gallon."

This law also mandated the Division to implement fuel price emergency surcharge programs for towers, taxicab and limited public motor vehicle operators, and water carriers, before September 1, 2001. Such requirement is equivalent to the required demonstration of need under R.I.G.L. §42-35-3(a)(3) and supercedes the requirement of an economic impact analysis as set forth in R.I.G.L. §42-35-3(3)(a)(4).

The Division published notice in the Providence Journal, on August 3, 2001, informing the public that the Division would be conducting public hearings on these matters on August 22 and 23, 2001. The duly noticed public hearings fulfilled the requirements of R.I.G.L. §42-35-3(a)(2).

After carefully considering all testimony and evidence presented at those hearings, the Division, on August 30, 2001, issued Orders 16699 (relating to Towers), 16700 (relating to Taxicabs and Limited public motor vehicles) and 16701 (relating to water carriers,) on August 30, 2001.

The aforementioned Orders implemented the following rules for the implementation of fuel price emergency surcharge programs:

I. In re: Towers.

1. The average cost of regular gasoline in Rhode Island will be determined by the Division by averaging the Rhode Island prices posted at www.aaasne.com on the first and third Wednesday of each month.
2. When the average cost of regular gasoline in Rhode Island exceeds one dollar and fifty ($1.50) cents per gallon, the Division will authorize a surcharge. The surcharge will be fifty ($0.50) cents per towing job.

3. The average cost of diesel fuel in Rhode Island will be determined by the Division by averaging the Rhode Island prices posted at www.aaasne.com on the first and third Wednesday of each month.

4. When the average cost of diesel fuel in Rhode Island exceeds one dollar and fifty ($1.50) cents per gallon, the Division will authorize a surcharge. The surcharge will be fifty ($0.50) cents per towing job.
5. On the fourth Monday of each month preceding a month in which the Division will authorize a surcharge, the Associate Administrator of the Motor Carrier's Section of the Division will issue an Administrative Order stating:
    a) The cost of regular gasoline in Rhode Island as posted on www.aaasne.com on the first and third Wednesday of each month;
    b) The average of the cost of regular gasoline in Rhode Island, based on these two data points; and,

c) The cost of diesel fuel in Rhode Island as posted on www.aaasne.com on the first and third Wednesday of each month;
d) The average of the cost of diesel fuel in Rhode Island, based on these two data points; and,
e) The authorization of a surcharge for regular gasoline and/or diesel fuel powered tow trucks for the following calendar month.

6. The Associate Administrator of the Motor Carrier's Section of the Division will cause this administrative order to be posted on the Division's web-site by the fourth Monday of each month preceding a month in which the Division will issue a surcharge, where it will remain at least until the expiration of the month to which it relates.

7. The Associate Administrator of the Motor Carrier's Section of the Division will cause a message to be recorded, indicating the authorization of a surcharge for regular gasoline fueled tow trucks and diesel fueled tow trucks, which will be accessible by telephone by the fourth Monday of each month preceding a month in which the Division will issue a surcharge, where it will remain at least until the expiration of the month to which it relates.

8. In those months when a surcharge is authorized, all tow trucks which operate during that month must contain a conspicuously placed notice of the fuel surcharge, which specifically identifies the type of fuel the truck uses. The Associate Administrator of the Motor Carrier's Section of the Division will make sample notices available.
9. The authorization of the surcharge will expire on the last day of the calendar month for which it is authorized.

10. The application of the surcharge is voluntary. However, if a person or entity elects to implement the surcharge it must be applied non-discriminatorily.

II. In re: Taxicabs and Limited Public Motor Vehicles.

1. The average cost of regular gasoline in the State of Rhode Island will be determined by the Division by averaging the cost of regular gasoline in the state as posted under Rhode Island at www.aaasne.com on the first and third Wednesday of each month.

2. When the average cost of regular gasoline in the state exceeds one dollar and fifty ($1.50) cents per gallon, the Division will authorize a surcharge. The surcharge will be twenty-five ($0.25) cents per fare when the meter shows a fare of $10.00 or less. The surcharge will be fifty ($0.50) cents per fare when the meter shows a fare of more than $10.00.

3. On the fourth Monday of each month preceding a month in which the Division will authorize a surcharge, the Associate Administrator of the Motor Carrier's Section of the Division will issue an Administrative Order stating:
   a) The cost of regular gasoline in the state as posted under Rhode Island fuel prices on the AAA of Southern New England's web-site on the first and third Wednesday of each month;
   b) The average of the cost of regular gasoline based on these two data points; and,

c) The authorization of a surcharge for the following calendar month.

4. The Associate Administrator of the Motor Carrier's Section of the Division will cause this administrative order to be posted on the Division's web-site by the fourth Monday of each month preceding a month in which the Division will authorize a surcharge, where it will remain at least until the expiration of the month to which it relates.

5. The Associate Administrator of the Motor Carrier's Section of the Division will cause a message to be recorded, indicating the authorization of a surcharge by the fourth Monday of each month preceding a month in which the Division will authorize a surcharge.

6. In those months when a surcharge is authorized, all taxicabs and limited public motor vehicles must conspicuously place a notice of the surcharge in every vehicle which operates during that month. The Associate Administrator of the Motor Carrier's Section of the Division will make sample notices available.

7. The authorization of the surcharge will expire on the last day of the calendar month for which it is authorized.

8. The application of the surcharge is voluntary. However, if a person or entity elects to implement the surcharge it must be applied non-discriminatorily to all persons carried.

III. In re: Water Carriers.

Available To:

A person or entity licensed under Rhode Island General Laws §§39-3-3, 39-3-3.1 or 39-3-4 to perform as a "common carrier of persons and/or property upon water between termini within the state."

Application of surcharge:

If a person or entity is authorized to implement a surcharge it must be applied non-discriminatorily to all persons and vehicles carried.

Application for authorization of a surcharge:

When the average retail cost of marine diesel in Rhode Island exceeds one dollar and twenty ($1.20) cents per gallon, a water carrier may request authorization to impose a surcharge.

A water carrier requesting authorization to impose a surcharge must demonstrate a nexus between the actual price that it has paid per gallon of marine diesel and its operations costs over the thirty (30) day period on which it is basing its request for a surcharge.

The water carrier must submit actual invoices, including a price per gallon assessment, for the marine diesel it purchased during the period, the number of passengers and vehicles it carried, the number of trips it made, and the number of gallons of marine diesel it used per

trip. This information must be delivered to the Division by the fourth Tuesday of the month before the calendar month for which the water carrier is requesting authorization to impose a surcharge.

The Division will notify the entity within five (5) business days after receipt of all submitted data as to whether a surcharge may be collected, and what amount of surcharge the water carrier is authorized to collect.

If the water carrier chooses to impose the surcharge, it must do so no later than three (3) days from the date on which it was notified that the Division had authorized the imposition of a surcharge.

The authorization of the surcharge will expire thirty (30) days after the water carrier has begun collecting the surcharge.

Amount of surcharge:

The amount of the surcharge will be determined based on evidence presented by the water carrier. However the amount of the surcharge will not exceed fifty ($0.50) cents per person or vehicle carried.

The following method will be used to calculate the average retail price of marine diesel in Rhode Island:

The average retail price of marine diesel in Rhode Island will be determined by the Division based on the retail price of "over the road" diesel which is posted on the Rhode Island portion of the AAA of Southern New England's web-site on the first and third Wednesday of each month.

The Division will determine the retail price of marine diesel on each of those days by first subtracting from this price of "over the road" diesel the amount of federal and state taxes which are assessed on each gallon which are not assessed on marine diesel[1]. Then, the Division will adjust that figure to include the Rhode Island sales tax that is assessed on marine diesel[2].

Notification to regulated water carriers of activation of program:

1. On the fourth Monday of each month preceding a month in which the Division will announce the activation of the program, the Associate Administrator of the Motor Carrier's Section of the Division will issue an Administrative Order stating:
    a) The retail price of marine diesel in Rhode Island on the first and third Wednesday of each month as determined by the Division using the above stated method;

[1] Currently, twenty-four and four-hundredths ($0.244) cents in federal taxes and twenty-eight ($0.28) cents in Rhode Island taxes are assessed on each gallon.
[2] Currently, Rhode Island sales tax is assessed at a rate of seven (7%) percent.

b) The average retail price of marine diesel in Rhode Island, based on these two data points; and,

c) The activation of the program for the following calendar month.

2. The Associate Administrator of the Motor Carrier's Section of the Division will cause this administrative order to be posted on the Division's web-site on the day it is issued, where it will remain at least until the expiration of the month to which it relates.
3. The Associate Administrator of the Motor Carrier's Section of the Division will cause a message, announcing this administrative order, to be recorded and accessible by telephone on the day such administrative order is issued.

Notification to customers of surcharge:

A water carrier who receives Division authorization to implement a surcharge must conspicuously post a notice stating that a marine diesel surcharge is in effect pursuant to R.I.G.L. §39-12-13(c) which must also state the amount of the surcharge that has been authorized. This notice must also state the date on which it began collecting the surcharge and the date on which it will stop collecting the surcharge. The Associate Administrator of the Motor Carrier's Section of the Division will make sample notices available.

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