

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

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

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

AMENDMENT TO AN EXISTING RULE: YES NO


IF YES, SERIES NUMBER OF RULE BEING AMENDED: VI

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

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

TITLE OF RULE BEING PROPOSED: _____

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


Fred VanKirk
Acting Division Administrator-
State Highway Engineer



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WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

State Capitol Complex
Building Five

Charleston, West Virginia 25305

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OFFICE OF WEST VIRGINIA
SECRETARY OF KENNETH M. DUNN
SECRETARY

GASTON CAPERTON
GOVERNOR

August 14, 1989

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

Dear Secretary Hechler:

Legislative Rules
Secretary of Transportation
Filing of an Agency Approved Rule
Regulations Relating to Use of State Road
Rights of Way and Areas Adjacent Thereto, Series VI

The attached Agency Approved Rule is hereby submitted by the Acting Administrator of the Division of Highways with my consent and agreement in accordance with the provisions of Chapter 5F of the State Code. These changes in the Division of Highways' Rules and Regulations are being filed in order to comply with the ruling made by Judge John R. Frazier, Circuit Court of Mercer County on June 30, 1989 concerning the process of advertisers applying for and Highways' issuing permits for outdoor advertising.

Also, this filing includes changes which address revisions to Chapter 17, Article 23, Sections 2, 4 and 8 as amended and reenacted by House Bill 3146, passed March 12, 1988 and effective June 10, 1988. These revisions address changes in the provisions for the licensing and maintaining of salvage yards with application to those licensed after June 12, 1988.

Very truly yours,

Kenneth M. Dunn
Secretary of Transportation

KMD:bc

Attachment



WEST VIRGINIA DEPARTMENT OF HIGHWAYS
State Capitol Complex
Building Five
Charleston, West Virginia 25305

GASTON CAPERTON
GOVERNOR

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
FRED VANKIRK
ACTING COMMISSIONER
STATE HIGHWAY ENGINEER

August 14, 1989

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

Dear Secretary Hechler:

Legislative Rules
Filing of an Agency Approved Rule
Regulations Relating to Use of State Road
Rights of Way and Areas Adjacent Thereto, Series VI

The attached Agency Approved Rule, Series VI, is being submitted along with the Notice of Agency Approval and Notice of Filing with the Legislative Rule Making Review Committee, the Public Hearing Summary and the Fiscal Note. This Rule was filed as an Emergency with your office on July 14, 1989.

A 30 day comment period was afforded the public for this rule. No comments were submitted directly to the Division of Highways. However, comments concerning the changes to section 7.5 were submitted to your office by the Outdoor Advertising Association and these have been summarized. No revisions or amendments have been made to the proposed rule as a result of these comments, since the changes to section 7.5 were filed to comply with the decision made by Judge John Frazier, Circuit Court of Mercer County in Civil Action 87-C-355-F on June 30, 1989.

Very truly yours,

Fred VanKirk
Acting Commissioner-
State Highway Engineer

FVK:c

Attachment

FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: X Legislative Interpretive Procedural

Agency Division of Highways Address State Capitol Complex, Building 5, Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Personal Services	\$11,000			\$11,000	\$11,000
Current Expense				unchanged	unchanged
Repairs & Alterations				unchanged	unchanged
Equipment				unchanged	unchanged
Other Advertising & Public Hearing	\$5,500			\$5,500	\$5,500
Estimated Total Cost	\$16,500			\$16,500	\$16,500

2. Explanation of above estimates:

The cost estimates are based on the estimated number of permit locations to be submitted in a year which is 275. The estimate of 20% as to the required public hearings as based on the number of inquiries on permits that have been submitted this year would equal 55. The estimated cost per hearing is \$300.00 which does not include the undetermined amount of cost for DOT Personnel.

3. Objectives of this rule:

This filing of an Agency Approved Rule is being made in order to comply with the decision made by Judge John R. Frazier, Circuit Court of Mercer County, West Virginia, in Civil Action 87-C-355-F on June 30, 1989. The revisions address changes to the "Rules and Regulations for Outdoor Advertising on the State Highway System" as presented in the subject Series VI, Legislative Rules.

Notable changes made to Section 7 are as follows: the definition of "Unzoned Commercial or Industrial Area" now specifies "viable" commercial or industrial activities; also, seven qualifications for identifying unzoned commercial or industrial areas have been added, while three qualifications have been added to the listing of circumstances which shall not be considered commercial or industrial activity.

Additionally, Section 7.5, Permits Required has been supplemented with information addressing the Division of Highways' internal processing of an Outdoor Advertising Permit Application. This processing includes: the assignment of an application number, notification to the applicant and local public advertisement of same; the submission of comments, request for public hearing and the Division's decision to approve, deny or hold a hearing; the Division's notification of hearing to the requestor, applicant and public; the provisions for determining hearing costs and application of the costs to the party of bad faith; and finally, the right to judicial review by the adversely affected party of the final decision.

Notable changes made to Section 8 are as follows: definitions for abandoned salvage yards, residential community, and occupied private residence have been added, while the definition of a salvage yard has been revised to exclude garbage dumps and sanitary landfills. Additionally, changes to the application for license have been made as follows: an annual license fee of \$200.00 is now specified; and the prerequisite of obtaining a permit from the County Planning Commission prior to establishing a salvage yard after July 1, 1984 has been included.

Also, distance restrictions from the edge of roadway for expressway, trunkline, feeder, state and local service roads and from single occupied private residences as well as occupied private residences which are a part of a residential community are prescribed for salvage yards licensed after June 12, 1988. A certified survey showing the distance to the nearest occupied residence, if within 1,000 feet, or the distance to the nearest occupied residence of a community, if within 5,000 feet, must accompany salvage yard applications after June 12, 1988.

Finally, all County Planning Commissions, or in their absence an appropriate office or agency, shall promulgate rules that conform with these rules and regulations before a permit may be issued after June 12, 1988. These rules must at least address the determination of the effect of proposed salvage yards on residential, business or commercial property investment and values, establish a quota for the number of yards in the county and the social, economic, and environmental impact on community growth and development in specified areas before issuing the commission's approval of a request for a salvage yard.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None.

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

The person who files the permit application would have to bear the burden of the expense of advertising in the paper and also the expense of a public hearing if so required.

- C. Economic Impact on Citizens/Public at Large.

None.

Date August 14, 1989



Fred Vankirk

SUMMARY OF PUBLIC COMMENT PERIOD

Proposed Amendment of Regulations
West Virginia Department of Transportation
Division of Highways
Charleston, West Virginia
Series VI Regulations
August 14, 1989

RULE DESCRIPTION

These rules are identified as: West Virginia Department of Transportation, Division of Highways Series VI, Regulations Relating to Use of State Road Rights of Way and Areas Adjacent Thereto.

PUBLIC COMMENT PERIOD

The comment period commenced upon filing of the Emergency Rule with the Secretary of State's office on July 14, 1989. The 30 day comment period ended on August 13, 1989 at 12:00 PM. Notice of the comment period was made in the State Register and was published in state newspapers and distributed to appropriate officials. Copies were also distributed to the Legislative Rule-Making Review Committee as required by law.

SUMMARY OF COMMENTS

Comments were submitted by the Outdoor Advertising Association only. Their comments were submitted directly to the Secretary of State, whose office forwarded a copy to the Division of Highways. A response to these comments was prepared and submitted to the Secretary of State. A summary of the OAA's comments follows.

COMMENTATOR - West Virginia Outdoor Advertising Association
DATE - July 28, 1989

- I. The amendments to Section 7.5 of Series VI, adopted by means of an Emergency Rule, are inappropriate and improper under the standards set forth in W. Va. Code §29A-3-15 and must be disapproved by the Secretary of State.
 - A. The notice and hearing provisions exceed the scope of the statute, W. Va. Code §17-22-15, by instituting procedures and provisions for obtaining an outdoor advertising permit which are not provided for in statute. The excesses are as follows:
 1. The provision for the permit applicant to publish a public notice is not in statute;
 2. The provision for a public comment period is not in statute;
 3. The provision for the discretionary holding of a public hearing on the grant or denial of the permit is not in statute;

SUMMARY OF PUBLIC COMMENT PERIOD

August 14, 1989

Page 2 of 2

4. The limiting of judicial review for any persons adversely affected to only a Writ of Certiorari is not in statute and violates statute on the following three counts:
 - a. Code requires review to be mandatory not merely a matter of the Court's discretion under Writ of Certiorari;
 - b. Code permits application to either the county which is the principle place of business of the applicant or to the county in which the sign is to be located not application only in Kanawha County;
 - c. Code allows for consent of the affected landowner of the permit application not any party.

- B. The facts and circumstances stated in the emergency rule do not state the existence of an emergency as defined by the Administrative Procedures Act. The stated circumstance of the emergency (the issuance of an order by the Circuit Court) as filed by Highways is not included as an emergency circumstance in the Administrative Procedures Act.

AMENDMENTS RESULTING FROM PUBLIC COMMENTS

No amendments were made to the rule as a result of public comments. The purpose of the changes to section 7.5 of this rule was to comply with the ruling made by Judge John R. Frazier, Circuit Court of Mercer County on June 30, 1989 concerning the process of advertisers applying for and the issuance of permits for outdoor advertising. Compliance with the referenced court ruling must be continued through the filing of the Agency Approved Rule with the court ordered changes intact.

FILING OF ADMINISTRATIVE LEGISLATIVE REGULATIONS

BY THE

DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS

DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS ADMINISTRATOR

CHAPTER 17-2A

SERIES VI

Subject: Regulations Relating to Use of State Road Rights of Way and Areas Adjacent Thereto

Section 1/ General

1.01/ Scope. -- These interpretive legislative regulations establish general rules pertaining to the use of state road rights of way and adjacent areas.

1.02/ Authority. -- These rules and regulations are issued under authority of West Virginia Code, Chapter 17, Articles 1, 2A, 4, 16, 22, and 23.

1.03/ Filing Date. --

1.04/ Effective Date. --

Section 2/ Definitions

2.01/ Road; Public Road; Highway. -- Within the meaning of these rules and regulations the words or terms "road", "public road", or "highway" shall be deemed to include, but shall not be 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 shall be taken to include 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, Chapter 17, Article 1, Section 3, Code.)

Section 3/ Use of Right of Way; Permits

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

3.02/ Entrances from Residence Properties, Industrial or Business Establishments. -- All entrances to any state road, whether from a residence, industrial or business property, shall be constructed in accordance with the "Manual on Rules and Regulations for Constructing Driveways on State Highway Right of Way", prepared by the Traffic Engineering Section 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 thereto hereinafter duly adopted and filed in said Office. All such entrances shall be adequately drained and properly stablized. (Code, WV, Chapter 17, Article 4, Sections 47 thru 52.) (Code, WV, Chapter 17, Article 2A, Section 12.)

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

3.04/ Overhead Structures. --

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

~~(2)~~3.4.2 State Local Service Roads - The minimum vertical clearances over state local service roads shall be 18 feet for the entire width of the roadway, including shoulders, and the minimum horizontal clearance shall be 8 feet on either side of the pavement edges, and in no instance shall the total horizontal clearance be less than 30 feet at right angles to the centerline of the road. In cases where proposed construction or reconstruction plans require greater horizontal clearances, such clearances must be provided.

Provided, however, that in the event of conflict between the provisions of Sections (1) and (2) above, and the terms of deeds conveying real estate to the Division of Highways, the latter shall control.

~~(3)~~3.4.3 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.

~~(4)~~3.4.4 Construction Plans Submitted with Application - All applications for permits covering such construction must be accompanied with a plan in sufficient detail that a complete structural analysis may be made by the Administrator.

3.05/ 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.

~~(1)~~3.5.1 Length - All such structures constructed at or near the grade of an existing highway must be of sufficient length to conform to the existing width of the roadway or any existing proposed roadway construction or reconstruction plans.

~~(2)~~3.5.2 Pedestrians - If necessary, such structures shall be provided with sidewalks to properly accomodate pedestrian traffic along the highway.

~~(3)~~3.5.3 Construction Plans Submitted with Application - All applications for permits covering such construction must be accompanied with a plan in sufficient detail that a complete structural analysis may be made by the Administrator.

Division of Highways
Adm. Reg. 17-2A
Series VI, Sec. 3.6

3.06/ 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.

(1)3.6.1 Conditions - The individual or company doing the mining shall carry on the operation so as to properly protect the highway from damage, and in the event damage to the highway does occur, the individual or company doing the mining shall either restore the highway at his or its own expense in a manner satisfactory to the Division of Highways or reimburse the Division of Highways for the actual expense that may be incurred in restoring the highway.

(2)3.6.2 Maps - All applications for permits covering subsurface mining shall be accompanied with a map showing the position of the coal seam or other mineral or minerals proposed to be mined, horizontally and vertically with relation to the highway.

3.07/ Seismic Surveys. -- The Administrator's Division of Highways seismic surveys, for the location of oil or gas deposits, to be conducted on state roadways upon compliance with the following conditions.

(1)3.7.1 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.

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

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

(1)3.9.1 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.

(2)3.9.2 Spur Tracks - Spur tracks should not be super-elevated across the highway.

(3)3.9.3 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.

(4)3.9.4 Crossing at Right Angles - All tracks shall cross the highway as near to a right angle as feasible.

(5)3.9.5 Rail Elevation - The top of rail elevation shall conform to the highway surface elevation or, highway approach grades conforming to current standards shall be provided. After the track is placed, the top of rail elevation shall not be altered by the railway company without prior approval of the change in elevation by the Administrator.

(6)3.9.6 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 Administrator of the Division of Highways based on the type and volume of highway and rail traffic.

(7)3.9.7 Width of Surface - The width of the crossing surface shall be in accordance with standards promulgated by the Administrator of the Division of Highways.

(8)3.9.8 Maintenance - The railway company roadbed and crossing shall be maintained by the railway company in a condition acceptable to the Administrator of the Division of Highways.

(9)3.9.9 Traffic Control Devices - As a minimum, the railway company shall install and maintain crossbuck signs in accordance with the "Manual on Uniform Traffic Control Devices for Streets and Highways." (Code, WV, Chapter 17, Article 3, Section 1.)

Division of Highways
Adm. Reg. 17-2A
Series VI, Sec. 3.9.9

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

~~(10)~~3.9.10 Abandoned Tracks and Appurtenances - When any railway track crossing a state highway is abandoned, the railway company shall promptly remove the tracks, ties, etc., and any appurtenances to the crossing such as crossbuck signs, active traffic control devices or other equipment. The highway shall be repaired with a pavement and shoulders of the same type and width as the adjacent pavement and shoulders, and in a manner satisfactory to the Administrator of the Division of Highways.

Section 4/ Rules for Issuance of Permits for Making Openings or Placing Structures; In, Upon, Along, Over, Under and Across State Roads

4.01/ General. -- These regulations are promulgated pursuant to the authority and provisions of Chapter 17, Article 16, Section 6, of the Code.

4.02/ General Regulations for Issuance of Such Permits. --

~~(1)~~4.2.1 Form of Application - Applications for permission to perform work within highway right of way shall be made on Division's standard permit form. The application shall give full information concerning the work to be done and be accompanied by a sketch.

~~(2)~~4.2.2 Signature Required - Applications shall be legally signed by the applicant or his duly authorized representative.

~~(3)~~4.2.3 Security - The applicant shall deposit with the Division in the form of a certified check, money order, or executed bond, with surety satisfactory to the Division, to cover any damage the Division may sustain by reason of the granting of the permit, including any expense incurred in restoring the highway to its original condition, or the proper repair of any and all damages that may result within one (1) year from the date of the completion of the work.

Division of Highways
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~~(4)~~4.2.4 Completion Date - The application shall state the date the proposed installation is to be completed.

~~(8)~~4.2.5 Approval of Application - Applicants for permits shall file the original and three (3) copies of such application with the District Engineer 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 or the Director of the Maintenance Division.

~~(6)~~4.2.6 Inspection - The work shall be done under the supervision and to the satisfaction of the Division. The applicant agrees to reimburse the Division for any inspection costs incurred under the permit.

~~(7)~~4.2.7 Notification - The applicant shall notify the Division at least 48 hours in advance of the date work will begin.

~~(8)~~4.2.8 Control of Traffic - The traveling public shall be protected at all times in accordance with the current manual, "Traffic Control for Streets and Highway Construction and Maintenance Operations" (August 18, 1980.)

~~(9)~~4.2.9 Damage - Damage to the road resulting at any time from work authorized under the permit shall be repaired by the applicant. Unsatisfactory repairs may be corrected by the Division or its authorized agent and the cost thereof paid by the applicant.

~~(10)~~4.2.10 Save Harmless - The person, firm or corporation to whom a permit is issued shall agree to save harmless the State, the Administrator, 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.

~~(11)~~4.2.11 Liability - The Division assumes no liability for damage to the proposed installation by reason of construction or maintenance work on the road.

~~(12)~~4.2.12 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 now or hereinafter adopted by the Highways Administrator.

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~~(13)~~4.2.13 Cancellation - The Highways Administrator 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.

Section 5/ Removal of Obstructions From Roadway

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

~~(1)~~5.1 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.

~~(2)~~5.2 Additional Notice - In the event of failure or undue delay on the part of the owner or the person responsible to remove immediately the obstruction, the County Maintenance Superintendent shall notify the District Engineer of the circumstances relating thereto. Thereupon the District Engineer shall notify the responsible party by letter to remove the obstruction. If the obstruction is not removed within ten (10) days, the Administrator, 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. (Penalty for non-compliance, removed by the Division of Highways and assessment and collection of costs therefore are governed by statute.) (See Chapter 17, Article 16, Sections 3, 4, 5, of the West Virginia Code.)

Section 6/ Reference Manual for Constructing Driveways on State Highway Right-of-Way

Series VI, Sections 6.01 through 6.10~~(4)~~.4 have been superseded by the manual containing the Rules and Regulations

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for Constructing Driveways on State Highway Rights-of-Ways heretofore filed with the Secretary of State in March of 1970.

These regulations were prepared by the West Virginia Division of Highways Traffic Engineering Section in compliance with the Official Code of West Virginia of 1931, as amended, Chapter 17, Article 2A, Section 8, Paragraph 37, to establish road policies and administrative practices for control of traffic and the promotion of safety on the public highways and Chapter 17, Article 4, Section 47 through 52; Chapter 17, Article 2A, Section 12; and Chapter 16, Article 16, Section 6, pertaining to access facilities to State Highways from and to real property and also pursuant to Chapter 29A of the Official Code of West Virginia of 1931, as amended, commonly known as the Administrative Procedures Act then in full force and effect. All the material contained in the rescinded regulations formerly promulgated on October 14, 1966, is contained in said Manual which has been filed and is made a part of this book of Rules and Regulations and to be read in conjunction therewith.

The appendix to Series VI contained in the former book of Regulations in its entirety is also rescinded by this Manual and the Manual on Uniform Traffic Control Devices for Street and Highways, 1978 Edition (Code, West Virginia, Chapter 17, Article 3, Section 1), also filed as a part of these Rules and Regulations.

Section 7/ Rules and Regulations for Outdoor Advertising
on the State Highway System

7.01/ Purpose. -- These Legislative rules and regulations are adopted by the Commissioner of Highways Division of Highways Administrator pursuant to the provisions of Chapter 17, Article 22, Sections 8 and 11, of the Official Code of West Virginia of 1931, as amended, for the purposes of regulating and controlling the erection and maintenance of outdoor advertising signs, displays and devices along the total highway system and further to set up specific regulations relating to size, spacing and lighting of those signs, displays and devices, located along those highways in West Virginia designated for federal-aid funding purposes as federal-aid interstate and federal-aid primary highways in accordance with Title 23, United States Code, and the above designated Code sections.

These rules and regulations are correlated and shall have application with that certain agreement dated the 6th day of

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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" prepared and promulgated by the Bureau of Public Roads in relation to the National System of Interstate and Defense Highways.

7.02/ Definitions. -- As used in these rules and regulations:

~~(1)~~7.2.1 "Sign" - shall mean 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)~~7.2.2 "Display" - shall mean 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.

~~(3)~~7.2.3 "Device" - shall mean 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.

~~(4)~~7.2.4 "Person" - shall include an individual, partnership, association, or corporation.

~~(5)~~7.2.5 "Interstate Highway" - shall mean 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 are classified as Expressway, under the provisions of Chapter 17, Article 4, Section 2, of the Official Code of West Virginia of 1931, as amended.

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(6)7.2.6 "Federal-Aid Primary Highway" - shall mean any highway which for federal-aid funding purposes has been designated or classified or redesignated or reclassified as federal-aid primary highway.

(7)7.2.7 "Controlled-Access Highway" - shall mean 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 Division Administrator in Chapter 17, Article 4, Sections 39, 40 and 41, of the Official Code of West Virginia of 1931, as amended.

(8)7.2.8 "Zoned Commercial or Industrial Area" - shall mean an area zoned for business, trade, industry, or commerce, pursuant to state, county, municipal or local law, ordinance or regulation.

(9)7.2.9 "Unzoned Commercial or Industrial Area" - shall mean 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 Division Administrator 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 Division Administrator.

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) Identification sign for the business. This sign shall conform to all rules and regulations concerning an on premiss sign.

(d) The hours the business is open shall be posted.

(e) Ample parking shall be provided for all customers.

(f) The business shall have electricity provided by the local power company. This shall not be an extension from any other building.

(g) The business shall have been in operation for a minimum 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.

(10)7.2.10 "Intervening Building, Structure or Roadway" - shall mean 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. 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.

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(11)7.2.11 "Main-Traveled Way" - shall mean 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.

(12)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 a State Highway Department subject to the approval of the Secretary of the U.S. Department of Transportation, or his authorized representative.

7.03/ Licenses Required, Applications. -- No person shall engage in the business of outdoor advertising in this State without first obtaining a license therefore from the Administrator; 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~~ Division Administrator. A license fee in the amount of one hundred dollars per annum, payable annually in advance, shall be charged for such license.

(1)7.3.1 Applications for licenses, or renewal of licenses, shall be made on forms furnished by the ~~Commissioner~~ Division Administrator and shall be accompanied by the annual fee.

(2)7.3.2 Licenses shall expire on the thirtieth day of June of each year, and shall not be prorated. Application for renewal of licenses shall be made not less than thirty (30) days prior to the date of expiration.

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

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(1) 7.4.1 Orders - A ~~Commissioner's~~ division administrator's order revoking a license shall be accompanied by a findings of fact and conclusions of law upon which said order was made and entered.

(2) 7.4.2 Judicial Review - Any person adversely affected by an order made and entered by the ~~Commissioner~~ Division Administrator is entitled to a judicial review as set out in Article 22, Chapter 17, of the Code.

7.05/ 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~~ Division of Highways Administrator, and paying the annual fee. In the case of new permits, an inspection fee can be charged as is deemed necessary by the ~~Division/Administrator~~.

Upon receipt of a permit application an application number shall be assigned by the Division of Highways. The applicant shall be notified of the temporary application number and shall then be required to publish a class 2 legal advertisement in the newspaper(s) serving the area where the proposed outdoor advertising sign, display or device is proposed to be located. A copy of the certificate of publication shall be provided to the Department within ten (10) days of the final publication date.

As a minimum the advertisement shall include the application number, the location (including ownership of the property upon which the sign is to be placed) and shall notify the public that comments will be received by the Division of Highways, Highway Services Section, until 10 days after the final publication. The advertisement shall also state that all comments must include the specific application number to which they refer.

Any person who claims to be affected by the proposed sign may submit written comments to the Division of Highways, Highway Services Section, and may request a public hearing within ten days of the final publication. Within ten working days of the close of the comment period the Division shall determine whether to approve, deny, or hold a public hearing for said permit.

When the Division determines that a public hearing is required it shall notify the person(s) who requested the

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hearing and the permit applicant. The Division shall cause notice to be published and hold the hearing in accordance with Administrative Regulations, Commissioner of Highways, Chapter 17-2A, Series I (1982), Section 3, Hearing Procedures (hereinafter WV Adm. Reg. 17-2A).

The Division Administrator shall assess the Division's costs of the hearing against the permit applicant or against the party requesting the hearing if he finds that either the application for the permit or the request for hearing was filed in bad faith.

Any party adversely affected by the final decision of the Division Administrator may apply for judicial review through application for a writ of certiorari to the Circuit Court of Kanawha County in accordance with W.Va. Code § 53-3-1 and W.Va. Code § 14-2-2.

The regulations in the preceding six paragraphs relating to publication of notice of an application, comments on a pending application, notice of hearing, hearing on permit, assessment of costs and judicial review shall not apply to an application for a permit for an advertising sign, display or device to be located within the boundaries of an incorporated municipality or of a county-zoned commercial or industrial area.

(1)7.5.1 License Required - No permit shall be issued to any person who has not obtained the license provided for in Section 7.03.

(2)7.5.2 Application - A separate application for a permit shall be made for each separate advertising sign, display or device, on the form furnished by the Commissioner Division Administrator. The application shall be signed by the applicant or his duly authorized representative. Such authorization must be submitted to the Commissioner Division Administrator in writing.

(3)7.5.3 Payment - Every application shall be accompanied by a fee of one dollar for each advertising sign, display or device, which fee shall be retained if the permit is issued. In addition thereto, the Commissioner Division Administrator may charge an inspection fee which will be retained as a cost of inspection whether the permit be issued or not.

(4)7.5.4 Refusal of Permit - The Commissioner Division Administrator shall make and enter an order to the effect and shall cause a copy of such order to be served on such applicant by Certified Mail, return receipt requested, where any

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permit application is refused. Such order shall be accompanied by findings of fact and conclusions of law upon which such order was made and entered.

~~(8)~~7.5.5 Change of Advertising Copy - The holder of a permit shall during the term thereof have the right to change the advertising copy on the structure or sign for which it was issued without payment of any additional fee.

~~(8)~~7.5.6 Expiration - Permits shall expire on the thirtieth day of June of each year and shall not be prorated, and may be renewed upon the payment of the same fee required to be paid upon application originally. No application shall be required for a renewal of a permit.

Construction of the sign or signs for which a permit is issued shall be initiated no later than one year from the date of issuance of the permit and shall be completed within a reasonable time thereafter. In the event of noncompliance with this provision, the permit may be cancelled at the discretion of the ~~Commissioner~~ Division Administrator. A sign within the meaning of this provision is as construed by Section 2 of Article 22, Chapter 17 of the Code of West Virginia of 1931, as amended.

7.061 Revocation of Permits. -- The ~~Commissioner~~ Division Administrator shall have the authority, after thirty (30) days notice in writing to the permittee, to make and enter an order revoking any permit issued by him under Section 7.05 upon repayment of a proportionate part of the fee in any case where it shall appear to the ~~Commissioner~~ Division Administrator that the application for the permit contains knowingly false or misleading information or that the permittee has violated any of the provisions of Article 22, Chapter 17, of the Code, unless such permittee shall, before the expiration of said thirty (30) days, correct such false or misleading information and comply with the provisions of Article 22, Chapter 17, of the Code.

~~(1)~~7.6.1 Findings of Fact - Such order shall be accompanied by findings of fact and conclusions of law upon which the order was made and entered.

~~(2)~~7.6.2 Zoning Boards, Commissions or Other Public Agencies - If the construction, erection, operation, or maintenance of any advertising sign, display or device, for which a permit is issued is prevented by any zoning board, municipal building ordinance, commission or public agency, which has jurisdiction over such matters, the fee for such

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permit shall be deemed to have accrued if the advertising sign is erected or the inspection by the Commissioner Division Administrator had been performed. Any other inspection fees charged will also have deemed to be accrued.

7.6.3 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 Article 22, Chapter 17, of the Code.

7.07 Territorial Application. -- The territory under the jurisdiction of the Commissioner Division Administrator for the purposes of these regulations shall include all of the State.

Authorized representatives of the Commissioner Division Administrator 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 Article 22, Chapter 17, of the Code, and/or these regulations.

7.08 Prohibition of Certain Outdoor Advertising. -- No outdoor advertising sign, display or device shall be erected or maintained within 660 feet of the nearest edge 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 Sections 7.10 and 7.18.

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

7.09 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 7.08 or 7.10, 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 until the end of the fifth year it becomes non-conforming.

7.10/ 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 Section 7.02(8) and (9), except as provided in Section 7.18.

Should the licensee desire to place a sign, display or device within 660 feet of a two-lane non-controlled access highway in an unzoned commercial or industrial area, on the opposite side of the highway from the activity establishing the zoning, he will submit a written request for a variance specifying the reasons, with the permit application. The decision to allow a variance will be made by the Administrator based on the conditions in the area and the documentation of the licensee. Once the side of the highway is determined it will not be changed where the area was established by a single activity.

(1)7.10.1 Size -

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

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

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

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(2)7.10.2 Spacing -

(a)7.10.2.a Federal-Aid Interstate Highways and Controlled-Access Facilities Within Zoned and Unzoned Commercial or Industrial Areas:

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

(2)7.10.2.a.2 No sign shall be located within 500 feet of an interchange. This requirement shall not apply within the boundaries of any municipality.

(b)7.10.2.b Other Federal-Aid Primaries:

(1)7.10.2.b.1 Outside a Municipality
- no two signs shall be spaced less than 300 feet apart on the same side of the highway.

(2)7.10.2.b.2 Inside Municipalities -
no two signs shall be spaced less than 100 feet apart on the same side of the highway.

(c)7.10.2.c The foregoing spacing requirements shall not apply to the signs which in the opinion of the licensee are separated by an intervening building, structure or roadway, as defined in Section 7.02. Where a licensee is of the opinion that a situation exists where an intervening building, structure or roadway would justify a variance from the spacing requirements, he will document the same in writing to the ~~Commissioner~~ Division Administrator at the time of submission of the permit application. Each individual submission of such documentation will be considered based upon the sight distances in the area and the documentation submitted by the licensee.

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

(3)7.10.3 Lighting - Signs may be illuminated, subject to the following restrictions:

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

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

~~(C)~~ 7.10.3.c No sign shall be illuminated so as to obstruct the view of any connecting road or intersection or to obscure an official traffic device or signal.

7.11/ Exceptions. --

~~(1)~~ 7.11.1 In lieu of exercising control of size, spacing and lighting of outdoor advertising signs, displays or devices in zoned commercial or industrial areas as set forth in Section 7.10, the ~~Commissioner~~ Division Administrator 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.

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

~~(2)~~ 7.11.2 The following signs are excepted from these regulations:

~~(a)~~ 7.11.2.a Directional or other official signs and notices required or authorized by law.

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

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

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

~~(1)~~7.11.2.d.1 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.

~~(2)~~7.11.2.d.2 Business or Activity Sign - one double-faced sign or two signs, one visible in each direction may be erected not more than 500 feet from the center of the activity. Such a sign or signs may not exceed 150 square feet including border and trim but excluding structural supports. Center of activity is determined by location of cash register or main business activity.

~~(3)~~7.11.2.d.3 A "Privilege Sign" - may be erected on or within 25 feet of the business activity itself if it meets all state or local building regulations, not to exceed 50 square feet. The sign must advertise an activity which is the principal one or one of the principal activities taking place.

~~(4)~~7.11.2.d.4 No "On Premise Sign" - may be located if it is separated from the activity by an intervening parcel of land or building.

~~(5)~~7.11.2.d.5 An "On Premise Sign" - may not be erected on the opposite side of the highway from the activity unless topographical conditions make it impossible to locate on the same side of the highway. The sight distance required to qualify for this variance will be less than 250 feet.

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

~~(1)~~7.12.1 Lawfully in existence on or after
January 1, 1968;

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~~(2)~~7.12.2 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;

~~(3)~~7.12.3 Lawfully erected after January 1, 1968.

7.13/ Bond of Out-of-State Licensee. -- No license shall be granted as provided in Section 7.03 to any person not a resident of this state, or to any person having his principal place of business outside the state, or which is incorporated outside the state, until such person shall have furnished and filed with the ~~Commissioner~~ Division Administrator a bond payable to the State of West Virginia, with approved surety in the sum of two thousand five hundred dollars, conditioned that such licensee shall fulfill all the requirements of law and observe and obey all regulations relating to the business of outdoor advertising in the State of West Virginia.

All sums received from the forfeiture of any bond or bonds shall be deposited in a special fund created in Chapter 17, Article 22, Section 10, of the Code.

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

7.15/ 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.

7.16/ Measurements. --

~~(1)~~7.16.1 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

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Series VI, Sec. 7.16.1

industrial activity, structures, driveways, parking lots, storage areas, or other areas constituting an integral part of such commercial or industrial activity.

~~(2)~~7.16.2 The distance requirement set forth in Section 7.10~~(2)~~.2 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.

~~(3)~~7.16.3 Official and "on premise" signs as set out in Section 7.11 shall not be counted nor shall measurements be made from them for the purposes of determining compliance of spacing regulations.

7.17/ General Restrictions. --

~~(1)~~7.17.1 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.

~~(2)~~7.17.2 No outdoor advertising sign, display or device shall be a copy or imitate a traffic sign or other official signal.

~~(3)~~7.17.3 No outdoor advertising sign, display or device shall attempt or purport to direct traffic.

~~(4)~~7.17.4 No outdoor advertising sign, display or device shall be painted, affixed, or attached to any natural feature, such as but not limited to; rocks, cliffs, trees and shrubbery.

~~(5)~~7.17.5 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.

~~(6)~~7.17.6 No outdoor advertising sign, display or device shall be located as to obscure the view of any connecting road or intersection.

~~(7)~~7.17.7 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.

7.18/ 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" prepared and promulgated by the Federal Highway Administration of the United States Department of Transportation and all reference to said "National Standards". The following subsections will apply to all outdoor advertising along interstate and defense highways except on those situations where Sections 7.02 to 7.17 are stricter in application.

(1)7.18.1 Territory Involved -

(a)7.18.1.a General Area (Protected):

These regulations 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 said areas are within 660 feet of the nearest edge of right of way limits within and without municipalities.

(b)7.18.1.b Excepted Areas (Unprotected):

The following areas are excepted areas within the meaning of these regulations:

(1)7.18.1.b.1 Any area wherein a line drawn perpendicular to the center line of the median and extended to both edges of the width of the normal right of way, intersects any right of way acquired for right of way purposes prior to July 2, 1956.

(2)7.18.1.b.2 Areas within a county wherein such area was zoned as commercial or industrial or the land use as of September 21, 1959, was clearly established by state law as commercial or industrial.

(3)7.18.1.b.3 Areas within the corporate boundaries of municipalities which are designated as commercial or industrial areas, as such corporate boundaries existed on September 21, 1959.

(2)7.18.2 "On Premise" Signs Within Protected Areas Outside of Information Sites - All "on premise" signs within protected areas outside of informational sites shall comply with the Federal Standards for Class 2 signs, and with the following:

Division of Highways
Adm. Reg. 17-2A
Series VI, Sec. 7.18.2.a

(1)7.18.2.a 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.

(2)7.18.2.b 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.

(1)7.18.2.b.1 Such sign may not

exceed 20 feet in any one dimension or 150 square feet in area, including border and trim, but excluding supports.

(2)7.18.2.b.2 "Center of activity" is

determined by location of cash register or main business activity, i.e., motel office.

(3)7.18.2.c Signs Within 50 Feet of

Advertised Activity: Within fifty (50) feet of advertised activity any number of signs of any size may be erected.

(4)7.18.2.d General Restrictions: Other

than size and distance the following restrictions shall be applicable to "on premise" signs:

(1)7.18.2.d.1 Such signs may not

attempt to direct traffic.

(2)7.18.2.d.2 Such signs may not

imitate a traffic sign.

(3)7.18.2.d.3 Lighting, if any, must

be shielded.

(4)7.18.2.d.4 Such signs may not

contain or include or be illuminated by any flashing, intermittent or moving light or lights.

(5)7.18.2.d.5 Such signs may not move

or have any animated or moving parts.

(6)7.18.2.d.6 Such signs may not be

on or attached to any natural feature.

Division of Highways
Adm. Reg. 17-2A
Series VI, Sec. 7.18.2.d.7

~~(7)~~7.18.2.d.7 Such signs may not hinder clear, unobstructed view of official signs and approaching or merging traffic.

~~(8)~~7.18.2.d.8 Any letters, trade-mark, etc., advertising a product may not be larger or more conspicuous than those advertising the activity, except a sign not more than fifty (50) feet from the advertised activity.

~~(3)~~7.18.3 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 for Class 3 signs and with the following regulations:

~~(a)~~7.18.3.a Such signs may advertise only activities being conducted within twelve (12) air miles of the sign and shall be visible only to interstate traffic not served by an information site within twelve (12) air miles of the advertised activity.

~~(b)~~7.18.3.b Such signs shall not be nearer than two (2) miles in advance of an intersection of the main traveled way and an exit roadway. This distance shall be measured from the edge of the exit roadway nearest to approaching traffic.

~~(c)~~7.18.3.c Such signs shall also be one thousand (1000) feet beyond the intersection of an entrance roadway and the main traveled highway. This distance shall be measured from the edge of the entrance roadway, including acceleration lanes, nearest to traffic which has passed the entrance roadway.

~~(d)~~7.18.3.d Within the area located between two (2) and five (5) miles approaching an intersection, as above measured.

~~(e)~~7.18.3.e Six (6) signs may be located, provided that there are not more than two (2) signs within any mile measured from any point, and such signs shall not be less than one thousand (1000) feet apart.

~~(f)~~7.18.3.f Beyond five (5) miles an average of one (1) sign per mile is permitted.

Division of Highways
Adm. Reg. 17-2A
Series VI, Sec. 7.18.3.g

~~(g)~~ 7.18.3.g Other than distance the following restrictions shall be applicable to all signs erected within twelve (12) air miles of an advertised activity.

~~(1)~~ 7.18.3.g.1 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.

~~(2)~~ 7.18.3.g.2 No sign may exceed twenty (20) feet in any dimension or one hundred fifty (150) square feet in area, including border and trim.

~~(3)~~ 7.18.3.g.3 Such signs may not be erected in scenic areas.

~~(4)~~ 7.18.3.g.4 The provisions of Section 7.18(2)(d) shall also be applicable to these signs.

~~(4)~~ 7.18.4 Signs in the Specific Interest of the Traveling Public Permitted - All signs in the specific interest of the traveling public referring to public places operated by the federal, state or local government shall be permitted within a protected area.

~~(a)~~ 7.18.4.a When the following areas have been so designated by the Division of Highways signs may be erected giving information concerning same:

~~(1)~~ 7.18.4.a.1 Natural phenomena
(Man-made lakes not included).

~~(2)~~ 7.18.4.a.2 Historical sites.

~~(3)~~ 7.18.4.a.3 Areas of natural scenic beauty.

~~(4)~~ 7.18.4.a.4 Areas naturally suited for outdoor recreation.

~~(5)~~ 7.18.4.a.5 Places for camping, lodging, eating, and vehicle service repair. Trade names, if any, on Class 4 signs, Federal Standards, are permitted only if it identifies or characterizes such a place or service. If a Class 2 or 3 sign also qualifies as a Class 4 sign, Federal Standards, trade name is not required to be of equal prominence.

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Adm. Reg. 17-2A
Series VI, Sec. 7.18.4.b

(b)7.18.4.b All signs designated in this subsection shall comply with the Federal Standards for Class 4 signs and with the following restrictions:

(1)7.18.4.b.1 Such signs must be more than twelve (12) miles from the nearest panel within an informational site service interstate highway traffic to which such sign is visible. A sign qualifying both as a Class 3 and 4, Federal Standards, may be permitted under the above regulations, subsection (3) of this section, or Section 7.18(3)(a).

(2)7.18.4.b.2 The provisions of Section 7.18(2)(d) shall also be applicable to these signs.

(B)7.18.5 Informational Sites, Signs Permitted
- Signs relating to informational sites shall be permitted within protected areas. Such signs shall comply with the Federal Standards for Class 3 and 4 signs and the following regulations:

(a)7.18.5.a The sign shall be placed upon a panel which shall not exceed thirteen (13) feet in height or twenty-five (25) feet in length, including border and trim, but excluding supports.

(b)7.18.5.b The sign shall not exceed twelve (12) square feet.

(c)7.18.5.c The text may not be legible from the main traveled way or turning roadway.

(d)7.18.5.d Only one sign concerning one activity or place is permitted within any one site.

(e)7.18.5.e 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, which does not also qualify as a Class 4, Federal Standards, sign may be permitted if the informational site is within twelve (12) air miles of the advertised activity.

(f)7.18.5.f No moving signs or any animated or moving parts are permitted.

(g)7.18.5.g Illumination of panels may be by white lights only.

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Adm. Reg. 17-2A
Series VI, Sec. 7.18.5.h

~~(K)~~7.18.5.h 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.

~~(J)~~7.18.5.i Lighting must be so effectively shielded as to prevent beams or rays of light from being directed at the highway.

~~(J)~~7.18.5.j 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.

~~(G)~~7.18.6 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.

Section 8. Salvage Yards

8.01. Definitions. -- This section and all subsequent sections are promulgated in accordance with the authority contained in Chapter 17, Article 23, sections 1 through 13. The authority is specifically contained in section 11 thereof. As used in these rules and regulations.

~~(I)~~8.1.1 "Salvage" - Shall mean old 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.

~~(Z)~~8.1.2 "Salvage Yard" - Shall mean 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 ~~and the term shall also include garbage dumps and sanitary fills.~~ 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, shall be considered a salvage yard.

8.1.3 "Abandoned salvage yards" - 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.

~~(3)~~8.1.4 "Fence" - Shall mean an enclosure, barrier or screen constructed of materials or consisting of planting, natural objects or other appropriate means approved by the Administrator and located, placed or maintained so as effectively to screen at all times salvage yards and the salvage therein contained from the view of persons passing upon the public roads of this State.

~~(4)~~8.1.5 "Owner or Operator" - Shall include 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.

~~(5)~~8.1.8 "Unzoned Industrial Area" - Shall mean 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.

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Series VI, Sec. 8.1.8

(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.

8.02/ Application for License. -- No salvage yard shall be established, operated or maintained without a license. Application for a license to establish, maintain or operate a salvage yard shall be made in writing on the form prescribed by the Administrator and shall be signed by the applicant or his authorized agent. A license fee in the amount established by Chapter 17, Article 23, Section 3 of the Code of Two Hundred Dollars (\$200), payable by certified or cashier's check or money order, shall accompany the application. The license shall expire on the first day of January following the date of issuance. The license may be renewed from year to year upon submitting the prescribed form and the established sum.

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

After July 1, 1984 any owner or operator establishing a salvage yard shall first obtain a permit from the County Planning Commission, or if the County does not have a planning commission from any agency so designated by the County Commission in which the salvage yard is to be located. (Chapter 17, Article 23, Section 4.)

8.03/ Areas in Which No Salvage Yard Permitted. -- On or after July 1, 1967, no license shall be issued to establish, operate or maintain a salvage yard, or any part thereof, within 1000 feet of the nearest edge of the right of way of any road within the state road system, designated and classified as either expressway, trunkline, or feeder. On or

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Series VI, Sec. 8.3

after July 1, 1967, no license shall be issued to establish, operate or maintain a salvage yard, or any part thereof, within 300 feet of the nearest edge of the right of way of any state local service road, unless the view thereof from said road shall be effectively screened and obscured by a fence or fences.

On or after June 12, 1988, no license shall be issued to establish, operate or maintain a salvage yard, or any part thereof, within 1000 feet of the nearest edge of the right of way of any road within the state road system, designated and classified as either expressway, trunkline, or feeder. On or after June 12, 1988, no license shall be issued to establish, operate or maintain a salvage yard, or any part thereof, within 500 feet of the nearest edge of the right of way of any state local service road, unless the view thereof from said road shall be effectively screened and obscured by a fence or fences. No license may be issued allowing a salvage yard within one thousand feet of the nearest occupied private residence; unless waived by the owner of such residence, a copy of which shall accompany the salvage yard application; or within five thousand feet of the nearest occupied private residence which is part of a residential community. (Chapter 17, Article 23, Section 4.)

8.04/ Existing Salvage Yards. -- The license, issued prior to July 1, 1967, of any salvage yard which is located within 1000 feet of the nearest edge of the right of way of a road designated as either expressway, trunkline or feeder, or is located within 300 feet of the nearest edge of a state local service road, may be renewed only if the view of said salvage yard, and all parts thereof, is effectively screened from view of the traveling public.

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

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

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Series VI, Sec. 8.4

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

8.05/ Fences. -- Fences shall be kept in good order and repair and no advertisement shall be permitted thereon other than the name of licensee and the nature of the business conducted on the premises. The fence shall be of such height as effectively to 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 Administrator. Fences shall be maintained in a manner satisfactory to the Administrator.

~~(1)~~8.5.1 Fences must be located in such a manner as to not be hazardous to the traveling public.

~~(2)~~8.5.2 The construction of fences shall be uniform and no patchwork type of construction shall be permitted.

~~(3)~~8.5.3 Fences shall be painted where the composition is such that painting is required. The paint used shall be of such color as to blend into the surrounding neighborhood of the yard.

~~(4)~~8.5.4 Where a living fence is constructed the operator shall secure the consent and permission of the Administrator as to the location and type of plant material which may be used, in order effectively to screen the view of the yard from the traveling public.

~~(5)~~8.5.5 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.

~~(6)~~8.5.6 The Administrator shall have the right to make determination as to whether a salvage yard is effectively screened by the fencing employed.

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

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

(1)8.7.1 With the consent of the owner or operator of such salvage yard pay the cost of removal of all salvage and equipment from such salvage yard to such other location as said owner or operator may direct and whereat a salvage yard business may lawfully be conducted.

(2)8.7.2 Purchase at private sale, or acquire by proceeding in eminent domain, in accordance with the provisions of Chapter 54, of the Code, all such property rights and interests, other than title to real property, as are necessary and required to effect a lawful termination of such salvage yard business.

8.08/ Distance Measurements. -- All measurements determinative of the location of salvage yards in relation to State highways shall be made in a line drawn perpendicular from the nearest edge of the right of way. All applications submitted after June 12, 1988 for a new salvage yard license must be accompanied by a certified survey showing the distance to the nearest residence if within 1,000 ft. of an occupied private residence or 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.

8.09/ 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.

8.10/ 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 June 12, 1988, 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

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Adm. Reg. 17-2A
Series VI, Sec. 8.10

salvage yards in the county and the social, economic and environmental impact on community growth and development in utilities, health, education, recreation, safety, welfare and convenience, if any, before issuing such approval permit. [§17-23-4]. A county in promulgating these rules may be stricter than those of the Department but at no time shall they be less restrictive.



WEST VIRGINIA DEPARTMENT OF HIGHWAYS

State Capitol Complex

Building Five

Charleston, West Virginia 25305

GASTON CAPERTON
GOVERNOR

FRED VANKIRK
ACTING COMMISSIONER
STATE HIGHWAY ENGINEER

August 2, 1989

Mr. Robert E. Wilkinson
Deputy Secretary of State
State Capitol, 157-K
Charleston, West Virginia 25305

Dear Mr. Wilkinson:

Thank you for the opportunity to respond to the memorandum from Gregory A. Morgan, Attorney at Law, concerning the opposition to the emergency rules filed by the Division of Highways.

As you are aware the only reason we filed the emergency admendments was because of the requirement of the court.

Whether or not this is sufficient basis to determine if this is an emergency situation should be decided by your office or ultimately the State Supreme Court.

The West Virginia Outdoor Advertising Association was well aware for over a year of this suit. At no time did the advertisers see fit to intervene. Therefore, we do not feel that it is appropriate for the Division of Highways or the Secretary of State to address the legal issues as set forth in the Associations memorandum.

Should you desire additional information, do not hesitate to contact me or Bob Bible of our Legal Division.

Very truly yours,

A handwritten signature in cursive script, appearing to read "C. Cameron Lewis".

C. Cameron Lewis, Director
Highway Services Division

CCL:b

cc: Bob Bible, Legat

COMMITTEE AMENDMENT:

Department of Highways

Regulations Relating to Use of State Roads Rights of Way and Areas Adjacent Thereto.

The Committee amended the proposed rule on Pages 14 and 15, Section 7.5, by deleting the following language: "Upon receipt of a permit application an application number shall be assigned by the Division of Highways. The applicant shall be notified of the temporary application number and shall then be required to publish a class 2 legal advertisement in the newspaper(s) serving the area where the proposed outdoor advertising sign, display or device is proposed to be located. A copy of the certificate of publication shall be provided to the Department within ten (10) days of the final publication date.

"As a minimum the advertisement shall include the application number, the location (including ownership of the property upon which the sign is to be placed) and shall notify the public that comments will be received by the Division of Highways, Highway Services Section, until 10 days after the final publication. The advertisement shall also state that all comments must include the specific application number to which they refer.

"Any person who claims to be affected by the proposed sign may submit written comments to the Division of Highways, Highway Services Section, and may request a public hearing within ten days of the final publication. Within ten working days of the close of the comment period the Division shall determine whether to approve, deny, or hold a public hearing for said permit.

"When the Division determines that a public hearing is required it shall notify the person(s) who requested the hearing and the permit applicant. The Division shall cause notice to be published and hold the hearing in accordance with Administrative Regulations, Commissioner of Highways, Chapter 17-2A, Series I (1982), Section 3, Hearing Procedures (hereinafter WV Adm. Reg. 17-2A).

"The Division Administrator shall assess the Division's costs of the hearing against the permit applicant or against the party requesting the hearing if he finds that either the application for the permit or the request for hearing was filed in bad faith.

"Any party adversely affected by the final decision of the Division Administrator may apply for judicial review through application for a writ of certiorari to the Circuit Court of

Kanawha County in accordance with W. Va. Code § 53-3-1 and W. Va. Code § 14-2-2.

"The regulations in the preceding six paragraphs relating to publication of notice of an application, comments on a pending application, notice of hearing, hearing on permit, assessment of costs and judicial review shall not apply to an application for a permit for an advertising sign, display or device to be located within the boundaries of an incorporated municipality or of a county-zoned commercial or industrial area."

Reason: The advertising and public hearing requirements are unnecessary, burdensome and expensive.

highways (traffic and safety rules and regulations) are authorized with the amendment set forth below:

On page 8, section 7.2, line 9, (unnumbered), by striking everything after the word "structures".

(g) The legislative rules filed in the state register on the first day of December, one thousand nine hundred eighty-seven, relating to the commissioner of highways (construction and reconstruction of state roads) are authorized.

(h) The legislative rules filed in the state register on the twenty-fifth day of February, one thousand nine hundred eighty-seven, modified by the commissioner of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of November, one thousand nine hundred eighty-seven, relating to the commissioner of highways (transportation of hazardous wastes upon the roads and highways) are authorized.

(i) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-nine, modified by the division of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of December, one thousand nine hundred eighty-nine, relating to the division of highways (use of state road rights of way and areas adjacent thereto) are authorized with the amendments set forth below:

On Pages 14 and 15, Section 7.5, by deleting the following language:

"Upon receipt of a permit application an application number shall be assigned by the Division of Highways. The applicant shall be notified of the temporary application number and shall then be required to publish a class 2 legal advertisement in the newspaper(s) serving the area where the proposed outdoor advertising sign, display or device is proposed to be located. A copy of the certificate of publication shall be provided to the Department within ten (10) days of the final publication date.

"As a minimum the advertisement shall include the application number, the location (including ownership of the property upon which the sign is to be placed) and shall notify the public that comments will be received by the Division of Highways, Highway Services Section, until 10 days after the final publication. The advertisement shall also state that all comments must include the specific application number to which they refer.

"Any person who claims to be affected by the proposed sign may submit written comments to the Division of Highways, Highway Services Section, and may request a public hearing within ten

days of the final publication. Within ten working days of the close of the comment period the Division shall determine whether to approve, deny, or hold a public hearing for said permit.

"When the Division determines that a public hearing is required it shall notify the person(s) who requested the hearing and the permit applicant. The Division shall cause notice to be published and hold the hearing in accordance with Administrative Regulations, Commissioner of Highways, Chapter 17-2A, Series I (1982), Section 3, Hearing Procedures (hereinafter WV Adm. Reg. 17-2A).

"The Division Administrator shall assess the Division's costs of the hearing against the permit applicant or against the party requesting the hearing if he finds that either the application for the permit or the request for hearing was filed in bad faith.

"Any party adversely affected by the final decision of the Division Administrator may apply for judicial review through application for a writ of certiorari to the Circuit Court of Kanawha County in accordance with W. Va. Code § 53-3-1 and W. Va. Code § 14-2-2.

"The regulations in the preceding six paragraphs relating to publication of notice of an application, comments on a pending application, notice of hearing, hearing on permit, assessment of costs and judicial review shall not apply to an application for a permit for an advertising sign, display or device to be located within the boundaries of an incorporated municipality or of a county-zoned commercial or industrial area."

(j) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred eighty-nine, modified by the division of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of November, one thousand nine hundred eighty-nine, relating to the division of highways (construction and reconstruction of state roads) are authorized.

(k) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-nine, modified by the division of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of December, one thousand nine hundred eighty-nine, relating to the division of highways (acquisition, disposal, lease and management of real property and appurtenant structures and relocation assistance) are authorized.

§64-8-2. Division of motor vehicles.

(a) The legislative rules filed in the state register on the second day of December, one thousand nine hundred eighty-two,