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Form #6

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: WV Dept. of Transportation - Division of Highways TITLE NUMBER: 157

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 6

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) Senate Bill 291

SECTION 64-8-2, PASSED ON March 13, 2010

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE FOLLOWING DATE: ~~March 13, 2010~~ 4/19/2010

Paul A. Mattox, Jr.
Authorized Signature

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SECRETARY OF STATE

TITLE 157
LEGISLATIVE RULE
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

SERIES 6
USE OF STATE ROAD RIGHTS OF WAY AND ADJACENT AREAS

§157-6-1. General.

1.1. Scope. -- This legislative rule establishes general rules pertaining to the use of state road rights of way and adjacent areas.

1.2. Authority. -- This rule is issued under authority of W. Va. Code §§17-1, 2A, 4, 16, 20, 22, and 23.

1.3. Filing Date. --

1.4. Effective Date. --

§157-6-2. Definitions.

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

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

2.3. "Back to back sign" means any sign constructed on a single set of supports with two sign facings in opposite directions each of which may have up to two sign faces visible.

2.4. "Changeable message signs (CMS)" means an outdoor advertising sign, display, or device which changes the message or copy on the sign by means of electronic rotation of panels or slats, or by LED, OLED or other illuminated message center. CMS's are considered outdoor advertising signs and must comply with all requirements applicable to outdoor advertising signs.

2.4.a. An off-premise CMS may not include, moving video or scrolling messages. Off-premise CMS must comply with all requirements for off-premise signs generally.

2.4.b. An on-premise CMS may scroll or change message content, but may not contain flashing images. On-premise CMS must comply with all requirements for on-premise signs generally.

2.4.c. No CMS sign, display or device, whether on-premise or off-premise, may be illuminated by any rapid flashing intermittent light or lights.

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

2.6. "Contiguous" means lots, parcels, municipal boundaries or county boundaries that are next to, abutting and having a boundary, or portion thereof, that is coterminous. Streets, highways, roads or other traffic or utility easements, streams, rivers, and other natural topography are not to be used to determine lots, parcels, municipal boundaries or county boundaries as contiguous.

2.7. "Control area" means that area within 660 feet of the nearest edge of the right of way of interstate or federal-aid primary highways and visible from the main-traveled way of the interstate or federal-aid primary highway. The distance is measured from the outer edge of the right of way in a straight line.

2.8. "Controlled-access highway" means any state highway or portion thereof which, for purposes of federal-aid funding, has been designated a federal-aid primary highway and

further has been designated a controlled-access highway pursuant to the authority vested in the Commissioner in W. Va. Code §§17-4-39, 40 and 41.

2.9. "Cutouts and extensions" means structural additions or deletions to a sign face area.

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

2.11. "Destroyed" or "Damaged" means fifty percent (50%) or more of the sign structure and sign face have been visibly separated, broken, or apart from the remaining sign structure.

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

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

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

2.15. "Expressway" means any road serving major intrastate and interstate travel, including federal interstate routes.

2.16. "Farm" means a tract or contiguous tracts of land used for agriculture, horticulture or grazing.

2.17. "Federal-aid primary highway" means any highway which, for federal-aid funding purposes, has been designated or classified or redesignated or reclassified as a federal-aid primary highway.

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

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

2.20. "Focal Point" means the location from which an LED, OLED or other illuminated message center, display or sign appears brightest.

2.21. "Interchange" means a system of interconnecting roadways in conjunction with one or more grade separations that provides for the movement of traffic between two or more roadways or highways on different levels.

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

2.23. "Intervening building, structure or roadway" means a building, overhead structure, or roadway which is located in such a manner that from any point along the highway, it obscures all signs, displays and devices on the same side of the highway within the minimum spacing distances set forth in subsection 7.8 of this rule. Only roads, streets, and highways that enter directly into the main traveled way of the

highway system being considered will be regarded as intervening roadways.

2.24. "Legible" means capable of being read or understood without visual aid by a person of normal visual acuity while traveling in an ordinary passenger car on any public road at the applicable speed limit.

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

2.26. "Nonconforming sign" means a sign which was lawfully erected but which does not comply with the current provisions of state law or which fails to comply with state law or rules because of changed conditions at the site.

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

2.28. "On-premise sign" means those signs that advertise the sale or lease of, or activities being conducted upon, the real property where the signs are located.

2.29. "Outdoor advertising sign" means any sign structure or combination of sign structure or message in the form of outdoor sign, display, device, figure, painting, drawing, message, plaque, poster, billboard, advertising structure, advertisement, logo, symbol or other form which is designed, intended or used to advertise or inform, any part of the message or informative contents of which is visible from the main traveled way. The term does not include official traffic control signs, official markers, or specific information panels erected, caused to be erected, or approved by the Division.

2.30. "Owner or operator" means an individual, firm, partnership, association or corporation or the plural thereof who owns land, a business, an advertising sign, an overhead structure, a roadway obstruction, a roadside memorial marker, etc., as it may relate to the provisions of this rule.

2.31. "Permanent memorials" means items such as plaques, stone monuments and etc., which are typically self-supported, intended to last many years and require a more significant installation or mounting process.

2.32. "Person" means an individual, partnership, association, or corporation.

2.33. "Removed" means the dismantling and complete removal from the view of the motoring public of all parts and materials of a sign or sign structure to include but not be limited to faces, and beams, poles, braces, stringers, guys, and struts which are used or intended to be used to support or display a sign.

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

2.35. "Road; public road; highway" as defined in W. Va. Code § 17-1-3 means but is not limited to, the right of way, roadbed and all necessary culverts, sluices, drains, ditches, waterways, embankments, slopes, retaining walls, bridges, tunnels, and viaducts necessary for the maintenance of travel, dispatch of freight and communication between individuals and communities; and these public roads or highways 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.

2.36. "Roadside memorials" means any of the various kinds of tributes, typically ornamental, placed alongside the roadway to memorialize people who have died as a result of vehicular accidents. Roadside memorials include and are limited to temporary memorials, permanent memorials, and roadside memorial signs.

2.37. "Roadside memorial signs" means

official signs, provided and placed by the Division of Highways, installed at or near the site where a fatal motor vehicle accident occurred considering available space and other constraints, and of a design approved by the Commissioner.

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

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

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

2.41. ~~2.37.~~ "Scenic byways and backways" means road segments that have been officially designated by the Secretary of the West Virginia Department of Transportation under the West Virginia Byway and Backway Program.

2.42. "Sham activity" means any activity located or created to qualify an area as an unzoned location for outdoor advertising.

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

2.44. "Sign face" means the part of the sign, including stringers, cutouts and extensions, which contains the message or informative contents and is distinguished from other parts of the sign and other sign faces by borders or decorative trim. It does not include lighting fixtures, aprons and catwalks unless part of the message or informative contents of the sign is displayed thereon.

2.45. "Sign structure" means all the interrelated parts and material, such as beams, poles and braces, which are used or designed to be used or are intended to be used to support or display a sign, but does not include sign face.

2.46. "Small parcels or narrow strips" means any configuration of land which cannot be put to ordinary commercial or industrial use without being aggregated with abutting properties.

2.47. "Transient or temporary businesses" means businesses that fail to meet any of the following requirements:

2.47.a. Continuous business operations at the proposed sign location for one (1) year prior to the submission of an outdoor advertising permit application;

2.47.b. Electricity, published telephone number and telephone answered at the business, running water, indoor restroom, permanent flooring other than dirt, gravel, sand, etc., adequate heating;

2.47.c. The business activity, or a major portion of it, conducted from a permanent building constructed principally of brick, concrete block, stone, concrete, metal, or wood or some combination of these materials or from a mobile home or trailer meeting the requirements stated in subdivision 2.44 of this rule;

2.47.d. Transient or temporary businesses include commercial or industrial

businesses that do not conduct significant business activities at the site.

2.48. "Temporary memorials" means the various types of decorations, flags, flowers (cut and artificial) and other lightweight objects or ornamentation commonly used at funerals or at gravesides as a tribute to the dead.

2.49. "Trunkline" means any road serving major city-to-city travel needs.

2.50. "Unzoned commercial or industrial areas," means those areas in a political subdivision which are not zoned on which there is located one or more separate businesses, each with a permanent building structure, devoted to a commercial or industrial activity, a portion of which activity is located within the control area. The unzoned commercial or industrial area is that area within 800 feet of the nearest edge of the area of business activity within the control area regularly used for the business activity.

2.50.a. With regard to sign permits for which the application was received prior to January 1, 2004, the term "unzoned commercial or industrial area" means an area not zoned by State or local law, regulation or ordinances on which there is located one or more viable commercial or industrial activities and the area along the highway extending outward 800 feet from and beyond the edge of such activity.

2.50.b. Unzoned commercial or industrial areas do not include the land on the opposite side of the highway from the unzoned commercial or industrial business activities except that 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, the topographical conditions on the same side of the highway as the activity are such that it is not reasonably usable; provided that the land on the opposite side of the highway has not been designated scenic by the Commissioner.

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

2.50.d. With regard to sign permits, for which the application was received after December 31, 2003, a location must meet the following requirements to qualify as an unzoned commercial or industrial area:

2.50.d.1. One (1) or more businesses must have been opened to the public for more than one (1) year prior to submission of an outdoor advertising permit application;

2.50.d.2. The business must be visible from the main traveled way of Federal-Aid Interstate Highways or Controlled Routes from which the outdoor advertising sign is visible;

2.50.d.3. Each business must be directly accessible to an ordinary passenger vehicle year-round under normal weather conditions by a road, driveway or entranceway;

2.50.d.4. Each business must have a building designed with a permanent foundation, built or modified for its current commercial or industrial use, and the building must be located within 660 feet from the nearest edge of the main traveled way. Where a mobile home or recreational vehicle is used as a business or office, the following conditions and requirements also apply:

2.50.d.4.A. The mobile home unit or recreational vehicle must meet all applicable Building Codes for commercial or business use;

2.50.d.4.B. All wheels, axles, and springs must be removed;

2.50.d.4.C. The vehicle must be permanently secured on piers, pad or foundation;

2.50.d.4.D. The vehicle must be tied down in accordance with local, state, or county requirements.

2.50.d.4.E. A self-propelled vehicle will not qualify for use as a business or

office.

2.50.d.5. Each business must be operated a minimum of 25 hours per week and open to the public during times that are normal and customary for that type of activity in the same or similar communities a minimum of 24 hours per week;

2.50.d.6. One or more employees must be available to serve customers whenever the business is open to the public;

2.50.d.7. Each business must be visible and recognizable as commercial or industrial from the main traveled way. A business is visible when that portion on which the permanent building designed, built, or modified for its current commercial use can be clearly seen year-round during normal weather by a person of normal visual acuity while traveling at the posted speed on the main traveled way adjacent to the business.

2.50.e. Each business must have a current business registration certificate issued by the West Virginia Department of Tax and Revenue;

2.50.f. With regard to sign permits for which the application was received prior to January 1, 2004, the business must have had a public access road and the following in order to have qualified for a sign permit:

2.50.f.1. An identification sign for the business which conforms to the provisions of this rule concerning an on premises sign;

2.50.f.2. A posting of the business operating hours;

2.50.f.3. A capacity to provide ample parking for all customers;

2.50.f.4. A separately metered electrical service provided by the local power company that cannot be an extension from any other building;

2.50.g. With regard to sign permits for which the application was received prior to January 1, 2004, the business used to qualify the permit location must have operated for six (6) months prior to the date of the permit application.

2.50.h. None of the following qualify as a commercial or industrial activity:

2.50.h.1. Outdoor advertising structures.

2.50.h.2.. Agricultural, forestry, grazing, farming, or other related activities, including, but not limited to wayside produce stands.

2.50.h.3. Activities conducted in a building or structure principally used as a residence.

2.50.h.4. Railroad tracks or minor sidings.

2.50.h.5. Activities more than 660 feet from the main traveled way.

2.50.h.6. Activities of transient or temporary businesses.

2.50.h. Any commercial or industrial activity upon which the permit application is based which is operated primarily to serve as the basis for an outdoor advertising permit.

2.50.h.8. Any other commercial or industrial activity which the Commissioner finds is not meaningful commercial or industrial activity.

2.50.i. With regard to sign permits for which the application was received prior to January 1, 2004, "part time commercial or industrial activity" means any commercial or industrial activity operated for less than twenty-five (25) hours per week and open to the general public less than twenty-four (24) hours per week.

2.50.j. With regard to sign permits, for which the application was received after December 31, 2003, none of the following qualify as commercial or industrial activity:

2.50.j.1. Recreational facilities such as campgrounds, golf courses (not including driving ranges) or par-three courses, tennis courts, baseball or football fields or stadiums, or racetracks, except for any portions of those facilities occupied by offices, clubhouses, etc. which meet the minimum standards to keep the business from being considered transient or temporary.

2.50.j.2. Quarries, borrow pits, or nurserylands, except for any portions of those facilities which are occupied by a permanent office located at the site which meets the minimum standards to keep the activity from being considered a transient or temporary activity.

2.50.j.3. Business not visible and recognizable as commercial or industrial from the traffic lanes of the main traveled way. A business is not visible and recognizable as commercial or industrial if the on premise or on property sign is the only part of the commercial or industrial activity that is visible from the main traveled way.

2.51. For purposes of section 8 of this rule an "unzoned industrial area" means an area within a municipality not zoned by State or local law, regulation or ordinance.

2.51.a. A salvage yard is in an unzoned industrial area within a municipality when it is located within a radius of 1000 feet of at least one industrial activity, which is in continuing operation for at least three (3) months of the year.

2.51.b. 2.46.b. None of the following are considered industrial activities:

2.51.b.1. Outdoor advertising structures.

2.51.b.2. Agricultural, forestry, ranching, grazing, farming and related activities, including, but not limited to, wayside fresh produce stands.

2.51.b.3. Activities normally and regularly in operation less than three (3) months of the year.

2.51.b.4. Activities of transient or temporary businesses.

2.51.b.5. Activities not visible from the traffic lanes of the main traveled way.

2.51.b.6. Activities more than 300 feet from the nearest edge of the main traveled way.

2.51.b.7. Activities conducted in a building principally used as a residence.

2.51.b.8. Railroad tracks, minor sidings, and passenger depots.

2.51.b.9. Junkyards, as defined in Section 136, Title 23, United States Code.

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

2.53. "Visible" means capable of being seen (whether or not legible) and readily recognized as a sign or commercial or industrial activity by a person of normal visual acuity. The presence of a sign, whether attached to the building or free-standing, is not considered in determining whether a commercial or industrial activity is visible.

2.54. "Zoned" means subject to a substantial system of land use, including the regulation of size, lighting, and spacing of signs, for tracts of land within a political subdivision established and actively enforced by duly constituted zoning authorities. The mere labeling of land as zoned commercial or industrial does not mean the area is zoned for purposes of signing; rather there must be the establishment and enforcement of a substantial set of regulations to govern land use within the portion of the political subdivision which is zoned. Unrestricted land is considered

unzoned.

2.55. "Zoned industrial or commercial areas" means those areas inside the control area within a political subdivision which are zoned for commercial or industrial use. Zoned industrial or commercial areas do not include any areas in which limited commercial or industrial activities are permitted as an incident to other primary land uses or areas the Division determines were so designated for the principal purpose of creating locations for outdoor advertising signs adjacent to or near interstate or federal-aid primary highways. Zoned industrial or commercial areas do not include areas which are unrestricted. No small parcels or narrow strips of land designated for a use classification different from and less restrictive than that of the surrounding area and which is made without consideration of the neighborhood land use character may be considered a zoned industrial or commercial area.

2.56. With regard to sign permits for which the application was received prior to January 1, 2004, the term "zoned commercial or industrial area" means an area zoned for business, trade, industry or commerce, pursuant to state, county, municipal or local law, ordinance or regulation.

2.57. "Immediate family members" include father, mother, son, daughter, siblings, parents, spouse, parents-in-law, children-in-law, grandparent, grandchildren, step-parents, step-brothers, step-sisters, step-children, foster children, and individuals in a legal guardianship relationship.

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

3.1. Purpose. The purpose of this section is to establish rules governing the making of openings or placing of structures, in, along, over, under or across state roads and highways and the issuance of permits for these purposes.

3.2. Entrances from Residential Properties, Industrial or Business Establishments. All entrances to any state road, whether from a residence, or an industrial or business property, shall be constructed in accordance with the Division's "Manual on Rules and Regulations for Constructing Driveways on State Highway Right of Way." This manual may be obtained by contacting the Division's central headquarters in Charleston or any of the Division's district headquarters. All entrances shall be adequately drained and properly stabilized.

3.3. School Bus Shelters. All school bus shelters must be constructed in accordance with plans approved by the Commissioner, and when so constructed, these shelters may be constructed within the right of way limits as directed by the Commissioner. All affected shoulder areas shall be properly stabilized.

3.4. Overhead Structures.

3.4.a. Expressway, Trunkline and Feeder Roads. All 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. The total horizontal clearance must be no less than 40 feet at right angles to the centerline of the highway. In cases where proposed construction or reconstruction plans require greater horizontal clearances, the required clearances must be provided by the owner of the overhead structure.

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

3.4.c. In the event of conflict between the provisions of subdivisions 4.a and 4.b of this section, and the terms of deeds conveying real estate to the Division, the terms of the deeds shall control.

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

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

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

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

3.5.b. Pedestrians. If necessary, underpass structures will include sidewalks to properly accommodate pedestrian traffic along the highway.

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

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

3.6.a. Conditions. The individual or company doing the mining must carry on the operation so as to properly protect the highway from damage. In the event damage to the highway does occur, the individual or company doing the mining must either restore the highway at his, her or its own expense in a manner satisfactory to the Division or reimburse the Division for the actual expense to restore the highway.

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

3.7. Seismic Surveys. A permit must be obtained to conduct seismic surveys, for the location of oil or gas deposits, on state roadways upon compliance with the following conditions: The work shall be performed when the ground is dry. Test holes shall not be larger than six (6) inches in diameter. Shot points shall be located at a safe distance from culverts, bridges and pavements, so as not to cause damage thereto. Shots shall not be in proximity to public or private buildings, and shall be so placed as to avoid disturbance to domestic water supplies. Upon completion of the work, ditches shall be restored and shoulders reshaped to the satisfaction of the District Engineer. Drill holes shall be plugged with concrete at a depth of thirty (30) inches below ground level.

3.8. Utility Installations. All individually, publicly, and privately owned utilities, including but not limited to, electric, communication, gas, oil, petroleum products, chemical, water, steam, sewage, drainage, and similar facilities that are to be accommodated, adjusted or relocated within state highway right of way, shall be in accordance with the Division's manual, "Accommodation of Utilities on Highway Right of Way", dated July 1, 1995, and made a part of this rule. This manual may be obtained by contacting the Division's central headquarters in Charleston or any of the Division's district headquarters.

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

3.8.b. Reimbursable relocation costs

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

3.8.c. Reimbursement of Publicly Owned Public Utilities.

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

3.8.c.2. This subdivision applies to all eligible projects on which the publicly owned public utility incurs reimbursable costs after June 9, 2000.

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

3.8.d.1. Construction or Improvement Projects. Privately owned public utilities, located within state highway right of way by permit, are eligible for reimbursement of relocation costs which are required due to a Division construction or improvement project. For the purpose of determining reimbursement eligibility, construction or improvement projects are generally all projects programmed with a separate Division "Authorization Number." The project, however, must alter the existing functionality of the highway involved in order to be eligible for reimbursement under this section. Examples of these types of projects include, but are not limited to: new highways, highway realignments, landslide corrections involving realignment of the highway, intersection improvements, bridge replacements, major bridge renovations involving deck replacement, and other projects as deemed eligible by the Commissioner. Projects performed under blanket Division authorizations (a single authorization representing multiple projects) that alter the functionality of the highway involved, shall be considered eligible for reimbursement.

3.8.d.2. Maintenance Activities. Privately owned public utilities located within state highway right of way by permit, are not eligible for reimbursement of relocation costs which are the result of maintenance activities by the Division. For the purpose of determining reimbursement eligibility, maintenance activities are activities performed by the Division that do not alter the existing functionality of the highway involved. Examples of these types of activities include, but are not limited to: surface improvements not affecting highway alignment, landslide corrections not affecting highway alignment, emergency repairs, bridge repairs not involving total deck replacement, drainage improvements to existing drainage structures, signal and lighting installations and improvements, painting, striping and signing work, routine maintenance, and other required activities as determined by the Commissioner.

3.8.d.3. Applicability. This subdivision applies to all eligible projects on which the privately owned public utility incurs reimbursable costs after May 4, 2001.

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

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

3.9.b. Spur Tracks. Spur tracks may not be super-elevated across the highway.

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

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

3.9.e. Rail Elevation. The top of rail

elevation shall conform to the highway surface elevation or, highway approach grades conforming to current standards shall be provided. After the track is placed, the railway company may not alter the top of rail elevation without prior approval of the change in elevation by the Commissioner.

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

3.9.g. Width of Surface. The width of the crossing surface shall be in accordance with the American Association of State Highway and Transportation Official's, "A Policy on Geometric Design of Highways and Streets."

3.9.h. Maintenance. The railway company will maintain the roadbed and crossing in a condition acceptable to the Commissioner.

3.9.i. Traffic Control Devices. At a minimum, the railway company shall install and maintain crossbuck signs in accordance with the Federal Highway Administration's, "Manual on Uniform Traffic Control Devices for Streets and Highways." This manual may be obtained by contacting the Division's central headquarters in Charleston or any of the Division's district headquarters.

3.9.j. Where a track is being constructed across any state highway, the Commissioner may require the railway company to install and maintain, at its own expense, active traffic control devices conforming to the Federal Highway Administration's, "Manual on Uniform Traffic Control Devices for Streets and Highways," and existing standards.

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

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

4.1. General Regulations for Issuance of Permits.

4.1.a. Form of Application. Applications for permission to perform work within highway right of way as provided in W. Va. Code, §17-16-6, must be made on the Division's standard permit form. The applicant must provide full information concerning the work to be done and must include a sketch.

4.1.b. Signature Required. Applications must be signed by the applicant or his or her duly authorized representative.

4.1.c. Security. The applicant must deposit security with the Division in the form of a certified check, money order, or executed bond, with surety satisfactory to the Division, to cover any damage the Division may sustain due to granting 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 permitted work.

4.1.d. Completion Date. The application must state the date the proposed work is to be completed.

4.1.e. Approval of Application. Applicants for permits must file the original and three (3) copies of the application with the District Engineer in whose district the work is proposed. Before any work can be started, the application must be approved by the District Engineer or the Director of the Maintenance Division.

4.1.f. Inspection. The permitted work must be done under the supervision and to the satisfaction of the Division. The applicant must agree to reimburse the Division for any

inspection costs incurred under the permit as provided in W. Va. Code, §17-16-6.

4.1.g. Notification. The applicant must notify the Division at least 48 hours in advance of the date on which work will begin.

4.1.h. Control of Traffic. The traveling public must be protected at all times in accordance with the Division's manual, "Traffic Control for Streets and Highway Construction and Maintenance Operations." This manual may be obtained by contacting the Division's central headquarters in Charleston or any of the Division's district headquarters.

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

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

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

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

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

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

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

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

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

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

Any person desiring to construct or reconstruct one or more driveways or other

connections to or within the right of way of any state system street or highway, must do so in accordance with the requirements specified in the Division's manual, "Rules and Regulations for Constructing Driveways on State Highway Rights of Way." This manual may be obtained by contacting the Division's central headquarters in Charleston or any of the Division's district headquarters.

§157-6-7. Requirements for Outdoor Advertising on the State Highway System.

7.1.

7.1.a. Purpose. This section's purpose is to regulate and control the erection and maintenance of outdoor advertising signs, displays and devices along the total highway system and further to set up specific limitations relating to size, spacing and lighting of those signs, displays and devices, located along those highways in West Virginia designated for federal-aid funding purposes as interstate and primary highways in accordance with Title 23, United States Code.

7.1.b. This section is correlated to and applies along with that certain agreement dated the 6th day of January, 1969, between the United States of America, represented by the Secretary of Transportation, acting through the Federal Highway Administrator, and that agreement dated the 19th day of June, 1961, between the United States Secretary of Commerce and the State Road Commissioner and the "National Standards" of 23CFR, Chapter 1, §750.105 et.seq. as prepared and promulgated by the Bureau of Public Roads in relation to the National System of Interstate and Defense Highways.

7.2. Licenses Required, Applications. No person may engage in the business of outdoor advertising in this state without first obtaining a license from the Commissioner. No person may construct, erect, operate, use, maintain, lease or sell any advertising sign, display or device in this State without first obtaining a license from the Commissioner. A license fee in the amount of one hundred and twenty-five dollars per year, payable in advance, will be charged licensees who obtain up to twenty (20) permits. Licensees, including subsidiaries and affiliates, who obtain twenty-one (21) or more permits will be charged a fee of one-thousand dollars per annum.

7.2.a. Applications for licenses or renewal of licenses must be made on forms furnished by the Commissioner and must be accompanied by the annual fee.

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

7.3. Revocation of License. Whenever the Commissioner finds that any material information given on the application for license is knowingly false or misleading or that the licensee has violated any of the provisions of W. Va. Code §17-22-1, et.seq., or this rule, he or she has the authority, after thirty (30) days' notice, in writing, to a licensee, to enter an order revoking any license granted. Upon revoking a license, the Commissioner will repay a proportionate part of the license fee unless the licensee shall, before the expiration of thirty (30) days, correct all false or misleading information and comply with the provisions of W. Va. Code §17-22,1, et. seq., and this section.

7.3.a. Orders. A Commissioner's order revoking a license shall be accompanied by the findings of fact and conclusions of law upon which the order was entered.

7.3.b. Judicial Review. Any person adversely affected by an order entered by the Commissioner in conjunction with this section is entitled to a judicial review as set out in W. Va. Code, §17-22-13.

7.4. Permits Required. No person may construct, erect, operate, use, maintain, or cause or permit to be constructed, erected, operated, used or maintained any outdoor advertising sign, display or device without first obtaining a permit from the Commissioner, and paying the permit application fee or annual permit renewal fee. In the case of new permits, an inspection fee will

be charged by the Commissioner as provided in W. Va. Code, §17-22-15.

7.4.a. If a check submitted to the Division for a permit and/or license fee is returned for any reason, the permit and /or license shall be void from date of issuance. The applicant may be required to submit a new application and may thereafter be required to submit cash or a certified check with any application or renewal.

7.4.b. License Required. Permits will not be issued to any person who has not obtained the license provided for in subsection 7.2 of this rule.

7.4.c. Application. A separate application for a permit must be made for each separate advertising sign, display or device, on the form furnished by the Commissioner. Applications must be typed, signed by the applicant or the applicant's duly authorized representative, describe the size, shape, and nature of the sign and its actual or proposed location with sufficient accuracy to enable the Commissioner to locate it, and include any other information relevant to the particular sign as the Commissioner may reasonably require. With regard to sign permits for which the application was received after December 31, 2003 the following shall apply:

7.4.c.1. Where local government regulation exists, no permit may be issued unless the applicant submits along with the application either (1) a copy of the permit issued for the site by the local government or (2) a statement from the appropriate official indicating that the sign complies with all local zoning and other applicable requirements and that they will issue a permit to that applicant upon issuance of the state permit by the Division. With the prior written approval of the Commissioner of Highways, a county commission may enact and enforce outdoor advertising ordinances which place limitations or restrictions on outdoor advertising signs, displays or devices which are in addition to or more restrictive than the limitations or restrictions provided by the Commissioner of Highways.

7.4.c.2. If requested by the Division, any application that is on the same real property of the qualifying business shall be accompanied by documentation confirming that the qualifying business has been in continuous significant operation at the location for one (1) year prior to submission of the application. Transient, temporary or sham businesses will not qualify.

7.4.c.3. The proposed location for a new sign shall be clearly identified on the ground by a stake with no less than two (2) feet of the stake clearly visible above the ground line. Staking of the site is considered part of the application. The stake shall not be moved or removed by the applicant until the application is disapproved or, if it is approved, until the sign has been erected.

7.4.c.4. No sign may be permitted or erected within 800 feet of areas from which vegetation has been removed unlawfully or areas within right of way limits from which vegetation has been unlawfully removed without prior written approval of the WVDOT.

7.4.c.5. Permit applications will be considered in the order submitted. If applications are submitted for the same or conflicting sites, each will be dealt with in turn. An application which is not approved may be resubmitted if the Division is notified in writing within three (3) business days from certified receipt of denial and the application is resubmitted within ten (10) business days.

7.4.c.6. The applicant is responsible for providing access to and entry upon all real property if entry is determined by the Division to be necessary for review of the application.

7.4.c.7. Upon receipt of the permit application, the District Inspector will inspect the site in order to ascertain if the location qualifies. The Division reserves the right to consider any application for a sign permit for a period of up to ninety (90) days from the date the application is submitted. On or before the expiration of the ninety (90) day period, the Division shall either: (1) accept the application and issue the sign permit; (2) reject the

application in writing stating the ground or grounds for the rejection; or (3) notify the applicant in writing that the Division requires additional time to review the application, not to exceed sixty (60) days, and stating the issues or matters requiring inquiry by the Division, including any request to the applicant for the submission of any additional information or documentation in support of the application. If within the ninety (90) day period the Division has not responded in writing indicating acceptance or rejection of the application, or specifying the need for further information, the applicant may deem the application rejected and proceed with the applicant's rights of appeal by judicial review in accordance with West Virginia Code § 17-22-15.

7.4.c.8. For the purpose of permitting additional outdoor advertising along roads which have been designated scenic byways or backways, the Secretary of Transportation may segment a portion of the roads from designation as a scenic byway or backway only in accordance with federal regulations.

7.4.c.9. The Division may issue a permit for a sign, which could otherwise be permitted even though it is located within the acquired right of way for a highway or interchange for which construction has not yet begun. However, the sign owner and the landowner must agree to remove the sign without cost to the Division and without compensation within thirty (30) days after written notice from the Division to the addresses provided in the application.

7.4.c.10. Regardless of the date of application, if a permit is disapproved or an existing permit is revoked, appeals shall be pursued in accordance with W. Va. Code, §17-22-15. The applicant bears the burden of showing that the Division should issue the permit or, in the case of the revocation of a permit, that the revocation was not warranted under the applicable law or rule. A decision regarding any other applications for the same or conflicting sites submitted subsequent to the initial submission of the disapproved application or revoked permit may be held in abeyance pending the resolution of the appeal. If the Division's disapproval is sustained, the other applications will be considered in turn.

7.4.c.11. No new application may be submitted by the same applicant or its assignee or successor for a site which has been disapproved unless there has been a significant change in the geometry or designation of a highway, the removal of an existing, conflicting sign, etc. This prohibition extends to any sites which depend for approval on the same facts which led to the disapproval of the first application.

7.4.d. With regard to signs for which the permit application was received prior to January 1, 2004, a separate application for a permit must be made for each separate advertising sign, display or device, on the form furnished by the Commissioner. The applicant or his duly authorized representative must sign the application. Authorization to represent the applicant must be submitted to the Commissioner in writing.

7.4.e. Bond of Out-of-State Licensee. Non-residents of this State, or any person having his or her principal place of business outside the state, or which is incorporated outside the state, must first furnish and file with the Commissioner a bond payable to the State of West Virginia, with approved surety in the sum of two thousand five hundred dollars before being eligible for an outdoor advertising license. Granting a license to a non-resident is also conditioned upon the licensee fulfilling all the requirements of law and observing and obeying all regulations relating to the business of outdoor advertising in the State of West Virginia. All money received from the forfeiture of any bond or bonds shall be deposited in the special fund created in W. Va. Code, §17-22-10.

7.4.f. Payment. Every application shall be accompanied by a permit application fee of twenty dollars for each advertising sign, display or device as provided in W. Va. Code § 17-22-15. The fee shall be retained if the permit is issued. The Commissioner will also charge an inspection fee, which will be retained whether the permit is issued or not as provided in W. Va.

Code § 17-22-15(b).

7.4.g. Refusal of Permit. In the event that a permit application is denied, the Commissioner shall enter an order for the denial and shall send a copy of the order to the applicant by certified mail, return receipt requested. The order shall be accompanied by the findings of fact and conclusions of law upon which the order was entered.

7.4.h. Change of Advertising Copy. The holder of a valid permit may change the advertising copy on the permitted structure or sign without payment of any additional fee.

7.4.i. Expiration. Permits expire on the thirtieth day of June of each year and will not be prorated.

7.4.j. Renewal. Permits may be renewed upon the payment of the $1.00 fee until June 30, 2005. Thereafter, the annual renewal fee shall be as follows: July 1, 2005 to June 30, 2006, $5.00; July 1, 2006 to June 30, 2007, $10.00; July 1, 2007 to June 30, 2008, $15.00; July 1, 2008 to June 30, 2009, $20.00; July 1, 2009 and beyond, $25.00 per outdoor advertising permit. No application is required for the renewal of a permit.

7.4.k. Construction of the sign structure and a sign face must be completed within one year from the date of the permit's issuance. The Division may cancel permits and forfeit fees if construction is not completed within one year as provided in W. Va. Code § 17-22-15(e).

7.4.l. With regards to signs for which the permit application was received prior to January 1, 2004, construction of the permitted sign or signs 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.

7.5. Revocation of Permits. Whenever the Commissioner finds that any material information given on the application for permit is knowingly false or misleading or that the permitee has violated any of the provisions of W. Va. Code §17-22-1, et. seq. or this rule, he or she has the authority, after thirty (30) days notice in writing to the permitee, to enter an order revoking any permit issued. Upon revoking a permit, the Commissioner will repay a proportionate part of the fee unless the permitee shall, before the expiration of thirty (30) days, correct all false or misleading information and comply with the provisions of W. Va. Code, §17-22-1, et. seq. and this rule.

7.5.a. Findings of Fact. A Commissioner's order revoking a permit shall be accompanied by the findings of fact and conclusions of law upon which the order was entered.

7.5.b. Zoning Boards, Commissions or Other Public Agencies. The Commissioner may revoke a permit and return the permit fee if it is found that the construction, erection, operation, use or maintenance of any advertising sign, display or device for which a permit was issued is prevented by any zoning board, municipal building ordinance, commission or public agency with jurisdiction over these matters. However, the Commissioner will only return one half the fee if the advertising sign was erected or the inspection by the Commissioner or his representatives was performed as provided in W. Va. Code § 17-22-15(b). Also, any inspection fees charged will not be refunded as provided in W. Va. Code § 17-22-15(b).

7.5.c. Judicial Review. Any person adversely affected by an order made and entered under this section refusing to grant or revoking a permit is entitled to judicial review as set out in W. Va. Code, §17-22-1, et. seq..

7.6. Territorial Application. The territory under the jurisdiction of the Commissioner for the purposes of this rule includes all of the State. Authorized representatives of the Commissioner may enter into and upon any land which has outdoor advertising signs, displays or devices in the performance of their functions and duties under the provisions of W. Va. Code, §17-22-1, et. seq., and this rule.

7.7. Prohibition of Certain Outdoor

Advertising.

7.7.a. No outdoor advertising sign, display or device may be erected or maintained within 660 feet of the nearest edge of and visible as to informative content from the right of way of any road within the state road system designated and classified for purposes of allocation of federal-aid highway funds as federal-aid interstate or federal-aid primary highways, except as provided in section 7.8 of this rule.

7.7.b. No outdoor advertising sign, display, or device may be erected or maintained along the state road system designated and classified 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 that main traveled way except as otherwise provided in this rule.

7.8. Exempted Areas. Outdoor advertising signs, displays and devices whose size, spacing and lighting are in conformance with this subsection 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 except as provided in subsection 15 of this section.

7.8.a. Licensees must submit a written request for a variance with the permit application if he or she wants to place a sign, display or device within 660 feet of a two-lane non-controlled access highway in an unzoned commercial or industrial area on the opposite side of the highway from the activity establishing the zoning. The written request for a variance must specify the reasons. The Commissioner will base his or her decision to accept the variance on the conditions in the area and the documentation of the licensee. Once it is determined which side of the highway the unzoned commercial, industrial area or the single activity establishing the zone is located, this determination will not be changed.

7.8.b. Size.

7.8.b.1. A sign may contain one or two advertisements per side, within the maximum allowed area.

7.8.b.2. Advertising signs composed of stacked sign faces, one on top of the other, on the same structure and facing the same direction are limited to three hundred square feet per sign face.

7.8.b.3. Advertising devices composed of separate sign faces in a side by side formation, on the same structure, facing the same direction are limited to three hundred square feet per sign face.

7.8.b.4. Advertising devices composed of a single sign, facing a single direction may not exceed six hundred seventy-two square feet: Provided, that cutouts and extensions which expand the area may be allowed to the extent the area is expanded by no more than thirty percent of its original permitted configuration.

7.8.b.5. No more than one sign structure is permitted at a location.

7.8.b.6. Signs for which the permit application was received prior to January 1, 2004, shall adhere to the following:

7.8.b.6.A. The maximum allowed area of any sign is 1200 square feet with a maximum height of 25 feet and a maximum length of 60 feet, inclusive of cutouts and extensions, but excluding decorative bases, and structural supports.

7.8.b.6.B. A sign may contain one or two advertisements per facing, within the maximum allowed area.

7.8.b.6.C. Back-to-back or V-type signs are permissible and will be treated as one structure with an area of 1200 square feet permitted for each facing.

7.8.c. Spacing.

7.8.c.1. The following spacing applies to signs along Federal-Aid Interstate Highways and Controlled-Access Facilities Within Zoned and Unzoned Commercial or Industrial Areas.

7.8.c.1.A. Signs must be spaced at least 1,000 feet apart on the same side of the highway.

7.8.c.1.B. No sign may be located within 1,000 feet of an interchange. This requirement does not apply within the boundaries of any municipality.

7.8.c.2. The following spacing applies to signs along Federal-Aid Interstate Highways and Controlled-Access Facilities Within Zoned and Unzoned Commercial or Industrial Areas for which the permit application was received prior to January 1, 2004.

7.8.c.2.A. Signs must be spaced at least 500 feet apart on the same side of the highway.

7.8.c.2.B. No sign may be located within 500 feet of an interchange. This requirement does not apply within the boundaries of any municipality.

7.8.c.3. The following spacing applies to signs along other Federal-Aid Primaries.

7.8.c.3.A. Outside a municipality, signs must be spaced at least 500 feet apart on the same side of the highway.

7.8.c.3.B. Inside municipalities, signs must be spaced at least 500 feet apart on the same side of the highway.

7.8.c.4. The following spacing applies to signs along other Federal-Aid Primaries for which the permit application was received prior to January 1, 2004.

7.8.c.4.A. Outside a municipality, signs must be spaced at least 300 feet apart on the same side of the highway.

7.8.c.4.B. Inside municipalities, signs must be spaced at least 100 feet apart on the same side of the highway.

7.8.c.5. Signs that are double decked, side-by-side, back-to-back, or V-type will be permitted, with regards to spacing, if they meet the requirements of this subdivision.

7.8.c.6. The foregoing spacing requirements do not apply to signs which in the opinion of the licensee are separated by an intervening building, structure or roadway. In order to receive a permit in variance to the spacing requirements of this subdivision licensees must submit written documentation along with the permit application explaining that a situation exists where an intervening building, structure or roadway would justify a variance from the spacing requirements. The Commissioner will review the permit application and the written documentation and may grant a variance based upon the sight distances in the area and the documentation submitted by the licensee.

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

7.8.d.1. No outdoor advertising may contain lighting that is not shielded, and any lighting must be of sufficiently low intensity as not to cause glare or impair the vision of an operator of any motor vehicle.

7.8.d.2. No off-premise sign may be illuminated by any rapid flashing intermittent light or lights that change in a time sequence faster than 12 cycles/revolutions per minute without a written acceptance of the variance from the Commissioner.

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

7.8.d.4. No off-premise sign may contain numerical displays in the form of LED's or other lights that change more than once in

eight seconds.

7.8.e. Off-premise Changeable Message Signs (CMS).

7.8.e.1. Off-premise CMS may not contain or display flashing, intermittent or moving lights. For purposes of this section, the illumination of an advertising device containing a message center display does not constitute the use of a flashing, intermittent or moving light. No message center display may include an illumination that is in motion or appears to be in motion or that changes in intensity or exposes its message for less than eight (8) seconds or that has an interval between messages of two (2) seconds or less. No off-premise LED, OLED, illuminated message center display or similar device may exceed the following brightness limits measured as candelas per square feet at any focal point on any roadway or berm or any vehicular approach to any roadway:

	Day	Night
Red	300	100
Green	600	200
Amber	450	150
Blue	800	350
White	550	50
All color	650	250

7.8.e.2. Off-premise CMS must conform with size requirements described in paragraph 7.8.b.4.

7.8.e.3. Off-premise CMS must be spaced a minimum of 1500 feet apart on the same side of the highway and 500 feet apart from another off-premise CMS structure located on the opposite side of the highway.

7.8.e.4. Only conforming sign structures may be modified to an off-premise CMS upon compliance with off-premise CMS standards and approval of the WVDOT. Nonconforming sign structures may not be modified to an off-premise CMS.

7.8.e.5. Each message displayed shall remain fixed for at least eight (8) seconds.

7.8.e.6. When a message is changed, it must be accomplished within an interval of two (2) seconds or less.

7.8.e.7. Off-premise CMS must contain a default design that will freeze the sign in one position if a malfunction occurs.

7.8.e.8. Off-premise CMS may only be constructed as a single face, back to back or two-faced, V-shaped structures. Only one face may be visible in each direction of the main traveled way. Off-premise CMS may not be side by side or stacked.

7.8.e.9. No cutouts or extensions are allowed on off-premise CMS structures.

7.8.e.10. If a conforming sign is to be revised to an off-premise CMS, an application shall be submitted to the Commissioner noting the sign is to become an off-premise CMS and requesting approval for this change. No off-premise CMS may be erected or permitted unless the applicant first cancels any previous permits for that location.

7.8.e.11. No off-premise CMS sign may exceed 672 square feet.

7.9. Exceptions.

7.9.a. In lieu of exercising control over size, spacing and lighting of outdoor advertising signs, displays or devices in zoned commercial or industrial areas as set forth in subsection 7.8 of this rule, the Commissioner may certify to the Federal Highway Administrator that a state, regional, county, municipal or local zoning law, regulations, or ordinance or building ordinance has established effective control of size, spacing and lighting of outdoor advertising signs, displays and devices.

7.9.b. The Commissioner will advise all licensees in the affected area of the action. The Commissioner's certification 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 will be effective as long as the control exercised is consistent with W. Va.

Code, §17-22-1, et. seq. and this rule.

7.9.c. The following signs are excepted from the license and permit requirements of this rule:

7.9.c.1. Directional or other official signs and notices required or authorized by law.

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

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

7.9.c.4. To fall within the purview of paragraphs c.2 and c.3 of this subsection, the sign, display or device must meet the following requirements:

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

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

7.9.c.4.C. Agriculture or Horticulture sign. Signs on real property, including parcels that are contiguous, occupied and cultivated and assessed for real property taxes as a farm, advertising agricultural or horticultural activities conducted on the real property, including without limitation non-traditional agriculture. Such signs must meet the requirements of Subsection 7.15 of this rule.

7.9.c.5. No on-premise sign may be located if it is separated from the activity by an intervening parcel of land or building.

7.9.d. Signs advertising activities, products or services offered or performed on the property upon which they are located are considered on-premise provided they meet the following requirements:

7.9.d.1. The sign is physically located on the same property as the activity advertised.

7.9.d.2. The purpose of the sign is the identification of the activity, product or service offered at the location.

7.9.d.3. In the event a sign site is located on a narrow strip of land contiguous to the advertised activity or on land connected to the advertised activity by a narrow strip of land, the sign site is not considered part of the premises on which the activity being advertised is conducted. A narrow strip shall include any configuration of land which cannot be put to any reasonable use related to the activity other than for signing purposes.

7.9.d.4. Two or more activities which share a common property line may share a single on-premise sign so long as the sign is located on the common property line and meets all other requirements for on-premise signs.

7.9.d.5. The sale of land between the main building and the advertising device or the diversion of the land to uses other than commercial or industrial by lease, rental agreement, easement, or license, etc., is prima facie evidence that the sign is no longer an on-premise sign. The diversion of land to other uses includes, but is not limited to, cultivation to raise crops or forest, even though land may be of a single ownership, or land which is separated from the activity by a public highway.

7.9.d.6. If a business vacates a premise which is not thereafter occupied by another business within one year, the owner of the property must, without cost to the Division, dismantle and remove any free-standing on-premise sign. Any on-premise sign which is not so removed is unlawful.

7.9.d.7. 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 is less than 250 feet.

7.9.d.8. For the purpose of this rule, an on-premise advertising display that is located within the boundaries of a development project, that identifies the name of the development project, its business logo, or the name or logo of the retail business located within the development project, shall continue to be deemed an on-premise advertising display regardless of any of the following occurrences.

7.9.d.8.A. The creation or construction, in or about the project, of a common parking area, driveway, thruway, alley, passway, public or private street, roadway, overpass, divider, connector, or easement intended for ingress or egress, regardless of where or when created or constructed, and whether or not created or constructed by the project developer or its successor, or by reason of government regulation or condition.

7.9.d.8.B. The sale, transfer, or conveyance of an individual lot, parcel, or parcels less than the whole, within the development project.

7.9.d.8.C. The sale, transfer, conveyance, or change of name or identification of a business within the development project.

7.9.d.8.D. The subdivision of the parcel that includes the development project in accordance with the Subdivision Map. This subdivision shall not be applicable in any case in which its application would result in a loss of federal highway funds by the State of West Virginia. This subdivision applies to all counties and municipalities.

7.10. Purchase or Condemnation. The Commissioner may acquire all of the property rights and interests specified in W. Va. Code, §17-22-5, when any sign, display or device is required to be removed by reason of the provisions of W. Va. Code, §17-22-1, et.seq. or of this rule, by purchase at private sale, or in the event he or she is unable to do so, by proceeding in eminent domain. Just and full compensation shall be paid upon the removal of any outdoor advertising sign, display or device that is:

7.10.a. lawfully in existence;

7.10.b. adjacent to any highway designated or redesignated as part of the federal-aid interstate or primary systems;

7.11. Permit Identification Number. Every permit issued in accordance with this rule will be assigned a separate identification number and tag. Upon issuance of the permit, the permitee must fasten or affix the identification tag on the support or lower corner of the sign nearest the main traveled way so as to be readable from the edge of the highway and as directed by the Division. The tag will be issued for and may be attached only to the sign described in the permit application. Under no circumstances may the tag be moved from one sign to another nor may the sign to which it is attached be relocated to another location. The tag will contain a number, the expiration date of the permit and the name of the permittee. Construction, erection, operation, use or maintenance of an outdoor advertising sign, display or device without having the permit number tag affixed thereto shall be prima facie evidence that it is in violation of the provisions of W. Va. Code, §17-22-1, et. seq. and this rule.

7.11.a. Replacement tags for those which are lost or vandalized must be obtained from the Division by submitting a copy of the application or the renewal permit list and replacement tag fee.

7.11.b. Every permit issued in accordance with this rule will be assigned a separate identification number. It is the duty of each permittee to fasten the permit identification number tag to the sign for which it was furnished. The tag will contain a number, the expiration date of the permit and the name of the permittee. Construction, erection, operation, use or maintenance of an outdoor advertising sign, display or device without having the permit number tag affixed thereto shall be prima facie

evidence that it is in violation of the provisions of W. Va. Code, § 17-22-1, et. seq. and this rule.

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

7.13. Measurements.

7.13.a. In determining unzoned commercial or industrial areas, measurements shall be made from the farthest or outer most edge of the used area of the commercial or industrial activity, structures, or other areas constituting an integral part of the commercial or industrial activity.

7.13.b. With regard to signs for which the permit application was received prior to January 1, 2004, in determining unzoned commercial or industrial areas, measurements shall be made from the farthest or outer most edge of the used area of the commercial or industrial activity, structures, driveways, parking lots, storage areas, or other areas constituting an integral part of the commercial or industrial activity.

7.13.c. When measuring the distance between signs, measurements shall be taken along the edge of the traveled way between lines perpendicular to the edge of the traveled way which intersect the face of the sign nearest the traveled way.

7.13.d. When measuring unzoned commercial or industrial areas, measurements shall be taken within the control area from the outermost edge of the regularly used buildings and areas regularly used and required for storage and processing. Only those portions of the activity which are within the control area and which are visible from the main traveled way shall be considered.

7.13.e. When measuring interchanges, where there is insufficient space to end an entrance ramp before beginning an exit ramp, the ramp shall be regarded as continuous and no signs may be permitted between the interchanges in areas which are not within the boundaries of an incorporated municipality.

7.13.f. The distance requirement set forth in subdivision 8.c of this section shall be measured along the interstate or controlled access facility, from the nearest point of the beginning or ending of the pavement widening at the exit from or entrance to the main traveled way.

7.13.g. Official and on premise signs as set out in subsection 8.c of this section shall not be counted nor shall measurements be made from them for the purposes of determining compliance of spacing regulations.

7.14. General Restrictions.

7.14.a. No advertising sign may be erected or maintained which involves rapid motion or rotation of the structure or any part thereof. Provided, that an advertising sign that does involve motion or rotation which is not rapid to effect changeable messages may be permitted in accordance with the provisions of W. Va. Code, §17-22-4 and this rule.

7.14.b. The Division shall have sole discretion to determine if a sign creates a traffic or safety hazard, by any means, without limitation to location, construction, orientation, or lighting or illumination. If the Division determines the sign to be a traffic or safety hazard, a notice will be given by certified mail to the sign-owner and landowner to correct any sign which does not conform to these standards within sixty (60) days of the date of mailing. If this determination is made, the sign shall be removed at the expense of the sign owner. A one-time extension of forty-five (45) days may be granted if the sign owner can show just cause for the delay because of unusual weather conditions or other reasons beyond the sign-owner's control. If the correction is not completed within the specified time, the sign must be removed at the sign-owner or landowner's expense.

7.14.c. No outdoor advertising sign, display or device may use the words "stop" or

"danger", or present or imply the need of requirement of stopping, or the existence of danger.

7.14.d. No outdoor advertising sign, display or device may be a copy or imitate a traffic sign or other official signal.

7.14.e. No outdoor advertising sign, display or device may attempt or purport to direct traffic.

7.14.f. No outdoor advertising sign may contain lighting which is not shielded, and any lighting shall be of sufficiently low intensity as not to cause glare or impair the vision of the operator of any motor vehicle.

7.14.g. No outdoor advertising display or device may be illuminated by any rapid flashing, intermittent light or lights.

7.14.h. No outdoor advertising sign, display or device may be painted, affixed, or attached to any natural feature, including, but not limited to; rocks, cliffs, trees and shrubbery.

7.14.i. No outdoor advertising sign, display or device may hinder the clear, unobstructed view of approaching or merging traffic, or obscure from view any traffic sign or other official signs.

7.14.j. No outdoor advertising sign, display or device may be located as to obscure the view of any connecting road or intersection.

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

7.14.l. No person may 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.

7.15. Control of Outdoor Advertising Along Federal-Aid Interstate and Defense Highways. This subsection is shall be construed and applied in conformity with the "National Standards" contained in 23CFR, §750.105 et.seq. on the effective date of this rule. This subsection applies to all outdoor advertising along interstate and defense highways except in those situations where the provisions of Subsections 7.2 to 7.14 of this rule are stricter.

7.15.a. All signs must be structurally safe and maintained in a good state of repair, which includes but is not limited to the following:

7.15.a.1. The sign face must be maintained free of peeling, chipping, rusting, wearing and fading so as to be fully legible at all times.

7.15.a.2. All parts of the sign, including the cutouts, extensions, border, trim, and sign structure must be maintained in a safe manner, free from rusting, rotting, breaking and other deterioration.

7.15.a.3. The sign face must not have any vegetation growing upon it or touching or clinging to it.

7.15.a.4. Any sign which does not conform to the maintenance standards is in violation of this subdivision. A notice will be given by certified mail to the sign owner and landowner to repair any sign which does not conform to these standards within sixty (60) days of the date of mailing. If this determination is made, the sign must be repaired or removed at the expense of the sign owner. A one-time extension of forty-five (45) days may be granted if the sign-owner can show just cause for the delay because of unusual weather conditions or other reasons beyond the sign-owner's control. If the repairs are not completed within the specified time, the sign must be removed at the sign-owner or landowner's expense.

7.15.b. Nonconforming signs must be maintained subject to the following restrictions:

7.15.b.1. No improvements, other than painting of the structure, may occur which will lengthen the life of the device.

7.15.b.2. The right to maintain a nonconforming sign is confined to the permitted sign owner or his transferee.

7.15.b.3. If a nonconforming sign is partially damaged by wind, rain, earthquake, or other natural forces including flood, tornado, or hurricane, by other catastrophic occurrences or casualties, it shall only be repaired as follows:

7.15.b.3.A. The sign owner shall notify the Division in writing of the extent of the damage and the cause of the damage, shall provide clear, color, on-site photographs of the damaged sign, and provide a description of the repair work to be undertaken including the cost of the same.

7.15.b.3.B. Within thirty (30) days of receipt of the written notification, the Division shall determine in writing by notice to the sign owner of the percent of damage to the nonconforming sign. If the Division determines that the damage is less than 50 percent of the replacement cost as of the time of the damage, the Division shall authorize the sign owner in writing to perform the requested repairs which shall be promptly completed by the sign owner. If the Division determines that the damage is greater than 50 percent of the replacement cost as of the time of the damage, the Division shall so notify the sign owner in writing and the sign shall not be rebuilt or repaired but shall be dismantled at the cost of the sign owner or landowner and shall not be erected thereafter. Any nonconforming sign which is repaired without Division authorization becomes illegal.

7.15.b.3.C. Any person aggrieved of a decision by the Division hereon shall have the right of appeal by judicial review in accordance with West Virginia Code § 17-22-15.

7.15.b.4. A nonconforming sign which is destroyed by Act of God, catastrophic occurrence, vandalism or tortuous act, cannot be rebuilt, and the debris from the destroyed sign shall be removed by the sign owner, or by the Division at the sign owner's expense and the permit cancelled.

7.15.b.5. A nonconforming sign when relocated or moved to a conforming location may no longer be considered a nonconforming sign and thereafter will be subject to all the provisions of law and of this rule. Reasonable repair and maintenance of a nonconforming sign is not a change which would terminate nonconforming use. Extension, enlargement, rebuilding, changing the materials of the sign structure, changing the size of the sign structure materials, adding guys or struts for stabilization of the sign or structure, adding lights to a non-illuminated sign, changing the height of the sign above ground or re-erection of the sign will make the sign illegal. Any changes to a nonconforming sign, such as the addition of catwalks, must be reviewed on a case-by-case basis and must be agreed to by the Federal Highway Administration prior to construction.

7.15.b.6. A nonconforming sign owner may change the advertising message, including changing faces, as long as similar materials are used and the sign face is not enlarged. If the sign face or faces are reduced, they may never be increased.

7.15.b.7. It is a violation of this rule for signs to be maintained from or across the right of way of Interstate or Federal-aid highways or across controlled access lines of Federal-aid primary routes.

7.15.c. Territory Involved.

7.15.c.1. General Area Protected. This section applies to all areas adjacent to interstate and defense highways, the entire right of way of which was acquired subsequent to July 1, 1956, and which areas are within 660 feet of the nearest edge of right of way limits within and without municipalities.

7.15.c.2. Excepted Areas. The following areas are excepted areas within the meaning of this section.

7.15.c.2.A. Any area wherein a line drawn perpendicular to the centerline of the median and extended to both edges of the width of the normal right of way, intersects any right

of way acquired for right of way purposes prior to July 2, 1956.

7.15.c.2.B. Areas within a county that are zoned as commercial or industrial or the land use as of September 21, 1959, was clearly established by state law as commercial or industrial.

7.15.c.2.C. Areas within the corporate boundaries of municipalities that are designated as commercial or industrial areas, as the corporate boundaries existed on September 21, 1959.

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

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

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

7.15.d.2.A. A business or activity sign may not exceed 20 feet in any one dimension or 150 square feet in area, including border and trim, but excluding supports.

7.15.d.2.B. "Center of activity" is determined by the location of the cash register or main business activity, i.e., motel office.

7.15.d.3. Signs Within 50 Feet of Advertised Activity. Within fifty (50) feet of the advertised activity any number of signs of any size may be erected.

7.15.d.4. General Restrictions. Other than size and distance the following restrictions shall be applicable to on premise signs:

7.15.d.4.A. The signs may not attempt to direct traffic.

7.15.d.4.B. The signs may not imitate a traffic sign.

7.15.d.4.C. Lighting, if any, must be shielded.

7.15.d.4.D. The signs may not contain or include or be illuminated by any rapid flashing light or lights.

7.15.d.4.E. The signs may not be on or attached to any natural feature.

7.15.d.4.F. The signs may not hinder clear, unobstructed view of official signs and approaching or merging traffic.

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

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

7.15.e.1. The signs may advertise only activities being conducted within twelve (12) air miles of the sign and shall be visible only to interstate traffic not served by an information site within twelve (12) air miles of the advertised activity.

7.15.e.2. The signs shall not be nearer than two (2) miles in advance of an intersection of the main traveled way and an exit

roadway. This distance shall be measured from the edge of the exit roadway nearest to approaching traffic.

7.15.e.3. The signs shall also be one thousand (1000) feet beyond the intersection of an entrance roadway and the main traveled highway. This distance shall be measured from the edge of the entrance roadway, including acceleration lanes, nearest to traffic which has passed the entrance roadway.

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

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

7.15.e.6. Other than distance, the following restrictions shall be applicable to all signs erected within twelve (12) air miles of an advertised activity.

7.15.e.6.A. Not more than one sign, advertising the same activity or attraction, visible to traffic moving in any one direction, will be permitted on any one interstate highway. The text must be visible to traffic.

7.15.e.6.B. No sign may exceed twenty (20) feet in any dimension or one hundred fifty (150) square feet in area, including border and trim.

7.15.e.6.C. The signs may not be erected in scenic areas.

7.15.e.6.D. The provisions of subparagraph d.4.G of this subsection shall also apply to signs within twelve (12) air miles of an advertised activity.

7.15.f. 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 are permitted within a protected area.

7.15.f.1. The following types of specific interest areas, when so designated by the Division, may have signs erected giving information concerning the area.

7.15.f.1.A. Natural phenomena (Man-made lakes not included).

7.15.f.1.B. Historical sites.

7.15.f.1.C. Areas of natural scenic beauty.

7.15.f.1.D. Areas naturally suited for outdoor recreation.

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

7.15.f.1.F. Farm Wineries as provided by W. Va. Code, §17-22-7.

7.15.f.2. All signs designated in paragraph f.1. of this subsection shall comply with the Federal Standards of 23CFR, Chapter 1, §750.105 et.seq. for Class 4 signs and with the following restrictions:

7.15.f.2.A. The signs must be more than twelve (12) miles from the nearest sign within an informational site serving interstate highway traffic to which the sign is visible. A sign qualifying both as a Class 3 and 4, per Federal Standards of 23CFR, Chapter 1, §750.107 et. seq., may be permitted under this subparagraph or under subdivisions 15.e or 15.f of this section.

7.15.f.2.B. The provisions of

subparagraph d.4.G of this subsection shall also be applicable to signs under subdivisions d, e and f of this section.

7.15.g. Informational Sites, Signs Permitted. Signs relating to informational sites are permitted within protected areas. The signs shall comply with the Federal Standards of 23CFR, Chapter 1, §750.105 et. seq. for Class 3 and 4 signs and the following regulations:

7.15.g.1. The sign shall be placed upon a panel that may not exceed thirteen (13) feet in height or twenty-five (25) feet in length, including border and trim, but excluding supports.

7.15.g.2. The sign may not exceed twelve (12) square feet.

7.15.g.3. The text may not be legible from the main traveled way or turning roadway.

7.15.g.4. Only one sign concerning one activity or place is permitted within any one site.

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

7.15.g.6. No moving signs or any animated or moving parts are permitted.

7.15.g.7. Illumination of panels may be by white lights only.

7.15.g.8. No sign on a panel may contain, include or be illuminated by any other lights, or any flashing, intermittent, or moving lights.

7.15.g.9. Lighting must be so effectively shielded as to prevent beams or rays of light from being directed at the highway.

7.15.g.10. Lighting must be of sufficiently 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.

§157-6-8. Salvage Yards.

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

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

8.1.b. Prior to establishing a salvage yard, the owner or operator must first obtain a permit from the County Planning Commission. If the County does not have a planning commission, then the owner/operator must obtain a permit from any agency so designated by the County Commission in which the salvage yard is to be located.

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

approval from the Department of Environmental Protection.

8.2. Areas in Which No Salvage Yard Permitted.

8.2.a. A license will not be issued to establish, operate or maintain a salvage yard, or any part thereof, within 1000 feet of the nearest edge of the right of way of any road within the state road system, designated and classified as either expressway, trunkline, or feeder. A license will not 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.

8.2.b. A license will not be issued to establish, operate or maintain a salvage yard, or any part thereof within one thousand feet of the nearest occupied private residence or within five thousand feet of the nearest occupied private residence which is part of a residential community, unless waived by the owner of the residence. A copy of the waiver must accompany the salvage yard application.

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

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

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

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

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

8.4.a. Fences must be located where they will not be hazardous to the traveling public.

8.4.b. The construction of fences shall be uniform; no patchwork type of construction is permitted.

8.4.c. Fences shall be painted where the composition is such that painting is required. The paint used shall be a color that blends into the surrounding neighborhood.

8.4.d. Where a fence consisting of plantings or other natural materials is constructed, the operator must secure the consent and permission of the Commissioner as to the location and type of plant or natural material which may be used, in order to effectively screen the view of the salvage yard from the traveling public.

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

8.4.f. The Commissioner has the right to determine whether a salvage yard is effectively screened by the fencing employed.

8.5. Payment of Costs of Fencing. The cost

of the erection of fences is the responsibility of the salvage yard operator. However, if the Commissioner believes that effective screening cannot be accomplished by the usual and ordinary methods, the Commissioner may determine and pay any additional costs necessary to provide effective screening.

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

8.6.a. Pay the cost to move all salvage and equipment from the salvage yard to another location where a salvage yard business may lawfully be conducted as long as the owner or operator provides his or her consent.

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

8.7. Distance Measurements.

8.7.a. All measurements determinative of the location of salvage yards in relation to State highways shall be made in a line drawn perpendicular from the nearest edge of the right of way.

8.7.b. All applications submitted for a new salvage yard license must be accompanied by a certified survey showing that the distance to the nearest occupied residence is greater than 1,000 ft., or a written waiver must be obtained from all residents within the 1,000 ft. distance.

8.7.c. The certified survey must also show the distance to the nearest residential community. No salvage yard is permitted within 5,000 ft. of a residential community. All measurements shall be made in a straight line from the outer most boundary of the salvage yard to the occupied private residence or the nearest residence in a residential community.

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

§157-6-9. Roadside Memorials.

9.1. Purpose. This section provides requirements for the placement of roadside memorials within the rights of way of the State's highways by or on behalf of family members or friends for the sole purpose of memorializing persons who have died as a result of vehicle related accidents.

9.2. General Requirements. All roadside memorials must be placed at or near the location of a fatal vehicular accident in compliance with the following rules:

9.2.a. Within the highway right of way, as far from the travel lanes as reasonably possible and not on private property nor in front of or alongside private property or residences unless express permission has been obtained from the property owner.

9.2.b. Clear of ditches, culvert pipes, bridges and other highway features that require access for maintenance.

9.2.c. Behind the guardrail, if one is present, except that temporary memorials may be tied to a guardrail post with lightweight string, wire or tape and must be easily removable for maintenance purposes.

9.2.d. Roadside memorials may not be placed in any median, nor may they be affixed to any bridge, tree, fence, sign or lighting pole, utility pole, traffic signal pole, signs, etc.

9.2.e. Roadside memorials may not interfere with any traffic control device or be a hazard to the motoring public in any way including, but not limited to, restricting drivers' or other road users' sight distance; having any light-reflecting parts or materials, or any means

of illumination;. or mimicking or imitating any official traffic control device.

9.2.f. Persons placing or visiting roadside memorials or roadside memorial signs are responsible for their own safety and must act in a responsible, safe manner including parking completely clear of the travel lanes, even if it means walking some distance.

9.2.g. Removal of roadside memorials. Division of Highways personnel will normally not remove roadside memorials that meet the requirements of this rule. However, the Commissioner has the authority to direct or cause the removal of any roadside memorial, without notice, within a state highway right of way upon determining that removal is necessary for construction, maintenance, safety or other purpose.

9.2.h If more than one person applies for a roadside memorial sign for the same victim or for multiple victims of the same accident, the applications will be consolidated and treated as one.

9.3 Temporary Memorials. Temporary memorials must be installed in accordance with the following rules:

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

9.3.b. Before placing a temporary memorial, a person must contact the nearest Division of Highways office. The person will be asked questions concerning the intended placement and construction of the temporary memorial so that appropriate guidance may be provided. Also, the Division employee will record the person's name, address and phone number for future contact, if required.

9.4. Permanent Memorials. Permanent memorials are items such as plaques, stone monuments and etc., which are typically self-supported, intended to last many years and require a more significant installation and mounting process. These memorials are allowed only if a permit has been obtained from the Division. Application for the permit may be made through the District Office having jurisdiction, on Division of Highways Form MM-109, which may be found on the Department of Transportation's Web site, www.WVDOT.com, or any district office.

9.5 Roadside Memorial Signs. Roadside memorial signs are official signs provided and placed by the Division of Highways. Roadside memorial signs must be installed in accordance with the following rules:

9.5.a. Roadside memorial signs may be installed at or near the site where a fatal motor vehicle accident occurred, at a location considering available space and other constraints. The signs shall be of a design approved by the Commissioner.

9.5.b . The provision and placement of a roadside memorial sign is a service by the Division of Highways and does not create any right or privilege.

9.5.c .Within three years following the date of a fatal motor vehicle accident, a member or members of the immediate family of the victim may make a written request to the Commissioner of Highways, on an application form specified by the Division of Highways, for the placement of a roadside memorial sign at or near the site of the accident. Blank application forms are available for downloading at the West Virginia Department of Transportation's Web site, http://www.wvdot.com., or at any district office

9.5.d. The applicant shall, upon request, provide the Commissioner with sufficient documentation to verify the relationship between the applicant and the victim.

9.5.e. Upon receipt of the application and any additional required documentation, the Division will review the information submitted and any other available official records or

reports to establish the location and circumstances of the accident.

9.5.f. Permanent memorials or roadside memorial signs will not be permitted or erected to recognize persons whose wrongful conduct was the proximate cause of the accident. If the Division's review discloses clear and convincing evidence that the accident resulted from the commission of a serious traffic offense as defined in the West Virginia Code, Section 17C-5-1 *et seq.,* or from the use of a vehicle in the commission of a felony, or from flight from a police officer, the Commissioner shall deny the application and shall inform the applicant(s) in writing, specifying the reason for the denial. The written decision of the Commissioner is final.

9.5.g. Only one sign will be permitted per victim and the sign may memorialize more than one victim.

9.5.h. If an application for a roadside memorial sign is granted, the Commissioner shall so inform the applicant in writing. Upon the receipt of a non-refundable payment of two hundred dollars ($200), the Division shall procure and install the sign and shall notify the applicant in writing when the sign has been installed.

9.5.i. The initial payment of two hundred dollars ($200) shall compensate the Division for its review of the application, the installation of the roadside memorial sign and its maintenance for a period of three years from the date of installation. The applicant may make a second, optional payment of two hundred dollars ($200) to extend the display and maintenance of the sign for one additional three-year period The Division will repair or replace the sign at its election, once during each three year period if damaged or destroyed. At the end of the initial or renewal period, whichever come later, the sign will be removed and offered to the applicant(s).

9.5.j. If at any time during the application and fabrication process another member of the victim's immediate family objects to the sign, the process shall be halted and the application, the two hundred dollar ($200) fee, and the related documentation shall be returned to the applicant. If the sign has been installed, the Division shall remove it and furnish it to the applicant, and the Division shall retain the two hundred dollar ($200) fee.

9.5.k. On or before the 20th day of January of each year the Commissioner shall prepare and submit to the Joint Standing Committee on Government Organization, the Senate Committee on Transportation and Infrastructure and the House Committee on Roads and Transportation, a report that describes the activities of the program during the previous year, including, the number of applications received for roadside memorial signs, the number of applications granted or denied, the number of objections received to roadside memorial signs, the amount of fees received by the Division for the procurement, installation and maintenance of roadside memorial signs, the cost of procurement, installation and maintenance of roadside memorial signs, and any other information the Commissioner considers appropriate.