

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

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SECRETARY OF STATE
STATE OF WEST VIRGINIA

Form #3

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

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

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

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 6

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

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

TITLE OF RULE BEING PROPOSED: _____

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



Paul A. Mattox, Jr.
Secretary of Transportation/
Commissioner of Highways

Division of Highways, Series 6
Use of State Road Rights
of Way and Adjacent Areas
Proposed Amendments to a Legislative Rule
June 19, 2007

SUMMARY OF PROPOSED RULE:

Series 6 provides general rules pertaining to the use of state road rights of way and adjacent areas. This rule includes: references to guidelines, manuals and standards followed by Highways for licensing and regulating outdoor advertising and salvage yards, and for regulating roadside memorial markers.

STATEMENT OF CIRCUMSTANCES:

This rule filing is being submitted to comply with HB 2804. This bill relieved the Division of Highways the responsibility for reimbursing privately owned public utilities relocation costs due to Division construction, improvement or maintenance projects, when the utilities are located within the state highway right of way by permit.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Series 6, Use of State Road Rights of Way and Adjacent Areas

Type of Rule: **Legislative** **Interpretative** **Procedural**

Agency: Division of Highways

Address: Building 5, 1900 Kanawha Boulevard, East
Charleston, WV 25305-0430
A-164

Phone Number: 304-558-2804 **Email:** mmurphy@dot.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

These rule changes do not impact the costs and revenues of the state government.

Fiscal Note Detail

Show over-all effect in item 1 and 2 and, in item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

Effect of proposal	FISCAL YEAR		
	Current Increase/Decrease (use “-“)	Next Increase/Decrease (use “-“)	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

Rule Title: Use of State Road Rights of Way and Adjacent Areas

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues:

These rule changes do not impact any annual or fiscal year costs.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: June 19, 2007


Secretary of Transportation/Commissioner of Highways

Division of Highways, Series 6
Use of State Road Rights of Way and Adjacent Area
Agency Approval of a Proposed Rule and
Filing with the Legislative Rule-Making Review Committee
July 25, 2007

SUMMARY OF PUBLIC COMMENTS and RESPONSES:

The public comment period was advertised in the State Register, published June 22, 2007. Five letters of comments were received on the proposed amendments. A summary of the comments along with the action taken follows.

Verizon West Virginia Inc.

Submitted by: J. David Fenwick, Goodwin & Goodwin, LLP

In a letter dated July 20, 2007 the respondent noted the following:

1. Verizon WV vehemently objects to the provision singling out telecommunications carriers (from other utilities) to allow telecommunications facilities within controlled access rights of way. Contrary to the DOH Manual, the Telecommunications Act of 1996 doesn't require access in controlled rights of way. Any change in WV law to allow placement of facilities in controlled rights of way must be done in equal and non-discriminatory manner applicable to all utilities without favoritism.

RESPONSE:

The DOH doesn't claim the Telecommunications Act of 1996 to require access to controlled access rights of way. The DOH contends it is in the best interest of the State to allow such access in a competitively neutral manner that is safe for the traveling public.

2. Verizon WV is seeking the authority to begin work, within the DOH right of way, while the "blanket" permit paperwork is being completed. Exhibit A was attached that adds activity 8 to the manual.

RESPONSE:

The comment in your letter does not match your attached Exhibit A. The "blanket permit" allows the DOH to know when and where crews are working within our system. This can play a vital role in deciding emergency detour routes and scheduling necessary maintenance.

Division of Highways, Series 6
Use of State Road Rights of Way and Adjacent Area
Agency Approval of a Proposed Rule and
Filing with the Legislative Rule-Making Review Committee
Page Two

3. Verizon WV requests that page 8 of the attached DOH manual be revised to recognize 911 service constitutes an emergency condition work under the "blanket permit". Verizon's proposed changes are attached as Exhibit B.

RESPONSE:

The manual language allows repairs to maintain 911 function. The proposed language could be misconstrued to allow new installations under the "blanket permit", the DOH has safety concerns with this.

4. Verizon WV requests that page 5 of the attached DOH manual be revised to add a process to obtain a "verbal" permit to satisfy service and safety concerns.

RESPONSE:

The DOH manuals emergency repairs criteria allow expedited procedures for emergency situations and by being issued annually should allow emergency recovery which eliminates the need for "verbal" permits.

5. Verizon WV request that page 15 of the attached DOH manual be revised to provide that there should be no more stringent requirement beyond the National Electrical Safety Code.

RESPONSE:

DOH understands your objection to a vertical clearance of 18' across public roads, however the NESC allows for installations lower than our recommended bridge clearances and much lower than a single axle dump truck with a bed in the raised position would require.



BI
(ALAN...)

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Highways

1900 Kanawha Boulevard East • Building Five • Room 110
Charleston, West Virginia 25305-0430 • 304/558-3505

Joe Manchin III
Governor

July 24, 2007

Mr. J. David Fenwick
Attorney at Law
Goodwin & Goodwin, LLP
Post Office Box 2107
Charleston, West Virginia 25328-2107

Dear Mr. Fenwick:

Thank you for your letter on behalf of Verizon West Virginia Inc. (Verizon) dated July 20, 2007 regarding the proposed legislative rule amending Title 157, Series 6.

The manual, "Accommodation of Utilities on Highway Right of Way and Adjustment and Relocation of Utility Facilities on Highway Projects" (Manual), identified in Section 3.8 of the proposed legislative rule is the set of restrictions, conditions and regulations prescribed by the Commissioner of Highways for public utilities to use the state road right of way. While the Manual is made a part of the rule, WV Code §17-4-8 (copy attached) specifically authorizes the commissioner to designate these restrictions, conditions and regulations. The section of the Manual relating to reimbursement is affected by the proposed legislative rule and is why the Manual is included by reference.

Responses to the Manual comments are below; however, no comments pertaining to the actual proposed legislative rule under Title 157, Series 6 were contained in your letter.

1. The WVDOH does not claim that the federal Telecommunications Act of 1996 requires access to controlled access right of way. The federal Telecommunications Act of 1996 distinguishes telecommunications facilities and encourages accommodation of such facilities within public rights of way. The WVDOH contends it is in the best interest of the State of WV to allow such access in a competitively neutral manner in a fashion that is safe for the traveling public.
2. The comment in your letter does not match your attached Exhibit A. Your letter indicates a desire for blanket permits that allow for a new installation that "...does not require the placement of any new structures within the right of way (e.g., poles anchors, guys)... while your Exhibit A proposes a new activity 8 that states "Provide service to customers when ordered, which may require the placement of support structures (i.e., anchors, guys, poles) within the Division of Highways' right of way."

Mr. J. David Fenwick
July 24, 2007
Page Two

It is incumbent on the WVDOT to provide a safe and efficient transportation network and, specifically for the WVDOH to provide a safe and efficient network of roads. Knowing what roadside features are being installed by others along these roadways is critical to safety. Also, knowing when and where crews are working to maintain your system is critical to the interactions within our system to know what roads may be restricted due to your activities. This can play a vital role in deciding emergency detour routes and scheduling necessary maintenance.

3. While the WVDOH understands your position on 911 service and agrees it is a critical service, language stating that "An emergency would exist anytime the public services of a group of individuals were interrupted..." at the beginning of the paragraph would allow repairs to be made to maintain this critical function. The language proposed by Verizon could be misconstrued to allow new installations under the blanket permit, and again, the WVDOH has safety concerns with this.
4. Satisfaction of obligations arising out of unsafe conditions should fall under the Emergency Repairs criteria in the Manual and should be handled accordingly. Service Drop Installations are allowed in the Blanket Permit section as defined in the Manual. Service installations requiring new support structures are a safety concern to the WVDOH and should be permitted per project. The Blanket Permit process allows expedited procedures for emergency situations and by being issued annually should allow unimpeded emergency recovery which eliminates the need for "verbal" permits. Electronic Permitting will be considered by the WVDOH, and much coordination and formatting (i.e. drawing formats) will need to take place before an adequate answer can be given to this particular issue.
5. The WVDOH understands that Verizon objects to a vertical clearance of 18' across public roads; however, the National Electric Safety Code allows for installations lower than our recommended bridge clearances and much lower than a single axle dump truck with the bed in the raised position. The WVDOH uses single axle dump trucks extensively for routine maintenance of all roads and permits over-height loads on public roads and would anticipate a greater amount of service disruption and customer dissatisfaction if the lesser criteria would be allowed.

Thank you for your comments.

Very truly yours,
Original Signed By
Marvin G. Murphy, P. E., P. L. S.
Marvin G. Murphy, P. E., P. L. S.
State Highway Engineer

MGM:Hc

Attachment

bcc: AC, CH, CHH, CL (Jeff Miller), DD (Foster), Alan Cuvero

§17-4-8. Use of roadbed by railroad, telephone company, etc.

No railroad or electric or other railway shall be constructed upon the roadbed of any state road, except to cross the same, nor shall any person, firm or corporation enter upon or construct any works in or upon such road, or lay or maintain thereon or thereunder any drainage, sewer or water pipes, gas pipes, electric conduits or other pipes, nor shall any telephone, telegraph or electric line or power pole, or any other structure whatsoever, be erected upon, in or over any portion of a state road, except under such restrictions, conditions and regulations as may be prescribed by the state road commissioner. Whenever any railroad or electric or other railway, heretofore or hereafter constructed, shall cross any state road, it shall be required to keep its own roadbed, and the bed of the road or highway at such crossing, in proper repair, or else to construct and maintain an overhead or undergrade crossing, subject to the approval of the state road commissioner; and the tracks of such railroad or railway at grade crossings shall be so constructed as to give a safe and easy approach to and across the same, and when the construction of such approaches is made necessary by a change in the railroad grade at the grade crossing, the cost shall be upon the railway company.

LAW OFFICES

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July 20, 2007

Via Hand Delivery

Marvin Murphy
WV Division of Highways
1900 Kanawha Boulevard, East
Room A-164
Charleston, WV 2530500430

JUL 20 2007

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JUL 20 2007

WVDOH
STATE HIGHWAY ENGINEER

**Re: Public Comment on DOH Proposed Legislative
Rule under Title 157, Series 6-Use of State Road
Rights of Way and Adjacent Areas**

Dear Mr. Murphy:

This letter is written on behalf of Verizon West Virginia Inc. ("Verizon WV"). The purpose of the letter, as referenced above, is to formally register Verizon WV's public comment on the West Virginia Division of Highway's ("DOH") proposed legislative rule under Title 157, Series 6, addressing Use of State Road Rights of Way and Adjacent Areas (the "Proposed Legislative Rule"). DOH filed the Proposed Legislative Rule with the West Virginia Secretary of State's Administrative Law Division on June 19, 2007.

The comment submitted on behalf of Verizon WV addresses issues that Verizon WV has previously expressed concern about to DOH regarding the Proposed Legislative Rule and DOH's "Accommodation of Utilities on Highway Right of Way and Adjustment Relocation of Utility Facilities on Highway Projects" Manual (dated June 1, 2007) ("DOH Manual"). Verizon WV raises five objections to provisions contained in the DOH Manual. Although these provisions are technically not contained in the Proposed Legislative Rule, Verizon is submitting this comment because the DOH Manual is subject to the same legislative rule making

GOODWIN & GOODWIN, LLP

requirements as the Proposed Legislative Rule.¹ Verizon WV objects to any attempt by DOH to use or enforce provisions of the DOH Manual that do not proceed through the formal legislative rule making procedures required by law.

1. Verizon WV's foremost objection concerns the following provision located on Page 14 of the DOH Manual:

Telecommunications providers who seek to locate in ground or underground facilities within controlled access right of way will be required to provide compensation to the Division for costs incurred as a result of use and occupancy of the right of way, and they will be required to comply with all other applicable requirements of the federal Telecommunications Act of 1996, as amended.

Verizon WV vehemently objects to this provision singling out telecommunications carriers (from other utilities) for a change in the law to allow telecommunications facilities within controlled access rights of way. Contrary to the suggestion in the DOH Manual, the federal Telecommunications Act of 1996 does not require access in controlled rights of way. Additionally, any change in West Virginia law to allow placement of facilities in controlled rights of way must be done in an equal and non-discriminatory manner applicable to all utilities and in a way that does not permit the State to exclude one or more utilities in favor of one or more others.

2. Verizon WV recommends changes to page 7 of the DOH Manual to provide that a "blanket" permit is needed to provide service to customers requiring work that, while within a DOH right of way, does not require the placement of any new structures within the right of way (e.g., poles, anchors, guys) within the DOH right of way. The new item numbers 7 and 8 allow Verizon to respond to request to provide service promptly, which Verizon is compelled to do not only because of its desire but also because of regulation by the Public Service commission and other legally imposed service standard requirements. In sum, all Verizon WV is seeking here is the authority to begin such work where there is no defined time within which a permit must be issued. For these two items, Verizon is not attempting to evade permitting but rather begin the work while the paperwork is being completed. Verizon WV's proposed changes are attached as Exhibit A.

¹ This is not to imply that Verizon WV agrees with all other aspects of the Proposed Legislative Rule or the DOH Manual or waives the right subsequently to challenge any part of either; rather, Verizon WV has opted to seek a change at this time only on the five issues addressed herein.

GOODWIN & GOODWIN, LLP

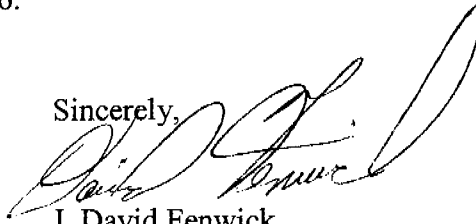
3. Verizon WV also requests that page 8 of the DOH Manual be revised to recognize that access to 911 service is an emergency condition permitting emergency work under the aforementioned blanket permit. Telephone service is required for access to 911 emergency response services (landline), and the lack of such access clearly should be recognized as an emergency condition. Verizon WV's proposed changes are attached as Exhibit B.

4. Verizon WV requests that page 5 of the DOH Manual be revised to add a process to obtain a "verbal" permit to satisfy service and unsafe conditions obligations. Other States require only that the utility apply for a permit before it may begin such work. Electronic permit application would also satisfy this concern. Similar to item 2. above, Verizon WV is simply seeking a reasonable way in which to expedite the permitting process to allow it to begin needed repair or service installation work.

5. Verizon WV requests that page 15 of the DOH Manual be revised to provide that while vertical clearance must meet National Electrical Safety Code (NESC) standards, there should be no more stringent requirements.

Thank you for your consideration of these public comments. If you have any questions or wish to discuss any matters addressed, please contact Sam Cipoletti at 344-7216.

Sincerely,

A handwritten signature in black ink, appearing to read "J. David Fenwick", written over a large, stylized flourish or scribble.

J. David Fenwick

EXHIBIT A

4. Any deviation from the approved permit must be authorized by the District Engineer or his authorized representative prior to making such changes.
5. **Division of Highways reserves the right to cancel the permit at any time should the applicant fail to comply with the terms and conditions under which it was granted.**

MAINTENANCE OF FACILITIES ON NONCONTROLLED ACCESS RIGHT OF WAY

All facilities are to be maintained and serviced in accordance with the conditions of the original permit and this manual. Upon application, a utility shall receive a blanket permit, on an annual basis, to allow for maintenance of existing facilities and service provision statewide as provided below. A blanket permit may be issued to a utility on an annual basis for maintenance of existing facilities.

Blanket permitted Maintenance activities for overhead installations should be limited to:

1. Clearing of vegetation and trimming of trees around overhead utility lines.
2. Placing or replacing cross arms or transformers on existing poles.
3. Replacement or repair of cable at the same capacity.
4. Replacing existing poles with same size and no nearer the traveled way.
5. Overhead lighting maintenance.
6. Emergency repairs as defined in this manual.
7. Service drop installation, including new or additional service or repair work beyond the serving terminal where no additional support structures are required (i.e., anchors, guys, poles) within the Division of Highways' right of way.
8. Provide service to customers when ordered, which may require the placement of support structures (i.e., anchors, guys, poles) within the Division of Highways' right of way.
9. Other activities as approved by the Division.

Blanket permitted Maintenance activities for underground installations outside of the traveled way should be limited to:

1. Leak repair.
2. Service tap installation.
3. Cathodic protection repair.
4. Emergency repairs as defined in this manual.
5. Accessing or modifying parts of an existing underground facility within conduit or through an existing manhole as long as no new surface opening is required.
6. Other activities as approved by the Division.

EXHIBIT B

All work performed under this permit should be diagramed and provided to the Utilities Supervisor prior to the work occurring or as soon as reasonably possible for emergency repairs. Work orders or other documentation of work performed should be provided to the Utility Supervisor on a weekly basis.

EMERGENCY REPAIRS

An emergency would exist anytime the public services of a group of individuals were interrupted; when the safety of the public is endangered by a damaged utility such as a ruptured gas line; or when there is a possibility that damage might occur to public or private property unless immediate corrective action is taken; or when telephone service providing access to 911 emergency response services is not in place. **The Applicant should notify Charleston Central Communications at (304)558-3028 or (304)558-2998 of the location.** Then, at the applicant's sole risk and responsibility, repair the damaged facilities. Appropriate safety methods and devices must be used to give adequate warning and protection to persons and property.

MAINTENANCE OF FACILITIES ON CONTROLLED ACCESS RIGHT OF WAY

Utilities are to be located in such a manner that they can be serviced without access from the through roadways or connecting ramps. Telecommunication companies located within controlled access right of way shall adhere to the clear roadside policy, use the Manual on Uniform Traffic Control Devices to properly maintain traffic, apply the Divisions Workzone Safety and Mobility Policy, and traffic safety regulations that may be deemed necessary by the Division, and shall compensate the Division for actual inspection cost.

PRESERVATION, RESTORATION AND CLEANUP

DISTURBED AREAS

The size of the disturbed area shall be kept to a minimum. Construction methods, erosion control and revegetation along the length of the construction area must be in accordance with Division of Highways specifications. Unsatisfactory restoration work shall promptly be corrected by the applicant. If necessary, the restoration work will be corrected by the Division of Highways and the cost thereof paid by the applicant.

DRAINAGE

Care must be taken to avoid disturbing existing drainage facilities. Underdrain and outlets are to be provided for entrapped water.

SPRAYING, CUTTING AND TRIMMING TREES

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 25, 2007

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No .) Division of Highways

1900 Kanawha Boulevard East, Building Five, Room A-164

Charleston, WV 25305-0440 304-558-2804

LEGISLATIVE RULE TITLE: Use of State Road Rights of Way and Adjacent Areas

1. Authorizing statute(s) citation §17-1, 2A, 4, 16, 20, 22, and 23

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period: June 22, 2007

b. What other notice, including advertising, did you give of the hearing? No additional notice was provided.

c. Date of Public Hearing(s) or Public Comment Period ended: July 23, 2007

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached x No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

Filed with Sec. of State: 7/27/2007 Published in State Register: 8/1/2007

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Marvin Murphy, Assistant Secretary DOT State Highway Engineer DOH

1900 Kanawha Blvd. E., Building Five, Room A-164, Charleston, WV 25305

phone: 304-558-2804, fax: 304-558-5781, email: mmurphy@dot.state.wv.us

- g. IF DIFFERENT **FROM ITEM 'f'**, please give **Name, title, address and phone** number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

- 3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

Not applicable

b. Date of hearing or comment period:

Not applicable

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

Not applicable

d. Attach findings and determinations and reasons:

Attached _____

RECEIVED

TITLE 157
 LEGISLATIVE RULE
 DEPARTMENT OF TRANSPORTATION
 DIVISION OF HIGHWAYS

2007 JUL 27 PM 1:53

SECRETARY OF STATE
 STATE OF WEST VIRGINIA

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

2.5. "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.

2.6. "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.

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

2.8. "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.

2.9. "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.

2.10. "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.

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

2.12. "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.

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

2.14. "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.

2.15. "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).

2.16. "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.

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

2.18. "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.

2.19. "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.

2.20. "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.

2.21. "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.

2.22. "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.

2.23. "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.

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

2.25. "Off premise 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. CMS may not include, moving video or scrolling messages.

2.26. "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.

2.27. "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.

2.28. "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.

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

2.30. "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.

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

2.32. "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.

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

2.34. "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.

2.35. "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.

2.36. "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.

2.37. "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.

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

2.39. "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.

2.40. "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.

2.41. "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.

2.42. "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.

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

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

2.43.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;

2.43.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;

2.43.d. Transient or temporary businesses include commercial or industrial businesses that do not conduct significant business activities at the site.

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

2.45. "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.

2.45.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.

2.45.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.

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

2.45.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:

2.45.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;

2.45.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;

2.45.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;

2.45.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:

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

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

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

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

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

2.45.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;

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

2.45.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.

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

2.45.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:

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

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

2.45.f.3. A capacity to provide

ample parking for all customers;

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

2.45.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.

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

2.45.h.1. Outdoor advertising structures.

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

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

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

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

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

2.45.h.7. 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.

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

2.45.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.

2.45.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:

2.45.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.

2.45.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.

2.45.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.

2.46. 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.

2.46.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.

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

2.46.b.1. Outdoor advertising structures.

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

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

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

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

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

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

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

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

2.47. "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.

2.48. "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.

2.49. "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.

2.50. "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.

2.51. 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.

§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, 2005 June 15, 2007, 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~~ June 1, 2007.

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.~~

3.8.d.1. Privately owned public utilities located within state highway right of way by permit are not eligible for reimbursement of relocation costs which are required due to a Division construction, improvement or maintenance project.

3.8.d.2. In cases where utility facilities are relocated in accordance with an approved plan and subsequent Division of Highways plan or construction changes for that project cause a utility conflict, the utility will be reimbursed for the costs of the subsequent relocation.

3.8.d.3. Notice respecting removal or relocation and utility liability. In accordance with the Division's manual, "Accommodation of Utilities on Highway Right of Way", dated June 15, 2007, the Division will provide notice to affected utilities when relocation of existing facilities is required for highway projects. Should the utility fail to comply with the notice as provided in W. Va. Code §17-4-17b(d)(4), the utility will be liable for all costs, fees, penalties or other charges incurred by the Division as a

result of the utility's failure to timely relocate, unless a written extension is granted by the Division.

3.8.d.4. Applicability. This subdivision applies to all eligible projects on which the privately owned public utility incurs reimbursable costs after July 1, 2007.

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 Officials, "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)~~ four (4) 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.

4.1.n. Violation of the terms of a permit or failure to perform permitted work in accordance with approved plans may, in the discretion of the Commissioner, result in the denial of subsequent permit applications and may require the removal of non-conforming facilities constructed or installed in state road system right-of-way. Applicant may appeal the Commissioner's denial as provide in 157CSR1.3.

§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 or District Utility Supervisor, as appropriate, 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 or District Utility Supervisor, as appropriate, 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.

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 permittee 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 permittee, to enter an order revoking any permit issued. Upon revoking a permit, the Commissioner will repay a proportionate part of the fee unless the permittee 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 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 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. 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 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. CMS must conform with size requirements described in paragraph 7.8.b.4.

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

7.8.e.4. Only conforming sign structures may be modified to a CMS upon compliance with CMS standards and approval of the WVDOT. Nonconforming sign structures may not be modified to a 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. CMS must contain a default design that will freeze the sign in one position if a malfunction occurs.

7.8.e.8. 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. CMS may not be side by side or stacked.

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

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

7.8.e.11. No 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.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 chapter, 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.

7.9.d.9. For the purposes of this chapter, any on premise "message center" is an advertising display where the message is changed more than once every two minutes, but no more than once every eight seconds.

7.9.d.9.A. On-premise message centers visible to traffic from any interstate, primary highway, or road in the state road system, shall meet all of the following requirements: (1) The display may not include any message that is in motion or appears to be in motion; (2) the display may not change the intensity of illumination more often than once every eight seconds; (3) the display may not change the message more than once every eight seconds; (4) no message may scroll and must remain static for eight seconds.

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 permittee 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. The following subsections are correlated and shall have the application in conformance with the "National Standards" of 23CFR, Chapter 1, §750.105 et. seq. as prepared and promulgated by the Federal Highway Administration of the United States Department of Transportation and

all references to the "National Standards." The following subsections apply 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 flashing, intermittent or moving light or lights.

7.15.d.4.E. The signs may not move or have any animated or moving parts.

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

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

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

7.15.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 Memorial Markers within the rights of way of the State's highways by family members or friends for the sole purpose of memorializing persons who have died as a result of vehicle related accidents.

9.2. Temporary Memorial Markers. Temporary Memorial Markers may be placed near the location of a fatal vehicular accident within the following rules:

9.2.a. Before placing a Temporary Memorial Marker, the person(s) must contact the nearest Division of Highways office. The family member or friend will be asked questions concerning the intended placement and construction of the Temporary Memorial Marker so that appropriate guidance may be provided. Also, the Division employee will record the family member or friend's name, address and phone number for future contact, if required.

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

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

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

9.4.a. be within the highway right of way, as far from the travel lanes as reasonably

possible and not on private property nor in front of or alongside of private property or residences unless express permission is obtained from the property owner;

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

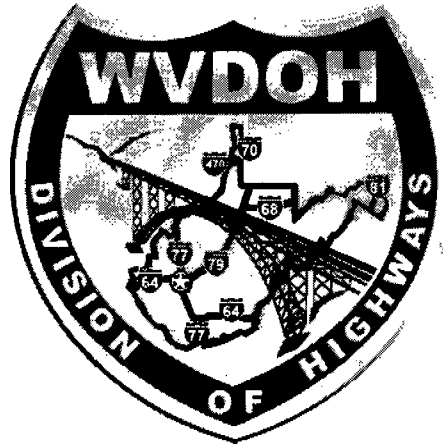
9.4.c. be behind the guardrail, if one is present, except that Temporary Memorial Markers may be tied to a guardrail post with lightweight string, wire or tape and must be easily removable for maintenance purposes;

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

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

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

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



**ACCOMMODATION OF UTILITIES ON
HIGHWAY RIGHT OF WAY**

AND

**ADJUSTMENT AND RELOCATION OF
UTILITY FACILITIES**

ON

HIGHWAY PROJECTS

June 2007

ACCOMMODATION OF UTILITIES

ON

HIGHWAY RIGHT OF WAY

AND

ADJUSTMENT AND RELOCATION

OF

UTILITY FACILITIES

ON

HIGHWAY PROJECTS

**Prepared By:
Railroads and Utilities Unit
Division of Highways
West Virginia Department of Transportation
June 15, 2007**

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**THE WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
CHARLESTON, WEST VIRGINIA**

ABSTRACT FROM THE RECORDS OF THE
COMMISSIONER'S ORDERS
DATED

June 15, 2007

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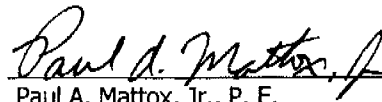
WHEREAS, the West Virginia Division of Highways, acting by and through its Commissioner has promulgated rules and regulations for accommodating utilities on State highway right-of-way under the authority of Chapter 17, Article 2A, and does at this time desire the adoption of said rules and regulations.

NOW, THEREFORE, the Commissioner, upon recommendation of the Engineering Division Director and Deputy State Highway Engineer - Development, hereby **ORDERS** the **ADOPTION** of the attached policy on the Accommodation of Utilities on Highway Right-of-Way and Adjustment and Relocation of Utility Facilities on Highway Projects as the official manual of the West Virginia Division of Highways.

The manual Accommodation of Utilities on Highway Right-of-Way and Adjustment and Relocation of Utility Facilities on Highway Projects supersedes the Accommodation of Utilities on Highway Right-of-Way and Adjustment and Relocation of Utility Facilities on Highway Projects adopted by the Commissioner's Order dated December 1, 2003. This order amends the December 1, 2003 Order only in regard to the superseding of the manual.

The policy on the Accommodation of Utilities on Highway Right-of-Way and Adjustment and Relocation of Utility Facilities on Highway Projects is in compliance with the official Code of West Virginia of 1931, as amended, Chapter 17, Articles 1, 2A, 4 and 16, to establish rules pertaining to the use of State road right-of-way and adjacent areas

Entered this 15th day of June, 2007


Paul A. Mattox, Jr., P. E.
Secretary of Transportation/
Commissioner of Highways

**STATE OF WEST VIRGINIA
WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS**

Given under my hand and seal of the Division of Highways, I do hereby certify that the foregoing is a true abstract from the Orders of the West Virginia Commissioner of Highways entered of record on June 15, 2007.


Division of Highways

DEFINITIONS OF TERMS

- AVERAGE DAILY TRAFFIC** - The average 24-hour volume during a stated period divided by the number of days in that period. Commonly abbreviated as ADT.
- BACKFILL** - Suitable material, compacted as specified, around and over a pipe, conduit or casing.
- BEDDING** - Organization of soil or other suitable material to support a pipe.
- BORING** - As in jacking but auger can be forward of pipe.
- BRIDGE** - A structure, including supports, erected over a depression or an obstruction, such as water, a highway or a railway and having a track or passage for carrying traffic or other moving loads, and having an opening measured along the center of roadway of more than 20 feet (6.1m) between undercopings of abutments or spring lines of arches, or extreme ends of openings for multiple boxes; it may also include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening.
- CARRIER** - Pipe directly enclosing a transmitted liquid or gas.
- CASING** - A larger pipe enclosing a carrier.
- CLEAR ROADSIDE POLICY** - The policy employed to increase safety, improve traffic operation and enhance the appearance of highways by designing, constructing, and maintaining highway roadsides as free as practical from physical obstructions above the ground such as trees, drainage structures, massive sign supports, utility poles, and other ground-mounted obstructions.
- CLEAR ZONE** - The roadside border area, starting at the edge of the traveled way, free of above ground obstructions, and available for use by errant vehicles.
- COATING** - Material applied to or wrapped around a pipe.
- CONDUIT** - An enclosed tubular runway for protecting wires or cables.
- CONTROLLED ACCESS** - The condition where the right of owners or occupants of abutting land or other persons lose access, light, air or view in connection with a highway which is fully or partially controlled by the Division of Highways.
- COVER** - Depth to top of pipe, conduit or casing below grade of roadway, ditch, or ground surface, whichever is the lowest elevation.
- CULVERT** - Any structure not classified as a bridge, which provides an opening under the roadway.
- DIRECT BURIAL** - Installing an underground cable or wire by plowing.
- EXPRESSWAY** - A divided arterial highway for through traffic, which serves major intrastate and interstate travel.
- FEEDER ROAD** - Serves community to community travel and/or collects and feeds traffic to higher systems.
- FREE BORING** - Boring without casing.
- FREEWAY** - An expressway with full control of access.
- FRONTAGE ROAD** - A local street or road auxiliary to and located on the side of an arterial highway for service to abutting property and other adjacent areas and for control of access.
- GROUNDING** - Electrical conductor connected to earth or to some extended conducting body which serves as a conductor instead of the earth.
- GROUT** - A cement mortar or slurry using fine sand.

HIGHWAY - A general term denoting a public way for purposes of vehicular travel including the entire area within the right of way.

JACKING - Forcing an open-ended pipe through the soil with an auger to transport soil back to the pit. No fluids allowed.

MANHOLE - An opening in an underground system which permits access for the purpose of making installations, inspections, repairs, connections, and tests.

MEDIAN - The portion of a divided highway separating the traveled ways for traffic in opposite directions.

MOLE - An air driven mechanical device which self-propels without casing.

PAVED ROAD - A road with a concrete or asphalt surface.

PERMIT - The document by which the Division of Highways regulates and/or gives approval of the use and occupancy of highway right of way.

PLOWING - Direct burial of utility lines by means of a "plow" type mechanism which breaks the ground, places the utility line and closes the break in the ground in a single operation.

PRESSURE - Relative internal pressure in psi (pounds per square inch), kPa (kilopascals).

PRIOR RIGHTS - When another entity has acquired ownership or right of way previous to the Division acquiring ownership or right of way on coincidental real estate.

PUNCHING - Installation of casing or carrier pipe by constant force on a horizontal plain.

RIGHT OF WAY - A general term denoting land, property or interest therein; usually in a strip, acquired for or devoted to transportation purposes and under control of the Division of Highways.

RIGID PIPE - Pipe designed for diametric deflection of less than 1%.

ROAD - See HIGHWAY.

ROADSIDE - A general term denoting the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside.

ROADWAY - The portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

SCENIC OVERLOOK - A roadside area beyond the shoulder provided for motorists to stop their vehicles. Primarily used for safely viewing the scenery.

SERVICE DROP - A non-longitudinal installation to a customer that generally attaches to a singular pole within Division right of way.

SERVICE TAP - A non-longitudinal installation to a customer.

SHARED RESOURCE PROJECT - A project undertaken by the West Virginia Department of Transportation, Division of Highways with a public/private company to achieve the goal of meeting the communication needs of each, including revenue to support these communication needs. A shared resource project may utilize highway right of way and/or private right of way.

STATE LOCAL SERVICE ROAD - Localized arterial and spur roads which provide land access and socioeconomic benefits to abutting properties.

STREET - See HIGHWAY.

TELECOMMUNICATIONS PROVIDER - Any company, or part of a company, providing telecommunications services.

TELECOMMUNICATIONS SERVICES - The offering of telecommunications for a fee directly to the public

or to such classes of users as to be effectively available directly to the public.

TELECOMMUNICATIONS FACILITY – Material, lines, switch boxes and other physical items necessary for the transmission of telecommunications services.

TRAVELED WAY - The portion of the roadway for the movement of vehicles, exclusive of shoulders.

TRENCHED - Installed in a narrow open excavation.

TRUNK LINE ROAD - Serves as major city to city travel.

UNPAVED ROAD – A road with a dirt, stone or tar and chip surface.

UNSUITABLE MATERIAL - Ashes, refuse, vegetable, organic or any other material determined unsuitable by the District Engineer or his authorized representative.

UNTRENCHED - Installed without breaking ground or pavement surface, such as by jacking or boring.

VENT - Appurtenance to discharge gaseous build-up from casings.

**CHAPTER 1
ACCOMMODATION OF UTILITIES
ON
HIGHWAY RIGHT OF WAY**

INTRODUCTION

The West Virginia Department of Transportation, Division of Highways (WVDOT/DOH) has the responsibility of maintaining the right of way of State highways to preserve the operational safety, integrity, and function of the highway facility. Since the manner in which utilities cross or otherwise occupy State highway right of way can materially affect the integrity, safe operation, maintenance and appearance of the highway, it is necessary that such occupancy be authorized and regulated.

West Virginia Code, Chapter 17, Article 16, Section 6, and Chapter 17, Article 4, Section 8, provide that no opening shall be made in any State highway, nor shall any structure be placed therein or thereover, nor shall any structure which has been so placed, be changed or removed, except in accordance with a permit from the Division of Highways. No highway shall be dug up for laying or placing pipes, sewers, poles or wires, or for other purposes and no obstructions shall be placed thereon without a written permit. The work shall be done under the supervision and to the satisfaction of the Division of Highways and the entire expense of replacing the highway in accordance with our specifications shall be paid by the applicant.

It is in the public interest for utility facilities to be accommodated on the right of way of State highways when such occupancy does not interfere with the free and safe flow of traffic, impair the highway or its scenic appearance and does not conflict with the provisions of Federal, State or Local laws or this accommodation policy.

The policy herein has been outlined in the interest of developing and preserving safe roadsides and minimizing possible interference and impairment to the highway, its structures, appearance, operation and maintenance.

APPLICATION

This policy applies to all individually, publicly and privately owned utilities, including but not limited to electric, communication, gas, oil, petroleum products, chemical, water, steam, sewage and similar facilities that are to be accommodated, adjusted or relocated within State highway right of way.

CONSIDERATIONS

This policy provides regulations for the process, review, approval, location, installation, adjustment and maintenance of utilities on State highway right of way. The conditions and regulations contained herein are not subject to the applicant's interpretation.

Where law or orders of public authority or industry codes prescribe a higher degree of protection than provided by this policy, the higher degree of protection should prevail.

This policy also prohibits longitudinal occupancy inside the controlled access right of way, by any utility, on any type of highway, which is fully or partially controlled, except telecommunications companies may be permitted to locate underground fiber optic facilities within fully or partially controlled access right of way in accordance with the federal Telecommunications Act of 1996, as amended, upon such terms as are acceptable to the West Virginia Division of Highways and Federal Highway Administration, as established by legislative rule.

GENERAL CONSIDERATIONS

LOCATION

The Division of Highways will, in no way, be responsible for any accidental damage to a utility facility placed within highway right of way as a result of maintenance or construction activities performed by the Division of Highways. Every effort shall be made by the applicant to place their facilities in accordance with the guidelines and regulations in this manual to preclude the possibility of damage, minimize adjustments to accommodate planned future highway improvements and to permit servicing with a minimum of interference to the traveling public.

In all cases, full consideration shall be given to sound engineering principles, overall economic aspects, and protection of the integrity and scenic appearance of the highway, maintenance operations and the safety of the traveling public.

The horizontal and vertical location of utility lines within the highway right of way should conform with the clear roadside policies applicable for the type of highway and specific conditions of the particular highway section involved. Installation of valve boxes in the ditch line will not be permitted. Meters of any kind should not be installed on the right of way. **Except as provided above for Telecommunications facilities, utility installations will not be allowed longitudinally inside controlled access right of way including the median.**

Manholes are not to be located in the pavement or shoulder of any Expressway, Trunk line or Feeder highway. Exceptions may be made on streets at locations where manholes are essential parts of

existing lines that are permitted to remain in place under existing and proposed highways. They may be retained or installed on State Local Service roads. If, for a legitimate reason, a manhole is in the pavement it is not to be placed in the wheel path of vehicles and will be installed with the lid flush with the pavement. Likewise, manholes located in paved shoulders will also be installed flush with the shoulder pavement. Manholes placed in unpaved shoulders shall have the cover 6 inches (150 mm) below the finished shoulder elevation. Manholes will only be permitted in the ditch line when no other alternative exists. Manholes so placed shall have 12 inches (300 mm) of cover below the normal flow line of the ditch.

In expanding areas along controlled access highways, utilities should install distribution or feeder line crossings, spaced as needed to serve consumers along either or both sides of the highway to minimize the need of crossings for service connections. In areas where utility services are not available within a reasonable distance along the side of a controlled access highway, crossings for utility service connections may be permitted. To the extent feasible and practical, utility installations crossing the highway should be perpendicular to the highway alignment.

DESIGN

The person, firm or corporation requesting use of Division of Highways' right of way is responsible for the design of the facility to be installed within the highway right of way or attached to a highway structure. The Division of Highways will be responsible for review and approval of the proposal with respect to the location, construction materials used, procedures for and manner of installation or attachment.

Approval of any installation does not constitute liability on the Division of Highways' part for improperly engineered or installed facilities. Neither will the Division of Highways be responsible for changes in right of way lines or designations which render the approved design useless.

All utility installations should be of durable materials relatively free from routine servicing and maintenance requirements and, as a minimum, meet the following current requirements:

1. Electric power and communication facilities should conform with the National Electrical Safety Code.
2. Waterlines should conform with the specifications of the American Water Works Association and the State Department of Health.
3. Sewer lines should conform to regulations of the State Department of Health.
4. Pressure pipelines should conform with the applicable sections of the American National Standards Institute; Title 49 CFR, Parts 192, 193, and 195 and applicable industry codes.

5. Liquid petroleum pipelines should conform with applicable recommended practice of the American Petroleum Institute for pipeline crossings under railroads and highways.

Any pipeline carrying hazardous materials shall conform to the rules and regulations of the U. S. Department of Transportation governing the transportation of such materials.

No sewage or other obnoxious effluents shall be discharged into any highway ditch line or storm drainage structure.

Utility facilities should be of a design, subject to reasonable consideration of engineering and economic feasibility, compatible with the scenic appearance of the specific highway section involved.

New installations or adjustments of existing utility lines, particularly those located underground or attached to structures, should be planned so as to minimize hazards and interference with highway traffic.

CONDITIONS OF ACCOMMODATION

If any facility is placed on, over, through or under the right of way of any State highway without an approved permit or utility agreement and the owner, after ten days notice refuses to remove same, then the Division of Highways may cause removal at the owner's expense. Nothing herein will prevent the Division of Highways from immediately removing any installation, which creates a hazard to public safety, use, construction or maintenance of any highway.

The following general conditions and stipulations are given concerning the use and occupancy of highway right of way by permit or utility agreement:

1. Full information, including a plan view shown on Division of Highways' plans when such plans are available, shall be given pertaining to all work to be done. A cross-sectional view of the highway will be required for underground or aerial crossings. (**Appendix A**, Figures 1 and 2) Any video tape of the permitted work area shall be copied and provided to the Division of Highways at the time the video is taken.
2. All underground facilities will be installed so that they can be located when requested. Locator tape will be used in accordance with the following:

Red - Electric Lines

Yellow - Gas, Oil, Steam, Petroleum, etc.

Orange - Communication Lines

Blue - Water

Green - Sanitary Sewers

The recommended location of the tape is 18 inches (450 mm) below the surface directly above the installation.

3. The applicant agrees to hold the State harmless on account of any damages to persons or property, which may arise during the progress of or by reason of the work performed.
4. Facilities should be kept in a good state of repair both in structure and appearance.
5. The installation shall be relocated, adjusted or removed by the applicant, at no cost to the Division of Highways, when required for improvement of the highway, unless the provisions of West Virginia Code, Chapter 17, Article 4, Section 17b, c or d apply.
6. The applicant agrees to protect at all times, its employees, equipment and the traveling public in accordance with the current edition of the manual, "Traffic Control for Street and Highway Construction and Maintenance Operations", published by the Division of Highways.

The highway must be adequately maintained for the safe and convenient use of the traveling public. Erection and maintenance of all required warning devices, barricades and danger signals, including keeping them operational and clean is the responsibility of the applicant.

7. **Any work performed during the presence or absence of the Division of Highways' inspector in no way relieves the applicant of his responsibility for proper installation and accountability to the Division of Highways.**

PERMIT PROCESS

The following provisions are given concerning the use and occupancy of the highway right of way by permit:

1. All requests to perform utility work within Division of Highways' right of way shall be made on Form MM 109, dated February 2005 or most current, except when such work is covered by a utility agreement. **Permit forms can be obtained from our District offices. (Appendix E)**
2. The permit application shall be submitted to the District Engineer of the District in which

the work is to be performed.

3. Applicant shall submit the **original and four copies**, including sketches acceptable to Division of Highways, sufficient to show the nature of work to be performed. It is the responsibility of the applicant to determine if the proposed installation conflicts with other existing facilities currently using the right of way and to construct its proposed facilities without damaging said existing facilities.
4. The permit application shall be submitted in the name of and executed by the owner/operator of the facility. An application may not be submitted in the name of a contractor of the owner, or in the name of a person being serviced by the facility.
5. Applicant, if required, shall deposit with Division of Highways a bond, certified check or money order to cover any possible damage the Division of Highways may sustain by reason of the granting of any permit. This includes any expenses incurred in restoring said highway to its original condition and/or the proper repair of any and all damages that may result within one year from the date of the completion of authorized work. Following that time, the applicant may request the bond be released. After the effective date of this manual, all accommodations of utilities on the Division of Highways' rights of way, whether said right of way is designated as controlled access or noncontrolled access, may be subject to a fee, as established by legislative rule.

Any of the above requirements not met at the time an application is received by the Division of Highways will cause the application to be returned to the applicant for completion.

PERMIT PROVISIONS

1. Applicant shall notify the District Engineer or his authorized representative at least 48 hours in advance of the date that work will begin. Failure to comply will cause cancellation of permit.
2. Applicant shall perform all work in a manner satisfactory to Division of Highways. Damage to highway resulting from work authorized under an approved permit shall promptly be repaired by applicant. Unsatisfactory repairs may be corrected by Division of Highways or its authorized agent and the cost thereof paid by applicant.
3. Applicant shall notify the District Engineer or his authorized representative when the work covered by an approved permit is complete.
4. Any deviation from the approved permit must be authorized by the District Engineer or his

authorized representative prior to making such changes.

5. **Division of Highways reserves the right to cancel the permit at any time should the applicant fail to comply with the terms and conditions under which it was granted.**

MAINTENANCE OF FACILITIES ON NONCONTROLLED ACCESS RIGHT OF WAY

All facilities are to be maintained and serviced in accordance with the conditions of the original permit and this manual. A blanket permit may be issued to a utility on an annual basis for maintenance of existing facilities.

Maintenance activities for overhead installations should be limited to:

1. Clearing of vegetation and trimming of trees around overhead utility lines.
2. Placing or replacing cross arms or transformers on existing poles.
3. Replacement or repair of cable at the same capacity.
4. Replacing existing poles with same size and no nearer the traveled way.
5. Overhead lighting maintenance.
6. Emergency repairs as defined in this manual.
7. Service drop installation.
8. Other activities as approved by the Division.

Maintenance activities for underground installations outside of the traveled way should be limited to:

1. Leak repair.
2. Service tap installation.
3. Cathodic protection repair.
4. Emergency repairs as defined in this manual.
5. Accessing or modifying parts of an existing underground facility within conduit or through an existing manhole as long as no new surface opening is required.
6. Other activities as approved by the Division.

All work performed under this permit should be diagramed and provided to the Utilities Supervisor prior to the work occurring or as soon as reasonably possible for emergency repairs. Work orders or other documentation of work performed should be provided to the Utility Supervisor on a weekly basis, or other written schedule agreed to by both parties.

EMERGENCY REPAIRS

An emergency would exist anytime the public services of a group of individuals were interrupted;

when the safety of the public is endangered by a damaged utility such as a ruptured gas line or when there is a possibility that damage might occur to public or private property unless immediate corrective action is taken. **The Applicant should notify Charleston Central Communications at (304)558-3028 or (304)558-2998 of the location.** Then, at the applicant's sole risk and responsibility, repair the damaged facilities. Appropriate safety methods and devices must be used to give adequate warning and protection to persons and property.

MAINTENANCE OF FACILITIES ON CONTROLLED ACCESS RIGHT OF WAY

Utilities are to be located in such a manner that they can be serviced without access from the through roadways or connecting ramps. Telecommunication companies located within controlled access right of way shall adhere to the clear roadside policy, use the Manual on Uniform Traffic Control Devices to properly maintain traffic, apply the Divisions Workzone Safety and Mobility Policy, and traffic safety regulations that may be deemed necessary by the Division, and shall compensate the Division for inspection cost.

PRESERVATION, RESTORATION AND CLEANUP

DISTURBED AREAS

The size of the disturbed area shall be kept to a minimum. Construction methods, erosion control and revegetation along the length of the construction area must be in accordance with Division of Highways specifications. Unsatisfactory restoration work shall promptly be corrected by the applicant. If necessary, the restoration work will be corrected by the Division of Highways and the cost thereof paid by the applicant.

DRAINAGE

Care must be taken to avoid disturbing existing drainage facilities. Underdrain and outlets are to be provided for entrapped water.

SPRAYING, CUTTING AND TRIMMING TREES

In general, only *light* trimming will be permitted. No tree larger than 4 inches (100 mm) may be cut down without *prior* approval of the District Engineer or his authorized representative. When the complete removal of a tree is absolutely necessary, it will be cut flush with the ground. If the stump is removed, the hole is to be properly backfilled. All cut debris, refuse and waste shall be removed from the right of way and the area site graded and revegetated to the satisfaction of the District Engineer or his authorized representative.

TELEVISION CABLES

Television cable companies may apply for a permit to locate their facilities within public rights of way. They are also subject to the same restrictions as public utilities (West Virginia Code, Chapter 24 D, Article 1).

However, any and all costs to move or relocate television cable facilities should be the responsibility of the cable company in all situations.

PIPELINES

GENERAL

BACKFILL REQUIREMENTS

The following backfilling specification is to be used in connection with any utility work performed within highway right of way.

After the casing, conduit or other underground facility is installed, the trench is to be backfilled. All backfill material shall: be free from particles larger than 3 inches (75 mm); not be frozen; contain no cinders, ashes, refuse, organic, vegetable or other like matter; nor any other material deemed unsuitable by the District Engineer or his authorized representative. Care shall be taken to compact the material under the haunches of the casing, conduit pipe or other facility and to place the backfill evenly on each side. The backfill material shall be deposited in the trench for its full width in layers not exceeding 4 inches (100 mm) after compaction. This method shall be followed until the trench is fully backfilled. The target percentage of dry density for the backfill material will be 95% or the density of the existing material, as evidenced by testing, if the existing density is lower than 95%. In areas outside the limits of the traveled way and shoulders, compaction to the density of the original ground is sufficient.

All backfill material and compaction requirements shall be in accordance with the specifications in this manual and subject to Division of Highways approval. Evidence of proper compaction by testing will be the responsibility of the applicant. The testing shall be 1 (one) per day or every 500 lineal feet (150m) or as determined by the District Engineer or his authorized representative.

Appropriate aggregate base course and/or aggregate shoulder stone is to be placed on the shoulder at a thickness equal to 6 inches (150 mm) or its original thickness whichever is greater. Paved shoulders shall be repaved.

LENGTH OF OPEN TRENCH

The length of open trench, related shoulder and ditch line shall not exceed that which must be properly restored by the end of each workday.

BLASTING

Blasting will not be permitted within highway right of way unless it is established that there is no feasible alternate. Each case must include provisions for adequate protection of the highway facility, the safety of the traveling public and any nearby residents. The length and location of *each* shot must be approved by the District Engineer or his authorized representative. All shooting will be done by a licensed "shooter". A copy of his license will be on site at all times.

CROSSINGS

GENERAL

Locations which are generally unsuitable for pipeline crossings include deep cuts; near footings of bridges and retaining walls; at cross drains where the flow of water or stream bed may be obstructed; or within basins of an underpass drained by a pump if the pipeline carries a liquid. No pipe, conduit or other facility shall be placed in any manner inside or across the ends of any drainage pipe or culvert. Crossings should be located as near perpendicular to the highway alignment as practical.

Open cut methods will not be employed for existing pavements except when approved by the District Engineer or his authorized representative. For the purpose of this section, a paved road is one which has been treated with at least 2 inches (50 mm) of hot-laid bituminous concrete, has been paved with portland cement concrete or has a "tar and chip" surface. Where crossings have been approved for open cut, pavement replacement shall promptly be made in accordance with Repaving Pipe Trenches (**Appendix B**, Figure 3).

COVER

The minimum required depth of cover for a crossing is 3 feet (.9 m). The critical control for cover on a pipeline crossing is the low point in the highway cross-section; usually the bottom of the longitudinal ditch. When measuring cover over pipes, the commonly specified surfaces are the top of pavement, natural ground, or the flow line of drainage ditches. A protective coating is considered part of the pipe. When the carrier is encased, cover is measured to the top of the casing.

CASING

It is recognized that a definite policy on the encasement of pipelines must take into account many inconclusive variables, not the least of which is the progressive improvements being made in the pipeline industry for strengthening and protecting carrier pipes. An arbitrary policy of requiring casing for all highway crossings is too expensive for both the utility consumer and the highway user.

Casing will not be required as follows:

1. In municipal sections when not feasible.
2. 1-1/4 inches (32 mm) or less diameter copper or steel pipe.
3. Plastic pipe, meeting requirements of ASTM, D2513, Type 2306, 1-1/4 inches or less nominal diameter.
4. Pipe, including but not limited to steel; cast iron; ductile iron; rigid plastic, and concrete, all in a thickness capable of sustaining live and dead load requirements of the Division of Highways. The design calculations must be submitted for approval by the Division of Highways.
5. Under unpaved roads unless otherwise directed by the District Engineer or his authorized representative.

However, considering past experience and current appraisal of future hazard, it is not considered prudent to waive all casing requirements. Since the Division of Highways is responsible for the safety of the traveling public and the structural integrity of the roadway, the burden of proof is on the utility if it contends that, for any particular location, casing is unnecessary.

Therefore, a policy intended to insure reasonable protection to the highway and traveling public is established by the following:

1. All pipelines crossing under paved State highways must be placed in a casing of larger diameter for a length adequate to permit repair or replacement of the carrier pipe in accordance with Profile View on the Roadway Cross Section (**Appendix A**, Figure 2).
2. Casing may include complete or partial enclosure designed to protect the carrier, lighten its burden, facilitate its insertion and withdrawal or guarantee integrity of the earth structure. Material for required casing shall be steel pipe of standard manufacture with joints welded

around the entire circumference of the pipe, reinforced concrete pipe, rigid plastic pipe, or poured portland cement concrete, provided they are able to sustain the live and dead loads as currently used by the Division of Highways.

3. Casing should extend a minimum of 5 feet (1.5 m) beyond the projected toe of fill slopes as shown in **Appendix A**, Figure 2. Length requirements for flat areas or sections with a ditch or curb are shown in sections B and C of **Appendix A**, Figure 2. The lateral distance between the surfaced area of the highway, including paved shoulders, and the portal limits of excavation should be a minimum of 5 feet (1.5 m) if the excavation is bulkheaded, and not less than the vertical difference in elevation between the surfaced area of the highway and the bottom of the trench if the excavation is not bulkheaded. Where extenuating circumstances preclude the attainment of this requirement, consideration will be given to alternate proposals, which insure the structural integrity of the highway and its operations.
4. When boring or jacking casing pipe under the highway, care must be taken to minimize annular voids and overbreaks. Pressure grout must be used for abandoned pipes, unused holes, overbreaks and voids.
5. Installation of casing pipe 2 inches (50 mm) or less in diameter or carrier pipe 1-1/4 inches (32 mm) or less in diameter will be permitted by punching, free boring or the use of a "mole". Use of liquids or chemicals during installation will not be permitted.

MARKERS, VENTS & APPURTENANCES

Markers, vents, drains, and shut-offs are appurtenances to pipeline installation. Pipeline crossings other than service lines shall be identified by permanent markers. These markers shall furnish sufficient information to enable identification and contact with the owner. Casing pipe 4 inches (100 mm) in diameter and larger shall be sealed and if carrying combustibles will be provided with a screened vent. Vent standpipes and location markers should be located outside the clear zone. They should not interfere with maintenance of the highway nor be concealed by vegetation. The preferred location is at the fence or right of way line or in a protected location.

LONGITUDINAL INSTALLATIONS

GENERAL

Longitudinal installations, other than in municipal sections, should be parallel to the pavement; preferably adjacent to the right of way line. The nearest edge of trench should be a minimum of 5 feet (1.5 m) from the edge of pavement, traveled way, toe of slope or curb line, when practical. Where possible to do so for any length of 500 feet (150 m) or more, a greater distance will be expected. The trench should not be deeper than the distance from the edge of the pavement, curb, paved shoulder, toe of slope, or back of ditch, than to the nearest edge of the trench unless a bulkhead is used. The minimum depth of cover on all longitudinal lines shall be 2.5 feet (0.75 m).

Longitudinal placing of pipelines under the traveled lanes is discouraged. It will only be considered as a last resort, and if the applicant provides detailed plans, which verify there is no feasible location outside the pavement. Restoration of such pipe trenches will be in accordance with Repaving Pipe Trenches (**Appendix B**, Figure 3) and may require complete replacement of at least one lane of pavement.

All pavement damaged by equipment, blasting or by the installation of pipe will promptly be repaired to the satisfaction of the Division of Highways; a full width pavement overlay may be required. Alternate pavement restoration will be considered if the design is submitted in writing by the applicant. Sufficient time must be given for a complete review by Division of Highways.

Municipal sections will be handled on an individual basis in a manner consistent with the prevailing limitations. Whenever practical, pipelines should be placed under the sidewalk. If this space is not available, the parking lanes should be used.

Pressure pipelines over 150 psi (1030 kPa) will be considered individually to determine if they will present a danger to the public.

EXCAVATED MATERIAL

Material removed from the trench shall not be stockpiled or stored within 2 feet (0.6 m) of the pavement edge or in a highway ditch line.

ELECTRIC, COMMUNICATION LINES AND TELEVISION CABLES

All permits issued by the West Virginia Division of Highways shall be subject to the following criteria:

- (1) No permit will be issued after the effective date of this manual for installations or adjustments that may interfere with established clear zone or clear roadside policies. The distance from the edge of the traveled way to the proposed installation as approved in the permit is the effective minimum offset established for the installation. The roadside policy will vary amongst the various roadways in this state due to topography, roadway conditions, and other considerations related to the protection of the traveling public.
- (2) All permits are subject to the limitation of available space on the right of way existing at the time of application.
- (3) All permit applications are subject to rejection by the Division for non-compliance with the requirements contained in this manual, or if the Division in its application of reasonable management practices, determines that granting the applicants permit would hinder or impinge upon the maintenance of highway right of way.

Telecommunications providers who seek to locate in ground or underground facilities within controlled access right of way will be required to provide compensation to the Division for costs incurred as a result of use and occupancy of the right of way, and they will be required to comply with all other applicable requirements of the federal Telecommunications Act of 1996, as amended.

Except where they are expressly exempted from the requirements and rules of this manual, telecommunication providers will comply with and observe all other restriction and requirements contained within this manual.

Telecommunication providers, as defined in this manual will be eligible to apply for permits for access of their telecommunications facilities, as defined in this manual, on West Virginia Division of Highways right of way. This access shall be on existing utility poles and generally in the areas where other utility companies are accommodated. In addition to a written permit application as outlined in this manual, the applicant for such access shall provide the following:

- (1) A copy of the applicant's certificate of convenience from the West Virginia Public Service Commission.
- (2) A lease or other agreement providing the telecommunications company with the right to occupy the existing utility poles of utility companies.

Telecommunication providers, as defined in this manual, do not have to provide proof that they have the power of eminent domain.

All other applicants for permits to occupy the right of way shall provide:

- (1) Proof of regulation by the West Virginia Public Service Commission.
- (2) Proof that they have the power of eminent domain.

OVERHEAD

GENERAL

The safety, maintenance, efficiency and appearance of the highway are enhanced by keeping the space between the edge of shoulder or curbline and the right of way line as free as practical from obstacles. The width and suitability of this space must be considered in locating poles, guys and related facilities along the highway. Where the road makes a curve and the line overhangs the road without crossing from one side to the other, all crossing and longitudinal clearance criteria must be met.

TYPE OF CONSTRUCTION

Longitudinal installations within highway right of way should be limited to single pole type of construction. Joint-use single pole construction is encouraged, as indicated by Rule 222 of Part 2 of the National Electrical Safety Code where more than one aerial utility is involved. This is of particular significance at locations where right of way widths approach the minimum needed for safe operations or maintenance requirements or where separate installations may require extensive removal or alteration of trees. Any construction detail not specifically covered herein must meet the current requirements of the National Electrical Safety Code.

Self-supporting poles, towers and/or dead-end construction should be employed at all crossings of the highway. The prime concern is the safety and appearance of the crossing. It is necessary to assure that structures will not fall or let conductors drop on the highway. The National Electrical Safety Code, Section 24 through 26, sets forth the strengths required for grades of construction for different situations. Construction that complies with this part of the Code will meet the Division of Highways' requirements.

No lines shall be attached to trees or any other items not specifically designed and constructed for such purposes. Any pole to be abandoned must be completely removed and hauled away except when abandonment is part of a utility agreement.

VERTICAL CLEARANCE

The minimum vertical clearance for overhead electric and communication lines should conform with the current National Electrical Safety Code. (See **Appendix A**, Figure 1 and **Appendix C**, Figure 4.)

LOCATION

Poles and related facilities should be located as far as practical from the edge of pavement. As a minimum, the poles should be located outside the applicable clear zone for the highway section involved. This location is to be consistent with the standards applied to the elimination of other obstacles. On curbed sections in urban areas the utilities should be located as far as practical behind the face of the curb and where feasible, behind the sidewalk. Exception to these clearances may be made where poles are of a breakaway type design or poles and guys can be placed at proper locations behind guardrails, deep drainage ditches, toe or top of steep slopes, retaining walls and other similarly protected locations.

The nature and extent of highway development and the ruggedness of the terrain being traversed are controlling factors for locating poles, guys and related facilities near the right of way line.

Location of overhead utility installations along highways with narrow right of way or on urban streets with abutting improvements are special cases. These must be resolved in a manner consistent with the prevailing limitations and conditions. Before locating the utility at other than the right of way line, consideration should be given to designs employing self-supporting, armless, single pole construction with vertical alignment of wires or cables or other techniques permitted by government or industry codes that are conducive to a safe traffic environment.

Where irregular shaped portions of the right of way are involved, variances in location from the right of way line may be allowed to maintain a uniform alignment for longitudinal installations.

SERVICE DROPS AND GUY WIRES

Guy wires to ground anchors and stub poles shall not be placed between a pole and the traveled way where they would occupy the clear zone. No poles, stubs for guys or anchors should be located in such a manner as to interfere with highway maintenance activities.

Installations made in accordance with an approved permit or utility agreement cover future construction of service drops and guy wires where no new poles or stubs are to be located within the highway right of way, provided the installation conforms with this manual. The utility shall contact the District Utility Supervisor's office prior to making the installation.

UNDERGROUND

GENERAL

All the regulations previously outlined for pipelines shall be applied to underground installations of electric and communication lines, except as indicated below.

CROSSINGS

Buried cable crossing under paved roads will require conduit, having a minimum nominal diameter of 2 inches (50 mm). The conduit length and depth shall be the same as required for pipeline encasement in Profile View on the Roadway Cross Section (**Appendix A**, Figure 2). On unpaved roads, if the direct burial or plowing method is used, the depth of bury shall be a minimum of 3 feet (0.9 m).

LONGITUDINAL INSTALLATIONS

The burying of cable along the paved road may be by direct burial or trenching methods maintaining a minimum offset of 5 feet (1.5 m) when practical and a minimum depth of 2.5 feet (0.75m). Cable buried along unpaved roads must be outside the traveled way. If rock or hard shale is encountered, the depth of direct bury may be reduced if *prior* approval is obtained from the District Engineer or his authorized representative.

Backfilling of the direct burial furrow shall be done with suitable random material free from rock or debris, which could create a void during compaction. Unless otherwise specified by the District Engineer or his authorized representative, the spoil removed by the plow will be placed over the furrow and tracked down with the vehicle. This operation will be repeated until the area of the furrow is thoroughly compacted. Where trenching methods are used, backfilling will be done in accordance with the requirements shown on page 8 under "Pipelines".

INSTALLATIONS ON HIGHWAY STRUCTURES

GENERAL

Attaching utility lines to a highway structure can affect the safe operation of traffic and the integrity and routine maintenance of the structure. Where it is feasible to locate utility lines elsewhere, attachment to highway structures is discouraged. However, where other locations prove to be extremely difficult, unsafe and/or unreasonably costly, consideration will be given for attaching a utility line to a highway structure.

Requests for attachment must be accompanied by a complete explanation of the circumstances creating the need for the proposed attachment. Also, it must include a detailed breakdown (Labor-Equipment-Material) of estimated costs for all alternate location studies done and all reasons that none are feasible.

The method of attachment should conform to logical engineering considerations for preserving the highway structure, its maintenance, appearance and provide safety for both the traveling public and the utility. The following considerations apply:

1. Since highway structure designs and site conditions vary, the adoption of standardized methods to accommodate utility facilities on structures is not feasible. Each proposed attachment will be considered on its individual merits.
2. The attachment of pipelines carrying combustible transmittants will not be permitted except for distribution type natural gas pipelines carrying 60 psi (415 kPa) or less.
3. Attachment of a utility will not be considered unless the structure in question is adequate to support the additional weight without any traffic load reduction and can accommodate the facility without compromising highway features, including reasonable ease of structure maintenance.
4. Installations, which would inhibit access to any structural part for painting or repair, will not be allowed.
5. The installation must maintain minimum appropriate vertical clearances.
6. Manholes will not be allowed in bridge decks.
7. Support rollers, saddles and hangers should be padded or coated to muffle vibration.
8. Electric and communication lines shall be insulated, grounded and carried in protective conduit from exit of ground to reentry.

EXISTING BRIDGES

An application for the placement of any installation on an existing bridge shall be accompanied by a complete description of the work involved and plans reflecting same. This information must include the weight per lineal foot of each line and details of the proposed method of attachment. The following conditions apply:

1. As a general rule, welding to main steel members or anchoring to the concrete deck, parapet or sidewalk will not be approved.
2. All installations shall be placed below the elevation of the bridge floor.
3. Trenching in the vicinity of piers or abutments shall be kept a sufficient distance from footings to prevent undercutting or sloughage of material from under the footing into the trench.

4. Any application involving reduction of existing waterway area will not be approved.

NEW BRIDGES

The placement of utility lines or other facilities on new bridges will be approved only in accordance with the following conditions:

1. The applicant is responsible for obtaining any desired information regarding the Division of Highways' proposed construction schedule.
2. The applicant shall submit complete plans and specifications of their proposed installation, including the weight per lineal foot and detail drawings, prior to Division of Highways' completion of plans and specifications for the proposed bridge or drainage structure.
3. The applicant shall bear all related engineering and construction costs incurred by the Division of Highways.

SCENIC ENHANCEMENT

GENERAL

The type and size of utility facilities and the manner and extent to which they are permitted along or within highway right of way can materially alter the scenic appearance and view of highway roadsides and adjacent areas. For these reasons additional controls are applicable in certain areas that have been acquired or set aside for their scenic quality. Such areas include scenic strips, overlooks, rest areas, recreation areas, and the right of way of highways adjacent thereto or which pass through parks and historic sites.

NEW INSTALLATIONS

Underground installations will not be permitted within such areas unless they *do not* require extensive removal or alteration of trees or other natural features visible to the traveling public and *do not* impair the visual quality of the land being traversed.

Aerial installations should be avoided at such locations where there is a feasible and prudent alternative. Such installations will be considered only when:

1. Other locations are unusually difficult, unreasonably costly or undesirable from the standpoint of visual quality.

2. Placing the facility underground is not feasible or is unreasonably costly.
3. The proposed installation can be made employing suitable designs and materials, which will give adequate attention to the visual qualities of the area being traversed.

CHAPTER 2
POLICY AND PROCEDURES
FOR ADJUSTMENT AND RELOCATION
OF PRIVATELY OWNED PUBLIC
AND PUBLICLY OWNED PUBLIC
UTILITY FACILITIES ON HIGHWAY PROJECTS

INTRODUCTION

The West Virginia Department of Transportation, Division of Highways engages in construction of highway projects, including federal-aid highway projects, which necessitate adjustment or relocation of railroad and utility facilities.

The procedures outlined herein have been developed in the interest of facilitating the coordination necessary when railroad and utility relocations are required in conjunction with highway projects.

APPLICATION

This policy applies to all railroad and public utility facilities including, but not limited to, electric, communication, gas, oil, petroleum products, water, steam, sewage, drainage and other similar commodities.

SCOPE

This policy sets forth the procedures to be followed for the adjustment or relocation of railroads and utilities on highway projects.

UTILITIES

PUBLIC UTILITY

A Public Utility is a business or enterprise performing an essential public service, such as supplying gas, water, electricity, communication, or transportation, and is either operated and/or regulated by the Federal, State, or local government. A Public Utility has the right of eminent domain by which it can appropriate private property for public use by the payment of just compensation.

A television cable company is not considered to be a public utility for the purpose of this chapter (West Virginia Code 24 D, Article 1).

Privately owned Public Utilities affected by highway construction or maintenance activities will be reimbursed from the State Road Fund ONLY when said utility has prior rights or interests in the affected area.

WEST VIRGINIA CODE - UTILITY REIMBURSEMENT

Chapter 17, Article 4, Section 17b, of the West Virginia Code covers the Relocation of Public Utility Lines to Accommodate Highway Projects and states that:

- (a) " Whenever the division reasonably determines that any public utility line or facility located upon, across or under any portion of a state highway needs to be removed, relocated or adjusted in order to accommodate a highway project, the division shall give to the utility reasonable notice in writing as mutually agreed, but not to exceed eighteen months directing it to begin the physical removal, relocation or adjustment of such utility obstruction or interference at the cost of the utility, including construction inspection costs and in compliance with the rules of the division and the provisions of article three, chapter twenty-nine-a of this code.

- (b) If the notice is in conjunction with a highway improvement project, it will be provided at the date of advertisement or award. Prior to the notice directing the physical removal, relocation or adjustment of a utility line or facility, the utility shall adhere to the division's utility relocation procedures for public road improvements which shall include, but not be limited to, the following:

(1) The division will submit to the utility a letter and a set of plans for the proposed highway improvement project;

(2) The utility must within a reasonable time submit to the division a written confirmation acknowledging receipt of the plans and a declaration of whether or not its facilities are within the proposed project limits and the extent to which the facilities are in conflict with the project;

(3) If the utility is adjusting, locating or relocating facilities or lines from or into the division's right-of-way, the utility must submit to the division plans showing existing and proposed locations of utility facilities.

(4) The utility's submission shall include with the plans a work plan demonstrating that the utility adjustment, location or relocation will be accomplished in a manner and time frame established by the division's written procedures and instructions. The work plan shall specify the order and calendar days for removal, relocation or adjustment of the utility from or within the project site and any staging property acquisition or other special requirements needed to complete the removal, relocation or adjustment. The division shall approve the work plan, including any requests for compensation, submitted by a utility for a highway improvement project if it is submitted within the established schedule and does not adversely affect the letting date. The division will review the work plan to ensure compliance with the proposed improvement plans and schedule.

- (c) If additional utility removal, relocation, or adjustment work is found necessary after the letting date of the highway improvement project, the utility shall provide a revised work plan within thirty calendar days after receipt of the division's written notification of the additional work. The utility's revised work plan shall be reviewed by the division to ensure compliance with the highway project or improvement. The division shall reimburse the utility for work performed by the utility that must be performed again as the result of a plan change on the part of the division.
- (d) Should the utility fail to comply with the notice to remove, relocate or adjust, the utility is liable to the division for direct contract damages, including costs, fees, penalties or other contract charges, for which the division is proven to be liable to a contractor caused by the utility's failure to timely remove, relocate or adjust, unless a written extension is granted by the division. The utility shall not be liable for any delay or other failure to comply with a notice to remove, relocate or adjust that is not solely the fault of the utility, including but not limited to the following:

- (1) The division has not performed its obligations in accordance with the division's rules;
 - (2) The division has not obtained all necessary rights-of-way that affect the utility;
 - (3) The delay or other failure to comply by the utility is due to the division's failure to manage schedules and communicate with the utility;
 - (4) The division seeks to impose liability on the utility based solely upon oral communications or communications not directed to the utility's designated contact person;
 - (5) The division changes construction plans in any manner following the notice to remove or relocate and the change affects the utility's facilities; or,
 - (6) Other good cause, beyond the control of and not the fault of the utility, including but not limited to, labor disputes, unavailability of materials on a national level, act of God, or extreme weather conditions.
- (e) In order to avoid construction delays and to create an efficient and effective highway program, the division may schedule program meetings with the public utility on a quarterly basis to assure that schedules are maintained."
- (f) The commissioner of highways is hereby authorized to include within the cost of highway construction the cost of relocation necessarily incurred by any public utility which has prior rights, and any pipeline company subject to the jurisdiction of the Federal Energy Regulatory Commission which has prior rights, in relocating any public utility line, pipeline or facility as a result of the construction of any fully or partially controlled access highway as a part of the national highway system as authorized by the Federal Highway Administration. Privately owned public utilities located within state highway right of way by permit are not eligible for reimbursement of relocation costs which are required due to a Division construction improvement or maintenance project.

Chapter 17, Article 4, Section 17d covers the relocation of public utility lines and public service districts utility lines on state highway construction projects and states that:

"Whenever the Commissioner of Highways determines that any public utility line owned by a county or municipal governmental body located upon, across or under any portion of a state highway needs to be relocated in order to accommodate a highway project for which proportionate reimbursement of the cost is not available from any federal program, the commissioner shall notify the public utility owning or operating the facility which shall relocate the same in accordance with this section, and the cost of the relocation shall be paid out of the state road fund."

For the purpose of this section, the term "cost of relocation" includes the entire amount paid by the utility, exclusive of any right-of-way costs incurred by the utility, properly attributable to the relocation after deducting there from any increase in the value of the new facility and salvage value derived from the old facility. Any notice required by this section is sufficient if given by registered mail or certified mail, return receipt requested, addressed to any officer of the utility or to an individual if the person to whom notice is required is an individual.

PROPORTIONATE SHARE REIMBURSEMENT

In those cases where only a portion of a Utility's relocation cost qualifies for reimbursement by the State, the determination of proportionate share, exclusive of right of way, will be based on the percentage of the existing facility, which qualifies for reimbursement. The percentage so developed on the existing line will be applied to the cost of the relocation. Percentages are usually developed from linear footage. The determination of proportionate share for right of way will be a ratio of the linear feet of existing right of way to linear feet of proposed right of way, never to exceed one.

REIMBURSEMENT OF PRIVATELY OWNED PUBLIC UTILITIES

The Commissioner shall utilize the following criteria when establishing eligibility for reimbursement:

"Construction or Improvement Projects. Relocation costs of privately owned public utilities, when prior rights can be demonstrated to the Division of Highways, are eligible for reimbursement if the costs are required due to a Division construction or improvement project.

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

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

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

Applicability. This rule applies to all eligible projects on which the privately owned public utility incurs reimbursable costs after May 4, 2001 (the effective date of this rule)."

FEDERAL-AID POLICY GUIDE

The Federal government may reimburse the States for a varying percentage of the funds incidental to the construction of Federal-aid Highways.

Payment of the proportionate share of the cost by the Federal government is contingent upon strict compliance by all parties with certain procedures set forth in the Federal Highway Administration's Federal-aid Policy Guide (hereinafter called FAPG), 23 CFR, 645A and 23 CFR, 645B and all supplements and amendments thereto. These FAPG's define the procedures the Division of Highways must require of utilities in order to be eligible to collect its proportionate share of the funds spent for utility relocation.

UTILITIES ON HIGHWAY RIGHT OF WAY

The Division of Highways has promulgated a portion of this manual entitled "Accommodation of Utilities on Highway Right of Way", which addresses the issues of utility facilities occupying highway right of way.

The regulations therein have been outlined in the interest of developing and preserving safe roadsides and of minimizing possible interference and impairment to the highway, its safe operation, structures, appearance and maintenance.

PERMITS

When the proposed relocated facility is to be within highway right of way and the Division of Highways is not liable for any of the incurred cost, a permit is required. (See Chapter 1)

Authority for the promulgation of regulations and issuance of permits to enter upon and under State Highway Right of Way is given in Chapter 17, Article 16, Section 6, and Chapter 17, Article 4, section 8 of the West Virginia Code.

TYPES OF UTILITY AGREEMENTS

When the Division of Highways is liable for any of the incurred cost of a required relocation, an agreement is required.

FAPG 23 CRF, 645A establishes a functional framework to provide a working liaison between the Division of Highways and the utility. It does not specifically prescribe the form of the written agreement between the Division of Highways and the utility, but does specify certain essential elements necessary to all such agreements where Federal-aid participation in the cost is requested.

Master Agreements are in effect with most utility companies with which the Division of Highways requires frequent relocations. These Agreements contain the specifications, regulations, and provisions required in conjunction with work performed on all highway projects. A transmittal letter is submitted by the Company, along with plans, profiles, cross sections, description of work, bill of materials, an Estimate of Utility Costs (**Appendix E**, Form RW 8.01), and any other support necessary to explain these costs. This package is referred to as Supporting Data.

The original and six (6) copies of the Supporting Data are submitted by the utility company for each project. The transmittal letter and copies must be signed in ink and indicate that the work will be done in accordance with the provisions of the Master Agreement and contain its date.

When a company does not have a master agreement and Federal-aid is involved, a long form agreement conforming to the requirements of FAPG, 23 CFR, 645A must be used.

If a company does not have a master agreement and the project is 100% State funded, a Utility Agreement (**Appendix E**, Form RW 8.03) is used. The original and three (3) copies of these agreements are required.

Letter agreements are used when a standard Utility Agreement is not necessary. This type of agreement is used with municipalities and public service districts when the relocations are designed by the Division of Highways or a consultant and built by our contractor. It is in the form of a letter from the Division of Highways to the utility. The recipient of the letter indicates approval of the contents by signing the letter in a space provided thereon, and returning the letter to the Division of Highways, after which it becomes an agreement.

PLAN, PROFILE, CROSS SECTION AND LEGENDS FOR AGREEMENTS AND PERMITS:

Plans, cross sections and/or profiles are required for all proposed utility installations on State highway right of way. These should be shown on Division of Highways' Plans when possible.

Four sets of the plans should be color-coded. The following legend and color code is preferred. Other plan symbols and/or colors may be used, if the legend explaining them is clear.

<u>Green</u>	Existing Locations
<u>Red</u>	Relocated Facilities
X---X---X---X	Remove or Abandon
<u>Orange</u>	Temporary Relocation

DISTRICT RESPONSIBILITY

For all projects designed at the district level, the district designer is responsible to have all existing utilities shown on the plans. He is also responsible to have those locations verified by the owner.

The District Utility Supervisor is responsible for notifying and providing plans to each affected utility. On projects where the Division of Highways is not responsible for relocation cost, the District Utility Supervisor will ensure that a permit is obtained for the relocations within the highway right-of-way. Each utility permittee shall provide a schedule for the necessary work to the Railroads and Utilities Unit.

When the Division of Highways is liable for any part of the relocation cost, the District Utility Supervisor will notify the Utilities Section of the Engineering Division for their handling of the agreement with the affected utility or railroad.

UTILITIES SECTION RESPONSIBILITY

The Utilities Section is responsible for all liaison incidental to the negotiation, preparation, processing, review and recommendation of approval of all utility and railroad agreements.

UTILITIES SECTION ORGANIZATION

RAILROADS AND UTILITIES UNIT LEADER
SECRETARY
REGIONAL COORDINATORS - RAILROADS AND UTILITIES

The Regional Coordinators are responsible for obtaining all agreements on projects in their area involving all public utilities and railroads. The Regional Coordinators are directly responsible to the Railroads and Utilities Unit Leader.

LIAISON

Liaison is defined as a form of appreciation of the views and problems of others and taking necessary steps toward making an overall plan, compatibly resolving or compromising all considerations.

For the purposes of this Chapter, liaison pertains to the relationship between the divisions of the Division of Highways, its engineering consultants, railroads, utilities, and the Federal Highway Administration.

PURPOSE OF LIAISON

To avoid unnecessary delay and cost in the construction of highway improvements, it is desirable that railroad and utility companies are advised in advance of project scheduling. This will allow sufficient time to design the necessary adjustments, appropriate money within their budgetary programming, procure the necessary materials and equipment, and schedule and perform the work required. It is equally desirable that railroad and utility companies advise the Division of Highways of plans for major new construction and major changes in their existing facilities. Adjustments of railroad and utility facilities could then be accomplished so as to minimize interference with highway improvements.

LIAISON POLICY

Railroad and utility relocation liaison procedures have been adopted by the Division of Highways. These procedures are generally in conformance with those suggested by the Liaison Committee of the International Right of Way Association. It will be most helpful if all railroad and utility companies can adopt the liaison procedures outlined in the following pages of this chapter.

UTILITIES

DIVISION OF HIGHWAYS ADVANCE PLANNING PROCEDURE

Division of Highways will:

1. When requested by a Utility Company, furnish a tentative construction program covering a period of one year, if possible. Information will include route, location, and nature of improvement and probable dates of construction. The information is confidential and the

Division of Highways will not be held to any firm commitments.

2. When highway alignment studies are underway, contact affected utilities for comments as to the feasibility of changes to reduce or eliminate utility relocation costs.
3. Furnish affected utilities with preliminary plans at the earliest possible date and determine eligibility for reimbursement.
4. If a highway consultant is involved, follow the procedure set forth in the Section Highway Consultant Utility Agreement Action.

UTILITY ADVANCE PLANNING PROCEDURE

Utility will:

1. Review with Division of Highways, plans for major new construction or changes in existing facilities to avoid conflicts with highway planning.
2. When advised by Division of Highways that a highway route is under study, promptly furnish related data concerning facilities in the area.
3. Cooperate with Division of Highways' District on all highway Maintenance and District Design projects, determine eligibility for reimbursement, and coordinate relocation of facilities.
4. Advise, in writing, the name and address of person in the company to be notified.

DIVISION OF HIGHWAYS PRELIMINARY PLANNING PROCEDURE

Division of Highways will:

1. As soon as usable plans are available, conduct a field check of the project to determine the location of all existing utility facilities.
2. After the field check, submit two copies of the preliminary plans to affected utilities with the request to verify or correct the ownership and location of existing utility facilities as shown thereon.

UTILITY PRELIMINARY PLANNING PROCEDURE

Utility will:

1. When requested, participate and cooperate with Division of Highways in field checks.
2. Promptly check the verification plans, indicate any additions or deletions on one (1) set and return it to Division of Highways.
3. Furnish, if requested, a "windshield" estimate of cost for the relocation.

ALTERNATES CONSIDERED

The economics of highway location and utility adjustment are studied to obtain the most economical or desirable solution to the problems. Where appropriate, the factors to be studied shall be the cost of underground versus overhead facilities, or the cost of moving a facility versus readjusting the road alignment.

Once plans are firm, they are sent to the affected utilities with the request that agreements or permits be prepared and submitted to the Division of Highways.

DIVISION OF HIGHWAYS-UTILITY AGREEMENT ACTION

Division of Highways will:

1. Provide to the person designated by each affected utility an authorization for preliminary engineering and replacement right-of-way. As soon as possible, provide useable plans to Company and request an estimate of cost and proposed relocation plan.
2. Notify each Utility of all changes in construction plans, which involve its facilities.
3. Review submission of the plans and estimates of each utility as to location of replaced facilities and conflict with construction details. Also check for conflicts with proposed locations of other utilities. Review proposed agreements as to eligibility for participation in accordance with Utility Agreement Check List (**Appendix E**, Form RW 8.08), and as set forth in FAPG 23 CFR, 645A.
4. Allocate funds in conformity with Summary of Utility Costs (**Appendix E**, Form RW 8.02).
5. Where applicable, request Alternate Procedure approval as outlined in FAPG 23 CFR, 645A.

6. Have utility relocations shown on highway construction plans.
7. Process agreement for approval within the Division of Highways.
8. Upon request, authorize the purchase of materials not in stock, which have an extended delivery date.
9. Notify the Utility in writing to begin actual relocation work at the earliest possible date.
10. Document prosecution of work on a weekly basis until the relocation is complete.
11. The Utility Section will obtain betterment agreements, when required, for upgraded water and sewer line relocations designed by Division of Highways' Engineering Division or Consultant.
12. Prepare Utility Status Report (**Appendix E**, Form RW 8.04), which shows for each utility the estimated work completion dates or indicates coordination is required.
13. After letting the contract, conduct a preconstruction conference with Division of Highways' Contractor and affected Utilities. The purpose of this conference with regard to utilities is to determine the Contractor's sequence of operation and clarify work coordination.
14. If there are revisions necessary to the Utility's relocation plans after the project begins, or additional work required because of changes in the highway construction plans, provide proper written authority to the Utility.

HIGHWAY CONSULTANT-UTILITY AGREEMENT ACTION

When Consulting Engineers develop highway plans, their procedure will be:

1. Locate by field surveys, available maps or other means all existing public and private utilities affected by the proposed construction.
2. Submit plans to each Utility showing their existing facilities and request verification of ownership and location. If verification is not promptly received from the utility, the consultant will renew the request and advise the Division of Highways.
3. Upon receiving verification of ownership and location from a utility, submit to the Division of Highways, a request that the affected utilities be authorized preliminary engineering. A copy of Division of Highways' authorization letter will be sent to the consultant.

4. Promptly notify each Utility of any changes in construction plans, which involve its facilities.
5. Promptly review submission of the relocation plans of each Utility as to location of replaced facilities and conflict with construction details or proposed locations of other Utilities.
6. Be able to discuss all proposed utility relocations at the final field review. On any major or complicated utility relocation, the consultant may request a special session for utilities. A representative from each utility will be invited.
7. Incorporate all utility relocations, including profiles and cross sections view, into the plans.
8. Furnish the Division of Highways with minutes of all meetings and copies of all correspondence between consultant and utility.

COMPANY-UTILITY AGREEMENT ACTION

Utility company will:

1. Designate a specific representative for the Division of Highways to contact.
2. Upon receiving preliminary engineering authorization and plans, promptly proceed with the preparation of utility relocation plans. Use Request for Right of Way to be Staked (**Appendix E**, Form RW 8.07), if right of way stakeout is needed.
3. Submit the Utility Agreement to the Utilities Unit for approval after the relocation plans have been approved by the Division of Highways.
4. In the event the relocation requires material, which is not in stock, or may have an extended delivery date, make an early request for authorization to order same.
5. Within ten (10) working days of receipt of a properly executed Utility Agreement provide a schedule for the work and, use Notice of Commencement or Completion of Work (**Appendix E**, Form RW 8.05) to notify the appropriate Assistant District Engineer, Construction, when work will commence. Proceed with the necessary work and use this same form to notify the District when work is completed.
6. Complete all physical work possible prior to the start of highway construction.
7. Participate in the preconstruction conference and coordinate all work as required.
8. Make no change from that shown in the approved Utility Agreement nor do any additional

work without authorization from the Utilities Unit Leader.

9. Keep necessary records during construction and furnish all information requested by Division of Highways. Using Notice of Disposal of Recovered Materials (**Appendix E**, Form RW 8.06), notify the appropriate Assistant District Engineer, Construction, of any material salvaged. If none, so state on form.

UTILITY CONSULTANT ACTION

When not adequately staffed to perform the design of facilities to accommodate proposed highway projects, the Utility Company may employ engineers, architects and others for required engineering and allied services. The Division of Highways will participate in the amounts paid, provided that the amounts are not based on a percentage of the cost of relocation. The Utility and its Consultant shall agree in writing as to the services to be provided and the fees and arrangements therefore.

The use of such services will require prior approval by Division of Highways and should be requested as follows:

1. Utility to furnish Division of Highways:
 - a. A statement that Utility is not adequately staffed to perform the required design.
 - b. Qualifications of Consultant.
 - c. An executed utility-consultant agreement containing:
 - 1) List of consultant's staff by classification with pay scale per hour.
 - 2) Estimate of time and cost for the work.
 - 3) Certificate of Consultant.
2. Division of Highways to review the:
 - a. Qualifications of the individual or firm.
 - b. Reasonableness of the rates and fee as compared to the standard rates in the area for similar services by other consulting engineers. The complexity of the work, time allowed and other factors affecting the cost will be considered.

- c. Adequacy of the agreement and Certificate.

The approval of a Consultant shall be on a project-by-project basis.

That fee developed shall be considered a ceiling. The amount paid will be the actual amount expended. Any anticipated overrun shall be subject to Division of Highways' approval prior to incurring such cost. Such overrun approval shall be based on supporting information furnished by the utility.

The Division of Highways will also participate in the cost of such services performed under existing written continuing contracts where it is demonstrated that such work is regularly performed for the utility in its own work under the same contract. No prior approval is necessary; however, the Division of Highways should be notified that work will be done in this manner.

Reimbursement for the costs incurred will be contingent upon the application of normal audit procedures and the acceptability of the costs established thereby.

RAILROADS

RAILROAD-HIGHWAY PROJECTS

There are four general types of highway projects, which involve railroads; grade crossing, overhead bridge, railroad underpass, and highway parallel and adjacent to the railroad. Such projects require railroad agreements to cover the new highway construction, relocation of railroad facilities, or the installation of protective warning devices. In the event that no force account work is performed by the Railroad, the Division of Highways may reimburse the railroad for preliminary engineering costs incurred in the review of Division of Highways' plans.

RAILROAD-HIGHWAY AGREEMENTS

The railroad agreement must adhere to the following documents:

1. Federal Highway Administration's FAPG, 23 CFR, 140I, Reimbursement for Railroad Work.
2. Federal Highway Administration's FAPG, 23 CFR, 646B, Railroad-Highway Projects.
3. Federal Highway Administration's Manual on Uniform Traffic Control Devices.
4. Road and Motor Vehicle Laws of West Virginia.

5. Rules and Regulations of the Division of Highways.

The railroad agreement covering the construction of a new highway project should contain:

1. The name of the parties to the agreement and date.
2. A description of the project and the appropriate project number.
3. A detailed statement of the work to be performed by each party.
4. Itemized force account estimate, material list and sketches for work to be performed by the railroad.
5. Amount of participation of cost by each party.
6. Where applicable, provisions covering the right of entry and acquisition of railroad property or property rights.
7. Reference to FAPG, 23 CFR, 140I, 646A and 646B on Federal-aid projects.
8. Form, duration and amount of any needed insurance.
9. Maintenance provisions.
10. Signatures of officials of the parties to the agreement.
11. When required, approval of Federal Highway Administration.

If the agreement is for preliminary engineering only, Items 6, 8, and 9 can be deleted.

DIVISION OF HIGHWAYS AGREEMENT ACTION

Division of Highways shall:

1. Provide authorization for preliminary engineering and furnish project plans. Arrange, when necessary, for a meeting with railroad representatives on the project to study the extent of the work on its property or affecting its facilities. Determine the following so that final plans can be completed:
 - a. Limits of work.

- b. Horizontal and vertical clearances.
 - c. Drainage.
 - d. Miscellaneous items.
2. Prepare an agreement between Division of Highways and railroad to cover work to be performed and outline the responsibility of each party. Send same to the railroad.
 3. Review all comments and coordinate such revisions as necessary to finalize an agreement.
 4. Upon receipt of executed agreement from the railroad, execute same on behalf of the Division of Highways.
 5. Submit the railroad agreement to the Federal Highway Administration for approval on all projects on the National Highway System.
 6. Return one signed copy of the agreement to the railroad and distribute remaining copies accordingly.
 7. Authorize the railroad to proceed with Force Account Work and to notify District personnel prior to commencement of work. This prior notification will insure that the records necessary for reimbursement will be developed.

Specific cases where the District is not notified prior to commencement of work by the Railroad should be brought to the attention of Utilities Unit Leader. The Railroad's Chief Engineer will be notified.

RAILROAD COMPANY AGREEMENT ACTION

Railroad shall:

1. Determine the extent of work to be done by its forces.
2. Submit to Division of Highways plans and an itemized estimate of the cost involved.
3. Review and execute agreement. If it is not satisfactory, resolve discrepancies in order to finalize the agreement. After execution, return agreement to Division of Highways.
4. Upon receipt of authorization to proceed with Force Account Work and prior to the

commencement of work, notify the Assistant District Engineer, Construction, when work will commence. Notice of Commencement or Completion of Work (**Appendix E**, Form RW 8.05) will be used for this purpose.

GENERAL

DIRECTION OF WORK PERFORMED UNDER AGREEMENTS AND PERMITS AS A RESULT OF A HIGHWAY PROJECT

Work under an agreement must not be performed prior to notification of approval by the Utilities Unit Leader.

The inspection of the work outlined in Railroad and Utility Agreements is a District responsibility. The District locations, addresses, and phone numbers are shown in **Appendix D**. Copies of all approved agreements are sent to the appropriate Assistant District Engineer, Construction.

If the Company does not start operations when authorized or delays performance of its work, direct contact shall be made by the District Utility Supervisor with the local Company representative. The Railroads and Utilities Unit shall be notified of the occurrence by the District Utility Supervisor and will also contact the designated representative for the company.

PRECONSTRUCTION CONFERENCES

Immediately following the awarding of a highway contract, a preconstruction conference is held wherein the District Engineer, or his representative, and the Contractor meet with representatives of each involved railroad and utility to verify the schedule provided after Notice to Proceed for coordination of the work. Procedures for this conference, usually held at a District office, are given in the Division of Highways' Construction Manual. This Manual indicates that full notes of the meeting are to be taken, proofread, typed, and distributed at the earliest possible date to those in attendance. This procedure will permit corrections of any errors in the notes and will make this document important in the event of future questions or problems.

INSPECTION AND RECORDS OF WORK PERFORMED UNDER PERMIT AND BY AGREEMENT

The purpose of inspection is to insure that the work is performed in substantial compliance with the agreement and document information, which will assist in an audit by representatives of the Division of Highways or the Federal Highway Administration.

The Division of Highways' Construction Manual provides that the Engineer or Inspector in charge of the project must keep detailed records regarding the amount of labor, material, and equipment used and materials salvaged. This enables a crosscheck when invoices are rendered.

The inspector assigned to observe reimbursable operations should be familiar with the agreement before the work starts. If at all possible, the inspector should be present at the preconstruction conference

so as to be fully informed.

The inspector assigned to observe operations should be familiar with the permit before the work starts.

Inspector's Daily Utilities Report (**Appendix E**, Form SC-453) is to be filled out by the inspector observing the work. Both the Utility representative and the Division of Highways Inspector shall agree and sign the form at the end of each day's operation. If either representative refuses to sign the form, or is unavailable, a notation to that effect should be made in the space provided for his signature.

Where feasible, a daily running total of materials used and/or removed should be carried in simple form, which will facilitate final review upon job completion.

Before any recovered material is disposed of by sale, scrap, or reuse, the Utility must notify the appropriate Assistant District Engineer, Construction, in writing, on Notice of Disposal of Recovered Materials (**Appendix E**, Form RW 8.06). The results of the inspection, along with the inventory and condition of materials recovered, shall be entered into the Diary. It is important that any substantial change in the amount and/or character of materials actually recovered as compared with those estimated in the Utility Agreement be noted and explained in the Diary.

The District Utilities Supervisor is responsible for reviewing the completed report and notifying the Railroads and Utilities Unit if a schedule change is anticipated.

The original reports, along with Notice of Commencement or Completion of Work and Notice of Disposal of Recovered Materials (**Appendix E**, Forms RW 8.05 and RW 8.06), and a summary of materials used are bound together in a hardback folder and become the Diary. A title page must be inserted which includes the following information:

1. Railroad or utility Involved.
2. District Number.
3. State Project Number.
4. Federal Right of Way Project Number.
5. Federal Construction Project Number.
6. County.

7. Starting and Completion Dates of company work.

Sufficient notation should be made in the Construction Project Master Diary referring to the Utility Diary or reports for the detailed account of utility relocation work when in conjunction with a Highway Project.

Upon completion of the utility work, the District Utility Supervisor should review the completed Diary with the inspector who observed the utility work. This Diary should be checked against the completed as built plans and the agreement. Any comments or exceptions that arise during the final check should be carefully recorded.

The Utility Diary and as-built plans, along with an accompanying transmittal letter should then be forwarded to the Auditing Division. An additional copy of utility as-built plans shall be submitted to the Project Supervisor. A notice of completion of work shall be provided to the Railroads and Utilities Unit.

INSPECTION OF WORK PERFORMED UNDER PERMIT

On projects where the Division of Highways is not responsible for relocation costs and the work is done under permit, the Inspector must insure that the work is properly performed in accordance with the permit and sketches accompanying same.

On active highway projects, the District Utility Supervisor should send a copy of the permit to the Project Engineer.

SELF CERTIFICATION OF UTILITY INSTALLATION UNDER PERMIT

In addition to the other requirements of this manual a Utility choosing to exercise this option shall ensure the following:

1. The utility must submit in writing requesting this option with a letter from the Independent Inspector signed and stamped by a registered Professional Engineer in the state of WV verifying their services. These will accompany the original permit (mm-109) submitted to the District Utility Supervisor.
2. The utility must provide a Performance Bond for each permit submitted. Actual amount to be determined by the WVDOH District Engineer/Manager or his Authorized Representative. (Approximately \$2 per linear foot for initial estimates, not to be less than \$5000.)
3. A letter from said **Independent** Engineer/Consulting Firm (Independent of said utility) shall accompany the original permit confirming that they have reviewed/approved the plans and design of said permit and will provide full time inspection and testing with qualified personnel.

4. One original and four copies of the permit (mm-109), plans, cross sections, profile view, area map, utility consultant letter, and description of the work to be performed will be submitted by the applicant to the District Utility Supervisor for review.
5. The Engineer/Consulting Firm shall be responsible for compaction tests (One lot per 500 lf = five sub-lots).
6. No work shall begin until said permit is reviewed and approved by the District and received by the utility.
7. A copy of the approved permit shall be kept at the work site at all times by the utility.
8. The permit holder will assume full responsibility for placement of the utility, restoration of WVDOH Right of Way to the original condition or to a condition that exceeds the original.
9. The permit holder shall assume full responsibility for the maintenance of traffic as provided by the most current manual.
10. The permit holder shall be responsible for any other permits required by West Virginia State Law.
11. The permit holder shall hold the state harmless from any liability for injury to persons or damage to property on or off Division of Highways right of way during the construction of said project. Any work performed during the of the Division of Highway's inspector in no way relieves the applicant of his responsibility for proper installation and accountability to the Division of Highways.
12. Minimum qualifications for inspectors shall be; NICET Level II certification, Fairmont State College Level II certification, or the equivalent with minimum experience of five (5) years in the Utility or Construction field. This information will be made available to the WVDOH.
13. WVDOH may perform quality assurance inspection to ensure minimum requirements are being met and quality control is in place. These inspections shall be charged to the Utilities Authorization for the Blanket Permit.
14. The District Manager/Engineer reserves the right to revoke the permit at any time for any technical or policy related reason.
15. The Utility Permittee will lose the option of Self Certification if it or its Engineer/Consulting Firm are determined by the Division not to be responsible or are issued continued written warnings are issued for non-compliance of these minimum requirements. A written course of corrective action will be required to be submitted to and approved by the Utilities Supervisor for reinstatement of this option.
16. Upon completion of work the Independent Inspector shall certify in writing, signed and stamped by the responsible engineer, that the WVDOH conditions and policy have been met.
17. A Substantial Completion Review shall be conducted by the Utility Permittee or its Contractor, the Utility Permittee's Engineer/Consulting Firm and the WVDOH Utilities Supervisor at the time all

work has been completed.

18. A Final Review will be performed after one (1) year after which the applicant may request the bond be released.

BILLING PROCEDURES

All invoices are to be submitted directly to the District Engineer of the District in which the work is performed. (See map in **Appendix D**).

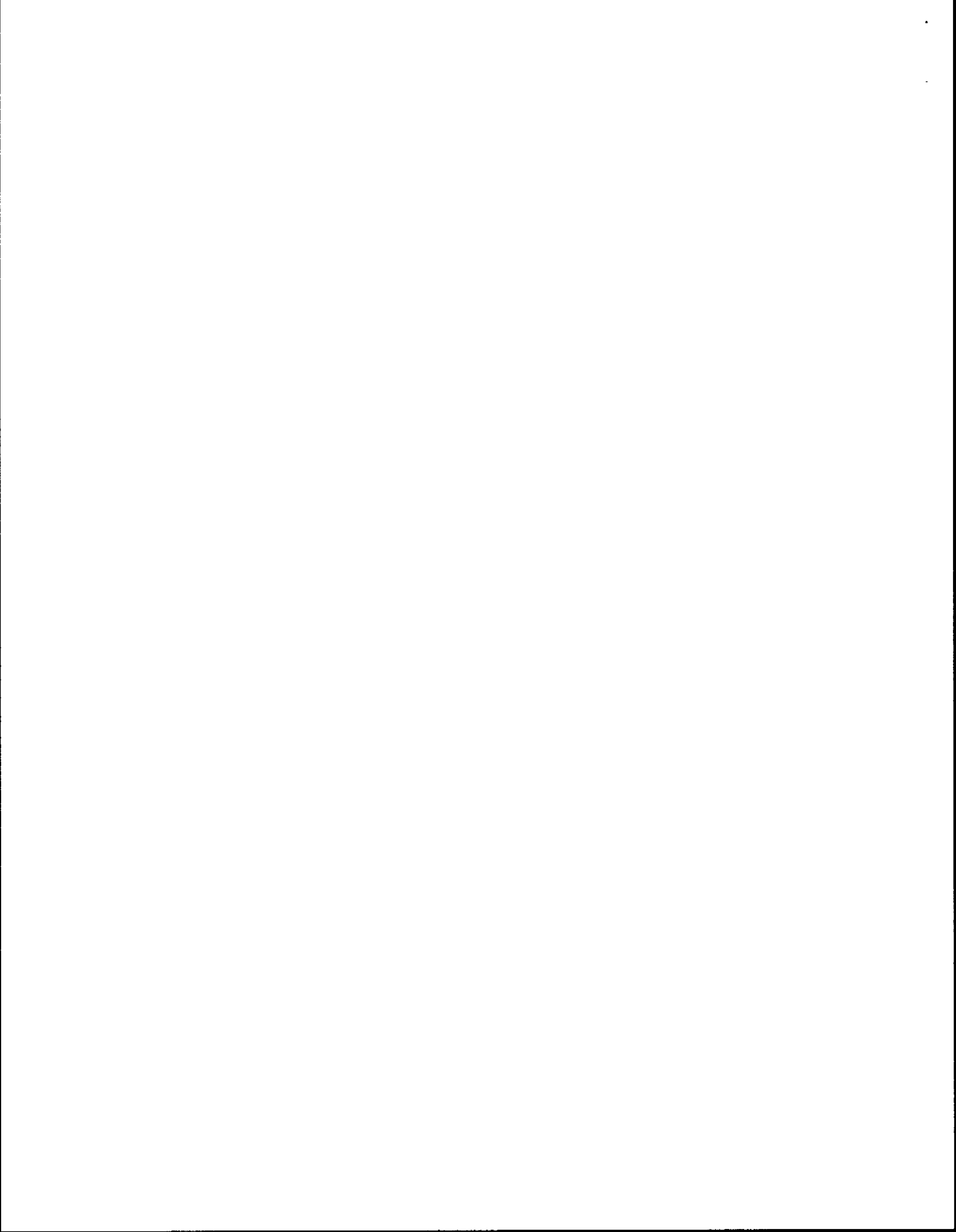
All invoices must contain: state project number, federal right of way project number (where applicable); project description and county; date of agreement, and the amount of the invoice, showing credit for any previously received partial payments.

Partial invoices may be submitted for actual costs incurred up to, but not exceeding, the amount shown in the approved agreement, and must be clearly marked PARTIAL INVOICE.

Final invoices are required to be submitted within six (6) months after all chargeable work covered by the agreement has been completed. The Utility or Railroad shall submit the final invoice, with complete support documentation, signed by an authorized representative. Final invoices cannot be paid until they have been audited.

PROJECT CLOSURE

The District Utility Supervisor will ensure final invoices are submitted in a timely manner. After final invoices have been paid, or work complete for one year and appropriate notice given to the involved utilities or railroad, the project will be closed.



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APPENDIX A

PROFILE VIEW ON THE ROADWAY CROSS SECTION "AERIAL"

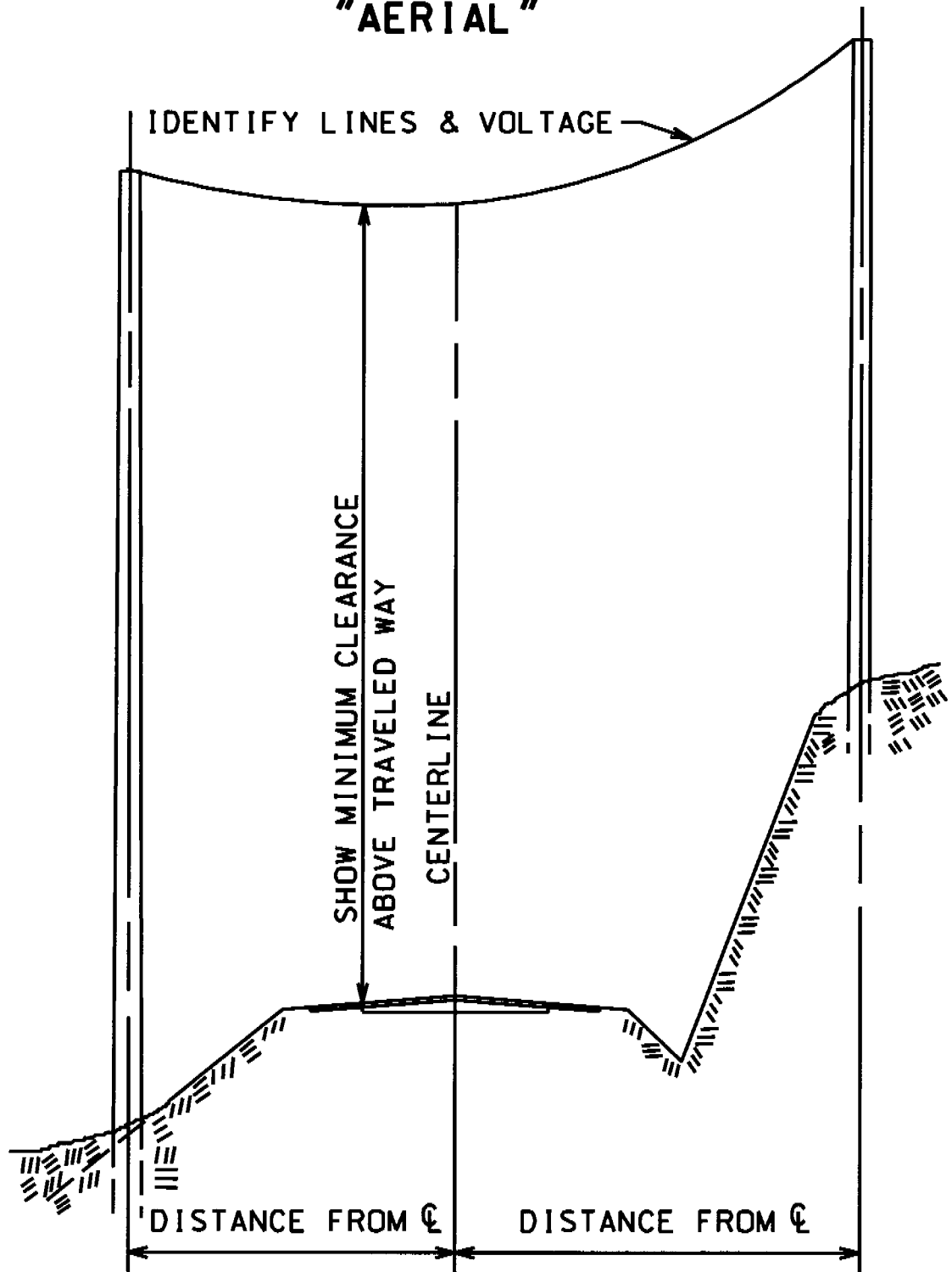
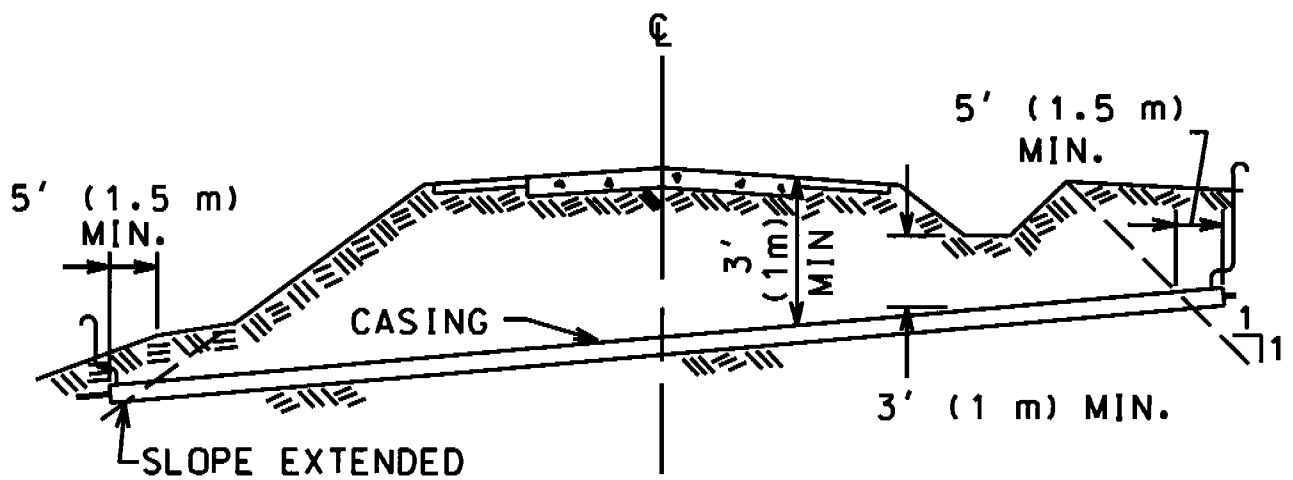
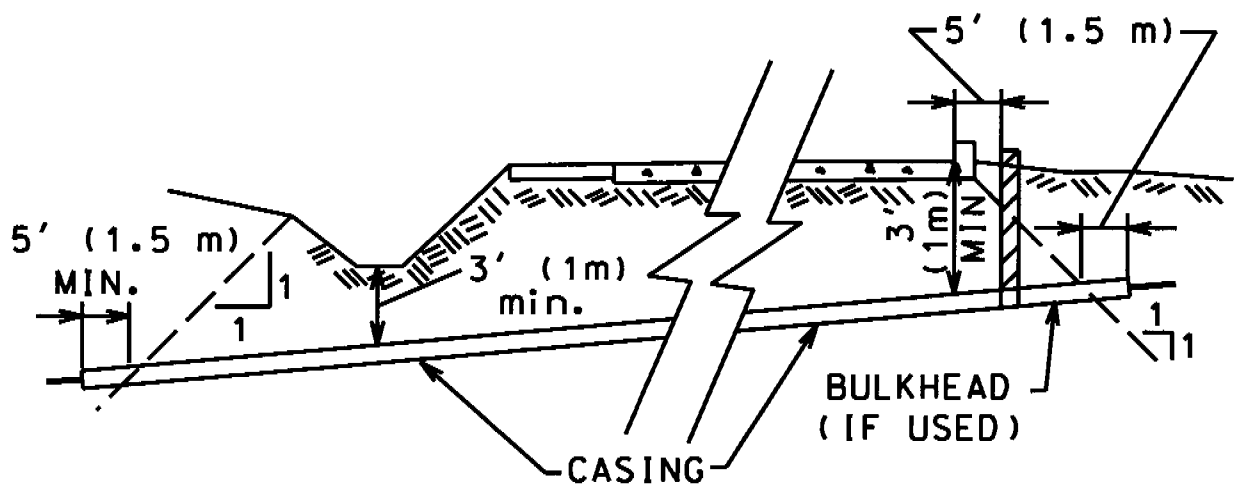


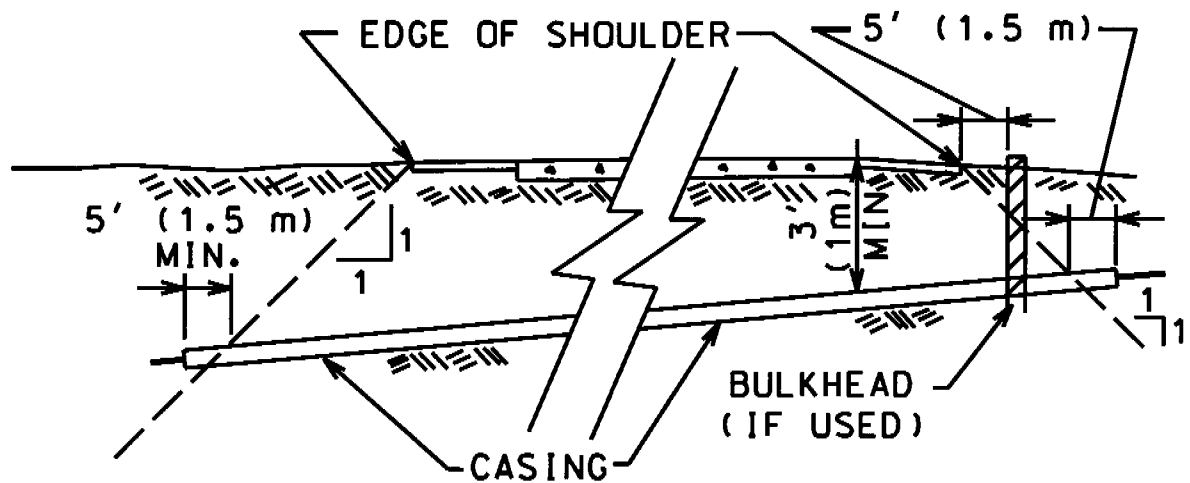
FIGURE 1



A. NORMAL CUT OR FILL SECTION



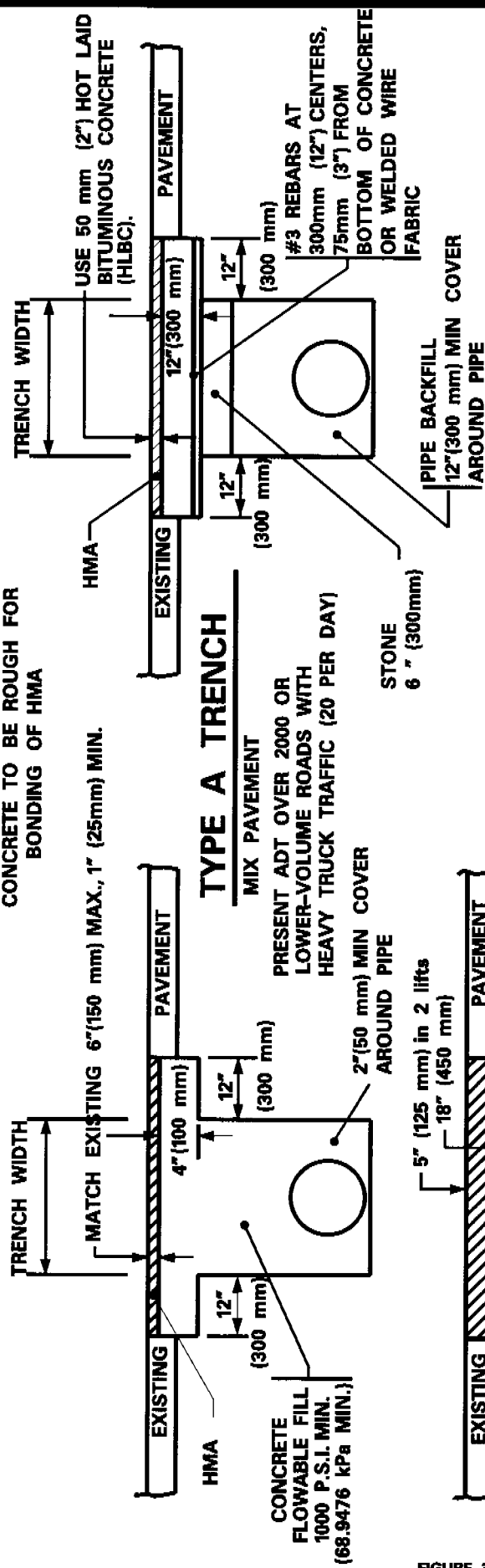
B. SECTION WITH DITCH OR CURB



C. SECTION WITHOUT DITCH

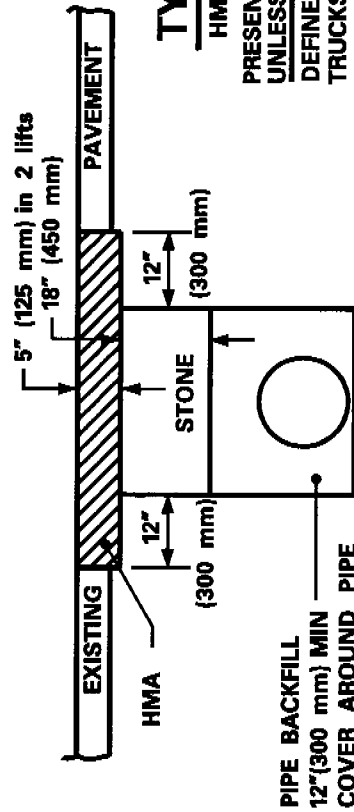
FIGURE 2

CONCRETE TO BE ROUGH FOR BONDING OF HMA



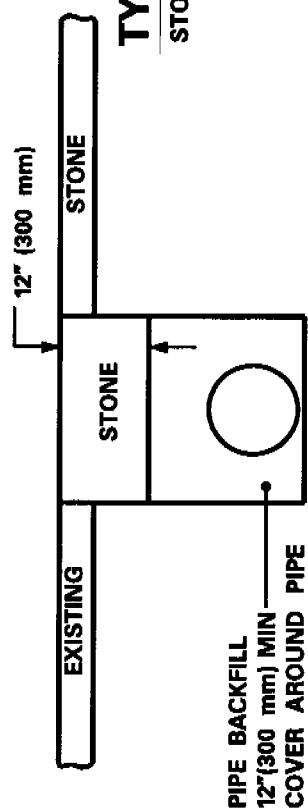
TYPE B TRENCH

HMA PAVEMENT
PRESENT ADT UNDER 2000 UNLESS HEAVY TRUCK TRAFFIC, DEFINED AS 20 TANDEM-AXLE TRUCKS PER DAY, IS EVIDENT.



TYPE C TRENCH

STONE ROADWAY



NOTES

1. Where type A trenches are wider than 7' in existing bituminous pavement, concrete may be deleted if existing HMA thickness and 18" stone are restored.
2. Traffic is to be maintained at all times by the use of appropriate traffic control devices. Use of metal plates, having sufficient rigidity to span Type A trench, is required to prevent wheel loads from being transmitted to the concrete flowable fill. The plates are to be left in place until the Concrete Flowable Fill has attained a 50% of its compressive strength.

FIGURE 3

NOTES

- Traffic is to be maintained at all times by the use of appropriate traffic control devices. Use of metal plates, having sufficient rigidity to span the trench, is required to prevent wheel loads from being transmitted to the Concrete. The plates are to be securely anchored to prevent movement caused by traffic. The plates are to be left in place until the Flowable Fill has attained a 50% of its compressive strength.

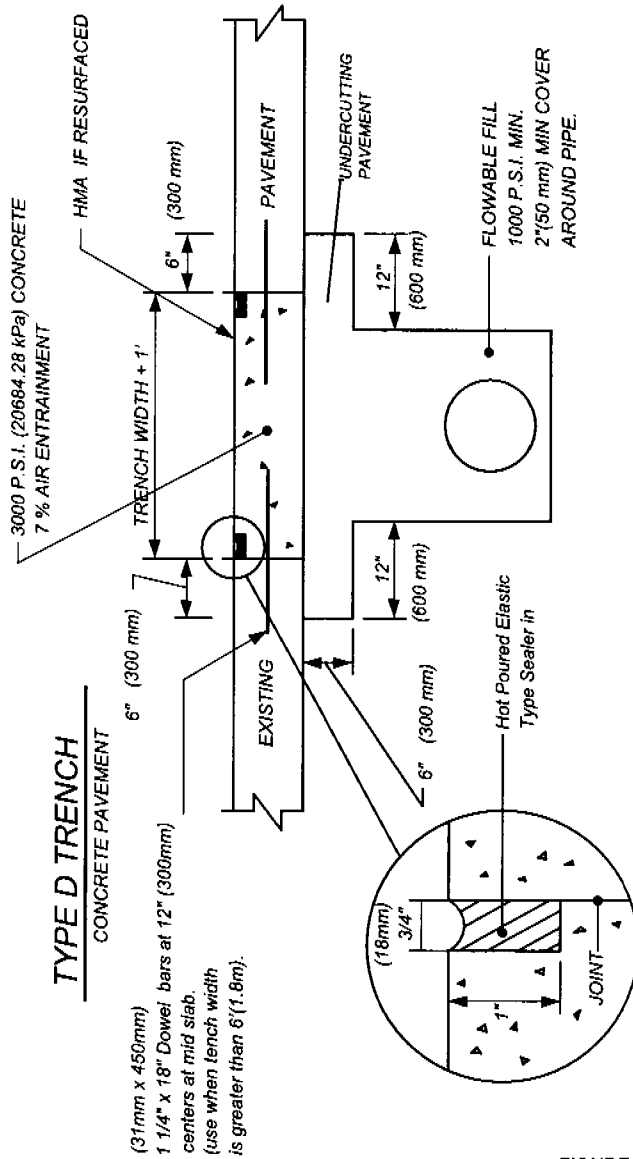


FIGURE 3

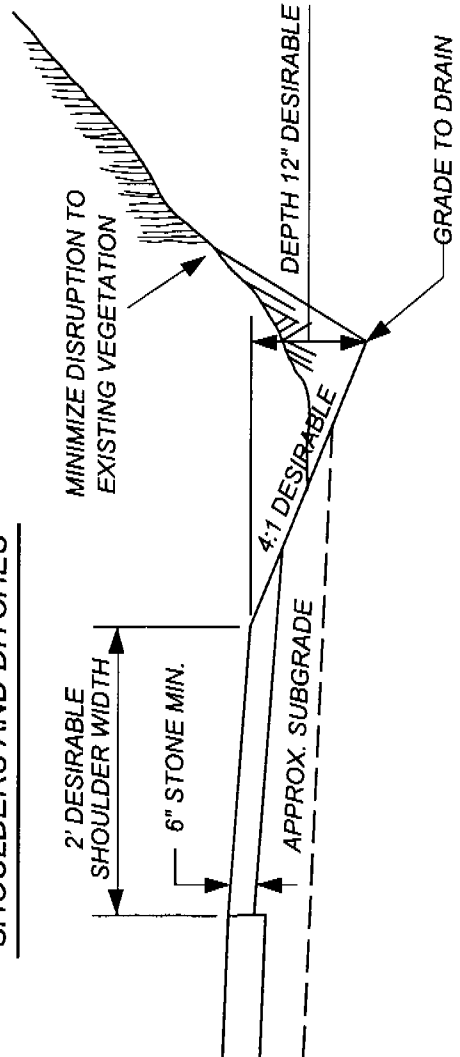
NOTES

This operation is intended to be shaping and/or reconstruction of the shoulder and ditchline after the installation of the utility facility. This operation also includes cleaning of existing structures, outlets and inlets.

The width of the shoulder shall be a minimum of the existing shoulder width prior to construction. However additional width shall be provided when sufficient area is available without compromising the required ditch.

The depth of the ditch shall be a minimum of the existing depth prior to construction. However the slope from the shoulder edge to the bottom of the ditch should not exceed a 4 to 1 slope and the depth of the ditch should not be less than 12 inches. If the 4 to 1 slope and the 12 inch minimum depth cannot be met then the 4 to 1 slope shall control.

SHOULDERS AND DITCHES



APPENDIX C

MINIMUM VERTICAL CLEARANCE OF WIRE ABOVE GROUND

ACROSS AND ALONG ROADS
(RULE 232 OF NATIONAL ELECTRICAL SAFETY CODE)

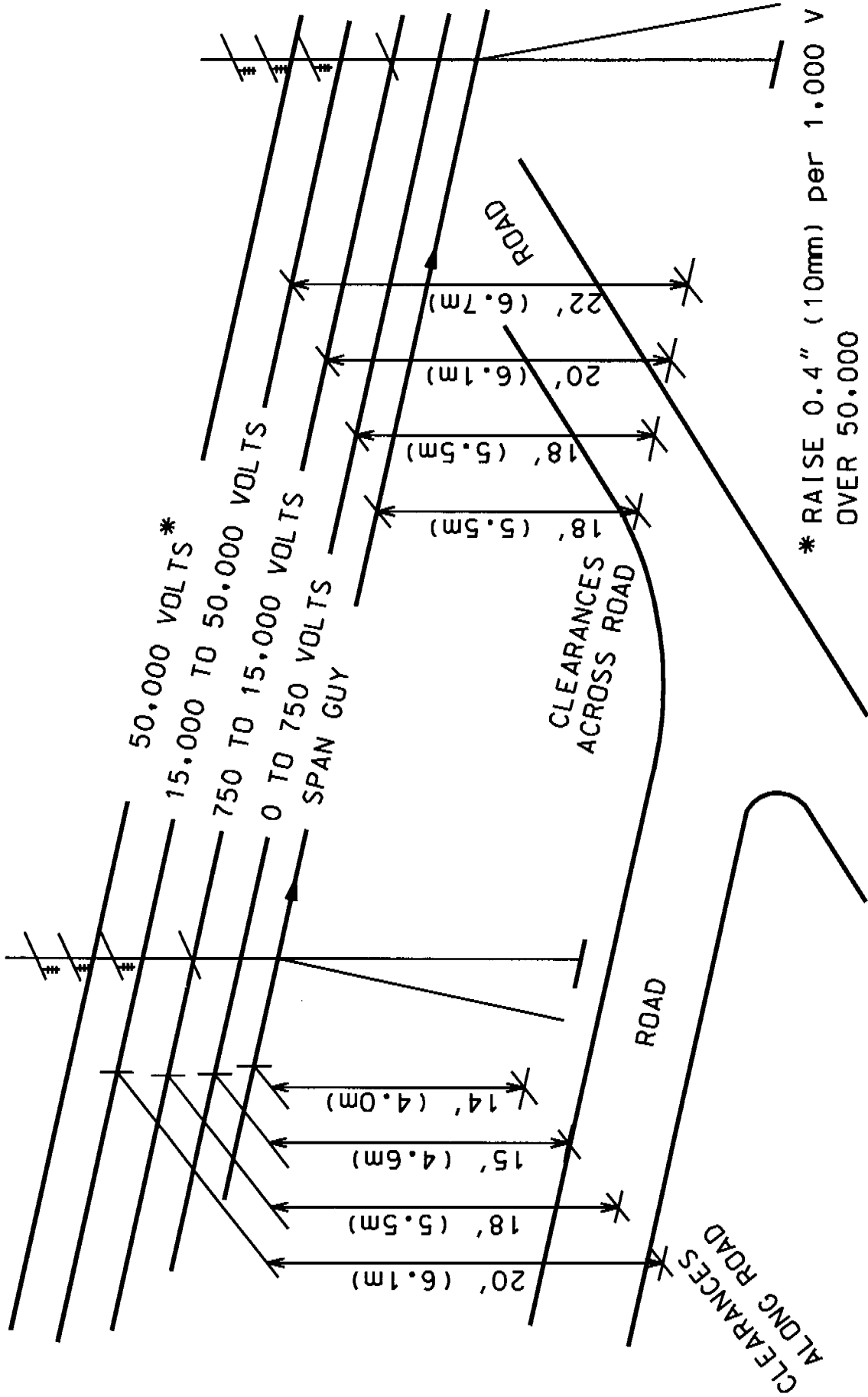


FIGURE 4

APPENDIX D

DISTRICT ONE

Division of Highways
District One
1334 Smith Street
Charleston, WV 25301
(304)558-3001

**Boone, Clay
Kanawha, Mason
Putnam**

DISTRICT SIX

Division of Highways
District Six
1 DOT Drive
Moundsville, WV 26041
(304)843-4008

**Brooke, Hancock
Marshall, Ohio
Tyler, Wetzel**

DISTRICT TWO

Division of Highways
District Two
P. O. Box 880
Huntington, WV 25712
(304)528-5625

**Cabell, Lincoln
Logan, Mingo
Wayne**

DISTRICT SEVEN

Division of Highways
District Seven
P. O. Drawer 1228
Weston, WV 26452
(304)269-0414

**Barbour, Braxton
Gilmer, Lewis
Upshur, Webster**

DISTRICT THREE

Division of Highways
District Three
624 Depot Street
Parkersburg, WV 26102
(304)420-4645

**Calhoun, Jackson
Pleasants, Ritchie
Roane, Wirt, Wood**

DISTRICT EIGHT

Division of Highways
District Eight
P. O. Drawer 1516
Elkins, WV 26241
(304)637-0215

**Pendleton
Pocahontas
Randolph, Tucker**

DISTRICT FOUR

Division of Highways
District Four
P. O. Box 4220
Clarksburg, WV 26302-4220
(304)842-1550

**Doddridge, Harrison
Marion, Monongalia
Preston, Taylor**

DISTRICT NINE

Division of Highways
District Nine
103 ½ Church Street
Lewisburg, WV 24901
(304)647-7450

**Fayette
Greenbrier
Monroe, Nicholas
Summers**

DISTRICT FIVE

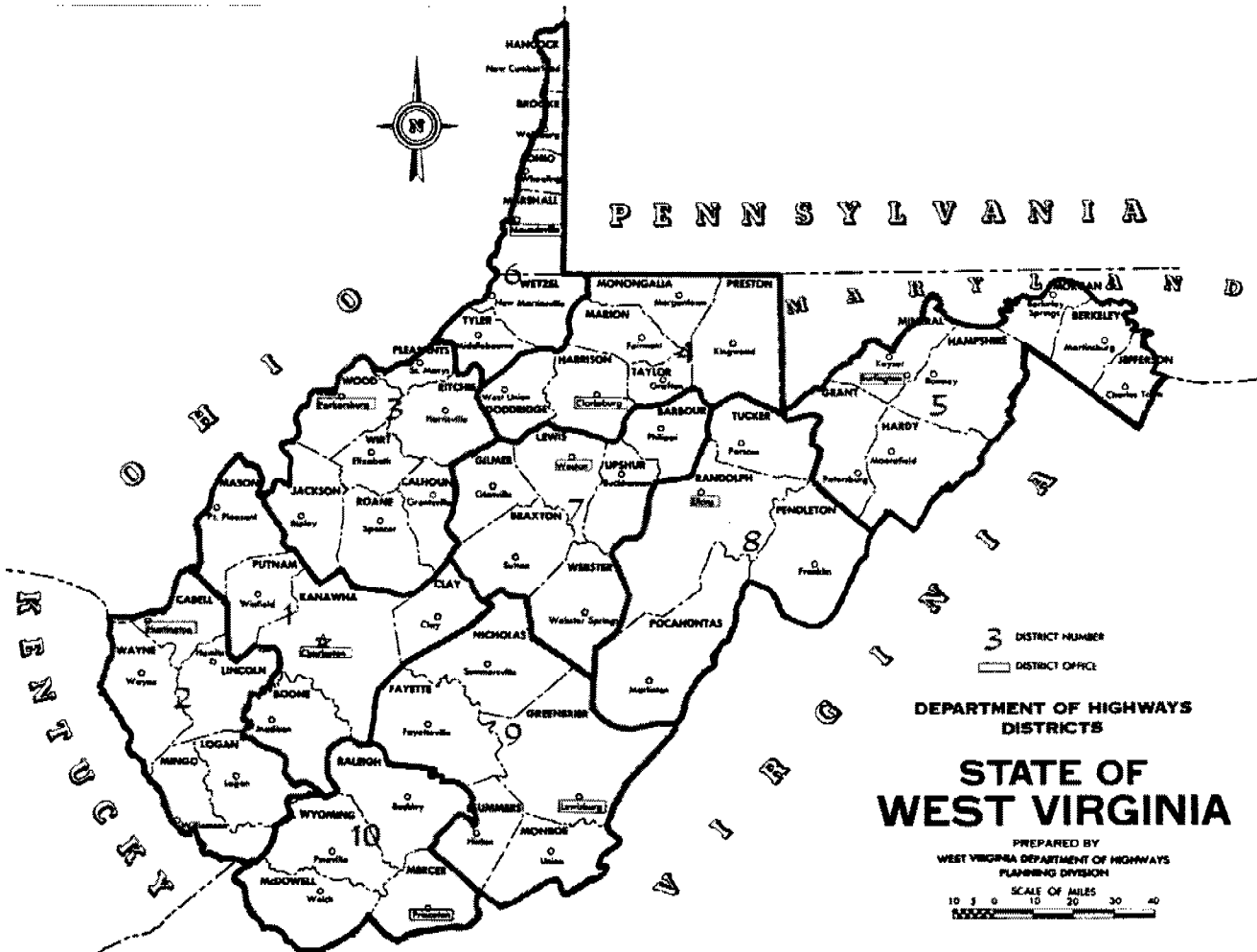
Division of Highways
District Five
P. O. Box 99
Burlington, WV 26710
(304)289-3521

**Berkeley, Grant
Hampshire, Hardy
Jefferson
Mineral, Morgan**

DISTRICT TEN

Division of Highways
District Ten
270 Hardwood Lane
Princeton, WV 24740
(304)487-5228

**McDowell, Mercer
Raleigh, Wyoming**



P E N N S Y L V A N I A

M A R Y L A N D

K E N T U C K Y

V I R G I N I A

3 DISTRICT NUMBER
 □ DISTRICT OFFICE

DEPARTMENT OF HIGHWAYS
 DISTRICTS
 STATE OF
 WEST VIRGINIA

PREPARED BY
 WEST VIRGINIA DEPARTMENT OF HIGHWAYS
 PLANNING DIVISION

SCALE OF MILES
 10 20 30 40

APPENDIX E

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

ESTIMATE OF UTILITY COSTS

STATE PROJECT NO.: _____ R/W PROJECT NO.: _____

PROJECT DESCRIPTION: _____ , _____ COUNTY

DATE OF MASTER AGREEMENT: _____ DATE OF SUPPORTING DATA: _____

UTILITY: _____

ADDRESS: _____

CITY: _____

A. PRELIMINARY ENGINEERING

1. Labor

(a) Salary and Wages _____

(b) Additives _____

(c) Personal Expense _____

2. Supplies _____

3. Transportation _____

4. Contract _____

TOTAL _____

B. TEMPORARY CONSTRUCTION

1. Labor

(a) Salary and Wages _____

(b) Additives _____

(c) Personal Expense _____

- 2. Material
 - (a) New Material _____
 - (b) Handling _____
 - (c) Credit or Salvage _____
- 3. Equipment
 - (a) Company Owned _____
 - (b) Rented _____
- 4. Contract _____

TOTAL _____

C. PERMANENT CONSTRUCTION

- 1. Labor
 - (a) Salary and Wages _____
 - (b) Additives _____
 - (c) Personal Expense _____
- 2. Material
 - * (a) New Material _____
 - ** (b) Salvage _____
 - (c) Handling _____
- 3. Equipment
 - (a) Company Owned _____
 - (b) Rented _____
- 4. Contract _____

TOTAL _____

* From Bill of Material
** From Schedule of Salvage

D. CONSTRUCTION ENGINEERING AND INSPECTION

- 1. Labor
 - (a) Salary and Wages _____
 - (b) Additives _____
 - (c) Personal Expense _____
 - 2. Supplies _____
 - 3. Transportation _____
 - 4. Contract _____
- TOTAL _____

E. ACCOUNTING

- 1. Labor
 - (a) Salary and Wages _____
 - (b) Additives _____
 - (c) Personal Expense _____
 - 2. Supplies _____
 - 3. Transportation _____
- TOTAL _____

F. OVERHEADS NOT INCLUDED IN ADDITIVES

[See FAPG, 23 CFR 645.105(h) and 23 CFR 645.117(d)]

- 1. General Administration _____

G. * BETTERMENTS _____

* From Schedule of Betterments

H. TOTAL RELOCATION COST (A + B + C + D + E + F - G) _____

DETERMINATION OF PROPORTIONATE SHARE FOR RELOCATION PORTION OF PROJECT

I.

- 1. * Length on the DOH Right-of-Way _____
 - 2. * Length on the Private Right-of-way _____
 - 3. * Total Length to be Relocated _____
 - (a) Divide Line I1 by Line I3 _____
 - (b) Divide Line I2 by Line I3. _____
 - 3. COMPANY SHARE (Multiply Line H by Line I3a) _____
 - 4. DIVISION SHARE (Multiply Line H by Line I3b) _____
- * Length is existing length.

J. RIGHT OF WAY ACQUISITION

- 1. Labor _____
 - (a) Salary and Wages _____
 - (b) Additives _____
 - (c) Personal Expense _____
 - (d) Contract _____
 - 2. Supplies _____
 - 3. Transportation _____
 - 4. Land or Easements _____
- TOTAL RIGHT-OF-WAY _____

K. DETERMINATION OF PROPORTIONATE SHARE FOR RIGHT-OF-WAY PORTION OF PROJECT

- 1. Length on Private Right-of-Way Existing Condition _____
- 2. Length on the Private Right-of-way Proposed Condition _____
- (a) * Divide Line K1 by Line K2. _____
- 3. DIVISION SHARE (Multiply Total section J by Line K2a) _____
- 4. COMPANY SHARE (Subtract Line K4 from Total section J) _____

* Value shall not exceed one.

L. TOTAL PROJECT COST

- 1. COMPANY SHARE (add Line I3 and Line K4) _____
- 2. DIVISION SHARE (add Line I4 and Line K3) _____

(FOR DEPARTMENT USE ONLY)

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

SUMMARY OF UTILITY COSTS

Date: _____

State Project No. _____ Date of Agreement: _____

R/W Project No. _____ Utility: _____

County: _____

Reimbursement percentage for relocation exclusive of right-of-way cost = _____ %.

Reimbursement ratio for right-of-way cost = _____.

ITEM	AMOUNT
Preliminary Engineering	\$ _____
Relocation	_____
SUBTOTAL	\$ _____ x _____ % = \$ _____
Right of Way	_____
SUBTOTAL	\$ _____ x _____ = \$ _____
AMOUNT FOR AUTHORIZATION	\$ _____

THIS AGREEMENT, made this ____ day of _____, 2007, by and between _____, hereinafter referred to as " _____ ", and WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS, hereinafter referred to as DEPARTMENT.

W I T N E S S E T H:

WHEREAS, DEPARTMENT proposes to construct a portion of _____, State Project No. _____, Federal Project No. _____, Right of Way, and Federal Project No. _____, Construction, in _____ County, to cross or affect certain facilities of _____. The DEPARTMENT has determined that _____'s facilities hereinafter referred to shall be relocated in order to accommodate the construction of the aforesaid Federal-Aid Project and has been given due notice of such determination. _____ has been requested to design relocations and/or relocate its facilities. DEPARTMENT is obligated to reimburse _____ for its actual cost for designing its existing facilities to conform with DEPARTMENT'S improvements.

WHEREAS, the design cost of the work herein contemplated is to be financed from funds provided by the State and expended under Federal regulations; and

WHEREAS, under the conditions hereof Federal-Aid funds are eligible to pay a share of said cost.

NOW, THEREFORE, for and in consideration of the sum of ONE DOLLAR (\$1.00), cash in hand paid by each party to the other, receipt of which each party hereby acknowledges, and the mutual promises and obligations hereinafter stated, _____ and DEPARTMENT do hereby mutually covenant and agree as follows:

- (1) _____ is not adequately staffed or equipped to perform the necessary design and relocation with its own forces. It is, therefore, authorized but not required to contract such work.
- (2) _____ agrees to design or have designed the relocation of its facilities affected by this project.
- (3) _____ agrees to prepare estimates for the design of its facilities to be relocated to conform to the new highway improvement.
- (4) _____ agrees to provide DEPARTMENT the complete

relocation plans of its facilities for incorporation into DEPARTMENT'S project plans.

(5) DEPARTMENT will, at project expense, have its contractor perform all work necessary to relocate and/or adjust _____ facilities to conform to said design.

(6) After the casing, conduit or other underground facility is installed, the trench is to be backfilled. All backfill material shall: be free from particles larger than 75 mm (3"); not be frozen, contain no cinders, ashes, refuse, organic, vegetable or other like matter; nor any other material deemed unsuitable by the District Engineer or his authorized representative. Care shall be taken to compact the material under the haunches of the casing, conduit pipe or other facility and to place the backfill evenly on each side. The backfill material shall be deposited in the trench for its full width in layers not exceeding 100 mm (4") after compaction. This method shall be followed until the trench is fully backfilled. The target percentage of dry density for the backfill material will be 95% or the density of the existing material, as evidenced by testing, if the existing density is lower than 95%. In areas outside the limits of the traveled way and shoulders, compaction to the density of the original ground is sufficient. All backfill material and compaction requirements shall be in accordance with the DEPARTMENT'S Specifications and subject to DEPARTMENT'S approval. Evidence of proper compaction by testing will be the responsibility of the DEPARTMENT. The testing shall be 1 (one) per day or every 150 m (500 lineal feet) or as determined by the District Engineer or his authorized representative.

(7) _____ agrees to save DEPARTMENT harmless from any damage to persons or property of the general public that may be occasioned during the course of the work involved and attributable to the acts of _____, its consultant or contractor.

(8) _____ agrees that the method of developing the cost of work performed under this agreement shall be in accordance with the work order accounting procedures as prescribed by the Public Service Commission of West Virginia and Federal-Aid Policy Guide 23 CFR 645A and B, and supplements and amendments thereto.

(9) Upon execution of this agreement by both parties by endorsement hereon, the DEPARTMENT will, by written notice, authorize _____ to

proceed with work. _____ agrees to prosecute such work diligently to completion.

(10) Upon completion of such facility relocation, _____ agrees to maintain its facilities located within DEPARTMENT'S right of way in accordance with DEPARTMENT'S current manual "Accommodation of Utilities on Highway Right of Way" and when applicable, Paragraph (7) of the American Association of State Highway and Transportation Officials' publication "Policy on the Accommodation of Utilities Within Freeway Right-of-Way" and supplements and amendments thereto.

(11) NONDISCRIMINATION OF EMPLOYEES: The _____ further agrees as follows: During the performance of work under this agreement, _____ and any of its contractors shall provide equal employment opportunities for all qualified persons and shall not discriminate against any employee or applicant because of race, color, religion, sex, national origin or disability. The _____ and its contractors shall comply with the Executive Orders of the Governor of the State of West Virginia, dated October 16, 1963 and December 15, 1965, The Presidential Executive Order Number 11246 as amended by Executive Order Number 11375 and as supplemented in Department of Labor Regulations Title 41 Code of Federal Regulations, Part 60 and the Civil Rights Act of 1964 as amended.

During the performance of this agreement, the _____, for itself, its assignees, and successors in interest (hereinafter called _____) shall agree as follows:

- (A) Compliance with Regulations: The _____ shall comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21 through Appendix H and Title 23 Code of Federal Regulations 710.405(b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this agreement.
- (B) Nondiscrimination: The _____, with regard to the work performed by it after award and prior to completion of the work, shall not discriminate on the grounds of race, color, religion, sex, national origin or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

The _____ shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5, Title 49 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B, Title 49 of the Regulations.

(C) Solicitations for Contractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation by the _____ for work to be performed under a contract, including procurement of materials or equipment, each potential contractor or supplier shall be notified by the _____ of the _____'s obligations under the agreement and the regulations relative to nondiscrimination on the grounds of race, color, religion, sex, national origin or disability.

(D) Information and Reports: The _____ shall provide all information and reports required by the regulations, or orders and instruction issued pursuant thereto, and shall permit access to its books, facilities, as may be determined by the Department to be pertinent to ascertain compliance with such regulations, orders and instructions.

Where any information required of a _____ is in the exclusive possession of another who fails or refuses to furnish this information, the _____ shall so certify the Department as appropriate, and shall set forth what efforts it has made to obtain the information.

(E) Sanctions for Noncompliance: In the event of the _____'s noncompliance with the nondiscrimination provisions of this agreement, the Department shall impose such agreement sanctions as it may determine to be appropriate, including, but not limited to:

- (1) Withholding of payments to the _____ under this agreement until the _____ complies, and/or
- (2) Cancellation, termination, or suspension of the agreement in whole or part.

(F) Incorporation of Provisions: The _____ shall include the provisions of paragraphs (A) through (F) in every contract, including procurement of materials and leases of equipment, unless exempt by the regulations, order, or instruction issued pursuant thereto. The _____ shall take such action with respect to any contract or procurement as the Department may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a _____ becomes involved in or is threatened with litigation with a contractor or supplier, as a result of such direction, the _____ may request the Department to enter into such litigation to protect the interest of the Department; and, in addition, the _____ may request the United States to enter into such litigation to protect the interest of the United States.

These provisions shall be fully and effectively enforced, and failure to comply therewith shall be regarded as a material breach of this agreement.

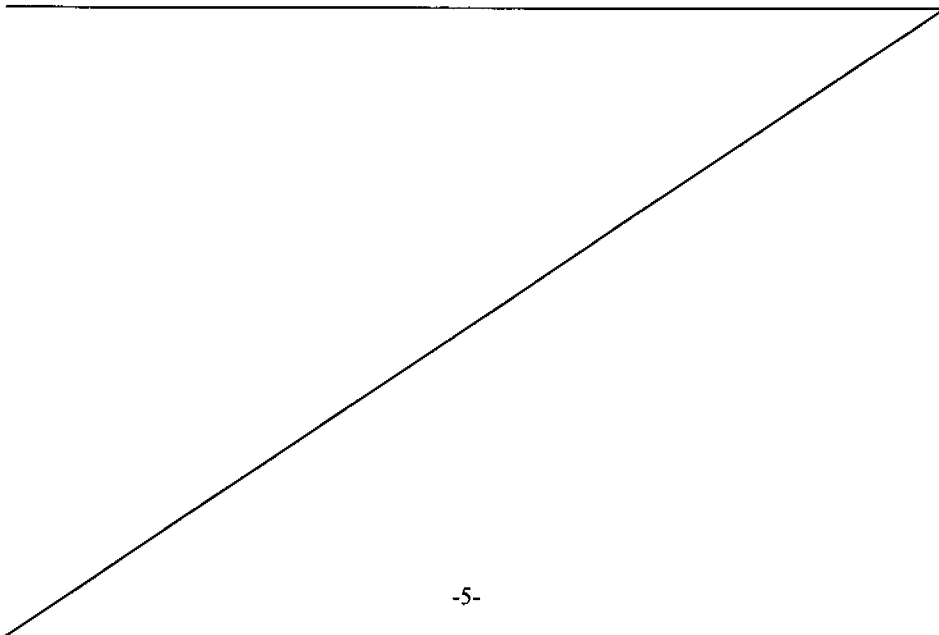
(12) The terms "Total actual cost" and "Actual costs" are hereby defined to include, for final reimbursement, all actual costs incurred and monies expended for the various

categories enumerated in the estimate attached hereto, including insurance premium cost, and further shall include reasonable and customary costs which cannot be estimated, anticipated or approved in advance for final reimbursement.

(13) After completion of the work as herein provided and upon receipt of proper billing, DEPARTMENT shall reimburse _____ for its actual cost incurred for the work performed hereunder as described in schedules attached hereto and made a part hereof, not including any bettering of facilities and giving proper allowances for materials salvaged.

(14) _____ agrees that DEPARTMENT and the Federal Highway Administration, US Department of Transportation, shall have the right to inspect all work done under this agreement during the course of this project and inspect and audit all records of _____. Additionally, _____ agrees to retain all records concerning the aforementioned work for a period of three (3) years following receipt of final payment from DEPARTMENT.

(15) Upon completion of such facility relocation and after reimbursement therefor has been received, _____ shall release unto DEPARTMENT all its right, title and interest in and to the property which accommodated the old facilities which were situated within the right of way limits of the highway project for which the relocation was made.



IN WITNESS WHEREOF, _____ and DEPARTMENT have caused their respective names to be signed and their respective seals affixed hereto by their duly authorized officers.

By _____

Its _____

ATTEST:

By _____

Its _____

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION,
DIVISION OF HIGHWAYS

By _____

Its Deputy State Highway Engineer --Development

ATTEST:

By _____

Its _____

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

UTILITY STATUS REPORT

State Project No. _____ Name of Project _____
Right of Way Project No. _____ County _____
Construction Project No. _____ Date _____

UTILITY DATES INDICATED FOR COMPLETION ARE ESTIMATED - STATUS
THE ACTUAL COMPLETION MAY VARY FORTY-FIVE DAYS

NOTE: Contractor shall notify Miss Utility @ 1-800-245-4848 to locate underground utilities before start of construction.

RW 8.04 (Revised 1/1/2000) Prepared by _____
For Utilities Engineer

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

NOTICE OF COMMENCEMENT OR COMPLETION OF WORK

Date: _____

State Project No.: _____

R/W Project No.: _____

Const. Project No.: _____

County: _____

Agreement Date: _____

Mr. _____
Assistant District Engineer, Construction
West Virginia Department of Transportation
Division of Highways

_____, West Virginia

This is to advise that work *will be commenced/was completed on the above captioned
project on _____.

Name of Utility or Railroad

By: _____
Title

*Circle One

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

NOTICE OF DISPOSAL OF RECOVERED MATERIALS

Date: _____

State Project No.: _____

R/W Project No.: _____

Const. Project No.: _____

County: _____

Agreement Date: _____

Mr. _____
Assistant District Engineer, Construction
West Virginia Department of Transportation
Division of Highways

_____, West Virginia

Dear Sir:

In accordance with FAPG, 23 CFR 645.117(e)(iv)(2), this is to advise that we intend to dispose of material recovered from the captioned project.

These materials may be inspected at _____, where they will be held until _____.
(10 days notice required)

If you wish to arrange for an inspection and inventory of these materials, please contact:

Name and Title

Street

City

Very truly yours,

Name of Utility or Railroad

By: _____
Title

REQUEST FOR RIGHT OF WAY TO BE STAKED

DATE: _____

TO: WV DOT/DOH
Utilities Engineer
Engineering Division
Building 5, Room 662
1900 Kanawha Boulevard, East
Charleston, WV 25305-0430

SUBJECT: State Project No. _____
Right of Way Project No. _____
Construction Project No. _____
County: _____

This is to request the following locations be staked on the above referenced project:

Description	From Station	To Station	Left Side	Right Side

Comments:

Name of Utility

By: _____, _____
Title

DIRECTIONS CONCERNING FORM SC-453

1. Indicate name of party performing the work and designate as principal permit holder, prime contractor or subcontractor.
2. Indicate the location or locations at which work is performed. Give station, offset, route number, etc.
3. Indicate type of vehicle and/or license number.
4. Indicate "S" for Salvaged material, "I" for Installed material.
5. Indicate the amount of material used and the unit in which the material is measured. Example: 60.5 l.f., 47 sq. ft.
6. Indicate first initial and last name of each work person.
7. Under Remarks:
 - a) Include all tests taken by number, type, and the result of each.
 - b) Include a statement as to when work starts and is completed.
 - c) Include an explanation in full detail of all new work in addition to the original agreement, including minor changes.
 - d) Include sketch if necessary.
 - e) Indicate disposition of recovered materials.
 - f) If additional space is required, indicate that additional information is attached. DO NOT WRITE on the back of this form.

- NOTE:**
- A. A copy of each report is to be given to the Project Field Office involved. The Original is to go to District Utilities Office. A separate report is to be made out for each utility.
 - B. A report is to be made out for periods of no work, and signed by the inspector so there is no time lapse in the diary.

SPECIAL NOTE: As-built utility locations should be shown on the as-built plans maintained in the Project Field Office.

SKETCH (INCLUDE MEASUREMENTS AND CALCULATIONS)

EACH MEASUREMENT IS TO BE DENOTED AS (1) FIELD; (2) PLAN OR (3) CALCULATED

CALCULATED BY _____
Signature

INSPECTOR _____
Signature

SKETCH (INCLUDE MEASUREMENTS AND CALCULATIONS)

EACH MEASUREMENT IS TO BE DENOTED AS (1) FIELD; (2) PLAN OR (3) CALCULATED

CALCULATED BY _____
Signature

INSPECTOR _____
Signature