

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

FILED
1987 AUG 17 PM 3:20
OFFICE OF THE SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: West Virginia Department of Highways TITLE NUMBER: 157

RULE TYPE: Legislative; CITE AUTHORITY §17-2A-8(1),(2) & §17-4-19

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: III

TITLE OF RULE BEING AMENDED: Construction and Reconstruction
of State Roads

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

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: September 24, 1987 TIME: 2:00 P.M.

LOCATION OF PUBLIC HEARING: Building 7, Conference Room A
1900 Washington Street, East
Charleston, WV 25305

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Mr. Robert K. Tinney

WV Dept. of Highways

1900 Washington, St., E.

Charleston, WV 25305

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



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 17, 1987

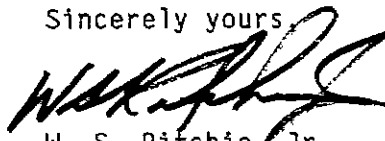
Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Dear Secretary Hechler:

Legislative Rules
Highways Commissioner
Proposed Amendments to
Existing Rules & Notice of
Public Hearing & Comment Period
Series III

The attached Proposed Amendments to an Existing Rule, Series III, are being submitted along with the Notice of Public Hearing and Comment Period and the Fiscal Note. The amendments are being filed in order to recognize recent revisions to the West Virginia Department of Highways Standard Specifications, Roads and Bridges, Adopted 1986. Pertinent passages from the Department's "Standard Specifications" are included in Series III and those passages which were revised by the 1986 version are included in these Proposed Amendments. The amendments address alterations of plans and the development of supplemental agreements and contractor payments, limitations to contractor's submission of progress schedules, time limitations to an extension of contract time due to Department delays, time limitations and daily charges associated with liquidated damages as a result of failure to complete on time and requirements for measurement of quantities.

Sincerely yours



W. S. Ritchie, Jr.
Commissioner

WSR:Cj

Attachment

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Series III, Construction and Reconstruction of State Roads

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		\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00
Current Expense					
Repairs & Alterations					
Equipment					
Other					
Estimated Total Cost		\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00

2. Explanation of above estimates:

Reducing the need for submission of progress schedules on certain projects should result in a statewide reduction of 200 manhours per year spent reviewing and approving these schedules.

3. Objectives of this rule:

This Amendment to an Existing Rule is being filed in order to recognize recent revisions to the West Virginia Department of Highways Standard Specifications, Roads and Bridges, Adopted 1986. Pertinent passages from the Department's "Standard Specifications" are included in Series III and those passages which were revised by the 1986 version are included in these Proposed Amendments. The amendments address alterations of plans and the development of supplemental agreements and contractor payments, limitations to contractor's submission of progress schedules, time limitations to an extension of contract time due to Department delays, time limitations and daily charges associated with liquidated damages as a result of failure to complete on time and requirements for measurement of quantities.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Reduced administrative costs as specified in items one and two.

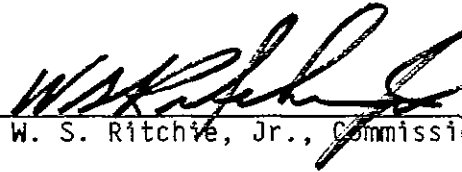
B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

There will be no foreseeable economic impact.

C. Economic Impact on Citizens/Public at Large.

There will be no foreseeable economic impact.

Date August 17, 1987



W. S. Ritchie, Jr., Commissioner

FILING OF LEGISLATIVE RULES

BY THE

DEPARTMENT OF HIGHWAYS

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WEST VIRGINIA LEGISLATIVE RULES

COMMISSIONER OF HIGHWAYS

CHAPTER 17-2A

SERIES III

RECEIVED
1931 AUG 17 PM 3:30
FHFD

Title: Construction and Reconstruction of State Roads

Section 1. General

1.01. Scope. -- These rules and regulations relate to the construction and reconstruction of state roads.

1.02. Authority. -- These rules and regulations are issued under authority of West Virginia Code, Chapter 17, Article 2A, Section 8 (1) and (2) and Chapter 17, Article 4, Section 19.

1.03. Filing Date. --

1.04. Effective Date. --

Section 2. Plans and Specifications for the Construction and Reconstruction of State Roads

2.1. General Purposes. -- This series of regulations is promulgated pursuant to Chapter 29A, Article 1, Section 2(c) to provide Legislative and Interpretative rules to make specific the Procedures in relation to the construction and reconstruction of roads and bridges and furnishing of materials and supplies to the Commissioner and to govern contracts pertaining thereto pursuant to the provisions of Chapter 17, Article 4, Section 19, of the Code of West Virginia, 1931, as amended.

2.2. Definitions. --

(1) Abbreviations - Whenever the following abbreviation is used in the Specifications, Plans or Contract Documents, it is to be construed the same as the respective expression represented:

(FHWA) - Federal Highway Administration,
Department of Transportation

demand, shall be entitled to revised contract consideration to be fixed and agreed upon in a written supplemental agreement, covering the necessary changes, executed between the contracting parties. In the event the Engineer and the Contractor are unable to agree upon the terms of the supplemental agreement, the Contractor may have the option either of proceeding with the work and receiving payment therefor in an amount determined by the Engineer as the reasonable direct cost of the material and labor furnished by the Contractor, in the manner and amount as hereinafter prescribed in Section 5.03 for Extra Work; or of performing the work necessary to be done at the time and in the manner deemed most expedient by the Commissioner or his duly authorized representative shall proceed with the work and receive payment therefore in the manner and amount prescribed in 10.4.

The Department may omit any item or items in the Contract, provided that notice of intent to omit such item or items is given to the Contractor before any material has been purchased or labor involved has been performed, and such omission shall not constitute grounds for any claim for damages or loss of anticipated profits. The Department may omit any item or items shown in the Proposal, at any time, by agreeing to compensate the Contractor for the reasonable expense already incurred and to take over at actual cost any unused material purchased in good faith for use for the item or items omitted.

Should the Contractor encounter or the Department discover during the progress of the work subsurface or latent physical conditions at the site differing materially from those indicated in the Contract, or unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract, the Engineer shall be notified in writing of such conditions; and if the Engineer finds the conditions do materially differ and cause an increase or decrease in the cost of, or the time required for performance of the Contract, an equitable adjustment will be made and the Contract modified in writing accordingly.

In addition to the above, alterations in Plans or increases in quantities of items may be made necessary at a time when the Contract or the items involved in the operations are substantially completed, the related Contractor organization demobilized, and related equipment essentially removed from the project. Under these circumstances, if it is

Department of Highways
Leg. Rule, 17-2A
Series III, Sec. 5.2

demonstrated that the unit cost to the Contractor has increased, additional compensation may be allowed by the Engineer and the additional work performed as prescribed in Section 5.3 as "Extra Work".

Any adjustment in compensation because of a change or changes resulting from one or more of the conditions described above will be made in accordance with the provisions of Section 10.3. Any adjustment in contract time because of such change or changes will be made in accordance with the provisions of Section 9.6.

5.3. Extra Work. -- The Contractor shall perform unforeseen work, for which there is no price included in the Contract, whenever it is deemed necessary or desirable in order to complete fully the work as contemplated. ~~SUCH~~ The work shall be performed in accordance with the Specifications and as directed, and will be paid for as provided ~~under/section~~ 10/04/ by a written supplemental agreement on a unit price or lump sum basis. In the event the Engineer and the Contractor are unable to agree upon the terms of the supplemental agreement, the Contractor shall proceed with the work and receive payment therefore in the manner and amount prescribed in 10.4.

5.4. Temporary Structures. -- In contracts for bridges only, the Contractor will not be required to construct or maintain temporary structures unless the construction and maintenance of such structures are stipulated in the Contract or ordered as extra work by the Engineer. If the building of temporary structures is included in the Contract, or added by extra work order, the responsibility of the Contractor for accidents to the public or to his workmen, arising from its construction or maintenance, shall extend to such structure and its roadway approaches.

5.5. Maintenance of Traffic. -- The Project, while undergoing improvement, shall be kept open to all traffic by the Contractor in such condition that both local and through traffic will be adequately and safely accommodated. All construction operations shall be scheduled to keep traffic delay to a minimum. The Department has adopted, and the Contractor shall follow the Standard, "Traffic Control for Street and Highway Construction and Maintenance Operations", published by the West Virginia Department of Highways.

Department of Highways
Leg. Rule, 17-2A
Series III, Sec. 5.5

All expenses for the following items shall be borne by the Contractor without extra compensation except when the Proposal provides for payment under 636, Maintaining Traffic (West Virginia Department of Highways Standard Specifications, Roads and Bridges, Adopted 19826):

- i. The construction and maintenance of temporary detours, temporary structures, temporary approaches, crossings and intersections with streets and roads, including the furnishing and application of aggregates for maintenance of traffic and liquid asphalt oil, calcium chloride, or water for use as dust palliative.
- ii. The furnishing of flaggers and pilot trucks and drivers.
- iii. The furnishing, erection, and maintenance of warning devices, such as signs, auxiliary barriers, channelizing devices, hazard warning lights, barricades, flares and reflective markers.

If actual field conditions are not illustrated in the Plans, engineering judgment and discretion shall be exercised to select devices that will be adaptable, but the general policies herein prescribed shall be adhered to. Final responsibility for the installation of adequate safety devices for the protection of the traveling public and workmen, as well as for the safeguard of the work in general, shall rest with the Contractor.

During any suspension of work, the Contractor shall make passable and shall open to traffic such portions of the project and temporary roadways or portions thereof as may be agreed upon between the Contractor and the Engineer for the temporary accommodation of necessary traffic during the anticipated period of suspension. Thereafter, and until an issuance of order for the resumption of construction operations, the maintenance of the temporary route or line of travel agreed upon will be by and at the expense of the Department. When work is resumed, the Contractor shall replace or renew any work or materials lost or damaged because of such

material unless otherwise specified.

Sites from which material has been removed shall, upon completion of the work, be left in a neat and presentable condition and shall be properly drained. Unless otherwise directed by the Engineer, they shall be seeded and mulched as provided in 652 (West Virginia Department of Highways Standard Specifications, Roads and Bridges, Adopted 19826) without additional compensation. Where practicable, borrow pits, gravel pits, and quarry sites shall be located so they will not be visible from the highway.

7.03. Samples, Tests, Cited Specifications. -- All materials will be inspected, tested and approved prior to incorporation into the work. Any work which incorporates materials prior to the above evaluation shall be performed at the Contractor's risk, and may subsequently be considered as unacceptable. Unless otherwise specified, the materials shall meet the applicable Standard or Interim Specifications of the American Association of State Highway and Transportation Officials, the Standard or Tentative Specifications of the American Society for Testing and Materials, or Standards adopted by other specifying agencies, with preference given in the same order in which the above agencies are listed. The specification which is current at the time of advertisement for bids shall govern, except that, with the approval of the Engineer, subsequent revisions or adoptions may govern. Applicable tests of materials shall be made in accordance with the methods prescribed by the American Society for Testing and Materials. All materials being used are subject to inspection, testing or rejection at any time prior to final acceptance of the completed work.

The Contractor shall be responsible for the quality of construction and materials incorporated therein. When called for in the Specifications, the Contractor shall perform all necessary process control inspection, sampling and testing. All materials will be approved for acceptance through the Department's acceptance procedures. The Department has the exclusive right and responsibility for determining the acceptability of the construction and materials incorporated therein. The Department may use the results of the Contractor's inspection, sampling and testing for acceptance purposes.

which is provided for in this Section (8.8) (including, but not limited to approval of work, methods, or procedures of work to be done, and the condition of premises after completion of work by the Contractor) shall in no way create any liability by the Department to the Railroad except to the extent provided otherwise by law and the Contractor shall, during all periods of construction and thereafter indemnify and save harmless the department from any and all liability to the Railroad or any third parties for any damages as a result of the work of the Contractor, the methods and procedures for performing work, the failure of the Contractor to properly remove equipment, surplus material and other debris upon the Railroad premises, or the condition of the premises of the Railroad during construction or after completion of construction by the Contractor as approved by the Department or otherwise.

8.9. Bridges Over Navigable Waters. -- All work on navigable waters shall be so conducted that free navigation of the waterways will not be interfered with and that the existing navigable depths will not be impaired except as allowed by permit issued by the U. S. Army Corps of Engineers.

8.10. Barricades and Warning Signs. -- The Contractor shall provide, erect, and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs, and other traffic control devices, except as provided by Section 5.5, and he shall take all necessary precautions for the protection of the work and safety of the public. Highways closed to traffic shall be protected by effective barricades, and obstructions shall be illuminated during hours of darkness. Suitable warning signs shall be provided to properly control and direct traffic.

The Contractor shall erect warning signs in advance of any place on the project where operations may interfere with the use of the road by traffic and at all intermediate points where the new work crosses or coincides with an existing road. Such warning signs shall be erected in accordance with the Plans furnished.

All barricades, warning signs, lights, temporary signals, and other protective devices must conform with the latest edition of the manual "Traffic Control for Street and Highway Construction and Maintenance Operations," published by the West Virginia Department of Highways, and the provisions of 715.9, "Standard Specifications, Roads and Bridges" adopted 19826.

Contract or Contracts or any portion thereof, or of his right, title, or interest therein, without written consent of the Engineer. In case such consent is given, the Contractor will be permitted to sublet a portion thereof but shall perform, with his own organization, work amounting to not less than 50 percent of the total contract cost, except that any items designated in the Contract as "speciality items" may be performed by subcontract and the cost of any such specialty items so performed by subcontract may be deducted from the total cost before computing the amount of work required to be performed by the Contractor with his own organization. No subcontracts, or transfer of contract, shall in any case release the Contractor of his liability under the Contract and Bonds.

9.2. Notice to Proceed. -- The "Notice to Proceed" will stipulate the date on which it is expected the Contractor shall begin the construction and from which date contract time will be charged. Commencement of work by the Contractor may be deemed and taken as a waiver on his part of this notice.

9.3. Prosecution of the Work. --

(1) General - The Contractor shall provide sufficient materials, equipment, and labor to guarantee the completion of the project in accordance with the Plans and Specifications within the time set forth in the Proposal. Should the prosecution of the work for any reason be discontinued, the Contractor shall notify the Engineer at least 24 hours in advance of resuming operations.

The Contractor shall furnish a schedule showing how he proposes to prosecute the work to complete the project by the date set for completion. The schedule shall be either a bar-graph type conforming to the requirements of Section 9.03(2) or a network schedule conforming to the requirements of Section 9.03(3). Progress schedules will not be required for the following types of projects unless requested by the Engineer on which the major portion of the work is resurfacing, landscaping, signing, lighting, installing signals, guardrail or bridge painting or on which the contract amount is \$300,000 or less.

// Projects for which the time for completion is 30 working days or less,
or for which the date set for completion is 45 calendar days or less.

iii/ Projects/for/which/the/time/for
completion/is/60/working/days/or
less//or/for/which/the/date/set/for
completion/is/90/calendar/days/or
less//and/the/major/portion/of/the
work/is/resurfacing//landscaping/
signing//lighting//installing
signals//guardrail/or/bridge
painting/

(2) Progress Schedule - When the Contractor elects to use the bar-graph type of schedule, the Contractor shall submit, at the pre-construction conference, three (3) copies of the progress schedule on forms provided by the Department. The progress schedule shall show the Contractor's best estimate of the time required to prosecute the several items of work, and shall incorporate any contract requirements regarding the order of performance of the work. The Contractor shall use all practical means to make the progress of the work conform to that shown on the progress schedule.

The progress schedule shall include a bar-graph for each activity, showing graphically the calendar time each activity is scheduled for work. The percent complete for each activity for each month, based on the monetary value of the work, shall be listed in numbers above the bar-graph.

During the progress of the work, if the Contractor's operations are materially affected by changes in the plan or in the amount of work, or if the Contractor has failed to comply with the approved schedule, the Contractor shall submit a revised progress schedule showing how he proposes to prosecute the balance of the work. Such revised progress schedule shall either be initiated by the Contractor and submitted by the Contractor to the Department with a formal request in writing for approval, or shall be prepared and submitted by the Contractor when requested to do so by the Engineer. The Contractor shall submit the revised progress schedule within ten (10) days after the date of the request.

(3) Network Scheduling - When the Contractor elects to use the network scheduling approach, the work shall be scheduled by the Critical Path Method (CPM), Project Evaluation and Review Technique (PERT), or other approved method.

Department of Highways
Leg. Rule, 17-2A
Series III, Sec. 9.6

(2) Extension of Contract Time - The number of days for performance allowed in the Contract is based on the original quantities as defined in Section 3.4. If satisfactory fulfillment of the Contract requires performance of work in greater quantities than those set forth in the Proposal, the contract time allowed for performance will be increased on a basis commensurate with the amount and difficulty of the added work.

When the notice to proceed is delayed more than ~~30~~ 30 days after the letting of the Contract due to delays which are the responsibility of the Department, the Contractor will be given an extension of ~~the~~ time equal to the amount of the delay in excess of ~~30~~ 30 days.

When the notice to proceed is delayed by acts or omissions which are the responsibility of the Contractor, such as failure to make a prompt submission of an acceptable on-the-job training program or temporary pollution control program as required, an extension of time will not be granted for this delay. The normal time required for the Department to take action on required programs submitted by the Contractor is considered to be seven calendar days after receipt of the program.

If the Contractor finds it impossible for reasons beyond his control to complete the work within the contract time as specified or as extended in accordance with the provision herein, he may, at any time prior to the expiration of the contract time as specified or as extended, make a written request to the Engineer for an extension of time, setting forth therein the reasons which he believes will justify the granting of his request. If the Engineer finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, he may extend the time for completion in such amounts as the conditions justify. The extended time for completion shall then be in full force and effect the same as though it were the original time for completion.

Delays in obtaining materials which are classified as critical due to the national defense efforts will be given consideration for an extension of time. Time extension for delays in delivery of other materials or energy will not be given consideration unless some unusual market condition such as an industrywide strike, natural disaster or areawide shortage arises after bids are taken and prevents

procurement of materials within the contract time limitations. In order for any consideration to be given for delays resulting from the Contractor's inability to procure materials when needed, the Contractor shall furnish documentation supporting that shortages exist and that delays are being caused by the shortages. The Contractor shall notify the Department immediately when a certain shortage of materials is delaying the work and shall take all possible steps to alleviate the shortage.

Losses of time due to acts of God, acts of the Department, strikes, freight embargoes, adverse weather in excess of 20 percent of the working days each month, and a state of national emergency may be given consideration for time extension.

When the work is substantially complete so that it could be opened to the safe and convenient use of the traveling public, as determined by the Engineer, time charges may be discontinued prior to final acceptance being made by the Engineer as prescribed in Section 6.16.

From April 1st to November 30th, consideration will be given to loss of time due to weather only for the number of days lost each month in excess of 20 percent of the total number of working days, as defined in Section 2.02(55) each month. Time extension for adverse weather will not be granted after the completion date. ~~No consideration will be given for loss of time due to weather conditions or floods~~ When approved time extensions move the completion date beyond November 30, the extension will not be applied to any date between November 30th of one year and April 1st of the following year.

When the contract time is on a working day basis, the Engineer will furnish the Contractor a weekly statement showing the number of days charged to the Contract for the preceding week and the number of days specified for completion of the Contract. The Contractor will be allowed one week in which to file a written protest setting forth in what respect the weekly statement is considered incorrect; otherwise, the statement will be deemed to have been accepted by the Contractor as correct.

9.7. Failure to Complete on Time and Liquidated Damages. -- Time is an essential element of the Contract and it is important that the work be completed within the time specified. The cost to the Department of the administration of the Contract, including engineering, inspection and supervision, will increase as the time required to complete the work is increased.

Therefore, the Department will assess liquidated damages against the Contractor for each calendar day ~~that~~ any work remains uncompleted during the months of April through November after the contract time specified for completion of the work, subject to such extensions of Contract time as may be allowed by section required or permitted in 9.06. The Daily charges will be deducted for each calendar day, as defined in Section 2.02(5), will be used for the purpose of assessing liquidated damages for all contracts including contracts where the Proposal specifies a date for completion and contracts where the Proposal specifies the number of working days on all contracts, except daily charges will not be deducted on any contract between November 30, and April 1. When specification restrictions prohibit work during other periods of the year, no daily charges will be deducted during the periods which the Contractor is prohibited from performing work on the controlling item or operations. The total amount of such liquidated damages/ daily charges, calculated from the schedule shown below, will be deducted from any monies due the Contractor, not as a penalty, but as liquidated damages.

SCHEDULE OF LIQUIDATED DAMAGES

<u>ORIGINAL CONTRACT AMOUNT</u>		<u>DAILY CHARGE</u>
<u>From More Than</u>	<u>To and Including</u>	
\$ 0	\$ 25,000	\$ 3045
25,000	50,000	5075
50,000	100,000	7310
100,000	500,000	100150
500,000	1,000,000	130225
1,000,000	2,000,000	200300
2,000,000	3005,000,000	450
5,000,000	10,000,000	600
10,000,000	-----	700

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Leg. Rule, 17-2A
Series III, Sec. 10.1

The galvanized sheet thicknesses to be used in the manufacture of metal cribbing, corrugated iron or steel culvert pipe, underdrain pipe, plate pipe, pipe arches, plate pipe arches and plate arches shall be as specified in AASHTO M 36 or AASHTO M 167. The sheet thicknesses to be used in the manufacture of corrugated aluminum alloy culvert pipe, underdrain pipe, plate pipe, pipe arches, plate pipe arches and plate arches shall be as specified in AASHTO M 196 or AASHTO M 219.

The "size number" used in the measurement of wire will be as specified in AASHTO M 32 or AASHTO M 225.

The term ton will mean the short ton consisting of 2,000 lb. ~~avoirdupois~~. All materials which are measured or proportioned by weight shall be weighed on ~~accurate~~ approved scales by competent, qualified personnel ~~at~~ ~~locations designated by the Engineer~~. Scales for weighing shall be of either the beam type, ~~or the~~ springless-dial type or digital recorder type. They shall be accurate within 0.5 percent throughout the range of use. All plant and truck scales and metering devices shall be inspected, approved and sealed in accordance with the requirements of the West Virginia Department of Labor, Bureau of Weights and Measures, or other appropriate agencies of the State or its political subdivisions. Poises shall be designed to be locked in any position to prevent unauthorized changes of position. The minimum graduation on the beam or dial shall not be greater than 0.2 percent of the rated capacity of the scale. When the beam type scales are used, provisions for a "telltale" dial shall be made for indicating to the operator that the required load in the weighing hopper is being approached. A device on the weighing beams shall clearly indicate the critical position.

If material is shipped by rail, the car weight may be accepted provided the actual weight of material only will be paid for. However, car weights will not be acceptable for material to be passed through mixing plants. Trucks used to haul materials being paid for by weight shall be weighed empty prior to each load, except at automatic batch plants approved to operate without truck scales.

Devices, used to meter or measure component or other materials in a simultaneous manner, shall be located so as to be readily accessible and visible to a single Inspector, unless otherwise directed by the Engineer.

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Series III, Sec. 10.1

Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured therein at the point of delivery. Vehicles for this purpose may be of any size or type acceptable to the Engineer, provided that the body is of such shape that the actual contents may be readily and accurately determined. All vehicles shall be loaded to at least their water level capacity, and all loads shall be leveled when the vehicles arrive at the point of delivery.

When ~~requested by the Contractor and~~ approved by the Engineer ~~in writing~~, material specified to be measured by the cubic yard may be weighed and ~~such~~ these weights will be converted to cubic yards for payment purposes. Further, when it is impractical to measure the material by weighing, or in its original position, the material will be measured in its final position and adjusted by a volume change factor. ~~Factors for conversion from weight measurement to volume measurements~~ These conversion factors will be determined by the Engineer and shall be agreed to by the Contractor before ~~such~~ these methods of measurement ~~or pay quantities~~ is are used.

When bituminous material is measured by volume, the measured volume at loading temperature shall be converted to volume at 60F using the temperature correction factors in 705 (West Virginia Department of Highways Standard Specifications, Roads and Bridges, Adopted 19826) for asphaltic materials and 706 (West Virginia Department of Highways Standard Specifications, Roads and Bridges, Adopted 19826) for tar materials, except that when volume is measured by an approved temperature compensated metering device, no further volume correction for temperature shall be required. When bituminous material is measured by weight, the actual specific gravity, API gravity, or weight per gallon of the material shall be used to convert the measured weight to volume at 60F. The Contractor shall furnish all information necessary as determined solely by the Department to determine the amount of bituminous material actually incorporated into the project.

Net certified scale weights or weights based on certified volumes in the case of rail shipments will be used as a basis of measurement, subject to correction when bituminous material has been lost from the car or the distributor, wasted, or otherwise not incorporated in the work.

Department of Highways
Leg. Rule, 17-2A
Series III, Sec. 10.2

Section 7.2 the cost of such testing will be deducted on current estimates from the amount due the Contractor by the Department. The cost of such testing will be determined in accordance with the unit costs per test as shown in Table 9-1, published in MP 109.00.20.

10.3. Compensation for Altered Quantities. -- When the accepted quantities of work vary from the quantities in the bid schedule, the Contractor shall accept as payment in full, so far as Contract items are concerned, payment at the original Contract unit price for the accepted quantities of work done. No allowance except as provided in Section 5.2 will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor resulting either directly from such alterations or indirectly from unbalanced allocation among the Contract items of overhead expense on the part of the bidder and subsequent loss of expected reimbursements therefore or from any other cause.

Increased work involving supplemental agreements will be paid for as stipulated in such agreements. The Contractor shall furnish substantiating data required in the preparation of these agreements.

10.4. Extra and Force Account Work. -- Extra work performed in accordance with the requirements and provisions of Section 3.03 will be paid for at the unit prices or lump sum stipulated in the order authorizing the work or the Department may require the Contractor to do such work on a force account basis to be compensated in the manner hereinafter prescribed. When the Engineer and the Contractor are unable to agree upon the terms of a supplemental agreement, as provided for in 5.2 and 5.3, the work shall be performed on a force account work order basis and will be paid for in the manner hereinafter prescribed.

(1) Labor - For all Contractors' or subcontractors' labor and foremen in direct charge of the specific force account operations, the Contractor or subcontractor shall receive the current local rate of wage, to be agreed upon in writing before starting such work, for each and every hour that the labor and foremen are actually engaged in such work; to which shall be added an amount equal to 40 percent of the sum thereof; and no compensation will be allowed for general superintendence.