

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #7

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Filing Date

FILED

JUL 12 9 08 AM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
Effective Date

NOTICE OF AN EMERGENCY RULE

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

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

EMERGENCY 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 RULE BEING FILED AS AN EMERGENCY: _____

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

This filing is necessary to comply with time limitations established by changes to state code. House Bill #4049 was passed March 11, 2000 and House Bill #4063 was passed March 9, 2000. The Governor signed H.B. 4049 and H.B. 4063 on March 20, 2000. The effective dates of these bills were ninety days from passage or June 9, 2000 and June 7, 2000, respectively.

Additionally, public safety is a consideration with the code changes of House Bill 4063, which pertains to the placement of Roadside Memorial Markers. The bill states that, "Legislative rules proposed pursuant to section one of this article shall provide for the placement of markers in a manner that increases public awareness of highway safety and promotes the safe use of the highways and their rights-of-way."

Use additional sheets if necessary


Signature

\$12.10

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

DATE: July 11, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Division of Highways
1900 Kanawha Boulevard East, Building Five, Room 715
Charleston, WV 25305-0430 Alan Cuervo 304/558-3475

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

1. Date of Filing July 12, 2000
2. Statutory Authority for promulgating emergency rule:

3. Date of filing of proposed legislative rule: July 12, 2000
4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?
Existing Series 6 is being amended.

5. Has the same or similar emergency rule previously been filed and expired?
No

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

EMERGENCY
LEGISLATIVE RULES
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

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TITLE 157
EMERGENCY
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 ~~SSubsection~~ 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 stabilized. ~~(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 stabilized.

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 W. Va. 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:

3.9.1a. 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.j. 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.~~ 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.~~ 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.~~ 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.~~ 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.~~ 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 7.117 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 7-9 2.27, except as provided in Subsection 7.116 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.e9.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.a10.c.1.~~ Directional or other official signs and notices required or authorized by law.

~~7.11.2.b10.c.2.~~ Signs, displays and devices advertising the sale or lease of property on which they are located.

~~7.11.2.c10.c.3.~~ Signs advertising activities conducted upon the property which they are located, and markers of underground utility facilities.

~~7.11.2.d10.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.110.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.210.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.310.c.4.C.~~ No "On Premise Sign" may be located if it is separated from the activity by an intervening parcel of land or building.

~~7.11.2.d.410.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.

7.17.16.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.