

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

FILED
2003 AUG -1 P 3:42

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #3

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Department of Transportation, Division of Highways TITLE NUMBER: 157

CITE AUTHORITY §§17-1, 2A, 4, 16, 20, 22 and 23

AMENDMENT TO AN EXISTING RULE: YES NO


IF YES, SERIES NUMBER OF RULE BEING AMENDED: 6

TITLE OF RULE BEING AMENDED: Use of State Road Rights of Way and Adjacent Areas

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Fred VanKirk, P.E.
Secretary/Commissioner of Highways

Division of Highways, Series 6
Use of State Road Rights of Way and Adjacent Areas
Agency Approval of a Proposed Rule and Filing with the
Legislative Rule-Making Review Committee
June 17, 2003

SUMMARY OF PROPOSED RULE:

Series 6 provides general rules pertaining to the use of state road rights of way and adjacent areas. This rule includes: references to the guidelines, manuals and standards followed by Highways for licensing and regulating outdoor advertising and salvage yards, and for regulating roadside memorial markers.

STATEMENT OF CIRCUMSTANCES:

This amendment of an existing legislative rule is being filed to address the following:

1. the need to revise §157-6-2, Definitions;
2. the need to increase various outdoor advertising permit and licensing fees (in §157-6-7);
3. the need to protect the Division against returned checks used to pay licensing or permit fees (§157-6-7.4.a.);
4. the need to revise requirements associated with applying for outdoor advertising permits and licenses (§157-6-7.4.c. and §157-6-8.1.);
5. the need to revise size requirements and restrictions for outdoor advertising (§157-6-7.8.b.);
6. the need to revise spacing requirements for outdoor advertising (§157-6-7.8.c.);
7. the need to revise lighting requirements for outdoor advertising (§157-6-7.8.d.);
8. the need to add requirements for off-premises change message signs (CMS) (§157-6-7.8.e.);
9. the need to add certain exceptions to this rule (§157-6-7.9.);
10. the need to revise requirements associated with the Permit Identification Number on outdoor advertising (§157-6-7.11.);
11. the need to revise measurement requirements associated with outdoor advertising (§157-6-7.13.);
12. the need to amend the General Restrictions associated with outdoor advertising (§157-6-7.14.);
13. the need to revise requirements in the section entitled "Control of Outdoor Advertising Along Federal-Aid Interstate and Defense Highways" (§157-6-7.15.);
14. the need to raise the Salvage Yard Permit Fee from \$200 per year to \$300 per year (§157-6-8.1.).

Item 1 is to clarify terms used in the subsequent revisions of this rule.

Item 2 is to reduce the deficit under which the outdoor advertising program currently operates. The program normally incurs \$570,000 per year in expenses for inspections and other operating costs while generating \$135,000 per year in revenue, resulting in an annual deficit of \$435,000. With the licensing and permit fee changes enacted in this legislative rule change, the Department expects to reduce the annual deficit to \$161,000.

Item 3 is to provide the Division with some recourse, should a check (received for outdoor advertising permits or licensing fees) be returned by the bank.

Division of Highways, Series 6
Use of State Road Rights of Way and Adjacent Areas
Agency Approval of a Proposed Rule and Filing with the
Legislative Rule-Making Review Committee (Page 2)

Item 4 is needed to give the Division greater efficiency and more control in the outdoor advertising application review and permit issuance process.

Items 5 through 12 are needed to give the Division greater efficiency and control in the regulation of outdoor advertising, and to provide better safety to the driving public.

Item 13 is to bring the Division into compliance with federal regulations.

Item 14 is needed to contribute \$41,900 toward offsetting the expense of outdoor advertising and salvage yard inspection activities.

FISCAL NOTE FOR PROPOSED RULES

June 17, 2003

Rule Title: Series 6, Use of State Road Rights of Way and Adjacent Areas

Type of Rule: Legislative Interpretive Procedural

Agency Division of Highways
 Address Building 5, 1900 Kanawha Boulevard, East,
Charleston, West Virginia 25305-0430

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Personal Services	0.00	0.00			
Current Expense	0.00	0.00			
Repairs & Alterations	0.00	0.00			
Equipment	0.00	0.00			
Other	0.00	0.00			
Estimated Total Cost	0.00	0.00	0.00	0.00	0.00

2. Explanation of above estimates:

These rule changes do not impact any annual or fiscal year costs, but will raise annual and fiscal year revenues associated with the outdoor advertising and salvage yard licensing programs.

3. Objectives of this rule:

This amendment of an existing legislative rule is being filed to address the following:

- a. the need to revise §157-6-2, Definitions to clarify terms used in the subsequent revisions of this rule;
- b. the need to increase various permit and licensing fees for outdoor advertising (in §157-6-7.) to reduce the deficit under which the outdoor advertising and salvage yard inspection program currently operates;
 - the program normally incurs approximately \$570,000.00 per year in expenses for inspections and other operating costs while generating \$135,000 per year in revenue, resulting in an annual deficit of \$435,000;
 - with the licensing and permit fee changes enacted in this legislative rule change, the Division expects to reduce the annual deficit to \$161,000;
- c. the need to protect the Division against returned checks used to pay licensing or permit fees (§157-6-7.4.a.);

- d. the need to revise requirements associated with applying for outdoor advertising permits and licenses (§157-6-7.4.c.);
- e. the need to revise size requirements and restrictions for outdoor advertising (§157-6-7.8.b.);
- f. the need to revise spacing requirements for outdoor advertising (§157-6-7.8.c.);
- g. the need to revise lighting requirements for outdoor advertising (§157-6-7.8.d.);
- h. the need to add requirements for off-premises change message signs (CMS) (§157-6-7.8.e.);
- i. the need to add certain exceptions to this rule (§157-6-7.9.);
- j. the need to revise requirements associated with the Permit Identification Number on outdoor advertising (§157-6-7.11.);
- k. the need to revise measurement requirements associated with outdoor advertising (§157-6-7.13.);
- l. the need to amend the General Restrictions associated with outdoor advertising (§157-6-7.14.);
- m. the need to revise requirements in the section entitled "Control of Outdoor Advertising Along Federal-Aid Interstate and Defense Highways" (§157-6-7.15.);
- n. the need to raise the Salvage Yard Permit Fee from \$200 per year to \$300 per year, contributing \$41,900 toward reducing the annual deficit of the outdoor advertising and salvage yard inspection program (§157-6-8.1.).

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government

Anticipated \$274,000 reduction in annual deficit of outdoor advertising and salvage yard inspection program.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens:

Across all West Virginia outdoor advertisers, there is a projected annual increase in total license fees and sign permit fees of \$253,050. Across all West Virginia salvage yards, there is a projected annual increase in total license fees of \$20,950.

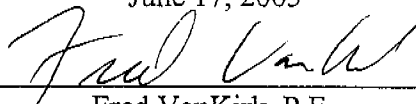
C. Economic Impact on Citizens/Public at Large.

No economic impact.

5. Contact Person and Telephone Number.

Mr. Bill Light
Phone - 558-2822

June 17, 2003



Fred VanKirk, P.E.

WVDOT Secretary/Commissioner of Highways

Legislative Rule-Making Review Committee

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 30, 2003

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Division of Highways

1900 Kanawha Boulevard East, Building Five, Room 110

Charleston WV 25305-0430 304/558-3505

LEGISLATIVE RULE TITLE: Use of State Road Rights of Way and Adjacent Areas

1. Authorizing statute(s) citation §§17-1, 2A, 4, 16, 20, 22, and 23

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 20, 2003

b. What other notice, including advertising, did you give of the hearing?
Meetings with The Outdoor Advertising Association of West Virginia and
Tammy Lynn Outdoor Advertising Association of West Virginia before the
end of the comment period.

c. Date of Public Hearing(s) or Public Comment Period ended:
July 21, 2003

- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

Filed with Sec. of State: 7/18/2003 Published in State Register: 7/20/2003

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Bill Light, Chief of Outdoor Advertising

1900 Kanawha Blvd. E., Building Five, Room A-617, Chas., WV 25305

304/558-3041, fax: 304/558-0454 [BeLight@dot.state.wv.us]

- g. ***IF DIFFERENT FROM ITEM 'f'***, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

Not Applicable

b. Date of hearing or comment period:

Not Applicable

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

Not Applicable

d. Attach findings and determinations and reasons:

Attached _____

Division of Highways, Series 6
Use of State Road Rights of Way and Adjacent Areas
Agency Approval of a Proposed Rule and
Filing with the Legislative Rule-Making Review Committee
July 30, 2003

SUMMARY OF PUBLIC COMMENTS and RESPONSES:

The public comment period was advertised in the State Register, published June 20, 2003. The comment period ended at midnight on July 21, 2003.

1. Federal Highway Administration comments:
 - a. Section 157-6-2: Questioned whether the "new" definitions will be numbered similar to the "old" definitions (DOH had sent FHWA an unnumbered copy for review). The answer is yes.
 - b. "FHWA previously provided you with a copy of a recommended definition for an interchange." DOH is using the definition provided by the FHWA.
 - c. Section 3.8: Recommended removing reference to the date of the Accommodation policy and simply refer to the "currently approved version" or similar language. DOH concurs. Also recommended that Right of Way Division (DOH) work with the Technical Section of the Engineering Division and others, as appropriate, to review non-outdoor advertising related sections to ensure all of the rules are up to date. All Highways' organizations are advised of the annual rule filing deadline and are asked to submit needed changes for timely filing. No changes were requested for Series 6 by other Highways organizations.
 - d. Sections 7.1.a.; 7.8.b.1.; 7.15; 7.25.b.; 7.15.c.; 7.15.d.2.A.; 7.15.e.; and 7.15.e.5. -- Change various Code of Federal Regulations (CFR) references to what is currently used. DOH concurs.

2. Marty Gearheart, VP of Sales & Marketing for Tammy Lynn Outdoor Advertising comments:
 - a. Section 2.25: "Off Premise Changeable Message Signs (CMS)" – need clarification here. DOH changed Section number to 2.24 and decided not to revise the definition, feeling that the definition adequately expresses the intent of the Division. Furthermore, the Secretary of Transportation/Commissioner of Highways has the power, through the Division's agreement with the Federal Highway Administration (FHWA), to regulate the lighting, size, and spacing of outdoor advertising signs.
 - b. Sections 2.42.a.; 2.44.a.2.; 2.44.a.8.; and 2.44.b.3.: Proposed amended time perimeters in these Definitions need to remain as they are now and new definitions within these sections need to be eliminated. DOH concurred.
 - c. Section 7.4.c.2: Business persons should not be required to furnish financial statements. DOH revised section to read "If requested by the Division, any application that is on the same real property of the qualifying business shall be accompanied by documentation confirming that the qualifying business has been in continuous significant operation at the location for one (1) year prior to submission of the application".

Division of Highways, Series 6
Use of State Road Rights of Way and Adjacent Areas
Agency Approval of a Proposed Rule and
Filing with the Legislative Rule-Making Review Committee
July 30, 2003

SUMMARY OF PUBLIC COMMENTS and RESPONSES (Page 2):

- d. Section 7.4.c.4: Requirement that "no sign shall be permitted or erected within 800 feet of areas from which vegetation has been removed ..." should be eliminated. Our competitors could remove vegetation to keep us from getting a location, or visa-versa. The DOH disagreed, because a policy is in place whereby individuals or companies may, through DOH District offices, apply for permission to remove vegetation from DOH rights of way. This requirement is designed to restrict illegal cutting.
- e. Section 7.4.c.7: No more than 30 days should be required to inspect a site. The DOH disagreed and kept the proposed "90 days from the date the application is submitted" The DOH District employees responsible for these inspections are not under the direct supervision of the Division's central office and they have other responsibilities that they must meet. A 30-day time limit would not be adequate in many cases.
- f. Section 7.4.i: This fee (\$20 for permit renewal) is too much. Why not charge more for the first inspection/permit fee to cover the rental fee? The DOH disagreed and left the section as originally proposed. The fee increases are necessary to offset the expenses of the Outdoor Advertising Inspection Program. However, the Division will review this fee change and, possibly, petition for some sort of graduated schedule in the future.
- g. Sections 7.8.c.1; 7.8.c.1.B; 7.8.c.2.A: Spacing regulations need to remain as they are. The DOH disagreed. The spacing regulation changes were proposed to the Division by the Outdoor Advertising Association of West Virginia. The Secretary of Transportation/Commissioner of Highways has the power, through the Division's agreement with the Federal Highway Administration (FHWA), to regulate the lighting, size, and spacing of outdoor advertising signs.
- h. Section 7.8.c.2.B: Spacing needs to be regulated by the municipality, not the state. The DOH disagreed. The Secretary of Transportation/Commissioner of Highways has the power, through the Division's agreement with the Federal Highway Administration (FHWA), to regulate the lighting, size, and spacing of outdoor advertising signs.
- i. Section 7.8.d.4: This ("No sign may contain numerical displays in the form of LED's or other lights that change more than once in 24 hours") should be the same as time/temp units ... five times per minute. The DOH disagreed, for public safety reasons; such signs could be distracting to motorists. The Secretary of Transportation/Commissioner of Highways has the power, through the Division's agreement with the Federal Highway Administration (FHWA), to regulate the lighting, size, and spacing of outdoor advertising signs.
- j. Sections 7.15.d.2; 7.15.d.2.A; 7.15.d.2.B; and 7.15.d.3: This (regulations on "Premise Signs Within Protected Areas Outside of Informational Sites) should be reviewed on an individual basis. The DOH disagreed with this comment for public safety reasons and to be in compliance with the Division's agreement with the FHWA. The section remains as originally proposed.

Division of Highways, Series 6
Use of State Road Rights of Way and Adjacent Areas
Agency Approval of a Proposed Rule and
Filing with the Legislative Rule-Making Review Committee
July 30, 2003

SUMMARY OF PUBLIC COMMENTS and RESPONSES (Page 3):

3. John Mayo, General Manager of Tammy Lynn Outdoor Advertising comments:
Generally, Mr. Mayo says that many of the proposed changes need further review before adoption and that the review should be open to all licensed outdoor advertising companies in WV. The DOH has reviewed the proposed changes in light of all specific comments submitted. The comment period was open to all interested parties.

4. Cameron Lewis, Agent for Tammy Lynn Outdoor Advertising comments:
Mr. Lewis states that the proposed changes favor "the large advertisers of this state." "Since they helped you prepare the most recent legislation I understand why," he continues. He adds that, if passed, these changes will effectively eliminate competition in the outdoor advertising business. Specific problems are listed below.
 - a. "Two years for a business to be in operation plus having two businesses to qualify for an unzoned commercial area is ridiculous." The DOH concurs and the referenced section and subsections (2.44 and 2.44.a.1) have been returned, basically, to their original wording.
 - b. "Given the terrain of our state there is absolutely no reason that a business should be visible from the main traveled highway, especially with the other restrictions for commercial areas." The DOH concurs and the referenced section (2.44.a.2) has been returned, basically, to its original wording.
 - c. Section 2.b.3: The posting of business hours is not on the outside of most office buildings where there is more than one business. The hours are not on hotels or motels either. The DOH concurs and the referenced section has been eliminated.
 - d. Section 2.48 states "...actively enforced by duly constituted zoning authorities". Some small towns may not have such authorities but will have comprehensive zoning. The DOH concurs and the referenced section has been revised.
 - e. Section 7.4.c.7 gives the division (DOH) 90 days to approve or reject a permit. This is entirely too long – should be done in no more than 30 days. The DOH District employees responsible for these inspections are not under the direct supervision of the Division's central office and they have other responsibilities that they must meet. A 30-day time limit would not be adequate in many cases.
 - f. Section 7.4.c.4: "If the company requesting the permit has unlawfully removed the vegetation, they should be penalized. However, if there is no proof that they removed the vegetation, they should be given a permit." The DOH disagreed. This requirement is designed to restrict illegal cutting. If an area is illegally cleared of vegetation, there is usually no way to prove who did the cutting.
 - g. Section 7.8.c.1: "One thousand feet spacing is not necessary. Most of our border states have kept 500 feet spacing." The DOH disagreed. The spacing regulation changes were proposed to the Division by the Outdoor Advertising Association of West Virginia. The Secretary of Transportation/Commissioner of Highways has the power, through the Division's agreement with the Federal Highway Administration (FHWA), to regulate the lighting, size, and spacing of outdoor advertising signs.

Division of Highways, Series 6
Use of State Road Rights of Way and Adjacent Areas
Agency Approval of a Proposed Rule and
Filing with the Legislative Rule-Making Review Committee
July 30, 2003

SUMMARY OF PUBLIC COMMENTS and RESPONSES (Page 4):

- h. Section 7.8.c.1.b: "Why 1,000 feet for an interchange?" The DOH disagreed. The spacing regulation changes were proposed to the Division by the Outdoor Advertising Association of West Virginia. The Secretary of Transportation/Commissioner of Highways has the power, through the Division's agreement with the Federal Highway Administration (FHWA), to regulate the lighting, size, and spacing of outdoor advertising signs.
- i. Section 7.8.c.2.B: "Rather than the state changing the spacing within a municipality, let them (the municipalities) do it. Some towns may want to promote businesses. The DOH disagreed. The spacing regulation changes were proposed to the Division by the Outdoor Advertising Association of West Virginia. The Secretary of Transportation/Commissioner of Highways has the power, through the Division's agreement with the Federal Highway Administration (FHWA), to regulate the lighting, size, and spacing of outdoor advertising signs.

In a follow-up letter, Mr. Lewis quotes Chapter 17, Article 22, Section 8 of the West Virginia State Code, and then states the following. "The West Virginia Legislature has made it clear that our rules and regulations governing outdoor advertising shall only be the minimum required by the Federal Highway Administration. Therefore, it is apparent that all of the proposed rule changes that are more restrictive than other states are not in compliance with the state code. I assume the Division will take the necessary action to stop these proposed changes. The DOH has reviewed all of the comments and, as a result, revised or, in some cases, eliminated some of the proposed changes. The Division believes it is acting within its authority in requesting that the remaining revisions be accepted.

5. Additional comments from Tammy Lynn Outdoor Advertising:

- a. Economic Impact: The economic impact on all will be reduced revenue, decreased competition, relocation of business, reduced tax revenue, reduced fee revenue, and a general adverse effect on advertisers and advertising companies. The DOH disagrees with this statement. While there, admittedly, could be some adverse effects in the short term, the Division believes these changes will result in a positive economic impact for the state, advertisers, and advertising companies overall.
- b. Statement of Circumstances: Why does the state need more control over an already over-regulated industry? How do these changes make the department (DOH) more efficient? How do these rules provide safety for the driving public? The DOH believes that it is acting within its authority in proposing these changes, that the fee increases are needed to offset the cost of the program, and that driver safety will be improved through fewer distractions to command the attention of drivers.

Division of Highways, Series 6
Use of State Road Rights of Way and Adjacent Areas
Agency Approval of a Proposed Rule and
Filing with the Legislative Rule-Making Review Committee
July 30, 2003

SUMMARY OF PUBLIC COMMENTS and RESPONSES (Page 5):

- c. Section 2.25: Factually incorrect statement starting on line #5. It should read "CMS's may be considered outdoor advertising when their placement falls within the definitions of this chapter. When CMS's are considered outdoor advertising, they must comply ..." The DOH believes that the proposed definition is both factually correct and clear, and that the noted statement is accurate, as is.
- d. Section 2.38: If an activity meets the appropriate criteria, why is its motivation an issue? Who determines the motivation for creation of an activity? The Division recognizes a growing need in West Virginia to define "sham activity", as has been done in other states.
- e. Section 2.42.a: Why? A viable business by its very nature establishes a commercial area. The DOH concurs somewhat, and has lowered the time limitation from two years to one year.
- f. Sections 2.44; 2.44.a; 2.44.a.2; 2.44.a.3; 2.44.a.4; and 2.44.a.8: Under what legal criteria are these based? The DOH concurs and the referenced sections have been returned to their original wording.
- g. Sections 2.44.b through 2.44.c: I don't know how any of the items do or do not identify a commercial area. These sections are not being proposed for revision. They are currently accepted now as useful for identifying a commercial area.
- h. Section 7.4.c.2: Why? The DOH revised the section to read "If requested by the Division, any application that is on the same real property of the qualifying business shall be accompanied by documentation confirming that the qualifying business has been in continuous significant operation at the location for one (1) year prior to submission of the application".
- i. Section 7.4.c.4: I don't know that it is legitimate to prohibit a legal business enterprise to the illegal acts of someone else. The DOH disagreed. This requirement is designed to restrict illegal cutting. If an area is illegally cleared of vegetation, there is usually no way to *prove* who did the cutting.
- j. Section 7.4.c.5: Ambiguous. The DOH has revised the third sentence in this section.
- k. Section 7.4.c.11: This appears to be dictatorial. State employees do not always make correct judgements. The DOH disagreed. If a permit is denied once, going through another inspection process is a waste of time and taxpayer's money if there has not been a significant change to justify it. Personnel entrusted with reviewing applications are qualified to determine whether a significant change has occurred or not.
- l. Section 7.4.j: Why would the Division have "discretion" over anything? The FHWA has charged the DOH with the authority to administer outdoor advertising regulations.
- m. Section 7.5.c: If permits are approved or denied correctly, judicial review shouldn't be a problem. The DOH concurs.
- n. Sections 7.8.b. through 7.8.c: I assume these changes are based on recent legislation as the result of a lobbying effort by the same group pushing these changes. The spacing regulation changes were proposed to the Division by the Outdoor Advertising Association of West Virginia. The Secretary of Transportation/Commissioner of

Division of Highways, Series 6
Use of State Road Rights of Way and Adjacent Areas
Agency Approval of a Proposed Rule and
Filing with the Legislative Rule-Making Review Committee
July 30, 2003

SUMMARY OF PUBLIC COMMENTS and RESPONSES (Page 6):

- Highways has the power, through the Division's agreement with the Federal Highway Administration (FHWA), to regulate the lighting, size, and spacing of outdoor advertising signs.
- o. Sections 7.8.d.4 through 7.8.e.11: What basis establishes these regulations? Recent legislation passed allows CMS's in West Virginia. The DOH has been charged with administering these, as well as all outdoor advertising signs, along the state's highways. Regulations are necessary in order to administer this program in a fair and responsible manner.
 - p. Sections 7.9.c.4.B; 7.9.d.1; 7.15.d.2.A through 7.15.d.2.B.; and 7.15.D.3: On what legal authority does the state tell a personal business where to place a business or activity sign that is on the premises of that individual, or when it should be removed. The Secretary of Transportation/Commissioner of Highways has authority through agreement with the FHWA to administer these regulations.
 - q. Section 7.14.b: Under what criteria will the state determine if a sign is unsafe? The DOH has qualified engineers in its Traffic Engineering Division to determine if a sign is unsafe.
 - r. Section 7.15.b.1: Ridiculous. The section in question concerns restricting improvements to nonconforming signs. Such improvements are forbidden by the FHWA's agreement with the DOH and by Code of Federal Regulations (CFR) 23.
 - s. Section 7.15.b.6: Why similar material? The use of a different material may constitute an improvement, and such improvements are forbidden by the FHWA's agreement with the DOH and by Code of Federal Regulations (CFR) 23.
6. Ralph Wayne Looney, Vice President of New Image Outdoor, Inc. comments:
- Opposed to "various changes within the statement of circumstances regarding this amendment". The DOH cannot respond to this comment without knowing what the party is opposed to within the Statement of Circumstances.
7. Outdoor Advertising Association of West Virginia comments:
- a. Add a disclaimer at the beginning of Section 157-6-2 stating the following. "The definitions in subsections 2.1 to 2.49, inclusive, shall not be construed to cause any advertising sign or device, the permit for which has been applied for prior to the 31st day of December, 2003, to become a 'non-conforming' advertising sign or device ... except the definition of 'Off Premise Changeable Message Signs (CMS)'...". The DOH concurs with this request and has added the requesting wording.
 - b. Section 157-6-2.7: Delete the words "of a conforming sign" in the definition of "Cutouts and Extensions". The DOH concurs and has deleted the noted wording.
 - c. Section 157-6-2.17: Delete the words "or maintained" in the definition for "Illegal Sign". The DOH has deleted the definition for "Illegal Sign".

Division of Highways, Series 6
Use of State Road Rights of Way and Adjacent Areas
Agency Approval of a Proposed Rule and
Filing with the Legislative Rule-Making Review Committee
July 30, 2003

SUMMARY OF PUBLIC COMMENTS and RESPONSES (Page 7):

- d. Section 157-6-2.22: Change the definition of "main traveled way" as follows. "Main-Traveled Way' means the traveled way of a highway on which through traffic is carried and the roadway by which businesses located adjacent to the main traveled way gain access to their property. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main traveled way." The Outdoor Advertising Association met with the DOH after this comment was submitted and, subsequently, decided to concur with the Division's definition of "main traveled way".
- e. Section 157-6-2.25: Change the first sentence of the definition as follows. "Off Premise Changeable Message Sign' means an outdoor advertising sign, display, or device whose message is partially changed by electronic process or remote control, including, but not limited to, rotating cubes, rotating vertical triangular slates, messages changed by turning lights on and off, remote numeric displays, glow tubes, light emitting diodes, cathode ray tubes, fluorescent discharge, or similar technology approved by the Secretary." DOH changed Section number to 2.24 and decided not to revise the definition, feeling that the definition adequately expresses the intent of the Division. Furthermore, the Secretary of Transportation/Commissioner of Highways has the power, through the Division's agreement with the Federal Highway Administration (FHWA), to regulate the lighting, size, and spacing of outdoor advertising signs.
- f. Section 157-6-2.42.a: Change the continuous business operation term from two consecutive years to six months. The DOH disagrees, but has changed the proposed term to one year (now Section 2.41.a). After meeting with the DOH, the Association decided to agree with the "one year term" amendment.
- g. Section 157-6-2.44: In the definition for "Unzoned Commercial or Industrial Areas", change two businesses to one business. The DOH concurs and the suggested wording has been used (now Section 2.43).
- h. Section 157-6-2.44.a.1: Change the continuous business operation from two years to six months and also change the number of businesses from two to one. The DOH has changed the continuous business operation to one year and the number of businesses to one (now Section 2.43.a.1). After meeting with the DOH, the Association decided to agree with these changes.
- i. Section 157-6-2.44.a.8: Concept of main traveled way needs to be clarified as follows. "Each business must be visible and recognizable as commercial or industrial from the main traveled way from which the business uses for access to its property. A business is visible when that portion on which the permanent building designed, built, or modified for its current use can be clearly seen year-round during normal weather conditions by a person of normal visual acuity while traveling at the posted speed on the main traveled way or on the road which is used by the business to access its property adjacent to the main-traveled way." The DOH retained the originally

Division of Highways, Series 6
Use of State Road Rights of Way and Adjacent Areas
Agency Approval of a Proposed Rule and
Filing with the Legislative Rule-Making Review Committee
July 30, 2003

SUMMARY OF PUBLIC COMMENTS and RESPONSES (Page 8):

- proposed wording (now Section 2.43.a.8) and after meeting with the DOH, the Association decided to concur with the Division's decision.
- j. Section 157-6-7.1.b: Add the following disclaimer. "The requirements in subsections 7.1 to 7.15.g.10, inclusive, shall not be construed to cause any advertising sign or device, the permit for which has been applied for prior to the 31st day of December 2003, to become a 'non-conforming advertising sign' or device ... except the requirements for size in sub-section 7.8.b. ...". The DOH concurs and has added the suggested wording under Section 157-6-7.
- k. Section 157-6-7.2: License fee for companies with twenty-one permits or more should be \$250 per year instead of \$1,000. The DOH disagrees and maintains that the fee increases are necessary to offset the cost of the inspection program.
- l. Section 157-6-7.4.c: The provision should be clarified to be consistent with West Virginia Code, as follows. "A separate application for a permit shall be made for each separate advertising sign, display or device on the form furnished by the Commissioner. Applications shall be typed, signed by the applicant or the applicant's duly authorized representative, describe the size, shape, and nature of the sign and its actual or proposed location with sufficient accuracy to enable the Commissioner to locate it, and include such other information relevant to the particular sign as the Commissioner may reasonably require." The DOH concurs and has added the suggested wording.
- m. Section 157-6-7.4.c.2: Delete the provision requiring financial documentation of the qualifying business. The DOH revised the section to read "If requested by the Division, any application that is on the same real property of the qualifying business shall be accompanied by documentation confirming that the qualifying business has been in continuous significant operation at the location for one (1) year prior to submission of the application".
- n. Section 157-6-7.4.c.5: The second sentence should be clarified to read as follows. "Any other applications for the same or conflicting sites received between the time a disapproved application is returned to the applicant and the time it is resubmitted shall be held in abeyance until the resubmitted application has been considered in accordance with the provisions of Section 7.4.c.7 below." The DOH declined to revise the third sentence. After meeting with the DOH, the Association concurred with the Division's wording.
- o. Section 157-6-7.4.c.7: Clarify this provision, as to informing the applicant why the application was rejected (if it was), what their recourse might be, etc. The DOH concurs and the text has been revised as suggested.
- p. Section 157-6-7.4.e: The proposed change cannot be adopted because the \$1 fee for each permit is fixed in West Virginia Code. The DOH believes it has the authority to raise fees and maintains that the fee increases are necessary to offset the cost of the inspection program.

Division of Highways, Series 6
Use of State Road Rights of Way and Adjacent Areas
Agency Approval of a Proposed Rule and
Filing with the Legislative Rule-Making Review Committee
July 30, 2003

SUMMARY OF PUBLIC COMMENTS and RESPONSES (Page 9):

- q. Section 157-6-7.4.i: The proposed change cannot be adopted because the \$1 fee for each permit is fixed in West Virginia Code. The DOH believes it has the authority to raise fees and maintains that the fee increases are necessary to offset the cost of the inspection program.
- r. Section 157-6-7.8.c.1.A: The spacing on the same side of a highway and the spacing at an interchange should not be increased and should be left at 500 feet. The DOH disagreed. The Secretary of Transportation/Commissioner of Highways has the power, through the Division's agreement with the Federal Highway Administration (FHWA), to regulate the lighting, size, and spacing of outdoor advertising signs.
- s. Section 157-6-7.8.c.2.A: The spacing outside municipalities should not be increased and should be left at 300 feet. The DOH disagreed. The Secretary of Transportation/Commissioner of Highways has the power, through the Division's agreement with the Federal Highway Administration (FHWA), to regulate the lighting, size, and spacing of outdoor advertising signs.
- t. Section 157-6-7.8.c.2.B: The spacing inside municipalities should not be increased and should be left at 100 feet. The DOH disagreed. The Secretary of Transportation/Commissioner of Highways has the power, through the Division's agreement with the Federal Highway Administration (FHWA), to regulate the lighting, size, and spacing of outdoor advertising signs.
- u. Section 157-6-7.8.d.4: The provision prohibiting LED's should be deleted. The DOH disagreed. The Secretary of Transportation/Commissioner of Highways has the power, through the Division's agreement with the Federal Highway Administration (FHWA), to regulate the lighting, size, and spacing of outdoor advertising signs.
- v. Section 157-6-7.8.e.4: The provision which permits only conforming sign structures to be modified to a CMS should be deleted. The DOH disagreed, but the Association withdrew this objection after meeting with the DOH.
- w. Section 157-6-7.8.e.8: The second sentence should be clarified as follows. "Only one CMS sign face per structure may be visible in each direction of the main traveled way." The DOH disagrees. The Secretary of Transportation/Commissioner has the authority, through FHWA agreement, to prohibit multi-face signs.
- x. Section 157-6-7.8.e.10: The provision requiring the applicant to remove one nonconforming sign structure in order to revise an existing sign to a CMS is unreasonable and should be deleted. The DOH has revised the referenced text to read "No CMS can be erected or permitted unless the applicant first cancels any previous permits for this location".
- y. Section 157-6-7.8.e.11: The fee for each permit is fixed in West Virginia Code at \$1 and cannot be increased by Regulation, even for a CMS. The DOH believes it has the authority to raise fees and maintains that the fee increases are necessary to offset the cost of the inspection program.
- z. Section 157-6-7.11.a: The applicant should not be required to submit a new application and tag fee for a replacement tag for a sign which is lost or vandalized,

Division of Highways, Series 6
Use of State Road Rights of Way and Adjacent Areas
Agency Approval of a Proposed Rule and
Filing with the Legislative Rule-Making Review Committee
July 30, 2003

SUMMARY OF PUBLIC COMMENTS and RESPONSES (Page 10):

- and this provision should be deleted. The DOH concurs.
- aa. Section 157-6-7.14.b: The sign-owner and land owner should be given 90 days from the date of the mailing of the notice to correct any sign the DOH determines to be a traffic or safety hazard, rather than 30, and there should be a right of appeal. The DOH has decided to give the sign-owner 60 days, rather than 30, to correct any sign determined to be a traffic or safety hazard, and to grant a one-time extension of 45 days if the owner can show just cause for an extension. However, no appeal rights have been included. The Association agreed with this decision after meeting with the DOH.
- bb. Section 157-6-7.15.a.1.D: The sign-owner and land owner should be given 90 days from the date of the mailing of the notice to correct any sign the DOH determines to be structurally unsafe or not maintained in a good state of repair, rather than 30, and there should be a right of appeal. The DOH has decided to give the sign-owner 60 days, rather than 30, to correct any that does not conform to the maintenance standards, and to grant a one-time extension of 45 days if the owner can show just cause for an extension. However, no appeal rights have been included. The Association agreed with this decision after meeting with the DOH.
- cc. Section 157-6-7.15.b.3: The language concerning rebuilding of involuntarily damaged nonconforming signs should be merged with the language concerning damage to the sign from excess wear in proposed Section 7.15.b.7. Also, include right of appeal. The DOH concurs.
- dd. Section 157-6-7.15.b.4: The language should be revised to "totally destroyed" in order to distinguish from "partially damaged". The DOH disagrees. "Partially" has been defined under Section 7.15.b.3.
- ee. Section 157-6-7.15.b.5: The words "adding catwalks, adding guys or struts for stabilization of the sign or structure" should be deleted. The DOH disagrees. CFR 23 gives the Division authority to define what constitutes an improvement to a nonconforming sign.
- ff. Section 157-6-7.15.b.7: Delete and merge into Section 7.15.b.3 as described above. The DOH concurs.
- gg. Section 157-6-7.15.b.8: Renumber to 7.15.b.7 because of merger of sections as described above. The DOH concurs.

**Draft Outdoor Advertising Rules
FHWA Comments
June 16, 2003**

1. **Section 157-6-2 Definitions** – we assume the “new” definitions will be numbered similar to the “old” definitions.
2. **Interchange definition** – FHWA previously provided you with a copy of a recommended definition for an interchange.
3. **Section 3.8** – recommend removing reference to the date of the Accommodation policy and simply refer to the “currently approved version” or similar language. Recommend you work with Technical Section of the Engineering Division and others, as appropriate, to review non outdoor advertising related sections to ensure all of the rules are up-to-date.
4. **Section 7.1.a** – change reference to 23 CFR, Chapter 1, §750.105 to **23 CFR, Part 750, Subpart A as prepared and promulgated by the Federal Highway Administration.**
5. **Section 7.8.b.1** – what happen to the maximum size requirements?
6. **Section 7.15** – change reference to **23 CFR, Part 750, Subpart A.**
7. **Section 7.25.b** – change reference to **23 CFR, Part 750, Subpart A, §750.105.**
8. **Section 7.15.c.** – change reference to **23 CFR, Part 750, Subpart A, §750.105 & §750.107.**
9. **Section 7.15.d.2.A** – change reference to **23 CFR, Part 750, Subpart A, §750.107.**
10. **Sections 7.15.e and 7.15.e.5** – change reference to **23 CFR, Part 750, Subpart A, §750.107.**



Outdoor Advertising

POST OFFICE BOX 50 · BLUEFIELD WEST VIRGINIA 24701
PHONES 304·327·3541 1·800·422·5361

*Bill/Get with [unclear]
& [unclear] [unclear]*

RECEIVED

JUL 18 2003

R/W DIVISION

July 16, 2003

Mr. David Jack
WV Division of Highways
1900 Kanawha Blvd. East
Room A-615
Charleston, WV 25305-0430

RE: Proposed Rule Amendments / Use of State Road Rights of Way and Adjacent Areas

Dear Mr. Jack:

I have been engaged in both the sign industry and outdoor advertising industry since 1985. During this time, I have functioned under the existing regulations of the Department of Highways in these areas. It is my belief the existing regulations are already overly restrictive, ambiguous, and lacking in basis of the federal and state laws they are intended to enforce. The proposed rule changes do not appear to improve this circumstance. It also appears the establishment of these regulations will eliminate competition, result in a poorer/higher price product for consumers, reduce revenue into the state, stifle small business, and establish monopolies in the outdoor advertising industry.

I have enclosed a list of the items for proposed changes I am opposed to with brief comments. I am available to testify regarding my position on these items and would enjoy the opportunity.

Now is not the time to cause damage to the already fragile economy in West Virginia. Establishment of these new rules will certainly create this result.

Sincerely,

Marty Gearheart / RKM
Marty Gearheart
VP of Sales & Marketing

MG/rkm
1 enclosure

TAMMY LYNN

Outdoor Advertising

POST OFFICE BOX 50 · BLUEFIELD WEST VIRGINIA 24701
PHONES 304-327-3541 1-800-422-5361

- Page 2, 2.25: "Off Premise Changeable Message Signs (CMS)" -- Need clarification here.
- Page 4, 2.42.a: This needs to remain six (6) months.
- Page 4, 2.4: This needs to remain one (1) business.
- Page 4-5, 2.44.a.1: This needs to remain six (6) months.
- Page 5, 2.44.a.2:
2.44.a.8: This needs to be eliminated. With our terrain along the Interstate systems, it is almost impossible to see businesses from the main traveled way, especially during the summer months.
- Page 5, 2.44.b.3: Not all businesses post operating hours, such as Holiday Inn, Ramada, etc. Larger business complexes, with several offices located in the same dwelling, have no business hours posted. This needs to be either eliminated or judged on an individual basis.
- Page 13, 7.4.c.2: It should not be required for a business person to furnish financial statements.
- Page 13, 7.4.c.4: This should be eliminated. Our competitors could remove vegetation to keep us from getting a location, or visa-versa.
- Page 13-14, 7.4.c.7: No more than thirty (30) days should be required to inspect a site.
- Page 14, 7.4.1: This fee is too much. Why not charge more for the first inspection/ permit fee to cover the rental fee?
- Page 16, 7.8.c.1: Spacing needs to remain 500 feet.
- Page 16, 7.8.c.1.B: Spacing needs to remain 500 feet.
- Page 16, 7.8.c.2.A: Spacing needs to remain 300 feet.
- Page 16, 7.8.c.2.B: Spacing needs to be regulated by the municipality, not the state.
- Page 17, 7.8.d.4: This should be the same as time/temp units...five times per minute.
- Page 22, 7.15.d.2:
7.15.d.2.A:
7.15.d.2.B:
7.15.d.3: This should be review on an individual basis.

TAMMY LYNN

Outdoor Advertising

POST OFFICE BOX 50 • BLUEFIELD WEST VIRGINIA 24701
PHONES 304-324-7610 276-322-2770

July 18, 2003

Mr. David Jack
WV Division of Highways
1900 Kanawha Boulevard
Room A-615
Charleston, W.Va. 25305-0430

Dear Sir:

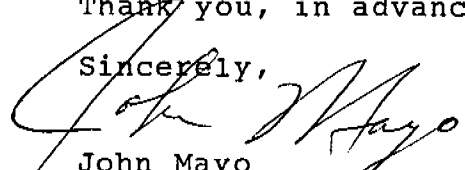
I'm responding to the proposed rules changes concerning the outdoor advertising and on-premise signage in West Virginia.

I have been involved in both phases of the business since 1974 and I think many of the purposed changes need further review before adoption.

And the "review" should be open to all licensed outdoor advertising companies in the state, not just a select few.

Thank you, in advance, for your assistance.

Sincerely,



John Mayo
General Manager

TAMMY LYNN

Outdoor Advertising

POST OFFICE BOX 50 • BLUEFIELD WEST VIRGINIA 24701
PHONES 304-324-7610 276-322-2770

July 18, 2003

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JUL 21 2003

R/W DIVISION

Mr. David Jack
WV Division of Highways
1900 Kanawha Boulevard East
Room A-615
Charleston, West Virginia 25305-0430

Reference: Legislative Rules 17-1,2A,4,16,20,22 and 23

Dear Mr. Jack:

This is in reference to above mentioned rule changes as proposed by the West Virginia Division of Highways pertaining to outdoor advertising.

As you are aware during the twenty-one plus years I served as Director of the Enforcement Division the Outdoor Advertising Section was part of my division for 18 years. Though the Federal Highway Administration made some recommendations for change we were never mandated to make any changes.

I want to congratulate you on including new definitions in the proposed changes. That said it is apparent that the proposed rules favor the large advertisers of this state. Since they helped you prepare the most recent legislation I understand why. Other than the Outdoor Advertising Association and one other large advertiser, I am not aware of another company that was asked for any input in this legislation.

With their deep pockets, these companies are not concerned about obtaining additional permits. They can use all of their present ones or just buy the smaller companies. There goes competition. The Outdoor Advertising Association represents only a handful of advertisers in West Virginia.

As to your proposals, I wish to make the following observations:

Two years for a business to be in operation plus having two businesses to qualify for an unzoned commercial area is ridiculous. By doing this, if a large motel (Ramada) were to build in a location by themselves not only would it take two years for this very legitimate business to qualify, it wouldn't because there would only be one business. If a large company (GM or Toyota) were to build a plant it would not qualify, as there would only be one business. I know what a sham is but you are going to exclude a lot of legitimate businesses from being used as a qualifying business.

Mr. David Jack

Page -2-

Given the terrain of our state there is absolutely no reason that a business should be visible from the main traveled highway, especially with the other restrictions for commercial areas.

While you are considering the proposed changes, I would encourage you to change 2.b.3 the posting of business hours is not on the outside of most office buildings where there is more than one business. The hours are not on hotels or motels either.

2.48 states that "actively enforced by duly constituted zoning authorities". Some small towns may not have such authorities but will have comprehensive zoning.

7.4c.7 gives the division 90 days to approve or reject a permit. This is entirely too long, this should be done in no more than 30 days.

7.4c.4 If the company requesting the permit has unlawfully removed the vegetation they should be penalized. However if there is no proof that they removed the vegetation they should be given a permit.

7.8c.1 One thousand feet spacing is not necessary. Most of our border states have keep 500 feet spacing.

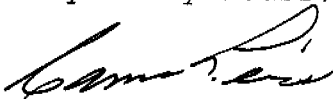
7.8c.1.b Why 1,000 feet for an interchange?

7.8.c.2.B. Rather than the state change the spacing within a municipality let them do it. Some towns may want to promote businesses.

It is my sincere hope that you will reconsider some of these proposed changes. This does not appear the time that our state makes changes that are not business friendly. That is what will happen if you try to eliminate competition.

I appreciate your time in reviewing these concerns as well as the Assistant Director of the Legal Division and your staff member meeting with representatives of our company, once the proposed rules had been filed.

Very Truly Yours,



Cameron Lewis, Agent

TAMMY LYNN

Outdoor Advertising

POST OFFICE BOX 50 • BLUEFIELD WEST VIRGINIA 24701
PHONES 304-324-7610 540-322-2770

July 19, 2003

Mr. David Jack
WV Division of Highways
1900 Kanawha Boulevard East
Room A-615
Charleston, West Virginia 25305-0430

RECEIVED

JUL 21 2003

RW DIVISION

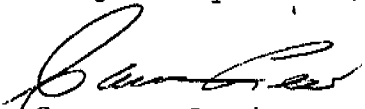
Dear Mr. Jack:

This is a follow up to my letter of July 18, 2003 on the proposed rule changes for outdoor advertising.

I call your attention to Chapter 17 Article 22 Section 8 of the West Virginia State Code. In part this section states, Any agreement between the State road commissioner and the secretary of transportation defining unzoned commercial or industrial areas, or relating to size, lighting and spacing, shall be no more restrictive than necessary to secure to this State any federal aid contingent upon compliance with federal laws or federal rules and regulations relating to outdoor advertising, and shall be subject to amendment or rejection by the legislature of West Virginia: Provided however, that the terms of any such agreement shall be no more restrictive than those included in any other similar agreement made by the secretary of transportation and other states: Provided further, that such agreement shall provide for its modification and amendment in the event and to the extent that the secretary of transportation and any other state shall thereafter agree to any provisions which shall be less restrictive.

The West Virginia Legislature has made it clear that our rules and regulations governing outdoor advertising shall only be the minimum required by the Federal Highway Administration. Therefore it is apparent that all of the proposed rule changes that are more restrictive than other states are not in compliance with the state code. I assume that the division will take the necessary action to stop these proposed changes.

Very Truly Yours,



Cameron Lewis, Agent

Tammy Lynn

**ENCLOSURE 1 (Proposed Rule Amendments / Use of State Road
Rights of Way and Adjacent Areas)**

Page 2 – 4A, 4B, 4C:

The economic impact on all will be reduced revenue, decreased competition, relocation of business, reduced tax revenue, reduced tax revenue, reduced fee revenue, and a general adverse affect on advertisers and advertising companies.

STATEMENT OF CIRCUMSTANES – Item 4, Item 5-12:

Why does the state need more control over an already over-regulated industry? How do these changes make the department more efficient? How do these rules provide safety for the driving public?

Page 2, 2.25:

Factual incorrect statement starting on line #5. It should read – “CMS’s may be considered outdoor advertising when their placement falls within the definitions of this chapter. When CMS’s are considered outdoor advertising, they must comply”.

Page 4, 2.38:

If an activity meets the appropriate criteria, why is its motivation an issue? Who determines the motivation for creation of an activity?

Page 4, 2.42.a:

Why? A viable business by its very nature establishes commercial area.

Page 4, 2.44:

Under what legal criteria is this based?

Page 4, 2.44.a:

Again, under what legal criteria is this based?

Page 5, 2.44a.2-4, 2.44a.8:

Again, under what legal criteria is this based?

Page 5 & 6, 2.44.b – 2.44.c:

I don’t know how any of the items do or do not identify a commercial area.

Page 13, 7.4.c.2:

Why?

Page 13, 7.4.c.4:

I don’t know that it is legitimate to prohibit a legal business enterprise to the illegal acts of someone else.

Page 13, 7.4.c.2:

Why?

Page 13, 7.4.c.4:

I don't know that it is legitimate to prohibit a legal business enterprise to the illegal acts of someone else.

Page 13, 7.4.c.5:

Ambiguous.

Page 14, 7.4.c.11:

This appears to be dictatorial. State employees do not always make correct judgments.

Page 14 & 15, 7.4.j:

Why would the Division have "discretion" over anything?

Page 15, 7.5.c:

If permits are approved or denied correctly, judicial review shouldn't be a problem.

Page 16, 7.8.b.-c:

I assume these changes are based on recent legislation as the result of a lobbying effort by the same group pushing these changes.

Page 17, 7.8.d.4 – 7.8.e.11:

What basis establishes these regulations?

Page 18, 7.9.c.4.B. & 7.9.d.1:

On what legal authority does the state tell a personal business where to place a business or activity sign that is on the premise of that individual, or when it should be removed?

Page 20, 7.14.b:

Under what criteria will the state determine if a sign is unsafe?

Page 21, 7.15.b.1:

Ridiculous.

Page 21, 7.15.b.c:

Why similar material?

Page 22, 7.15.d.2.A-B & 7.15.D.3:

See comments for 7.9.c.4.B.



"A BUSINESS WITH NO SIGN IS A SIGN OF NO BUSINESS"

RECEIVED
JUL 24 2003
R/W DIVISION

July 21, 2003

Mr. David Jack
WV Division of Highways
1900 Kanawha Boulevard East
Room A-615
Charleston, WV 25305-0430

Dear Mr. Jack:

Regarding the proposed Title of Rule being amended: (Use of state road rights of way and adjacent areas), Series 6 (pertaining to licensing and regulating outdoor advertising, as filed on June 18, 2003.

Being an outdoor advertising company within the State of West Virginia, I was unaware of any comment period being established in lieu of a public hearing, these changes would directly affect my company after the fact. I would have thought that I would have been personally notified by the State of West Virginia.

Therefore upon such short notice, I would like to have my comments entered as a matter of record that I am opposed to various changes withing the statement of circumstances regarding this amendment.

Sincerely,

Wallace R. Looney, Jr.

Wallace R. Looney, Jr.
President

Ralph Wayne Looney

Ralph Wayne Looney
Vice President

cc: B. E. Light
F. VanKirk

P.O. Box 331 • Bluefield, Virginia 24605 • 304-327-6946

Comments of
Outdoor Advertising Association of West Virginia
to
Proposed Changes in Title 157,
Series 6
Use of State Road Rights of Way and Adjacent Areas
of the
Legislative Rules
of
West Virginia Department of Transportation, Division of Highways

Section 157-6-2 Definitions

Transitional rule is needed for existing applications for permits. Add the following paragraph as new subsection 2:

"2. The definitions in subsections 2.1 to 2.49, inclusive, shall not be construed to cause any advertising sign or device, the permit for which has been applied for prior to the 31st day of December 2003, to become a 'non-conforming' advertising sign or device. Such advertising sign or device shall not be subject to the definitions hereinafter set forth except the definition of 'Off Premise Changeable Message Signs (CMS)' in subsection 2.25, but shall be subject to the definitions in § 157-6-2 as they existed prior to the effective date of this section."

- 2.7 Delete the words "of a conforming sign" in the definition of "Cutouts and Extensions".
- 2.17 Delete the words "or maintained" in the definition for "Illegal Sign".
- 2.22 Change the definition of "main traveled way" as follows:

"Main-Traveled Way" means the traveled way of a highway on which through traffic is carried and the roadway by which businesses located adjacent to the main traveled way gain access to their property. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main traveled way.

- 2.25 Change the first sentence of the definition as follows:

" 'Off Premise Changeable Message Sign' means an outdoor advertising sign, display, or device whose message is partially changed by electronic process or remote control, including, but not limited to, rotating cubes, rotating vertical triangular slats, messages changed by turning lights on and off, remote numeric displays, glow tubes, light emitting diodes, cathode ray tubes, fluorescent discharge, or similar technology approved by the Secretary."

2.42.a The proposed change is contrary to existing West Virginia statutory law or agreements with the United States Secretary of Transportation. Change the continuous business operation term from two (2) consecutive years to six (6) months.

2.44 The proposed change is contrary to existing West Virginia statutory law or agreements with the United States Secretary of Transportation. In the definition for "Unzoned Commercial or Industrial Areas", change two (2) businesses to one (1) business.

2.44.a.1 The proposed change is contrary to existing West Virginia statutory law or agreements with the United States Secretary of Transportation. Change the continuous business operation from two (2) years to six (6) months and also change the number of businesses from two (2) businesses to one (1) business.

2.44.a.8 Concept of main traveled way needs to be clarified as follows:

"Each business must be visible and recognizable as commercial or industrial from the main traveled way from which the business uses for access to its property. A business is visible when that portion on which the permanent building designed, built, or modified for its current use can be clearly seen year-round during normal weather conditions by a person of normal visual acuity while traveling at the posted speed on the main traveled way or on the road which is used by the business to access its property adjacent to the main-traveled way."

Transitional rule is needed for existing applications for permits. Add the following paragraph as new subsection 7.1.b:

"7.1.b The requirements in subsections 7.1 to 7.15.g.10, inclusive, shall not be construed to cause any advertising sign or device, the permit for which has been applied for prior to the 31st day of December 2003, to become a 'non-conforming advertising sign' or device. Such advertising sign or device shall not be subject to the requirements hereinafter set forth except the requirements for size in sub-section 7.8.b. but shall be subject to the requirements in § 157-6-7 as they existed prior to the effective date of this section."

7.2 License fee for companies with twenty-one permits or more permits should be \$250 per year instead of \$1,000 per year.

7.4.c. The provision as drafted should be clarified to be consistent with West Virginia Code § 17-22-15(b) as follows:

"A separate application for a permit shall be made for each separate advertising sign, display or device on the form furnished by the Commissioner. Applications shall be typed, signed by the applicant or the applicant's duly authorized representative, describe the size, shape, and nature of the sign and its actual or proposed location with sufficient accuracy to enable the Commissioner to locate it, and include such other information relevant to the particular sign as the Commissioner may reasonably require."

7.4.c.2 The provision requiring financial documentation of the qualifying business is onerous and should be deleted.

7.4.c.5 The second sentence should be clarified to read as follows:

"Any other applications for the same or conflicting sites received between the time a disapproved application is returned to the

applicant and the time it is resubmitted shall be held in abeyance until the resubmitted application has been considered in accordance with the provisions of Section 7.4.c.7 below."

7.4.c.7 The provision as drafted is confusing and should be clarified as follows:

"Upon receipt of the permit application, the District Inspector will inspect the site in order to ascertain if the location qualifies. The Division reserves the right to consider any application for a sign permit for a period of up to ninety (90) days from the date the application is submitted. On or before the expiration of such ninety (90) day period, the Division shall either: (1) accept the application and issue the sign permit; (2) reject the application in writing stating the ground or grounds for the rejection; or (3) notify the applicant in writing that the Division requires additional time to review the application not to exceed sixty (60) days and stating the issues or matters requiring inquiry by the Division including any request to the applicant for the submission of any additional information or documentation in support of the application. If within the ninety (90) day period the Division has not responded in writing to the application of the Division's acceptance, rejection, or need for further inquiry, the applicant may deem the application rejected and proceed with the applicant's rights of appeal by judicial review in accordance with West Virginia Code § 17-22-15. If any application which has been rejected by the Division is based on a ground or grounds which the applicant can reasonably cure or correct, the applicant shall be given sixty (60) days from the date of the written rejection by the Division to cure or correct such defect or defects and to submit the application to the Division for further consideration."

The proposed change is contrary to existing West Virginia statutory law. The fee for each permit is statutorily fixed by the Legislature in West Virginia Code § 17-22-15(b) at \$1 and cannot be increased by Regulation. A permit fee in the amount of \$20 may be reasonable.

The Regulation should establish and fix the inspection fee in a reasonable amount with a cap as follows: "The Commissioner may also charge an

inspection fee for each application not to exceed \$____, which will be retained whether the permit is issued or not."

- 7.4.i. The proposed change is contrary to existing West Virginia statutory law. The fee for each permit is statutorily fixed by the Legislature in West Virginia Code § 17-22-15(b) at \$1 and cannot be increased by Regulation. A renewal fee in the amount of \$5 may be reasonable.
- 7.8.c.1.A The proposed change is contrary to existing West Virginia statutory law or agreements with the United States Secretary of Transportation. The spacing on the same side of a highway should not be increased and should be left at 500 feet.
- 7.8.c.1.A The proposed change is contrary to existing West Virginia statutory law or agreements with the United States Secretary of Transportation. The spacing at an interchange should not be increased and should be left at 500 feet.
- 7.8.c.2.A The proposed change is contrary to existing West Virginia statutory law or agreements with the United States Secretary of Transportation. The spacing outside municipalities should not be increased and should be left at 300 feet.
- 7.8.c.2.B The proposed change is contrary to existing West Virginia statutory law or agreements with the United States Secretary of Transportation. The spacing inside municipalities should not be increased and should be left at 100 feet.
- 7.8.d.4. The provision prohibiting LED's should be deleted.
- 7.8.e.4 The provision which permits only conforming sign structures to be modified to a CMS should be deleted.
- 7.8.e.8 The second sentence should be clarified as follows:

"Only one CMS sign face per structure may be visible in each direction of the main traveled way."
- 7.8.e.10 The provision requiring the applicant to remove

one nonconforming sign structure in order to revise an existing sign to a CMS is unreasonable and should be deleted.

- 7.8.e.11 The fee for each permit is statutorily fixed by the Legislature in West Virginia Code § 17-22-15(b) at \$1 and cannot be increased by Regulation, even for a CMS.
- 7.11.a The applicant should not be required to submit a new application and tag fee for a replacement tag for a sign which is lost or vandalized, and this provision should be deleted.

The language concerning traffic hazards as drafted appears to grant the Division an improper standard of discretion and should be revised to read as follows:

"If the Division determines that a sign is a traffic or safety hazard because of its location, construction, orientation, or lighting or illumination, the Division may notify the sign owner and landowner by certified mail of such hazard or hazards and direct the sign owner and landowner to correct the same within ninety (90) days from the date of mailing of the notice. A one-time extension of thirty (30) days may be granted if the sign owner or landowner shows just cause for delay because of unusual weather conditions or other reasons beyond the sign owner's or landowner's control. If the hazard or hazards of such sign are not corrected within the specified time, the Division may order the sign to be removed at the expense of the sign owner or the landowner. Any person aggrieved of a decision by the Division hereon shall have the right of appeal by judicial review in accordance with West Virginia Code § 17-22-15."

- .a.1.D The language concerning maintenance as drafted is vague and should be revised to read as follows:

"If the Division determines that a sign is not structurally safe or maintained in a good state of repair, the Division may notify the sign owner and landowner by certified mail of such safety or maintenance violation and direct the sign owner and landowner to correct the same within ninety (90) days from the date of mailing of the notice. A one-time

extension of thirty (30) days may be granted, if the sign owner or landowner shows just cause for delay because of unusual weather conditions or other reasons beyond the sign owner's or landowner's control. If the safety or maintenance violation of such sign is not corrected within the specified time, the Division may order the sign to be removed at the expense of the sign owner or the landowner. Any person aggrieved of a decision by the Division hereon shall have the right of appeal by judicial review in accordance with West Virginia Code § 17-22-15."

- 7.15.b.3 The language concerning rebuilding of involuntarily damaged nonconforming signs should be merged with other damage to the sign from excess wear was provided in Section 7.15.b.7. Merge the sections to read as follows:

"7.15.b.3 If a nonconforming sign is partially damaged by wind, rain, earthquake, or other natural forces including flood, tornado, or hurricane, by other catastrophic occurrences or casualties, or by wear in excess of normal wear, it shall only be repaired as follows:

7.15.b.3.A The sign owner shall notify the Division in writing of the extent of the damage and the cause of the damage, shall provide clear, color, on-site photographs of the damaged sign, and provide a description of the repair work to be undertaken including the reasonable cost of the same.

7.15.b.3.B Within thirty (30) days of receipt of the written notification, the Division shall determine in writing by notice to the sign owner and landowner of the percent of damage to the nonconforming sign. If the Division determines that the damage is less than 50 percent of the replacement cost as of the time of the damage, the Division shall authorize the sign owner in writing to perform the requested repairs which shall be promptly completed by the sign owner. If the Division determines that the damage is greater than 50 percent of the replacement cost as of the time of the damage, the Division shall so notify the sign owner and landowner in writing and the sign shall not be rebuilt or repaired but shall be dismantled at the cost of the sign owner or landowner and shall not be erected thereafter. Any nonconforming sign which is repaired without Division authorization becomes illegal.

7.15.b.3.C Any person aggrieved of a decision by the Division hereon shall have the right of appeal by judicial review in accordance with West Virginia Code § 17-22-15."

7.15.b.4 The language should be revised to "totally destroyed" in order to distinguish from "partially damaged".

7.15.b.5 The words "adding catwalks, adding guys or struts for stabilization of the sign or structure" should be deleted.

7.15.b.7 Delete and merge into Section 7.15.b.3 as described above.

7.15.b.8 Renumber to 7.15.b.7 because of merger of sections as described above.

**TITLE 157
LEGISLATIVE RULE
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS**

**SERIES 6
USE OF STATE ROAD RIGHTS OF WAY
AND ADJACENT AREAS**

§157-6-1. General.

1.1. Scope. -- This legislative rule establishes general rules pertaining to the use of state road rights of way and adjacent areas.

1.2. Authority. -- This rule is issued under authority of W. Va. Code §§17-1, 2A, 4, 16, 20, 22, and 23.

1.3. Filing Date. --

1.4. Effective Date. -- .

§157-6-2. Definitions.

The definitions in subsections 2.1 to 2.49, inclusive, shall not be construed to cause any advertising sign or device, the permit for which has been applied for prior to the 31st day of December 2003, to become a "non-conforming" advertising sign or device. Such advertising sign or device shall not be subject to the definitions hereinafter set forth except the definition of "Off Premise Changeable Message Signs (CMS)" in subsection 2.25, but shall be subject to the definitions in § 157-6-2 as they existed prior to the effective date of this section.

2.1. "Abandoned salvage yard" means any unlicensed salvage yard or any salvage yard that was previously licensed but upon which the license has not been renewed for more than one year.

2.2. "Authorization Number" means the unique, seven character number assigned for cost accounting purposes to a specific highway project. This number is only assigned upon review and acceptance of the project by Division of Highways management.

2.3. "Back to Back Sign" means any sign constructed on a single set of supports with two sign facings in opposite directions each of which may have up to two sign faces visible.

2.34. "Commissioner" means the Commissioner of the West Virginia Department of Transportation, Division of Highways.

2.5. "Control Area" means that area within 660 feet of the nearest edge of the right-of-way of Interstate or Federal-aid primary highways and visible from the main-traveled way of the Interstate or Federal-aid primary highways. The distance is measured from the outer edge of the right-of-way in a straight line.

2.46. "Controlled-Access Highway" means any state highway or portion thereof which for purposes of federal-aid funding has been designated a federal-aid primary highway and further has been designated a controlled-access highway pursuant to the authority vested in the Commissioner in W. Va. Code §§17-4-39, 40 and 41.

2.7. "Cutouts and Extensions" means structural additions or deletions to a sign face area.

2.58. "Defense Highway" means those highway routes designated by the Division of Highways, which might reasonably be used for important defense shipments, movements of troops or military hardware and/or supplies, or for the evacuation of the general public from disaster areas.

2.9. "Destroyed" or "Damaged" means fifty percent (50%) or more of the sign structure or sign face have been visibly separated, broken, or apart from the remaining sign structure.

2.610. "Device" means any card, cloth, paper, metal or wooden advertising emblem or sign of any kind or character, which is posted, stuck, glued, tacked, nailed, painted or otherwise fastened or affixed to or upon any fence, post, tree or thing other than an advertising sign or structure.

2.711. "Division" means the West Virginia

Department of Transportation, Division of Highways.

2.812. "Display" means any poster, bill, printing, writing, drawing, painting, or advertising material of any kind or character whatsoever, designed and intended to draw the attention of the public to any goods, merchandise, property, real or personal, business service, entertainment or amusement, produced, bought, sold, conducted, furnished, or dealt in by any person, which is placed, posted, painted, tacked, nailed, glued or otherwise affixed or fastened to any advertising sign or structure, or otherwise displayed outdoors.

2.913. "Expressway" means any road serving major intrastate and interstate travel, including federal interstate routes.

2.4014. "Federal-Aid Primary Highway" means any highway, which for federal-aid funding purposes has been designated or classified or redesignated or reclassified as a federal-aid primary highway.

2.415. "Feeder" means any road serving community-to-community travel and/or any road which collects and feeds traffic to one of the higher road systems (expressway and trunkline).

2.4216. "Fence" means an enclosure, barrier or screen constructed of materials or consisting of plantings, natural objects or other appropriate means approved by the Commissioner and located, placed or maintained so as to effectively screen at all times salvage yards and the salvage therein contained from the view of persons passing upon the public roads of this State.

2.17. "Interchange" means a system of interconnecting roadways in conjunction with one or more grade separations that provides for the movement of traffic between two or more roadways or highways on different levels.

2.4318. "Interstate Highway" means that portion of the system of highways in West Virginia, which for federal-aid funding purposes has been designated or classified or redesignated or reclassified as interstate highway and which is

classified as an Expressway, under the provisions of W. Va. Code §17-4-2.

2.4419. "Intervening Building, Structure or Roadway" means a building, overhead structure, or roadway which is located in such a manner that from any point along the highway, it obscures all signs, displays and devices on the same side of the highway within the minimum spacing distances set forth in Subsection 7.10 of this rule. Only roads, streets, and highways that enter directly into the main traveled way of the highway system being considered will be regarded as intervening roadways.

2.20. "Legible" means capable of being read or understood without visual aid by a person of normal visual acuity while traveling in an ordinary passenger car on any public road at the applicable speed limit.

2.4521. "Main-Traveled Way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

2.22. "Non-conforming Sign" means a sign which was lawfully erected but which does not comply with the current provisions of state law or which fails to comply with these state laws or rules because of changed conditions at the site.

2.4623. "Occupied Private Residence" means a private residence which is occupied for at least six months each year.

2.24. "Off Premise Changeable Message Signs (CMS)" means an outdoor advertising sign, display, or device which changes the message or copy on the sign by means of electronic rotation of panels or slats. CMS's are considered outdoor advertising signs, and as such must comply with all requirements applicable to outdoor advertising signs. CMS's may not include lighting devices forming part of the message or border, video or scrolling messages.

2.1725. "On Premise Sign" means those signs that advertise the sale or lease of, or activities being conducted upon, the real property where the signs are located.

2.26. "Outdoor Advertising Sign" means any sign structure or combination of sign structure or message in the form of outdoor sign, display, device, figure, painting, drawing, message, plaque, poster, billboard, advertising structure, advertisement, logo, symbol or other form which is designed, intended or used to advertise or inform any part of the message or informative contents of which is visible from the main traveled way. The term does not include official traffic control signs, official markers, or specific information panels erected, caused to be erected, or approved by the Division.

2.1827. "Owner or Operator" means an individual, firm, partnership, association or corporation or the plural thereof.

2.1928. "Person" means an individual, partnership, association, or corporation.

2.29. "Removed" means the dismantling and complete removal from the view of the motoring public of all parts and materials of a sign or sign structure to include but not be limited to faces, and beams, poles, braes, stringers, guys, and struts which are used or intended to be used to support or display a sign.

2.2030. "Residential Community" means an area wherein five or more occupied private residences are located within any one thousand feet radius.

2.2131. "Road; Public Road; Highway" means but is not limited to, the right of way, roadbed and all necessary culverts, sluices, drains, ditches, waterways, embankments, slopes, retaining walls, bridges, tunnels, and viaducts necessary for the maintenance of travel, dispatch of freight and communication between individuals and communities; and such public road or highway includes any road to which the public has access and which it is not denied the right to use, or any road or way leading from any other public road

over the land of another person, and which shall have been established pursuant to law.

2.2232. "Roadside Memorial Marker" means any of the various kinds of tributes, typically ornamental, placed alongside the roadway to memorialize people who have died as a result of vehicular accidents. For the purposes of this rule, Temporary Memorial Markers include, but are not limited to the various types of decorations, flags, flowers (cut and artificial) and other lightweight objects or ornamentation commonly used at funerals or at gravesides as a tribute to the dead. Permanent Memorial Markers are items such as plaques, stone monuments and etc., which are typically self-supported, intended to last many years and require a more significant installation/mounting process.

2.2333. "Salvage" means old or scrap copper, brass, rope, rags, batteries, paper, rubber, trash, waste, junked, dismantled or wrecked machinery, machines or motor vehicles, or any parts of any junked, dismantled or wrecked machinery, machines or motor vehicles, iron, steel and other old or scrap ferrous or non-ferrous materials.

2.2434. "Salvage Yard" means any place which is maintained, operated or used for the storing, keeping, buying, selling, or processing of salvage, or for the operation and maintenance of a motor vehicle graveyard. Any collection of three or more automobile hulks, or combination of ferrous or non-ferrous materials together with one or more automobile hulks, or a collection of any salvage contained in an area more than one-quarter acre in size is a salvage yard.

2.2535. "Save Harmless" means any person, firm, corporation or other entity to whom a permit is issued or with whom the Division enters into an agreement or contract shall not hold the State, the Commissioner, or any officers, agents and employees of the Division responsible or liable for any damages to persons or property arising or resulting from work performed under the permit, contract or agreement.

~~2.26. "Sign" means any structure erected for advertising purposes upon which any poster, bill,~~

printing, writing, drawing, painting, or advertising material of any kind or character whatsoever, may be placed, posted, painted, tacked, nailed, glued or otherwise fastened, affixed or displayed.

2.36. "Scenic Byways and Backways" means road segments that have been officially designated by the Secretary of the West Virginia Department of Transportation under the West Virginia Byway and Backway Program.

2.37. "Sham Activity" means any activity located or created to qualify an area as an unzoned location for outdoor advertising.

2.38. "Sign Face" means the part of the sign, including stringers, cutouts and extensions, which contains the message or informative contents and is distinguished from other parts of the sign and other sign faces by borders or decorative trim. It does not include lighting fixtures, aprons and catwalks unless part of the message or informative contents of the sign is displayed thereon.

2.39. "Sign Structure" means all the interrelated parts and material, such as beams, poles and braces, which are used or designed to be used or are intended to be used to support or display a sign, but does not include sign face.

2.40. "Small Parcels or Narrow Strips" means any configuration of land which cannot be put to ordinary commercial or industrial use without aggregating with abutting properties.

2.41. "Transient or Temporary Businesses" means businesses that fail to meet any of the following requirements:

2.41.a. continuous business operations at the proposed sign location for one (1) year prior to the submission of an outdoor advertising permit application;

2.41.b. electricity, published telephone number and telephone answered at the business, running water, indoor restroom, permanent flooring other than dirt, gravel, sand, etc., adequate heating;

2.41.c. the business activity, or a major portion of it, conducted from a permanent building constructed principally of brick, concrete block, stone, concrete, metal, or wood or some combination of these materials or from a mobile home or trailer meeting the requirements stated in subdivision 2.43.a of this rule;

2.41.d. transient or temporary businesses include commercial or industrial businesses that do not conduct significant business activities at the site.

2.2742. "Trunkline" means any road serving major city-to-city travel needs.

2.2843. "Unzoned Commercial or Industrial Areas," means ~~an~~ those areas in a political subdivision which are not zoned by State or local law, regulation or ordinances on which there is located one or more viable commercial or industrial activities and the area along the highway extending outward one or more separate businesses, each with a permanent building structure, devoted to a commercial or industrial activity, a portion of which activity is located within the control area. The unzoned commercial or industrial area is that area within 800 feet ~~from~~ and beyond the edge of the nearest edge of the area of business activity within the control area regularly used for such business activity.

2.28.a. ~~Unzoned commercial or industrial areas shall not include the land on the opposite side of the highway from these activities except on two lane non-controlled access highways, the unzoned commercial or industrial area may be located on the opposite side of the highway from the commercial or industrial activity if in the opinion of the Commissioner the topographical conditions on the same side of the highway as the activity are such that it is not reasonably usable; provided that the land on the opposite side of the highway has not been designated scenic by the Commissioner.~~

2.28.b. ~~In no instance will the unzoned commercial or industrial area established by a single activity include land on both sides of the highway.~~

~~2.28.e.43.a.~~ To qualify as an unzoned commercial or industrial area, a business location must, at a minimum, have meet the following requirements:

2.43.a.1. one (1) or more businesses must have been opened to the public for more than one (1) year prior to submission of an outdoor advertising permit application;

2.43.a.2. the businesses must be visible from the main traveled way of Federal-Aid Interstate Highways and Controlled Routes;

2.43.a.3. each business must be directly accessible to an ordinary passenger vehicle year-round under normal weather conditions by a road, driveway or entrance-way;

2.43.a.4. each business must have a building designed with a permanent foundation, built or modified for its current commercial or industrial use, and the building must be located within 660 feet from the nearest edge of the main traveled way. Where a mobile home or recreational vehicle is used as a business or office, the following conditions and requirements also apply:

2.43.a.4.A. the mobile home unit or recreational vehicle must meet all applicable Building Codes for commercial or business use;

2.43.a.4.B. all wheels, axles, and springs must be removed;

2.43.a.4.C. the vehicle must be permanently secured on piers, pad or foundation;

2.43.a.4.D. the vehicle must be tied down in accordance with local, state, or county requirements.

2.43.a.5. a self-propelled vehicle will not qualify for use as a business or office;

2.43.a.6. each business must be operated a minimum of 25 hours per week and open to the public during times that are normal and

customary for that type of activity in the same or similar communities a minimum of 24 hours per week;

2.43.a.7. one or more employees must be available to serve customers whenever the business is open to the public;

2.43.a.8. each business must be visible and recognizable as commercial or industrial from the main traveled way. A business is visible when that portion on which the permanent building designed, built, or modified for its current commercial use can be clearly seen year-round during normal weather by a person of normal visual acuity while traveling at the posted speed on the main traveled way adjacent to the business.

2.43.b. Each business must have:

~~2.28.e.143.b.1.~~ a current business registration certificate issued by the West Virginia Department of Tax and Revenue;

~~2.28.e.2. a public access road;~~

~~2.28.e.343.b.2.~~ an identification sign for the business which shall conform to this rule concerning an on premises sign;

~~2.28.e.443.b.3.~~ a posting of the business operating hours;

~~2.28.e.543.b.4.~~ a capacity to provide ample parking for all customers;

~~2.28.e.643.b.5.~~ a separately metered electrical service provided by the local power company that cannot be an extension from any other building;

~~2.28.e.7. and a minimum operating period of six (6) months prior to the date of the permit application.~~

~~2.28.d43.c.~~ None of the following qualify as a commercial or industrial activity:

~~2.28.d43.c.1.~~ Outdoor advertising

structures.

~~2.28.d.43.c.2.~~ Agricultural, forestry, grazing, farming, or other related activities, including, but not limited to wayside produce stands.

~~2.28.d.43.c.3.~~ Activities conducted in a building or structure principally used as a residence.

2.43.c.4. Recreational facilities such as campgrounds, golf courses (not including driving ranges) or par-three courses, tennis courts, baseball or football fields or stadiums, or racetracks, except for any portions of those facilities occupied by offices, clubhouses, etc. which meet the minimum standards to keep the business from being considered transient or temporary.

2.43.c.5. Quarries, borrow pits, or nurserylands, except for any portions of those facilities which are occupied by a permanent office located at the site which meets the minimum standards to keep the activity from being considered a transient or temporary activity.

2.43.c.6. Business not visible and recognizable as commercial or industrial from the traffic lanes of the main traveled way. A business is not visible and recognizable as commercial or industrial if the on-premise or on-property sign is the only part of the commercial or industrial activity that is visible from the main traveled way.

~~2.28.d.443.c.7.~~ Railroad tracks or minor sidings.

~~2.28.d.543.c.8.~~ Activities more than 660 feet from the main traveled way.

~~2.28.d.643.c.9.~~ Transient or temporary activities.

~~2.28.d.743.c.10.~~ Any commercial or industrial activity upon which the permit application is based which is operated primarily to serve as the basis for an outdoor advertising permit.

~~2.28.d.8.~~ Part time commercial or industrial activity, defined as any commercial or industrial activity operated for less than twenty five (25) hours per week and open to the general public less than twenty four (24) hours per week.

~~2.28.d.943.c.11.~~ Any other commercial or industrial activity which the Commissioner finds is not meaningful commercial or industrial activity.

2.2944. "Unzoned Industrial Area," for purposes of Section 8 of this rule, means an area within a municipality not zoned by State or local law, regulation or ordinance. ~~For the purposes of Section 8 of this rule, a~~ salvage yard is in an unzoned industrial area within a municipality when it is located within a radius of 1000 feet of at least one industrial activity, which is in continuing operation for at least three (3) months of the year.

2.2944.a. None of the following are considered industrial activities:

2.2944.a.1. Outdoor advertising structures.

2.2944.a.2. Agricultural, forestry, ranching, grazing, farming and related activities, including, but not limited to, wayside fresh produce stands.

2.2944.a.3. Activities normally and regularly in operation less than three (3) months of the year.

2.2944.a.4. Transient or temporary activities.

2.2944.a.5. Activities not visible from the traffic lanes of the main traveled way.

2.2944.a.6. Activities more than 300 feet from the nearest edge of the main traveled way.

2.2944.a.7. Activities conducted in a building principally used as a residence.

2.2944.a.8. Railroad tracks, minor sidings, and passenger depots.

2.2944.a.9. Junkyards, as defined in Section 136, Title 23, United States Code.

2.3045. "Urban Area" means an area including and adjacent to a municipality or other urban place having a population of 5,000 or more, as determined by the latest available Federal census within boundaries to be fixed by the Division subject to the approval of the Secretary of the U.S. Department of Transportation, or his authorized representative.

2.46. "Visible" means capable of being seen (whether or not legible) and readily recognized as a sign or commercial or industrial activity by a person of normal visual acuity. The presence of a sign, whether attached to the building or free-standing, shall not be considered in determining whether or not a commercial or industrial activity is visible.

2.47. "Zoned" means subject to a complete system of land use, including the regulation of size, lighting, and spacing of signs, for tracts of land within a political subdivision established and actively enforced by duly constituted zoning authorities. The mere labeling of land as zoned commercial or industrial does not mean the area is zoned for purposes of signing, rather there must be the establishment and enforcement of a complete set of regulations to govern land use within the portion of the political subdivision which is zoned. Unrestricted land shall be treated as unzoned.

2.3148. "Zoned Commercial or Industrial or Commercial Areas" means an those areas zoned for business, trade, industry, or commerce, pursuant to state, county, municipal or local law, ordinance or regulation inside the control area within a political subdivision which are zoned for commercial or industrial use. They shall not include any areas in which limited commercial or industrial activities are permitted as an incident to other primary land uses nor shall they include areas which the Division determines were so designated for the principal purpose of creating locations for outdoor

advertising signs adjacent to or near Interstate or Federal-aid primary highways. They shall not include areas which are unrestricted. No small parcels or narrow strips of land designated for a use classification different from and less restrictive than that of the surrounding area and which is made without consideration of the neighborhood land use character shall be considered a zoned industrial or commercial area.

§157-6-3. Use of Right of Way; Permits.

3.1. Purpose. The purpose of this section is to establish rules governing the making of openings or placing of structures, in, along, over, under or across State roads and highways and the issuance of permits for such purposes.

3.2. Entrances from Residential Properties, Industrial or Business Establishments. All entrances to any state road, whether from a residence, or an industrial or business property, shall be constructed in accordance with the Division's "Manual on Rules and Regulations for Constructing Driveways on State Highway Right of Way". This manual may be obtained by contacting the Division's central headquarters in Charleston or any of the Division's district headquarters. All entrances shall be adequately drained and properly stabilized.

3.3. School Bus Shelters. All school bus shelters must be constructed in accordance with plans approved by the Commissioner, and when so constructed, these shelters may be constructed within the right of way limits as directed by the Commissioner. All affected shoulder areas shall be properly stabilized.

3.4. Overhead Structures.

3.4.a. Expressway, Trunkline and Feeder Roads. All structures constructed over expressway, trunkline and feeder roads, such as grade separations, wire structures, coal tipples, conveyors, etc., must be constructed so as to provide a minimum vertical clearance of 18 feet over the entire width of the roadway, including shoulders, and a minimum horizontal clearance of 10 feet on either side of the pavement edges. The

total horizontal clearance must be no less than 40 feet at right angles to the centerline of the highway. In cases where proposed construction or reconstruction plans require greater horizontal clearances, the required clearances must be provided.

3.4.b. State Local Service Roads. The minimum vertical clearances over state local service roads must be 18 feet for the entire width of the roadway, including shoulders, and the minimum horizontal clearance must be 8 feet on either side of the pavement edges. The total horizontal clearance must be no less than 30 feet at right angles to the centerline of the road. In cases where proposed construction or reconstruction plans require greater horizontal clearances, the required clearances must be provided.

3.4.c. In the event of conflict between the provisions of Subdivisions 3.4.a. and 3.4.b. of this rule, and the terms of deeds conveying real estate to the Division, the terms of the deeds shall control.

3.4.d. Coal Tipples, Conveyors, etc. All coal tipples or conveyors carrying or transporting loose material must be adequately encased within the limits of the highway right of way and a sufficient distance on either side of the highway right of way to properly protect the traveling public or other highway users.

3.4.e. Construction Plans Submitted with Application. All applications for permits covering the construction of overhead structures must be accompanied with a plan in sufficient detail that a complete structural analysis may be made by the Commissioner.

3.5. Underpass Structures. All underpass structures, such as tunnels, coal mine haulways, airways, etc., constructed under state highways, must be constructed so as to properly support and otherwise protect the highway.

3.5.a. Length. All underpass structures constructed at or near the grade of an existing highway must be of sufficient length to conform to the existing width of the roadway or any existing

proposed roadway construction or reconstruction plans.

3.5.b. Pedestrians. If necessary, underpass structures will include sidewalks to properly accommodate pedestrian traffic along the highway.

3.5.c. Construction Plans Submitted with Application. All applications for permits covering underpass construction must be accompanied with a plan in sufficient detail that a complete structural analysis may be made by the Commissioner of the Division.

3.6. Subsurface Mining. A permit must be obtained from the Division for all subsurface mining being carried on or to be carried on under any state highway.

3.6.a. Conditions. The individual or company doing the mining shall carry on the operation so as to properly protect the highway from damage. In the event damage to the highway does occur, the individual or company doing the mining must either restore the highway at his, her or its own expense in a manner satisfactory to the Division or reimburse the Division for the actual expense to restore the highway.

3.6.b. Maps. All applications for permits covering subsurface mining must be accompanied with a map showing the position of the coal seam or other mineral or minerals proposed to be mined, horizontally and vertically with relation to the highway.

3.7. Seismic Surveys. The Commissioner's seismic surveys, for the location of oil or gas deposits, may be conducted on state roadways upon compliance with the following conditions.

3.7.a. The work shall be performed when the ground is dry. Test holes shall not be larger than six (6) inches in diameter. Shot points shall be located at a safe distance from culverts, bridges and pavements, so as not to cause damage thereto.

Shots shall not be in proximity to public or private buildings, and shall be so placed as to avoid disturbance to domestic water supplies. Upon completion of the work, ditches shall be restored

and shoulders reshaped to the satisfaction of the District Engineer. Drill holes shall be plugged with concrete at a depth of thirty (30) inches below ground level.

3.8. Utility Installations. All individually, publicly, and privately owned utilities, including but not limited to, electric, communication, gas, oil, petroleum products, chemical, water, steam, sewage, drainage, and similar facilities that are to be accommodated, adjusted or relocated within State highway right-of-way, shall be in accordance with the Division's manual, "Accommodation of Utilities on Highway Right of Way" dated July 1, 1995, and made a part of this rule. This manual may be obtained by contacting the Division's central headquarters in Charleston or any of the Division's district headquarters.

3.8.a. Eligibility for reimbursement of public utilities by the Division, for relocation costs due to the Division's projects shall be in accordance with W. Va. Code §17-4-1, et. seq. and the following provisions.

3.8.b. Reimbursable relocation costs include the entire amount paid by the public utility, exclusive of any right-of-way costs, required to perform the relocation after deducting any increase in value and any salvage value.

3.8.c. Reimbursement of Publicly Owned Public Utilities. The Commissioner shall, in accordance with W. Va. Code §17-4-17d-1, reimburse all publicly owned public utilities for the cost of relocation due to a highway project.

3.8.c.1. Applicability. This rule applies to all eligible projects on which the publicly owned public utility incurs reimbursable costs after June 9, 2000.

3.8.d. Reimbursement of Privately Owned Public Utilities. The Commissioner shall utilize the following criteria when establishing eligibility for reimbursement.

3.8.d.1. Construction or Improvement Projects. Relocation costs of privately owned public utilities, located within State highway right-

of-way by permit, are eligible for reimbursement if the costs are required due to a Division construction or improvement project.

3.8.d.1.A. Construction or Improvement projects, for the purpose of determining reimbursement eligibility, are generally all projects programmed with a separate Division "Authorization Number". The project, however, must alter the existing functionality of the highway involved in order to be eligible for reimbursement under this section. Examples of these types of projects include, but are not limited to: new highways, highway realignments, landslide corrections involving realignment of the highway, intersection improvements, bridge replacements, major bridge renovations involving deck replacement, and other projects as deemed eligible by the Commissioner. Projects performed under blanket Division authorizations (a single authorization representing multiple projects) that alter the functionality of the highway involved, shall be considered eligible for reimbursement.

3.8.d.2. Maintenance Activities. Relocation costs of privately owned public utilities, located within State highway right-of-way by permit, are not eligible for reimbursement if the costs are the result of maintenance activities by the Division.

3.8.d.2.A. Maintenance activities, for the purpose of determining reimbursement eligibility, are activities performed by the Division that do not alter the existing functionality of the highway involved. Examples of these types of activities include, but are not limited to: surface improvements not affecting highway alignment, landslide corrections not affecting highway alignment, emergency repairs, bridge repairs not involving total deck replacement, drainage improvements to existing drainage structures, signal and lighting installations and improvements, painting, striping and signing work, routine maintenance, and other required activities as determined by the Commissioner.

3.8.d.3. Applicability. This rule applies to all eligible projects on which the privately owned public utility incurs reimbursable

costs after May 4, 2001 (the effective date of this rule).

3.9. Railway Grade Crossings. All railway grade crossings of any state highway shall be constructed and maintained in accordance with the following requirements:

3.9.a. Conformity to Grade. All railway grade crossings must be constructed so as to conform to the grade of the highway involved. If necessary, in order to obtain proper conforming grades and alignment, the railway company shall be required at its own expense to relocate and reconstruct the section of the road affected in accordance with existing standards.

3.9.b. Spur Tracks. Spur tracks should not be super-elevated across the highway.

3.9.c. High-Speed Tracks. High-speed tracks shall be so located as to cross the highway on a track tangent or slight curve in order to eliminate or cause minimum track superelevation.

3.9.d. Crossing at Right Angles. All tracks shall cross the highway as near to a right angle as feasible.

3.9.e. Rail Elevation. The top of rail elevation shall conform to the highway surface elevation or, highway approach grades conforming to current standards shall be provided. After the track is placed, the railway company will not alter the top of rail elevation without prior approval of the change in elevation by the Commissioner.

3.9.f. Type of Pavement. The type of pavement on crossings shall be of a high-type surface or other semi-permanent material as specified by the Commissioner based on the type and volume of highway and rail traffic.

3.9.g. Width of Surface. The width of the crossing surface shall be in accordance with standards promulgated by the Commissioner.

3.9.h. Maintenance. The railway company will maintain the roadbed and crossing in

a condition acceptable to the Commissioner.

3.9.i. Traffic Control Devices. At a minimum, the railway company shall install and maintain crossbuck signs in accordance with the Federal Highway Administration's, "Manual on Uniform Traffic Control Devices for Streets and Highways." This manual may be obtained by contacting the Division's central headquarters in Charleston or any of the Division's district headquarters.

3.9.j. Where a track is being constructed across any state highway, the Commissioner may require the railway company at its own expense to install and maintain active traffic control devices conforming to the Federal Highway Administration's, "Manual on Uniform Traffic Control Devices for Streets and Highways," and existing standards.

3.9.k. Abandoned Tracks and Appurtenances. When any railway track crossing a state highway is abandoned, the railway company must promptly remove the tracks, ties, etc., and any appurtenances to the crossing such as crossbuck signs, active traffic control devices or other equipment. The highway shall be repaired with a pavement and shoulders of the same type and width as the adjacent pavement and shoulders, and in a manner satisfactory to the Commissioner.

§157-6-4. Rules for Issuance of Permits for Making Openings or Placing Structures; In, Upon, Along, Over, Under and Across State Roads.

4.1. General Regulations for Issuance of Such Permits.

4.1.a. Form of Application. Applications for permission to perform work within highway right of way must be made on the Division's standard permit form. The applicant must provide full information concerning the work to be done and must include a sketch.

4.1.b. Signature Required. Applications must be signed by the applicant or his duly authorized representative.

4.1.c. Security. The applicant must deposit security with the Division in the form of a certified check, money order, or executed bond, with surety satisfactory to the Division, to cover any damage the Division may sustain due to granting the permit, including any expense incurred in restoring the highway to its original condition, or the proper repair of any and all damages that may result within one (1) year from the date of the completion of the work.

4.1.d. Completion Date. The application must state the date the proposed installation is to be completed.

4.1.e. Approval of Application. Applicants for permits must file the original and three (3) copies of the application with the District Administrator in whose District the proposed installation is to be made. Before any work can be started, the application must be approved by the District Administrator or the Director of the Highway Operations Division.

4.1.f. Inspection. The work must be done under the supervision and to the satisfaction of the Division. The applicant must agree to reimburse the Division for any inspection costs incurred under the permit.

4.1.g. Notification. The applicant must notify the Division at least 48 hours in advance of the date work will begin.

4.1.h. Control of Traffic. The traveling public must be protected at all times in accordance with the Division's manual, "Traffic Control for Streets and Highway Construction and Maintenance Operations." This manual may be obtained by contacting the Division's central headquarters in Charleston or any of the Division's district headquarters.

4.1.i. The applicant will repair at his or her expense damage to the road, at any time, resulting from work authorized under the permit.

Unsatisfactory repairs may be corrected by the Division or its authorized agent and the cost thereof paid by the applicant.

4.1.j. Save Harmless. The person, firm or corporation to whom a permit is issued must agree to save harmless the State, the Commissioner, and any and all officers, agents and employees of the Division from any damages to persons or property arising or resulting from work authorized or done under the permit.

4.1.k. Liability. The Division assumes no liability for damage to the proposed installation by reason of construction or maintenance work on the road.

4.1.l. Removal. All permits granted shall be subject to the removal of the installation by the permittee at no cost to the Division when required for improvement of the road, and subject to all rules now or hereinafter adopted by the Commissioner.

4.1.m. Cancellation. The Commissioner reserves the right at any time to cancel any permit in the event the applicant or the person by whom the work is being done thereunder fails to comply with the terms and conditions under which it is granted.

§157-6-5. Removal of Obstructions From Roadway.

5.1. Procedure for Effecting Removal of Obstructions. The procedure for effecting the removal of any obstruction, as defined in W. Va. Code, §17-16-1, from the right of way limits of any state highway, shall be as follows:

5.1.a. Notice. The County Maintenance Superintendent shall notify the owner or the person responsible for the obstruction that he or she is violating the law in placing, or causing to be placed, the obstruction within the highway right of way limits, and that immediate steps must be taken not only to remove the obstruction, but also to make any necessary repairs resulting from the existence of the obstruction.

5.1.b. Additional Notice. In the event of failure or undue delay on the part of the owner or the person responsible to remove immediately the

obstruction, the County Maintenance Superintendent shall notify the District Administrator of the circumstances relating thereto. Thereupon the District Administrator shall notify the responsible party by letter to remove the obstruction. If the obstruction is not removed within ten (10) days, the Commissioner, or his duly authorized representative, shall then cause a written notice to be served upon the owner or person responsible for the obstruction in the manner provided by law for service of notice or process, notifying such owner or responsible person to remove said obstruction within ten (10) days from the date of service of the notice. If, following service of the notice, the obstruction is not removed within ten days the Division will remove the obstruction. The costs and applicable penalties for the obstruction removal will be the responsibility of the owner or responsible person of the obstruction. The assessment and collection of costs will be pursued in accordance with W. Va. Code, §17-16-3, 4 and 5.

§157-6-6. Constructing Driveways on State Highway Right-of-Way.

6.1. Any person desiring to construct or reconstruct one or more driveways or other connections to or within the right of way of any state system street or highway, must do so in accordance with the requirements specified in the Division's manual, "Rules and Regulations for Constructing Driveways on State Highway Rights-of-Way". This manual may be obtained by contacting the Division's central headquarters in Charleston or any of the Division's district headquarters.

§157-6-7. Requirements for Outdoor Advertising on the State Highway System.

The requirements in subsections 7.1 to 7.15.g.10, inclusive, shall not be construed to cause any advertising sign or device, the permit for which has been applied for prior to the 31st day of December 2003, to become a "non-conforming advertising sign" or device. Such advertising sign or device shall not be subject to the requirements hereinafter set forth except the requirements for size in subsection 7.8.b. but shall be subject to the

requirements in § 157-6-7 as they existed prior to the effective date of this section.

7.1. Purpose. This rule's purpose is to regulate and control the erection and maintenance of outdoor advertising signs, displays and devices along the total highway system and further to set up specific limitations relating to size, spacing and lighting of those signs, displays and devices, located along those highways in West Virginia designated for federal-aid funding purposes as interstate and primary highways in accordance with Title 23, United States Code.

7.1.a. This rule is correlated and applies along with that certain agreement dated the 6th day of January, 1969, between the United States of America, represented by the Secretary of Transportation, acting through the Federal Highway Administrator, and that agreement dated the 19th day of June, 1961, between the United States Secretary of Commerce and the State Road Commissioner and the "National Standards" of 23CFR, Chapter 1, §750.105 et.seq. as prepared and promulgated by the Bureau of Public Roads in relation to the National System of Interstate and Defense Highways.

7.2. Licenses Required, Applications. No person may engage in the business of outdoor advertising in this State without first obtaining a license from the Commissioner; and no person shall construct, erect, operate, use, maintain, lease or sell any advertising sign, display or device in this State without first obtaining a license from the Commissioner. A license fee in the amount of one hundred ~~twenty-five~~ dollars per annum, payable in advance, shall be charged for ~~such license one (1)~~ through twenty (20) permits. Companies, including subsidiaries and affiliates, obtaining twenty-one (21) or more permits shall pay a fee of one-thousand dollars per annum.

7.2.a. Applications for licenses, or renewal of licenses, must be made on forms furnished by the Commissioner and must be accompanied by the annual fee.

7.2.b. Licenses expire on the thirtieth day of June of each year, and will not be prorated.

Application for renewal of licenses must be made at least thirty (30) days prior to the date of expiration.

7.3. Revocation of License. Whenever the Commissioner finds that any material information given on the application for license is knowingly false or misleading or that the licensee has violated any of the provisions of W. Va. Code §17-22-1, et.seq. or these rules, he or she has the authority, after thirty (30) days notice in writing to a licensee, to enter an order revoking any license granted. Upon revoking a license, the Commissioner will repay a proportionate part of the license fee unless such licensee shall, before the expiration of thirty (30) days, correct such false or misleading information and comply with the provisions of W. Va. Code §17-22,1, et. seq. and these rules.

7.3.a. Orders. A Commissioner's order revoking a license shall be accompanied by the findings of fact and conclusions of law upon which the order was entered.

7.3.b. Judicial Review. Any person adversely affected by an order entered by the Commissioner is entitled to a judicial review as set out in W. Va. Code, §17-22-13.

7.4. Permits Required. No person shall construct, erect, operate, use, maintain, or cause or permit to be constructed, erected, operated, used or maintained any outdoor advertising sign, display or device without first obtaining a permit from the Commissioner, and paying the annual fee. In the case of new permits, an inspection fee may will be charged as is deemed necessary by the Commissioner.

7.4.a. If a check submitted to the Division for a permit and/or license fee is returned for any reason, the permit and /or license shall be void from date of issuance. The applicant may be required to submit a new application and may thereafter be required to submit cash or a certified check with any application or renewal.

7.4.ab. License Required. Permits will not be issued to any person who has not obtained the license provided for in Subsection 7.2.

7.4.bc. Application. A separate application for a permit must be made for each separate advertising sign, display or device, on the form furnished by the Commissioner. ~~The applicant or his duly authorized representative must sign the application. Such authorization must be submitted to the Commissioner in writing~~ Applications must be typed, signed by the applicant or the applicant's duly authorized representative, describe the size, shape, and nature of the sign and its actual or proposed location with sufficient accuracy to enable the Commissioner to locate it, and include such other information relevant to the particular sign as the Commissioner may reasonably require.

7.4.c.1. Where local government regulation exists, no permit shall be issued unless the applicant submits along with the application either (1) a copy of the permit issued for the site by the local government or (2) a statement from the appropriated official indicating that the sign complies with all local requirements and that they will issue a permit to that applicant upon issuance of the state permit by the Division.

7.4.c.2. If requested by the Division, any application that is on the same real property of the qualifying business shall be accompanied by documentation confirming that the qualifying business has been in continuous significant operation at the location for one (1) year prior to submission of the application.

7.4.c.3. The proposed location for a new sign shall be clearly identified on the ground by a stake with no less than two (2) feet of the stake clearly visible above the ground line. Staking of the site is considered part of the application. The stake shall not be moved or removed by the applicant until the application is disapproved or, if it is approved, until the sign has been erected.

7.4.c.4. No sign shall be permitted or erected within 800 feet of areas from which vegetation has been removed unlawfully or areas within right of way limits from which vegetation has been removed without prior written approval of the WVDOT.

7.4.c.5. Permit applications will be considered in the order submitted. If applications are submitted for the same or conflicting sites, each will be dealt with in turn. An application which is not approved may be resubmitted if the Division is notified in writing within three (3) business days from certified receipt of denial and the application is resubmitted within ten (10) business days.

7.4.c.6. The applicant is responsible for providing access to and entry upon all real property as determined by the Division as necessary for view of the application.

7.4.c.7. Upon receipt of the permit application, the District Inspector will inspect the site in order to ascertain if the location qualifies. The Division reserves the right to consider any application for a sign permit for a period of up to ninety (90) days from the date the application is submitted. On or before the expiration of such ninety (90) day period, the Division shall either: (1) accept the application and issue the sign permit; (2) reject the application in writing stating the ground or grounds for the rejection; or (3) notify the applicant in writing that the Division requires additional time to review the application, not to exceed sixty (60) days and stating the issues or matters requiring inquiry by the Division, including any request to the applicant for the submission of any additional information or documentation in support of the application. If within the ninety (90) day period the Division has not responded in writing indicating acceptance or rejection of the application, or specifying the need for further information, the applicant may deem the application rejected and proceed with the applicant's rights of appeal by judicial review in accordance with West Virginia Code § 17-22-15.

7.4.c.8. For the purpose of permitting additional outdoor advertising along roads which have been designated scenic byways or backways, the Secretary may exclude a portion of the byway or backway from designation if it is inconsistent with the criteria and is in accordance with the segmentation policy.

7.4.c.9. The Division may issue a

permit for a sign, which could otherwise be permitted even though it is located within the acquired right-of-way for a highway or interchange for which construction has not yet begun. However, the sign owner and the landowner must agree to remove the sign without cost to the Division and without compensation within thirty (30) days after written notice from the Division to the addresses provided in the application.

7.4.c.10. In the event the permit is disapproved, all appeals may be pursued in accordance with W. Va. Code, §17-22-15. The applicant shall bear the burden of showing that the Division should issue the permit. A decision regarding any other applications for the same or conflicting sites submitted subsequent to the initial submission of the disapproved application may be held in abeyance pending the resolution of the appeal. If the Division's disapproval is sustained, the other applications will be considered in turn.

7.4.c.11. No new application may be submitted by the same applicant or its assignee or successor for a site which has been disapproved unless there has been a significant change in the geometry or designation of a highway, the removal of an existing, conflicting sign, etc. This prohibition extends to any sites which depend for approval on the same facts which led to the disapproval of the first application.

7.4.ed. Bond of Out-of-State Licensee. Non-residents of this State, or any person having his or her principal place of business outside the State, or which is incorporated outside the State, must first furnish and file with the Commissioner a bond payable to the State of West Virginia, with approved surety in the sum of two thousand five hundred dollars before being eligible for an outdoor advertising license. Granting a license to a non-resident is also conditioned upon the licensee fulfilling all the requirements of law and observing and obeying all regulations relating to the business of outdoor advertising in the State of West Virginia.

7.4.ed.1. All money received from the forfeiture of any bond or bonds shall be deposited in a special fund created in W. Va. Code, §17-22-10.

7.4.de. Payment. Every application shall be accompanied by a fee of ~~one~~ twenty dollars for each advertising sign, display or device. The fee shall be retained if the permit is issued. The Commissioner ~~may~~ will also charge an inspection fee, which will be retained whether the permit is issued or not.

7.4.ef. Refusal of Permit. In the event that a permit application is denied, the Commissioner shall enter an order for the denial and shall send a copy of the order to the applicant by Certified Mail, return receipt requested. The order shall be accompanied by findings of fact and conclusions of law upon which the order was entered.

7.4.fg. Change of Advertising Copy. The holder of a valid permit may change the advertising copy on the permitted structure or sign without payment of any additional fee.

7.4.gh. Expiration. Permits expire on the thirtieth day of June of each year and will not be prorated.

7.4.hi. Renewal. Permits may be renewed upon the payment of the ~~\$1.00~~ twenty dollar fee required upon original application. No application is required for the renewal of a permit.

7.4.ij. Construction of the ~~permitted sign structure or signs and sign face shall be initiated no later than completed within~~ one year from the date of ~~the permit's~~ issuance. ~~of the permit and shall be completed within a reasonable time thereafter. In the event of noncompliance with this provision, the permit may be cancelled at the discretion of the Commissioner. The Division has the discretion to cancel permits and forfeit fees if construction is not completed.~~

7.5. Revocation of Permits. Whenever the Commissioner finds that any material information given on the application for permit is knowingly false or misleading or that the permittee has violated any of the provisions of W. Va. Code §17-22-1, et. seq. or these rules, he or she has the authority, after thirty (30) days notice in writing to the permittee, to enter an order revoking any permit

issued. Upon revoking a permit, the Commissioner will repay a proportionate part of the fee unless such permittee shall, before the expiration of thirty (30) days, correct such false or misleading information and comply with the provisions of W. Va. Code, §17-22-1, et. seq. and these rules.

7.5.a. Findings of Fact. A Commissioner's order revoking a permit shall be accompanied by the findings of fact and conclusions of law upon which the order was entered.

7.5.b. Zoning Boards, Commissions or Other Public Agencies. The Commissioner may revoke a permit and return the permit fee if it is found that the construction, erection, operation, use or maintenance of any advertising sign, display or device, for which a permit was issued is prevented by any zoning board, municipal building ordinance, commission or public agency with jurisdiction over such matters. However, the Commissioner will only return one half the fee if the advertising sign was erected or the inspection by the Commissioner or his representatives was performed. Also, any other inspection fees charged will not be refunded.

~~7.5.c. Judicial Review. Any person adversely affected by an order made and entered under this section refusing to grant or revoking a permit is entitled to judicial review as set out in W. Va. Code, §17-22-1, et. seq.~~

7.6. Territorial Application. The territory under the jurisdiction of the Commissioner for the purposes of this rule includes all of the State.

7.6.a. Authorized representatives of the Commissioner may enter into and upon any land which has outdoor advertising signs, displays or devices in the performance of their functions and duties under the provisions of W. Va. Code, §17-22-1, et. seq., and this rule.

7.7. Prohibition of Certain Outdoor Advertising. No outdoor advertising sign, display or device may be erected or maintained within 660 feet of the nearest edge of and visible as to informative content from the right of way of any

road within the State Road System designated and classified for purposes of allocation of Federal-Aid Highway Funds as Federal-Aid Interstate or Federal-Aid Primary Highways, except as provided in Sections 7.8 and ~~7.16~~ of this rule.

7.7.a. No outdoor advertising sign, display, or device may be erected or maintained along the State Road System designated and classified for purposes of allocation of Federal-Aid Highway Funds as Federal-Aid Interstate or Federal-Aid Primary Highway outside of urban areas which are more than 660 feet off the nearest edge of the right-of-way visible from the main traveled way of the system and erected with the purpose of a message being read from such main traveled way except as otherwise provided in this rule.

7.8. Exempted Areas. Outdoor advertising signs, displays and devices whose size, spacing and lighting are in conformance with the following subsections may be erected within 660 feet of the nearest edge of the right-of-way of those roads designated for Federal-Aid funding purposes as Federal-Aid Interstate or Federal-Aid Primary Highways within zoned and unzoned commercial or industrial areas except as provided in Section 7.15 of this rule.

7.8.a. Licensees must submit a written request for a variance with the permit application if he or she wants to place a sign, display or device within 660 feet of a two-lane non-controlled access highway in an unzoned commercial or industrial area, on the opposite side of the highway from the activity establishing the zoning. The written request for a variance must specify the reasons. The Commissioner will based his or her decision to accept the variance on the conditions in the area and the documentation of the licensee. Once it is determined which side of the highway the unzoned commercial, industrial area or the single activity establishing the zone is located, it will not be changed.

7.8.b. Size.

~~7.8.b.1. The maximum allowed area of any sign is 1200 square feet with a maximum~~

~~height of 25 feet and a maximum length of 60 feet, inclusive of cutouts and extensions, but excluding decorative bases, and structural supports.~~

7.8.b.2. A sign may contain one or two advertisements per facing side, within the maximum allowed area.

~~7.8.b.3. Back to back or V-type signs are permissable and will be treated as one structure with an area of 1200 square feet permitted for each facing~~

7.8.b.2. Advertising signs composed of stacked sign faces, one on top of the other, on the same structure and facing the same direction will be limited to three hundred square feet per sign face.

7.8.b.3. Advertising devices composed of separate sign faces in a side by side formation, on the same structure, facing the same direction will be limited to three hundred square feet per sign face.

7.8.b.4. Advertising devices composed of a single sign, facing a single direction will be limited to six hundred seventy-two square feet: *Provided*, that cutouts and extensions which expand the area may be allowed to the extent the area is expanded by no more than thirty percent of its original permitted configuration.

7.8.b.5. No more than one sign structure is permitted at a location.

7.8.c. Spacing.

7.8.c.1 Federal-Aid Interstate Highways and Controlled-Access Facilities Within Zoned and Unzoned Commercial or Industrial Areas.

7.8.c.1.A. Signs must be spaced at least 500 1,000 feet apart on the same side of the highway.

7.8.c.1.B. No sign may be located within 500 1,000 feet of an interchange. This requirement does not apply within the

boundaries of any municipality.

7.8.c.2. Other Federal-Aid Primaries.

7.8.c.2.A. Outside a municipality, signs must be spaced at least ~~300~~ 500 feet apart on the same side of the highway.

7.8.c.2.B. Inside municipalities, signs must be spaced at least ~~100~~ 500 feet apart on the same side of the highway.

~~7.8.c.3. The foregoing spacing requirements do not apply to signs which in the opinion of the licensee are separated by an intervening building, structure or roadway, as defined in section 7.2 of this rule. In order to receive a permit for these situations, licensees must submit written documentation along with the permit application explaining that a situation exists where an intervening building, structure or roadway would justify a variance from the spacing requirements. The Commissioner will review the permit application and the written documentation and may grant a variance based upon the sight distances in the area and the documentation submitted by the licensee.~~

7.8.c.4. Signs that are double decked, side-by-side, back-to-back, or V-type will be permitted if they meet the requirements of Subsections 1, 2, and 3 of this Section 7 of this rule.

7.8.d. Lighting. Signs may be illuminated, subject to the following restrictions:

7.8.d.1. No outdoor advertising may contain lighting that is not shielded and any lighting must be of such low intensity as not to cause glare or impair the vision of an operator of any motor vehicle.

7.8.d.2. No sign may be illuminated by any rapid flashing intermittent light or lights, that change in a time sequence faster than 12 cycles/revolutions per minute, without a written acceptance of the variance from the Commissioner.

7.8.d.3. No sign may be illuminated

so as to obstruct the view of any connecting road or intersection or to obscure an official traffic device or signal.

7.8.d.4. No sign may contain numerical displays in the form of LED's or other lights that change more than once in twenty-four (24) hours.

7.8.e. Off-premise Change Message Signs (CMS)

7.8.e.1. CMS may not contain or display flashing, intermittent or moving lights.

7.8.e.2. CMS may conform with size requirements as described in previous sections.

7.8.e.3. CMS may be spaced 1500 feet apart on the same side of the highway and 500 feet apart from another CMS structure located on the opposite side of the highway.

7.8.e.4. Only conforming sign structures may be modified to a CMS upon compliance with CMS standards and approval of the WVDOT. Nonconforming sign structures shall not be modified to a CMS.

7.8.e.5. Each message displayed shall remain fixed for at least eight (8) seconds.

7.8.e.6. When a message is changed, it must be accomplished within an interval of two (2) seconds or less.

7.8.e.7. CMS must contain a default design that will freeze the sign in one position if a malfunction occurs.

7.8.e.8. CMS may only be constructed as a single face, back to back or two-faced, V-shaped structures. Only one face may be visible in each direction of the main traveled way. CMS shall not be side by side or stacked.

7.8.e.9. No cutouts or extensions are allowed on CMS structures.

7.8.e.10. If a conforming sign is to

be revised to a CMS, an application shall be submitted noting the sign is to become a CMS and requesting approval for this change. No CMS can be erected or permitted unless the applicant first cancels any previous permits for this location.

7.8.e.11. A special CMS permit fee of \$500.00 will be charged for initial issuance and annual renewal of CMS permits in addition to an initial inspection fee.

7.9. Exceptions.

7.9.a. In lieu of exercising control over size, spacing and lighting of outdoor advertising signs, displays or devices in zoned commercial or industrial areas as set forth in Subsection 7.8 of this rule, the Commissioner may certify to the Federal Highway Administrator that a state, regional, county, municipal or local zoning law, regulations, or ordinance or building ordinance has established effective control of size, spacing and lighting of outdoor advertising signs, displays and devices.

7.9.b. All licensees in the affected area will be advised of the Commissioner's action. This certification will be effective as long as the control exercised is consistent with W. Va. Code, §17-22-1, et. seq. and this rule.

7.9.c. The following signs, as defined in this Subdivision, are excepted from the license and permit requirements of this rule:

7.9.c.1. Directional or other official signs and notices required or authorized by law.

7.9.c.2. Signs, displays and devices advertising the sale or lease of property on which they are located.

7.9.c.3. Signs advertising activities conducted upon the property which they are located, and markers of underground utility facilities.

7.9.c.4. To fall within the purview of paragraphs 7.9.c.2 and 7.9.c.3., the sign, display or device must meet the following requirements:

7.9.c.4.A. For Sale or Lease Signs. One sign advertising the sale or lease of the property which is visible to traffic proceeding in any one direction may be erected.

7.9.c.4.B. Business or Activity Sign. One double-faced sign or two signs, one visible in each direction may be erected not more than 500 feet from the center of the activity. The sign or signs may not exceed 150 square feet including border and trim but excluding structural supports. Center of activity is determined by the location of the cash register or the main business activity.

~~7.9.c.4.C. No on-premise sign may be located if it is separated from the activity by an intervening parcel of land or building.~~

7.9.d. Signs advertising activities, products or services offered or performed on the property upon which they are located shall be considered on-premise provided they meet the following requirements:

7.9.d.1. Signs must be physically located on the same property as activity advertised.

7.9.d.2. The intent of the sign must be the identification of the activity, product or service offered at the location.

7.9.d.3. In the event a sign site is located on a narrow strip of land contiguous to the advertised activity or on land connected to the advertised activity by a narrow strip of land, the sign site shall not be considered part of the premises on which the activity being advertised is conducted. A narrow strip shall include any configuration of land which cannot be put to any reasonable use related to the activity other than for signing purposes.

7.9.d.4. Two or more activities which share a common property line may share a single on-premise sign so long as the sign is located on the common property line and meets all other requirements on on-premise signs.

7.9.d.5. The sale of land between the main building and the advertising device or the diversion of the land to uses other than commercial or industrial by lease, rental agreement, easement, or license, etc., will be prima facie evidence that the sign is no longer on-premise and shall be subject to appropriate provisions of the law. The diversion of land to other uses includes, but is not limited to, cultivation to raise crops or forest even though land may be of a single ownership, or land which is separated from the activity by a public highway.

7.9.d.6. If a business vacates a premise which is not thereafter occupied by another business within one year, the owner of the property must, without cost to the Division, dismantle and remove any free-standing on-premise sign. Any on-premise sign which is not so removed is illegal.

7.9.e.4.D d.7. An on premise sign may not be erected on the opposite side of the highway from the activity unless topographical conditions make it impossible to locate on the same side of the highway. The sight distance required to qualify for this variance is less than 250 feet.

7.10. Purchase or Condemnation. The Commissioner is authorized and empowered to make acquisition of all of the property rights and interests specified in W. Va. Code, §17-22-5, when any sign, display or device is required to be removed by reason of the provisions of W. Va. Code, §17-22-1, et.seq. or of this rule, by purchase at private sale, or in the event he or she is unable to do so, by proceeding in eminent domain. Just and full compensation shall be paid upon the removal of any outdoor advertising sign, display or device that is:

7.10.a. lawfully in existence;

7.10.b. adjacent to any highway designated or redesignated as part of the federal-aid interstate or primary systems;

7.11. Permit Identification Number. Every permit issued in accordance with this rule will be

assigned a separate identification number. ~~It is the duty of each permittee to fasten the permit identification number tag to the sign for which it was furnished.~~ Upon issuance of the permit, the permittee must fasten or affix the identification tag on the support or lower corner of the sign nearest the main traveled way so as to be readable from the edge of the highway and as directed by the Division. The tag will be issued for and may be attached only to the sign described in the permit application. Under no circumstances may the tag be moved from one sign to another nor may the sign to which it is attached be relocated to another location. The tag will contain a number, the expiration date of the permit and the name of the permittee. Construction, erection, operation, use or maintenance of an outdoor advertising sign, display or device without having the permit number tag affixed thereto shall be prima facie evidence that it is in violation of the provisions of W. Va. Code, §17-22-1, et. seq. and this rule.

7.11.a Replacement tags for those which are lost or vandalized must be obtained from the Division by submitting a copy of the application or the renewal permit list and replacement tag fee.

7.12. Removal After Expiration or Revocation of Permit. All outdoor advertising signs, displays and devices shall be removed by the permittee within thirty (30) days after the date of the expiration or revocation of the permit for the same.

7.13. Measurements.

7.13.a. In determining unzoned commercial or industrial areas, measurements shall be made from the farthest or outer most edge of the used area of the commercial or industrial activity, structures, ~~driveways, parking lots, storage areas,~~ or other areas constituting an integral part of the commercial or industrial activity.

7.13.b. When measuring the distance between signs, measurements shall be taken along the edge of the traveled way between lines perpendicular to the edge of the traveled way which intersect the face of the sign nearest the traveled way.

7.13.c. When measuring unzoned commercial or industrial areas, measurements shall be taken within the control area from the outermost edge of the regularly used buildings and areas regularly used and required for storage and processing. Only those portions of the activity which are within the control area and which are visible from the main traveled way shall be considered.

7.13.d. When measuring interchanges, where there is insufficient space to end an entrance ramp before beginning an exit ramp, the ramp shall be regarded as continuous and no signs will be permitted between the interchanges in areas which are not within the boundaries of an incorporated municipality.

7.13.be. The distance requirement set forth in Subdivision 7.9.b of this rule shall be measured along the interstate or controlled access facility, from the nearest point of the beginning or ending of the pavement widening at the exit from or entrance to the main traveled way.

7.13.ef. Official and on premise signs as set out in Subsection 7.10 of this rule shall not be counted nor shall measurements be made from them for the purposes of determining compliance of spacing regulations.

7.14. General Restrictions.

7.14.a. No advertising sign shall be erected or maintained which involves rapid motion or rotation of the structure or any part thereof. Provided, that an advertising sign that does involve motion or rotation which is not rapid to effect changeable messages may be permitted in accordance with the provisions of W. Va. Code, §17-22-4 and this rule.

7.14.b. The Division shall have sole discretion to determine if a sign creates a traffic or safety hazard, by any means, without limitation to location, construction, orientation, or lighting or illumination. If the Division determines the sign to be a traffic or safety hazard, a notice will be given by certified mail to the sign-owner and landowner to correct any sign which does not conform to

these standards within sixty (60) days of the date of mailing. If such a determination is made, the sign shall be removed at the expense of the sign owner immediately upon notice. A one-time extension of forty-five (45) days may be granted if the sign-owner can show just cause for the delay because of unusual weather conditions or other reasons beyond the sign-owner's control. If the correction is not completed within the specified time, the sign must be removed at the sign-owner or landowner's expense.

7.14.bc. No outdoor advertising sign, display or device shall use the words "stop" or "danger", or present or imply the need of requirement of stopping, or the existence of danger.

7.14.ed. No outdoor advertising sign, display or device shall be a copy or imitate a traffic sign or other official signal.

7.14.de. No outdoor advertising sign, display or device shall attempt or purport to direct traffic.

7.14.ef. No outdoor advertising sign shall contain lighting which is not shielded, and any lighting shall be of such low intensity as not to cause glare or impair the vision of the operator of any motor vehicle.

7.14.fg. No outdoor advertising display or device shall be illuminated by any rapid flashing, intermittent light or lights.

7.14.gh. No outdoor advertising sign, display or device shall be painted, affixed, or attached to any natural feature, including, but not limited to; rocks, cliffs, trees and shrubbery.

7.14.hi. No outdoor advertising sign, display or device shall hinder the clear, unobstructed view of approaching or merging traffic, or obscure from view any traffic sign or other official signs.

7.14.ij. No outdoor advertising sign, display or device shall be located as to obscure the view of any connecting road or intersection.

7.14.jk. No outdoor advertising sign, display or device shall be erected, outside of any municipality, within five hundred feet of any church, school, cemetery, public park, public reservation, public playground, or State or national forest, except markers for underground utility facilities.

7.14.kl. No person shall construct, operate or maintain an outdoor advertising sign, display or device without permission of the owner or other person in lawful possession or control of the land on which it is located.

7.15. Control of Outdoor Advertising Along Federal-Aid Interstate and Defense Highways. The following subsections are correlated and shall have the application in conformance with the "National Standards" of 23CFR, Chapter 1, §750.105 et.seq. as prepared and promulgated by the Federal Highway Administration of the United States Department of Transportation and all references to the "National Standards". The following subsections apply to all outdoor advertising along interstate and defense highways except in those situations where the provisions of Subsections 7.1 to 7.14 of this rule are stricter.

7.15.a. Maintenance Standards for All Signs

7.15.a.1. All signs must be structurally safe and maintained in a good state of repair which includes but is not limited to the following:

7.15.a.1.A. The sign face must be maintained free of peeling, chipping, rusting, wearing and fading so as to be fully legible at all times.

7.15.a.1.B. All parts of the sign, including the cutouts, extensions, border, trim, and sign structure must be maintained in a safe manner, free from rusting, rotting, breaking and other deterioration.

7.15.a.1.C. The sign face must not have any vegetation growing upon it or touching or clinging to it.

7.15.a.1.D. Any sign which does not conform to the maintenance standards is in violation of this subdivision. A notice will be given by certified mail to the sign owner and landowner to repair any sign which does not conform to these standards within sixty (60) days of the date of mailing. If such a determination is made, the sign shall be removed at the expense of the sign owner immediately upon notice. A one-time extension of forty-five (45) days may be granted if the sign-owner can show just cause for the delay because of unusual weather conditions or other reasons beyond the sign-owner's control. If the repairs are not completed within the specified time, the sign must be removed at the sign-owner or landowner's expense.

7.15.b. Non conforming signs must be maintained subject to the following restrictions:

7.15.b.1. No improvements may occur which will lengthen the life of the device.

7.15.b.2. The right to maintain a nonconforming sign is confined to the permitted sign owner or his transferee.

7.15.b.3. If a nonconforming sign is partially damaged by wind, rain, earthquake, or other natural forces including flood, tornado, or hurricane, by other catastrophic occurrences or casualties, it shall only be repaired as follows:

7.15.b.3.A. The sign owner shall notify the Division in writing of the extent of the damage and the cause of the damage, shall provide clear, color, on-site photographs of the damaged sign, and provide a description of the repair work to be undertaken including the cost of the same.

7.15.b.3.B. Within thirty (30) days of receipt of the written notification, the Division shall determine in writing by notice to the sign owner of the percent of damage to the nonconforming sign. If the Division determines that the damage is less than 50 percent of the replacement cost as of the time of the damage, the Division shall authorize the sign owner in writing to perform the requested repairs which shall be

promptly completed by the sign owner and the Division. If the Division determines that the damage is greater than 50 percent of the replacement cost as of the time of the damage, the Division shall so notify the sign owner in writing and the sign shall not be rebuilt or repaired but shall be dismantled at the cost of the sign owner or landowner and shall not be erected thereafter. Any nonconforming sign which is repaired without Division authorization becomes illegal.

7.15.b.3.C. Any person aggrieved of a decision by the Division hereon shall have the right of appeal by judicial review in accordance with West Virginia Code § 17-22-15.

7.15.b.4. A nonconforming sign which is destroyed by Act of God, catastrophic occurrence, vandalism or tortuous act, cannot be rebuilt, and the debris from the destroyed sign shall be removed by the sign owner, or by the Division at the sign owner's expense and the permit cancelled.

7.15.b.5. A nonconforming sign when relocated or moved to a conforming location shall no longer be considered a nonconforming sign and thereafter shall be subject to all the provisions of law and of these rules. Reasonable repair and maintenance of a nonconforming sign is not a change which would terminate nonconforming use. Extension, enlargement, rebuilding, changing the materials of the sign structure, changing the size of the sign structure materials, adding catwalks, adding guys or struts for stabilization of the sign or structure, adding lights to a non-illuminated sign, changing the height of the sign above ground or re-erection of the sign will make the sign illegal.

7.15.b.6. A nonconforming sign owner may change the advertising message, including changing faces, as long as similar materials are used and the sign face is not enlarged. If the sign face or faces are reduced, they may never be increased.

7.15.b.7. It is a violation of this rule for signs to be maintained from or across the right-of-way of Interstate or Federal-aid highways

or across controlled access lines of Federal-aid primary routes.

7.15.ac. Territory Involved.

7.15.ac.1. General Area Protected. This rule applies to all areas adjacent to interstate and defense highways, the entire right of way of which was acquired subsequent to July 1, 1956, and which areas are within 660 feet of the nearest edge of right of way limits within and without municipalities.

7.15.ac.2. Excepted Areas. The following areas are excepted areas within the meaning of this rule.

7.15.ac.2.A. Any area wherein a line drawn perpendicular to the centerline of the median and extended to both edges of the width of the normal right of way, intersects any right of way acquired for right of way purposes prior to July 2, 1956.

7.15.ac.2.B. Areas within a county that are zoned as commercial or industrial or the land use as of September 21, 1959, was clearly established by state law as commercial or industrial.

7.15.ac.2.C. Areas within the corporate boundaries of municipalities that are designated as commercial or industrial areas, as the corporate boundaries existed on September 21, 1959.

7.15.bd. On Premise Signs Within Protected Areas Outside of Information Sites. All on premise signs within protected areas outside of informational sites must comply with the Federal Standards of 23CFR, Chapter 1, §750.105 et.seq. for Class 2 signs, and with the following:

7.15.bd.1. For Sale or For Lease Signs. One sign advertising the sale or lease of the property upon which it is located and which is visible to traffic proceeding in any one direction may be erected. This may be one double-faced sign, one face being visible to traffic, proceeding in one direction, or two signs with the face of each visible only to traffic proceeding in one direction.

7.15.bd.2. Business or Activity Sign. One double-faced sign or two signs, one visible in each direction, and more than fifty (50) feet from the center of activity, advertising the activity being conducted on premises is permissible.

7.15.bd.2.A. Such sign may not exceed 20 feet in any one dimension or 150 square feet in area, including border and trim, but excluding supports.

7.15.bd.2.B. "Center of activity" is determined by the location of the cash register or main business activity, i.e., motel office.

7.15.bd.3. Signs Within 50 Feet of Advertised Activity. Within fifty (50) feet of the advertised activity any number of signs of any size may be erected.

7.15.bd.4. General Restrictions. Other than size and distance the following restrictions shall be applicable to on premise signs:

7.15.bd.4.A. The signs may not attempt to direct traffic.

7.15.bd.4.B. The signs may not imitate a traffic sign.

7.15.bd.4.C. Lighting, if any, must be shielded.

7.15.bd.4.D. The signs may not contain or include or be illuminated by any flashing, intermittent or moving light or lights.

7.15.bd.4.E. The signs may not move or have any animated or moving parts.

7.15.bd.4.F. The signs may not be on or attached to any natural feature.

7.15.bd.4.G. The signs may not hinder clear, unobstructed view of official signs and approaching or merging traffic.

7.15.bd.4.H. Signs greater than fifty (50) feet from the business or activity may not

have any letters, trade-marks, etc., advertising a product that are larger or more conspicuous than those advertising the activity.

7.15.ee. Signs Within 12 Air Miles of an Advertised Activity. All signs within twelve (12) air miles of an advertised activity shall comply with the Federal Standards of 23CFR, Chapter 1, §750.105 & §750.107 et. seq. for Class 3 signs and with the following regulations:

7.15.ee.1. The signs may advertise only activities being conducted within twelve (12) air miles of the sign and shall be visible only to interstate traffic not served by an information site within twelve (12) air miles of the advertised activity.

7.15.ee.2. The signs shall not be nearer than two (2) miles in advance of an intersection of the main traveled way and an exit roadway. This distance shall be measured from the edge of the exit roadway nearest to approaching traffic.

7.15.ee.3. The signs shall also be one thousand (1000) feet beyond the intersection of an entrance roadway and the main traveled highway. This distance shall be measured from the edge of the entrance roadway, including acceleration lanes, nearest to traffic which has passed the entrance roadway.

7.15.ee.4. Within the area located between two (2) and five (5) miles approaching an intersection, as above measured, not more than six (6) signs may be located, provided that there are not more than two (2) signs within any mile measured from any point and the signs shall not be less than one thousand (1000) feet apart.

7.15.ee.5. Beyond five (5) air miles from the advertised activity, an average of one (1) sign per mile is permitted.

7.15.ee.6. Other than distance, the following restrictions shall be applicable to all signs erected within twelve (12) air miles of an advertised activity.

7.15.ee.6.A. Not more than one sign, advertising the same activity or attraction, visible to traffic moving in any one direction, will be permitted on any one interstate highway. The text must be visible to traffic.

7.15.ee.6.B. No sign may exceed twenty (20) feet in any dimension or one hundred fifty (150) square feet in area, including border and trim.

7.15.ee.6.C. The signs may not be erected in scenic areas.

7.15.ee.6.D. The provisions of Subparagraph 7.15.bd.4.G. of this rule shall also apply to these signs.

7.15.df. Signs in the Specific Interest of the Traveling Public Permitted. All signs in the specific interest of the traveling public referring to public places operated by the federal, state or local government are permitted within a protected area.

7.15.df.1. The following types of specific interest areas, when so designated by the Division, may have signs erected giving information concerning the area.

7.15.df.1.A. Natural phenomena (Man-made lakes not included).

7.15.df.1.B. Historical sites.

7.15.df.1.C. Areas of natural scenic beauty.

7.15.df.1.D. Areas naturally suited for outdoor recreation.

7.15.df.1.E. Places for camping, lodging, eating, and vehicle service repair. Trade names (as defined in 23CFR, Chapter 1, §750.105 et.seq.) if any, on Class 4 signs, per Federal Standards of 23CFR, Chapter 1, §750.105 et.seq., are permitted only if they identify or characterize such a place or service. If a Class 2 or 3 sign also qualifies as a Class 4 sign, per Federal Standards of 23CFR, Chapter 1, §750.105 et.seq., the trade name is not required to be of equal prominence.

7.15.df.1.F. Farm Wineries as provided by W. Va. Code, §17-22-7.

7.15.df.2. All signs designated in this subsection shall comply with the Federal Standards of 23CFR, Chapter 1, §750.105 et.seq. for Class 4 signs and with the following restrictions:

7.15.df.2.A. The signs must be more than twelve (12) miles from the nearest sign within an informational site serving interstate highway traffic to which the sign is visible. A sign qualifying both as a Class 3 and 4, per Federal Standards of 23CFR, Chapter 1, §750.107 et. seq., may be permitted under the above regulations, Subdivision 7.15.c. of this rule, or Paragraph 7.15.c.1. of this rule.

7.15.df.2.B. The provisions of Subparagraph 7.15.bd.4.G. of this rule shall also be applicable to these signs.

7.15.eg. Informational Sites, Signs Permitted. Signs relating to informational sites are permitted within protected areas. The signs shall comply with the Federal Standards of 23CFR, Chapter 1, §750.105 et. seq. for Class 3 and 4 signs and the following regulations:

7.15.eg.1. The sign shall be placed upon a panel that may not exceed thirteen (13) feet in height or twenty-five (25) feet in length, including border and trim, but excluding supports.

7.15.eg.2. The sign may not exceed twelve (12) square feet.

7.15.eg.3. The text may not be legible from the main traveled way or turning roadway.

7.15.eg.4. Only one sign concerning one activity or place is permitted within any one site.

7.15.eg.5. Signs concerning a single activity or place may be permitted within more than one informational site, but no Class 3 sign, as defined by Federal Standards of 23CFR, Chapter 1, §750.105 et. seq., which does not also qualify as

a Class 4 sign, by Federal Standards of 23CFR, Chapter 1, §750.105 et.seq., may be permitted if the informational site is within twelve (12) air miles of the advertised activity.

7.15.eg.6. No moving signs or any animated or moving parts are permitted.

7.15.eg.7. Illumination of panels may be by white lights only.

7.15.eg.8. No sign on a panel may contain, include or be illuminated by any other lights, or any flashing, intermittent, or moving lights.

7.15.eg.9. Lighting must be so effectively shielded as to prevent beams or rays of light from being directed at the highway.

7.15.eg.10. Lighting must be of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

§157-6-8. Salvage Yards.

8.1. Application for License. No person may establish, operate or maintain a salvage yard without first obtaining a license from the Commissioner. Application for a salvage yard license must be made in writing on the form prescribed by the Commissioner and must be signed by the applicant or his authorized agent. A license fee in the amount of ~~Two Hundred Dollars (\$200)~~ Three Hundred Dollars (\$300), payable by certified or cashier's check or money order, must accompany the application. The license will expire on the first day of January following the date of issuance. The license may be renewed from year to year upon submitting the prescribed form and the ~~\$200.00~~ \$300.00.

8.1.a. Each application must include, but is not limited to the following: name, address, and business capacity of the applicant, i.e., whether the business is conducted by an individual, partnership, corporation, society or association; the date such business was established; the date of the

last salvage yard license (if any issued) and the number thereof, and the location of the salvage yard, including the number of the nearest State highway in accordance with W. Va. Code, §17-23-3.

8.1.b. Prior to establishing a salvage yard, the owner or operator must first obtain a permit from the County Planning Commission. If the County does not have a planning commission, then the owner/operator must obtain a permit from any agency so designated by the County Commission in which the salvage yard is to be located.

8.1.c. In accordance with the provisions of W. Va. Code §17-23-3, the owner or operator of a salvage yard may have no more than one hundred waste tires which are not mounted on wheels on vehicles or machines unless the salvage yard has received a license, permit or approval from the Division Department of Environmental Protection.

8.2. Areas in Which No Salvage Yard Permitted. A license will not be issued to establish, operate or maintain a salvage yard, or any part thereof, within 1000 feet of the nearest edge of the right of way of any road within the state road system, designated and classified as either expressway, trunkline, or feeder. A license will not be issued to establish, operate or maintain a salvage yard, or any part thereof, within 500 feet of the nearest edge of the right of way of any state local service road, unless the view thereof from said road shall be effectively screened and obscured by a fence or fences.

8.2.a. A license will not be issued to establish, operate or maintain a salvage yard, or any part thereof within one thousand feet of the nearest occupied private residence or within five thousand feet of the nearest occupied private residence which is part of a residential community, unless waived by the owner of the residence. A copy of the waiver must accompany the salvage yard application.

8.3. Existing Salvage Yards. Any license, issued prior to July 1, 1967, of any salvage yard that is located within 1000 feet of the nearest edge of the right of way of a road designated as either

expressway, trunkline or feeder, or is located within 300 feet of the nearest edge of a state local service road, may be renewed only if the view of the salvage yard, and all parts thereof, is effectively screened from view of the traveling public.

8.3.a. Any salvage yard which on July 1, 1967 was duly licensed may continue to be operated and maintained without screening by fences so long as the yard is not located within 1000 feet of any road designated as either expressway, trunkline or feeder, or is not located within 300 feet of the nearest edge of the right of way of any state local service road.

8.3.b. Any salvage yard which was licensed prior to June 12, 1988 may continue to be operated and maintained in accordance with the statutes, and rules in effect at the time the yard was initially licensed.

8.3.c. The licensing of salvage yards situated within municipalities shall be in accordance with the terms and provisions of W. Va. Code, §17-23-7.

8.4. Fences. Fences shall be kept in good order and repair. No advertisement is permitted on the fences other than the name of the licensee and the nature of the business conducted on the premises. The fence shall be of such height as to effectively screen the salvage yard and salvage contained therein, and shall be constructed of wood, metal or other material as may be approved by the Commissioner. Fences shall be maintained in a manner satisfactory to the Commissioner.

8.4.a. Fences must be located where they will not be hazardous to the traveling public.

8.4.b. The construction of fences shall be uniform; no patchwork type of construction is permitted.

8.4.c. Fences shall be painted where the composition is such that painting is required. The paint used shall be a color that blends into the surrounding neighborhood.

8.4.d. Where a fence consisting of

plantings or other natural materials is constructed, the operator must secure the consent and permission of the Commissioner as to the location and type of plant or natural material which may be used, in order to effectively screen the view of the salvage yard from the traveling public.

8.4.e. Gates shall be of the same height as the component fence and shall be opened only for the purpose of permitting ingress and egress to and from the enclosure.

8.4.f. The Commissioner has the right to determine whether a salvage yard is effectively screened by the fencing employed.

8.5. Payment of Costs of Fencing. The cost of the erection of fences is the responsibility of the salvage yard operator. However, if the Commissioner believes that effective screening cannot be accomplished by the usual and ordinary methods, the Commissioner may determine and pay any additional costs necessary to provide effective screening.

8.6. Removal, Purchase or Condemnation of Salvage Yard. Whenever a salvage yard is so situated that in the opinion of the Commissioner it cannot be effectively screened by fencing, the Commissioner may:

8.6.a. Pay the cost to move all salvage and equipment from the salvage yard to another location where a salvage yard business may lawfully be conducted as long as the owner or operator provides his or her consent.

8.6.b. Purchase at private sale, or acquire by eminent domain, in accordance with the provisions of W. Va. Code, §17-4-5, all property rights and interests, other than title to real property, as are necessary and required to effect a lawful termination of the salvage yard business.

8.7. Distance Measurements.

8.7.a. All measurements determinative of the location of salvage yards in relation to State highways shall be made in a line drawn perpendicular from the nearest edge of the right of way.

8.7.b. All applications submitted for a new salvage yard license must be accompanied by a certified survey showing that the distance to the nearest occupied residence is greater than 1,000 ft., or a written waiver must be obtained from all residents within the 1,000 ft. distance.

8.7.c. The certified survey must also show the distance to the nearest residential community. No salvage yard is permitted within 5,000 ft. of a residential community. All measurements shall be made in a straight line from the outer most ~~boundary~~ boundary of the salvage yard to the occupied private residence or the nearest residence in a residential community.

8.8. Yard Maintenance. Salvage in yards not required by law to be fenced, and all salvage exposed to view from the public highway, shall be neatly aligned, and all wrecked or used automobiles shall have doors, hoods and trunk lids closed.

§157-6-9. Roadside Memorials.

9.1. Purpose. This section provides requirements for the placement of Roadside Memorial Markers within the rights-of-way of the State's highways by family members or friends for the sole purpose of memorializing persons who have died as a result of vehicle related accidents.

9.2. Temporary Memorial Markers. Temporary Memorial Markers may be placed near the location of a fatal vehicular accident within the following rules.

9.2.a. Before placing a Temporary Memorial Marker, the person(s) must contact the nearest Division of Highways office. The family member or friend will be asked questions concerning the intended placement and construction of the Temporary Memorial Marker so that appropriate guidance may be provided. Also, the Division employee will record the family member or friend's name, address and phone number for future contact, if required.

9.2.b. Temporary Memorial Markers must

not exceed surface dimensions of four feet in length by four feet in width and should be self-supporting. Any structural or support members of the memorial are limited to a diameter no greater than three inches if wooden or one-quarter inch if metal.

9.3. Permanent Memorial Markers. Permanent Memorial Markers are only allowed if a permit is obtained from the Division. Application for this permit may be made through the Division's District office with jurisdiction.

9.4. Physical Placement of Roadside Memorial Markers. All Roadside Memorial Markers must:

9.4.a. be within the highway right-of-way, as far from the travel lanes as reasonably possible and not on private property nor in front of or alongside of private property or residences unless express permission is obtained from the property owner;

9.4.b. be clear of ditches, culvert pipes, bridges and other highway features that require access for maintenance;

9.4.c. be behind the guardrail, if one is present, except that Temporary Memorial Markers may be tied to a guardrail post with lightweight string, wire or tape and must be easily removable for maintenance purposes;

9.4.d. not be placed in the highway median, on any bridge, nor attached to trees, fences, signs, signals, utility poles, etc.;

9.4.e. not be a hazard to the motoring public in any way including, but not limited to: restricting driver's sight; have any light reflecting materials or be illuminated by any means; or by interfering with or obscuring any traffic control device.

9.5. Safety. Persons placing Roadside Memorial Markers are responsible for doing so by acting in a responsible, safe manner including parking completely clear of the travel lanes, even if it means walking some distance. The memorial

may need to be placed nearby the accident location, rather than exactly at the accident location, in order to avoid endangering the persons placing or maintaining the memorial and to avoid endangering the motoring public.

9.6. Removal of Roadside Memorial Markers.

Division of Highways personnel will normally not remove Roadside Memorial Markers that meet the requirements of these rules. However, the Commissioner has the authority to direct or cause the removal of any Roadside Memorial Marker, without notice, within a state highway right-of-way upon determining that removal is necessary for construction, maintenance, safety or other purpose.