July 20, 2021

Re: 2 CCR 601-3 Rules Governing Outdoor Advertising in Colorado

To Colorado Department of Transportation at dot_rules@state.co.us

Please accept this memo on behalf of Scenic Colorado regarding Rules Governing Outdoor Advertising in Colorado 2 CCR 601-3. We appreciate the opportunity to join a conference call on the proposed emergency rule and to submit these comments.

By way of introduction, Scenic Colorado is a not-for-profit 501(c)3 organization dedicated to the preservation and enhancement of Colorado's scenic environment and view-scapes. Specifically, our members support the elimination of all outdoor advertising that inhibits the view of the natural environment including billboards and other structures used for such advertising. Our members have been instrumental in opposing the construction of new billboards, especially electronic billboards throughout the state.

In general, Scenic Colorado finds the proposed emergency rule acceptable. Scenic Colorado recognizes that the distinction between on-premise and off-premise signs, especially as it relates to billboards, requires careful consideration. The proposed changes adopting a new definition of advertising device which involves compensation appears to accomplish the need for clarification.

In particular, Scenic Colorado supports the following revisions currently contained in the proposed rule:

- 6.03.1.C: No new advertising device shall be erected adjacent to a Scenic Byway
- 12.00.C.2.a.: No CEVMS may be placed within 1,000 feet of another CEVMS on the same side of the highway and facing the same direction of travel.

Subject to these considerations, Scenic Colorado supports the proposed rule.

Very truly yours,

President of Scenic Colorado
On Behalf of the Board of Directors

MAILING AND CONTACT INFORMATION
Scenic Colorado

www.scenic-colorado.org

STATE OF COLORADO

Rules - CDOT, DOT_ <dot_rules@state.co.us>

Outdoor Advertising Stakeholder Workshop comment

1 message

Thu, Jul 22, 2021 at 9:47 AM

To: "dot_rules@state.co.us" <dot_rules@state.co.us>
Cc:

Hello –

We have been in the tourism business for 70 years locally. We are concerned about the deletion of existing 6.03.5 Tourist Related Nonconforming Advertising Devices – Exemption.

Our signage and our large beetle sculpture (all on our own property) are iconic and internationally known, and on display at DIA – see attachment. We don't want our items jeopardized by this loss of exemption.

Please explain how we are protected under the new legislation and emergency rules.

Sincerely,

Golden Eagle Campground, Inc.

May Museum of Natural History

John May Museum Center

2014-06-08_22-41-37_287.jpg
2134K

Rules - CDOT, DOT_ <dot_rules@state.co.us>

Re: Link to the Video of CDOT's Outdoor Advertising Stakeholder Workshop on 7.19.21

1 message

Thu, Jul 22, 2021 at 6:52 PM

To: CDOT Rules <cdot_rules@state.co.us>
Cc

Hello Natalie,

. We have permitted billboards and would like in plain English how this is going to effect our Company.

Also the comments made by a Todd, I didn't get his Last Name. Could you clarify that person.

Jeannie Gafford Signs

On Jul 22, 2021, at 11:08 AM, CDOT Rules <cdot_rules@state.co.us> wrote:

Hello Stakeholder,

Thank you for attending our Outdoor Advertising Stakeholder Workshop! We appreciated the feedback that we heard during the workshop. We are taking the comments into consideration and will update the proposed emergency rules as appropriate.

We wanted to share the video from Monday's workshop with you because we realize that some stakeholders were not able to join us on July 19, 2021. Since the workshop video is a large file, it will be shared through Google Drive in the link below. Please note that we did not have a court reporter in attendance at the workshop to transcribe the workshop.

Outdoor Advertising Stakeholder Workshop

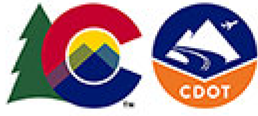
To ensure that we have adequate time to consider the public statements heard during the workshop and any written comments received, we may update our rulemaking schedule and seek adoption of the proposed emergency rules on a date later than July 30, 2021. We intend to keep you posted on changes to the rulemaking schedule and any updates during the rulemaking process as they occur.

As a friendly reminder, please submit written comments on or before July 23, 2021, to dot_rules@state.co.us. Written comments will be redacted for data privacy and posted on CDOT's Rules Website. I have also attached a high-level summary of the outdoor advertising rule changes.

Please let me know if you have any questions.

Thank you,
Natalie

--
Natalie Lutz
Rules, Policies, and Procedures Administrator



COLORADO
Department of Transportation
Office of Policy and Government Relations

P: 303.757.9441
2829 W. Howard Place, Denver, CO 80204
dot_rules@state.co.us | www.codot.gov | www.cotrip.org
<Outdoor Advertising Rule Change Summary.pdf>

COMMENTS ON NEW CDOT REGULATIONS

I want to thank everyone for this opportunity to provide comments on CDOT's new proposed rules. Having listened to CDOT and stakeholder comments at Monday's meeting it was quite apparent that CDOT has a tough task of how to draft new rules that are content neutral and still satisfy its obligations entered into with the Federal Government. It is also quite apparent that what CDOT has proposed to satisfy both these requirements will turn into a regulatory nightmare for CDOT. This is said as CDOT didn't seem to have answers at Monday's meeting to the most basic questions posed by stakeholders on how CDOT plans on enforcing these new rules.

A stakeholder, who is associated with a History Museum, relayed his concerns at this meeting concerning if their existing signs associated with the museum would now be regulated by CDOT under these new proposed rules (under current rules they are not regulated by CDOT). CDOT really didn't have an answer to their concerns on what will now be considered an "advertising device" that CDOT will now be regulating. This concern will probably be shared by every person/entity who currently have signs that are not regulated by CDOT under current rules (on-premise signs/official signs/directional signs/political signs/logo signs, etc.).

This concern will be directly derived from CDOT's definition of what now constitutes an "advertising device". CDOT is now proposing that signs that derive "compensation", whether or not that compensation is directly or indirectly paid or earned in exchange for the signs erection or existence by any person or entity, will now fall under CDOT's regulatory authority and have to meet all of CDOT's rules if that "advertising device" is visible from the travel way of any state highway. CDOT is also proposing that "compensation" means the exchange of anything of value…". This definition, exchange of anything of value (whether directly or indirectly), is going to create a regulatory nightmare for CDOT if CDOT is going to administer these new rules in a fair and impartial manner.

It is hard to imagine any sign that doesn't create "value" for some person or entity. Why else do people/entities pay to have signs created, installed, and maintained if they don't create "value". This is true for any currently defined on-premise sign, off-premise sign, directional sign, political sign, logo sign, etc. Only fools would spend their resources on signage if they didn't expect that signage to create "value".

With this in mind I feel it is imperative to discuss some of the current, and potential new signs, that CDOT will be required to regulate. To start with, CDOT needs to consider all the current on-premise signs within CDOT's jurisdiction that are not currently required to obtain a permit from CDOT to advertise their business. Each sign will now have to meet CDOT's new rules and CDOT will be required to regulate them. There are probably thousands of these signs located adjacent to, and visible from, the traveled way of the State's highways. CDOT must now regulate these signs and apply all the size, spacing, lighting, and zoning requirements to these signs if they are

not a “vehicle using the highway” or “part of a comprehensive development” as defined by the new rules. The far majority of these existing signs will not be able to satisfy these new rules bestowed upon them and will have to be given a non-conforming status. Which means they will not be allowed to be altered, changed, moved, etc. from their current configuration/location to remain compliant with these new rules. How will CDOT insure all these signs remain the same as they are to be able to maintain their non-conforming status? What happens when two current signs are now required to meet CDOT’s new rules and only one sign can be conforming due to spacing issues (for example, two signs visible and adjacent to an Interstate). On an Interstate, these signs are required to be spaced 500’ apart. What happens if two signs owned by different entities are spaced under 500’. How will CDOT decide who gets the conforming status and who gets the non-conforming status? Any new business won’t be able to erect a new sign if the sign will be within 500’ of any other “on-premise” sign that is now regulated by CDOT. How will CDOT handle new “advertising devices” that are wanted to be erected for businesses located adjacent to an Interstate if the property the “advertising devices” are located upon wasn’t zoned for commercial or industrial uses prior to 1970 and not part of a “comprehensive development”. Are they out of luck? CDOT should consider that many Counties and Cities in this State did not have zoning prior to 1970. Does this mean that any new business is excluded from advertising to the Interstate in these areas if they are not part of a comprehensive development as defined by these new rules? As an example, suppose a truck stop located adjacent to the Interstate is located on one parcel (doesn’t meet the proposed definition of a comprehensive development) and wants to modify their current sign to include a digital sign. Are they precluded from doing that if the location/sign doesn’t meet all the size, spacing, lighting, and zoning requirements? How about the same sign being located adjacent to a state highway and the land wasn’t zoned for commercial and industrial purposes until after 1970. These signs can only be up to 150 square feet. What if the existing sign is over 150 square and the owner wants to modify it, is CDOT going to make them downsize their sign before they modify it. How about when CDOT undertakes a highway widening project and takes the land where a sign is located that has been given a non-conforming status by CDOT under these new rules (and weren’t regulated by the “old” rules). Does this mean that the business can no longer have a sign at that location if the location can no longer meet the new rules? Will the State be on the “hook” for the loss of revenue any business will suffer through the condemning of the businesses sign through a highway widening project? How about the State’s Logo signs located near Interstate interchanges. If CDOT undertakes a highway widening project and these signs are required to be removed, can they be re-erected at a new location if the new location doesn’t meet the size, lighting, spacing or zoning requirements? Any business that advertises on these Logo “advertises devices” does so because it wants the traveling public to solicit their business, thereby, increasing their sales. Why do “advertising devices” located in a comprehensive development (located in an area with two or more parcels) escape enforcement and a development under the exact same conditions but only located on one parcel have to comply with the new rules? In light of the legislative declaration at 43-1-402 how does the comprehensive developed area differ from the single parcel designation. An “advertising device” is an “advertising device” no matter how many parcels the sign serves. Each one could, for arguments sake, contain 10 different business panels on the “advertising device”. What is the difference in terms of satisfying the legislative interests stated in 43-1-402? Why should the

“advertising device” in the “comprehensive development” be treated differently than the “advertising device” located on a single lot. The sign in the “comprehensive development” gets to escape enforcement and the sign located on the single lot doesn’t, even though they both advertise 10 different businesses. How about a business located in a “Bonus area” of the Interstate, are they now precluded from erecting an “advertising device”. How about political “advertising devices” advertising a candidate? In its narrowest definition of “compensation” does that mean that any person associated with the campaign can not put up a campaign sign for the candidate they work for if it is visible to a highway? In a broader sense, can any person now put a political sign on their property if it is visible to a highway? The candidate will gain “value” through this exposure and some person/entity had to pay for its creation and distribute it out to people who “support” that candidate. Exposure creates “value”! Ask anyone who has worked in Outdoor Advertising and they will tell you that one of the main determinations in the rent they charge a client is the amount of traffic that “advertising device” is exposed to (traffic counts).

What happens when a “sign owner” executes an affidavit stating that their sign is not an “advertising device”. How will CDOT verify this and monitor it going forward. I thoroughly understand the history museums concerns. If they, like any other business, charges a fee or sells a product, are they not gaining “value” from the increased amount of people entering their business due to the “advertising devices” existence? Once again, why would anyone spend money erecting and maintaining an “advertising device” if it wasn’t giving “value” to that business/entity?

At the next stakeholders meeting I hope CDOT will be able to tell us what “advertising devices” do not create “value” to the business/entity responsible for its erection or existence! I do plan on speaking at the next stakeholder meeting and I am going to ask CDOT this question. This question isn’t “speculative” in nature and I hope CDOT will have a comprehensive answer to this complicated question before it creates a regulatory nightmare for itself. Afterall, how can CDOT enforce something if it doesn’t even know what it should be enforcing!

These are just some of the scenarios that CDOT should consider prior to changing its rules. There are plenty of others! That’s why it was so discouraging at Monday’s meeting when CDOT didn’t have answers to the basic questions that arose. I believe it was stated that CDOT didn’t want to speculate on how they would treat a potential problem in answering those questions. Shouldn’t CDOT speculate on all these potential problems PRIOR to them arising under these new rules to try and stem the regulatory nightmare they are creating and potential litigation these new rules will create. It became quite apparent to me at this meeting that CDOT hadn’t thought through these new rules and are just “shooting from the hip” trying to cure one problem (content neutrality) and that the “cure” is actually going to be worse than the “disease” it is trying to rid itself of.

Should CDOT enact these new rules in their present form I am sure CDOT will be receiving complaints on hundreds, if not thousands, of “advertising devices” that will now be required to be regulated by CDOT. I am also sure that CDOT will find itself “drowning” in litigation with all

these new “advertising devices” it will now need to regulate. I know CDOT has a tough task in figuring out how to enact “content neutral” rules while still fulfilling its agreements with the Federal Government concerning Highway Beautification. But these new proposed rules will only make your situation worse. As someone who has been doing outdoor advertising in this state for 27 years, I assure you these rules will only be a nightmare for the regulatory people at CDOT. Please rethink what you are about to enact!

Lastly, I would like to comment on CDOT’s desire to remove the words “or renewing” from Rule 2.3. Since it is the desire of this State, and CDOT, to comply with the Highway Beautification Act, CDOT must cause the prompt removal of any illegal “advertising device”, whether a permit has been issued or not (see 23 CFR 750.705 (i). By removing these two words it appears that CDOT wants to have more discretion on what permits it must revoke if the “advertising device” was permitted in error and does not, nor ever has, complied with the size, lighting and spacing requirements. To not revoke an illegally obtained permit, and cause the prompt removal of that “advertising device”, would potentially subject the State of Colorado to a 10% loss of its federal highway dollars. This should be avoided at all costs. I would suggest even adding a new Rule whereby CDOT keeps a “log” of all the “advertising devices” it receives complaints/questions on and this log contain the resolution derived for this “advertising device” and publish it on its website. This would definitely benefit anyone who has a question about how CDOT will enforce its Rules on that particular problem. It will also benefit any future CDOT employees to ensure they will be enforcing the Rules in a consistent manner and no illegal “advertising devices” are allowed to continue to exist. Afterall, I think everyone familiar with this program knows that the inconsistent and discretionary enforcement actions from CDOT personnel is why CDOT is now having to update its Rules! Transparency and consistency should far outweigh discretion!

Thank you once again for allowing my comments and I look forward to more discussions on this very important matter. Should anyone wish to speak to me on these matters feel free to call me at [redacted].

[redacted]

Mountain States Media, LLC.

7-23-2021

To Whom It May Concern,

Mile High Outdoor is providing written comments in response to the recent Virtual Workshop put together by CDOT on July 19th, 2021. All comments are in reference to CDOT's effort to modify a portion of the rules governing outdoor advertising in Colorado, 2 CCR 601-3 (Outdoor Advertising Rules) in an Emergency Rules Making Process. These edits are to align the language in 2CCR 601-3 with Senate Bill 21-263, which was enacted into law on June 30th, 2021.

In summary, Mile High Outdoor is in full support of the drafted language discussed in detail on July 19th. We feel it will bring the Outdoor Advertising Rules 2 CCR 601-3 into alignment with the new Statute.

Rule 3.2 Grounds for Noncompliance

A. **1. (b)** Mile High Outdoor would like to see a shorter timeframe given to the property owner to conform. We believe that 60 days is far too long of a period since many advertising campaigns only run for 28 days. This would allow property owners the ability to take short term advertising programs on illegal signs (meaning they needed to follow the Outdoor Advertising Rules), collect their money, and then correct the issue after receiving notice on non-compliance all within 60 days. This might even end up being a business model for some of the typical offenders within the market. We would encourage CDOT a cure period of 10 days, and believe that is plenty of time to remove the advertisement in order to bring the sign into conformance.

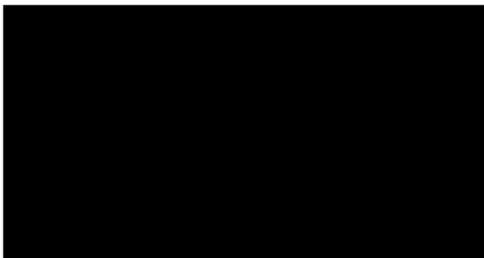
Mile High Outdoor would also suggest CDOT look at language that further discourages individuals and/or companies from breaking the law of the newly approved Outdoor Advertising Act. Below is an example of California's disgorgement language that would be recommended.

California Business Code § 5485

Annual permit fee for advertising displays; penalties for displays without valid permits; enforcement costs (a)(1) The annual permit fee for each advertising display shall be set by the director. (2) The fee shall not exceed the amount reasonably necessary to recover the cost of providing the service or enforcing the regulations for which the fee is charged, but in no event shall the fee exceed one hundred dollars ($100). This maximum fee shall be increased in the 2007–08 fiscal year and in the 2012–13 fiscal year by an amount equal to the increase in the California Consumer Price Index. (3) The fee may reflect the department's average cost, including the indirect costs, of providing the service or enforcing the regulations. (b) If a display is placed or maintained without a valid, unrevoked, and

unexpired permit, the following penalties shall be assessed: (1) If the advertising display is placed or maintained in a location that conforms to the provisions of this chapter, a penalty of one hundred dollars ($100) shall be assessed. (2) If the advertising display is placed or maintained in a location that does not conform to the provisions of this chapter or local ordinances, and is not removed within thirty days of written notice from the department or the city or the county with land use jurisdiction over the property upon which the advertising display is located, a penalty of ten thousand dollars ($10,000) plus one hundred dollars ($100) for each day the advertising display is placed or maintained after the department sends written notice shall be assessed. (c) In addition to the penalties set forth in subdivision (b), the gross revenues from the unauthorized advertising display that are received by, or owed to, the applicant and a person working in concert with the applicant shall be disgorged. (d) The department or a city or a county within the location upon which the advertising is located may enforce the provisions of this section. (e) Notwithstanding any other provision of law, if an action results in the successful enforcement of this section, the department may request the court to award the department its enforcement costs, including, but not limited to, its reasonable attorneys' fees for pursuing the action. (f) It is the intent of the Legislature in enacting this section to strengthen the ability of local governments to enforce zoning ordinances governing advertising displays.

Sincerely,



– Mile High Outdoor

7-23-2021

To Whom It May Concern,

The Colorado Outdoor Advertising Association (COAA) is providing written comments in response to the recent Virtual Workshop put together by CDOT on July 19th, 2021. All comments are in reference to CDOT's effort to modify a portion of the rules governing outdoor advertising in Colorado, 2 CCR 601-3 (Outdoor Advertising Rules) in an Emergency Rules Making Process. These edits are to align the language in 2CCR 601-3 with Senate Bill 21-263, which was enacted into law on June 30th, 2021.

In summary, the COAA is in full support of the drafted language discussed in detail on July 19th. We feel it will bring the Outdoor Advertising Rules 2 CCR 601-3 into alignment with the new Statute.

Rule 3.2 Grounds for Noncompliance

- **A. 1. (b)** The COAA would like to see a shorter timeframe given to the property owner to conform. We believe that 60 days is far too long of a period since many advertising campaigns only run for 28 days. This would allow property owners the ability to take short term advertising programs on illegal signs (meaning they needed to follow the Outdoor Advertising Rules), collect their money, and then correct the issue after receiving notice on non-compliance all within 60 days. This might even end up being a business model for some of the typical offenders within the market. We would encourage CDOT a cure period of 10 days, and believe that is plenty of time to remove the advertisement in order to bring the sign into conformance.

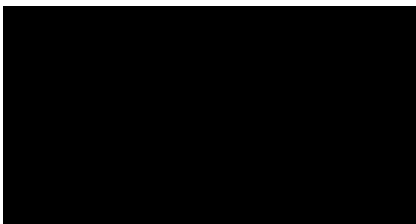
The COAA would also suggest CDOT look at language that further discourages individuals and/or companies from breaking the law of the newly approved Outdoor Advertising Act. Below is an example of California's disgorgement language that would be recommended.

California Business Code § 5485

Annual permit fee for advertising displays; penalties for displays without valid permits; enforcement costs (a)(1) The annual permit fee for each advertising display shall be set by the director. (2) The fee shall not exceed the amount reasonably necessary to recover the cost of providing the service or enforcing the regulations for which the fee is charged, but in no event shall the fee exceed one hundred dollars ($100). This maximum fee shall be increased in the 2007–08 fiscal year and in the 2012–13 fiscal year by an amount equal to the increase in the California Consumer Price Index. (3) The fee may reflect the

department's average cost, including the indirect costs, of providing the service or enforcing the regulations. (b) If a display is placed or maintained without a valid, unrevoked, and unexpired permit, the following penalties shall be assessed: (1) If the advertising display is placed or maintained in a location that conforms to the provisions of this chapter, a penalty of one hundred dollars ($100) shall be assessed. (2) If the advertising display is placed or maintained in a location that does not conform to the provisions of this chapter or local ordinances, and is not removed within thirty days of written notice from the department or the city or the county with land use jurisdiction over the property upon which the advertising display is located, a penalty of ten thousand dollars ($10,000) plus one hundred dollars ($100) for each day the advertising display is placed or maintained after the department sends written notice shall be assessed. (c) In addition to the penalties set forth in subdivision (b), the gross revenues from the unauthorized advertising display that are received by, or owed to, the applicant and a person working in concert with the applicant shall be disgorged. (d) The department or a city or a county within the location upon which the advertising is located may enforce the provisions of this section. (e) Notwithstanding any other provision of law, if an action results in the successful enforcement of this section, the department may request the court to award the department its enforcement costs, including, but not limited to, its reasonable attorneys' fees for pursuing the action. (f) It is the intent of the Legislature in enacting this section to strengthen the ability of local governments to enforce zoning ordinances governing advertising displays.

Sincerely,



COAA

FAIRFIELD AND WOODS P.C.

July 23, 2021

Sent via E-Mail

Natalie Lutz,
Rules, Policies, and Procedures Administrator
Colorado Department of Transporation
2829 West Howard Place
Denver, Colorado 80204

Re: Proposed Rulemaking - 2 CCR § 601-3

Dear Ms. Lutz:

Thank you for the opportunity to provide comments on the proposed rulemaking to update 2 CCR § 601-3 in response to the recent passage of SB21-263. The purpose of this letter is to provide general comments about the proposed rules, and then to specifically address 2 CCR § 601-3:7.00.D. These comments are submitted on behalf of our client, StreetMediaGroup, LLC.

In General

Our comments on SB21-263 are of record and apply with equal force to the proposed rulemaking. In addition, we stand by our comments at the rulemaking workshop on July 19, 2021. CDOT's written summary says "[t]he new compensation-based approach makes it easier for landowners and sign owners to understand whether they need a CDOT permit." Yet, at the rulemaking workshop CDOT personnel were unable to answer basic questions about everyday scenarios in this regard, including:

- Whether a commercial landlord who charges tenants for placement on an existing sign would need a CDOT permit, or
- Whether a commercial landlord who charges a tenant for the erection of a new sign on that tenant's behalf would need a CDOT permit.

Mr. Lovato said that no permit would be required for the scenario in which a landowner pays a contractor to erect a sign, but there is nothing in the actual text of the law that supports that conclusion. CDOT has a history of interpreting and applying its laws with uneven results, as evidenced by the records of the protracted conflicts between CDOT and our clients.

CDOT and COAA cooperated to draft SB21-263 and push it through the legislature, yet CDOT personnel are not able to articulate the purpose of the law in public. The First Amendment requires clarity with respect to the purposes of the law, the standards that apply to the issuance of permits, and the standards that apply to the determination of who will be subject to a permitting requirement

in the first place. The public is entitled to know clearly which signs are subject to permitting requirements and which signs are not subject to permitting requirements. It is CDOT's legal obligation to provide that information in a manner that ordinary people can feel confident that they understand. We hope that CDOT can and will articulate that information in a manner that is useful and practical for the many thousands of sign owners along regulated highways in the State of Colorado who may be affected by this new regulation.

As we advised at the workshop, until CDOT articulates the purpose and specific objectives of the new law, it is very challenging to offer meaningful, substantive input regarding specific provisions of 2 CCR § 601-3 beyond what is included in the next part of this letter. Before promulgating any new rule, we think CDOT has an obligation to the people of Colorado to state very clearly on the record what it is actually trying to accomplish, as well as how the proposed rule advances or fulfills those objectives. CDOT did a much better job in this regard last year when it considered amendments to 2 CCR § 601-3. *See* **Exhibit A**.

The Interchange Rule

In October 2020, CDOT almost promulgated a change to 2 CCR § 601-3.D.2., along with updates to the definitions of "urbanized area" and "urban area" in 2 CCR § 601-3:1.31. We think the rationale for those amendments has not changed (*see* **Exhibit A**), and if anything it is even more urgent today. Modifications to the interchange rule would alleviate many existing and potential conflicts under the new law, would harmonize future practice with past practice, and would also thereby eliminate controversy surrounding a number of "illegal" permits held by three large COAA member companies.

One COAA member previously suggested that the 1971 Agreement does not allow changes to the interchange rule. We disagree for reasons we have previously articulated. Moreover, we believe that whatever individual participants in this rulemaking process may think about the procedural requirements, this issue could simply be resolved by stipulation in federal court.

We urge CDOT to make the following changes, which it supported less than a year ago--

> 1.31 "Urban Area" and "Urbanized Area" ~~"Urban Area" pursuant to 23 U.S.C. 101 (33) means an urbanized area designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area (as defined by 23 U.S.C. 101 (34)), within boundaries to be fixed by responsible State and local officials.~~
>
> A. "Urban Area" means an urbanized area or, in the case of an urbanized area encompassing more than one state, that part of the urbanized area in each state, or urban place as designated by the U.S. Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by responsible state and

local officials in cooperation with each other, subject to approval by the U.S. Secretary of Transportation. Such boundaries shall encompass, at a minimum, the entire urban place designated by the U.S. Bureau of the Census.

B. "Urbanized Area" means an area with a population of 50,000 or more designated by the U.S. Bureau of the Census, within boundaries to be fixed by responsible state and local officials in cooperation with each other, subject to approval by the U.S. Secretary of Transportation. Such boundaries shall encompass, at a minimum, the entire urbanized area within a state as designated by the U.S. Bureau of the Census. Urbanized Area designations may be viewed on the TIGERweb Decennial map provided on the U.S. Census Bureau's website at https://tigerweb.geo.census.gov/.

* * *

D. Spacing of Signs

1. Advertising Devices on Control Routes may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness of any official traffic sign, signal, or device, obstruct or physically interfere with the driver's view of approaching, merging or intersecting traffic.

2. In the Control Area near Interstates ~~Highways~~ and Freeways:

a. No two Signs shall be spaced less than 500 feet apart.

b. ~~Outside of incorporated villages and cities, no~~ Advertising Devices may shall not be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety Rest Area if the Advertising Device is located outside of an Urbanized Area and outside of the boundaries of an incorporated town or city. The 500 feet is to be measured along the Interstate or Freeway from the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

i. This spacing limitation applies where the proposed location of the Sign is located outside of an Urbanized Area and outside of the boundaries of an incorporated town or city regardless of the location of the interchange, intersection at grade, or safety Rest Area.

ii. The limits of an interchange, intersection at grade, or safety Rest Area span from the beginning of pavement widening for an exit lane or ramp and continues through the interchange, intersection at grade, or safety Rest Area, to the point where pavement widening ends for an entrance lane or ramp.

iii. The 500-foot measurement is to be measured parallel to the highway. This prohibition applies to the entire 660-foot Control Area adjacent to the interchange, intersection at grade, or safety Rest Area along with the 500-foot measurement adjacent thereto.

iv. "Pavement widening" includes exit and entrance lanes and ramps, auxiliary lanes, and other lanes which terminate while allowing traffic to weave on or off the main-travelled way.

v. For those locations where a continuous auxiliary lane extends from the entrance ramp/lane of one interchange/intersection at grade/safety Rest Area and connects to the exit ramp/lane of another interchange/intersection at grade/safety Rest Area, such that there is no clear "beginning or ending of pavement widening at the exit from or entrance to the main-traveled way," this rule prohibits signs located within 2,250 feet from the physical gore of entrance ramps/lanes and within 1,600 feet from the physical gore of exit ramps/lanes.

3. All other Controlled Routes except Interstate and Freeways

a. Outside of Urbanized Areas and incorporated towns~~villages~~ and cities, no two ~~structures~~ Signs shall be spaced less than 300 feet apart.

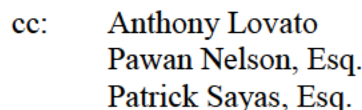
b. Within Urbanized Areas and incorporated townsvillages and cities, no two ~~structures~~ Signs shall be spaced less than 100 feet apart.

* * *

Thank you again for the opportunity to provide comments.

Sincerely,

Fairfield and Woods, P.C.



cc: Anthony Lovato
Pawan Nelson, Esq.
Patrick Sayas, Esq.

COLORADO
Department of Transportation
Office of Policy and Government Relations

2829 W. Howard Place
Denver, CO 80204-2305

Summary of Rule 7.00(D)(2) in 2 CCR 601-3, Rules Governing Outdoor Advertising

- The purpose of the Outdoor Advertising Rules found in 2 CCR 601-3 is to control the use of billboards or other outdoor advertising signs in areas near the state highway system to protect and promote the health, safety, and welfare of the traveling public.
- The Outdoor Advertising Rules also promote the reasonable, orderly, and effective display of billboards while preserving and enhancing the natural and scenic beauty of Colorado in compliance with the Colorado Outdoor Advertising Act and the federal Highway Beautification Act.
- The Colorado Department of Transportation ("CDOT") proposes to clarify the restriction against billboards being located within 500 feet of an interchange, intersection at-grade, or safety rest area near interstates and freeways in Rule 7.00(D)(2).
- This administrative rule derives from a 1971 agreement between CDOT and the United States Secretary of Transportation and sets forth the State's size, spacing, and lighting criteria for billboards.
- CDOT proposes that signs cannot be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety Rest Area if the billboard is located outside of an urbanized area and outside of the boundaries of an incorporated town or city.
- This proposed revision contemplates modern highway design principles, recent developments in outdoor advertising laws and regulations, and changes in land use zoning and designations, such as unincorporated areas that are near the boundaries of incorporated towns or cities.
- This proposed rule change is consistent with the Highway Beautification Act's intent to preserve natural and scenic beauty in rural and unincorporated areas.
- Local jurisdictions have the authority to regulate billboards and other outdoor advertising signs within their boundaries. This proposed rule change supports decision-making at the local or community level. Local jurisdictions are in a better position to determine whether or not billboards should be allowed in their communities rather than CDOT making that determination.
- This proposed revision will help to preserve public funds, as many of the CDOT's recent active and historical litigation has involved this rule.

Rules - CDOT, DOT_ <dot_rules@state.co.us>

Written Comments

1 message

Fri, Jul 23, 2021 at 12:20 PM

To: dot_rules@state.co.us

Greetings CDOT,

Attached are written comments for the proposed rule changes to the Outdoor Advertising Rules: 2 CCR 601-3. Thank you,

Colorado IDA Western Colorado Regional Coordinator

Recommended revisions to Outdoor Advertising Rules.docx
38K

Recommended revisions to **RULES GOVERNING OUTDOOR ADVERTISING IN COLORADO 2 CCR 601-3** :

Introduction: Artificial light at night is a powerful environmental stimulant, and as the use of light at night continues to increase across the globe, public and environmental health issues due to these lights are becoming more of a problem(1). The International Dark-sky Association (IDA) was formed in 1988 in response to the growing threat of light pollution, and has become the world-leader in protecting the nighttime environment through education, outreach, and promotion of its Dark-Sky Places certification program for communities and public places who show an exceptional dedication to preserving the night sky (2).

Colorado is currently emerging as a leader in dark-sky awareness and conservation with a growing list of dark-sky communities and places, and with towns, counties, public land managers, and state agencies all working in concert on dark-sky friendly policies and legislation. The International Dark-sky Association Colorado chapter requests that the Colorado Department of Transportation look at ways to reduce light pollution wherever possible.

The following comments outline recommended revisions to **RULES GOVERNING OUTDOOR ADVERTISING IN COLORADO 2 CCR 601-3** in order to preserve and protect Colorado's dark-sky resource.

Shielding:
Section 7.00 Signs in Areas Zoned Industrial or Commercial Uses C. Lighting 2:
Add to existing shielding requirements. "Light shall be pointed down and shielded so that no light is directed up towards the sky, and..."
Also, add specific limits to prevent light trespass and light pollution. As such, "the illumination projected from any use shall at no time exceed 0.1 footcandle onto a residential use, and 1.0 footcandle onto a non-residential use. This should apply to light emitted from any form of signage." (5)(6)
(Light trespass from CEVMS can be mitigated through technology such as Siteline (3))

Dark-sky places:
Section 9.00:
Add International Dark-sky places restrictions similar to scenic byway restrictions. Provisions must be added so that lighted signs do not impact Colorado's light-sensitive dark-sky areas:
"No new CEVMS shall be erected within 25 (To Be Reviewed (TBR)) miles of a certified International Dark-sky place, park, sanctuary, reserve, or community." (7)

"All lighted Signs (externally or internally lit) within 25 (TBR) miles of a certified dark-sky location are encouraged to be turned off at night to preserve the dark-sky quality of the location, otherwise these signs must have lighting that is pointed down and fully shielded so that no light is cast upwards into the sky or onto adjacent lands. Also, lighted signs within 25 (TBR) miles of a certified dark-sky location must be dimmed to total luminance levels less than 100 nits, and color temperature reduced to 2200 Kelvin or less between dusk and dawn."

CEVMS Brightness:
12. CEVMS C. General Requirements 5. Operational Requirements b. Brightness 4: Replace “300 nits” with "specific luminance limits of 100 nits for nighttime conditions, applicable to all CEVMS."(4)(5)(6)

CEVMS Color Temperature (CCT):
Also add provision to reduce the amount of blue (CCT > 2200 Kelvin) light at night.
12. CEVMS C. General Requirements 5. Operational Requirements c. Color Temperature (CCT).
“A CEVMS shall use automatic technology to adjust the color temperature of the Sign relative to ambient light so that blue light (ie light with CCT > 2200 Kelvin) is eliminated at night between dusk and dawn.” (1) (8)

CEVMS Curfew:
12. CEVMS Advertising Devices C. General Requirements: 4. Operations b. CEVMS must:
"To further control light pollution, CEVMS shall be extinguished automatically no later than 10:00pm local standard time or 11:00pm daylight savings time each evening until dawn. Signs for establishments that operate or remain open past 10:00 pm MST / 11:00 pm DST may remain on no later than one half hour past the close of the establishment." (5)
This curfew is especially important during spring and autumn bird migration seasons (9).

Carbon Footprint:
Digital signs generally use significantly more electricity than static signs. Normal static displays are illuminated by 2 or 3 inefficient flood lights - usually only at night. Digital displays use efficient LED bulbs, however there are hundreds to thousands of these bulbs on each sign, oftentimes displayed for 24 hours per day, and this energy adds up. Also, CEVMS are operated by a controller unit that adds to the power draw. In summertime, excess heat from the CEVMS controller is managed with air conditioning devices that draw even more power. These factors cause CEVMS to have a significantly higher power draw than the more traditional, static billboard lighting (5).

Where new digital signage construction or digital conversions are permitted, there should be a “trade-off” policy, based on power consumption. For every square footage of digital signage an outdoor advertising company installs, via new construction or conversion, they must remove a specified amount of square footage of their existing static signage, in order to maintain or reduce their carbon footprint. (5)

Sources:
(1) American Medical Association on health risks due to light pollution:
https://www.ama-assn.org/press-center/press-releases/ama-adopts-guidance-reduce-harm-high-intensity-street-lights

(2) Link to the International Dark-sky Association (IDA) website:
https://www.darksky.org/

(3) New technology for electronic billboards: Siteline - Light Blocking Technology.
https://www.mediaresources.com/siteline/

(4) The Illuminating Engineering Society of North America (IESNA) has conflicting recommendations for electronic billboard lighting.
Here is a paper on outdoor signage luminance levels including IESNA recommendations:
Digital LED Billboard Luminance Recommendations: How Bright Is Bright Enough?
http://www.illinoislighting.org/resources/DigitalBillboardLuminanceRecommendation_ver7.pdf

(5) This article compares electronic/digital signs to externally lit static signs:
Illuminating the Issues: Digital Signage and Philadelphia's Green Future:
https://www.scenic.org/wp-content/uploads/2019/09/Digital_Signage_Final_Dec_14_20101.pdf

(6) Another article on digital displays:
Illinois Coalition for Responsible Outdoor Lighting - Digital Billboards.
http://www.illinoislighting.org/billboards.html

(7) IDA statement on Electronic Billboards in Arizona:
https://www.darksky.org/wp-content/uploads/2016/02/IDA_HB2507_statement.pdf
"Such a move would endanger other IDA-designated Dark Sky Places in Arizona, indicated on the map in yellow, and directly imperils the state's burgeoning "astrotourism" industry."

(8) Information on health impacts of blue light at night:
https://www.healthline.com/nutrition/block-blue-light-to-sleep-better#other-methods

(9) Link to Lights Out Colorado with information on the effects of light pollution on bird migration.
https://idacolorado.xyz/lights-out-colorado/

Drafted by
7.22.21

Colorado IDA Western Colorado Regional Coordinator