

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF THE
SECRETARY OF STATE

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

AGENCY: Dept. of Transportation, Div. of Highways TITLE NUMBER: 157

CITE AUTHORITY §17-2A-5, 8, 17, 19, 19A & 20

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: II

TITLE OF RULE BEING AMENDED: Acquisition, Disposal, Lease & Management of
Real Property & Appurtenant Structures & Relocation Assistance

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

TITLE OF RULE BEING PROPOSED: _____

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



Fred VanKirk
Deputy Secretary & State Highway Engineer/Commissioner

9.86



**WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION**

1900 Kanawha Boulevard East • Building Five • Room 109
Charleston, West Virginia 25305-0440 • 304/558-0444

Gaston Caperton
Governor

Charles L. Miller, P.E.
Secretary

February 7, 1995

Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Dear Secretary Hechler:

Notice of Agency Approval of a Proposed Rule
and Filing with the Legislative Rule-Making Review Committee
Division of Highways, Series II

The attached information is being submitted by the Commissioner of Highways with my consent and agreement in accordance with the provisions of Chapter 5G, Article 1 of the State Code. These proposed amendments are being submitted to comply with H.R. #4339 which addressed the Commissioner of Highways' authority to sell excess highway right-of-way.

Sincerely,

A handwritten signature in cursive script that reads "Charles L. Miller".

Charles L. Miller, P.E.
Secretary

CLM:c
Attachment

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Series II, Acquisition, Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Highways

Address: Building 5, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305-0430

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$50,000	\$ --	\$ --	\$ --	\$ --
PERSONAL SERVICES	\$50,000				
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

It is anticipated that the effect of this rule change will be to increase present operating costs by \$50,000 annually. The increase is due to the expected rise in frequency of requests from the public to dispose of Division of Highways property (excess right-of-way).

3. Objectives of this rule:

To comply with the changes to the rules governing the disposition of excess highway right-of-way mandated by the passage of H.R. #4339 effective July 1, 1994. These rule changes grant the Commissioner of Highways the authority to privately negotiate the sale of excess right-of-way at fair market value to abutting landowners. These changes further dictate that the sale of excess right-of-way shall first be offered to the principal abutting landowner.

Rule Title: Series II; Acquisition, Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government:

The increased operating costs are expected to be offset by the revenues generated from the sale of the excess right-of-way.

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

The sale of excess right-of-way may result in an increase in the value of individual properties with a potential increase in the owner's property tax assessment.

C. Economic Impact on Citizens/Public at Large.

None.

October 28, 1994



Fred VanKirk
Deputy Sec. & State Highway Engineer/Commissioner

DATE: FEBRUARY 7, 1995

TO: LEGISLATIVE RULE MAKING REVIEW COMMITTEE

FROM: WEST VIRGINIA DEPT. OF TRANSPORTATION, DIVISION OF HIGHWAYS

LEGISLATIVE RULE TITLE: ACQUISITION, DISPOSAL, LEASE & MANAGEMENT
OF REAL PROPERTY & APPURTENANT STRUCTURES & RELOCATION ASSISTANCE

1. Authorization statute(s) citation §17-2A-5, 8, 17, 19, 19A & 20

2. a. Date filed in State Register with Notice of Public Comment Period.

November 4, 1995

b. What other notice, including advertising, did you give of the comment period?

None

c. Date of Hearing(s) N/A

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

Attached No comments received

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

February 15, 1995

f. Name and phone number(s) of agency person(s) to contact for additional information:

Mr. Joseph C. Riley

(304) 558-2822

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

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

N/A

b. Date of hearing: N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

FILED

WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF TRANSPORTATION
COMMISSIONER OF DIVISION OF HIGHWAYS

FEB 15 10 40 AM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 157

SERIES II

Title: Acquisition, Disposal, Lease and Management of Real
Property and Appurtenant Structures and Relocation
Assistance

Section 1. General

1.1. Scope. -- These Interpretive, Legislative and Procedural rules and regulations relate to the acquisition, disposal, lease and management of real property and appurtenant structures, and relocation assistance for persons dislocated by highway construction.

1.2. Authority. -- These rules and regulations are issued under authority of West Virginia Code, ~~Chapter 17, Article 2A, Sections §17-2A-5, 8, 17, 19, 19A, and 20.~~

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Amendment to Former Rule. -- This legislative rule amends the West Virginia Legislative Rule, "~~Division Department~~ of Highways, Series II, Acquisition, Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance", filed ~~December 16, 1982~~ April 25, 1990 and effective ~~January 1, 1983~~ June 1, 1990.

Section 2. Acquisition of Real Property

2.1. General. -- The acquisition of real property, and interests therein, required for the state road program and system, is governed by statute. (Reference, in general, ~~Chapter 17, Article 2A, Sections 8 and 17, Code WV Code §17-2A-8 & 17.~~) ~~Needless to say,~~ the exercise of the sovereign power of eminent domain is controlled by substantive law principles.

Section 3. Sale, Exchange or Lease of Real Property and Structures

3.1. Property Management Unit of Right of Way Division. -- The sale, exchange, or lease of real property or any interest or right therein or any structure thereon, held by the Department of Transportation, Division of Highways, shall be under the control and management of the Property Management Unit of the Right of Way Division of the Division of Highways.

3.2. District Office. -- In each District Office the District Right of Way Agent or his/her assistant shall perform the duties and functions of Property Management relating to the sale, exchange or lease of real property, any interest therein, or structures thereon, within the District.

3.3. Definition: Excess Real Estate. -- Excess real estate, as used in these rules, shall mean any real property or any interest or right therein, which is held by the Division of Highways and which is not necessary or desirable for present or presently foreseeable future state road purposes, or any directly or indirectly related purposes connected with the construction, maintenance or operation of state roads. Any land within the right of way limits or a property required by the Division of Highways shall not be considered excess real property without the prior approval of the ~~Administrator~~ Commissioner of Highways or his/her designee.

(a) 3.4. Temporary Disposition. -- Temporary disposition of real property or any interest therein, not needed for state road purposes, may be either by lease or permit.

(b) 3.5. Permanent Disposition.

(a) Excess real estate may be permanently disposed of by:

- (1) Exchange for other real property needed for any state road purpose.
- (2) Public sale.
- (3) Abandonment. (In the usual instance will apply only to road right of way easement.)

(4) Private negotiated sale at fair market value to the principal abutting landowners, ~~provided however that this method of permanent disposition of real property shall be available only with respect to former railroad rights of way owned by the Division of Highways and those properties owned by the Division of Highways which were formerly used as turnpike roads.~~

(b) If excess real estate acquired subsequent to December 31, 1973, through voluntary real estate acquisition or exercise of the power of eminent domain is to be sold, it shall be first offered for sale to the principal abutting landowner at a cost equal to the amount paid by the Division of Highways in acquiring the real estate less any applicable reduction attributable to the value of improvements which have been removed, plus an adjusted amount to reflect interest at a rate equal to the increase in the consumer price index for all urban consumers as reported by the United States Department of Labor since the disbursement of funds, provided that the following conditions are met:

(1) A principal abutting landowner for purposes of this subsection is an abutting landowner who is an individual from whom the real estate was acquired or his or her surviving spouse or descendent as defined in West Virginia Code, §42-1-1; and

(2) The primary use of the abutting property shall not have substantially changed since the time of the acquisition. Primary use shall be deemed to have substantially changed if the abutting property's use has changed to or from any of the categories listed below:

- (a) vacant
- (b) residential
- (c) commercial.

If either condition is not met, the property can only be sold as otherwise provided in this section.

(c) An abutting landowner shall be given the right of first refusal whenever the sale of excess property is contemplated under Paragraphs 3.5, (a) (2) or (a) (4) or under Subsection 3.5 (b) of "Acquisition, Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance." 157CSR2. Such right of first refusal gives the abutting landowner the right to purchase the excess property as provided in this section. The abutting landowner shall be notified in writing sent by certified mail, return receipt requested, of his/her right of first refusal and that he/she has sixty (60) days to exercise this right. The right of first refusal is exercised by the abutting landowner through his/her remittance of the price determined by the Division of Highways within sixty (60) days of notification. If the abutting landowner does not exercise his/her right of first refusal by remitting the purchase price to the Division of Highways within sixty (60) days, then the property may be otherwise sold. The Division of Highways will recognize and take action upon a release of the right of first refusal. However, the Division of Highways will not recognize or honor a purported transfer of the right of first refusal so as to create a right in a third party.

(d) For purposes of Subsection 3.5, (c) of "Acquisition, Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance." 157CSR2, the abutting landowner is an abutting landowner at the time of the sale. Such landowner shall be determined by the Commissioner's employees or agents or staff, or by attorneys or other professionals employed by the Commissioner to make title examinations or other proof to substantiate who the landowner is. In all cases the landowner shall submit proof of his or her ownership by way of certified copy of deed, payment of current year's taxes evidenced by tax receipt, or in the case of heirs who do not have deeds, such proof shall be by way of certified documented records of heirship or intestate ownership. In the absence of any documentation in the official records of County Clerks' offices in the various counties in the State of West

Virginia, the Commissioner may accept duly executed affidavits in support of any alleged ownership by the landowner. Principal abutting landowners for purposes of Subsection 3.5. (a) (4) of "Acquisition, Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance," 157CSR2 shall be determined in the same manner as abutting landowners.

(e) If public utilities are present on property being permanently disposed, that portion being used by the utility shall be excepted or reserved from the conveyance.

~~3.4~~ 3.6. Initiating Disposition. -- Disposition of real estate owned or held by the Division of Highways may be initiated by a request of some member or group of the general public.

~~(a) Public Request.~~ Any citizen or group of citizens Any person, firm or corporation, in accordance with the provisions of Subsection 3.3 of "Acquisition, Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance," 157CSR2, may make a written request to the District Engineer of the Division of Highways District where the property involved is located, or such request may be made directly to the Commissioner of Highways in Charleston, West Virginia, for the disposition of any parcel or tract of real estate owned or otherwise held by the Division of Highways. Regardless of the manner in which the request is initiated, no real estate owned or held by the Division of Highways shall be sold, offered for sale, or released in any manner until such sale, offer or release has been approved by the District Engineer, the State Highway Engineer and the Commissioner of Highways or his/her designee.

~~3.5.~~ 3.7. Finding With Respect to Value as Hiking Trail. -- No real property owned by the Division of Highways shall be transferred, sold or otherwise disposed of unless the Commissioner finds that such property or right-of-way has no significant value to the state as a hiking trail and does not serve as a link between two or more state owned properties, except that any such property that lies within six hundred (600) feet of any dwelling house may be transferred, sold or otherwise disposed of without such a finding by the Commissioner.

Section 4. Exchange of Real Property

4.1. Property Not Necessary for Road Purposes. -- Any real property, or any part thereof, or any interest or right therein, which is deemed by the Commissioner not necessary or desirable for present or presently foreseeable state road purposes may be exchanged for other real property, or any interest or right therein, which is deemed by the Commissioner to be necessary or desirable for present or presently foreseeable state road purposes. (Reference: ~~Chapter 17, Article 2A, Section 19, Code~~ WV Code §17-2A-19.)

4.2. Property Necessary for Road Purposes. -- Any real property, or any part thereof, or any interest or right therein, even though it may be necessary or desirable for present or presently foreseeable state road purposes, may be exchanged for other real property, or any interest or right therein, in close proximity thereto which the Commissioner deems of equal or superior useful value for present or presently foreseeable future state road purposes. (Reference: ~~Chapter 17, Article 2A, Section 19, Code WV Code §17-2A-19.~~)

4.3. Appraisal. -- Any exchange of real property, or any interest therein, must be based on an approved appraisal of each separate property involved, and a determination by the Reviewing Chief Appraiser or his/her designee of the Division of Highways of the fair market value of the properties. The Director of the Right of Way Division shall make a recommendation to the Commissioner as to whether or not the property the Commissioner desires to acquire by exchange is of equal or superior useful value for present or presently foreseeable future state road purposes as the property already owned by the Division.

4.4. Difference in Value. -- The Commissioner of Highways may pay or require payment of any substantial difference in the value of the properties being exchanged and may move or pay the cost of moving buildings, structures, or appurtenances in connection with any such exchange.

Section 5. Public Sale of Excess Real Property

5.1. Public sales of excess real property shall be in accordance with Sections 5.2 through 5.5, set out below.

~~5.1~~ 5.2. Auction. -- All excess real property, or any interest or right therein or structure thereon, shall be sold at public auction in the county in which the real property, or the greater part thereof, in value, is located. Such sale shall be made as provided by law and these regulations. Conveyance of real property by the Division of Highways to other public bodies may be handled on a negotiated basis. Such conveyances are subject to the approval of the Board of Public Works. (Reference: ~~Chapter 17, Article 2A, Section 19, Code WV Code §17-2A-19.~~)

~~5.2~~ 5.3. Published Notice of Auction. -- Notice of public auction of excess real property shall be published on three different days in a newspaper of general circulation in the county in which the real property, or a part thereof, is situate.

(a) The first publication of the notice shall be at least 20 days prior to the date of the public sale.

(b) The notice shall set forth the time, place, date and terms of the proposed sale and a general description of the real property to be offered for sale.

(c) The notice shall clearly state that the Division of Highways reserves the right to reject any or all bids received at a sale.

(d) An affidavit of publication of notice, or a copy of the published notice, shall be obtained and filed with the Right of Way Division Office.

~~5.3~~ 5.4. Conduct of Auctions. -- The District Right of Way Agent shall conduct, or cause to be conducted, the public auction at the time and place specified in the notice. Another person appointed by the District Right of Way Agent, shall act as clerk and record the high bid and the name and address of the high bidder. The clerk shall also receive any monies paid at the time of sale and give a receipt therefor to the highest bidder. The District Right of Way Agent shall promptly forward the results of the auction, a copy of the receipt, a cashier's or certified check payable to the Division of Highways for all money received, and the recommendations of the District Office to the Right of Way Division Office.

~~5.4~~ 5.5. Closing Sales of Real Property. -- If the sale is approved by the Division Right of Way Office and the Commissioner of Highways, an executed deed shall be forwarded to the District Office for completion of the transaction. The District Right of Way Agent shall collect any balance of money due in the form of a cashier's or certified check prior to the delivery of the executed deed. Any monies so received shall be promptly forwarded to the ~~Accounts Receivable Section, Finance Division, Division of Highways, with a copy of the transmittal letter to the Right of Way Division Office.~~ The Property Management Section prepares a funds transmittal letter which is sent, along with the cashier's or certified check, to the Accounts Receivable Section of the Finance Division. ~~The District Right of Way Agent shall advise the Division remit to the Right of Way Division Office in writing as to a copy of the deed with the recordation date of the deed, and the page and book number in which the deed is recorded in the appropriate County Clerk's Office.~~

~~Section 5A — Disposition of Former Railroad Rights of Way and former Turnpike Roads.~~

~~5A.1 Authority. — In any instance where the West Virginia Division of Highways has or shall hereafter acquire title to property which was formerly used as a railroad right of way, or which was formerly used and designated as a turnpike road, the Commissioner may, subject to the conditions and procedures herein contained, transfer the same by sale on such terms and conditions, including consideration, as the Commissioner shall determine to be fair and reasonable, in accordance with the following procedure.~~

~~(a) — Upon written request by any interested party or on the Commissioner's initiative, the Commissioner shall determine and define those portions of any former railroad or turnpike properties owned by the Division of Highways which are not necessary or desirable for present~~

~~or presently foreseeable future state road purposes, and shall designate the same for the sale hereunder. If the Commissioner determines that such property is not necessary or desirable for present or presently foreseeable future state road purposes, has no significant value to the state as a hiking trail and does not serve as a link between two or more state owned properties, its fair market value will be established by the Commissioner and the abutting property owner will be permitted to purchase said property for the established price.~~

~~(b) For each particular former railroad or turnpike property designated for sale, the Commissioner shall determine and establish (1) the fair market value for each such former railroad right of way or turnpike property designater for sale, and (2) the total square foot area of each former railroad right of way or turnpike property designated for sale.~~

~~(c) Any person or persons owning the entire surface interest or the entire interest in the fee, to a lot, parcel or tract of land abutting on a former railroad right of way property or property formerly used for turnpike roads and now owned by the West Virginia Division of Highways, may, subject to the conditions, restrictions and requirements hereinafter set forth, purchase portions of said property.~~

~~(d) A determination of the eligibility to purchase said property will be made following receipt of an application in writing from such owner(s) identifying the exact location of the property proposed to be purchased and the property owned by the abutting property owner. Evidence of such ownership shall include but not be limited to a certified statement indicating that the property does abut the railroad or turnpike roads together with copies of any deeds, wills, or other instruments conveying right of title unto such property.~~

~~(e) Any properties abutting such railroad or turnpike roads sold pursuant to these regulations shall embrace an area fronting the entire length of the abutting property owner's adjacent property and one half the width of the former railroad right of way or turnpike road and terminating at both ends by lines perpendicular to centerline or radially therefrom.~~

Section 6. Disposition of Structures

6.1. Methods of Disposing of Structures. -- Structures which are not needed for road purposes but which are situated on land required for present or future contemplated road needs shall be disposed of by the following methods:

(a) Retention by former owner as a part of the consideration of acquisition of the land; or

(b) Public sale; or

- (c) Letting a demolition contract; or
- (d) Giving to a local public agency; or
- (e) Removal by Division of Highways maintenance forces; or
- (f) Inclusion in the prime construction contract.

6.2. Retention by Owner. -- Property owners may be permitted to retain improvements for clearance from the right of way. Such improvements must be properly removed within the time agreed to between the property owner and the Commissioner of Highways, and if not so removed, the Commissioner of Highways, shall take proper action to clear the right of way of any such improvements.

6.3. Public Sale of Structures. -- The sale of improvements upon state road property shall be at public auction as provided by law and these regulations. (Reference: ~~Chapter 17, Article 2A, Section 19, Code.~~ WV Code §17-2A-19.)

(a) Notice of Auction - The District Right of Way Agent shall cause a notice of the proposed sale of structures to be published during at least two different weeks in a newspaper of general circulation in the county in which the structures are located or as otherwise approved by the Director of the Right of Way Division. The first such notice shall be published at least 20 days prior to date of the proposed public auction.

(b) Form of Notice - Notice of sale of structures shall set forth the time, place, and terms of the proposed sale. The notice shall clearly state that the Commissioner of Highways reserves the right to reject any and all bids. The notice shall describe the structures to be sold, indicate the location of the structures, set forth the terms of payment, and inform prospective bidders where they may obtain a copy of the specifications for removal and clearance of the structures and terms of the proposed bill of sale.

(c) Proof of Publication - An affidavit of publication of the notice shall be obtained and filed with the Right of Way Division Office.

(d) Auction Procedure - At the time and place specified in the notice, the District Right of Way Agent, or a person designated by him, shall first advise prospective bidders concerning the terms under which the improvements may be sold. Terms discussed include those concerning payment to the Division of Highways, the posting of a performance bond and rules governing the removal of the improvements and cleanup. After completing the discussion concerning the terms, the auctioneer may commence taking bids.

Only after all such items have been read shall the auction commence. Another person appointed by the District Right of Way Agent, shall act as clerk to record the high bid and the name and address of the high bidder on each property. The clerk shall also receive any monies paid at the time of the sale and give a receipt therefor to the high bidder. The clerk shall retain two copies of each such receipt.

(e) Recommendation of Approval - If time is of the essence, the District Office may request by telephone an advance indication as to whether the high bid will be acceptable and inform the bidder that contingent upon final approval of the bill of sale, he may make arrangements to remove the improvement. However, actual work of removing the structure cannot begin until such final approval has been given by the Director of the Right of Way Division. If such advance notice is given the high bidder, he shall be clearly advised that the sale is still contingent upon approval by the Director of the Right of Way Division, and that the advance notice does not bind the Division of Highways. The District Right of Way Agent shall immediately forward the bill of sale, results of the auction, and a copy of the receipt to the Division Office with the District Right of Way Agent's recommendations.

(f) Bill of Sale - The bill of sale, in quadruplicate, shall be completed and signed by the purchaser on the day of the auction for transmittal to the Division Office with the recommendations of the District Right of Way Agent.

(g) Approval and Closing of Sale - If the sale is approved by the Director of the Right of Way Division, the District Office will notify the successful bidder by giving him the fully executed bill of sale (original), and shall obtain any balance due by certified or cashier's check and receive any required performance bond.

(h) Removal of Structures - All improvements shall be removed from the state right of way by the buyer, at his/her own expense, in accordance with the terms of the bill of sale, or any extension of time authorized in writing by the Director of the Right of Way Division. If such improvements are not so removed, title thereto shall revert to the Division of Highways and all sums paid pursuant to said bill of sale shall be forfeited as liquidated damages.

6.4. Demolition Contract. -- Removal of structures by demolition contract shall be solicited by public advertisement. Structures may be removed by demolition contract. Such contracts are subject to the provisions of ~~Chapter 17-2A, Series III~~ entitled "Construction and Reconstruction of State Roads," of ~~these regulations~~ 157CSR3.

6.5. Removal of Structures From the Right of Way by Fire Department. -- Structures which have been offered for sale and on which there were not acceptable bids may be removed by local fire departments after approval of the Director or Assistant Director of the ~~Division~~ Right of Way ~~Office~~ Division.

6.6. Removal by Maintenance Forces. -- Removal by maintenance forces may be made after bids have been taken and there is no acceptable bid. However, maintenance forces may make removal in other instances prior to the taking of bids upon prior approval by the Director of the Right of Way Division and when such removal by maintenance forces is deemed to be in the public interest.

6.7. Removal by Contractor. -- Structures may be left on the right of way for the prime contractor to remove when in a particular case it is more practicable or in the public interest so to do so.

Section 7. Persons Ineligible to Purchase Real Property or Structures from the Division of Highways

7.1. Employees of the Division of Highways. -- No employee of the Division of Highways, or his or her immediate family, shall be eligible to bid, either directly or indirectly on any real property or structure offered for sale by the Division of Highways.

Section 8. Lease of Division of Highways' Property

8.1. General. -- In all instances where property or any interest or right therein, including airspace or any part thereof, is being held by the West Virginia Division of Highways, it may be leased pursuant to the provisions of ~~Chapter 17, Article 2A, Sections 19 and 19a of the Code~~ West Virginia Code §17-2A-19 & 19a. Such leases will be made in accordance with the following regulations.

8.2. Prior Approval. -- Prior approval of such lease must be obtained from the District Engineer and Commissioner of Highways except where the lease is a temporary continuation of an existing occupancy at the time of the Division of Highways acquisition and does not interfere with right of way clearance.

8.3. Appraisal. -- Rentals shall be based on a written approval and determination of fair rental value approved by the Chief ~~Reviewing~~ Appraiser or his/her designee for the Division of Highways.

8.4. Continuation of Existing Lease. -- When a property acquired by the Division of Highways is subject to an existing lease or tenancy, the District Right of Way Agent, with the approval of the Director of the Right of Way Division, may continue such existing lease at the existing rental, provided proper arrangements are made to vacate the property promptly, in advance of its need for highway construction.

8.5. Owner-Occupant Retaining Possession. -- Where property is acquired and the owner-occupant is permitted by the Division of Highways to retain possession in excess of the time allotted under the option or 30 days after closing, whichever is greater, the former owner-occupant may rent the property or interest therein at a fair rental determined by the Chief Appraiser or his/her designee, provided satisfactory arrangements are made for vacating the property prior to its need for highway purposes.

8.6. Rental Principles. -- Division of Highways property which is leased to others, except to an owner-occupant or tenant at time of acquisition, shall be leased in accordance with the following principles:

(a) The Chief Reviewing Appraiser or his/her designee shall establish the fair rental value.

(b) Each prospective tenant shall be required to execute a lease agreement which has been approved by the Legal Division.

(c) All rent shall be due and payable on the first day of each rental period.

(d) All lease agreements shall be in effect for an agreed term and may provide for termination upon thirty (30) days' written notice by either party.

(e) The Division shall make no repairs or alterations without written authorization from the Director of the Right of Way Division.

(f) The Division of Highways assumes no liability for any utility bills, sewer charges, or trash disposal costs.

(g) No tenant shall be allowed to occupy Division of Highways property until he has paid first to the Division of Highways (by certified or cashier's check or money order) one (1) month's rent in advance.

(h) No employee of the Division of Highways shall occupy Division of Highways property without authorization from the Commissioner of Highways.

Division of Highways
Leg. Rule, 17-2A
Series II, Sec. 8.6

(i) The District Property Manager shall collect the first rental payments only. All future rents shall be paid directly by the tenant to the Accounts Receivable ~~Unit~~ Section, Finance Division of the Division of Highways.

(j) Occupants of properties acquired by the Division of Highways may remain in possession of such properties as tenants of the Division on a preferential basis.

Section 9. Rental of Property from Other Persons

9.1. General. -- The Division of Highways may lease real property from other persons upon the recommendation in writing of the District Engineer and the Director of the Right of Way Division and with the approval of the Commissioner of Highways. If the property to be rented is for use of a Headquarters Division, the approval of the District Engineer is not required. When so recommended and approved, the amount of the rental shall be approved in writing by the Chief Appraiser or his/her designee. (Reference: ~~Chapter 17, Article 2A, Section 17, Code WV Code §17-2A-17.~~)

9.2. Office Space Leases. -- Pursuant to the provisions of ~~Chapter 5A, Article 5 of the Code of West Virginia Code §5A-5, et seq.,~~ as amended, office space is leased for the Division of Highways by the Commissioner of ~~Finance and~~ Administration upon receipt of proper requisition from the Commissioner of Highways.

Section 10. Damage by Owner or Occupant

10.1. General. -- The owner or occupant of real property acquired by the Division of Highways and who continues to do so by permission after the date of acquisition shall be responsible for all damages to or loss of the improvements which result from the negligent or willful actions of such owner or occupant.

10.2. Adjustment of Damages. -- If the owner or occupant does not pay for such damages, the Chief ~~Reviewing~~ Appraiser, or his/her designee, shall determine the value of the missing or damaged property and make appropriate adjustment in settlement price. If satisfactory adjustment is not made, the Legal Division shall take whatever action is necessary to protect the State's interest.

Division of Highways
Leg. Rule, 17-2A
Series II, Sec. 11.

Section 11. Relocation Assistance

11.1. Incorporation of Federal Regulations. --

(a) Federal-Aid Highway Projects - By this Legislative rule and pursuant to the authority of ~~Chapter 17, Article 2A, Section 20, and of Chapter 54, Article 3, Section 3 of the Official Code of West Virginia Code §§17-2A-20 & 54-3-3, 1931, as amended,~~ the West Virginia Division of Highways adopts as its own, the provisions, procedures and regulations promulgated by the Federal Highway Administration of the United States ~~Division~~ Department of Transportation, as the same appear in the Federal Register and are reproduced for convenient reference as ~~Title 23, Part 740, in the Code of Federal Regulations, 23 CFR 740, a copy of which title is submitted herewith.~~

(b) State Highway Projects - By this Legislative rule and pursuant to the authority of ~~Chapter 17, Article 2A, Section 20 of the Official Code of West Virginia Code §17-2A-20, 1931, as amended,~~ the West Virginia Division of Highways adopts as its own, the provisions, procedures and regulations promulgated by the Federal Highway Administration of the United States ~~Division~~ Department of Transportation, insofar as they define terms, and relate to advisory assistance and relocation payments, as the same appear in the Federal Register and are reproduced for convenient reference as ~~Title 23, Part 740, in the Code of Federal Regulations 23 CFR 740.~~

11.2. Forms. -- By this Procedural rule, the West Virginia Division of Highways adopts the hereinafter identified forms, a copy of each of which is attached hereto. The applicable form or forms must be signed by claimant or others, where appropriate, as a prerequisite to receiving the payment described therein. Forms RW 12.01B, RW 12.04, RW 12.04A, ~~RW 12.04B~~, RW 12.04E, RW 12.06, RW 12.06B, RW 12.07, ~~RW 12.07A, RW 12.07B~~, RW 12.13 (Owner), RW 12.13 (Tenant), RW 12.14A, RW 12.16, RW 13.11, and RW 13.12.

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION - DIVISION OF HIGHWAYS

CERTIFIED
STATEMENT OF RENT
FORM RW 12.01B
REV. 4/1/94

DISTRICT _____ PARCEL _____

FEDERAL PROJECT _____

STATE PROJECT _____

=====

OCCUPANT _____ SPOUSE _____

ADDRESS _____

=====

I certify that:

I have lived in this unit at the above address for _____ months;

I moved into this unit on the _____ day of _____, 19__;

My monthly rent is \$_____, which includes:

Income: \$ _____ per _____ Verified by: Tax Return, Pay Stubs (Attached - circle one)	_____ Gas	\$ _____	per month average est.
	_____ Water	\$ _____	per month average est.
	_____ Electric	\$ _____	per month average est.
	_____ Sewer	\$ _____	per month average est.
	_____ Furniture	\$ _____	per month average est.
	_____ Other	_____	_____

TO THE BEST OF MY KNOWLEDGE ALL THE ABOVE INFORMATION IS TRUE AND CORRECT.

Occupant

Date

=====

Above information verified:

(Check one) _____ Contacted landlord (telephone, in person) (Circle one)

_____ Observed rent receipts

I certify that I have verified the above rental information on _____
Date

Agent

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION - DIVISION OF HIGHWAYS

RELOCATION CLAIM
RESIDENTIAL
FORM RW 12.04, REV. 4/1/94

DISTRICT _____ PARCEL _____

FEDERAL PROJECT _____

STATE PROJECT _____

=====

At or soon after the beginning of negotiations to acquire the real property I occupy, a representative of the West Virginia Department of Transportation, Division of Highways personally contacted me, gave me a Relocation Brochure and explained relocation services and eligibility requirements necessary to qualify for relocation payments.

I certify that my family and I were in continuous occupancy of the subject property for a period of at least _____ 90 days or _____ 180 days prior to the beginning of negotiations to acquire the property; that the family unit numbered _____ persons; and that the family occupied _____ rooms of living area (Mobile Homes - Sq. Ft. _____) plus _____ rooms of storage area consisting of _____.

I further certify that all my personal property was/will be moved to _____, _____ and the move was/will be completed on _____, 19____; that the replacement dwelling appears to be/will be made decent, safe and sanitary; and I understand and agree that the inspection or inspections made of the premises by the Division of Highways was made solely for the purpose of determining my eligibility for replacement housing payments under applicable laws and is not a representation for any other purpose, and I further understand and agree that the Division of Highways does not warrant or guarantee the real property; and that I now/will qualify to receive and that I agree with the relocation payments in the amounts and categories listed below:

Moving Costs \$ _____ Costs Incident To Purchase \$ _____
Replacement Housing \$ _____ Interest Differential \$ _____

DATE _____ CLAIMANT _____

I request payment to be mailed to: _____ Spouse _____

=====

I certify that negotiations to acquire the subject property began on _____, 19____; that the premises occupied by claimant qualify as _____ rooms (Mobile Homes - Sq. Ft. _____) eligible for reimbursement of Moving Costs; that his personal property has been/will be removed; that the replacement housing appears to be/will be decent, safe and sanitary; and that the amounts claimed by the Claimant are true and correct.

DATE _____ DISTRICT AGENT _____

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION - DIVISION OF HIGHWAYS

ANNUAL INSTALLMENT CLAIM
FORM RW 12.04A, REV. 4/1/94

DISTRICT _____ PARCEL _____
FEDERAL PROJECT _____
STATE PROJECT _____

=====

INSTRUCTIONS

Second Payment If this is the second installment, circle the word First in the fourth line; the word One in the fifth line; and the word Second as Annual Installment due.

Third Payment If this is the third installment, circle the word Second in the fourth line; the word Two in the fifth line; and the word Third as Annual Installment due.

Fourth Payment If this is the fourth installment, circle the word Third in the fourth line; the word Three in the fifth line; and the word Fourth as Annual Installment due.

=====

I, _____, Spouse _____

certify that: My total Replacement Housing Determination was \$ _____;

I was informed that payment would be made in Four Equal Installments; I have received the (First - Second - Third) Annual Installment Payment of \$ _____; it has been at least (One - Two - Three) year(s) since I moved from the original location; I now occupy decent, safe and sanitary housing at _____

Street

_____ / _____
City

State and Zip Code

and I now qualify for the (Second - Third - Fourth) Annual Installment Payment of

\$ _____, _____, 19____.
Date

Claimant

=====

APPROVED: _____
District Agent Date

RETURN TO: West Virginia Department of Transportation
Division of Highways - Right of Way

Street

_____ / _____
City

State and Zip Code

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION - DIVISION OF HIGHWAYS

QUARTERLY INSTALLMENT CLAIM
FORM RW 12.04AA, REV. 4/1/94

DISTRICT _____ PARCEL _____
FEDERAL PROJECT _____
STATE PROJECT _____

=====
I, _____, certify that: My total Replacement Housing
Determination was \$ _____; I was informed that payment would be made in
Sixteen Equal Quarterly Installments; I have previously received _____ payments
and I now qualify for the _____ Installment Payment in the amount of \$ _____;
I now occupy decent, safe and sanitary housing at:

_____ / _____ / _____
Street City State and Zip Code

Claimant

Date

=====
Landlord Certification

I certify that as of this date _____
Occupant's Name

occupies a dwelling unit located at _____
Address

for which he pays \$ _____ per month rent.

District Agent

Date

Address of Landlord

=====
APPROVED: _____
District Agent Date

RETURN TO: West Virginia Department of Transportation
Division of Highways - Right of Way

Street

City State and Zip Code

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION - DIVISION OF HIGHWAYS

HARDSHIP RELOCATION CERTIFICATION
PRE-DRAW CHECK RECEIPT
FORM RW 12.04E, REV. 8/1/94

DISTRICT _____ PARCEL _____

PROJECT _____

=====
Occupant _____ Spouse _____
=====

Warrant Number(s)

Name(s)

Amount(s)

Type Claim

I acknowledge receipt of the above listed State Warrant(s) on the _____ day of

_____, 19____.

Warrant(s) delivered by _____

Agent

=====

I certify that all requirements for this payment have been fulfilled and that the
relocatee moved his personal property from the project _____

Date

Date

District Right of Way Agent

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION - DIVISION OF HIGHWAYS

RELOCATION CLAIM
BUSINESS, FARM, NONPROFIT
FORM RW 12.06, REV. 4/1/94

DISTRICT _____ PARCEL _____
FEDERAL PROJECT _____
STATE PROJECT _____

=====
(Circle One)

Business

Farm Operation

Nonprofit Organization

I, the undersigned claimant, certify that I was in occupancy at the time of initiation of negotiations to acquire the real property as designated above and that all my personal property has been/will be moved from the captioned parcel to:

_____ / _____ / _____
Street City State and Zip Code

as of _____, 19____, and that I am now/will be eligible for reimbursement of moving costs and hereby make claim in the amount of \$_____.

I further certify that a representative of the West Virginia Department of Transportation, Division of Highways delivered a Relocation Brochure and explained moving costs to me, including my rights to "Appeal".

_____ / _____
Date Claimant (Company Name)

By _____ Title _____

Payment to be directed to:

Street City Street and Zip Code

=====
I certify that negotiations for this parcel were initiated (date) _____
and that I have inspected or caused to be inspected the premises of the above named claimant and that his personal property has been/will be removed as stated and that the sum claimed by him for reimbursement of moving costs is true and correct.

_____ / _____
Date District Right of Way Agent

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION - DIVISION OF HIGHWAYS

ESTIMATE - BID
FORM RW 12.07, REV. 4/1/94

DISTRICT _____ PARCEL _____

FEDERAL PROJECT _____

STATE PROJECT _____

(Circle One)

Residential Business Farm Operation Nonprofit Organization

Claimant (dba) _____ Distance of Move _____

Address (Old Location) _____

Address (New Location) _____

DESCRIPTION:

1. Residential (Residential Personalty, Tools, Lumber, Junked Cars, etc.) _____
2. Business (Service Station, Grocery, etc.) _____
3. Farm (Dairy, Produce, etc.) _____
4. Nonprofit (Church, School, etc.) _____

SEE ATTACHED DOCUMENTATION

The estimated cost to move the personalty (list attached) to the new address is

\$ _____

Moving Company Name _____

By Estimator _____ Date _____

*Estimator's Fee \$ _____ Approved For Fee Purposes

District Agent

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION - DIVISION OF HIGHWAYS

REPLACEMENT PAYMENTS - OWNER DISTRICT _____ PARCEL _____

FORM RW 12.13 (Owner) FEDERAL PROJECT _____

REV. 4/1/94 STATE PROJECT _____

=====

OCCUPANT _____

This is to inform you that the West Virginia Department of Transportation, Division of Highways has authorized a supplemental housing payment offer to you. This amount is offered to you provided you meet all eligibility requirements of a 180 day owner occupant as outlined in the "Relocation Brochure". If you do not have a brochure, please request one immediately.

Based on information assembled by this office, you are entitled to an amount up to \$_____ additional dollars as a replacement housing payment provided you spend the fair market value of \$_____, plus the replacement housing supplement, on a decent, safe and sanitary replacement that cost at least \$_____. The amount of the replacement housing payment is based on a comparable dwelling located at _____.

This offer is subject to the condition that you meet all requirements of the Relocation Assistance and Real Properties Acquisition Policy Act of 1970 and its Amendments, which is summarized in the Relocation Brochure for further information about the exact procedure for payment computation. Before any payment can be made, you must be able to fully document your eligibility.

Personnel at our office are ready to assist you should you have any questions or need assistance.

Receipt Acknowledged

Date

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION - DIVISION OF HIGHWAYS

REPLACEMENT PAYMENTS - TENANT DISTRICT _____ PARCEL _____

FORM RW 12.13 (Tenant)
REV. 4/1/94

FEDERAL PROJECT _____

STATE PROJECT _____

=====

OCCUPANT _____

This is to inform you that the West Virginia Department of Transportation, Division of Highways has authorized a rental subsidy offer to you. This amount is offered to you provided you meet all eligibility requirements as outlined in the "Relocation Brochure". If you do not have a brochure, please request one immediately.

Based on information assembled by this office, you will incur a higher monthly rental fee to rent a similar dwelling to the one you now occupy. The Division of Highways will offer you a total lump-sum payment of \$_____ if you rent and occupy a decent, safe and sanitary replacement dwelling costing at least \$_____ per month including estimated utilities; and provided you meet all other eligibility requirements. The amount of this payment is based on a comparable located at _____.

If you elect to purchase a decent, safe and sanitary replacement instead of renting one, you are eligible for up to \$5,250.00 to help pay the downpayment and closing costs, provided you meet all other eligibility requirements.

Please refer to your Relocation Brochure for further information about the exact procedure for payment computation. Before any payment can be made, you must be able to fully document your eligibility. Personnel at our office are ready to assist you should you have any questions or need assistance.

Receipt Acknowledged

Date

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION - DIVISION OF HIGHWAYS

INTEREST DIFFERENTIAL MORTGAGE DATA
FORM RW 12.14A, REV. 4/1/94

DISTRICT _____ PARCEL _____

FEDERAL PROJECT _____

STATE PROJECT _____

=====
Claimant _____ Spouse _____

Address Old Property _____

Address New Property _____
=====

TO BE COMPLETED BY MORTGAGEE

MORTGAGE INFORMATION
(Old Address)

MORTGAGE INFORMATION
(New Address)

- 1. Amount of Loan \$ _____
- 2. Date of Mortgage _____
- 3. Interest Rate _____%
- 4. Principal and Interest Payment (do not include taxes and insurance) \$ _____/Mo.
- 5. Date This Loan Paid Off _____
- 6. Amount of Remaining Principal Balance at Time of Mortgage Payoff \$ _____
- 7. Remaining Term (remaining number of monthly payments) at Date of Payoff _____

- 1. Amount of Loan \$ _____
- 2. Date of Mortgage _____
- 3. Interest Rate _____%
- 4. Principal and Interest Payment (do not include taxes and insurance) \$ _____/Mo.
- 5. Term of New Loan _____/Yrs.
- 6. Origination Fee or Loan Service Charge Charged Purchaser (if applicable) \$ _____

I certify that the above information is true and correct.

Mortgage Company or Mortgagee

By

Date

=====
Information Obtained By _____ Date _____

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION - DIVISION OF HIGHWAYS
REQUEST FOR RELOCATION
APPEAL HEARING
FORM RW 12.16, REV. 4/1/94

DISTRICT _____ PARCEL _____
FEDERAL PROJECT _____
STATE PROJECT _____

=====

Date _____

Gentlemen:

I, _____, Spouse _____

am dissatisfied with the determination of payment of eligibility for (Moving Costs,
Replacement Housing or Mortgage Interest or Incidental Costs)

_____ and wish to appeal for the
following reason: _____

I, (occupy or occupied) _____ property at

_____ in _____
Street City

I, understand there will be a preliminary hearing held at the District level. Will you
inform me as to a convenient time and place to discuss my appeal?

Date

Claimant

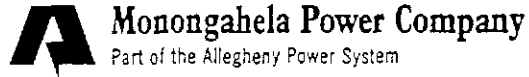
Form RW 13.11
 Rev. 10/12/90
 CLOSING STATEMENT AND
 CLAIM FOR REIMBURSEMENT
 Expenses incidental to transfer
 of property to the
 WEST VIRGINIA DEPARTMENT OF
 TRANSPORTATION, DIVISION OF HIGHWAYS

Parcel No.	Project No.
District	County

Land or interest in land sold by

	PAID BY SELLER	DISTRIBUTION OUT OF STATE CHECK
1. LIENS AND ENCUMBRANCES:		
(A.) _____	\$ _____	\$ _____
(B.) _____	\$ _____	\$ _____
(C.) _____	\$ _____	\$ _____
(D.) _____	\$ _____	\$ _____
2. RECORDING FEES:		
_____	\$ _____	\$ _____
3. EXPENSES SIMILAR TO RECORDING FEES AND TRANSFER TAXES: (Explain)		
_____	\$ _____	\$ _____
4. PENALTY COSTS FOR PREPAYMENT OF QUALIFIED MORTGAGE OR DEED OF TRUST: (Date of instrument, mortgagee, where recorded)		
_____	\$ _____	\$ _____
5. 19____ REAL PROPERTY TAXES	\$ _____	\$ _____
6. PRORATED REAL PROPERTY TAXES		
(Amount F on reverse side of this form)	\$ _____	
7. NET BALANCE TO PAYEES		\$ _____
8. TOTAL GROSS CONSIDERATION		\$ _____
9. TOTAL REIMBURSABLE EXPENSES CLAIMED (Sum of Items 2, 3, 4 and 6) \$ _____		

LEGAL DEPARTMENT



1310 Fairmont Avenue
P. O. Box 1392
Fairmont, WV 26555-1392
(304) 366-3000

December 8, 1994

Mr. Joseph C. Riley
West Virginia Div. of Highways
Bldg. 5, Room A-617
1900 Kanawha Boulevard, East
Charleston, WV 25305-0430

RE: COMMENTS ON 157CSR2

Dear Mr. Riley:

Monongahela Power Company hereby offers comments in regard to the Division of Highways proposed rule revision entitled, "Acquisition, Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance" found at 157CSR2.

As an electric utility, we have many thousands of miles of electric facilities - - - much of which lie along state roadways pursuant to permission granted by the Div. of Highways by permit or license. We normally acquire rights to locate our facilities on lands by securing permanent rights from landowners by an easement agreement which is recorded in the local courthouse and provides notice to all subsequent purchasers of the prevailing easement across the property.

When we receive only permission from the Div. of Highways, rather than permanent easement rights, there is no interest in land that supports our facilities and continues in the property once the Div. of Highways sells or otherwise disposes of the property. Accordingly, under the present system, our legal right to have facilities in place are extinguished once the Div. of Highways disposes of the property. This is problematic as our facilities have been constructed at great expense and are needed to continue to supply electric service. We do not believe it is the intent of the Dept. of Highways to extinguish these rights in property it disposes. Accordingly, we suggest the following language be added in the proposed rule:

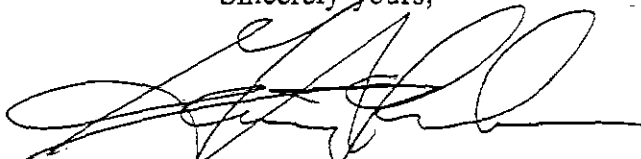
3.5(e) Utilities - - - If public utility facilities are present on property being permanently disposed, the property shall be sold, exchanged or abandoned, and the buyer shall take such property, subject to such existing utility facilities. Any written instrument conveying, transferring, releasing, or otherwise disposing of such property shall specifically state that subsequent owners shall take and receive the property subject to the continued existence and

Page 2
COMMENTS ON 157CSR2

development of such public utilities, but the failure to include such a provision shall not affect the valid reservation of the right for utility facilities.

The inclusion of the above language should ameliorate problems we have experienced in the past with new landowners disavowing our right to keep in place existing utilities serving the citizens of West Virginia. We appreciate the opportunity to comment on this very important matter.

Sincerely yours,



Gary A. Jack
Attorney

GAJ:bsa

Bell Atlantic - West Virginia, Inc.
1500 MacCorkle Avenue, S.E.
Room 500
Charleston, West Virginia 25314
304 344-7644
FAX 304 344-6123

Joseph J. Starsick, Jr.
Attorney

December 9, 1994

Mr. Joseph C. Riley
West Virginia Division of Highways
Bldg. 5, Room A-617
1900 Kanawha Boulevard, East
Charleston, WV 25305-0430

Re: Comments on 157CSR2

Dear Mr. Riley:

We have read the comments of Monongahela Power Company ("Mon Power") and we strongly concur. The modification to the rules suggested by Mon Power should be adopted.

Very truly yours,



1 202