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SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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Form #2

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

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

RULE TYPE: Legislative; CITE AUTHORITY §17-1, 2A, 4, 16, 20, 22 and 23

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 6

TITLE OF RULE BEING AMENDED: Regulations Relating to Use of State Road Rights of
Way and Areas Adjacent Thereto

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

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 14, 2000 AT 12:00 P.M.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Norman Roush
WV Division Of Highways
1900 Kanawha Boulevard East
Room A-164
Charleston, WV 25305-0430

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Samuel H. Beverage, P.E.
Acting Secretary/Commissioner of Highways

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$11.80

Division of Highways, Series 6
Regulations Relating to Use of State Road Rights of Way and Areas Adjacent Thereto
Proposed Legislative Rule
July 11, 2000

SUMMARY OF PROPOSED RULE:

Series 6 provides rules pertaining to various uses of state road rights of way and adjacent areas.

The primary items addressed by this legislative rule are:

1. a list of definitions;
2. permits for the use of highway right of way (includes utility installations);
3. permits for making openings or placing structures in, upon, along, over, under and across state roads;
4. removal of obstructions from state roadways;
5. rules for constructing driveways on state highway rights-of-way;
6. rules and the licensing of Outdoor Advertising on the State Highway System;
7. rules and the licensing of Salvage Yards; and
8. rules for placing Roadside Memorial Markers.

STATEMENT OF CIRCUMSTANCES:

The proposed amendments to this legislative rule are being filed in response to changes in W. Va. Code §§17-4-17b and 17-20 as a result of passage of House Bills 4049 and 4063, respectively. These bills were signed by the Governor on March 20, 2000 and became effective June 9 and June 7, 2000, respectively.

In summary, the revisions to W. Va. Code §17-4-17b shifts the responsibility for the costs of relocating public utility lines that are located within state road rights-of-way from the utility companies to the Division of Highways as a result of highway projects. This shift in responsibility is without regard to funding source, federal or state.

The addition of W. Va. Code §17-20 required the promulgation of rules to provide for the placement of memorial markers or other tributes within state highway rights-of-way to memorialize people who have died as a result of vehicle related accidents.

Other proposed amendments to this rule are editorial in nature and are proposed to bring this rule into compliance with current legislative rule formatting guidelines of the Secretary of State and of the Legislative Rule Making Review Committee.

FISCAL NOTE FOR PROPOSED RULES
July 11, 2000

Rule Title: Series 6, Regulations Relating to Use of State Road Rights of Way and Areas Adjacent Thereto

Type of Rule: Legislative Interpretive Procedural

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

| 1. Effect of Proposed Rule | ANNUAL | | FISCAL YEAR | | |
|----------------------------|-------------|----------|-------------|-------------|-------------|
| | Increase | Decrease | Current | Next | Thereafter |
| Personal Services | 0 | 0 | 0 | 0 | 0 |
| Current Expense | 0 | 0 | 0 | 0 | 0 |
| Repairs & Alterations | 0 | 0 | 0 | 0 | 0 |
| Equipment | 0 | 0 | 0 | 0 | 0 |
| Other | \$5,000,000 | 0 | \$5,000,000 | \$5,000,000 | \$5,000,000 |
| Estimated Total Cost | \$5,000,000 | 0 | \$5,000,000 | \$5,000,000 | \$5,000,000 |

2. Explanation of above estimates:

The above costs conservatively represent the expected annual increase in costs to the State Road Fund for the relocation of public utility lines that are located within state road rights-of-way. Approximately four million is attributable to relocating the lines of privately owned utilities, while one million is attributable to relocating the lines of publically owned utilities. This increase in costs to the State Road Fund is a result of the revisions to W. Va. Code §17-4-17b due to the passage of House Bill 4049.

These costs are based on historical data, obtained from the utility companies, of non-reimbursed utility line relocation costs resulting from highway projects. However, the relocation costs from several privately owned utility companies and from publically owned utility companies were not readily available, so these costs were estimated.

3. Objectives of this rule:

The amendments to this legislative rule are being filed to comply with code changes effected by the passage of House Bills 4049 and 4063, passed by the 2000 Legislature.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government

The changes to W. Va. Code §17-4-17b due to the passage of H.B. #4049 (Relocation of Public Utility Lines) will result in an estimated increase in annual costs of \$5,000,000 to the State Road Fund.

No economic impact is anticipated from the passage of H.B. #4063 and the subsequent addition of W.Va. Code §17-20, *Roadside Memorial Markers*.

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

The changes to W. Va. Code §17-4-17b due to the passage of H.B. #4049 will result in an estimated decrease in annual costs of \$5,000,000 to the public utilities with facilities to be moved as a result of highway construction activities.

No economic impact is anticipated from the passage of H.B. #4063 and the subsequent addition of W.Va. Code §17-20, *Roadside Memorial Markers*.

C. Economic Impact on Citizens/Public at Large.

Citizens will realize a \$5,000,000 reduction in expenditures for state roads as a result of the increased costs to the state highway program. However, the absorption of the cost of utility relocations into the State Road Fund has the potential to lower public utility rates, since the public utility companies will not pay the costs of utility line relocations due to highway construction.

No economic impact is anticipated from the passage of H.B. #4063 and the subsequent addition of W.Va. Code §17-20, *Roadside Memorial Markers*.

5. Contact Person and Telephone Number.

Mr. Norman Roush
Phone - 558-2804

July 11, 2000


Samuel H. Beverage, P.E.

Acting Secretary/Commissioner of Highways

LEGISLATIVE RULES
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

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TITLE 157
LEGISLATIVE RULES
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 6
REGULATIONS RELATING TO USE OF STATE ROAD RIGHTS OF WAY AND
AREAS ADJACENT THERETO

§157-6-1. General.

1.1. Scope. ~~These~~ This legislative regulations rule establish general rules pertaining to the use of state road rights of way and adjacent areas.

1.2. Authority. ~~These~~ This rules and regulations are is issued under authority of West Virginia. Code Chapter §17, Articles 1, 2A, 4, 16, 20, 22, and 23.

1.3. Filing Date.

1.4. Effective Date.

§157-6-2. Definitions.

~~2.1.8-1.3~~ "Abandoned salvage yard" means any unlicensed salvage yard or any salvage yard that was previously licensed but upon which the license has not been renewed for more than one year.

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

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

~~2.4.7-2.7~~ "Controlled-Access Highway" means any state highway or portion thereof which for purposes of federal-aid funding has been designated a federal-aid primary highway and further has been designated a controlled-access highway pursuant to the authority vested in the Commissioner of Highways in W. Va. Code ~~Chapter 17, Article 4, Sections 39, 40 and 41~~ §17-4-39, 40 and 41.

~~2.5.7.2.13~~ "Defense Highway" means those highway routes designated by the Division of Highways which might reasonably be used for important defense shipments, movements of troops or military hardware and/or supplies, or for the evacuation of the general public from disaster areas.

~~2.6.7.2.3~~ "Device" means any card, cloth, paper, metal or wooden advertising emblem or sign of any kind or character, which is posted, stuck, glued, tacked, nailed, painted or otherwise fastened or affixed to or upon any fence, post, tree or thing other than an advertising sign or structure.

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

~~2.8.7.2.2~~ "Display" means any poster, bill, printing, writing, drawing, painting, or advertising material of any kind or character whatsoever, designed and intended to draw the attention of the public to any goods, merchandise, property, real or personal, business service, entertainment or amusement, produced, bought, sold, conducted, furnished, or dealt in by any person, which is placed, posted, painted, tacked, nailed, glued or otherwise affixed or fastened to any advertising sign or structure, or otherwise displayed outdoors.

~~2.19.~~ "Expressway" means Any road serving major intrastate and interstate travel, including federal interstate routes.

~~2.10.7.2.6~~ "Federal-Aid Primary Highway" means any highway which for federal-aid funding purposes has been designated or classified or redesignated or reclassified as a federal-aid primary highway.

~~2.211.~~ "Feeder" means Any road serving community to community travel and/or any road which collects and feeds traffic to one of the higher road systems (expressway and trunkline).

~~2.12.8.1.4~~ "Fence" means an enclosure, barrier or screen constructed of materials or consisting of plantings, natural objects or other appropriate means approved by the Commissioner of Highways and located, placed or maintained so as to effectively screen at all times salvage yards and the salvage therein contained from the view of persons passing upon the public roads of this State.

2.13.7.2.5 "Interstate Highway" means that portion of the system of highways in West Virginia, which for federal-aid funding purposes has been designated or classified or redesignated or reclassified as interstate highway and which is classified as an Expressway, under the provisions of W. Va. Code §17-4-2.

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

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

2.16. "Memorial Marker" means the various types of decorations, flags, flowers and other lightweight objects or ornamentation commonly used at funerals or at gravesides as a tribute to the dead.

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

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

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

2.20.7.2.4 "Person" ~~includes~~ means an individual, partnership, association, or corporation.

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

2.322. "Road; Public Road; Highway" ~~Within the meaning of these rules and regulations the words or terms "road", "public road", or "highway" include,~~ means but are is not

limited to, the right of way, roadbed and all necessary culverts, sluices, drains, ditches, waterways, embankments, slopes, retaining walls, bridges, tunnels, and viaducts necessary for the maintenance of travel, dispatch of freight and communication between individuals and communities; and such public road or highway includes any road to which the public has access and which it is not denied the right to use, or any road or way leading from any other public road over the land of another person, and which shall have been established pursuant to law, ~~(Reference, WV Code Chapter 17, Article 1, Section 3.)~~

~~2.23.8.1.1~~ "Salvage" means old or scrap copper, brass, rope, rags, batteries, paper, rubber, trash, waste, junked, dismantled or wrecked machinery, machines or motor vehicles, or any parts of any junked, dismantled or wrecked machinery, machines or motor vehicles, iron, steel and other old or scrap ferrous or non-ferrous materials.

~~2.24.8.1.2~~ "Salvage Yard" means any place which that is maintained, operated or used for the storing, keeping, buying, selling, or processing of salvage, or for the operation and maintenance of a motor vehicle graveyard. Any collection of three or more automobile hulks, or combination of ferrous or non-ferrous materials together with one or more automobile hulks, or a collection of any salvage contained in an area more than one-quarter acre in size is a salvage yard.

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

~~2.26.7.2.1~~ "Sign" means any structure erected for advertising purposes upon which any poster, bill, printing, writing, drawing, painting, or advertising material of any kind or character whatsoever, may be placed, posted, painted, tacked, nailed, glued or otherwise fastened, affixed or displayed.

2.527. "Trunkline" means Any road serving major city-to-city travel needs.

~~2.28.7.2.9~~ "Unzoned Commercial or Industrial Area," as it applies to the licensing of outdoor advertising, Section 7 of these rules, means an area not zoned by State or local law, regulation or ordinances on which there is located one or more

"viable" commercial or industrial activities and the area along the highway extending outward 800 feet from and beyond the edge of such activity.

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

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

2.28.c. To qualify as an unzoned commercial or industrial area a business shall have, but not be limited to, the following:

2.28.c.1.(a) a current business registration certificate issued by the West Virginia Tax Department;

2.28.c.2.(b) a public access road;

2.28.c.3.(c) an identification sign for the business which shall conform to these rules and regulations concerning an on premises sign;

2.28.c.3.(d) a posting of the business operating hours;

2.28.c.3.(e) a capacity to provide ample parking for all customers;

2.28.c.3.(f) a separately metered electrical service provided by the local power company which shall not be an extension from any other building;

2.28.c.3.(g) and a minimum operating period of six (6) months prior to the date of the permit application.

2.28.d. None of the following shall be considered a commercial or industrial activity:

2.28.d.1.(a) Outdoor advertising structures.

2.28.d.2.(b) Agricultural, forestry, grazing, farming, or other related activities, including, but not limited to wayside produce stands.

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

2.28.d.4.(d) Railroad tracks or minor sidings.

2.28.d.5.(e) Activities more than 660 feet from the main traveled way.

2.28.d.6.(f) Transient or temporary activities.

2.28.d.7.(g) Any commercial or industrial activity upon which the permit application is based which is operated primarily to serve as the basis for an outdoor advertising permit.

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

2.28.d.9.(i) Any other commercial or industrial activity which the ~~Division Administrator~~ Commissioner finds is not meaningful commercial or industrial activity.

~~2.29.8.1.8~~ "Unzoned Industrial Area," as it applies to the licensing of salvage yards, Section 8 of these rules, means an area within a municipality not zoned by State or local law, regulation or ordinance. A salvage yard shall be determined to be in an unzoned industrial area within a municipality when it is located within a radius of 1000 feet of at least one industrial activity, which is in continuing operation for at least three (3) months of the year.

2.29.a. None of the following shall be considered industrial activities:

2.29.a.1.(a) Outdoor advertising structures.

~~2.29.a.2.(b)~~ Agricultural, forestry, ranching, grazing, farming and related activities, including, but not limited to, wayside fresh produce stands.

~~2.29.a.3.(c)~~ Activities normally and regularly in operation less than three (3) months of the year.

~~2.29.a.4.(d)~~ Transient or temporary activities.

~~2.29.a.5.(e)~~ Activities not visible from the traffic lanes of the main traveled way.

~~2.29.a.6.(f)~~ Activities more than 300 feet from the nearest edge of the main traveled way.

~~2.29.a.7.(g)~~ (g) Activities conducted in a building principally used as a residence.

~~2.29.a.8.(h)~~ (h) Railroad tracks, minor sidings, and passenger depots.

~~2.29.a.9.(i)~~ (i) Junkyards, as defined in Section 136, Title 23, United States Code.

~~2.30.7.2.12~~ "Urban Area" means an area including and adjacent to a municipality or other urban place having a population of 5,000 or more, as determined by the latest available Federal census within boundaries to be fixed by the Division of Highways subject to the approval of the Secretary of the U.S. Department of Transportation, or his authorized representative.

~~2.31.7.2.8~~ "Zoned Commercial or Industrial Area" means an area zoned for business, trade, industry, or commerce, pursuant to state, county, municipal or local law, ordinance or regulation.

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

3.1. Purpose. The purpose of ~~these regulations~~ this section is to establish rules governing the making of openings or placing of structures, in, along, over, under or across State roads and highways and the issuance of permits for such purposes. (~~Reference, WV Code, Chapter 17, Article 16, Section 6.~~)

3.2. Entrances from Residence Properties, Industrial or Business Establishments. All entrances to any state road, whether from a residence, or an industrial or business property, shall be constructed in accordance with the "Manual on Rules and Regulations for Constructing Driveways on State Highway Right of Way", prepared by the Traffic Engineering ~~Section~~ Division of the Division of Highways, dated March 1970, ~~and filed in the Office of the Executive Secretary of the Division of Highways, and all amendments duly adopted as of the effective date of this rule.~~ All entrances shall be adequately drained and properly stablized. ~~(WV Code, Chapter 17, Article 4, Sections 47 thru 52.) (WV Code, Chapter 17, Article 2A, Section 12.)~~

3.3. School Bus Shelters. All school bus shelters shall be constructed in accordance with plans approved by the Division of Highways Commissioner, and when so constructed, such shelters may be constructed within the right of way limits at such locations as the Division of Highways Commissioner may direct. All affected shoulder areas shall be properly stablized.

3.4. Overhead Structures.

3.4.1a. Expressway, Trunkline and Feeder Roads. All overhead structures constructed over expressway, trunkline and feeder roads, such as grade separations, wire structures, coal tipples, conveyors, etc., must be constructed so as to provide a minimum vertical clearance of 18 feet over the entire width of the roadway, including shoulders, and a minimum horizontal clearance of 10 feet on either side of the pavement edges and in no instance shall the total horizontal clearance be less than 40 feet at right angles to the centerline of the highway. In cases where proposed construction or reconstruction plans require greater horizontal clearances, such clearances must be provided.

3.4.2b. State Local Service Roads. The minimum vertical clearances over state local service roads shall be 18 feet for the entire width of the roadway, including shoulders, and the minimum horizontal clearance shall be 8 feet on either side of the pavement edges, and in no instance shall the total horizontal clearance be less than 30 feet at right angles to the centerline of the road. In cases where proposed construction or reconstruction plans require greater horizontal clearances, such clearances must be provided.

3.4.c. Provided, however, that in the event of conflict between the provisions of Sections ~~(1)~~ subdivisions 3.4.a. and (2) 3.4.b. above of this rule, and the terms of deeds conveying real estate to the Division of Highways, the terms of the deeds shall control.

3.4.3d. Coal Tipples, Conveyors, etc. All coal tipples or conveyors carrying or transporting loose material must be adequately encased within the limits of the highway right of way and a sufficient distance on either side of the highway right of way to properly protect the traveling public or other highway users.

3.4.4e. Construction Plans Submitted with Application. All applications for permits covering such construction must be accompanied with a plan in sufficient detail that a complete structural analysis may be made by the Commissioner of the Division of Highways.

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

3.5.1a. Length. All such structures constructed at or near the grade of an existing highway must be of sufficient length to conform to the existing width of the roadway or any existing proposed roadway construction or reconstruction plans.

3.5.2b. Pedestrians. If necessary, such structures shall be provided with sidewalks to properly accomodate pedestrian traffic along the highway.

3.5.3c. Construction Plans Submitted with Application. All applications for permits covering such construction must be accompanied with a plan in sufficient detail that a complete structural analysis may be made by the Commissioner of the Division of Highways.

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

3.6.1a. Conditions. The individual or company doing the mining shall carry on the operation so as to properly protect the highway from damage, and in the event damage to the highway does occur, the individual or company doing the mining

shall either restore the highway at his or its own expense in a manner satisfactory to the Division of Highways or reimburse the Division of Highways for the actual expense that may be incurred in restoring the highway.

3.6.2b. Maps. All applications for permits covering subsurface mining shall be accompanied with a map showing the position of the coal seam or other mineral or minerals proposed to be mined, horizontally and vertically with relation to the highway.

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

3.7.1a. The work shall be performed when the ground is dry. Test holes shall not be larger than six (6) inches in diameter. Shot points shall be located at a safe distance from culverts, bridges and pavements, so as not to cause damage thereto. Shots shall not be in proximity to public or private buildings, and shall be so placed as to avoid disturbance to domestic water supplies. Upon completion of the work, ditches shall be restored and shoulders reshaped to the satisfaction of the District Engineer. Drill holes shall be plugged with concrete at a depth of thirty (30) inches below ground level.

3.8. Utility Installations. All individually, publicly, and privately owned utilities, including but not limited to, electric, communication, gas, oil, petroleum products, chemical, water, steam, sewage, drainage, and similar facilities that are to be accommodated, adjusted or relocated within State highway right-of-way, shall be in accordance with the ~~current~~ manual, "Accommodation of Utilities on Highway Right of Way" ~~filed with the Secretary of State on February 4, 1982~~ dated July 1, 1995 and made a part of these ~~regulations~~ rules.

3.8.a. Eligibility for reimbursement of public utilities, by the Division of Highways, for relocation costs due to Division of Highways' projects shall be per WV Code §17-4 and the following rules.

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

3.8.c. Reimbursement of Publicly Owed Public Utilities. Per WV Code §17-4-17d-a, the Commissioner of the Division of Highways shall cause all publicly owned public utilities to be reimbursed for the cost of relocation due to a highway project.

3.8.c.1 Effective Date for Publicly Owned Public Utilities. These rules shall be considered effective for all projects on which the publicly owned public utility is authorized to begin relocation design work after June 9, 2000, and on all eligible projects on which relocation costs are incurred after January 1, 2001 irrespective on the authorization date.

3.8.d. Reimbursement of Privately Owned Public Utilities. Per WV Code §17-4-17d-b, the Commissioner of the Division of Highways shall utilize the following rules when establishing eligibility of the cost of relocation for reimbursement, due to a Division of Highways construction or improvement projects.

3.8.d.1. Construction or Improvement Projects. Relocation costs of privately owned public utilities, located within State highway right-of-way by permit, shall be eligible for reimbursement if the costs are required due to a Division of Highways construction or improvement project.

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

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

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

3.8.d.3. Effective Date for Privately Owned Public Utilities. These rules shall be considered effective for all projects on which the privately owned public utility is authorized to begin relocation design work on eligible projects after July 15, 2000, and on all eligible projects on which relocation costs are incurred after January 1, 2001.

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

3.9.4a. Conformity to Grade All railway grade crossings must be constructed so as to conform to the grade of the highway involved. If necessary, in order to obtain proper conforming grades and alignment, the railway company shall be required at its own expense to relocate and reconstruct the section of the road affected in accordance with existing standards.

3.9.2b. Spur Tracks. Spur tracks should not be super-elevated across the highway.

3.9.3c. High Speed Tracks. High speed tracks shall be so located as to cross the highway on a track tangent or slight curve in order to eliminate or cause minimum track superelevation.

3.9.4d. Crossing at Right Angles. All tracks shall cross the highway as near to a right angle as feasible.

3.9.5e. Rail Elevation. The top of rail elevation shall conform to the highway surface elevation or, highway approach grades conforming to current standards shall be provided. After the track is placed, the top of rail elevation

shall not be altered by the railway company without prior approval of the change in elevation by the Commissioner of the Division of Highways.

3.9.6f. Type of Pavement. The type of pavement on crossings shall be of a high-type surface or other semi-permanent material as specified by the Commissioner of the Division of Highways based on the type and volume of highway and rail traffic.

3.9.7g. Width of Surface. The width of the crossing surface shall be in accordance with standards promulgated by the Commissioner of the Division of Highways.

3.9.8h. Maintenance. The railway company roadbed and crossing shall be maintained by the railway company in a condition acceptable to the Commissioner of the Division of Highways.

3.9.9i. Traffic Control Devices. As a minimum, the railway company shall install and maintain crossbuck signs in accordance with the Division of Highways', "Manual on Uniform Traffic Control Devices for Streets and Highways." (~~WV Code, Chapter 17, Article 3, Section 1.~~)

3.9.9j. Where a track is being constructed across any state highway, the Commissioner of the Division of Highways may require that the railway company at its own expense install and maintain active traffic control devices conforming to the Division of Highways', "Manual on Uniform Traffic Control Devices for Streets and Highways." (~~WV Code, Chapter 17, Article 3, Section 1~~), and existing standards.

3.9.10k. Abandoned Tracks and Appurtenances. When any railway track crossing a state highway is abandoned, the railway company shall promptly remove the tracks, ties, etc., and any appurtenances to the crossing such as crossbuck signs, active traffic control devices or other equipment. The highway shall be repaired with a pavement and shoulders of the same type and width as the adjacent pavement and shoulders, and in a manner satisfactory to the Commissioner of the Division of Highways.

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

4.1. General Regulations for Issuance of Such Permits.

4.1.1.a. Form of Application. Applications for permission to perform work within highway right of way shall be made on the Division's standard permit form. The application shall give full information concerning the work to be done and be accompanied by a sketch.

4.1.2.b. Signature Required. Applications shall be legally signed by the applicant or his duly authorized representative.

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

~~4.1.4.d.~~ Completion Date. The application shall state the date the proposed installation is to be completed.

~~4.1.5.e.~~ Approval of Application. Applicants for permits shall file the original and three (3) copies of such application with the District Engineer Administrator in whose District the proposed installation is to be made. Before any work can be started, the application must be approved by the District Engineer Administrator or the Director of the Maintenance Section Highway Operations Division.

~~4.1.6.f.~~ Inspection. The work shall be done under the supervision and to the satisfaction of the Division. The applicant agrees to reimburse the Division for any inspection costs incurred under the permit.

~~4.1.7.g.~~ Notification. The applicant shall notify the Division at least 48 hours in advance of the date work will begin.

~~4.1.8.h.~~ Control of Traffic. The traveling public shall be protected at all times in accordance with the current manual, "Traffic Control for Streets and Highway Construction and Maintenance Operations," (~~August 18, 1980.~~) November 1994.

4.1.9.i. Damage. Damage to the road resulting at any time from work authorized under the permit shall be repaired by the applicant. Unsatisfactory repairs may be corrected by the Division or its authorized agent and the cost thereof paid by the applicant.

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

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

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

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

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

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

5.1.1a. Notice. The County Maintenance Superintendent shall notify the owner or the person responsible for the obstruction that he or she is violating the law in placing, or causing to be placed, the obstruction within the highway right of way limits, and that immediate steps must be taken not only to remove the obstruction, but also to make any necessary repairs resulting from the existence of the obstruction.

5.1.2b. Additional Notice. In the event of failure or undue delay on the part of the owner or the person responsible to remove immediately the obstruction, the County Maintenance Superintendent shall notify the District Engineer of the circumstances relating thereto. Thereupon the District Engineer shall notify the responsible party by letter to remove the obstruction. If the obstruction is not removed within ten (10) days, the Commissioner, or his duly authorized representative, shall then cause a written notice to be served upon the owner or person responsible for the obstruction in the manner provided by law for service of notice or process, notifying such owner or responsible person to remove said obstruction within ten (10) days from the date of service of the notice. If, following service of the notice, the obstruction is not removed within ten days the Division of Highways will remove the obstruction. The costs and applicable penalties for the obstruction removal will be the responsibility of the owner or responsible person of the obstruction. The assessment and collection of costs will be pursued in accordance with W. Va. Code, ~~Chapter 17, Article 16, Sections~~ §17-16-3, 4 and 5.

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

6.1. Any person desiring to construct or reconstruct one or more driveways or other connections to or within the right of way of any state system street or highway, must do so in accordance with the requirements specified in the manual, "Rules and Regulations for Constructing Driveways on State Highway Rights-of-Way", 1970 Edition, as prepared by the Traffic Engineering Section Division of the West Virginia Division of Highways.

§157-6-7. Rules and Regulations for Outdoor Advertising on the State Highway System.

7.1. Purpose. These rules are for the purpose of regulating and controlling the erection and maintenance of outdoor advertising signs, displays and devices along the total highway system and further to set up specific regulations relating to size, spacing and lighting of those signs, displays and devices, located along those highways in West Virginia designated for federal-aid funding purposes as federal-aid interstate and federal-aid primary highways in accordance with Title 23, United States Code, and the above designated Code sections.

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

7.2 Definitions. ~~As used in these rules and regulations:~~

~~7.2.1 "Sign" - means any structure erected for advertising purposes upon which any poster, bill, printing, writing, drawing, painting, or advertising material of any kind or character whatsoever, may be placed, posted, painted, tacked, nailed, glued or otherwise fastened, affixed or displayed.~~

~~7.2.2 "Display" - means any poster, bill, printing, writing, drawing, painting, or advertising material of any kind or character whatsoever, designed and intended to draw the attention of the public to any goods, merchandise, property, real or personal, business service, entertainment or amusement, produced, bought, sold, conducted, furnished, or dealt in by any person, which is placed, posted, painted, tacked, nailed, glued or otherwise affixed or fastened to any advertising sign or structure, or otherwise displayed outdoors.~~

~~7.2.3 "Device" - means any card, cloth, paper, metal or wooden advertising emblem or sign of any kind or character, which is posted, stuck, glued, tacked, nailed, painted or otherwise fastened or affixed to or upon any fence, post, tree or thing other than an advertising sign or structure.~~

~~7.2.4 "Person" - includes an individual, partnership, association, or corporation.~~

~~7.2.5 "Interstate Highway" - means that portion of the system of highways in West Virginia, which for federal-aid funding purposes has been designated or classified or redesignated or reclassified as interstate highway and which is classified as an Expressway, under the provisions of WV Code Chapter 17, Article 4, Section 2.~~

~~7.2.6 "Federal Aid Primary Highway" means any highway which for federal-aid funding purposes has been designated or classified or redesignated or reclassified as a federal-aid primary highway.~~

~~7.2.7 "Controlled Access Highway" means any state highway or portion thereof which for purposes of federal-aid funding has been designated a federal-aid primary highway and further has been designated a controlled-access highway pursuant to the authority vested in the Commissioner of Highways in WV Code Chapter 17, Article 4, Sections 39, 40 and 41.~~

~~7.2.8 "Zoned Commercial or Industrial Area" means an area zoned for business, trade, industry, or commerce, pursuant to state, county, municipal or local law, ordinance or regulation.~~

~~7.2.9 "Unzoned Commercial or Industrial Area" means an area not zoned by State or local law, regulation or ordinances on which there is located one or more "viable" commercial or industrial activities and the area along the highway extending outward 800 feet from and beyond the edge of such activity.~~

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

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

~~To qualify as an unzoned commercial or industrial area a business shall have, but not be limited to, the following:~~

- ~~(a) a current business registration certificate issued by the West Virginia Tax Department;~~
- ~~(b) a public access road;~~

- ~~(c) an identification sign for the business which shall conform to these rules and regulations concerning an on premiss sign;~~
- ~~(d) a posting of the business operating hours;~~
- ~~(e) a capacity to provide ample parking for all customers;~~
- ~~(f) a separately metered electrical service provided by the local power company which shall not be an extension from any other building;~~
- ~~(g) and a minimum operating period of six (6) months prior to the date of the permit application.~~

~~None of the following shall be considered a commercial or industrial activity:~~

- ~~(a) Outdoor advertising structures.~~
- ~~(b) Agricultural, forestry, grazing, farming, or other related activities, including, but not limited to wayside produce stands.~~
- ~~(c) Activities conducted in a building or structure principally used as a residence.~~
- ~~(d) Railroad tracks or minor sidings.~~
- ~~(e) Activities more than 660 feet from the main traveled way.~~
- ~~(f) Transient or temporary activities.~~
- ~~(g) Any commercial or industrial activity upon which the permit application is based which is operated primarily to serve as the basis for an outdoor advertising permit.~~
- ~~(h) Part time commercial or industrial activity, defined as any commercial or industrial activity operated for less than twenty-five (25) hours per week and open to the general public less than twenty-four (24) hours per week.~~
- ~~(i) Any other commercial or industrial activity which the Division Administrator finds is not meaningful commercial or industrial activity.~~

~~7.2.10 "Intervening Building, Structure or Roadway" means a building, overhead structure, or roadway which is located in such a manner that from any point along the highway, it obscures all signs, displays and devices on the same side of the highway within the minimum spacing distances set forth in Section 7.10 of this rule. Only roads, streets, and highways which enter directly into the main traveled way of the highway system being considered will be regarded as intervening roadways.~~

~~7.2.11 "Main-Traveled Way" - means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.~~

~~7.2.12 "Urban Area" - means an area including and adjacent to a municipality or other urban place having a population of 5,000 or more, as determined by the latest available Federal census within boundaries to be fixed by the Division of Highways subject to the approval of the Secretary of the U.S. Department of Transportation, or his authorized representative.~~

~~7.2.13 "Defense Highway" - means those highway routes designated by the Division of Highways which might reasonably be used for important defense shipments, movements of troops or military hardware and/or supplies, or for the evacuation of the general public from disaster areas.~~

~~7.2.14 "Expressway" - Any road serving major intrastate and interstate travel, including federal interstate routes.~~

~~7.2.15 "Trunkline" - Any road serving major city to city travel needs.~~

~~7.2.16 "Feeder" - Any road serving community to community travel and/or any road which collects and feeds traffic to one of the higher road systems (expressway and trunkline).~~

~~7.2.17 "On Premise Sign" - means those signs which advertise the sale or lease of, or activities being conducted upon, the real property where the signs are located.~~

7.32. Licenses Required, Applications. No person shall engage in the business of outdoor advertising in this State without first obtaining a license therefore from the Commissioner; and no person shall construct, erect, operate, use, maintain, lease or sell any advertising sign, display or device in this State without first obtaining such a license from the Commissioner of the Division of Highways. A license fee in the amount of one hundred dollars per annum, payable annually in advance, shall be charged for such license.

~~7.3-12.a.~~ Applications for licenses, or renewal of licenses, shall be made on forms furnished by the Commissioner of Highways and shall be accompanied by the annual fee.

~~7.3-22.b.~~ Licenses shall expire on the thirtieth day of June of each year, and shall not be prorated. Application for renewal of licenses shall be made not less than thirty (30) days prior to the date of expiration.

~~7.43.~~ Revocation of License. The Commissioner of Highways shall have authority, after thirty (30) days notice in writing to a licensee, to make and enter an order revoking any license granted by him upon repayment of a proportionate part of the license fee, in any case where he shall find that any material information required to be given in the application for the license is knowingly false or misleading or that the licensee has violated any of the provisions of W. Va. Code, ~~Chapter 17, Article 22 §17-22~~ and/or these regulations rules, unless such licensee shall, before the expiration of said thirty (30) days, correct such false or misleading information and comply with the provisions of said article and/or regulations rules:

~~7.4-13.a.~~ Orders. A Commissioner's order revoking a license shall be accompanied by the findings of fact and conclusions of law upon which said order was made and entered.

~~7.4-23.b.~~ Judicial Review. Any person adversely affected by an order made and entered by the Commissioner is entitled to a judicial review as set out in WV Code, ~~Article 22, Chapter 17 §17-22.~~

~~7.54.~~ Permits Required. No person shall construct, erect, operate, use, maintain, or cause or permit to be constructed, erected, operated, used or maintained any outdoor advertising sign, display or device without first obtaining a permit from the Commissioner, and paying the annual fee. In the case of new permits, an inspection fee can be charged as is deemed necessary by the Commissioner.

~~7.5-14.a.~~ License Required. No permit shall be issued to any person who has not obtained the license provided for in Subsection 7.32.

~~7.5-24.b.~~ Application. A separate application for a permit shall be made for each separate advertising sign, display or device, on the form furnished by the Commissioner of Highways. The application shall be signed by the applicant or his duly authorized representative. Such authorization must be submitted to the Commissioner in writing.

7.5-34.c. Bond of Out-of-State Licensee. No license shall be granted as provided in Subsection 7.32 of this regulation rule to any person not a resident of this state, or to any person having his principal place of business outside the state, or which is incorporated outside the state, until such person shall have furnished and filed with the Commissioner of Highways a bond payable to the State of West Virginia, with approved surety in the sum of two thousand five hundred dollars, conditioned that such licensee shall fulfill all the requirements of law and observe and obey all regulations relating to the business of outdoor advertising in the State of West Virginia.

7.4.c.1. All sums received from the forfeiture of any bond or bonds shall be deposited in a special fund created in W. Va. Code, ~~Chapter 17, Article 22, Section 10~~ §17-22-10.

7.5-44.d. Payment. Every application shall be accompanied by a fee of one dollar for each advertising sign, display or device, which fee shall be retained if the permit is issued. In addition thereto, the Commissioner of Highways may charge an inspection fee which will be retained as a cost of inspection whether the permit be issued or not.

7.5-54.e. Refusal of Permit. The Commissioner of Highways shall make and enter an order to the effect and shall cause a copy of such order to be served on such applicant by Certified Mail, return receipt requested, where any permit application is refused. Such order shall be accompanied by the findings of fact and conclusions of law upon which such order was made and entered.

7.5-64.f. Change of Advertising Copy. The holder of a permit shall during the term thereof have the right to change the advertising copy on the structure or sign for which it was issued without payment of any additional fee.

7.5-74.h. Expiration. Permits shall expire on the thirtieth day of June of each year and shall not be prorated, and may be renewed upon the payment of the \$1.00 fee required to be paid upon application originally. No application shall be required for a renewal of a permit.

7.4.h.1. Construction of the sign or signs for which a permit is issued shall be initiated no later than one year from the date of issuance of the permit and shall be completed within a reasonable time thereafter. In the event

of noncompliance with this provision, the permit may be cancelled at the discretion of the Commissioner of Highways.

7.65. Revocation of Permits. The Commissioner of Highways shall have the authority, after thirty (30) days notice in writing to the permittee, to make and enter an order revoking any permit issued by him under Subsection 7.54 upon repayment of a proportionate part of the fee in any case where it shall appear to the Commissioner that the application for the permit contains knowingly false or misleading information or that the permittee has violated any of the provisions of W. Va. Code, ~~Chapter 17, Article 22 §17-22~~ unless such permittee shall, before the expiration of said thirty (30) days, correct such false or misleading information and comply with the provisions of ~~Chapter 17, Article 22~~ W. Va. Code, §17-22.

~~7.6-15.a.~~ Findings of Fact. Such order shall be accompanied by the findings of fact and conclusions of law upon which the order was made and entered.

~~7.6-25.b.~~ Zoning Boards, Commissions or Other Public Agencies. If the construction, erection, operation, use or maintenance of any advertising sign, display or device, for which a permit is issued is prevented by any zoning board, municipal building ordinance, commission or public agency, which has jurisdiction over such matters, the fee for such permit shall be returned by the Commissioner of Highways and the permit revoked. But one half the fee shall have accrued if the advertising sign is erected or the inspection by the Commissioner or his representatives had been performed. Any other inspection fees charged will also have accrued.

~~7.6-35.c.~~ Judicial Review. Any person adversely affected by an order made and entered under this section refusing to grant or revoking a permit is entitled to judicial review as set out in W. Va. Code, ~~Article 22, Chapter 17 §17-22~~.

7.76. Territorial Application. The territory under the jurisdiction of the Commissioner for the purposes of these regulations rules includes all of the State.

~~7.6.a.~~ Authorized representatives of the Commissioner may enter into and upon any land which has outdoor advertising signs, displays or devices in the performance of their functions and duties under the provisions of W. Va. Code, ~~Article 22, Chapter 17 §17-22~~, and/or these regulations rules.

7.87. Prohibition of Certain Outdoor Advertising. No outdoor advertising sign, display or device shall be erected or

maintained within 660 feet of the nearest edge of and visible as to informative content from the right of way of any road within the State Road System designated and classified or redesignated or reclassified for purposes of allocation of Federal-Aid Highway Funds as Federal-Aid Interstate or Federal-Aid Primary Highways, except as provided in Subsections 7.109 and 7.1017 of this regulation rule.

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

7.98. Existing Signs. No outdoor advertising sign, display or device lawfully in existence adjacent to Federal-Aid Interstate or Federal-Aid Primary Highways on September 1, 1965, which does not conform to the requirements of Subsections 7.87 or 7.109 of this regulation rule, shall be required to be removed until such time as the federal share of the just compensation to be paid is available. No sign, display or device erected after this date shall be removed until it is in non-conformance with these regulations rules for a period of five (5) years. No sign erected prior to January 6, 1969, but subsequent to October 22, 1965, shall be required to be removed in zoned or unzoned commercial or industrial areas for violation of size, spacing and lighting requirements as set out in Subsection 7.109 of this regulation rule until the end of the fifth year, at which time the sign becomes non-conforming.

7.109. Exempted Areas. Outdoor advertising signs, displays and devices whose size, spacing and lighting are in conformance with the following subsections may be erected within 660 feet of the nearest edge of the right-of-way of those roads designated for Federal-Aid funding purposes as Federal-Aid Interstate or Federal-Aid Primary Highways within zoned and unzoned commercial or industrial areas as defined in Subsection 7.2.8 2.30 and Subsection 7.2.27, except as provided in Subsection 7.1716 of this regulation rule.

7.9.a. Should the licensee desire to place a sign, display or device within 660 feet of a two-lane non-controlled access highway in an unzoned commercial or

industrial area, on the opposite side of the highway from the activity establishing the zoning, he shall submit a written request for a variance specifying the reasons, with the permit application. The decision to allow a variance will be made by the Commissioner based on the conditions in the area and the documentation of the licensee. Once the side of the highway is determined it will not be changed where the area was established by a single activity.

7.10.19.b. Size.

7.10.1.a9.b.1. The maximum area of any sign shall be 1200 square feet with a maximum height of 25 feet and a maximum length of 60 feet, inclusive of cutouts and extensions, but excluding decorative bases, and structural supports.

7.10.1.b9.b.2. A sign may contain one or two advertisements per facing, not to exceed the maximum area.

7.10.1.c9.b.3. Back-to-back or V-type signs will be permitted and shall be treated as one structure with an area of 1200 square feet permitted for each facing.

7.10.29.c. Spacing.

7.10.2.a9.c.1 Federal-Aid Interstate Highways and Controlled-Access Facilities Within Zoned and Unzoned Commercial or Industrial Areas.

7.10.2.a.19.c.1.A. No two signs shall be spaced less than 500 feet apart on the same side of the highway.

7.10.2.a.29.c.1.B. No sign shall be located within 500 feet of an interchange. This requirement shall not apply within the boundaries of any municipality.

7.10.2.b9.c.2. Other Federal-Aid Primaries.

7.10.2.b.19.c.2.A. Outside a Municipality. No two signs shall be spaced less than 300 feet apart on the same side of the highway.

7.10.2.b.29.c.2.B. Inside Municipalities. No two signs shall be spaced less than 100 feet apart on the same side of the highway.

~~7.10.2.e9.c.3.~~ The foregoing spacing requirements shall not apply to the signs which in the opinion of the licensee are separated by an intervening building, structure or roadway, as defined in Subsection 7.2 of this regulation rule. Where a licensee is of the opinion that a situation exists where an intervening building, structure or roadway would justify a variance from the spacing requirements, he will document the same in writing to the Commissioner at the time of submission of the permit application. Each individual submission of such documentation will be considered based upon the sight distances in the area and the documentation submitted by the licensee.

~~7.10.2.d9.c.4.~~ Notwithstanding any other provision of this section, signs which are double decked, side-by-side, back-to-back, or V-type will be permitted if they meet the requirements of Subsections 1, 2, and 3 of this section.

~~7.10.39.d.~~ Lighting. Signs may be illuminated, subject to the following restrictions:

~~7.10.3.a9.d.1.~~ No outdoor advertising may contain lighting which is not shielded and any lighting shall be of such low intensity as not to cause glare or impair the vision of an operator of any motor vehicle.

~~7.10.3.b9.d.2.~~ No sign shall be illuminated by any rapid flashing intermittent light or lights, which change in a time sequence faster than 12 cycles/revolutions per minute, without a written acceptance of the variance from the Commissioner.

~~7.10.3.c9.d.3.~~ No sign shall be illuminated so as to obstruct the view of any connecting road or intersection or to obscure an official traffic device or signal.

7.110 Exceptions.

~~7.11.110.a.~~ In lieu of exercising control over size, spacing and lighting of outdoor advertising signs, displays or devices in zoned commercial or industrial areas as set forth in Subsection 7.10 of this regulation rule, the Commissioner may certify to the Federal Highway Administrator that a state, regional, county, municipal or local zoning law, regulations, or ordinance or building ordinance has established effective control of size, spacing and lighting of outdoor advertising signs, displays and devices.

7.10.b. All licensees in the affected area will be advised of the Commissioner's action. This certification will be effective as long as the control exercised is consistent with WV Code, ~~Chapter 17, Article 22~~ §17-22 and these ~~regulations~~ rules.

~~7.11.2.10.c.~~ The following signs are excepted from these ~~regulations~~ rules:

~~7.11.2.a.10.c.1.~~ Directional or other official signs and notices required or authorized by law.

~~7.11.2.b.10.c.2.~~ Signs, displays and devices advertising the sale or lease of property on which they are located.

~~7.11.2.c.10.c.3.~~ Signs advertising activities conducted upon the property which they are located, and markers of underground utility facilities.

~~7.11.2.d.10.c.4.~~ To fall within the purview of ~~subsections (b) and (c)~~ paragraphs 7.10.c.2 and 7.10.c.3., the sign, display or device shall have to meet the following requirements:

~~7.11.2.d.1.10.c.4.A.~~ For Sale or Lease Signs. One sign advertising the sale or lease of the property which is visible to traffic proceeding in any one direction may be erected.

~~7.11.2.d.2.10.c.4.B.~~ Business or Activity Sign. One double-faced sign or two signs, one visible in each direction may be erected not more than 500 feet from the center of the activity. Such a sign or signs may not exceed 150 square feet including border and trim but excluding structural supports. Center of activity is determined by location of cash register or main business activity.

~~7.11.2.d.3.10.c.4.C.~~ No "On Premise Sign" may be located if it is seperated from the activity by an intervening parcel of land or building.

~~7.11.2.d.4.10.c.4.D.~~ An "On Premise Sign" may not be erected on the opposite side of the highway from the activity unless topographical conditions make it impossible to locate on the same side of the highway. The sight distance required to qualify for this variance will be less than 250 feet.

7.1211. Purchase or Condemnation. The Division of Highways Commissioner is authorized and empowered to make acquisition of all of the property rights and interests specified in W. Va. Code, ~~Chapter 17, Article 22, Section 5 §17-22-5~~, when any sign, display or device is required to be removed by reason of the provisions of W. Va. Code, ~~Chapter 17, Article 22 §17-22~~, or of these regulations rules, by purchase at private sale, or in the event he is unable to do so, by proceeding in eminent domain. Just and full compensation shall be paid upon the removal of any outdoor advertising sign, display or device which is:

7.12-111.a. Lawfully in existence on or after January 1, 1968;

7.12-211.b. Lawfully in existence on or after January 1, 1968, adjacent to any highway which shall be designated or redesignated as part of the federal-aid interstate or primary systems;

7.12-311.c. Lawfully erected after January 1, 1968.

7.1312. Permit Identification Number. Every permit issued in accordance with these regulations rules shall be assigned a separate identification number. It shall be the duty of each permittee to fasten said permit identification number tag to the sign for which it was furnished. Said tag will contain a number, the expiration date of the permit and the name of the permittee. Construction, erection, operation, use or maintenance of an outdoor advertising sign, display or device without having said permit number tag affixed thereto shall be prima facie evidence that the same is in violation of the provisions of W. Va. Code, ~~Chapter 17, Article 22 §17-22~~ and these regulations rules.

7.1413. Removal After Expiration or Revocation of Permit. All outdoor advertising signs, displays and devices shall be removed by the permittee within thirty (30) days after the date of the expiration or revocation of the permit for the same.

7.1514. Measurements.

7.15-114.a. In determining unzoned commercial or industrial areas, measurements shall be made from the farthest or outer most edge of the used area of the commercial or industrial activity, structures, driveways, parking lots, storage areas, or other areas constituting an integral part of such commercial or industrial activity.

~~7.15.2~~14.b. The distance requirement set forth in Section subdivision 7.10.2b of this regulation rule shall be measured along the interstate or controlled access facility, from the nearest point of the beginning or ending of the pavement widening at the exit from or entrance to the main traveled way.

~~7.15.3~~14.c. Official and "on premise" signs as set out in Subsection 7.11 of this regulation rule shall not be counted nor shall measurements be made from them for the purposes of determining compliance of spacing regulations.

~~7.16~~15. General Restrictions.

~~7.16.1~~15.a. No advertising sign shall be erected or maintained which involves rapid motion or rotation of the structure or any part thereof.

~~7.16.2~~15.b. No outdoor advertising sign, display or device shall use the words "stop" or "danger", or present or imply the need of requirement of stopping, or the existence of danger.

~~7.16.3~~15.c. No outdoor advertising sign, display or device shall be a copy or imitate a traffic sign or other official signal.

~~7.16.4~~15.d. No outdoor advertising sign, display or device shall attempt or purport to direct traffic.

~~7.16.5~~15.e. No outdoor advertising sign shall contain lighting which is not shielded, and any lighting shall be of such low intensity as not to cause glare or impair the vision of the operator of any motor vehicle.

~~7.16.6~~15.f. No outdoor advertising display or device shall be illuminated by any rapid flashing, intermittent light or lights.

~~7.16.7~~15.g. No outdoor advertising sign, display or device shall be painted, affixed, or attached to any natural feature, such as but not limited to; rocks, cliffs, trees and shrubbery.

~~7.16.8~~15.h. No outdoor advertising sign, display or device shall hinder the clear, unobstructed view of approaching or merging traffic, or obscure from view any traffic sign or other official signs.

~~7.16.9~~15.i. No outdoor advertising sign, display or device shall be located as to obscure the view of any connecting road or intersection.

~~7.16.10~~15.j. No outdoor advertising sign, display or device shall be erected, outside of any municipality, within five hundred feet of any church, school, cemetery, public park, public reservation, public playground, or State or national forest, except markers for underground utility facilities.

~~7.16.11~~15.k. No person shall construct, operate or maintain an outdoor advertising sign, display or device without permission of the owner or other person in lawful possession or control of the land on which it is located.

~~7.17~~16. Control of Outdoor Advertising Along Federal-Aid Interstate and Defense Highways. The following subsections are correlated and shall have the application in conformance with the so-called "National Standards" of 23CFR, Chapter 1, §750.105 et seq. as prepared and promulgated by the Federal Highway Administration of the United States Department of Transportation and all reference to said "National Standards". The following subsections apply to all outdoor advertising along interstate and defense highways except on those situations where the provisions of Subsections 7.21 to 7.1615 of this regulation rule are stricter in application.

~~7.17.1~~16.a. Territory Involved.

~~7.17.1.a~~16.a.1 General Area (Protected). These regulations rules shall be applicable to all areas adjacent to interstate and defense highways, the entire right of way of which was acquired subsequent to July 1, 1956, and which areas are within 660 feet of the nearest edge of right of way limits within and without municipalities.

~~7.17.1.b~~16.a.2 Excepted Areas (Unprotected). The following areas are excepted areas within the meaning of these regulations rules.

~~7.17.1.b.1~~16.a.2.A. Any area wherein a line drawn perpendicular to the center line of the median and extended to both edges of the width of the normal right of way, intersects any right of way acquired for right of way purposes prior to July 2, 1956.

~~7.17.1.b.2~~16.a.2.B. Areas within a county wherein such area was zoned as commercial or industrial or the land use as of September 21, 1959, was clearly established by state law as commercial or industrial.

~~7.17.1.b.3~~16.a.2.C. Areas within the corporate boundaries of municipalities which are designated as commercial or industrial areas, as such corporate boundaries existed on September 21, 1959.

~~7.17.2~~16.b. "On Premise" Signs Within Protected Areas Outside of Information Sites. All "on premise" signs within protected areas outside of informational sites shall comply with the Federal Standards of 23CFR, Chapter 1, §750.105 et.seq. for Class 2 signs, and with the following:

~~7.17.2.a~~16.b.1. For Sale or For Lease Signs. One sign advertising the sale or lease of the property upon which it is located and which is visible to traffic proceeding in any one direction may be erected. This may be one double-faced sign, one face being visible to traffic, proceeding in one direction, or two signs with the face of each visible only to traffic proceeding in one direction.

~~7.17.2.b~~16.b.2. Business or Activity Sign. One double-faced sign or two signs, one visible in each direction, and more than fifty (50) feet from the center of activity, advertising the activity being conducted on premises is permissible.

~~7.17.2.b.1~~16.b.2.A. Such sign may not exceed 20 feet in any one dimension or 150 square feet in area, including border and trim, but excluding supports.

~~7.17.2.b.2~~16.b.2.B. "Center of activity" is determined by the location of cash register or main business activity, i.e., motel office.

~~7.17.2.c~~16.b.3. Signs Within 50 Feet of Advertised Activity. Within fifty (50) feet of the advertised activity any number of signs of any size may be erected.

~~7.17.2.d~~16.b.4. General Restrictions. Other than size and distance the following restrictions shall be applicable to "on premise" signs:

~~7.17.2.d.1~~16.b.4.A. Such signs may not attempt to direct traffic.

~~7.17.2.d.2~~16.b.4.B. Such signs may not imitate a traffic sign.

~~7.17.2.d.3~~16.b.4.C. Lighting, if any, must be shielded.

~~7.17.2.d.4~~16.b.4.D. Such signs may not contain or include or be illuminated by any flashing, intermittent or moving light or lights.

~~7.17.2.d.5~~16.b.4.E. Such signs may not move or have any animated or moving parts.

~~7.17.2.d.6~~16.b.4.F. Such signs may not be on or attached to any natural feature.

~~7.17.2.d.7~~16.b.4.G. Such signs may not hinder clear, unobstructed view of official signs and approaching or merging traffic.

~~7.17.2.d.8~~16.b.4.H. Signs greater than fifty (50) feet from the business or activity may not have any letters, trade-marks, etc., advertising a product that are larger or more conspicuous than those advertising the activity.

~~7.17.3~~16.c. Signs Within 12 Air Miles of an Advertised Activity. All signs within twelve (12) air miles of an advertised activity shall comply with the Federal Standards of 23CFR, Chapter 1, §750.105 & §750.107 et.seq. for Class 3 signs and with the following regulations:

~~7.17.3.a~~16.c.1. Such signs may advertise only activities being conducted within twelve (12) air miles of the sign and shall be visible only to interstate traffic not served by an information site within twelve (12) air miles of the advertised activity.

~~7.17.3.b~~16.c.2. Such signs shall not be nearer than two (2) miles in advance of an intersection of the main traveled way and an exit roadway. This distance shall be measured from the edge of the exit roadway nearest to approaching traffic.

~~7.17.3.c~~16.c.3. Such signs shall also be one thousand (1000) feet beyond the intersection of an entrance roadway and the main traveled highway. This distance shall be measured from the edge of the entrance roadway, including

acceleration lanes, nearest to traffic which has passed the entrance roadway.

~~7.17.3.d~~16.c.4. Within the area located between two (2) and five (5) miles approaching an intersection, as above measured, not more than six (6) signs may be located, provided that there are not more than two (2) signs within any mile measured from any point and such signs shall not be less than one thousand (1000) feet apart.

~~7.17.3.e~~16.c.5. Beyond five (5) air miles from the advertised activity, an average of one (1) sign per mile is permitted.

~~7.17.3.f~~16.c.6. Other than distance, the following restrictions shall be applicable to all signs erected within twelve (12) air miles of an advertised activity.

~~7.17.3.f.1~~16.c.1.A. Not more than one sign, advertising the same activity or attraction, visible to traffic moving in any one direction, will be permitted on any one interstate highway. The text must be visible to traffic.

~~7.17.3.f.2~~16.c.1.B. No sign may exceed twenty (20) feet in any dimension or one hundred fifty (150) square feet in area, including border and trim.

~~7.17.3.f.3~~16.c.1.C. Such signs may not be erected in scenic areas.

~~7.17.3.f.4~~16.c.1.D. The provisions of ~~Section 7.17.2.d~~ Subparagraph 7.16.b.4.G. of this rule shall also be applicable to these signs.

~~7.17.4~~16.d. Signs in the Specific Interest of the Traveling Public Permitted. All signs in the specific interest of the traveling public referring to public places operated by the federal, state or local government shall be permitted within a protected area.

~~7.17.4.a~~16.d.1. The following types of specific interest areas, when so designated by the Division of Highways, may have signs erected giving information concerning the area.

~~7.17.4.a.1~~16.d.1.A. Natural phenomena (Man-made lakes not included).

~~7.17.4.a.2~~16.d.1.B. Historical sites.

~~7.17.4.a.3~~16.d.1.C. Areas of natural scenic beauty.

~~7.17.4.a.4~~16.d.1.D. Areas naturally suited for outdoor recreation.

~~7.17.4.a.5~~16.d.1.E. Places for camping, lodging, eating, and vehicle service repair. Trade names (as defined in 23CFR, Chapter 1, §750.105 et.seq.) if any, on Class 4 signs, per Federal Standards of 23CFR, Chapter 1, §750.105 et.seq., are permitted only if they identify or characterize such a place or service. If a Class 2 or 3 sign also qualifies as a Class 4 sign, per Federal Standards of 23CFR, Chapter 1, §750.105 et.seq., the trade name is not required to be of equal prominence.

~~7.17.4.a.6~~16.d.1.F. Farm Wineries as provided by WV Code, ~~Chapter 17, Article 22, Section 7~~ §17-22-7.

~~7.17.4.b.1~~6.d.2. All signs designated in this subsection shall comply with the Federal Standards of 23CFR, Chapter 1, §750.105 et.seq. for Class 4 signs and with the following restrictions:

~~7.17.4.b.1~~6.d.2.A. Such signs must be more than twelve (12) miles from the nearest sign within an informational site serving interstate highway traffic to which the sign is visible. A sign qualifying both as a Class 3 and 4, per Federal Standards of 23CFR, Chapter 1, §750.107 et.seq., may be permitted under the above regulations, ~~subsection (3)~~ Subdivision 7.16.c. of this section rule, or Section 7.17.3.a Paragraph 7.16.c.1. of this regulation rule.

~~7.17.4.b.2~~16.d.2.B. The provisions of ~~Section 7.17.2.d~~ Subparagraph 7.16.b.4.G. of this ~~regulation rule~~ shall also be applicable to these signs.

~~7.17.5~~16.e. Informational Sites, Signs Permitted. Signs relating to informational sites shall be permitted within protected areas. Such signs shall comply with the Federal Standards of 23CFR, Chapter 1, §750.105 et.seq. for Class 3 and 4 signs and the following regulations:

~~7.17.5.a~~16.e.1. The sign shall be placed upon a panel which shall not exceed thirteen (13) feet in height or twenty-five (25) feet in length, including border and trim, but excluding supports.

~~7.17.5.b~~16.e.2. The sign shall not exceed twelve (12) square feet.

~~7.17.5.c~~16.e.3. The text may not be legible from the main traveled way or turning roadway.

~~7.17.5.d~~16.e.4. Only one sign concerning one activity or place is permitted within any one site.

~~7.17.5.e~~16.e.5. Signs concerning a single activity or place may be permitted within more than one informational site, but no Class 3 sign, as defined by Federal Standards of 23CFR, Chapter 1, §750.105 et.seq., which does not also qualify as a Class 4 sign, by Federal Standards of 23CFR, Chapter 1, §750.105 et.seq., may be permitted if the informational site is within twelve (12) air miles of the advertised activity.

~~7.17.5.f~~16.e.6. No moving signs or any animated or moving parts are permitted.

~~7.17.5.g~~16.e.7. Illumination of panels may be by white lights only.

~~7.17.5.h~~16.e.8. No sign on a panel may be permitted to contain, include or be illuminated by any other lights, or any flashing, intermittent, or moving lights.

~~7.17.5.i~~16.e.9. Lighting must be so effectively shielded as to prevent beams or rays of light from being directed at the highway.

~~7.17.5.j~~16.e.10. Lighting must be of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

~~7.17.6~~16.f. Federal, State, Local Laws - Nothing herein contained shall be construed to permit the erection or maintenance of signs otherwise prohibited or declared to be illegal.

§157-6-8. Salvage Yards.

8.1. Definitions. -- ~~As used in these rules and regulations.~~

~~8.1.1 "Salvage" -- means old or scrap copper, brass, rope, rags, batteries, paper, rubber, trash, waste, junked, dismantled or wrecked machinery, machines or motor vehicles, or any parts of any junked, dismantled or wrecked machinery, machines or motor vehicles, iron, steel and other old or scrap ferrous or non-ferrous materials.~~

~~8.1.2 "Salvage Yard" -- means any place which is maintained, operated or used for the storing, keeping, buying, selling, or processing of salvage, or for the operation and maintenance of a motor vehicle graveyard. Any collection of three or more automobile hulks, or combination of ferrous or non-ferrous materials together with one or more automobile hulks, or a collection of any salvage contained in an area more than one-quarter acre in size is a salvage yard.~~

~~8.1.3 "Abandoned salvage yard" -- means any unlicensed salvage yard or any salvage yard that was previously licensed but upon which the license has not been renewed for more than one year.~~

~~8.1.4 "Fence" -- means an enclosure, barrier or screen constructed of materials or consisting of plantings, natural objects or other appropriate means approved by the Commissioner of Highways and located, placed or maintained so as to effectively screen at all times salvage yards and the salvage therein contained from the view of persons passing upon the public roads of this State.~~

~~8.1.5 "Owner or Operator" -- includes an individual, firm, partnership, association or corporation or the plural thereof.~~

~~8.1.6 "Residential Community" -- means an area wherein five or more occupied private residences are located within any one thousand feet radius.~~

~~8.1.7 "Occupied Private Residence" -- means a private residence which is occupied for at least six months each year.~~

~~8.1.8 "Unzoned Industrial Area" means an area within a municipality not zoned by State or local law, regulation or ordinance. A salvage yard shall be determined to be in an unzoned industrial area within a municipality when it is located within a radius of 1000 feet of at least one industrial activity which is in continuing operation for at least three (3) months of the year. None of the following shall be considered industrial activities:~~

- ~~(a) Outdoor advertising structures.~~
- ~~(b) Agricultural, forestry, ranching, grazing, farming and related activities, including, but not limited to, wayside fresh produce stands.~~
- ~~(c) Activities normally and regularly in operation less than three (3) months of the year.~~
- ~~(d) Transient or temporary activities.~~
- ~~(e) Activities not visible from the traffic lanes of the main traveled way.~~
- ~~(f) Activities more than 300 feet from the nearest edge of the main traveled way.~~
- ~~(g) Activities conducted in a building principally used as a residence.~~
- ~~(h) Railroad tracks, minor sidings, and passenger depots.~~
- ~~(i) Junkyards, as defined in Section 136, Title 23, United States Code.~~

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

8.1.a. Information required to be furnished shall include, but not be limited to, the name, address, and business capacity of the applicant, i.e., whether the business is conducted by an individual, partnership, corporation, society or association; the date such business was established; the date of the last salvage yard license (if any issued) and the number thereof, and the location of the salvage yard, including the number of the nearest State highway in accordance with W. Va. Code, ~~Chapter 17, Article 23, Section 3~~ §17-23-3.

8.1.b. After July 1, 1984 any owner or operator establishing a salvage yard shall first obtain a permit from the County Planning Commission, or if the County does not have a planning commission from any agency so designated by the County Commission in which the salvage yard is to be located.

8.32. Areas in Which No Salvage Yard Permitted. On or after July 1, 1967, no license shall be issued to establish, operate or maintain a salvage yard, or any part thereof, within 1000 feet of the nearest edge of the right of way of any road within the state road system, designated and classified as either expressway, trunkline, or feeder. On or after July 1, 1967, no license shall be issued to establish, operate or maintain a salvage yard, or any part thereof, within 300 feet of the nearest edge of the right of way of any state local service road, unless the view thereof from said road shall be effectively screened and obscured by a fence or fences.

8.2.a. On or after June 12, 1988, no license shall be issued to establish, operate or maintain a salvage yard, or any part thereof, within 1000 feet of the nearest edge of the right of way of any road within the state road system, designated and classified as either expressway, trunkline, or feeder. On or after June 12, 1988, no license shall be issued to establish, operate or maintain a salvage yard, or any part thereof, within 500 feet of the nearest edge of the right of way of any state local service road, unless the view thereof from said road shall be effectively screened and obscured by a fence or fences. No license may be issued allowing a salvage yard within one thousand feet of the nearest occupied private residence; unless waived by the owner of such residence, a copy of the waiver shall accompany the salvage yard application; or within five thousand feet of the nearest occupied private residence which is part of a residential community.

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

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

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

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

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

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

~~8.5-14.a.~~ Fences must be located in such a manner as to not be hazardous to the traveling public.

~~8.5-24.b.~~ The construction of fences shall be uniform and no patchwork type of construction shall be permitted.

~~8.5-34.c.~~ Fences shall be painted where the composition is such that painting is required. The paint used shall be of such color as to blend into the surrounding neighborhood of the yard.

~~8.5-44.d.~~ Where a fence consisting of plantings or other natural materials is constructed, the operator shall secure the consent and permission of the Commissioner as to the

location and type of plant or natural material which may be used, in order to effectively screen the view of the salvage yard from the traveling public.

8.5-54.e. Gates shall be of the same height as the component fence and shall be opened only for the purpose of permitting ingress and egress to and from the enclosure.

8.5-64.f. The Commissioner shall have the right to make determination as to whether a salvage yard is effectively screened by the fencing employed.

8.65. Payment of Costs of Fencing. The cost of the erection of fences shall be paid by the salvage yard operator, provided, however, that if in the opinion of the Commissioner effective screening cannot be accomplished by the usual and ordinary methods, the Commissioner may determine and pay such additional costs as are necessary to provide effective screening.

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

8.7-16.a. With the consent of the owner or operator of such salvage yard pay the cost of removal of all salvage and equipment from such salvage yard to such other location as said owner or operator may direct and whereat a salvage yard business may lawfully be conducted.

8.7-26.b. Purchase at private sale, or acquire by proceeding in eminent domain, in accordance with the provisions of WV Code, ~~Chapter 54~~ §54, all such property rights and interests, other than title to real property, as are necessary and required to effect a lawful termination of such salvage yard business.

8.87. Distance Measurements. All measurements determinative of the location of salvage yards in relation to State highways shall be made in a line drawn perpendicular from the nearest edge of the right of way. All applications submitted after June 12, 1988 for a new salvage yard license must be accompanied by a certified survey showing that the distance to the nearest occupied residence is greater than 1,000 ft., or a written waiver must be obtained from all residents within the 1,000 ft. distance. The certified survey must also show the distance to the nearest residential community. No salvage yard is permitted within 5,000 ft. of a residential

community. All measurements shall be made in a straight line from the outer most boundry of the salvage yard to the occupied private residence or the nearest residence in a residential community.

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

8.109. County Planning Commissions. All County Planning Commissions, or if a County does not have a County Planning Commission, then an appropriate office or agency designated by the County Commission, in which the salvage yard is located, shall before issuing a permit after July 1, 1984, promulgate rules that conform with these rules ~~and regulations~~. That agency shall promulgate such reasonable rules including, but not limited to, determining the effect of the proposed salvage yard on residential, business or commercial property investment and values, establish a quota for the number of salvage yards in the county and the social, economic and enironmental impact on community growth and development in utilities, health, education, recreation, safety, welfare and convenience, if any, before issuing such approval permit. [§17-23-4]. A county in promulgating these rules may be stricter than those of the ~~Department~~ Division of Highways but at no time shall they be less restrictive.

§157-6-9. Roadside Memorials.

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

9.2. Placement of Temporary Memorial Markers. Memorial markers that are normally used at funerals and at graveside ceremonies that would be considered temporary by the nature of their design, by their materials and by their size, may be placed near the location of a fatal vehicular accident within the following rules.

9.2.a. Before placing a temporary memorial marker, the person(s) must register the memorial by completing and submitting a registration form at the nearest Division of Highways' office. The registration form is available at any Division of Highways' District or County office.

9.2.b. Memorial markers must not exceed surface dimensions of four feet in length by four feet in width, must be self-supporting and must not have any light reflecting materials or be illuminated by any means.

9.2.c. Physical placement of memorial markers must:

9.2.c.1. be within the highway right-of-way, not on private property nor in front of or alongside of private property or residences unless express permission is obtained;

9.2.c.2. be clear of ditches, culvert pipes, bridges and other highway features that require access for maintenance;

9.2.c.3. be behind the guardrail, if one is present;

9.2.c.4. not be in the highway median or on any bridge and must not be attached to trees, fences, signs, signals, utility poles, etc.

9.2.d. In no instances may a memorial marker be placed where it will be a hazard to the motoring public in any way including, but not limited to; restricting driver's sight, reflecting headlights, sunlight or any other lighting or by interfering with or obscuring any traffic control device.

9.2.e. Persons placing roadside memorial markers are responsible for doing so by acting in a responsible, safe manner including parking completely clear of the travel lanes, even if it means walking some distance. The memorial may need to be placed nearby the accident location, rather than exactly at the accident location, in order to avoid endangering the persons placing or maintaining the memorial and to avoid endangering the motoring public.

9.3. Placement of Permanent Memorial Markers. Memorial markers outside the definition of temporary and beyond the intent of Subsection 9.2 of this rule, will only be allowed if the person obtains a formal permit from the Division. Application for this permit may be made through the Division's District office with jurisdiction.

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

[Code of Federal Regulations]

[Title 23, Volume 1]

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Source: 38 FR 16044, June 20, 1973, unless otherwise noted.

Subpart A--National Standards for Regulation by States of Outdoor Advertising Adjacent to the Interstate System Under the 1958 Bonus Program

Authority: Sec. 12, Pub. L. 85-381, 72 Stat. 95, as amended; 23 U.S.C. 131; delegation of authority in 49 CFR 1.48(b).

Sec. 750.101 Purpose.

(a) In section 12 of the Federal-Aid Highway Act of 1958, Pub. L. 85-381, 72 Stat. 95, hereinafter called the act, the Congress declared that:

(1) To promote the safety, convenience, and enjoyment of public travel and the free flow of interstate commerce and to protect the public investment in the National System of Interstate and Defense Highways, hereinafter called the Interstate System, it is in the public interest to encourage and assist the States to control the use of and to improve areas adjacent to such system by controlling the erection and maintenance of outdoor advertising signs, displays, and devices adjacent to that system.

(2) It is a national policy that the erection and maintenance of outdoor advertising signs, displays, or devices within 660 feet of the edge of the right-of-way and visible from the main-traveled way of all portions of the Interstate System constructed upon any part of right-of-way, the entire width of which is acquired subsequent to July 1, 1956, should be regulated, consistent with national standards to be prepared and promulgated by the Secretary of Transportation.

(b) The standards in this part are hereby promulgated as provided in the act.

[38 FR 16044, June 20, 1973, as amended at 39 FR 28629, Aug. 9, 1974]

Sec. 750.102 Definitions.

The following terms when used in the standards in this part have the following meanings:

(a) Acquired for right-of-way means acquired for right-of-way for any public road by the Federal Government, a State, or a county, city, or other political subdivision of a State, by donation, dedication, purchase, condemnation, use, or otherwise. The date of acquisition shall be the date upon which title (whether fee title or a lesser interest) vested in the public for right-of-way purposes under applicable Federal or State law.

(b) Centerline of the highway means a line equidistant from the edges of the median separating the main-traveled ways of a divided Interstate Highway, or the centerline of the main-traveled way of a

nondivided Interstate Highway.

(c) Controlled portion of the Interstate System means any portion which:

(1) Is constructed upon any part of right-of-way, the entire width of which is acquired for right-of-way subsequent to July 1, 1956 (a portion shall be deemed so constructed if, within such portion, no line normal or perpendicular to the centerline of the highway and extending to both edges of the right-of-way will intersect any right-of-way acquired for right-of-way on or before July 1, 1956);

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(2) Lies within a State, the highway department of which has entered into an agreement with the Secretary of Transportation as provided in the act; and

(3) Is not excluded under the terms of the act which provide that agreements entered into between the Secretary of Transportation and the State highway department shall not apply to those segments of the Interstate System which traverse commercial or industrial zones within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or which traverse other areas where the land use as of September 21, 1959, was clearly established by State law as industrial or commercial.

(d) Entrance roadway means any public road or turning roadway, including acceleration lanes, by which traffic may enter the main-traveled way of an Interstate Highway from the general road system within a State, irrespective of whether traffic may also leave the main-traveled way by such road or turning roadway.

(e) Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(f) Exit roadway means any public road or turning roadway including deceleration lanes, by which traffic may leave the main-traveled way of an Interstate Highway to reach the general road system within a State, irrespective of whether traffic may also enter the main-traveled way by such road or turning roadway.

(g) Informational site means an area or site established and maintained within or adjacent to the right-of-way of a highway on the Interstate System by or under the supervision or control of a State highway department, wherein panels for the display of advertising and informational signs may be erected and maintained.

(h) Legible means capable of being read without visual aid by a person of normal visual acuity.

(i) Maintain means to allow to exist.

(j) Main-traveled way means the traveled way of an Interstate Highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(k) Protected areas means all areas inside the boundaries of a State which are adjacent to and within 660 feet of the edge of the right-of-way of all controlled portions of the Interstate System within that State. Where a controlled portion of the Interstate System terminates at a State boundary which is not perpendicular or normal to the centerline of the highway, protected areas also means all areas inside the boundary of such State which are within 660 feet of the edge of the right-of-way of the Interstate Highway in the adjoining State.

(l) Scenic area means any public park or area of particular scenic beauty or historical significance designated by or pursuant to State law as a scenic area.

(m) Sign means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is

designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of a controlled portion of the Interstate System.

(n) State means the District of Columbia and any State of the United States within the boundaries of which a portion of the Interstate System is located.

(o) State law means a State constitutional provision or statute, or an ordinance, rule, or regulation enacted or adopted by a State agency or political subdivision of a State pursuant to State constitution or statute.

(p) Trade name shall include brand name, trademark, distinctive symbol, or other similar device or thing used to identify particular products or services.

(q) Traveled way means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

(r) Turning roadway means a connecting roadway for traffic turning between two intersection legs of an interchange.

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(s) Visible means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

Sec. 750.103 Measurements of distance.

(a) Distance from the edge of a right-of-way shall be measured horizontally along a line normal or perpendicular to the centerline of the highway.

(b) All distances under Sec. 750.107 (a) (2) and (b) shall be measured along the centerline of the highway between two vertical planes which are normal or perpendicular to and intersect the centerline of the highway, and which pass through the termini of the measured distance.

[38 FR 16044, June 20, 1973, as amended at 41 FR 9321, Mar. 4, 1976]

Sec. 750.104 Signs that may not be permitted in protected areas.

Erection or maintenance of the following signs may not be permitted in protected areas:

(a) Signs advertising activities that are illegal under State or Federal laws or regulations in effect at the location of such signs or at the location of such activities.

(b) Obsolete signs.

(c) Signs that are not clean and in good repair.

(d) Signs that are not securely affixed to a substantial structure, and

(e) Signs that are not consistent with the standards in this part.

Sec. 750.105 Signs that may be permitted in protected areas.

(a) Erection or maintenance of the following signs may be permitted in protected areas:

Class 1--Official signs. Directional or other official signs or notices erected and maintained by public officers or agencies pursuant to and in accordance with direction or authorization contained in State or Federal law, for the purpose of carrying out an official duty or responsibility.

Class 2--On-premise signs. Signs not prohibited by State law which are consistent with the applicable provisions of this section and Sec. 750.108 and which advertise the sale or lease of, or activities being conducted upon, the real property where the signs are located.

Not more than one such sign advertising the sale or lease of the same property may be permitted under this class in such manner as to be visible to traffic proceeding in any one direction on any one Interstate Highway.

Not more than one such sign, visible to traffic proceeding in any one direction on any one Interstate Highway and advertising activities being conducted upon the real property where the sign is located, may be permitted under this class more than 50 feet from the advertised activity.

Class 3--Signs within 12 miles of advertised activities. Signs not prohibited by State law which are consistent with the applicable provisions of this section and Secs. 750.106, 750.107, and 750.108 and which advertise activities being conducted within 12 air miles of such signs.

Class 4--Signs in the specific interest of the traveling public. Signs authorized to be erected or maintained by State law which are consistent with the applicable provisions of this section and Secs. 750.106, 750.107, and 750.108 and which are designed to give information in the specific interest of the traveling public.

(b) A Class 2 or 3 sign, except a Class 2 sign not more than 50 feet from the advertised activity, that displays any trade name which refers to or identifies any service rendered or product sold, used, or otherwise handled more than 12 air miles from such sign may not be permitted unless the name of the advertised activity which is within 12 air miles of such sign is displayed as conspicuously as such trade name.

(c) Only information about public places operated by Federal, State, or local governments, natural phenomena, historic sites, areas of natural scenic beauty or naturally suited for outdoor recreation and places for camping, lodging, eating, and vehicle service and repair is deemed to be in the specific interest of the traveling public. For the purposes of the standards in this part, a trade name is deemed to be information in the specific interest of the traveling public only if it identifies or characterizes such a place or identifies vehicle service, equipment, parts, accessories, fuels, oils, or lubricants being offered for sale at such a place. Signs displaying any other trade name may not be permitted under Class 4.

(d) Notwithstanding the provisions of paragraph (b) of this section, Class 2 or Class 3 signs which also qualify as Class 4 signs may display trade names in accordance with the provisions of paragraph (c) of this section.

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Sec. 750.106 Class 3 and 4 signs within informational sites.

(a) Informational sites for the erection and maintenance of Class 3 and 4 advertising and informational signs may be established in accordance with Sec. 1.35 of this chapter. The location and frequency of such sites shall be as determined by agreements between the Secretary of Transportation and the State highway departments.

(b) Class 3 and 4 signs may be permitted within such informational sites in protected areas in a manner consistent with the following provisions:

- (1) No sign may be permitted which is not placed upon a panel.
- (2) No panel may be permitted to exceed 13 feet in height or 25 feet in length, including border and trim, but excluding supports.
- (3) No sign may be permitted to exceed 12 square feet in area, and nothing on such sign may be permitted to be legible from any place on the main-traveled way or a turning roadway.
- (4) Not more than one sign concerning a single activity or place may be permitted within any one informational site.
- (5) Signs concerning a single activity or place may be permitted

within more than one informational site, but no Class 3 sign which does not also qualify as a Class 4 sign may be permitted within any informational site more than 12 air miles from the advertised activity.

(6) No sign may be permitted which moves or has any animated or moving parts.

(7) Illumination of panels by other than white lights may not be permitted, and no sign placed on any panel may be permitted to contain, include, or be illuminated by any other lights, or any flashing, intermittent, or moving lights.

(8) No lighting may be permitted to be used in any way in connection with any panel unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way of the Interstate System, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

[23 FR 8793, Nov. 13, 1958, as amended at 35 FR 18719, Dec. 10, 1970; 41 FR 9321, Mar. 4, 1976]

Sec. 750.107 Class 3 and 4 signs outside informational sites.

(a) The erection or maintenance of the following signs may be permitted within protected areas, outside informational sites:

(1) Class 3 signs which are visible only to Interstate highway traffic not served by an informational site within 12 air miles of the advertised activity;

(2) Class 4 signs which are more than 12 miles from the nearest panel within an informational site serving Interstate highway traffic to which such signs are visible.

(3) Signs that qualify both as Class 3 and 4 signs may be permitted in accordance with either paragraph (a)(1) or (2) of this section.

(b) The erection or maintenance of signs permitted under paragraph (a) of this section may not be permitted in any manner inconsistent with the following:

(1) In protected areas in advance of an intersection of the main-traveled way of an Interstate highway and an exit roadway, such signs visible to Interstate highway traffic approaching such intersection may not be permitted to exceed the following number:

| Distance from intersection | Number of signs |
|----------------------------|-------------------------------|
| 0-2 miles..... | 0. |
| 2-5 miles..... | 6. |
| More than 5 miles..... | Average of one sign per mile. |

The specified distances shall be measured to the nearest point of the intersection of the traveled way of the exit roadway and the main-traveled way of the Interstate highway.

(2) Subject to the other provisions of this paragraph, not more than two such signs may be permitted within any mile distance measured from any point, and no such signs may be permitted to be less than 1,000 feet apart.

(3) Such signs may not be permitted in protected areas adjacent to any Interstate highway right-of-way upon any part of the width of which is constructed an entrance or exit roadway.

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(4) Such signs visible to Interstate highway traffic which is

approaching or has passed an entrance roadway may not be permitted in protected areas for 1,000 feet beyond the furthest point of the intersection between the traveled way of such entrance roadway and the main-traveled way of the Interstate highway.

(5) No such signs may be permitted in scenic areas.

(6) Not more than one such sign advertising activities being conducted as a single enterprise or giving information about a single place may be permitted to be erected or maintained in such manner as to be visible to traffic moving in any one direction on any one Interstate highway.

(c) No Class 3 or 4 signs other than those permitted by this section may be permitted to be erected or maintained within protected areas, outside informational sites.

Sec. 750.108 General provisions.

No Class 3 or 4 signs may be permitted to be erected or maintained pursuant to Sec. 750.107, and no Class 2 sign may be permitted to be erected or maintained, in any manner inconsistent with the following:

(a) No sign may be permitted which attempts or appears to attempt to direct the movement of traffic or which interferes with, imitates or resembles any official traffic sign, signal or device.

(b) No sign may be permitted which prevents the driver of a vehicle from having a clear and unobstructed view of official signs and approaching or merging traffic.

(c) No sign may be permitted which contains, includes, or is illuminated by any flashing, intermittent or moving light or lights.

(d) No lighting may be permitted to be used in any way in connection with any sign unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way of the Interstate System, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

(e) No sign may be permitted which moves or has any animated or moving parts.

(f) No sign may be permitted to be erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(g) No sign may be permitted to exceed 20 feet in length, width or height, or 150 square feet in area, including border and trim but excluding supports, except Class 2 signs not more than 50 feet from, and advertising activities being conducted upon, the real property where the sign is located.

Sec. 750.109 Exclusions.

The standards in this part shall not apply to markers, signs and plaques in appreciation of sites of historical significance for the erection of which provisions are made in an agreement between a State and the Secretary of Transportation, as provided in the Act, unless such agreement expressly makes all or any part of the standards applicable.

Sec. 750.110 State regulations.

A State may elect to prohibit signs permissible under the standards in this part without forfeiting its rights to any benefits provided for in the act.

Subpart B--National Standards for Directional and Official Signs

Authority: 23 U.S.C. 131, 315, 49 U.S.C. 1651; 49 CFR 1.48(b).

Sec. 750.151 Purpose.

(a) In section 131 of title 23 U.S.C., Congress has declared that:

(1) The erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote safety and recreational value of public travel, and to preserve natural beauty.

(2) Directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by

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law, shall conform to national standards authorized to be promulgated by the Secretary, which standards shall contain provisions concerning the lighting, size, number and spacing of signs, and such other requirements as may be appropriate to implement the section.

(b) The standards in this part are issued as provided in section 131 of title 23 U.S.C.

[38 FR 16044, June 30, 1973, as amended at 40 FR 21934, May 20, 1975]

Sec. 750.152 Application.

The following standards apply to directional and official signs and notices located within six hundred and sixty (660) feet of the right-of-way of the Interstate and Federal-aid primary systems and to those located beyond six hundred and sixty (660) feet of the right-of-way of such systems, outside of urban areas, visible from the main traveled way of such systems and erected with the purpose of their message being read from such main traveled way. These standards do not apply to directional and official signs erected on the highway right-of-way.

[40 FR 21934, May 20, 1975]

Sec. 750.153 Definitions.

For the purpose of this part:

(a) Sign means an outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main traveled way of the Interstate or Federal-aid primary highway.

(b) Main traveled way means the through traffic lanes of the highway, exclusive of frontage roads, auxiliary lanes, and ramps.

(c) Interstate System means the National System of Interstate and Defence Highways described in section 103(d) of title 23 U.S.C.

(d) Primary system means the Federal-aid highway system described in section 103(b) of title 23 U.S.C.

(e) Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(f) Maintain means to allow to exist.

(g) Scenic area means any area of particular scenic beauty or historical significance as determined by the Federal, State, or local officials having jurisdiction thereof, and includes interests in land which have been acquired for the restoration, preservation, and enhancement of scenic beauty.

(h) Parkland means any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.

(i) Federal or State law means a Federal or State constitutional provision or statute, or an ordinance, rule, or regulation enacted or adopted by a State or Federal agency or a political subdivision of a State pursuant to a Federal or State constitution or statute.

(j) Visible means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

(k) Freeway means a divided arterial highway for through traffic with full control of access.

(l) Rest area means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control for the convenience of the traveling public.

(m) Directional and official signs and notices includes only official signs and notices, public utility signs, service club and religious notices, public service signs, and directional signs.

(n) Official signs and notices means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in Federal, State, or local law for the purposes of carrying out an official duty or responsibility. Historical markers authorized by State law and erected by State or local government agencies or nonprofit historical societies may be considered official signs.

(o) Public utility signs means warning signs, informational signs, notices, or markers which are customarily erected

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and maintained by publicly or privately owned public utilities, as essential to their operations.

(p) Service club and religious notices means signs and notices, whose erection is authorized by law, relating to meetings of nonprofit service clubs or charitable associations, or religious services, which signs do not exceed 8 square feet in area.

(q) Public service signs means signs located on school bus stop shelters, which signs:

(1) Identify the donor, sponsor, or contributor of said shelters;

(2) Contain public service messages, which shall occupy not less than 50 percent of the area of the sign;

(3) Contain no other message;

(4) Are located on schoolbus shelters which are authorized or approved by city, county, or State law, regulation, or ordinance, and at places approved by the city, county, or State agency controlling the highway involved; and

(5) May not exceed 32 square feet in area. Not more than one sign on each shelter shall face in any one direction.

(r) Directional signs means signs containing directional information about public places owned or operated by Federal, State, or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public.

(s) State means any one of the 50 States, the District of Columbia, or Puerto Rico.

(t) Urban area means an urbanized area or, in the case of an urbanized area encompassing more than one State, that part of the urbanized areas in each such State, or an urban place as designated by the Bureau of the Census having a population of five thousand or more and not within any urbanized area, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of the Census.

[38 FR 16044, June 30, 1973, as amended at 40 FR 21934, May 20, 1975]

Sec. 750.154 Standards for directional signs.

The following apply only to directional signs:

(a) General. The following signs are prohibited:

(1) Signs advertising activities that are illegal under Federal or State laws or regulations in effect at the location of those signs or at the location of those activities.

(2) Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.

(3) Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(4) Obsolete signs.

(5) Signs which are structurally unsafe or in disrepair.

(6) Signs which move or have any animated or moving parts.

(7) Signs located in rest areas, parklands or scenic areas.

(b) Size. (1) No sign shall exceed the following limits:

(i) Maximum area--150 square feet.

(ii) Maximum height--20 feet.

(iii) Maximum length--20 feet.

(2) All dimensions include border and trim, but exclude supports.

(c) Lighting. Signs may be illuminated, subject to the following:

(1) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.

(2) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(3) No sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal.

(d) Spacing. (1) Each location of a directional sign must be approved by the State highway department.

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(2) No directional sign may be located within 2,000 feet of an interchange, or intersection at grade along the Interstate System or other freeways (measured along the Interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).

(3) No directional sign may be located within 2,000 feet of a rest area, parkland, or scenic area.

(4) (i) No two directional signs facing the same direction of travel shall be spaced less than 1 mile apart;

(ii) Not more than three directional signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity;

(iii) Signs located adjacent to the Interstate System shall be within 75 air miles of the activity; and

(iv) Signs located adjacent to the primary system shall be within 50 air miles of the activity.

(e) Message content. The message on directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit numbers. Descriptive words or phrases, and pictorial or photographic representations of the activity or its environs are prohibited.

(f) Selection method and criteria. (1) Privately owned activities or attractions eligible for directional signing are limited to the following: natural phenomena; scenic attractions; historic, educational, cultural, scientific, and religious sites; and outdoor recreational areas.

(2) To be eligible, privately owned attractions or activities must be nationally or regionally known, and of outstanding interest to the traveling public.

(3) Each State shall develop specific selection methods and criteria to be used in determining whether or not an activity qualifies for this type of signing. A statement as to selection methods and criteria shall be furnished to the Secretary of Transportation before the State permits the erection of any such signs under section 131(c) of title 23 U.S.C., and this part.

Sec. 750.155 State standards.

This part does not prohibit a State from establishing and maintaining standards which are more restrictive with respect to directional and official signs and notices along the Federal-aid highway systems than these national standards.

[38 FR 16044, June 20, 1973, as amended at 40 FR 21934, May 20, 1975]

Subpart C [Reserved]

Subpart D--Outdoor Advertising (Acquisition of Rights of Sign and Sign Site Owners)

Authority: 23 U.S.C. 131 and 315; 23 CFR 1.32 and 1.48(b).

Source: 39 FR 27436, July 29, 1974, unless otherwise noted.

Sec. 750.301 Purpose.

To prescribe the Federal Highway Administration (FHWA) policies relating to Federal participation in the costs of acquiring the property interests necessary for removal of nonconforming advertising signs, displays and devices on the Federal-aid Primary and Interstate Systems, including toll sections on such systems, regardless of whether Federal funds participated in the construction thereof. This regulation should not be construed to authorize any additional rights in eminent domain not already existing under State law or under 23 U.S.C. 131(g).

Sec. 750.302 Policy.

(a) Just compensation shall be paid for the rights and interests of the sign and site owner in those outdoor advertising signs, displays, or devices which are lawfully existing under State law, in conformance with the terms of 23 U.S.C. 131.

(b) (1) Federal reimbursement will be made on the basis of 75 percent of the acquisition, removal and incidental costs legally incurred or obligated by the State.

(2) Federal funds will participate in 100 percent of the costs of removal of those signs which were removed prior to January 4, 1975, by relocation, pursuant to the provisions of 23 CFR

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Sec. 750.305(a)(2), and which are required to be removed as a result of the amendments made to 23 U.S.C. 131 by the Federal-Aid Highway Amendments of 1974, Pub. L. 93-643, section 109, January 4, 1975. Such signs must have been relocated to a legal site, must have been legally

maintained since the relocation, and must not have been substantially changed, as defined by the State maintenance standards, issued pursuant to 23 CFR 750.707(b).

(c) Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651, et seq.) applies except where complete conformity would defeat the purposes set forth in 42 U.S.C. 4651, would impede the expeditious implementation of the sign removal program or would increase administrative costs out of proportion to the cost of the interests being acquired or extinguished.

(d) Projects for the removal of outdoor advertising signs including hardship acquisitions should be programed and authorized in accordance with normal program procedures for right-of-way projects.

[39 FR 27436, July 29, 1974; 39 FR 30349, Aug. 22, 1974, as amended at 41 FR 31198, July 27, 1976]

Sec. 750.303 Definitions.

(a) Sign. An outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard or other thing which is designed, intended of the advertising or informative contents of which is visible from any place on the main-traveled way of the Interstate or Primary Systems, whether the same be permanent or portable installation.

(b) Lease (license, permit, agreement, contract or easement). An agreement, oral or in writing, by which possession or use of land or interests therein is given by the owner or other person to another person for a specified purpose.

(c) Leasehold value. The leasehold value is the present worth of the difference between the contractual rent and the current market rent at the time of the appraisal.

(d) Illegal sign. One which was erected and/or maintained in violation of State law.

(e) Nonconforming sign. One which was lawfully erected, but which does not comply with the provisions of State law or State regulations passed at a later date or which later fails to comply with State law or State regulations due to changed conditions. Illegally erected or maintained signs are not nonconforming signs.

(f) 1966 inventory. The record of the survey of advertising signs and junkyards compiled by the State highway department.

(g) Abandoned sign. One in which no one has an interest, or as defined by State law.

Sec. 750.304 State policies and procedures.

The State's written policies and operating procedures for implementing its sign removal program under State law and complying with 23 U.S.C. 131 and its proposed time schedule for sign removal and procedure for reporting its accomplishments shall be submitted to the FHWA for approval within 90 days of the date of this regulation. This statement should be supported by the State's regulations implementing its program. Revisions to the State's policies and procedures shall be submitted to the FHWA for approval. The statement should contain provisions for the review of its policies and procedure to meet changing conditions, adoption of improved procedures, and for internal review to assure compliance. The statement shall include as a minimum the following:

(a) Project priorities. The following order of priorities is recommended.

(1) Illegal and abandoned signs.

(2) Hardship situations.

(3) Nominal value signs.

(4) Signs in areas which have been designated as scenic under authority of State law.

- (5) Product advertising on:
 - (i) Rural interstate highway.
 - (ii) Rural primary highway.
 - (iii) Urban areas.
- (6) Nontourist-oriented directional advertising.
- (7) Tourist-oriented directional advertising.
- (b) Programing. (1) A sign removal project may consist of any group of proposed sign removals. The signs may

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be those belonging to one company or those located along a single route, all of the signs in a single county or other locality, hardship situations, individually or grouped, such as those involving vandalized signs, or all of a sign owner's signs in a given State or area, or any similar grouping.

(2) A project for sign removal on other than a Federal-aid primary route basis e.g., a countywide project or a project involving only signs owned by one company, should be identified as CAF-000B(), continuing the numbering sequence which began with the sign inventory project in 1966.

(3) Where it would not interfere with the State's operations, the State should program sign removal projects to minimize disruption of business.

(c) Valuation and review methods--(1) Schedules--formulas. Schedules, formulas or other methods to simplify valuation of signs and sites are recommended for the purpose of minimizing administrative and legal expenses necessarily involved in determining just compensation by individual appraisals and litigation. They do not purport to be a basis for the determination of just compensation under eminent domain.

(2) Appraisals. Where appropriate, the State may use its approved appraisal report forms including those for abbreviated or short form appraisals. Where a sign or site owner does not accept the amount computed under an approved schedule, formula, or other simplified method, an appraisal shall be utilized.

(3) Leaseholds. When outdoor advertising signs and sign sites involve a leasehold value, the State's procedures should provide for determining value in the same manner as any other real estate leasehold that has value to the lessee.

(4) Severance damages. The State has the responsibility of justifying the recognition of severance damages pursuant to 23 CFR 710.304(h), and the law of the State before Federal participation will be allowed. Generally, Federal participation will not be allowed in the payment of severance damages to remaining signs, or other property of a sign company alleged to be due to the taking of certain of the company's signs. Unity of use of the separate properties, as required by applicable principles of eminent domain law, must be shown to exist before participation in severance damages will be allowed. Moreover, the value of the remaining signs or other real property must be diminished by virtue of the taking of such signs. Payments for severance damages to economic plants or loss of business profits are not compensable. Severance damage cases must be submitted to the FHWA for prior concurrence, together with complete legal and appraisal justification for payment of these damages. To assist the FHWA in its evaluation, the following data will accompany any submission regarding severance:

(i) One copy of each appraisal in which this was analyzed. One copy of the State's review appraiser analysis and determination of market value.

(ii) A plan or map showing the location of each sign.

(iii) An opinion by the State highway department's chief legal officer that severance is appropriate in accordance with State law together with a legal opinion that, in the instant case, the damages constitute severance as opposed to consequential damage as a matter of

law. The opinion shall include a determination, and the basis therefor, that the specific taking of some of an outdoor advertiser's signs constitutes a distinct economic unit, and that unity of use of the separate properties in conformity with applicable principles of eminent domain law had been satisfactorily established. A legal memorandum must be furnished citing and discussing cases and other authorities supporting the State's position.

(5) Review of value estimates. All estimates of value shall be reviewed by a person other than the one who made the estimate. Appraisal reports shall be reviewed and approved prior to initiation of negotiations. All other estimates shall be reviewed before the agreement becomes final.

(d) Nominal value plan. (1) This plan may provide for the removal costs of eligible nominal value signs and for payments up to \$250 for each nonconforming sign, and up to \$100 for each nonconforming sign site.

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(2) The State's procedures may provide for negotiations for sign sites and sign removals to be accomplished simultaneously without prior review.

(3) Releases or agreements executed by the sign and/or site owner should include the identification of the sign, statement of ownership, price to be paid, interest acquired, and removal rights.

(4) It is not expected that salvage value will be a consideration in most acquisitions; however, the State's procedures may provide that the sign may be turned over to the sign owner, site owner, contractor, or individual as all or a part of the consideration for its removal, without any project credits.

(5) Programing and authorizations will be in accord with Sec. 750.308 of this regulation. A detailed estimate of value of each individual sign is not necessary. The project may be programed and authorized as one project.

(e) Sign removal. The State's procedural statement should include provision for:

- (1) Owner retention.
- (2) Salvage value.
- (3) State removal.

[39 FR 27436, July 29, 1974; 42 FR 30835, June 17, 1977, as amended at 50 FR 34093, Aug. 23, 1985]

Sec. 750.305 Federal participation.

(a) Federal funds may participate in:

(1) Payments made to a sign owner for his right, title and interest in a sign, and where applicable, his leasehold value in a sign site, and to a site owner for his right and interest in a site, which is his right to erect and maintain the existing nonconforming sign on such site.

(2) The cost of relocating a sign to the extent of the cost to acquire the sign, less salvage value if any.

(3) A duplicate payment for the site owner's interest of \$2,500 or less because of a bona fide error in ownership, provided the State has followed its title search procedures as set forth in its policy and procedure submission.

(4) The cost of removal of signs, partially completed sign structures, supporting poles, abandoned signs and those which are illegal under State law within the controlled areas, provided such costs are incurred in accordance with State law. Removal may be by State personnel on a force account basis or by contract. Documentation for Federal participation in such removal projects should be in accord with the State's normal force account and contractual reimbursement

procedures. The State should maintain a record of the number of signs removed. These data should be retained in project records and reported on the periodic report required under Sec. 750.308 of this regulation.

(5) Signs materially damaged by vandals. Federal funds shall be limited to the Federal pro-rata share of the fair market value of the sign immediately before the vandalism occurred minus the estimated cost of repairing and reerecting the sign. If the State chooses, it may use its FHWA approved nominal value plan procedure to acquire these signs.

(6) The cost of acquiring and removing completed sign structures which have been blank or painted out beyond the period of time established by the State for normal maintenance and change of message, provided the sign owner can establish that his nonconforming use was not abandoned or discontinued, and provided such costs are incurred in accordance with State law, or regulation. The evidence considered by the State as acceptable for establishing or showing that the nonconforming use has not been abandoned or voluntarily discontinued shall be set forth in the State's policy and procedures.

(7) In the event a sign was omitted in the 1966 inventory, and the State supports a determination that the sign was in existence prior to October 22, 1965, the costs are eligible for Federal participation.

(b) Federal funds may not participate in:

(1) Cost of title certificates, title insurance, title opinion or similar evidence or proof of title in connection with the acquisition of a landowner's right to erect and maintain a sign or signs when the amount of payment to the landowner for his interest is \$2,500 or less, unless required by State law. However, Federal funds may participate in the costs of securing some lesser evidence or proof of title such as

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searches and investigations by State highway department personnel to the extent necessary to determine ownership, affidavit of ownership by the owner, bill of sale, etc. The State's procedure for determining evidence of title should be set forth in the State's policy and procedure submission.

(2) Payments to a sign owner where the sign was erected without permission of the property owner unless the sign owner can establish his legal right to erect and maintain the sign. However, such signs may be removed by State personnel on a force account basis or by contract with Federal participation except where the sign owner reimburses the State for removal.

(3) Acquisition costs paid for abandoned or illegal signs, potential sign sites, or signs which were built during a period of time which makes them ineligible for compensation under 23 U.S.C. 131, or for rights in sites on which signs have been abandoned or illegally erected by a sign owner.

(4) The acquisition cost of supporting poles or partially completed sign structures in nonconforming areas which do not have advertising or informative content thereon unless the owner can show to the State's satisfaction he has not abandoned the structure. When the State has determined the sign structure has not been abandoned, Federal funds will participate in the acquisition of the structure, provided the cost are incurred in accordance with State law.

Sec. 750.306 Documentation for Federal participation.

The following information concerning each sign must be available in the State's files to be eligible for Federal participation.

(a) Payment to sign owner. (1) A photograph of the sign in place. Exceptions may be made in cases where in one transaction the State has acquired a number of a company's nominal value signs similar in size, condition and shape. In such cases, only a sample of representative photographs need be provided to document the type and condition of the

signs.

(2) Evidence showing the sign was nonconforming as of the date of taking.

(3) Value documentation and proof of obligation of funds.

(4) Satisfactory indication of ownership of the sign and compensable interest therein (e.g., lease or other agreement with the property owner, or an affidavit, certification, or other such evidence of ownership).

(5) Evidence that the sign falls within one of the three categories shown in Sec. 750.302 of this regulation. The specific category should be identified.

(6) Evidence that the right, title, or interest pertaining to the sign has passed to the State, or that the sign has been removed.

(b) Payment to the site owner. (1) Evidence that an agreement has been reached between the State and owner.

(2) Value documentation and proof of obligation of funds.

(3) Satisfactory indication of ownership or compensable interest.

(c) In those cases where Federal funds participate in 100 percent of the cost of removal, the State file shall contain the records of the relocation made prior to January 4, 1975.

[39 FR 27436, July 29, 1974, as amended at 41 FR 31198, July 27, 1976]

Sec. 750.307 FHWA project approval.

Authorization to proceed with acquisitions on a sign removal project shall not be issued until such time as the State has submitted to FHWA the following:

(a) A general description of the project.

(b) The total number of signs to be acquired.

(c) The total estimated cost of the sign removal project, including a breakdown of incidental, acquisition and removal costs.

Sec. 750.308 Reports.

Periodic reports on site acquisitions and actual sign removals shall be submitted on FHWA Form 1424 and as prescribed. \1\

\1\ Forms are available at FHWA Division Offices located in each State.

[39 FR 27436, July 29, 1974, as amended at 41 FR 9321, Mar. 4, 1976]

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Subpart E--Signs Exempt From Removal in Defined Areas

Authority: 23 U.S.C. 131 and 315, 49 CFR 1.48, 23 CFR 1.32.

Source: 41 FR 45827, Oct. 18, 1976, unless otherwise noted.

Sec. 750.501 Purpose.

This subpart sets forth the procedures pursuant to which a State may, if it desires, seek an exemption from the acquisition requirements of 23 U.S.C. 131 for signs giving directional information about goods and services in the interest of the traveling public in defined areas which would suffer substantial economic hardship if such signs were removed. This exemption may be granted pursuant to the provisions of 23 U.S.C. 131(o).

Sec. 750.502 Applicability.

The provisions of this subpart apply to signs adjacent to the Interstate and primary systems which are required to be controlled under 23 U.S.C. 131.

Sec. 750.503 Exemptions.

(a) The Federal Highway Administration (FHWA) may approve a State's request to exempt certain nonconforming signs, displays, and devices (hereinafter called signs) within a defined area from being acquired under the provisions of 23 U.S.C. 131 upon a showing that removal would work a substantial economic hardship throughout that area. A defined area is an area with clearly established geographical boundaries defined by the State which the State can evaluate as an economic entity. Neither the States nor FHWA shall rely on individual claims of economic hardship. Exempted signs must:

(1) Have been lawfully erected prior to May 5, 1976, and must continue to be lawfully maintained.

(2) Continue to provide the directional information to goods and services offered at the same enterprise in the defined area in the interest of the traveling public that was provided on May 5, 1976. Repair and maintenance of these signs shall conform with the State's approved maintenance standards as required by subpart G of this part.

(b) To obtain the exemption permitted by 23 U.S.C. 131(c), the State shall establish:

(1) Its requirements for the directional content of signs to qualify the signs as directional signs to goods and services in the defined area.

(2) A method of economic analysis clearly showing that the removal of signs would work a substantial economic hardship throughout the defined area.

(c) In support of its request for exemption, the State shall submit to the FHWA:

(1) Its requirements and method (see Sec. 750.503(b)).

(2) The limits of the defined area(s) requested for exemption, a listing of signs to be exempted, their location, and the name of the enterprise advertised on May 5, 1976.

(3) The application of the requirements and method to the defined areas, demonstrating that the signs provide directional information to goods and services of interest to the traveling public in the defined area, and that removal would work a substantial economic hardship in the defined area(s).

(4) A statement that signs in the defined area(s) not meeting the exemption requirements will be removed in accordance with State law.

(5) A statement that the defined area will be reviewed and evaluated at least every three (3) years to determine if an exemption is still warranted.

(d) The FHWA, upon receipt of a State's request for exemption, shall prior to approval:

(1) Review the State's requirements and methods for compliance with the provisions of 23 U.S.C. 131 and this subpart.

(2) Review the State's request and the proposed exempted area for compliance with State requirements and methods.

(e) Nothing herein shall prohibit the State from acquiring signs in the defined area at the request of the sign owner.

(f) Nothing herein shall prohibit the State from imposing or maintaining stricter requirements.

Subpart F [Reserved]

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Subpart G--Outdoor Advertising Control

Authority: 23 U.S.C. 131 and 315; 49 CFR 1.48.

Source: 40 FR 42844, Sept. 16, 1975, unless otherwise noted.

Sec. 750.701 Purpose.

This subpart prescribes the Federal Highway Administration (FHWA) policies and requirements relating to the effective control of outdoor advertising under 23 U.S.C. 131. The purpose of these policies and requirements is to assure that there is effective State control of outdoor advertising in areas adjacent to Interstate and Federal-aid primary highways. Nothing in this subpart shall be construed to prevent a State from establishing more stringent outdoor advertising control requirements along Interstate and Primary Systems than provided herein.

Sec. 750.702 Applicability.

The provisions of this subpart are applicable to all areas adjacent to the Federal-aid Interstate and Primary Systems, including toll sections thereof, except that within urban areas, these provisions apply only within 660 feet of the nearest edge of the right-of-way. These provisions apply regardless of whether Federal funds participated in the costs of such highways. The provisions of this subpart do not apply to the Federal-aid Secondary or Urban Highway System.

Sec. 750.703 Definitions.

The terms as used in this subpart are defined as follows:

(a) Commercial and industrial zones are those districts established by the zoning authorities as being most appropriate for commerce, industry, or trade, regardless of how labeled. They are commonly categorized as commercial, industrial, business, manufacturing, highway service or highway business (when these latter are intended for highway-oriented business), retail, trade, warehouse, and similar classifications.

(b) Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(c) Federal-aid Primary Highway means any highway on the system designated pursuant to 23 U.S.C. 103(b).

(d) Interstate Highway means any highway on the system defined in and designated, pursuant to 23 U.S.C. 103(e).

(e) Illegal sign means one which was erected or maintained in violation of State law or local law or ordinance.

(f) Lease means an agreement, license, permit, or easement, oral or in writing, by which possession or use of land or interests therein is given for a specified purpose, and which is a valid contract under the laws of a State.

(g) Maintain means to allow to exist.

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

(i) Sign, display or device, hereinafter referred to as "sign," means an outdoor advertising sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of the Interstate or Primary Systems, whether the same be permanent or portable installation.

(j) State law means a State constitutional provision or statute, or

an ordinance, rule or regulation, enacted or adopted by a State.

(k) Unzoned area means an area where there is no zoning in effect. It does not include areas which have a rural zoning classification or land uses established by zoning variances or special exceptions.

(l) Unzoned commercial or industrial areas are unzoned areas actually used for commercial or industrial purposes as defined in the agreements made between the Secretary, U.S. Department of Transportation (Secretary), and each State pursuant to 23 U.S.C. 131(d).

(m) Urban area is as defined in 23 U.S.C. 101(a).

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(n) Visible means capable of being seen, whether or not readable, without visual aid by a person of normal visual acuity.

Sec. 750.704 Statutory requirements.

(a) 23 U.S.C. 131 provides that signs adjacent to the Interstate and Federal-aid Primary Systems which are visible from the main-traveled way and within 660 feet of the nearest edge of the right-of-way, and those additional signs beyond 660 feet outside of urban areas which are visible from the main-traveled way and erected with the purpose of their message being read from such main-traveled way, shall be limited to the following:

(1) Directional and official signs and notice which shall conform to national standards promulgated by the Secretary in subpart B, part 750, chapter I, 23 CFR, National Standards for Directional and Official Signs;

(2) Signs advertising the sale or lease of property upon which they are located;

(3) Signs advertising activities conducted on the property on which they are located;

(4) Signs within 660 feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and Federal-aid Primary Systems which are zoned industrial or commercial under the authority of State law;

(5) Signs within 660 feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and Federal-aid Primary Systems which are unzoned commercial or industrial areas, which areas are determined by agreement between the State and the Secretary; and

(6) Signs lawfully in existence on October 22, 1965, which are determined to be landmark signs.

(b) 23 U.S.C. 131(d) provides that signs in Sec. 750.704(a) (4) and (5) must comply with size, lighting, and spacing requirements, to be determined by agreement between the State and the Secretary.

(c) 23 U.S.C. 131 does not permit signs to be located within zoned or unzoned commercial or industrial areas beyond 660 feet of the right-of-way adjacent to the Interstate or Federal-aid Primary System, outside of urban areas.

(d) 23 U.S.C. 131 provides that signs not permitted under Sec. 750.704 of this regulation must be removed by the State.

Sec. 750.705 Effective control.

In order to provide effective control of outdoor advertising, the State must:

(a) Prohibit the erection of new signs other than those which fall under Sec. 750.704(a) (1) through (6);

(b) Assure that signs erected under Sec. 750.704(a) (4) and (5) comply, at a minimum, with size, lighting, and spacing criteria contained in the agreement between the Secretary and the State;

(c) Assure that signs erected under Sec. 750.704(a) (1) comply with the national standards contained in subpart B, part 750, chapter I, 23

CFR;

- (d) Remove illegal signs expeditiously;
- (e) Remove nonconforming signs with just compensation within the time period set by 23 U.S.C. 131 (subpart D, part 750, chapter I, 23 CFR, sets forth policies for the acquisition and compensation for such signs);
- (f) Assure that signs erected under Sec. 750.704(a)(6) comply with Sec. 750.710, Landmark Signs, if landmark signs are allowed;
- (g) Establish criteria for determining which signs have been erected with the purpose of their message being read from the main-traveled way of an Interstate or primary highway, except where State law makes such criteria unnecessary. Where a sign is erected with the purpose of its message being read from two or more highways, one or more of which is a controlled highway, the more stringent of applicable control requirements will apply;
- (h) Develop laws, regulations, and procedures to accomplish the requirements of this subpart;
- (i) Establish enforcement procedures sufficient to discover illegally erected or maintained signs shortly after such occurrence and cause their prompt removal; and
- (j) Submit regulations and enforcement procedures to FHWA for approval.

[40 FR 42844, Sept. 16, 1975; 40 FR 49777, Oct. 24, 1975]

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Sec. 750.706 Sign control in zoned and unzoned commercial and industrial areas.

The following requirements apply to signs located in zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way adjacent to the Interstate and Federal-aid primary highways.

(a) The State by law or regulation shall, in conformity with its agreement with the Secretary, set criteria for size, lighting, and spacing of outdoor advertising signs located in commercial or industrial zoned or unzoned areas, as defined in the agreement, adjacent to Interstate and Federal-aid primary highways. If the agreement between the Secretary and the State includes a grandfather clause, the criteria for size, lighting, and spacing will govern only those signs erected subsequent to the date specified in the agreement. The States may adopt more restrictive criteria than are presently contained in agreements with the Secretary.

(b) Agreement criteria which permit multiple sign structures to be considered as one sign for spacing purposes must limit multiple sign structures to signs which are physically contiguous, or connected by the same structure or cross-bracing, or located not more than 15 feet apart at their nearest point in the case of back-to-back or ``V'' type signs.

(c) Where the agreement and State law permits control by local zoning authorities, these controls may govern in lieu of the size, lighting, and spacing controls set forth in the agreement, subject to the following:

- (1) The local zoning authority's controls must include the regulation of size, of lighting and of spacing of outdoor advertising signs, in all commercial and industrial zones.
- (2) The regulations established by local zoning authority may be either more restrictive or less restrictive than the criteria contained in the agreement, unless State law or regulations require equivalent or more restrictive local controls.
- (3) If the zoning authority has been delegated, extraterritorial, jurisdiction under State law, and exercises control of outdoor advertising in commercial and industrial zones within this

extraterritorial jurisdiction, control by the zoning authority may be accepted in lieu of agreement controls in such areas.

(4) The State shall notify the FHWA in writing of those zoning jurisdictions wherein local control applies. It will not be necessary to furnish a copy of the zoning ordinance. The State shall periodically assure itself that the size, lighting, and spacing control provisions of zoning ordinances accepted under this section are actually being enforced by the local authorities.

(5) Nothing contained herein shall relieve the State of the responsibility of limiting signs within controlled areas to commercial and industrial zones.

Sec. 750.707 Nonconforming signs.

(a) General. The provisions of Sec. 750.707 apply to nonconforming signs which must be removed under State laws and regulations implementing 23 U.S.C. 131. These provisions also apply to nonconforming signs located in commercial and industrial areas within 660 feet of the nearest edge of the right-of-way which come under the so-called grandfather clause contained in State-Federal agreements. These provisions do not apply to conforming signs regardless of when or where they are erected.

(b) Nonconforming signs. A nonconforming sign is a sign which was lawfully erected but does not comply with the provisions of State law or State regulations passed at a later date or later fails to comply with State law or State regulations due to changed conditions. Changed conditions include, for example, signs lawfully in existence in commercial areas which at a later date become noncommercial, or signs lawfully erected on a secondary highway later classified as a primary highway.

(c) Grandfather clause. At the option of the State, the agreement may contain a grandfather clause under which criteria relative to size, lighting, and spacing of signs in zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way apply only to new signs to be erected after the date specified in the agreement. Any sign lawfully in existence in a commercial or industrial area

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on such date may remain even though it may not comply with the size, lighting, or spacing criteria. This clause only allows an individual sign at its particular location for the duration of its normal life subject to customary maintenance. Preexisting signs covered by a grandfather clause, which do not comply with the agreement criteria have the status of nonconforming signs.

(d) Maintenance and continuance. In order to maintain and continue a nonconforming sign, the following conditions apply:

(1) The sign must have been actually in existence at the time the applicable State law or regulations became effective as distinguished from a contemplated use such as a lease or agreement with the property owner. There are two exceptions to actual existence as follows:

(i) Where a permit or similar specific State governmental action was granted for the construction of a sign prior to the effective date of the State law or regulations and the sign owner acted in good faith and expended sums in reliance thereon. This exception shall not apply in instances where large numbers of permits were applied for and issued to a single sign owner, obviously in anticipation of the passage of a State control law.

(ii) Where the State outdoor advertising control law or the Federal-State agreement provides that signs in commercial and industrial areas may be erected within six (6) months after the effective date of the law or agreement provided a lease dated prior to such effective date was

filed with the State and recorded within thirty (30) days following such effective date.

(2) There must be existing property rights in the sign affected by the State law or regulations. For example, paper signs nailed to trees, abandoned signs and the like are not protected.

(3) The sign may be sold, leased, or otherwise transferred without affecting its status, but its location may not be changed. A nonconforming sign removed as a result of a right-of-way taking or for any other reason may be relocated to a conforming area but cannot be reestablished at a new location as a nonconforming use.

(4) The sign must have been lawful on the effective date of the State law or regulations, and must continue to be lawfully maintained.

(5) The sign must remain substantially the same as it was on the effective date of the State law or regulations. Reasonable repair and maintenance of the sign, including a change of advertising message, is not a change which would terminate nonconforming rights. Each State shall develop its own criteria to determine when customary maintenance ceases and a substantial change has occurred which would terminate nonconforming rights.

(6) The sign may continue as long as it is not destroyed, abandoned, or discontinued. If permitted by State law and reerected in kind, exception may be made for signs destroyed due to vandalism and other criminal or tortious acts.

(i) Each state shall develop criteria to define destruction, abandonment and discontinuance. These criteria may provide that a sign which for a designated period of time has obsolete advertising matter or is without advertising matter or is in need of substantial repair may constitute abandonment or discontinuance. Similarly, a sign damaged in excess of a certain percentage of its replacement cost may be considered destroyed.

(ii) Where an existing nonconforming sign ceases to display advertising matter, a reasonable period of time to replace advertising content must be established by each State. Where new content is not put on a structure within the established period, the use of the structure as a nonconforming outdoor advertising sign is terminated and shall constitute an abandonment or discontinuance. Where a State establishes a period of more than one (1) year as a reasonable period for change of message, it shall justify that period as a customary enforcement practice within the State. This established period may be waived for an involuntary discontinuance such as the closing of a highway for repair in front of the sign.

(e) Just compensation. The States are required to pay just compensation for the removal of nonconforming lawfully existing signs in accordance with the

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terms of 23 U.S.C. 131 and the provisions of subpart D, part 750, chapter I, 23 CFR. The conditions which establish a right to maintain a nonconforming sign and therefore the right to compensation must pertain at the time it is acquired or removed.

Sec. 750.708 Acceptance of state zoning.

(a) 23 U.S.C. 131(d) provide that signs ``may be erected and maintained within 660 feet of the nearest edge of the right-of-way within areas . . . which are zoned industrial or commercial under authority of State law.'' Section 131(d) further provides, ``The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act.''

(b) State and local zoning actions must be taken pursuant to the State's zoning enabling statute or constitutional authority and in

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accordance therewith. Action which is not a part of comprehensive zoning and is created primarily to permit outdoor advertising structures, is not recognized as zoning for outdoor advertising control purposes.

(c) Where a unit of government has not zoned in accordance with statutory authority or is not authorized to zone, the definition of an unzoned commercial or industrial area in the State-Federal agreement will apply within that political subdivision or area.

(d) A zone in which limited commercial or industrial activities are permitted as an incident to other primary land uses is not considered to be a commercial or industrial zone for outdoor advertising control purposes.

Sec. 750.709 On-property or on-premise advertising.

(a) A sign which consists solely of the name of the establishment or which identifies the establishment's principal or accessory products or services offered on the property is an on-property sign.

(b) When a sign consists principally of brand name or trade name advertising and the product or service advertised is only incidental to the principal activity, or if it brings rental income to the property owner, it shall be considered the business of outdoor advertising and not an on-property sign.

(c) A sale or lease sign which also advertises any product or service not conducted upon and unrelated to the business or selling or leasing the land on which the sign is located is not an on-property sign.

(d) Signs are exempt from control under 23 U.S.C. 131 if they solely advertise the sale or lease of property on which they are located or advertise activities conducted on the property on which they are located. These signs are subject to regulation (subpart A, part 750, chapter I, 23 CFR) in those States which have executed a bonus agreement, 23 U.S.C. 131(j). State laws or regulations shall contain criteria for determining exemptions. These criteria may include:

(1) A property test for determining whether a sign is located on the same property as the activity or property advertised; and

(2) A purpose test for determining whether a sign has as its sole purpose the identification of the activity located on the property or its products or services, or the sale or lease of the property on which the sign is located.

(3) The criteria must be sufficiently specific to curb attempts to improperly qualify outdoor advertising as "on-property" signs, such as signs on narrow strips of land contiguous to the advertised activity when the purpose is clearly to circumvent 23 U.S.C. 131.

Sec. 750.710 Landmark signs.

(a) 23 U.S.C. 131(c) permits the existence of signs lawfully in existence on October 22, 1965, determined by the State, subject to the approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance, the preservation of which is consistent with the purpose of 23 U.S.C. 131.

(b) States electing to permit landmark signs under 23 U.S.C. 131(c) shall submit a one-time list to the Federal Highway Administration for approval. The list should identify each sign as being in the original 1966 inventory. In the event a sign was omitted in the 1966 inventory, the State may submit

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other evidence to support a determination that the sign was in existence on October 22, 1965.

(c) Reasonable maintenance, repair, and restoration of a landmark

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sign is permitted. Substantial change in size, lighting, or message content will terminate its exempt status.

Sec. 750.711 Structures which have never displayed advertising material.

Structures, including poles, which have never displayed advertising or informative content are subject to control or removal when advertising content visible from the main-traveled way is added or affixed. When this is done, an "outdoor advertising sign" has then been erected which must comply with the State law in effect on that date.

Sec. 750.712 Reclassification of signs.

Any sign lawfully erected after the effective date of a State outdoor advertising control law which is reclassified from legal-conforming to nonconforming and subject to removal under revised State statutes or regulations and policy pursuant to this regulation is eligible for Federal participation in just compensation payments and other eligible costs.

Sec. 750.713 Bonus provisions.

23 U.S.C. 131(j) specifically provides that any State which had entered into a bonus agreement before June 30, 1965, will be entitled to remain eligible to receive bonus payments provided it continues to carry out its bonus agreement. Bonus States are not exempt from the other provisions of 23 U.S.C. 131. If a State elects to comply with both programs, it must extend controls to the Primary System, and continue to carry out its bonus agreement along the Interstate System except where 23 U.S.C. 131, as amended, imposes more stringent requirements.