

## **R2-71 DEVIATIONS BY MOTOR CARRIERS OF PASSENGERS FROM AUTHORIZED REGULAR ROUTES**

(a) Applicability of Rule. - Subject to all other rules and regulations of the Commission, this rule is hereby found to be just and reasonable and adopted and made applicable so far as pertinent to the operations within the State of North Carolina under authority of certificates issued by the Commission to all motor carriers of passengers.

(b) Definitions. - As used in this rule, the following words and terms shall be construed to have meanings as follows:

- (1) Designated Highway. - A highway identified for record purposes by a number, letter, or name such as a turnpike, thruway, expressway, freeway, or as an "unnumbered county or state road," or in some other like manner.
- (2) Redesignated Highway. - A highway to which there has been assigned a new designation, either number, letter, name or other identifying reference, in lieu of a designation previously assigned thereto.
- (3) Relocated Highway. - A highway which has been constructed in a new location in lieu of an existing highway or a segment or segments thereof, and which is intended to replace such existing highway or a segment or segments thereof for public use.
- (4) Regular Service Route. - A designated highway or series of highways over which a regular route motor carrier is specifically authorized to operate with provision in the carrier's certificate for service at terminal, intermediate, or off-route points as specified therein, as distinguished from an alternate route as defined in subdivision (5) of this subsection. Such regular service route may be described as a single route in a carrier's authority or as two or more routes which are combined by joinder at a common service point or points.
- (5) Alternate Route. - A designated highway or series of highways lying wholly within the State of North Carolina over which a regular route motor carrier may operate in the interest of economy or convenience or to avoid congested areas, dangerous grades, sharp curves, or other hazards on an authorized regular service route, deviating from a point on such authorized regular service route and returning at some other point on the same regular service route.
- (6) By-Pass Route. - A route designated by proper authority for the general purpose of avoiding traffic congestion in a heavily populated area or areas.
- (7) Detour Route. - The highway or highways designated by proper authority for public use while the highway or highways normally used between specified points is, or are, temporarily closed or restricted, as by reduced weight limits, or for repairs or constructions, or for any other reason.
- (8) Deviation Route. - Any of the routes used by a motor carrier under authority of this rule.
- (9) Point of Deviation. - The point where a motor carrier using, or proposing to use, an alternate route, as defined in subdivision (5) of this subsection or any other deviation route, under authority of this rule, departs from, or proposes to depart from, its specifically authorized regular service route.
- (10) Point of Return. - The point where a carrier using, or proposing to use, an alternate route, as defined in subdivision (5) of this subsection or any other deviation route, under authority of this rule returns to, or proposes to return to, its specifically authorized regular service route.
- (11) Deadheading Empty Vehicles. - The movement of empty vehicles incidental to either prior or subsequent transportation in intrastate commerce.

(c) Authority for Deviations by Carriers from Operating Authorities in Described Circumstances. - Subject to the special rules, requirements, and conditions governing particular situations hereinafter stated, and subject also, when reference is made thereto, to the general conditions and requirements set forth in subsection (d) of this rule, carriers holding operating authority from this Commission, are hereby authorized, in the circumstances hereinafter described, to deviate from their specifically authorized regular service routes, and otherwise to depart from their specific authority, in the circumstances and to the extent hereinafter stated without obtaining other prior specific authority therefor:

- (1) Redesignated Highways. - Where a carrier is authorized to operate over a specified highway and thereafter that highway or a segment thereof without relocation is redesignated, the carrier in order to facilitate appropriate corrections in its certificate and changes in the records of the Commission, shall so advise the Commission, by letter, giving sufficient information regarding the old and new designation, the points between which the highway designation has been changed, and the place or places where such highway is referred to in the carrier's authority. The new designation of the highway will be shown in the carrier's certificate when the Commission has occasion to reissue it.
- (2) Relocated Highway and Abandonment of Old Highway. - Where a carrier is authorized to operate over a specified highway and thereafter that highway or a segment or segments thereof are relocated, and where the old highway or any segment thereof is no longer maintained for use by the general public, the carrier

may operate over such relocated highway or relocated segment or segments under its authority without notice to the Commission of such change, and in so doing may serve as intermediate or off-route points, on or from, the new highway, those points previously authorized to be served as intermediate or off-route points on or from the old highway, provided there is no other change in the service previously rendered in connection with operations over the old highway.

(3) Relocated Highway and Maintenance of Old Highway under New Designation.

- a. Where a carrier is authorized to operate over, and to serve points on, a specified highway and thereafter that highway or segment or segments thereof are relocated, but the old highway is maintained for use by the general public under a new designation, the carrier shall not, without first obtaining specific authority from the Commission, transfer its operations to the relocated highway or relocated segments thereof, but must continue to operate over the old highway and advise the Commission of the change in the designation thereof, furnishing the same information as required in connection with subdivision (1) of this subsection. The new designation of the highway will be shown in the carrier's certificate when the Commission has occasion to reissue it.
- b. Where a carrier is authorized to operate over a specified highway, but is not authorized to serve any point on such highway, and thereafter such highway or a segment or segments thereof are relocated, but the old highway is maintained for use by the public under a new designation, the carrier may, if it so desires, use as its operating route only the new or relocated highway, provided, it promptly advises the Commission of such change, giving descriptions of the old and new highways between the points involved and the other information required by subdivision (1) of this subsection.

(4) By-Pass Routes. - Where a by-pass route has been designated to be used for the purpose of avoiding a congested area or areas, a carrier having an authorized regular route, or alternate route, through such area or areas, which desires to use such by-pass route as an alternate route, may do so subject to the general conditions and requirements set forth in subsection (d) of this rule.

(5) Detour Routes. - When a federal, state, county or other government official, in the exercise of his powers, temporarily prohibits the use by a regular route carrier of an authorized service route or a segment or segments thereof, or when operations by a regular route carrier over an authorized service route or a segment or segments thereof are temporarily obstructed or rendered unsafe by any cause over which the carrier has no control, or when a highway or a segment thereof which comprises all or any portion of a carrier's authorized regular service route is, by appropriate authority, made subject to weight or other restrictions which temporarily prevent the operation of the equipment regularly and normally used by the carrier over that route, and when, because of any one or more of the foregoing, a detour route has been officially designated by proper authority for public use in lieu of the closed, obstructed, unsafe, or restricted highway, the carrier may use such officially designated detour route in lieu of the temporarily closed, obstructed, unsafe, or restricted highway, provided (i) that no service is rendered at any point the carrier is not specifically authorized to serve, (ii) that, so far as suitable detour routes are available, the carrier continues to furnish reasonable and adequate service at all points it is authorized to serve, and (iii) that if use of the detour route will continue for more than 30 days and if the distance over the detour route is less than 90 percent of the distance over the authorized service route, a statement shall be obtained from the governmental authority exercising control over the highways involved and filed by the carrier with the Commission, together with a notice in writing of its intent to use such detour route under authority of this subdivision, which notice shall show the nature of the condition which prevents operation over the authorized route, the period of time it is anticipated that the service route will not be usable and proper identification of the official detour route. Where a detour route is used under the provisions of this subdivision, the carrier shall discontinue operations over such route and resume operations over its authorized service route immediately upon removal of the condition which necessitated use of the detour route.

(6) Alternate Routes for Operating Convenience Only.  Where a regular route motor carrier is authorized to operate over a regular service route and there is wholly within the State of North Carolina another highway which extends in the same general direction as such regular service route and affords a reasonably direct and practicable route between any two points on such regular service route, it may, subject to the general conditions and requirements set forth in subsection (d) of this rule, use such other highway as an alternate route for operating convenience only, with no service at any intermediate point thereon, and with no service at the termini except as otherwise authorized, in the manner and to the extent, as follows:

- a. Superhighways as alternate routes. □ Where a regular route motor carrier is authorized to operate over a regular service route and there is extending in the same general direction as such service route, and wholly within the State of North Carolina, a so-called superhighway, turnpike, thruway, freeway, or expressway, which is substantially the same in purpose, design, and construction as the National System of Interstate Highways, such superhighway, turnpike, thruway, freeway, or expressway and such additional highways as it may be necessary to use in traveling by the shortest practicable route between the carrier's authorized regular service route and the superhighway, turnpike, thruway, freeway, or expressway may be used as an alternate route between two points on the carrier's regular service route regardless of the ratio of the distance over such alternate route between the point of deviation and the point of return to the distance over the carrier's regular service route between the same points, and regardless of whether or not such alternate route crosses or intersects or passes over or under, any other specifically authorized service or alternate routes of the carrier at any place intermediate to the points of deviation and return: Provided, that use of the alternate route will not materially change the competitive situation between such carrier and any other.
- b. Highways other than superhighways. - Where a regular route motor carrier is authorized to operate over a regular service route and there is extending in the same general direction as such service route and wholly within the State of North Carolina, another highway which is not a so-called superhighway, turnpike, thruway, freeway, or expressway, the carrier may use such other highway as an alternate route for operating convenience only, provided (i) that the distance over such alternate route between the points of deviation and return is not less than 90 percent of the distance over the authorized regular service route between the same points, and (ii) that such alternate route does not duplicate, or involve operations over, any part of any authorized service route described in the carrier's certificate and does not cross or otherwise intersect any authorized service route of the carrier or pass through any authorized off-route point or any part of the commercial zone of any authorized point either off-route or other, except at the points of deviation and return.
- c. For the purpose of this paragraph:
  1. The crossing of another route by overpass or underpass shall be deemed to be a crossing or an intersection except in those instances where a transfer of a vehicle from one highway to the other at a point of such underpass or overpass is physically impossible because of the absence of any connecting access roads.
  2. The prohibition against the inclusion of any alternate route used under this paragraph of any part of any authorized service route of the carrier shall not be deemed to prohibit the inclusion of an alternate route used under this paragraph, of a segment of the specifically authorized alternate route, provided, the distance over the alternate route used under this paragraph is computed from point of deviation from a service route to the point of return to the same service route, including the embraced segment of the specifically authorized alternate route.
  3. The prohibition against the crossing by any alternate route used under this paragraph of any authorized service route shall not be deemed to prohibit the crossing of a specifically authorized alternate route.
- (7) Deadheading Empty Vehicles. - A motor carrier may deadhead empty vehicles over any highway, the use of which is necessary or desirable to accomplish a reasonably direct and practicable movement thereof between any two points incidental to either prior or subsequent transportation in intrastate commerce.
- (d) General Conditions and Requirements. - Where reference is made thereto in subsection (c) of this rule governing particular situations, the following general conditions and requirements shall be applicable and shall be complied with as a condition to the granting of authority herein for the particular deviation:
  - (1) Any proposed deviation under this rule, except one over an alternate route under subsection (c)(6) of this rule, may be instituted by a carrier without prior notice to the Commission.
  - (2) If a deviation proposed under this rule, other than one under subsection (c)(6) of this rule, is to continue for not more than 30 days, no notice to the Commission concerning it is required.
  - (3) If any deviation, other than one over an alternate route under subsection (c)(6) of this section, is to continue for more than 30 days, the carrier shall, not later than one day after the deviation operations are begun,

- give notice thereof to the Commission and others in the manner provided in subdivision (5) of this subsection, giving the information therein required.
- (4) When an alternate-route deviation under subsection (c)(6) of this rule is proposed, the carrier shall give prior notice thereof to the Commission and to others in the manner provided in subdivision (5) of this subsection. A summary of such notice must be prepared by the carrier and published in a newspaper of general circulation in the area involved and operation over such deviation route shall not, under any circumstances, be commenced until the elapse of 30 days after the date of such publication and if a protest against any such proposed deviation is filed within such 30-day period, the proposed deviation shall not be commenced until the Commission has considered and overruled the protest and found that the proposed deviation meets the requirements of, and is permissible under, this rule.
- (5) If notice of a deviation proposed under this rule is required by either subdivision (3) or (4) of this subsection, it shall contain:
- a. A complete description by highway designations of the carrier's authorized service route between the point of deviation and the point of return, including authorized off-route points;
  - b. A complete description by highway designations of its proposed deviation route between the point of deviation and the point of return;
  - c. A complete description by highway designations of all segments of other specifically authorized service and alternate routes, including authorized off-route points, of the carrier adjacent either to the authorized service route from which deviation is to be made or to the proposed deviation route; and
  - d. Where the deviation is subject to a comparative distance limitation, the distance (actual mileage) over any proposed deviation route and also over the authorized regular service route between the points of deviation and return shall be stated. Such distances shall be computed not from municipal or commercial zone limits, but from actual junction points of the carrier's specifically authorized service route and the proposed deviation route, whether such junction points be within or without city limits, and shall include that portion of any specifically authorized alternate route which is embraced in any proposed alternate deviation route.
- (6) The notice described in subdivision (5) of this subsection shall be accompanied by a map on which there shall be shown so much as may be practicable of the information required by that subdivision and in case of an alternate-route deviation under subsection (c)(6)(a) or (b) of this rule, such map must clearly show in different colors the routes involved and authorized off-route points, including in each instance the official highway designations of the authorized regular service route, from which deviation is proposed, and other service routes of the carriers, if any, in the area, also the highway designations of the proposed deviation route and other specifically authorized alternate routes, if any, in the area, and the distances (actual mileage) between the points of deviation and return (the actual junctions) over the regular service route from which deviation is proposed and over the deviation route.
- (7) The notice of an alternate-route deviation required by subdivision (4) of this subsection shall also contain a statement to the effect that the carrier filing it will continue to furnish reasonable and adequate service from and to all authorized points on its regular service route; that it will not serve any intermediate point or points on such deviation route; and that deviation from its authorized regular service route as proposed, will not enable it to render a materially different service than that rendered over its regular service route or enable it to engage in transportation between any points between which operation is not practicable over its regular service route because of the circuitry or otherwise.
- (8) The notice of any deviation required by subdivision (3) or (4) of this subsection shall also contain a statement indicating that a copy thereof, accompanied by a copy of the map required by subdivision (5) of this subsection, has been served by mail or in person on the following, listed by names and addresses in each instance:  
All carriers which, after diligent inquiry, have been found to be competitive with the carrier's proposed operation over the deviation route.
- (9) Where a notice of a deviation or proposed deviation is required by subdivision (3) or (4) of this subsection and such notice is not timely filed and served on competing carriers and others as required by subdivision (8) of this subsection, any deviation operation begun prior to the actual filing and service of notice is unauthorized and where a notice though filed is defective for want of required information or insufficient service on competing carriers, or for any other reason, it shall be subject to rejection and if rejected, any deviation operation covered thereby which has been begun, shall immediately be discontinued and shall not

be resumed until a sufficient notice has been filed and served on interested parties as required by subdivision (8) of this subsection, and the carrier has been notified by the Commission that the operation may be resumed.

- (10) The right to operate over a deviation route which is subject to the general conditions and requirements set forth in this subsection shall continue only so long as the carrier is performing, when required by this rule, reasonable and adequate service over specifically authorized routes, and only so long as the conditions set forth in this rule are observed.

(e) Protest and Replies Thereto. - Any person who considers that he is or will be adversely affected by a deviation described or proposed in any notice filed under subsection (d) of this rule may file at any time a protest against such deviation. Such protest may be in the form of a letter, but shall contain a recital of facts and information showing protestant's interest and supporting his opinion that the facts and circumstances upon which the right to deviate depends, are nonexistent, or have been incorrectly described, or that the carrier filing the deviation notice has not met the applicable conditions and requirements, and shall show that a copy thereof has been furnished to the carrier filing the notice. If such a protest is filed, the carrier which has filed the deviation notice may reply thereto within 20 days, after which the Commission will give due consideration to all facts of record or otherwise available to it in the particular case, including the notice and protest, and will make a determination in accordance therewith.

(f) Commission May Forbid Deviation. - The Commission may forbid the commencement of operations over any deviation route under this rule, or require discontinuance of any such operations already commenced, whenever, in its opinion, such deviation results in inadequate service over specifically authorized routes, or is unreasonable, undesirable, or otherwise repugnant to the public interest, or is not in harmony with the general purpose and intent of the rules and regulations established by this rule.