

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

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

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

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

AMENDMENT TO AN EXISTING RULE: YES  NO

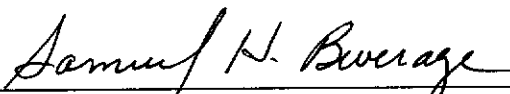
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 6

TITLE OF RULE BEING AMENDED: Use of State Road Rights of Way and  
Adjacent Areas

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_  
\_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

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

LEGISLATIVE RULES  
DEPARTMENT OF TRANSPORTATION  
DIVISION OF HIGHWAYS

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TITLE 157  
LEGISLATIVE RULES  
DEPARTMENT OF TRANSPORTATION  
DIVISION OF HIGHWAYS

Oct 30 7 46 PM '00  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

§157-6-1. General.

1.1. Scope. ~~These~~ This legislative ~~regulations~~ rule establishes 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 ~~W. est~~ 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~~ 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.±9. "Expressway" means Aany 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.±11. "Feeder" means Aany 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~~ Subsection 7.10 of this rule. Only roads, streets, and highways ~~which that~~ enter directly into the main traveled way of the highway system being considered will be regarded as intervening roadways.

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

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

2.17.7.2.17 "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.

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

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

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

2.321. "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.)~~

2.22. "Roadside Memorial Marker" means any of the various kinds of tributes, typically ornamental, placed alongside the roadway to memorialize people who have died as a result of vehicular accidents. For the purposes of this rule, Temporary Memorial Markers include, but are not limited to the various types of decorations, flags, flowers (cut and artificial) and other lightweight objects or ornamentation commonly used at funerals or at gravesides as a tribute to the dead. Permanent Memorial Markers are items such as plaques, stone monuments and etc., which are typically self-supported, intended to last many years and require a more significant installation/mounting process.

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 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 these 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 that~~ 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 must, at a minimum, have the following:

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

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~~ this rules ~~and regulations~~ concerning an on premises sign;

2.28.c.4.(d) a posting of the business operating hours;

2.28.c.5.(e) a capacity to provide ample parking for all customers;

2.28.c.6.(f) a separately metered electrical service provided by the local power company which shall that cannot be an extension from any other building;

2.28.c.7.(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~~ qualify as 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 For the purposes of Section 8 of this rule, a salvage yard shall be determined to be is 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~~ are 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 Residential 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 Division's "Manual on Rules and Regulations for Constructing Driveways on State Highway Right of Way" ~~prepared by the Traffic Engineering Section 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.~~ This manual may be obtained by contacting the Division's central headquarters in Charleston or any of the Division's district headquarters. 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~~ must be constructed in accordance with plans approved by the ~~Division of Highways~~ Commissioner, and when so constructed, ~~such~~ these shelters may be constructed within the right of way limits ~~at such locations as the Division of Highways Commissioner may direct as directed by the Commissioner.~~ 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 must be no 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~~ the required clearances must be provided.

3.4.2b. State Local Service Roads. The minimum vertical clearances over state local service roads ~~shall~~ must be 18 feet for the entire width of the roadway, including shoulders, and the minimum horizontal clearance ~~shall~~ must be 8 feet on either side of the pavement edges. ~~and in no instance shall~~ The total horizontal clearance must be no 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~~ the required clearances must be provided.

3.4.c. ~~Provided, however, that~~ ~~i~~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~~ the construction of overhead structures 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~~ underpass 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 underpass structures shall be provided with~~ will include sidewalks to properly accommodate pedestrian traffic along the highway.

3.5.3c. Construction Plans Submitted with Application. All applications for permits covering ~~such~~ underpass 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~~ ~~i~~In the event damage to the highway does occur, the individual or company doing the mining

~~shall must~~ either restore the highway at his, her 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 to~~ restoring the highway.

3.6.2b. Maps. All applications for permits covering subsurface mining ~~shall must~~ 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 Division's 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. This manual may be obtained by contacting the Division's central headquarters in Charleston or any of the Division's district headquarters.

3.8.a. Eligibility for reimbursement of public utilities by the Division, for relocation costs due to the Division's projects shall be in accordance with W. Va. Code §17-4-1, et. seq. and the following provisions.

3.8.b. Reimbursable relocation costs 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. The Commissioner shall, in accordance with W. Va. Code §17-4-17d-1, reimburse all publicly owned public utilities for the cost of relocation due to a highway project.

3.8.c.1 Applicability. This rule applies to all eligible projects on which the publicly owned public utility incurs reimbursable costs after June 9, 2000.

3.8.d. Reimbursement of Privately Owned Public Utilities. The Commissioner shall utilize the following criteria when establishing eligibility for reimbursement.

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

3.8.d.1.A. Construction or Improvement projects, for the purpose of determining reimbursement eligibility, are generally all projects programmed with a separate Division "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, and other projects as deemed eligible by the Commissioner. Projects performed under blanket Division authorizations (a single authorization representing multiple projects) that 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, are not eligible for reimbursement if the costs are the result of maintenance activities by the Division.

3.8.d.2.A. Maintenance activities, for the purpose of determining reimbursement eligibility, are activities performed by the Division 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.

3.8.d.3. Applicability. This rule applies to all eligible projects on which the privately owned public utility incurs reimbursable costs after xxxxxxxx, x 2001 (the effective date of this rule).

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 railway company will not alter 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 will maintain the 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~~ At a minimum, the railway company shall install and maintain crossbuck signs in accordance with the Federal Highway Administration's, "Manual on Uniform Traffic Control Devices for Streets and Highways." ~~(WV Code, Chapter 17, Article 3, Section 1.)~~ This manual may be obtained by contacting the Division's central headquarters in Charleston or any of the Division's district headquarters.

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 to install and maintain active traffic control devices conforming to the Federal Highway Administration's, "Manual on Uniform Traffic Control Devices for Streets and Highways." ~~(WV Code, Chapter 17, Article 3, Section 1),~~ and existing standards.

3.9.k. Abandoned Tracks and Appurtenances. When any railway track crossing a state highway is abandoned, the railway company ~~shall~~ must 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.a. Form of Application. Applications for permission to perform work within highway right of way ~~shall~~ must be made on the Division's standard permit form. The application ~~nt shall give~~ must provide full information concerning the work to be done and ~~be accompanied by~~ must include a sketch.

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

4.1.3.c. Security. The applicant ~~shall~~ must 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 due to 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~~ must state the date the proposed installation is to be completed.

~~4.1.5.e.~~ Approval of Application. Applicants for permits ~~shall~~ must file the original and three (3) copies of ~~such the 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~~ must be done under the supervision and to the satisfaction of the Division. The applicant must agree to reimburse the Division for any inspection costs incurred under the permit.

~~4.1.7.g.~~ Notification. The applicant ~~shall~~ must 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~~ must be protected at all times in accordance with the current Division's manual, "Traffic Control for Streets and Highway Construction and Maintenance Operations," (August 18, 1980.) November 1994. This manual may be obtained by contacting the Division's central headquarters in Charleston or any of the Division's district headquarters.

4.1-9.i. Damage. The applicant will repair at his or her expense damage to the road, at any time, resulting at any time from work authorized under the permit shall be repaired by the applicant. Unsatisfactory repairs may be corrected by the Division or its authorized agent and the cost thereof paid by the applicant.

4.1-10.j. Save Harmless. The person, firm or corporation to whom a permit is issued ~~shall~~ must agree to save harmless the State, the Commissioner ~~of Highways~~, and any and all officers, agents and employees of the Division ~~of Highways~~ from any damages to persons or property arising or resulting from work authorized or done under the permit.

4.1-11.k. Liability. The Division assumes no liability for damage to the proposed installation by reason of construction or maintenance work on the road.

4.1-12.l. Removal. All permits granted shall be subject to the removal of the installation by the permittee at no cost to the Division ~~of Highways~~ when required for improvement of the road, and subject to all regulations rules now or hereinafter adopted by the ~~Highways~~ Commissioner.

4.1-13.m. Cancellation. The ~~Highways~~ Commissioner reserves the right at any time to cancel any permit in the event the applicant or the person by whom the work is being done thereunder fails to comply with the terms and conditions under which it is granted.

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

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

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

5.1.2b. Additional Notice. In the event of failure or undue delay on the part of the owner or the person responsible to remove immediately the obstruction, the County Maintenance Superintendent shall notify the District ~~Engineer Administrator~~ of the circumstances relating thereto. Thereupon the District ~~Engineer Administrator~~ 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 Division's manual, "Rules and Regulations for Constructing Driveways on State Highway Rights-of-Way", 1970 Edition, as prepared by the Traffic Engineering Section of the West Virginia Division of Highways. This manual may be obtained by contacting the Division's central headquarters in Charleston or any of the Division's district headquarters.

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

7.1. Purpose. ~~These~~ This rule's are for the purpose of is to ~~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~~ limitations 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~~ ~~This~~ ~~rules~~ ~~and~~ ~~regulations~~ ~~are~~ ~~is~~ correlated and ~~shall have application~~ ~~applies~~ along 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 may 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~~ must be made on forms furnished by the Commissioner of ~~Highways~~ and ~~shall~~ must be accompanied by the annual fee.

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

~~7.43.~~ Revocation of License. Whenever ~~the~~ Commissioner of ~~Highways~~ ~~shall~~ ~~have~~ finds that any material information given on the application for license is knowingly false or misleading or that the licensee has violated any of the provisions of W. Va. Code §17-22-1, et. seq. or these rules, he or she has the 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~~ Upon revoking a license, the Commissioner will repay 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 W. Va. Code §17-22,1, et. seq. and/or regulations these 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~~ the 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 W. Va. Code, ~~Article 22, Chapter 17~~ §17-22-13.

~~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~~ may be charged as is deemed necessary by the Commissioner.

~~7.5-14.a.~~ License Required. ~~No~~ ~~p~~Permits ~~shall~~ will not 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 must~~ 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 must sign the application. 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 Non-residents of this State, or to any person having his or her principal place of business outside the State, or which is incorporated outside the State, until such person shall have~~ must first 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 before being eligible for an outdoor advertising license. Granting a license to a non-resident is also conditioned that such upon the licensee shall fulfilling all the requirements of law and observeing and obeying all regulations relating to the business of outdoor advertising in the State of West Virginia.

7.4.c.1. All ~~sums~~ money 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 The~~ fee shall be retained if the permit is issued. ~~In addition thereto, tThe Commissioner of Highways may also charge an inspection fee which will be retained as a cost of inspection whether the permit be is~~ issued or not.

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

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

~~7.5-74.g.~~ Expiration. Permits shall expire on the thirtieth day of June of each year and shall will not be prorated.

~~7.4.h.~~ Renewal. Permits and may be renewed upon the payment of the \$1.00 fee required ~~to be paid~~ upon application originally application. No application shall ~~be~~ is required for a the renewal of a permit.

~~7.4.i.~~ Construction of the permitted 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. Whenever ~~the~~ Commissioner of Highways ~~shall have~~ finds that any material information given on the application for permit is knowingly false or misleading or that the permittee has violated any of the provisions of W. Va. Code §17-22-1, et. seq. or these rules, he or she has 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 revoking a permit, the Commissioner will ~~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, §17-22-1, et. seq. and these rules.~~

~~7.6-15.a.~~ Findings of Fact. Such A Commissioner's order revoking a permit 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. The Commissioner may revoke a permit and return the permit fee ~~if it is found that the construction, erection, operation, use or maintenance of any advertising sign, display or device, for which a permit is was issued is prevented by any zoning board, municipal building ordinance, commission or public agency, which has with jurisdiction over such matters. the fee for such permit shall be returned by the Commissioner of Highways and the permit revoked. However, the Commissioner will only return~~ But one half the fee shall have accrued if the

advertising sign ~~is~~ was erected or the inspection by the Commissioner or his representatives ~~had been~~ was performed. Also, Any other inspection fees charged will also have accrued not be refunded.

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~~ §17-22-1, et. seq.

7.76. Territorial Application. The territory under the jurisdiction of the Commissioner for the purposes of ~~these~~ this ~~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~~ §17-22-1, et. seq., and/or these this regulations rules.

7.87. Prohibition of Certain Outdoor Advertising. No outdoor advertising sign, display or device ~~shall~~ may 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 7.108 and 7.116 of this regulation rule.

7.7.a. No outdoor advertising sign, display, or device ~~shall~~ may 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 this rules.

7.9. 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 Sections 7.8 or 7.10 of this regulation, 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 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 Section 7.10 of this regulation until the end of the fifth year, at which time the sign becomes non-conforming.~~

~~7.108.~~ 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 .9-2.27,~~ except as provided in Subsection 7.1715 of this regulation rule.

~~7.8.a.~~ Should the licensees must submit a written request for a variance with the permit application if he or she desire wants 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 The written request for a variance must specifying the reasons, with the permit application. ~~The decision to allow a variance will be made by the Commissioner will based his or her decision to accept the variance on the conditions in the area and the documentation of the licensee. Once the side of the highway it is determined which side of the highway the unzoned commercial, industrial area or the single activity establishing the zone is located, it will not be changed where the area was established by a single activity.~~

~~7.10.18.b.~~ Size.

~~7.10.1.a8.b.1.~~ The maximum allowed area of any sign ~~shall be~~ is 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.b8.b.2.~~ A sign may contain one or two advertisements per facing, not to exceed within the maximum allowed area.

~~7.10.1.c8.b.3.~~ Back-to-back or V-type signs will be are permitted permissible and shall will be treated as one structure with an area of 1200 square feet permitted for each facing.

7.10.28.c. Spacing.

7.10.2.a.8.c.1 Federal-Aid Interstate Highways and Controlled-Access Facilities Within Zoned and Unzoned Commercial or Industrial Areas.

7.10.2.a.18.c.1.A. No two signs shall ~~must~~ be spaced ~~less than~~ at least 500 feet apart on the same side of the highway.

7.10.2.a.28.c.1.B. No sign shall may be located within 500 feet of an interchange. This requirement ~~shall~~ does not apply within the boundaries of any municipality.

7.10.2.b.8.c.2. Other Federal-Aid Primaries.

7.10.2.b.18.c.2.A. Outside a ~~Municipality, No two signs shall~~ must be spaced ~~less than~~ at least 300 feet apart on the same side of the highway.

7.10.2.b.28.c.2.B. Inside ~~Municipalities, No two signs shall~~ must be spaced ~~less than~~ at least 100 feet apart on the same side of the highway.

7.10.2.c.8.c.3. The foregoing spacing requirements shall ~~do 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~~ In order to receive a permit for these situations, licensees is of the opinion must submit written documentation along with the permit application explaining 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. The Commissioner will review the permit application and the written documentation Each individual submission of such documentation will be considered and may grant a variance based upon the sight distances in the area and the documentation submitted by the licensee.

7.10.2.d.8.c.4. Notwithstanding any other provision of this section, ~~signs which~~ that 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.

~~7.10.38.d.~~ Lighting. Signs may be illuminated, subject to the following restrictions:

~~7.10.3.a8.d.1.~~ No outdoor advertising may contain lighting ~~which that~~ is not shielded and any lighting ~~shall~~ must be of such low intensity as not to cause glare or impair the vision of an operator of any motor vehicle.

~~7.10.3.b8.d.2.~~ No sign ~~shall~~ may be illuminated by any rapid flashing intermittent light or lights, ~~which that~~ 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.c8.d.3.~~ No sign ~~shall~~ may be illuminated so as to obstruct the view of any connecting road or intersection or to obscure an official traffic device or signal.

7.119 Exceptions.

7.11.19.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 7.98 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.

7.9.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 W. Va. Code, ~~Chapter 17, Article 22 §17-22-1, et. seq. and these regulations~~ this rules.

7.11.29.c. The following signs, as defined in this Subdivision, are excepted from the license and permit requirements of from these regulations this rules:

~~7.11.2.a9.c.1.~~ Directional or other official signs and notices required or authorized by law.

~~7.11.2.b9.c.2.~~ Signs, displays and devices advertising the sale or lease of property on which they are located.

~~7.11.2.c9.c.3.~~ Signs advertising activities conducted upon the property which they are located, and markers of underground utility facilities.

~~7.11.2.d.9.c.4.~~ To fall within the purview of ~~subsections (b) and (c) paragraphs 7.9.c.2 and 7.9.c.3.,~~ the sign, display or device ~~shall have to~~ must meet the following requirements:

~~7.11.2.d.19.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.29.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~~ The sign or signs may not exceed 150 square feet including border and trim but excluding structural supports. Center of activity is determined by the location of the cash register or the main business activity.

~~7.11.2.d.39.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.49.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~~ is less than 250 feet.

~~7.12.10.~~ 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 §17-22-1, et.seq.~~ or of ~~these regulations this rules,~~ by purchase at private sale, or in the event he or she 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 that~~ is:

~~7.12.10.a.~~ lawfully in existence ~~on or after January 1, 1968;~~

~~7.12.210.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;

~~7.11.c.~~ Lawfully erected after January 1, 1968.

~~7.13~~11. Permit Identification Number. Every permit issued in accordance with ~~these regulations~~ this rules shall ~~will~~ be assigned a separate identification number. It ~~shall be~~ is the duty of each permittee to fasten ~~said the~~ permit identification number tag to the sign for which it was furnished. ~~Said~~ The 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 the~~ permit number tag affixed thereto shall be prima facie evidence that ~~the same it~~ is in violation of the provisions of W. Va. Code, ~~Chapter 17, Article 22~~ §17-22-1, et. seq. and ~~these regulations~~ this rules.

~~7.14~~12. 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.

~~7.15~~13. Measurements.

~~7.15-1~~13.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 the~~ commercial or industrial activity.

~~7.15-2~~13.b. The distance requirement set forth in Section Subdivision 7.9.b 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~~13.c. Official and on premise signs as set out in Subsection 7.10 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~~14. General Restrictions.

~~7.16-1~~14.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~~14.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.

~~7.16.314.c.~~ No outdoor advertising sign, display or device shall be a copy or imitate a traffic sign or other official signal.

~~7.16.414.d.~~ No outdoor advertising sign, display or device shall attempt or purport to direct traffic.

~~7.16.514.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.

~~7.16.614.f.~~ No outdoor advertising display or device shall be illuminated by any rapid flashing, intermittent light or lights.

~~7.16.714.g.~~ No outdoor advertising sign, display or device shall be painted, affixed, or attached to any natural feature, ~~such as~~ including, but not limited to; rocks, cliffs, trees and shrubbery.

~~7.16.814.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.

~~7.16.914.i.~~ No outdoor advertising sign, display or device shall be located as to obscure the view of any connecting road or intersection.

~~7.16.1014.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.

~~7.16.1114.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.

~~7.1715.~~ 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 references to ~~said the~~ "National Standards". The following subsections apply to all outdoor advertising along interstate and defense highways except on in those situations where the provisions of Subsections 7.21 to 7.1614 of this regulation rule are stricter ~~in application~~.

~~7.17.1~~15.a. Territory Involved.

~~7.17.1.a~~15.a.1 General Area (Protected). ~~These regulations~~ This 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~~15.a.2 Excepted Areas (Unprotected). The following areas are excepted areas within the meaning of ~~these regulations~~ this rules.

~~7.17.1.b.1~~15.a.2.A. Any area wherein a line drawn perpendicular to the centerline 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~~15.a.2.B. Areas within a county ~~wherein such area was~~ that are 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~~15.a.2.C. Areas within the corporate boundaries of municipalities ~~which that~~ are designated as commercial or industrial areas, as ~~such the~~ the corporate boundaries existed on September 21, 1959.

~~7.17.2~~15.b. On Premise Signs Within Protected Areas Outside of Information Sites. All on premise signs within protected areas outside of informational sites ~~shall~~ must 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~~15.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~~15.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~~15.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~~15.b.2.B. "Center of activity" is determined by the location of the cash register or main business activity, i.e., motel office.

~~7.17.2.c~~15.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~~15.b.4. General Restrictions. Other than size and distance the following restrictions shall be applicable to on premise signs:

~~7.17.2.d.1~~15.b.4.A. Such The signs may not attempt to direct traffic.

~~7.17.2.d.2~~15.b.4.B. Such The signs may not imitate a traffic sign.

~~7.17.2.d.3~~15.b.4.C. Lighting, if any, must be shielded.

~~7.17.2.d.4~~15.b.4.D. Such The signs may not contain or include or be illuminated by any flashing, intermittent or moving light or lights.

~~7.17.2.d.5~~15.b.4.E. Such The signs may not move or have any animated or moving parts.

~~7.17.2.d.6~~15.b.4.F. Such The signs may not be on or attached to any natural feature.

~~7.17.2.d.7~~15.b.4.G. Such The signs may not hinder clear, unobstructed view of official signs and approaching or merging traffic.

~~7.17.2.d.8~~15.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~~15.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.a15.c.1.~~ ~~Such~~ The 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.b15.c.2.~~ ~~Such~~ The 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.c15.c.3.~~ ~~Such~~ The 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.d15.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~~ the signs shall not be less than one thousand (1000) feet apart.

~~7.17.3.e15.c.5.~~ Beyond five (5) air miles from the advertised activity, an average of one (1) sign per mile is permitted.

~~7.17.3.f15.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.115.c.6.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.215.c.6.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.315.c.6.C.~~ ~~Such~~ The signs may not be erected in scenic areas.

~~7.17.3.f.415.c.6.D.~~ The provisions of ~~Section 7.17.2.d~~ Subparagraph 7.15.b.4.G. of this rule shall also be applicable to these signs.

~~7.17.4.15.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~~ are permitted within a protected area.

~~7.17.4.a.15.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.15.d.1.A.~~ Natural phenomena (Man-made lakes not included).

~~7.17.4.a.215.d.1.B.~~ Historical sites.

~~7.17.4.a.315.d.1.C.~~ Areas of natural scenic beauty.

~~7.17.4.a.415.d.1.D.~~ Areas naturally suited for outdoor recreation.

~~7.17.4.a.515.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.615.d.1.F.~~ Farm Wineries as provided by W. Va. Code, ~~Chapter 17, Article 22, Section 7~~ §17-22-7.

~~7.17.4.b.15.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.115.d.2.A.~~ Such The 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 7.15.c. of this section rule, or Section 7.17.3.a Paragraph 7.15.c.1. of this regulation rule.~~

~~7.17.4.b.2~~15.d.2.B. The provisions of ~~Section 7.17.2.d~~ Subparagraph 7.15.b.4.G. of this regulation rule shall also be applicable to these signs.

~~7.17.5~~15.e. Informational Sites, Signs Permitted. Signs relating to informational sites ~~shall be~~ are permitted within protected areas. ~~Such~~ The 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~~15.e.1. The sign shall be placed upon a panel ~~which shall~~ that may 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~~15.e.2. The sign ~~shall~~ may not exceed twelve (12) square feet.

~~7.17.5.c~~15.e.3. The text may not be legible from the main traveled way or turning roadway.

~~7.17.5.d~~15.e.4. Only one sign concerning one activity or place is permitted within any one site.

~~7.17.5.e~~15.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~~15.e.6. No moving signs or any animated or moving parts are permitted.

~~7.17.5.g~~15.e.7. Illumination of panels may be by white lights only.

~~7.17.5.h~~15.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~~15.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~~15.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.

~~7.16.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.~~

~~8.21. Application for License. No person may salvage yard shall be established, operated or maintained a salvage yard without first obtaining a license from the Commissioner. Application for a salvage yard license to establish, maintain or operate a salvage yard shall must be made in writing on the form prescribed by the Commissioner and shall must 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 must accompany the application. The license shall will 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~~  
Each application must include, but is not be limited to the following: 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~~ Prior to establishing a salvage yard, the owner or operator establishing a salvage yard shall must first obtain a permit from the County Planning Commission. or if If the County does not have a planning commission, then the owner/operator must obtain a permit from any agency so designated by the County Commission in which the salvage yard is to be located.

~~8.1.c. In accordance with the provisions of W. Va. Code §17-23-3, the owner or operator of a salvage yard may have no more than one hundred waste tires which are not mounted on wheels on vehicles or machines unless the salvage yard has received a license, permit or approval from the Division of Environmental Protection.~~

~~8.32. Areas in Which No Salvage Yard Permitted. On or after July 1, 1967, no A license shall be will not 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 A license shall will not be issued to establish, operate or maintain a salvage yard, or any part thereof, within 3500 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 A license may will not be issued allowing a salvage yard to~~

establish, operate or maintain a salvage yard, or any part thereof within one thousand feet of the nearest occupied private residence or within five thousand feet of the nearest occupied private residence which is part of a residential community, unless waived by the owner of such the residence. aA copy of the waiver shall must 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 that~~ 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 the~~ 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 the~~ 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, and 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 nNo advertisement shall be is permitted thereon the fences~~ other than the name of the 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 where they will 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 is~~ 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 a color as to~~ that blends 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~~ must 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~~ has the right to ~~make determinations 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~~ is the responsibility of the salvage yard operator. ~~provided, however, that if in the opinion of the Commissioner believes that~~ effective screening cannot be accomplished by the usual and ordinary methods, the Commissioner may determine and pay ~~such any~~ 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 it~~ 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 to move all salvage and equipment from ~~such the~~ salvage yard to ~~such another~~ location ~~as said owner or operator may direct and whereat a salvage yard business may lawfully be conducted~~ as long as the owner or operator provides his or her consent.

~~8.7-26.b.~~ Purchase at private sale, or acquire by ~~proceeding in~~ eminent domain, in accordance with the provisions of W. Va. Code, ~~Chapter 54 §17-4-5,~~ all ~~such~~ property rights and interests, other than title to real property, as are necessary and required to effect a lawful termination of ~~such the~~ salvage yard business.

8.87. Distance Measurements.

8.7.a. 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.

8.7.b. 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.

8.7.c. 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. Yard 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.

~~8.9. 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 Division of Highways but at no time shall they be less restrictive.~~

§157-6-9. Roadside Memorials.

9.1. Purpose. This section provides requirements for the placement of Roadside 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. Temporary Memorial Markers. Temporary Memorial Markers 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 contact the nearest Division of Highways office. The family member or friend will be asked questions concerning the intended placement and construction of the Temporary Memorial Marker so that appropriate guidance may be provided. Also, the Division employee will record the family member or friend's name, address and phone number for future contact, if required.

9.2.b. Temporary Memorial Markers must not exceed surface dimensions of four feet in length by four feet in width and should be self-supporting. Any structural or support members of the memorial are limited to a diameter no greater than three inches if wooden or one-quarter inch if metal.

9.3. Permanent Memorial Markers. Permanent Memorial Markers are only allowed if a permit is obtained from the Division. Application for this permit may be made through the Division's District office with jurisdiction.

9.4. Physical Placement of Roadside Memorial Markers. All Roadside Memorial Markers must:

9.4.a. be within the highway right-of-way, as far from the travel lanes as reasonably possible and not on private property nor in front of or alongside of private property or residences unless express permission is obtained from the property owner;

9.4.b. be clear of ditches, culvert pipes, bridges and other highway features that require access for maintenance;

9.4.c. be behind the guardrail, if one is present, except that Temporary Memorial Markers may be tied to a guardrail post with lightweight string, wire or tape and must be easily removable for maintenance purposes;

9.4.d. not be placed in the highway median, on any bridge, nor attached to trees, fences, signs, signals, utility poles, etc.;

9.4.e. not be a hazard to the motoring public in any way including, but not limited to: restricting driver's sight; have any light reflecting materials or be illuminated by any means; or by interfering with or obscuring any traffic control device.

9.5. Safety 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.

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