

**WEST VIRGINIA**  
**SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #7

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1988 AUG 12 PM 3:20

STATE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AN EMERGENCY RULE**

AGENCY: Department of Highways TITLE NUMBER: 157

CITE AUTHORITY: WV Code §17-2A-4b and 8

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Regulations Pertaining to  
Particular Functions of the Commissioner of Highways

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

TITLE OF RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

This filing is being made in order to comply with changes to the Code of Federal Regulations, 49 CFR Part 23 of the U.S. Department of Transportation. The DOT regulations became effective October 21, 1987; therefore, this rule is being filed to comply with a time limitation established by federal statute.

Notable changes include: a renaming of Minority Business Enterprises to Disadvantaged Business Enterprises which, by federal statute, identifies women, like all other currently designated groups, as presumed to be socially and disadvantaged for program purposes; a redefining of "small" firms to those with annual billings less than \$7,500,000 over the last three years; and a revising of the Certification Application, EO Form 475 to supply DBE information required by federal statute.

Additionally, references to the Executive Secretary-Planning Manager, formerly an office of the Department, have been deleted and the referenced responsibilities reassigned. Finally, the listings of the Department's Districts and the District Engineers' addresses have been updated.

Use Additional Sheets If Necessary.

  
\_\_\_\_\_  
W. S. Ritchie, Jr., Commissioner  
West Virginia Department of Highways



WEST VIRGINIA DEPARTMENT OF HIGHWAYS

1900 Washington Street, East  
Charleston, West Virginia  
25305

ARCH A. MOORE, JR.  
GOVERNOR

WILLIAM S. RITCHIE, JR.  
COMMISSIONER

August 12, 1988

Legislative Rule-making Review Committee  
State Capitol Building  
Charleston, West Virginia 25305

Gentlemen:

Emergency Legislative Rules  
Highways Commissioner  
Regulations Pertaining to Particular  
Functions of the Commissioner of Highways  
Series I

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SECRETARY OF STATE

Enclosed are fifteen (15) copies of emergency rules filed with the Secretary of State's office on August 12, 1988. This filing is being made in order to comply with changes to the Code of Federal Regulations, 49 CFR Part 23 of the U.S. Department of Transportation. The DOT regulations became effective October 21, 1987; therefore, this rule is being filed to comply with a time limitation established by federal statute.

Additionally, references to the Executive Secretary-Planning Manager, formerly an office of the Department, have been deleted and those assigned the responsibilities identified. Finally, the listings of the Department's Districts and the District Engineers' addresses have been updated.

Attached to each copy of the emergency rule is a copy of the emergency rule form, a copy of the summary of rule content along with a statement of facts and circumstances and a copy of the fiscal note.

Sincerely yours,

W. S. Ritchie, Jr.  
Commissioner

WSR:a  
Attachments

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Series I, Regulations Pertaining to Particular  
Functions of the Commissioner of Highways

Type of Rule:  Legislative  Interpretive  Procedural

Agency Department of Highways Address 1900 Washington Street, East.  
Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Personal Services			\$ 17,350.	\$120,300.	+2.5% / yr
Current Expense			\$ 4,500.	\$ 4,750.	+5.0% / yr
Repairs & Alterations			0.	0.	0.
Equipment			\$ 2,000.	\$ 2,040.	+2.0% / yr
Other			0.	0.	0.
Estimated Total Cost			\$123,850.	\$127,090.	+2.6% avg.

2. Explanation of above estimates:

Personal Services includes payroll additive rate. Current Expense includes board and lodging and office expenses. Equipment costs includes automobile expenses. The total expenses represent the full costs to operate the Disadvantaged Business Enterprise Program for the Department. The program is funded 100% with federal funds and if these legislative rule revisions are not adopted in order to comply with federal statute, program funding may be jeopardized.

3. Objectives of this rule:

This filing is being made in order to comply with changes to the Code of Federal Regulations, 49 CFR Part 23 of the U.S. Department of Transportation. The DOT regulations became effective October 21, 1987; therefore, this rule is being filed to comply with a time limitation established by federal statute.

Notable changes include: a renaming of Minority Business Enterprises to Disadvantaged Business Enterprises which, by federal statute, identifies women, like all other currently designated groups, as presumed to be socially and disadvantaged for program purposes; a redefining of "small" firms to those with annual billings less than \$7,500,000 over the last three years; and a revising of the Certification Application, EO Form 475 to supply DBE information required by federal statute.

Additionally, references to the Executive Secretary-Planning Manager, formerly an office of the Department, have been deleted and the referenced responsibilities reassigned. Finally, the listings of the Department's Districts and the District Engineers' addresses have been updated.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

There is no foreseeable impact to the state's budget as submitted for the operation of the Disadvantaged Business Enterprise program.

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

None.

C. Economic Impact on Citizens/Public at Large.

None.

Date August 12, 1988



W. S. Ritchie, Jr., Commissioner

DATE:

August 12, 1988

TO:

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:

WEST VIRGINIA DEPARTMENT OF HIGHWAYS

EMERGENCY RULE TITLE: Regulations Pertaining to Particular Functions  
of the Commissioner of Highways

1. Date of filing: August 9, 1988 (As Emergency Rule with Sec. State)

2. Statutory authority for promulgating the emergency

rule: WV Code §17C-2A-4b and 8

3. Date of filing of proposed legislative rule: (following hearing)

4. Does the emergency rule adopt new language or does it amend or  
repeal a current legislative rule?

The emergency rule amends the current Department of Highways  
Legislative Rule, Series I, Regulations Pertaining to Particular  
Functions of the Commissioner of Highways

5. Has the same or similar emergency rule previously been filed and  
expired?

No

6. State, with particularity, those facts and circumstances which  
make the emergency rule necessary for the immediate preservation  
of public peace, health, safety or welfare.

Not Applicable.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

49 CFR Part 23, U.S. Department of Transportation, effective

October 21, 1987

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Not Applicable.

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DATE: August 12, 1988  
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
FROM: WEST VIRGINIA DEPARTMENT OF HIGHWAYS

FILED  
1988 AUG 12 PM 3:20  
OFFICE OF THE SECRETARY OF STATE

PROPOSED RULE TITLE: Regulations Pertaining to Particular Functions of the Commissioner of Highways

SUMMARY OF RULE CONTENT - This series of regulations was promulgated in order to provide rules for particular functions of the office of the Commissioner of Highways within the provisions of Chapter 17, Article 2A, Section 4b and 8 of the Code. The functions addressed include: the purpose, scope and process of issuing Commissioner's Orders; purpose, scope and process of conducting and documenting public hearings and the rendering of a decision; the application, consideration and awarding of scholarships for prospective employees; the petitioning, department investigation, hearing and decision rendering process addressing the location, relocation, classification or reclassification of state roads; the regulations concerning the incorporation of roads into the State Highway System; the process of abandonment and discontinuance of state roads; and the procurement procedures for negotiated contracts

STATEMENT OF CIRCUMSTANCES REQUIRING CHANGES TO THE RULE - The amendments to this rule are being filed to comply with changes to the Code of Federal Regulations, 49 CFR Part 23 of the U.S. Department of Transportation. The DOT regulations became effective October 21, 1987; therefore, this rule is being filed to comply with a time limitation established by federal statute.

Notable changes to the procurement procedures for negotiated contracts include: a renaming of Minority Business Enterprises to Disadvantaged Business Enterprises which, by federal statute, identifies women, like all other currently designated groups, as presumed to be socially and disadvantaged for program purposes; a redefining of "small" firms to those with annual billings less than \$7,500,000 over the last three years; and a revising of the Certification Application, EO Form 475 to supply DBE information required by federal statute.

Additionally, references to the Executive Secretary-Planning Manager, formerly an office of the Department, have been delegated and the referenced responsibilities reassigned. Finally, the listings of the Department's Districts and the District Engineer's addresses have been updated.

## FILING OF ADMINISTRATIVE REGULATIONS

BY THE

DEPARTMENT OF HIGHWAYS

INDEX TO

SERIES I

Subject: Regulations Pertaining to Particular Functions of the Commissioner of Highways

Section 1. General

1.01/	Scope
1.02/	Authority
1.03/	Filing Date
1.04/	Effective Date

Section 2. Commissioner's Orders

2.01/	Purpose
2.02/	Scope of Commissioner's Order
2.03/	Commissioner's Order Book
2.04/	Effective Date
2.05/	Copies of Commissioner's Orders; Distribution

Section 3. Hearing Procedures

3.01/	Purpose
3.02/	Scope
3.03/	Records Pertaining to Hearings
3.04/	Complaints, Claims, Applications, Petitions, Protests
	<del>(1)</del> 3.4.1 Informal Pleadings & Procedures
	<del>(2)</del> 3.4.2 Formal Pleadings
3.05/	Answers or Responsive Pleadings by Commissioner of Highways
3.06/	Stipulations or Agreed Facts
3.07/	Hearings; Notices; Evidence
	<del>(1)</del> 3.7.1 Notices
	<del>(2)</del> 3.7.2 Evidence
3.08/	Depositions

3.09/	Subpoenas
3.10/	Decisions of Commissioner of Highways
3.11/	Service of Commissioner's Decision, Subpoenas and Notices Appendix A Forms
	No. 1      Petition to Commissioner
	No. 2      Same Verification of Petitioner

Section 4.      Scholarships for Prospective West Virginia  
Department of Highways Personnel

4.01/	General
4.02/	Application
4.03/	Certified Copy of Academic Grades
4.04/	Written Essay
4.05/	Personal Interview
4.06/	Award of Scholarship
4.07/	Execution of Notes
4.08/	Employment Credited Against Notes
4.09/	Failure to Graduate or Complete Education

Section 5.      Location, Relocation, Classification or  
Reclassification of State Roads

5.01/	General
5.02/	Commissioner's Order; Distribution (1)5.2.1      Copies of Commissioner's Order
5.03/	Petition of Interested Persons
5.04/	Investigation by Department
5.05/	Hearing
5.06/	Commissioner's Determination

Section 6.      Regulations Relating to Roads to be Incorporated  
into the State Highway System

6.01/	General Purposes
6.02/	Requests for Incorporation - Procedure
6.03/	Definitions
	(1)6.3.1      AASHTO
	(2)6.3.2      Adverse Possession
	(3)6.3.3      Average Daily Traffic
	(4)6.3.4      Commissioner's Order

	<del>(5)</del> 6.3.5	Dollar Deed
	<del>(6)</del> 6.3.6	Easement
	<del>(4)</del> 6.3.6.a	Drainage Easement
	<del>(6)</del> 6.3.6.b	Planting Easement
	<del>(0)</del> 6.3.6.c	Scenic Easement
	<del>(2)</del> 6.3.6.d	Sight Line Easement
	<del>(6)</del> 6.3.6.e	Slope Easement
	<del>(1)</del> 6.3.6.f	Utility Easement
	<del>(7)</del> 6.3.7	Encroachment
	<del>(8)</del> 6.3.8	Existing Highway System
	<del>(9)</del> 6.3.9	Orphan Roads
	<del>(10)</del> 6.3.10	Petition
	<del>(11)</del> 6.3.11	Public Dedication
	<del>(12)</del> 6.3.12	Right of Way
	<del>(13)</del> 6.3.13	Roadway
	<del>(14)</del> 6.3.14	Subdivision Roads
	<del>(15)</del> 6.3.15	Traveled Way
	<del>(16)</del> 6.3.16	Unrecorded Plats
	<del>(17)</del> 6.3.17	Water Course
6.04/		Methods for Determining Eligibility
6.05/		Right of Way and Utilities
	<del>(1)</del> 6.5.1	Widths
	<del>(2)</del> 6.5.2	Utilities
	<del>(3)</del> 6.5.3	Restrictive Strips
	<del>(4)</del> 6.5.4	Drainage
	<del>(5)</del> 6.5.5	Monuments
6.06/		Design Criteria
	<del>(1)</del> 6.6.1	Widths and Typical Sections
	<del>(2)</del> 6.6.2	Drainage
	<del>(3)</del> 6.6.3	Pavement Thicknesses
	<del>(4)</del> 6.6.4	Curb
	<del>(5)</del> 6.6.5	Grades
	<del>(6)</del> 6.6.6	Structures and Retaining Walls
	<del>(7)</del> 6.6.7	Intersections
	<del>(8)</del> 6.6.8	Driveways
	<del>(9)</del> 6.6.9	Sidewalks
	<del>(10)</del> 6.6.10	Railroad Grade Crossing
	<del>(11)</del> 6.6.11	Construction Cuts and Fills

- Figure 1 ~~122~~6.6.12 Dead End Streets Typical Section
  - Figure 2 Guide for Minimum Roadway Width
  - Figure 3 Sight Distance at Intersections
  - Figure 4 Sight Distance for Combinations of Street and Train Speeds
  - Figure 5 Construction Cuts and Fills
  - Figure 6 CUL-DE-SACS and Dead End Streets Plans
- 6.071

Section 7. Abandonment and Discontinuance of State Roads

- 7.011 General
- 7.021 Petition of Interested Persons
- 7.031 Hearing
- 7.041 Investigation by Commissioner
- 7.051 Abandonment by Commissioner's Order
- 7.061 Copies of Commissioner's Order of Abandonment

Section 8. Procurement Procedures for Negotiated Contracts

- 8.011 Purpose
- 8.021 Application
- 8.031 Procedures

Appendix and Exhibits List  
Appendix I, II, III and IV  
Exhibits A, B, C, D, E and F

CHAPTER 17-2A

SERIES I

Title: Regulations Pertaining to Particular Functions of the  
Commissioner of Highways

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Section 1/ General

1.01/ Scope. -- These procedural rules and regulations appertain to particular functions of the office of the Commissioner of Highways and are submitted pursuant to the provisions of Chapter 29A, Article 3, Section 3 of the Code.

1.02/ Authority. -- These rules and regulations are issued pursuant to authority granted to the Commissioner by West Virginia Code, Chapter 17, Article 2A, Sections 4b and 8.

1.03/ Filing Date. -- August <sup>12</sup> 1988

1.04/ Effective Date. -- August <sup>12</sup> 1988

Section 2/ Commissioner's Orders

2.01/ Purpose. -- The purpose of this section is to establish a system by which all orders of the Commissioner of Highways may be permanently recorded and maintained in such manner that they will be conveniently accessible to interested persons.

2.02/ Scope of Commissioner's Order. -- The orders of the Commissioner of Highways are official determinations or decisions which relate to the internal management and organization of the Department of Highways, or to a specific person or group of persons, or to the public in general.

2.03/ Commissioner's Order Book. -- The Commissioner of Highways shall maintain in his office a record of all orders issued by him, which record shall be designated as the Commissioner of Highways' Order Book. All orders issued by the Commissioner during each day shall be entered therein, and all

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 2.3

such orders so entered shall be indexed and cross-indexed so as to afford a method of ready and convenient access to each such order issued by the Commissioner.

2.04/ Effective Date. -- Each order of the Commissioner of Highways filed in the Commissioner's Order Book as provided in the preceding section, shall become effective immediately upon filing, unless some provision of law or some statement as to the effective date of such decision is stated in the order itself.

2.05/ Copies of Commissioner's Orders; Distribution.  
-- The Commissioner of Highways shall provide a certified copy of any Commissioner's Order to any person who is directly affected by any such order and who requests a copy thereof. In addition to any person requesting a copy of such order, the Commissioner may furnish copies to any governmental agency or to such other persons, firms or organizations as he may deem suitable or proper in order to provide the most effective notice of the order.

Section 3/ Hearing Procedures

3.01/ Purpose. -- The purpose of this section is to provide standards of conduct for all hearings by and before the Commissioner of Highways.

3.02/ Scope. -- These rules shall apply to all hearings which may be held by the Commissioner of Highways, whether the same be initiated by the Commissioner or by any citizen, it being the intent hereof that these rules shall be applicable whenever, by any action of the Commissioner of Highways, the rights of any citizen will be adversely and directly affected and it is proper that such citizen have due notice and an opportunity to be heard thereon.

These rules shall also apply to the conduct of all hearings on claims asserted against the Department of Highways, other than claims heard and determined by the Court of Claims. These rules shall not apply to hearings and public meetings held by the Commissioner for purposes of acquiring information, making findings and determining courses of action and procedure relative to the location of any road or proposed road, or to the advancement and improvement of the state road system.

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Adm. Reg. 17-2A  
Series I, Sec. 3.2

These rules shall be applied in harmony with applicable state statutes and in case of conflict, state statutes shall prevail.

3.03/ Records Pertaining to Hearings. -- The Executive/Secretary/Planning/Manager Commissioner of the Department of Highways or his designee shall be responsible for all administrative and clerical duties relating to hearings and for all records and pleadings pertaining to hearings. He shall receive all applications, petitions, protests, claims or other written documents relating to a hearing before the Department of Highways. The Executive/Secretary/Planning/Manager designee will, upon request, advise any party as to the form or condition of any paper to be filed in any proceeding before the Commissioner. He will maintain a docket book in which shall be entered each formal case on complaint, claim, application or petition, investigation, or protest, with a file number corresponding to the number of the case together with brief chronological notations of the proceedings had in the case. He shall also maintain the Commissioner's Order Book, in which shall be recorded, on the day of their filing, any orders made or passed by the Commissioner of Highways in the performance of his statutory duties.

~~(1)3.3.1~~ All papers or documents, of whatever character, which are received or filed in the office of the Executive/Secretary/Planning/Manager with the Department, shall be stamped showing the date of receipt or filing thereof.

3.04/ Complaints, Claims, Applications, Petitions, Protests. -- Claims, complaints or applications may be either informal or formal.

~~(1)3.4.1~~ Informal Pleadings and Procedures - Informal claims, complaints or applications may be made by letter or other writing addressed to the Commissioner of Highways, 1900 Washington Street, East, Charleston, West Virginia 25305, or the office of the District Engineer. Matters thus presented, if their nature warrants, may be negotiated and settled by the Commissioner of Highways, the District Engineer, or some other duly authorized employee, without formal hearings. If the matters cannot be resolved satisfactorily to all parties, the proceeding is held to be

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 3.4.1

without prejudice to the right of any party to file and prosecute a formal claim, complaint or application, whereupon the informal proceeding will be discontinued. No form of informal complaint, claim or application is prescribed, but the letter or other writing must contain a clear and concise statement of the facts and the specific relief sought. However, the names of all parties affected or involved shall be stated in full, and the address of each party, with the name and address of his attorney, if any, stated therein or thereon.

~~(2)~~ 3.4.2 Formal Pleadings - All formal complaints, claims, applications, petitions and protests shall be in writing and addressed to the Commissioner of Highways. Such papers shall set forth plainly and distinctly the grounds for the relief sought or reasons for protest and should be so drawn as fully and completely to advise the Commissioner of Highways of the nature of the grievances or alleged violations of law.

~~(1)~~ 3.4.2.a The names of all parties affected or involved shall be stated in full and the address of each party, with the name and address of his attorney, if any.

~~(1)~~ 3.4.2.b Formal pleadings shall be substantially in the form hereinafter prescribed, and verification shall likewise be substantially in the form hereinafter prescribed. (See Forms No. 1 and 2, Appendix A to this Series.)

~~(1)~~ 3.4.2.c Two copies of all such papers shall be filed with the Commissioner.

3.05/ Answers or Responsive Pleadings by Commissioner of Highways. -- Within thirty days after receipt of a formal pleading or protest, the Commissioner of Highways or the director of the division thereby affected shall file an answer to such pleading or protest. Such answer shall fully and plainly inform the parties involved of the nature of the Commissioner's defense or reason for the decision or action upon the particular matter involved. The Commissioner of Highways shall serve such answer upon the parties either in person or by registered or certified mail to the party or his attorney.

3.06/ Stipulations or Agreed Facts. -- The parties to any proceeding before the Commissioner of Highways may, by stipulation in writing filed with the Commissioner, agree upon

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Adm. Reg. 17-2A  
Series I, Sec. 3.6

the facts, or any portion thereof, involved in the controversy, which stipulation shall be recorded and used at the hearing.

3.071 Hearings; Notices; Evidence. -- When issue is joined by the service of an answer on the complainant upon any matter for which the Commissioner is required by law to hold a hearing or shall pursuant to these rules and regulations determine that a hearing shall be held, the Commissioner will assign a time and place for such hearing, which will be at his offices in the City of Charleston or elsewhere in the state at the discretion of the Commissioner. The hearing will be held by the Commissioner of Highways or by one or more of his employees who shall have been designated by him to hold hearings.

3.7.1 Notices - The Commissioner shall give all parties not less than ten days' notice of the time and place of hearing, which notice may be served upon the parties by personal delivery, or by registered or certified mail, or in any manner by which a notice may be served at law.

3.7.2 Evidence - The parties must prove the existence of the facts as alleged in their pleadings. The Commissioner, however, will hear such proof of facts as he may deem proper and reasonable, and may make such investigation and enter such order as the facts justify and the circumstances may require.

3.7.2.a The Commissioner of Highways shall not be bound by common law or statutory rules of evidence in conducting hearings. He will admit all testimony or other evidence having reasonable probative value, but will exclude immaterial, irrelevant or unduly repetitious testimony. He shall, however, give effect to any rules of privilege recognized by the law of this state.

3.7.2.b All evidence, including records and documents in the possession of the Commissioner of Highways may be duly offered and made a part of the record in a case. Every party to the proceeding shall be afforded adequate opportunity to rebut or offer countervailing evidence.

3.7.2.c The Commissioner of Highways, or his duly authorized hearing examiner, may take official notice of any generally recognized fact or any established technical or scientific fact; but parties shall be notified

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 3.7.2.c

either before or during the hearing or by full reference in preliminary reports or otherwise, of the facts so noticed, and they shall be afforded an opportunity to contest the validity thereof.

(d) 3.7.2.d At any hearing conducted by the Commissioner, or by a designated employee thereof, witnesses shall be examined under oath in the manner and form, and in the order designated by the presiding officer. If the Commissioner or presiding officer so directs, or any party in interest so requests, the testimony given shall be reduced to writing in the form of shorthand notes or such other form of recording as the Commissioner may direct, and preserved in the Commissioner's files. Should any party in interest request a transcript of the proceedings, or should the Commissioner direct that a transcript be prepared, then sufficient copies shall be made and delivered to each party making such request, and at the expense of the person making the request.

3.08/ Depositions. -- The testimony of any witness may be taken by deposition at the instance of a party, in any proceeding or investigation at any time after the same is at issue, by the consent of the Commissioner. The Commissioner may, of his own motion, order testimony to be taken by deposition in any proceeding or investigation pending before him, at any stage of such proceeding or investigation. Depositions shall be taken in a manner consistent with the provisions of Section 3, Series I, of these rules and regulations.

3.09/ Subpoenas. -- Subpoenas requiring the attendance of witnesses, from any place in the State of West Virginia, at any designated place of hearing before the Commissioner, or any employee of the Commissioner whom he shall have designated to hold such hearing, for the purpose of taking the testimony of such witness, and subpoenas requiring the production of documentary evidence, will be issued upon the application of either party, by the ~~Executive/Secretary/~~ Planning/Manager Commissioner or his designee.

3.10/ Decisions of the Commissioner of Highways. -- Every decision of the Commissioner of Highways in a contested case shall be in writing accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise and separate statement of the ultimate conclusions upon each contested issue of fact without recital of evidence.

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 3.11

3.11/ Service of Commissioner's Decision, Subpoenas and Notices. -- Every decision when made by the Commissioner of Highways shall be recorded in the Commissioner's Order Book, and a copy thereof shall be served forthwith by personal delivery or by registered or certified mail to each adversary party to the proceeding or to his attorney of record; and all subpoenas for parties or witnesses and all notices shall be served by personal delivery or by registered or certified mail to each adversary party to the proceeding or to his attorney of record, or as provided by law.

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 3

Appendix A

FORM 1

STATE OF WEST VIRGINIA  
Commissioner of Highways  
Charleston

TO THE COMMISSIONER OF HIGHWAYS:

Your petitioner, (name of petitioner), respectfully states:

1. That (Here state occupation, or business of petitioner, and address).
2. That petitioner (Here state form of relief sought from Department of Highways, i.e., whether an application, claim, complaint, or protest to a ruling or decision of the Commissioner, together with a brief statement setting forth plainly the grounds therefor).
3. That (Here state names of all parties, and their addresses, who may be involved, if any).

WHEREFORE, the petitioner, or complainant, request that (Here set forth specifically the relief sought or action desired to be taken by the Commissioner).

Dated this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
Attorney for Petitioner

\_\_\_\_\_  
Address

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 3

Appendix A

FORM 2  
VERIFICATION

(To be added to all complaints, answers, applications  
and petitions.)

STATE OF WEST VIRGINIA,

COUNTY OF \_\_\_\_\_, to-wit:

\_\_\_\_\_, the (Petitioner, etc.) named  
in the foregoing (petition, etc.) being duly sworn, says that the  
facts and allegations therein contained are true, except so far as  
they are therein stated to be on information, and that, so far as  
they are therein stated to be on information, he believes them to  
be true.

\_\_\_\_\_  
Affiant

Taken, sworn to and subscribed before me this \_\_\_\_ day  
of \_\_\_\_\_, 19\_\_\_\_.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for said County

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 4

Section 4. Scholarships for Prospective West Virginia  
Department of Highways Personnel

4.01/ General. -- Pursuant to the provisions of Chapter 17, Article 2A, Section 4b, Code, the West Virginia Commissioner of Highways is authorized to award scholarships to competent persons whether employed by the West Virginia Department of Highways or not for the purpose of enabling and encouraging them to attend a college or university to pursue such course of study as may be approved by the West Virginia Commissioner of Highways, with the end in view of attracting and holding competent personnel for the West Virginia Department of Highways. No more than twelve persons may hold such scholarships at any one time.

4.02/ Application. -- Any person who is eligible to attend any accredited college or university may apply for a West Virginia Department of Highways scholarship. Application blanks shall be furnished at the Commissioner's office and when completed shall be returned to the Commissioner's office.

4.03/ Certified Copy of Academic Grades. -- Any person applying for a West Virginia Department of Highways scholarship shall provide the Commissioner, as a part of his application, a certified copy of his grades, and the subjects studied for all previous institutions of higher learning attended by the applicant. Where the applicant has attended high school only, a certified copy of his high school grades shall be sent to the Commissioner with the written application.

4.04/ Written Essay. -- Each applicant shall submit to the West Virginia Commissioner of Highways a written essay of not more than one thousand words explaining why he is interested in the Department's scholarship program.

4.05/ Personal Interview. -- If after receiving the application and other papers required by the preceding sections, the Commissioner feels that the applicant is entitled to further consideration, a personal interview will be arranged and the applicant will be notified of the time and place at least ten days in advance.

4.06/ Award of Scholarship. -- Upon the basis of the information and personal impressions which the Commissioner has received from the information requested by virtue of the preceding subdivisions of this section, the Commissioner may

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 4.6

award a scholarship to such person or persons as he considers competent and entitled thereto. Any such scholarship shall carry a stipend in an amount fixed by the Commissioner, but not to exceed a total of \$4,000.00. The sum so awarded will be paid to the recipient of the scholarship in equal installments at the beginning of each quarter or semester wherein the recipient has agreed to pursue his course of study.

4.07/ Execution of Notes. -- The recipient of a scholarship shall execute negotiable promissory notes for the full amount of the scholarship stipends awarded him by the West Virginia Commissioner of Highways and each such note shall be in the amount actually received from the State Road Fund and shall be payable on demand to the order of the State Treasurer.

4.08/ Employment Credited Against Notes. -- If, upon graduation, or completion of the approved course of study, the person awarded the scholarship herein described enters the employ of the West Virginia Department of Highways and remains so employed, the West Virginia Commissioner of Highways will credit the oldest outstanding note of such person in the amount of \$400.00 for every six months period that such person is employed by the West Virginia Department of Highways.

4.09/ Failure to Graduate or Complete Education. -- If for any reason, except death or physical or mental disability or being drafted into the armed services, the recipient of the scholarship fails to successfully complete the course of study for which the scholarship was granted, or if after the completion of the approved course of study such person does not become or continue to be an employee of the West Virginia Department of Highways, or ceases to be an employee before all such notes have been paid or cancelled, the West Virginia Commissioner of Highways shall demand payment of all such unpaid notes, and shall transmit them to the State Treasurer for immediate collection.

Section 5. Location, Relocation, Classification or  
Reclassification of State Roads

5.01/ General. -- Pursuant to the provisions of Chapter 17, Article 2-A, Section 8(3) of the Code of West Virginia as amended the Commissioner of Highways may conduct investigations and experiments, and he may hold formal or informal hearings or other public meetings and conferences for the purpose of acquiring information from which he can determine

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 5.1

future courses of action and procedure relative to the state road system.

5.02/ Commissioner's Order; Distribution. -- When the Commissioner has received the results of any engineering study or survey, or investigation, or when as the result of any hearing, public meeting or conference, he determines the location, relocation, classification or reclassification or designation by number of any road in this state, he shall set forth his conclusions in an order and spread such order upon the pages of the Commissioner's Order Book to be retained as a permanent record of his conclusions and his actions regarding any such road. All such orders of the Commissioner shall become effective immediately upon being signed and entered in the Commissioner's Order Book by the ~~Executive/Secretary/~~ Planning/Manager Business Manager of the Department of Highways.

(1)5.2.1 Copies of Commissioner's Order -  
Copies of any such order of the Commissioner shall be sent to the office of the District Engineer of the District wherein any such road is located and shall be kept available for public inspection during all normal business hours. The Commissioner may also send copies of any such order to such public officials or private persons or groups as he may feel will provide adequate public notice of his action.

5.03/ Petition of Interested Persons. -- Any group of twenty-five or more persons interested in the location, relocation, classification or reclassification of any road or proposed road may file a petition in writing with the Commissioner of Highways setting forth therein the request, complaint or demand of the persons signing such petition, and the Commissioner shall immediately designate one or more employees of the Department of Highways to investigate the situation described in the petition. All such petitions shall be directed to the Commissioner of Highways, 1900 Washington Street, East, Charleston, West Virginia 25305, and shall contain at least the following information:

(1)5.3.1 A description of the road or proposed road in as definite terms as possible, with references to route numbers and approximate distances from intersections with other roads or from city limits where possible.

(1)5.3.2 A concise and clear statement of the problem or situation which the petitioners are asking the Commissioner to resolve.

EMERGENCY

Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 5.3.3

~~(B)~~5.3.3 A concise and clear statement of the action the petitioners want the Commissioner of Highways to take to remedy the situation described in the petition.

~~(A)~~5.3.4 Signatures and mailing addresses of the petitioners.

5.04/ Investigation by Department. -- Upon receipt of any such petition, the Commissioner of Highways shall immediately forward a copy thereof to the District Engineer of the District wherein the road problem or road situation described in the petition is located, and request that a complete investigation be undertaken. The District Engineer shall then immediately commence such investigation, and during the course thereof, no less than two of the persons who have signed their names to the petition shall be personally interviewed by the District Engineer or his duly authorized representative. Where possible, the first two persons who have signed the petition will be interviewed.

5.05/ Hearing. -- If, after completing his investigation, the Commissioner of Highways believes that a hearing should be held, or if the petitioners request a hearing, the Commissioner shall set a time and place for the hearing and shall notify all persons who have signed the petition and any other person he feels may be interested in order that all such persons may appear at the hearing and express their views. The Commissioner may, if in his opinion the situation warrants, cause a notice of the hearing to be published in some newspaper of general circulation in the county in which the road to be affected is situated.

5.06/ Commissioner's Determination. -- Upon the completion of his study of the results of the investigation provided for herein, and after reviewing the evidence presented at the hearing provided for herein, if such hearing be held, the Commissioner shall decide whether the relief requested by the petition shall be granted and will notify at least the first five persons whose signatures and mailing addresses appear on the petition of his conclusions, unless the petitioners have designated some other person or group of persons to receive such notice. If the Commissioner's decision is such that it must be put into effect by means of a formal Commissioner's Order as provided for herein, the Commissioner shall send copies of the order to at least the first five persons whose signatures and mailing addresses appear on the petition.

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 6

Section 6. Regulations Relating to Roads to be Incorporated  
into the State Highway System

6.01/ General Purposes. -- These regulations prescribe guidelines for standards for roads to be considered by the Department of Highways for incorporation into the West Virginia State Highway System, which regulations must be consistent with all other statutes and regulations pertaining to the incorporation of roads generally into the State Highway System.

6.02/ Requests for Incorporation - Procedure. -- Initial requests for the Department to accept a proposed new road into the State Highway System shall be submitted to the West Virginia Department of Highways' District Engineer who has jurisdiction in the area of the facility.

The District Engineer will coordinate with the person or persons making the request and various Divisions of the Department in the determination of applicable standards, specifications and plan requirements. Coordination meetings may be required.

Final approval to accept the facility into the State System shall be made by the Commissioner.

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 6.2

DISTRICT ENGINEERS

District One  
1334 Smith Street  
Charleston, WV 25301  
Phone: 348-3001

District Six  
Third & Jefferson Streets  
Moundsville, WV 26041  
Phone: ~~843-4133~~ 238-1120

District Two  
P. O. Box 880  
~~2224/5th/Avenue~~  
Huntington, WV 25712  
Phone: ~~823/8476~~ 528-5625

District Seven  
P. O. Box 1228  
Weston, WV 26452  
Phone: 627-2353

District Three  
~~120/Scott/Street~~  
P. O. Box 308  
~~Princeton/WV/26712~~  
Parkersburg, WV 26105  
Phone: ~~423/2133~~ 420-4595

District Eight  
P. O. Box 1516  
Elkins, WV 26241  
Phone: 627-2245

District Four  
P. O. Box ~~2570~~1871  
~~Meadowbrook/Exit/121/179~~  
Clarksburg, WV 26301  
Phone: ~~823/3791~~ 627-2260

District Nine  
210 Maple Street  
Ronceverte, WV  
Phone: 647-7458

District Five  
P. O. Box 99  
~~Jackson/US/Road/220/2/30~~  
Burlington, WV 26710  
Phone: 289-3521

District Ten  
120 Scott Street  
Princeton, WV 24740  
Phone: 425-2155



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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 6.3

6.031                    Definitions. --

~~(1)~~6.3.1            AASHTO - The American Association of State Highway and Transportation Officials.

~~(2)~~6.3.2            Adverse Possession - Adverse possession is the occupying and possession of land by a person or persons other than the legal owner thereof. If such possession is open, continuous, visible, distinct and hostile to all other claimants for a sufficient period of time, such occupants may acquire title to such land. A sufficient period of time for purposes of this directive will be 10 years.

~~(3)~~6.3.3            Average Daily Traffic - Number of vehicles using the road on an average 24-hour day, being the total volume during a stated period divided by the number of days in that period. The term is commonly abbreviated ADT.

~~(4)~~6.3.4            Commissioner's Order - The Orders of the Commissioner of Highways are official determinations or decisions which relate to the internal management and organization of the West Virginia Department of Highways, or to a specific person or groups of persons, or the public in general.

~~(5)~~6.3.5            Dollar Deed - A dollar deed is a simplified version of a standard form deed of the West Virginia Department of Highways, which conveys certain right of way and easements for state road purposes in, upon or over lands of the grantor.

~~(6)~~6.3.6            Easement - An easement is the right to use or control the property of another for designated purposes.

~~(a)~~6.3.6.a        Drainage Easement: An easement for directing the flow of water.

~~(b)~~6.3.6.b        Planting Easement: An easement for reshaping roadside areas and establishing, maintaining, and controlling plant growth thereon.

~~(c)~~6.3.6.c        Scenic Easement: An easement for conservation and development of roadside views and natural features.

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 6.3.6.d

~~(6)~~ 6.3.6.d Sight Line Easement: An easement for maintaining or improving the sight distance.

~~(6)~~ 6.3.6.e Slope Easement: An easement for cuts or fills including at times ditches.

~~(7)~~ 6.3.6.f Utility Easement: An easement to be occupied by one or more utilities.

~~(7)~~ 6.3.7 Encroachment - An encroachment is a building, structure, or part of a building or structure or any other obstruction which intrudes upon or invades upon property of another, including a highway or sidewalk.

~~(8)~~ 6.3.8 Existing Highway System - Existing highway system shall mean and include all highways and roads shown on the official maps and records of the West Virginia Department of Highways at the particular time of request for an addition is received.

~~(9)~~ 6.3.9 Orphan Roads - Orphan roads shall mean those roads used by the traveling public not under control of any Governmental Agencies.

~~(10)~~ 6.3.10 Petition - A petition is a request by the property owner or owners along a specific section of a public road not on the state road system for the road to be incorporated into the state road system.

~~(11)~~ 6.3.11 Public Dedication - Public dedication is setting apart by the owner and the acceptance by the public of the property for public use in accordance with statutory or common law provisions.

~~(12)~~ 6.3.12 Right of Way - A property right or interest in land usually acquired for or devoted to a roadway and being of sufficient width to maintain the road and its appurtenances. The minimum width should be forty (40) feet, however, thirty (30) feet may be accepted in areas where forty (40) feet may not be feasible or necessary for maintenance purposes.

~~(13)~~ 6.3.13 Roadway - The portion of a highway, including shoulders, for vehicular use.

~~(14)~~ 6.3.14 Subdivision Roads - Subdivision roads are those roads indicated by a recorded or unrecorded plat

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 6.3.14

where a landowner has subdivided a tract of land into lots, streets and alleys and sells lots by reference to plat, whether such plat is duly recorded or not. Purchasers of such lots become entitled to the use of its streets and alleys as necessary to complete their enjoyment of the lot.

### (18)6.3.15

Traveled Way - The portion of the roadway for the movement of vehicles exclusive of shoulders and auxiliary lanes.

### (16)6.3.16

Unrecorded Plats - Unrecorded plats are those plats that have not been recorded in the Office of the Clerk of the County Commission. Mere existence of the plat with reference to the sales of lots is sufficient providing that it has been certified by a registered Professional Engineer or licensed Land Surveyor.

### (17)6.3.17

Water Course - An established natural drainage course that leads to a drainage basin, stream, creek, river, watershed or waterway.

6.04/ Methods of Determining Eligibility. -- New roads constructed outside of incorporated places, which are proposed for inclusion in the State Highway System shall be constructed in accordance with Department of Highways guidelines and specifications:

(1)6.4.1 New roads for the purpose of public access may be taken into the state highway system two years after completion or after a substantial part of the development in the particular subdivision is completed, whichever is longer. Necessary maintenance will be provided by the developer in the interim during construction until acceptance into the State System.

(2)6.4.2 Ten years of dedicated and active public use may be required for consideration for inclusion of the roadway into the state highway system without justification being presented showing public necessity.

6.05/ Right of Way and Utilities. --

(1)6.5.1 Widths - Right of way in accordance with Department's Policy, is required to be dedicated to public use. If the dedication is not legally implemented, then in

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Adm. Reg. 17-2A  
Series I, Sec. 6.5.1

such instances, the developer shall provide the Department of Highways with proper and acceptable deeds, transferring easements and right of way for a public road, free and clear of all encumbrances. Right of way width shall be sufficient to maintain the road and its appurtenances.

If a sidewalk is to be provided, additional right of way width will be required to the extent necessary to accommodate the sidewalk. Maintenance of the sidewalk will be the responsibility of the adjacent property owner.

~~(2)~~6.5.2 Utilities - It is the policy of the Department to require an unencumbered dedication of right of way on all additions to the system. Therefore, any easements or other interests within the platted right of way must be quitclaimed to the Department of any prior rights therein, in exchange for a permit to occupy the area. The permit shall be initiated by the parties involved once the acknowledgement of the street has been received and a route number assigned.

~~(a)~~6.5.2.a All longitudinal underground activities shall be located outside of the public right of way with the exception of situations where it is impractical. In those cases, utilities shall be placed under the shoulder of the road conforming with the Department's "Policy on the Accommodation of Utilities on State Highway Rights of Way."

~~(b)~~6.5.2.b The Department's Policy restricts the open-cutting of paved roads. Therefore, all lateral underground utilities to be installed prior to the acceptance of the street should be made prior to the final surface application.

~~(3)~~6.5.3 Restrictive Strips - The Department will not approve plans that include reserved areas which prohibit the use of streets by adjacent properties, whether within or outside the development proper.

~~(4)~~6.5.4 Drainage - Drainage easements shall be provided from all drainage outfalls to extend to a watercourse as defined by the Department, and said easements shall include a release for damages to the residue of lands that may be occasioned by reason of the construction and maintenance of the facilities or an acceptable agreement to save the Department harmless from future claims.

~~(5)~~6.5.5 Monuments - Any right of way to be dedicated to the Department shall be monumented by permanent

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 6.5.5

right of way markers. These markers shall be shown on all plats, plans or other documents and shall be adequate in number and location to permit location of the street or road right of way limits by field survey.

6.061 Design Criteria. --

~~(1)~~6.6.1 Widths and Typical Sections - Widths and Typical Sections for the various road requirements based on the average daily traffic are shown in Figures 1 and 2. Additional lanes may be required on approaches to intersections and where traffic volumes or roadside development warrant. It shall be the prerogative of the West Virginia Department of Highways to require the construction of these lanes.

~~(2)~~6.6.2 Drainage - Drainage facilities including off-site facilities when necessary to provide adequate drainage, shall be provided in accordance with the Department's current drainage design practices.

In instances where developments divert more intensified runoff into existing Department facilities to the extent that the facilities must be adjusted, such adjustments shall be at the developer's expense, and the developer shall be required to furnish any additional easements that are required.

Drainage design and the criteria to be used, shall be in accordance with the Department's design criteria and methods of analysis and subject to approval by the Department. A copy of the drainage design data and computations shall be submitted to the Department at the time that the plans are submitted for review. Peak discharges shall be determined by methods appropriate for the size, location and character of the watersheds involved. Appropriate design storm frequencies will be utilized depending upon the risk of damage to both adjacent property and the roadway.

Minimum design criteria applicable to the roadway may not be applicable to the adjacent property damage potential, thus requiring higher design criteria.

In the design of drainage structures, the following risk evaluations should be considered:

- (a) Damage to adjacent property
- (b) Damage to the roadway and/or structure
- (c) Traffic interruption
- (d) Hazard to human life
- (e) Damage to stream flood plain environment

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Adm. Reg. 17-2A  
Series I, Sec. 6.6.2

Design and analysis techniques shall be appropriate for the type of structure or system of structures involved and may require flood profiles and water surface profile analysis. In areas involving flood plains, the Federal Flood Insurance requirements relative to zoning and hydraulic design to accompany the 100 year flood shall be considered.

~~(7)~~ 6.6.3 Pavement Thicknesses - The Pavement Thickness shall be designed to meet current Department design requirements.

All new pavements shall be constructed as specified by and in conformance with the Department's procedures for roadway improvements.

On existing pavements the structural adequacy shall be determined and the thickness increased if required to carry the roadway traffic loads.

~~(4)~~ 6.6.4 Curb - Roll-type or mountable curb may be considered on an individual case-by-case basis. When considering such curb sufficient storm sewer receptacles (drop inlets), shall be provided to make the installation comparable to the Department's design drainage requirements. At intersections where curbs are used and where sidewalks are constructed or contemplated, provisions for curb ramps for the handicapped are to be made.

~~(8)~~ 6.6.5 Grades - The minimum grade, essential for adequate drainage shall not be less than 0.5 percent. It is desirable that the maximum grade be 12 percent, however, for short distances a steeper grade may be utilized.

~~(6)~~ 6.6.6 Structures and Retaining Walls - All bridges, culverts and retaining walls shall be designed in accordance with current AASHTO specifications. The live loading on bridges shall be HS20-44.

Design calculations for each structure and retaining wall shall be submitted to the Department of Highways for review.

Clear widths shall be provided on all structures to be compatible with the approach roadway section. Approach guardrail in accordance with Department Standards shall be provided at bridges.

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Adm. Reg. 17-2A  
Series I, Sec. 6.6.7

~~(7)~~ 6.6.7 Intersections - The safety and efficiency of operation of the street system will depend on the intersections. The following guidelines are for intersections within the subdivisions as well as for intersections with through highways.

At all intersections, adequate sight distance along the through street is required for safety. Sight distance for traffic controlled by a STOP sign should not be less than shown in Figure 3.

Intersections to be controlled by STOP signs should be at right angles and shall be at no less than 60 degrees. Closely-spaced offset intersections are to be avoided. Where a subdivision is constructed on one side of a through highway, the entrance should be lined up with a major street or major entrance across the highway, if one exists.

At all intersecting streets a relatively flat landing should be provided on the side streets which have STOP or YIELD situations. It should be of sufficient length to accommodate at least one vehicle, with additional length depending upon the projected traffic volume of the side street. Where volumes of turning traffic warrant, additional lanes should be constructed to accommodate these vehicles. It shall be a Department prerogative to require these lanes or additional length of landing area when needed.

A minimum turning radius of 30 feet should be provided at all major intersections with larger radii recommended for commercial and industrial areas. In all cases, it should be possible for the vehicle to turn without forcing the vehicle to stop and back up or "track" outside the street or shoulder area. On low-volume streets, a tighter turning radius may be used and the vehicle allowed to encroach on adjacent lanes while turning.

~~(8)~~ 6.6.8 Driveways - Driveways should be constructed in accordance with the current edition of the Department of Highways publication, "Rules and Regulations for Constructing Driveways on State Highway Rights of Way."

Particular care should be taken to assure adequate sight distance at driveways. Cut slopes, retaining walls or landscaping which restrict sight distance from driveways should be avoided.

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 6.6.9

~~(9)~~6.6.9 Sidewalks - If a sidewalk is provided immediately adjacent to the curb section the sidewalk must be constructed in accordance to the Department's requirements. The sidewalk must be at least 4' wide on an appropriate grade so as to be compatible with the curb.

~~(10)~~6.6.10 Railroad Grade Crossings - Construction of a new railroad grade crossing or upgrading of an existing crossing will require that the developer have an appropriate agreement with the railroad company involved. It will be necessary for the developer to supply documentation of the legal status of the crossing to the Department. Contacts with the railroad company will ordinarily be through the Office of the Chief Engineer of the respective railroad.

The grade crossing surface type and construction will be recommended by the railroad to provide adequate service under the train and highway traffic anticipated. The surface width shall be, as a minimum, curb to curb where curbs are present and pavement plus shoulders where curbs are not used. If sidewalks are provided, the railroad crossing surface should be extended to provide a walking surface for pedestrians.

The need for active warning devices (flashers, or flashers and gates) at grade crossings will be determined on a case-by-case basis. If active warning devices are not installed, sight distance should be in accordance with Figure 4. This table defines the minimum "sight triangle" at the crossing. Inability to provide this sight triangle indicates that active warning devices may be advisable.

All traffic control devices at railroad grade crossings are to comply with the current edition of the Manual on Uniform Control Devices. The use of STOP at railroad crossings is discouraged.

Crossings should be compatible with highway design speed and located to avoid steep or "hump-backed" approaches. Roads should cross the tracks as nearly at right angles as possible.

~~(11)~~6.6.11 Construction Cuts and Fills - When terrain conditions permit, foreslopes, backslopes, and roadside drainage channels should have gentle well-rounded transitions. The embankment slope guide indicates the slope for various fill heights. Cut slopes are to be constructed to minimize future maintenance costs and protect the roadway and safety of the

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 6.6.11

traffic. Cut sections should be designed with adequate ditches and provide an average slope of no steeper than 1 1/2' horizontal to 1' vertical (See Figure 5.)

~~(122)~~ 6.6.12 Dead End Streets - Provision shall be made for turning vehicles. Several types of CUL-DE-SACS and Dead End Streets are shown in Figure 6.

Other variations of shapes of CUL-DE-SACS as necessary to fit right of way and site controls may be used to permit vehicles to turn around by backing once.

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 Adm. Reg. 17-2A  
 Series I, Sec. 6.6.12

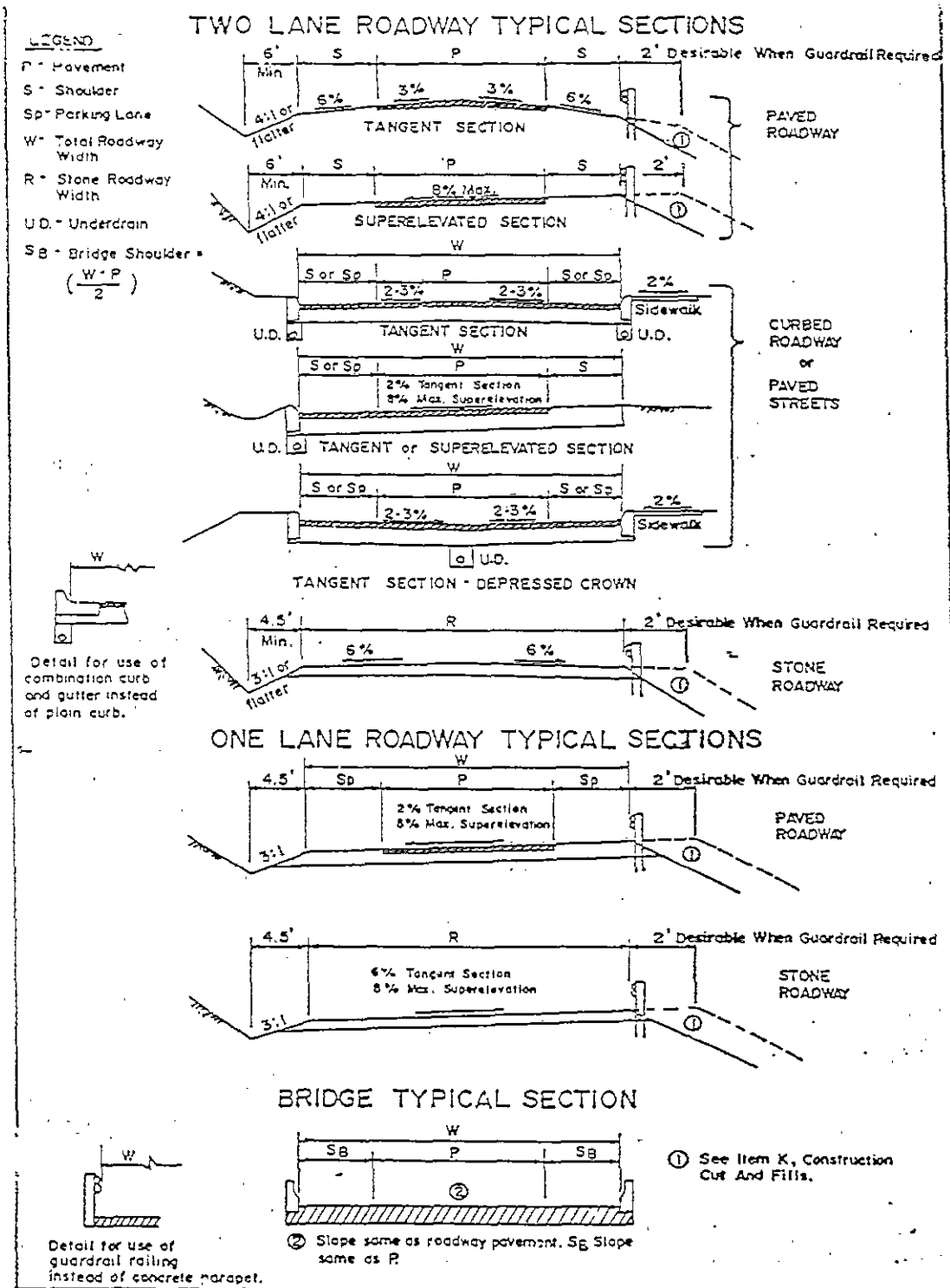


FIGURE 1

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 Series I, Sec. 6.6.12

GUIDE FOR MINIMUM ROADWAY WIDTH

TWO LANE ROADWAY								
		PAVED		CURBED ROADWAY			BRIDGE	STONE
ADT ①	DESIGN SPEED MPH	P	S	W	W	W	W	R
		NO PARKING		NO PARKING	ONE SIDE PARKING	TWO SIDE PARKING	NO PARKING	NO PARKING
				P+2S	P+S+Sp	P+2Sp	P+2S	
<250	20-30	18'	2'	22'	28'	34'	22'	22
250-400	20-30	20'	2'	24'	30'	36'	24'	24
400-750	20-30	20'	4'	28'	32'	36'	26'	28
<400	40-50	20'	2'	24'	30'	36'	24'	—
400-750	40-50	22'	4'	30'	32'	38'	28'	—

① For ADT greater than 750, or for Design Speed greater than 50, consultation with DOH required.

ONE LANE ROADWAY ②								
ADT < 250	PAVED ROADWAY			PAVED STREETS			BRIDGE	STONE
	P	S	S	W	W	W	W	R
	DESIRABLE		MINIMUM	NO PARKING	ONE SIDE PARKING	TWO SIDE PARKING		
				P+2'	P+Sp	P+2Sp	P+4'	
2-WAY TRAFFIC	10'	6''	4'	—	18'	26''	14''	18'
2-WAY TRAFFIC WITH PULLOUTS ③	10'	2'	—	12'	—	—	14''	10'
ONE WAY TRAFFIC	10'	2'	—	12'	18'	26'	14''	10'

② One Lane Roadway may be used for low volume roads where topography restricts the use of a two-lane roadway.

③ Pullouts should be provided at all blind vertical and horizontal curves. Other spacing not to exceed 700 feet. The pullouts should be inter-visible for obvious safety and convenience reasons. The minimum length of pullouts should be 100 feet with a minimum roadway width of 22 feet at the pullouts.

GENERAL NOTES

A. ADT ESTIMATION

For new facilities which service single family units the ADT may be estimated by multiplying the number of units by eight.

New facilities to commercial buildings will require a traffic projection analysis based on individual use and employment requirements.

B. Use of raised (normal) or depressed crown or single pavement slope dependent on drainage considerations and /or super-elevation requirements.

C. Where underdrain is required for drainage of base course, fabric underdrain or perforated slotted drain is acceptable.

D. Curb may be required on either or both sides of roadway as conditions dictate. Sidewalk or slope behind curbs dependent on adjacent conditions.

E. Curbs should be 6" to 8" in height, except where 2" drop curbs are provided for driveways.

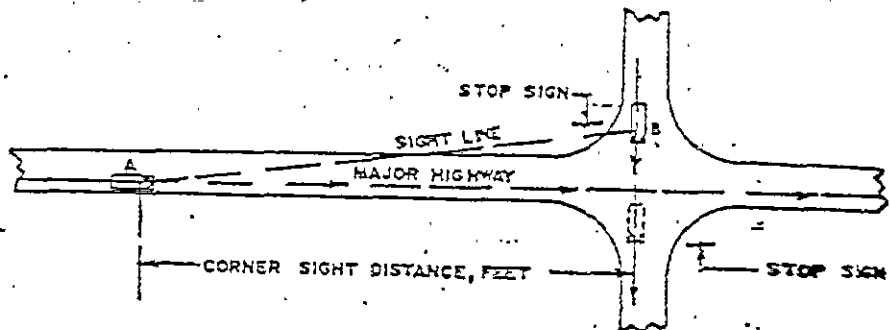
FIGURE 2

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Series I, Sec. 6.6.12

SUGGESTED CORNER SIGHT DISTANCE

<u>Speed of Through Traffic, MPH</u>	<u>Corner Sight Distance, Feet</u>
25	250
35	350
45	450
55	550



SIGHT DISTANCE AT INTERSECTIONS

FIGURE 3

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Series I, Sec. 6.6.12

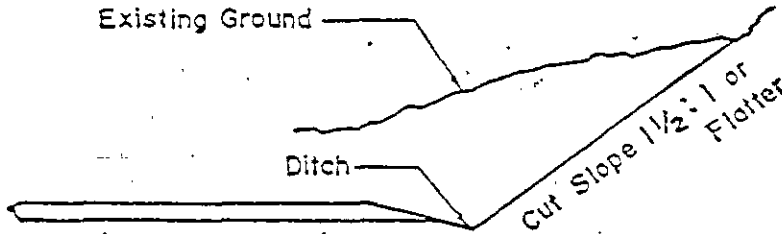
SIGHT DISTANCES FOR COMBINATIONS  
OF STREET AND TRAIN SPEEDS

Maximum Train Speed	Highway Speed				
	10	20	30	40	50
	<u>Distance Along Railroad from Crossing</u>				
10	126	94	94	99	107
20	252	188	188	197	214
30	378	281	281	295	321
40	504	376	376	394	428
50	630	470	470	492	534
60	756	562	562	590	642
	<u>Distance Along Highway from Crossing</u>				
	65	125	215	330	470

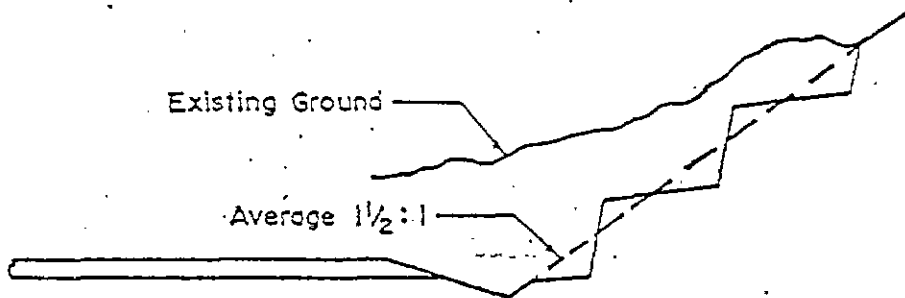
FIGURE 4

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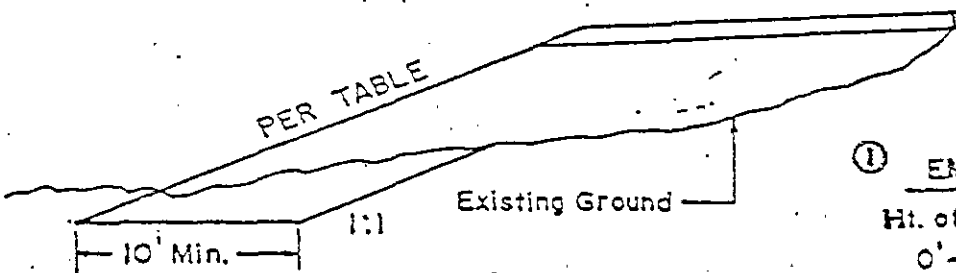
Department of Highways  
 Adm. Reg. 17-2A  
 Series I, Sec. 6.6.12



TYPICAL CUT IN EARTH



TYPICAL CUT IN ROCK



FILL TO BE CONSTRUCTED ON ROCK FOUNDATION

① EMBANKMENT SLOPEGUIDE

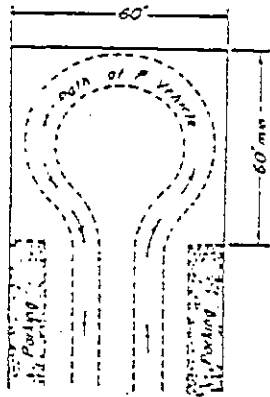
Ht. of Emb.	Slope
0'-10'	2:1 Max. 4:1 Desir.
> 10'	2:1 Desirable 1 1/2:1 Max.

CONSTRUCTION CUTS AND FILLS

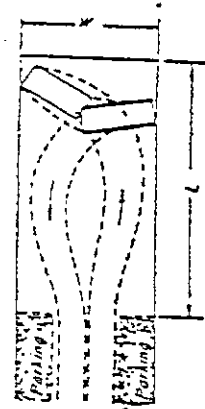
FIGURE 5

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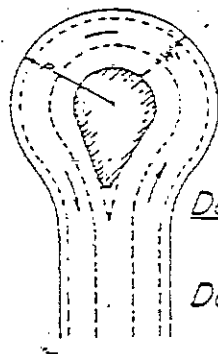
Department of Highways  
 Adm. Reg. 17-2A  
 Series I, Sec. 6.6.12



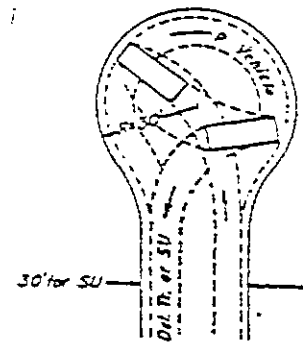
<u>Des. Vehicle</u>	<u>W</u>	<u>L</u>
P	30'	60'
Del. Truck	40'	80'
SU	50'	100'



SQUARE END



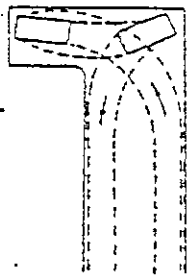
<u>Des. Vehicle</u>	<u>R</u>	<u>W</u>
P	30'	18'
Del. Truck	37'	22'
WB-40	42'	25'
SU & WB-	50'	47'
		30'



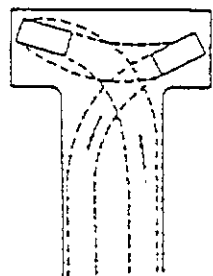
CIRCULAR

CIRCULAR-OFFSET

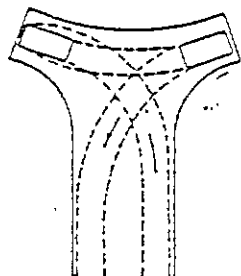
CIRCULAR-ALL PAVED



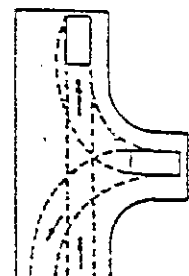
L-TYPE



T-TYPE



Y-TYPE



BRANCH

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Adm. Reg. 17-2A  
Series I, Sec. 6.7

6.07/ Plans. --

(1)6.7.1 The plans shall include a title sheet, typical sections, road layout, profiles and appropriate special details.

(2)6.7.2 Generally accepted nomenclature or wording should be used wherever possible.

(3)6.7.3 The scale to be used for plan and profile sheets shall be adequate to show the necessary details as governed by the topography and the complexity of the work. Plans should be drawn to a horizontal scale of 1" = 50' or 1" = 100'. Profiles should be drawn to the same horizontal scale as the plan but the vertical scale may be five to ten times that of the horizontal scale.

(4)6.7.4 The general road plan shall show the centerline of the survey which, if practical, should be the centerline of the proposed road bed. In a subdivision the road plan can be shown upon the subdivision map providing that it is 1" = 50' or 1" = 100' scale.

(5)6.7.5 Right of way lines shall be shown on the plans with the widths acquired or to be acquired appropriately tied to centerline. Stationing, intersecting property lines and changes in right of way widths shall be shown. Parcels shall be identified by owner's names and if in a subdivision, also by lot number and subdivision name.

(6)6.7.6 Format of the plans shall be as simple as possible.

(7)6.7.7 For filing purposes it is desirable that the original drawings be not more than 22 inches in width and 36 inches in length.

(8)6.7.8 Plans and Specifications shall be certified by a registered Professional Engineer of West Virginia.

Section 7/ Abandonment and Discontinuance of State Roads

7.01/ General. -- Pursuant to the provisions of Chapter 17, Article 2A, Section 8(12) of the West Virginia Code, the Commissioner of Highways may discontinue, vacate and

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 7.1

close any road or highway, or any part thereof, where he finds the continuance and maintenance of any such road unnecessary and improper.

7.02/ Petition of Interested Persons. -- Any person whose property or property interests are affected by any road or highway subject to the control and jurisdiction of the Commissioner of Highways may petition the Commissioner for the abandonment and discontinuance of any such road. The petition shall describe the road, or portion of the road, in such a fashion and by reference to some form of land marks so that it can be readily located by Department of Highways personnel; the petition shall state the reasons why the petitioner wants the road abandoned; and the petitioner shall sign his full name and provide his mailing address.

7.03/ Hearing. -- Upon receiving a petition for the abandonment of a road, the Commissioner may, if he deems it necessary or desirable, or shall, if the petitioner so requests, set the matter for a hearing as provided in Section 3 of Series I of these regulations, and upon the basis of the evidence produced at the hearing, the Commissioner shall determine whether the road or portion of the road should be abandoned. If requested by the petitioner or if the Commissioner in his discretion deems it advisable, a notice of the proposed abandonment of said road shall be advertised in a newspaper of general circulation in the county in which the road is located as a Class I legal advertisement advising any person having objections to the proposed abandonment to notify the Commissioner by registered letter at least ten days prior to said date of the proposed abandonment of his desire for a hearing in which event the Commissioner shall set a hearing at the earliest convenient time. If a public hearing is requested, the time and place of said hearing shall be advertised in the same manner as above set forth.

7.04/ Investigation by Commissioner. -- The Commissioner of Highways may on his own motion, cause an investigation to be made of any road or highway, and upon the basis of the information so produced, determine whether it is in the best interests of the state for a road, or a part of a road, to be abandoned and discontinued, and if he finds that it is in the best interests of the state so to do, he may abandon and discontinue the same. Where such an investigation is made by the Commissioner prior to a hearing, as provided for in the preceding section, the Commissioner shall produce the findings of his investigation at the hearing and allow all other interested parties to either rebut or support his findings.

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 7.5

7.05/ Abandonment by Commissioner's Order. -- In every case where the Commissioner of Highways determines that it is in the best interests of the state to abandon and discontinue a road or portion of a road, he shall abandon, discontinue, vacate or close the same by a formal Commissioner's Order, duly entered in the permanent Commissioner's Order Book as provided for in Section 1 of Series I of these regulations. Any such road or portion of a road, shall be abandoned as of the date the Commissioner's Order is entered in the Commissioner's Order Book.

7.06/ Copies of Commissioner's Order of Abandonment. -- The Commissioner shall send a certified copy of any order wherein a road or a part of a road is abandoned, discontinued, vacated or closed to the following persons:

(1) 7.6.1 The office of the District Engineer of the District wherein any such road is located, which order shall be available for public inspection during all normal business hours;

(2) 7.6.2 The Clerk of the County Court of the county wherein the abandoned road is located;

(3) 7.6.3 Any person who has notified the Commissioner that his personal or property interests may be affected by the abandonment, discontinuance, vacating or closing of the road in question.

Section 8/ Procurement Procedures for Negotiated Contracts

8.01/ Purpose. -- To set forth procedures for negotiated contracts to insure that a qualified contractor is obtained through an equitable selection process and that prescribed work is properly accomplished in a timely manner at a just and reasonable cost pursuant to 23 U.S.C. 104(f), 114(a), 307(c), 315 and 402; 49 CFR 1.48(b), Office of Management and Budget (OMB) Circular No. A-102 and FHFM 1-7-2.

8.02/ Application. -- The procedures outlined here are applicable only to contracts where funds are made available under Title 23 U.S.C. for the following types of service:

- (1) Planning research and development,
- (2) Preliminary engineering,
- (3) Construction engineering; and,
- (4) Highway related safety program.

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 8.3

8.03/ Procedures. --

~~(1)~~8.3.1 When service under this procedure, except as excluded in Section (27), is desired, the Department will advertise for statements of interest from firms and develop an interest list for the specific project.

~~(2)~~8.3.2 Advertising shall appear once each week for at least two successive weeks in two newspapers of opposite politics, if there be such, but if not, then in one newspaper published in each county or municipality in which the road lies, if the project has no significant relation to a specific site the City of Charleston shall be considered the locale for "in which the road lies", and once in at least one daily newspaper published in the City of Charleston are considered minimum requirements for publicizing of the service. (See Exhibit A).

~~(3)~~8.3.3 -- Firms to be solicited for the specific service will be selected from the interest list, provided they meet Department qualifications, by the Director of the Division requiring such service. Master Agreements for inspection service, subsurface investigation, or any combination thereof, will be negotiated with as many qualified firms as practical.

~~(4)~~8.3.4 Firms will be selected on the basis of past experience and reputation, expertise for the particular project under consideration, including demonstrated ability, capability to meet requirements, location, distribution of work to individuals and other firms, specifically ~~Minority~~ Disadvantaged Business Enterprises, time frame proposed by contractors or required by the Department and past performance both administratively and technically. Other criteria may be required in special cases.

~~(5)~~8.3.5 An adequate number of unpriced prospectus shall be solicited from the list of interested contractors to permit reasonable competition consistent with the nature and requirements of the procurement.

~~(6)~~8.3.6 An adequate number of qualified sources will be determined by the size, scope of the work and the number of firms on the interest list, qualified to perform the service. An adequate number will not be less than five, unless approved by the Commissioner.

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 8.3.7

178.3.7 The Commissioner, or his delegate, (in no case will any member of the Division requiring the service be the delegate) shall concur in the Division Director's list of selected firms prior to request for prospectuses.

188.3.8 It is the policy of the West Virginia Department of Highways that Minority Disadvantaged Business Enterprises, as defined in these procedures, shall have the maximum opportunity to participate in the performance and award of contracts financed in whole or in part with Federal funds in accordance with the West Virginia Department of Highways' Minority Disadvantaged Business Enterprise program.

198.3.9 For the purpose of these procedures Minority Disadvantaged Business Enterprise or "MDEBE" means a small business concern, as defined pursuant to (11) of these procedures, which is owned and controlled by one or more minorities or women socially and economically disadvantaged individuals. For the purpose of the MDEBE program, minorities also include firms which have been certified under the Small Business Administration 8(a) program.

Owned and controlled means a business -

(a) which is at least fifty-one per centum owned by one or more minorities or women or, in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by one or more minorities or women; and

(b) whose management and daily business operations are controlled by one or more such individuals.

208.3.10 All Small and Minority Disadvantaged Business Enterprises who are qualified with the Department will be so identified on the list of interested contractors.

218.3.11 Firms with fifty (50) employees or less and an annual billing of less than \$2,000,000 over the last three years are considered "small" under these procedures.

228.3.12 In order to be classified as a Minority Disadvantaged Business Enterprise a firm must submit Form WEO-475, Schedule A, for Certification as a Minority Disadvantaged Business Enterprise. In addition, Form WEO-476, Schedule B, must be submitted and approved by

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 8.3.12

the EEO Division of the Department prior to ~~being/identified~~  
~~an/MBE~~ the Department's acceptance of a Disadvantaged  
Business Enterprise joint venture.

~~(13)~~8.3.13 The award of negotiated contracts  
financed with Federal funds will be included in the  
Department's annual ~~MBE~~DBE goals.

~~(14)~~8.3.14 Solicitation of prospectuses shall  
include a clear and accurate description of the service to be  
required and contain no features which unduly restricts  
competition.

~~(15)~~8.3.15 The solicitation for prospectuses  
(see Exhibit B) shall identify all significant evaluation  
factors, including price or cost feature where appropriate, and  
their relative importance including the date to be submitted.

~~(16)~~8.3.16 All prospectuses received from the  
contractors will be reviewed by the Director of the Division  
initiating the request for prospectuses to assure that all  
pertinent information and data, including consideration of  
~~MBE~~DBE's have been submitted.

~~(17)~~8.3.17 Should the interview indicate that an  
interview with any or all of the firms be appropriate to  
further the review then such interviews will be scheduled.

~~(18)~~8.3.18 The interview should be scheduled  
based on mutual consideration; however, any reluctance on the  
part of the firm to attend an interview may be considered  
adequate justification to delete the firm from further  
consideration.

~~(19)~~8.3.19 Upon completion of this review the  
Division Director will submit a list of the prospectuses with  
his analysis to the Commissioner for further review for  
selection of the contractor for continuation of negotiations.

~~(20)~~8.3.20 The Commissioner, or his delegate,  
(in no case will any member of the Division requiring the  
service be the delegate) will then select no less than three  
(3), if there be that many qualified, of the firms whose  
prospectuses will be the most advantageous to the Department  
for continuations of negotiations. The firms selected by the  
Commissioner for further negotiations will be listed numerically  
with the preference in ascending order.

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Sec. 8.3.21

~~(21)~~8.3.21 All firms who have submitted prospectuses will be notified promptly of this determination.

~~(22)~~8.3.22 The Director of the Division initiating the request for service will be responsible for negotiating an agreement with the contractor selected number one (1).

~~(23)~~8.3.23 The contractor so selected will be furnished a draft of an agreement for this service; be requested to attend a scope of work meeting, and to submit a comprehensive proposal.

~~(24)~~8.3.24 In the event that agreement is unable to be reached the negotiator shall advise the Commissioner, or his delegate, (in no case will any member of the Division requiring the service be the delegate) and initiate action to begin negotiations with the contractor that was listed number two (2) by the Commissioner and so through the list, if necessary.

~~(25)~~8.3.25 Should it be impossible to reach an agreement with any contractor on this list the Commissioner will be so advised.

~~(26)~~8.3.26 The Commissioner will then make a reassessment to determine whether or not to extend the list, to begin negotiations over with the existing list, to accomplish the service "in-house" or to remove the work from the program.

~~(27)~~8.3.27 Noncompetitive negotiations is procurement through solicitation of a prospectus from only one source, or after solicitation of a number of sources, competition is determined inadequate.

~~(28)~~8.3.28 Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following:

~~(a)~~8.3.28.a The item is available only from a single source; or

~~(b)~~8.3.28.b public exigency or emergency where the urgency for the requirement will not permit a delay incident to competitive solicitation; or

~~(c)~~8.3.28.c after solicitation of a number of sources, competition is determined inadequate; or

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Department of Highways  
Adm. Reg. 17-2A  
Series I

~~(d)~~8.3.28.d when it is determined appropriate to use available services of a public agency or educational institution; or

~~(e)~~8.3.28.e small purchase when the service whose procurement is \$10,000 or less.

~~(29)~~8.3.29 Comprehensive prospectuses will be subjected to technical and price evaluations in accordance with 23 CFR 172.7(c). (See Exhibit E).

~~(30)~~8.3.30 Contract provisions shall be in accordance with 23 CFR 172.9. (See Exhibit F).

~~(31)~~8.3.31 After notice to proceed is given to a contractor, the responsible Department Division meets regularly with the contractor to discuss progress and problems as they may occur. These meetings are usually held every month. At these meetings a complete review of the progress to date is made, as well as the next phases of the work to be performed. Periodic submission of data is also made in accordance with the applicable type project involved. All phases of contract work are reviewed by the Division of the Department of Highways concerned with that particular type of work and that Division's opinion of the contractor's expertise in their field is considered for future work.

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Department of Highways  
Adm. Reg. 17-2A  
Series I

APPENDIX

- I Code of Conduct
- II Fee Structure
- III Certification of Contractor
- IV Certification of West Virginia Department of Highways

EXHIBITS

- A Publication Notice
- B Solicitation of Unpriced Prospectus
- C ~~Minority~~ Disadvantaged Business Enterprise Eligibility, Form EO-475, Schedule A
- D Information for Determining Joint Venture Eligibility, Form EO-476, Schedule B
- E Procurement Standards - 23 CFR 172.7(c)
- F Contract Provisions - 23 CFR 172.9

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Appendix I

CODE OF CONDUCT

1. Chapter 61, Article 5A, Section 6, of the Official Code of West Virginia, 1931, as amended, provides that it shall be unlawful for any public servant in any department, agency, division, board, bureau or commission of government to solicit, accept or agree to accept, directly or indirectly, any gift or gratuity from a person known by said public servant to be subject to any regulatory functions of his agency, division, department, etc.

The West Virginia Department of Highways' long standing policy relating to gifts or gratuities is in keeping with this Code provision.

2. The West Virginia Department of Highways is fully committed to the policy of the United States and the West Virginia State Governments, which is to provide equal employment opportunity for all qualified persons in accordance with Executive Order 11246, the Equal Employment Opportunity Act of 1972, and the West Virginia Human Rights Act. These acts collectively prohibit discrimination in employment on the basis of race, color, religion, sex, national origin, age or handicap. The Department of Highways will not discriminate against any employee or prospective employee because of any of the foregoing factors.

3. No employee of the Department shall participate in selection, or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved.

4. All contracts shall contain certifications of conduct as per Attachments 1 and 2.

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Appendix II

FEE STRUCTURE

Methods of payment which may be used are as follows:

- a) Lump Sum;
- b) Cost per unit of work;
- c) Specific rates or compensation which will be considered only if all other methods have been found by the Federal Highways Administration to be inappropriate.

The cost plus a percentage of cost and percentage of construction cost method of contracting shall not be used.

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Appendix III

Project \_\_\_\_\_

Date of Agreement \_\_\_\_\_

CERTIFICATION OF CONTRACTOR

I hereby certify that I am the \_\_\_\_\_  
and duly authorized representative of the firm of \_\_\_\_\_  
\_\_\_\_\_, whose address is \_\_\_\_\_  
\_\_\_\_\_, and that neither I nor the above  
firm I here represent has:

(a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above contractor) to solicit or secure this contract, or

(b) Agreed, as an express or implied condition for obtaining this contract to employ or retain the services of any firm or person in connection with carrying out the contract, or

(c) Paid, or agree to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above contractor) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract; except as hereby expressly stated (if any):

I acknowledge that this Certificate is to be furnished to the West Virginia Department of Highways and the U. S. Department of Transportation, Federal Highway Administration in connection with this Contract involving participation of Federal-aid Highway Funds and is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

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Adm. Reg. 17-2A  
Series I, Appendix IV

Project \_\_\_\_\_

Date of Agreement \_\_\_\_\_

CERTIFICATION OF WEST VIRGINIA DEPARTMENT OF HIGHWAYS

I hereby certify that I am the Commissioner of the West Virginia Department of Highways and that the above contracting firm or its representatives has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract to;

(a) employ or retain, or agree to employ or retain, any firm or person, or

(b) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as here expressly stated (if any);

I acknowledge that this Certificate is to be furnished to the U. S. Department of Transportation, Federal Highway Administration, in connection with this Contract involving participation of Federal-aid Highway Funds, and is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

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Adm. Reg. 17-2A  
Series I, Exhibit A

PUBLICATION NOTICE

Pursuant to regulations of the Federal Highway Administration in 23 CFR 172 "Administration of Negotiated Contracts", it is the policy of the West Virginia Department of Highways to provide notice that interest will be solicited for (description of project, type of work, anticipated completion date and special features).

Also, it is the policy of the West Virginia Department of Highways that Disadvantaged Business Enterprises, as defined in the West Virginia Department of Highways' Procurement Procedures for Negotiated Contracts, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds.

Firms interested in being considered for this work must submit a letter of interest to the West Virginia Department of Highways, 1900 Washington Street, East, Charleston, West Virginia 25305 by \_\_\_\_\_. Firms interested in this work are required to either be on the Department's qualified list or be able to become qualified in accordance with the Department's procedures.

In order to be classified as a Disadvantaged Business Enterprise, a firm must submit Form EO-475, Schedule A, for certification as a Disadvantaged Business Enterprise. In addition, Form EO-476, Schedule B, must be submitted for any proposed joint venture. These forms must be submitted and approved prior to being identified as a DBE on the list of interested contractors. Copies of these forms are available in the Equal Employment Opportunity Division of the West Virginia Department of Highways and should be submitted to that Division.

The selection of firms to be solicited for prospectuses will be based on experience, expertise in type of work to be performed including demonstrated ability, capacity of firm to perform contract, time required to accomplish the work, utilization of DBE's and past performance both technically and administratively.

For additional information concerning this notice contact \_\_\_\_\_  
\_\_\_\_\_ at \_\_\_\_\_.

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Adm. Reg. 17-2A  
Series I, Exhibit B

SOLICITATION OF UNPRICED PROSPECTUSES

The following items are typical of those to be obtained from or furnished to the contractors from whom prospectuses are solicited.

Typical information to be obtained from contractor -

1. Expression of interest;
2. brochure or other information that may have a direct relation to the work being solicited;
3. overall capabilities to handle the project, i.e., work force, workload;
4. work to be subcontracted, specifically for MBE/DBE's;
5. location of office in which work will be performed; and
6. has a job order cost accounting system maintained, capable of segregating and identifying accumulating costs for cost-type contracts.

Typical information to be furnished to contractor -

1. Type of service required;
2. description and location of the work including cost estimate;
3. any data or work that is a prerequisite to the project;
4. anticipated methods of payment which will be acceptable;
5. anticipated schedule for performing the service;
6. date by which interest must be expressed, and
7. Minority/Disadvantaged Business Enterprise listing.

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Adm. Reg. 17-2A  
Series I, Exhibit C

EO FORM 475 - SCHEDULE A

CERTIFICATION APPLICATION

Note: If, after filing this application, and prior to the expiration of your certification, there is any change in the ownership and/or management of this firm, you must notify the West Virginia Department of Highways in writing within thirty days after the change. Failure to comply with this requirement may lead to a loss of certification.

I. GENERAL INFORMATION

1. Authorized Name of Firm \_\_\_\_\_

2. Street Address of Firm \_\_\_\_\_

3. Mailing Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

4. Contact Person, Telephone Number (including area code) \_\_\_\_\_

5. Person(s) preparing this application.

Name	Address	Title

	Code
Disadvantaged:	
Black American	B
Hispanic American	H
Native American	N
Asian-Pacific American	P
Asian-Indian American	I
Women	W
Other (specify)	O

6. Legal Structure of Firm.

\_\_\_\_\_ Sole Proprietorship      \_\_\_\_\_ Partnership      \_\_\_\_\_ Corporation

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Exhibit C

7. What is the number of the firm's annual full-time work force? \_\_\_\_\_

A. Number of Employees.

	Full Time	Part Time
a. Administrative	_____	_____
b. Sales	_____	_____
c. Manufacturing	_____	_____
d. Other	_____	_____

8. Type of Business.

A. Construction \_\_\_\_\_ Manufacturing \_\_\_\_\_  
(bridge, highway, etc.) Service \_\_\_\_\_  
Consulting \_\_\_\_\_ Supplier \_\_\_\_\_  
(engineering, architect, etc.) Other (specify) \_\_\_\_\_

B. Nature of Business (as you desire listed in Directory) \_\_\_\_\_

9. A. Date business established \_\_\_\_\_

B. Date current owner purchased the majority ownership of the firm. \_\_\_\_\_

C. List other business names previously used. \_\_\_\_\_

D. Has your firm applied for reorganization under Chapter 11 and/or liquidation under Chapter 7, within the last three years?

Yes \_\_\_\_\_ No \_\_\_\_\_

10. Identification Numbers and Certification.

A. Federal identification number \_\_\_\_\_

B. Are you an SBA 8(a) certified business?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, attach a copy of current certification.

C. If certified as a DBE, MBE or WBE by any other federal, state or local agency, attached a copy of the current certification(s).

11. Has this firm or any of its owners, members of the Board of Directors, officers or management personnel ever been denied certification or decertified as a DBE, MBE or WBE by any agency in any State?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, indicate State(s), agency(s) and date(s).

\_\_\_\_\_ Provide a copy of the denial or decertification letter(s).

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Exhibit C

12. Does this firm have any M/W/DBE applications pending in other States or agencies? If yes, please list.
- \_\_\_\_\_
- \_\_\_\_\_

II. FINANCIAL INFORMATION

13. A. Provide the following banking information:

Name of Financial Institution \_\_\_\_\_  
Officers \_\_\_\_\_  
Address and Phone \_\_\_\_\_

- B. If you have established bonding capacity, identify agent, surety and limit.

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_

Bonding limit: Aggregate \_\_\_\_\_ Project \_\_\_\_\_

- C. Does your business normally require a performance bond for sub/supply contract with customers?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, what is the capacity of your bonding? \$ \_\_\_\_\_

- D. Indicate the source of investment capital for both disadvantaged and non-disadvantaged group members or women who have an ownership interest in the business.

a. \_\_\_\_\_ Personal Savings

b. \_\_\_\_\_ Joint Savings - Identify joint account holders  
\_\_\_\_\_

c. \_\_\_\_\_ Proceeds from sales of real estate or personal property  
(if property sold in past 6 months, indicate date the sales contract was executed) \_\_\_\_\_

d. \_\_\_\_\_ Gift \_\_\_\_\_

e. \_\_\_\_\_ Personal Loan \_\_\_\_\_

f. \_\_\_\_\_ Jointly Owned Property used to Collateralize Loans  
\_\_\_\_\_

g. \_\_\_\_\_ Other (specify) \_\_\_\_\_

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Series I, Exhibit C

E. Complete the following:

Name of owner or shareholder (indicate code from page 1), source of capital (indicate by letter of sources above, a-g; attach additional sheet if necessary).

Name	Amount of Capital	Code	Source of Capital
_____	_____	_____	_____
_____	_____	_____	_____

Attach copies of all cancelled checks reflecting initial investment.

F. If the source of capital is a gift, state the following:

Name of source(s) \_\_\_\_\_

Date of gift(s) \_\_\_\_\_

If gift is conditional, state conditions \_\_\_\_\_

G. Identify all sources, amount and purposes of money loaned to firm, including name of person securing loan, if other than owner. Provide copies of all loan agreements.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. A. Specify the gross receipts of the firm for the last three years.

Year Ending _____	Total Receipts \$ _____
Year Ending _____	Total Receipts \$ _____
Year Ending _____	Total Receipts \$ _____

B. Number of continuous years in business with total gross of at least \$50,000.00 \_\_\_\_\_

C. List the three largest contracts completed in the past three years.

Owner/Contractor _____	Amount \$ _____
Phone Number _____	Amount \$ _____
Project Number/Location _____	Amount \$ _____

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Series I, Exhibit C

Owner/Contractor \_\_\_\_\_  
Phone Number \_\_\_\_\_ Amount \$ \_\_\_\_\_  
Project Number/Location \_\_\_\_\_

Owner/Contractor \_\_\_\_\_  
Phone Number \_\_\_\_\_ Amount \$ \_\_\_\_\_  
Project Number/Location \_\_\_\_\_

D. What is the largest job (in dollars) that your company can handle?  
\$ \_\_\_\_\_

III. PERSONNEL/MANAGEMENT

15. List names of principals who are permanent residents of the U.S. and indicate code letter (see page 1).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ( )  
\_\_\_\_\_ ( )  
\_\_\_\_\_ ( )

16. If applicable, identify individuals or firms who provide the following contracted services to your firm:

A. External Management or Technical/Computer Service

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Accountant

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. Attorney

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. Principal Suppliers

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17. Current licenses/permits held by firm (e.g. contractor, engineer, architect, interstate commerce, etc.).

Individual Name	License Name	Date of Expiration	License Number
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____



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B. Estimating: (cost estimates, bid preparation or negotiations).

Name	Title	Ethnicity	Sex

C. Hiring/Firing of Management Personnel:

Name	Title	Ethnicity	Sex

D. Field/Production Operations Supervisor: (site supervision/scheduling, project management services).

Name	Title	Ethnicity	Sex

E. List all Field Superintendents:

Name	Title	Ethnicity	Sex

F. Contract Signature Authority: (contract execution, bid submission)

Name	Title	Ethnicity	Sex

G. Office Management:

Name	Title	Ethnicity	Sex

H. Marketing/Sales:

Name	Title	Ethnicity	Sex

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Series I, Exhibit C

I. Purchasing of Major Equipment:

Name	Title	Ethnicity	Sex

J. Holders of any Licenses:

Name	Title	Ethnicity	Sex

K. Decides which Jobs the Business will do:

Name	Title	Ethnicity	Sex

L. May any of the above persons fire any disadvantaged/woman employee who has an ownership interest in the business?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please list the names of the persons who have this authority, and identify the code for each.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ( )  
\_\_\_\_\_ ( )  
\_\_\_\_\_ ( )

21. A. Do any of the people listed in questions 19 and 20 perform a management or supervisory function for any other business?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, identify person, title, business and function.

\_\_\_\_\_  
\_\_\_\_\_

B. Do any of the persons listed in questions 18 and 20 own or work for other firms which have a business relationship with yours? (relationships include ownership interests, shared office space, financial investments, equipment leases or personnel sharing).

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, identify person, title, business and function.

\_\_\_\_\_  
\_\_\_\_\_

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Series I, Exhibit C

22. A. Has your firm or any principal of your firm ever failed to complete any contract awarded to you?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, please state when, where and why.

\_\_\_\_\_  
\_\_\_\_\_

B. Has any officer, partner or principal of your organization ever been an officer, partner or principal of any other organization that failed to complete a construction project?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, please describe circumstances.

\_\_\_\_\_  
\_\_\_\_\_

C. What areas in the State will you work?

\_\_\_\_\_  
\_\_\_\_\_

D. Are you willing to work in other States? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please list the States.

\_\_\_\_\_  
\_\_\_\_\_

IV. LEGAL STRUCTURE

If the business is a sole proprietorship, complete question #26 (omit #23, #24, #25).

If the business is a general partnership, complete question #24 (omit #23, #25, #26).

If the business is a limited partnership, complete question #25 (omit #23, #24, #26).

If The business is a corporation, complete question #23 (omit #24, #25, #26).

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Series I, Exhibit C

23. To be Completed by Corporation

A. Attach a copy of the following:

- \* Articles of Organization/Incorporation
- \* Bylaws
- \* Current Financial Statement (within 90 days)
- \* Stock Certificates

B. List the number of shares and class authorized.

Number of Shares	Class Authorized
_____	_____
_____	_____
_____	_____

C. List the number of shares issued as of the date of this agreement and to whom issued (indicate disadvantaged/woman group share-holders).

Number of Shares Issued	Shareholder	Code	Class
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

D. If the business is a public corporation, list the following information:

Names of disadvantaged/woman principals who own shares	Number of shares owned by disadvantaged/woman principals	Class
_____	_____	_____
_____	_____	_____
_____	_____	_____

E. Describe the voting rights or powers of each class of stock.

Voting Rights or Powers	Class of Stock
_____	_____
_____	_____
_____	_____

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Adm. Reg. 17-2A  
Series I, Exhibit C

F. Are there any restrictions to limit the voting rights of disadvantaged group members or women who are shareholders within the bylaws, articles of incorporation or any other documents?

Yes \_\_\_\_\_ No \_\_\_\_\_

G. Describe and explain any changes in duties, powers, bylaws, or personnel made during the past six months, with respect to principals, officer and/or directors of this corporation.

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24. To be Completed by General Partnerships

A. Attach a copy of partnership agreement and current financial statements.

B. Date partnership established \_\_\_\_\_

C. List names and addresses of all partners and the amount of each partner's initial investment.

Name	Code	Address	Amount Invested
------	------	---------	-----------------

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D. If a corporation is a general partner, state the percentage of shares in the corporation which are owned by disadvantaged group members or women.

Percentage of Shares \_\_\_\_\_

E. If any of the general or limited partners obtained their interest within the last six months, complete the following:

Name	Date Acquired	Purchase Price	From Whom Purchased
------	---------------	----------------	---------------------

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Adm. Reg. 17-2A  
Series I, Exhibit C

F. Are any of the partners affiliated in any way with another business?

Yes \_\_\_\_\_ No \_\_\_\_\_

Name of Partner	Name of Other Business	Address	Position Held

26. To be Completed by Sole Proprietorship

A. Date sole proprietorship established \_\_\_\_\_

B. Is business registered? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, state, city or town in which business is registered. \_\_\_\_\_

Date of registration \_\_\_\_\_

C. If title of business was sold or a gift to the present owner, state the following:

Date title was transferred to present owner \_\_\_\_\_

Name of previous owners. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

27. To be Completed by Supplier

A. Indicate the type of suppliers.

_____	Manufacturer	_____	Franchise
_____	Distributor	_____	Dealership
_____	Manufacturing Representative	_____	Wholesaler
_____	Other (specify) _____		

B. Does your business stock, on property owned or leased by the business, the goods that you supply to customers?

Yes \_\_\_\_\_ No \_\_\_\_\_

C. Does your business own or operate distribution equipment?

Yes \_\_\_\_\_ No \_\_\_\_\_

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Adm. Reg. 17-2A  
Series I, Exhibit C

D. Does your business take ownership title to the goods supplied to customers?

Yes \_\_\_\_\_ No \_\_\_\_\_

E. Does your business insure goods (i.e. for damages, theft or fire) that are supplied to customers?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, describe the type of insurance.

\_\_\_\_\_

F. Does your business normally require a performance bond for supply contracts with customers?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, what is the capacity of your bonding? \$ \_\_\_\_\_

G. In the event of dissatisfaction on the part of the customer, due to untimely delivery, damaged or defective goods, or failure to perform by your business, to whom does the customer have legal recourse?

Your Business \_\_\_\_\_  
Manufacturer \_\_\_\_\_  
Other (specify) \_\_\_\_\_

Explain if customer has legal recourse to more than one party \_\_\_\_\_

\_\_\_\_\_

28. Operational Background

A. Equipment (list major pieces of equipment below as indicated). Attach copies of current lease agreement on equipment.

Equipment	Model	Present Value
-----------	-------	---------------

\_\_\_\_\_

B. Plant (describe owned or leased warehouse, office and yard as indicated below). Attach copies of lease agreements for space rental.

Address	General Description	Square Feet	Present Value of Amount of Lease/Rental
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\_\_\_\_\_

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Exhibit C

C. Is the space shared with another company?    Yes \_\_\_\_\_    No \_\_\_\_\_

If yes, list name of company \_\_\_\_\_

Name of principal owner(s) \_\_\_\_\_

D. Trade references.

List sub-contractors or material suppliers that you have now, or have had in the past under contract.

Name	Address	Telephone Number
_____	_____	_____
_____	_____	_____
_____	_____	_____

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Exhibit C

CERTIFICATION AFFIDAVIT

We the undersigned, agree to the following conditions:

1. To abide by all of the rules and regulations of the West Virginia Department of Highways governing the certification process hereinafter.
2. To notify the State within thirty days of any change in the ownership, control, management or status as an on-going concern.
3. That the State has the right to conduct a review of the company's books, contracts, company structure, facilities and to request whatever additional information it deems necessary from time to time, in order to monitor the status of the company, if the firm is certified by the State as a bona-fide disadvantaged person or woman owned and controlled company.
4. That the State may, at any time, withdraw the certification after applying its own procedures.
5. That the State may automatically deny or rescind certification, if during or after the certification process it finds that the undersigned have submitted false, inaccurate or misleading information.

We certify under the pains and penalties of perjury that the information supplied to this application is correct and complete and the State is entitled to rely solely on it as the basis for its decision.

We recognize the five (5) conditions stated above governing the consideration of this application and the maintenance of the certified status.

*SIGNATURE _____	*SIGNATURE _____
PRINTED NAME _____	PRINTED NAME _____
DATE _____	DATE _____

\*Must be signed by at least one officer if a Corporation; one general partner if a Partnership; or the proprietor if a Sole Proprietorship.

NOTARY

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

Signed \_\_\_\_\_, Notary Public in and for the

County of \_\_\_\_\_, State \_\_\_\_\_

My Commission Expires \_\_\_\_\_

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Exhibit C

DEFINITIONS

- A. Socially And Economically Disadvantaged Individuals refers to those individuals who are citizens of the United States and who are Women, Black Americans, Hispanic Americans, Native Americans or Asian-Pacific Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

Women;

Black Americans includes persons having origins in any of the Black racial groups of Africa;

Hispanic Americans includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;

Asian-Pacific Americans includes persons whose origins are Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, Samoa, the Phillipines, Guam, the U.S. Trust Territories of the Pacific and the Northern Marianas.

Asian-Indian Americans includes persons whose origins are India, Pakistan and Bangladesh.

- B. Disadvantaged Business Enterprise - "Disadvantaged Business" or "DBE" refers to a small business concern (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

1. The disadvantaged owners must demonstrate that they have dominant control over management and provide evidence of dominant participation in the daily affairs of the enterprise.
2. The firm has not been solely established for the purposes of taking advantage of a special program which has been developed to assist disadvantaged businesses. The Department of Highways reserves the right to deem the existence of any agreements, options, rights of conversion or other restraints that may be exercised, and which if exercised, could reduce disadvantaged ownership or control to less than the requisite percentage to the grounds for rejection of the existing enterprise as a disadvantaged business enterprise.

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Exhibit C

DOCUMENT REQUEST

Document Request - Place (x) marks on the items you have submitted and completed to be sure all requested information has been submitted (item numbers correspond with question numbers).

Any Shortage Will Delay The Processing Of Your Application

- 1. Original And Any Amended Partnership Agreements (Item 24)
- 2. Official Articles Of Incorporation (Signed By State Official) (Item 23)
- 3. Both Sides Of All Corporate Stock Certificates (Item 23)
- 4. Minutes Of All Stockholders And Board Of Directors Meetings
- 5. Corporate ByLaws And Any Amendments (Item 23)
- 6. Corporate Bank Resolutions And Signature Cards For All Accounts
- 7. Signed Loan Agreements (Item 13. E.)
- 8. Work Experience Resumes That Include Places Of Ownership Employment And Corresponding Dates (Item 18)
- 9. Proof Of Legal Permanent Resident Status And Ethnicity (Item 18)
- 10. Description Of Real Estate And Proof Of Ownership Listed
- 11. List Of Equipment Owned/Leased And Signed Lease Agreements (Item 28)
- 12. List Of Automotive Equipment Owned And Title/Proof Of Ownership
- 13. Signed Leases For Offices/Storage Space (Item 28)
- 14. End Of Year Balance Sheets And Income Statements For Past Three Years (Or Life Of Firm If Less Than Three Years). A New Business Must Provide A Current Balance Sheet (Item 14)
- 15. Relevant Licenses (Item 17)
- 16. DBE/MBE/WBE Or SBA 8(a) Certifications Or Denials And Decertifications (Items 10-11)
- 17. Additional Proof Of Ownership And Control Of This Firm
- 18. \*Seal And Signature Of Notary Public

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Exhibit C

- \_\_\_ 19. Attach Copy Of Proof Of Payment On Behalf Of Each Of The Owners For Their Portion/Share Of The Firm (e.g. Both Sides Of Cancelled Checks) (Item 13)
- \_\_\_ 20. Schedules Of Salaries Paid To All Officers, Managers And Directors By This Firm
- \_\_\_ 21. Provide Copies Of Federal Income Tax Submitted For The Last Two Years
- \_\_\_ 22. I Have Read The DBE/MBE/WBE Federal Regulations Relative To Eligibility Requirements
- \_\_\_ 23. Community Property Agreement

\*Please Be Sure Page 15 Of This Application Is Signed, Notarized And Completed Before Mailing

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Exhibit D

EO FORM 476 - SCHEDULE B

1. Name of Joint Venture \_\_\_\_\_
2. Address of Joint Venture \_\_\_\_\_
3. Phone Number of Joint Venture \_\_\_\_\_
4. Identify the firms which comprise the joint venture: (The DBE partner must complete Form EO 475, Schedule A) \_\_\_\_\_  
\_\_\_\_\_  
a. Describe the role of the DBE firm in the joint venture \_\_\_\_\_  
\_\_\_\_\_  
b. Describe very briefly the experience and business qualifications of each non DBE joint venturer \_\_\_\_\_  
\_\_\_\_\_  
5. Nature of the joint venture's business \_\_\_\_\_
6. Provide a copy of the joint venture agreement.
7. What is the claimed percentage of DBE ownership? \_\_\_\_\_
8. Ownership of joint venture: (This need not be filled in if described in the joint venture agreement, provided by Question 6.)
  - a. Profit and Loss Sharing \_\_\_\_\_
  - b. Capital Contributions, Including Equipment \_\_\_\_\_
  - c. Other Applicable Ownership Interests \_\_\_\_\_
9. Control of and participation in this contract. Identify by name, race, sex, and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decisionmaking, including, but not limited to, those with prime responsibility for:
  - a. Financial Decisions \_\_\_\_\_
  - b. Management Decisions, such as:
    - (1) Estimating \_\_\_\_\_
    - (2) Marketing and Sales \_\_\_\_\_
    - (3) Hiring and Firing of Management Personnel \_\_\_\_\_
    - (4) Purchasing of Major Items or Supplies \_\_\_\_\_

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Exhibit D

---

(5) Supervision of Field Operations

---

Note: If, after filing this Schedule B and before the completion of the joint venture's work on the contract covered by this regulation, there is any significant change in the information submitted, the joint venture must inform the grantee, either directly or through the prime contractor if the joint venture is a subcontractor.

Affidavit

"The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to the grantee current, complete and accurate information regarding actual joint venture work and the payment therefor and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representative of the grantee or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements."

---

Name of Firm

Name of Firm

---

Signature

Signature

---

Name

Name

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Exhibit D

\_\_\_\_\_

Title	Title
-------	-------

\_\_\_\_\_

Date	Date
------	------

Date \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, before me appeared [Name] \_\_\_\_\_ to me personal known, who being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by [Name of Firm] \_\_\_\_\_ to execute the affidavit and did so as his or her free act and deed.

Notary Public \_\_\_\_\_

[Seal]

Commission Expires \_\_\_\_\_

Date \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, before me appeared [Name] \_\_\_\_\_ to me personal known, who being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by [Name of Firm] \_\_\_\_\_ to execute the affidavit and did so as his or her free act and deed.

Notary Public \_\_\_\_\_

[Seal]

Commission Expires \_\_\_\_\_

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Exhibit E

PROCUREMENT STANDARDS

23 CFR 172.2(c)

Before a contract is awarded, the contracting agency shall determine and document in files that the proposal has been subjected to technical and cost or price evaluations, as appropriate, and how the results of these evaluations were considered in the contract negotiations.

Appropriate cost or price evaluations shall include -

1. An audit evaluation prior to negotiation of proposals for which the total costs exceed, or are expected to exceed \$5,000.
2. Audit evaluations of proposals of less than \$50,000 where a valid need exists, such as:
  - (i) Inadequate knowledge concerning the prospective contractor's accounting policies, costs systems, or substantially changed methods or levels of operation.
  - (ii) previous unfavorable experience indicating doubtful reliability of the prospective contractor's estimating, accounting, or purchasing method or
  - (iii) procurement of a new product for which cost experience is lacking.

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Exhibit F

CONTRACT PROVISIONS

23 CFR 172.9

The contracting agency shall ensure that all contracts include, to the extent appropriate, provisions required by Attachment O, OMB Circular No. A-102, and the following:

- a) Civil Rights - All contracts awarded by grantees, subgrantees, and their contractors shall contain provisions requiring compliance with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, 49 CFR 21 through Appendix E and 23 CFR 710.405(b) shall be made applicable by reference in all contracts and subcontracts financed in whole or in part with Federal-aid highway funds.
- b) Documentation - Contracts, where appropriate, shall provide that the contractor document the results of the work to the satisfaction of the contracting agency and the FEWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the contract objectives.
- c) Patent Rights - Applicable patent rights provisions described in 41 CFR 1-9.1 regarding rights to inventions shall be included in contracts as appropriate.
- d) Copyrights - The contracting agency may permit copyrighting of reports or other contract products. If copyrights are permitted, the contract shall provide that the FEWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use the work for Government purposes.
- e) Subcontracts -
  1. All contracts shall show that the prime contractor is required to perform all work except specialized services or other tasks specifically exempted in the contract, except that governmental recipients of 23 U.S.C. 104(1) or 402 funds may subcontract as necessary to accomplish approved work program activities.

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Department of Highways  
Adm. Reg. 17-2A  
Series I, Exhibit F

2. All contracts shall provide that sub-contracts exceeding \$10,000 in cost shall contain all required provisions of the prime contract.
- f) Other Provisions - Following is a list of other provisions normally included in contracts:
1. Scope of work;
  2. Time period covered;
  3. Contract price, including limiting amounts for all contracts;
  4. Change in work;
  5. Disputes;
  6. Obligations of contracting agency;
  7. Ownership of documents;
  8. Inspection of work; and
  9. Equipment and instrumentation required.

2 of 2



KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
Deputy Secretary of State

CATHERINE FREROTTE  
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Chief of Staff

RICHARD O. HARTMAN  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

VIRGINIA SKEEN  
Special Assistant

(Plus all the volunteer  
help we can get)

STATE OF WEST VIRGINIA  
SECRETARY OF STATE  
Charleston 25305

September 23, 1988

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Highways

RULE: Amendment to Section 1; Particular Functions of the  
Commissioner of Highways

DATE FILED AS AN EMERGENCY RULE: August 12, 1988

DECISION NO. 18-88

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

KEN HECHLER  
Secretary of State

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE Sept 23, 1988  
ADMINISTRATIVE LAW DIVISION



KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
Deputy Secretary of State

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Chief of Staff

RICHARD O. HARTMAN  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

VIRGINIA SKEEN  
Special Assistant

(Plus all the volunteer  
help we can get)

# STATE OF WEST VIRGINIA

## SECRETARY OF STATE

Charleston 25305

### DECISION                      EMERGENCY RULE DECISION (ERD 16-88)

AGENCY: Department of Highways  
RULE: Amendment to Series 1, Particular Functions of the  
Commissioner of Highways  
FILED AS AN EMERGENCY RULE: August 12, 1988

- par. 1 The DOH has filed amendments to the above rule as an emergency.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review DOH (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The DOH has filed this emergency rule with supporting documents with the Secretary of State on August 12, 1988 and with the LRMRC on August 12, 1988.

par. 7 It is the determination of the Secretary of State that the DOH has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §17-2A-8(24) reads in part:

*§17-2A-8. Powers, duties and responsibilities of commissioner.*

*(24) Make and promulgate rules and regulations for the government and conduct of personnel, for the orderly and efficient administration and supervision of the state road program and for the effective and expeditious performance and discharge of the duties and responsibilities placed upon him by law.*

par. 9 It is the determination of the Secretary of State that the DOH has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

*(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the DOH are as follows:

This filing is being made in order to comply with changes to the Code of Federal Regulations, 49 CFR Part 23 of the U. S. Department of Transportation. The DOT regulations became effective October 21, 1987; therefore, this rule is being filed to comply with a time limitation established by federal statute.

Notable changes include: a renaming of Minority Business Enterprises to Disadvantaged Business Enterprises which, by federal statute, identifies women, like all other currently designated groups, as presumed to be socially and economically disadvantaged for program purposes; a redefining of "small" firms to those with annual billings less than \$7,500.00 over the last three years; and a revising of the Certification Application, EO Form 475 to supply DBE information required by federal statute.

Additionally, references to the Executive Secretary-Planning Manager, formerly an office of the Department, have been deleted and the referenced responsibilities reassigned. Finally, the listings of the Department's Districts and the District Engineers' addresses have been updated.

par. 13 It is the determination of the Secretary of State that this proposal meets the standards for emergency rule.

par. 15 This decision shall be cited as Emergency Rule Decision 18-88 or ERD 18-88 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the DOH, the Attorney General and the Legislative Rule Making Review DOH.

*Ken Hechler*

KEN HECHLER

SECRETARY OF STATE  
FILED IN THE OFFICE OF  
THE SECRETARY OF STATE

THIS DATE Sept 23, 1988  
ADMINISTRATIVE LAW DIVISION

Entered \_\_\_\_\_

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Charleston 25305

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Special Assistant

(Plus all the volunteer  
help we can get)

July 19, 1989

Fred VanKirk  
Acting Division Administrator  
Division of Highways  
Department of Transportation  
State Capitol  
Charleston, WV 25301

Dear Mr. VanKirk:

West Virginia Code ~~2~~29A-3-15(3) states:

"The agency has not previously filed and fails to file the proposed rule with the legislative rule-making review committee within one hundred eighty days of the date the proposed rule was filed as an emergency rule, in which case the emergency rule expires on the one hundred eighty-first day."

In checking my files, I found the Department of Highways, Series 1 Rule, "Regulations Pertaining to Particular Functions of the Commissioner of Highways," was filed on August 12, 1989, but there has not been an Agency Approved rule filed with the Secretary of State and fifteen copies with the Legislative Rule-Making Review Committee. Therefore this emergency rule died February 9, 1989.

The Code further states in 29A-3-15(c) that:

"Once an emergency rule expires due to the conclusion of fifteen months or due to the effect of subdivision (1)(2) (3) or (4), subsection (a) of this section, the agency may not refile the same or similar rule as an emergency rule."

This notice will appear in the Register dated July 21, 1989.

Sincerely,

Judy Cooper, Director  
Administrative Law Division