CDOT Outdoor Advertising Program Reference Guide

2015

COLORADO
Department of Transportation

CDOT Outdoor Advertising Program

Reference Guide

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CDOT's Reason for Developing this Reference Guide

The purpose of this CDOT Reference Guide is to provide our inspectors and stakeholders ready access to all Colorado state statutes and federal laws in one convenient location. This is an important resource given the complexity of the law in the area of outdoor advertising. This Reference Guide, read together with the CDOT Rules Governing Outdoor Advertising in Colorado, provide a strong foundation for an ever-improving statewide program, and a positive collaboration with our local jurisdictions.

COLORADO
Department of Transportation

Section 1

State Statutes

West's Colorado Revised Statutes Annotated
Title 43. Transportation
General and Administrative
Article 1. General and Administrative
Part 4. Roadside Advertising (Refs & Annos)

C.R.S.A. § 43-1-401

§ 43-1-401. Short title

Currentness

This part 4 shall be known and may be cited as the "Outdoor Advertising Act".

Credits

Repealed and reenacted by Laws 1981, H.B.1154, § 1, eff. July 1, 1981.

Notes of Decisions (12)

C. R. S. A. § 43-1-401, CO ST § 43-1-401
Current through the First Regular Session of the Sixty-Ninth General Assembly (2013)

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West's Colorado Revised Statutes Annotated
Title 43. Transportation
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Article 1. General and Administrative
Part 4. Roadside Advertising (Refs & Annos)

C.R.S.A. § 43-1-402

§ 43-1-402. Legislative declaration

Currentness

(1)(a) It is declared to be the purpose of the general assembly in the passage of this part 4 to control the existing and future use of advertising devices in areas adjacent to the state highway system in order to protect and promote the health, safety, and welfare of the traveling public and the people of Colorado and such purposes are declared to be of statewide concern. The general assembly finds and declares that the enactment of this part 4 is necessary to further the following substantial state interests:

(I) Protection of the public investment in the state highway system;

(II) Promotion of safety upon the state highway system;

(III) Promotion of the recreational value of public travel;

(IV) Promotion of public pride and spirit both on a statewide and local basis;

(V) Preservation and enhancement of the natural and scenic beauty of this state;

(VI) Broadening the economic well-being and general welfare by attracting to this state tourists and other travelers;

(VII) Providing the traveling public with information as to necessary goods and services in the immediate vicinity of the traveler;

(VIII) Protection and encouragement of local tourist-related businesses for the general economic well-being of this state;

(IX) Insuring that Colorado receives its full share of funds to be apportioned by the congress of the United States for expenditures on federal-aid highways.

(b) In furtherance of the substantial state interests stated in paragraph (a) of this subsection (1), it is the intent of the general assembly that Colorado comply with the federal "Highway Beautification Act of 1965"[1] and rules and regulations adopted thereunder.

(2) The general assembly further finds and declares that this part 4, taken as a whole, represents a balancing of the above-stated substantial state interests.

Credits

Repealed and reenacted by Laws 1981, H.B.1154, § 1, eff. July 1, 1981, eff. July 1, 1981.

Footnotes

1 23 U.S.C.A. § 131.

C. R. S. A. § 43-1-402, CO ST § 43-1-402
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West's Colorado Revised Statutes Annotated
Title 43. Transportation
General and Administrative
Article 1. General and Administrative
Part 4. Roadside Advertising (Refs & Annos)

Effective: August 5, 2008

C.R.S.A. § 43-1-403

§ 43-1-403. Definitions

Currentness

As used in this part 4, unless the context otherwise requires:

(1) "Advertising device" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or any other contrivance designed, intended, or used to advertise or to give information in the nature of advertising and having the capacity of being visible from the travel way of any state highway, except any advertising device on a vehicle using the highway. The term "vehicle using the highway" does not include any vehicle parked near said highway for advertising purposes.

(1.5)(a) "Comprehensive development" means a group of two or more lots or parcels of land used primarily for multiple separate commercial or industrial activities that:

(I) Is located entirely on one side of a highway;

(II) Consists of lots or parcels that are contiguous except for public or private roadways or driveways that provide access to the development;

(III) Has been approved by the relevant local government as a development with a common identity and plan for public and private improvements;

(IV) Has common areas such as parking, amenities, and landscaping; and

(V) Has an approved plan of common ownership in which the owners have recorded irrevocable rights to use common areas and that provides for the management and maintenance of common areas.

(b) "Comprehensive development" includes all land used or to be used or occupied for the activities of the development, including buildings, parking, storage and service areas, streets, driveways, and reasonably necessary landscaped areas. A comprehensive development includes only land that is used for a purpose reasonably related to the activities of the development other than an attempt to qualify the land for on-premise advertising.

(2) "Defined area" means a geographically described economic area in which tourist-related businesses are located, which area would suffer substantial economic hardship by the removal of any tourist-related advertising device in that area providing directional information about goods and services in the interest of the traveling public.

(3) "Department" means the department of transportation.

(4) "Directional advertising device" includes, but is not limited to: Advertising devices containing directional information to facilitate emergency vehicle access to remote locations or about public places owned or operated by federal, state, or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public. Such devices shall conform to standards promulgated by the department pursuant to section 43-1-415, which standards shall conform to the national policy.

(5) "Erect" means to construct or allow to be constructed.

(6) "Highway" means any road on the state highway system, as defined in section 43-2-101(1).

(7) "Informational site" means an area established and maintained within a highway rest area wherein panels for the display of advertising and informational plaques may be erected and maintained so as not to be visible from the travel way of any state highway.

(8) "Interstate system" means the system of highways as defined in section 43-2-101(2).

(9) "Maintain" means to preserve, keep in repair, continue, or replace an advertising device.

(10) "Municipality" has the same meaning as defined in section 31-1-101(6), C.R.S.

(11) "National policy" means the provisions relating to control of advertising, signs, displays, and devices adjacent to the interstate system contained in 23 U.S.C. sec. 131 and the national standards or regulations promulgated pursuant to such provisions.

(12) "Nonconforming advertising device" means any advertising device that was lawfully erected under state law and has been lawfully maintained in accordance with the provisions of this part 4 or prior state law, except those advertising devices allowed by section 43-1-404(1).

(13) "Official advertising device" means any advertising device erected for a public purpose authorized by law, but the term shall not include devices advertising any private business.

(14) "On-premise advertising device" means:

(a) An advertising device advertising the sale or lease of the property on which it is located or advertising activities conducted on the property on which it is located; or

(b) An advertising device located within a comprehensive development that advertises any activity conducted in the comprehensive development, so long as the placement of the advertising device does not cause a reduction of federal aid highway moneys pursuant to 23 U.S.C. sec. 131.

(15) "Person" means any individual, corporation, partnership, association, or organized group of persons, whether incorporated or not, and any government, governmental subdivision, or agency thereof.

(16) "Tourist-related advertising device" means any legally erected and maintained advertising device which was in existence on May 5, 1976, and which provides directional information about goods and services in the interest of the traveling public limited to the following: Lodging, campsite, food service, recreational facility, tourist attraction, educational or historical site or feature, scenic attraction, gasoline station, or garage.

(17) "Visible" means capable of being seen, whether or not legible, without visual aid by a person of normal acuity.

(18) "Would work or suffer a substantial economic hardship" means tending to cause or causing a significant negative economic effect, such as a loss of business income, an increase in unemployment, a reduction in sales taxes or other revenue to the state or other governmental entity, a reduction in real estate taxes to the county, and other significant negative economic factors.

Credits

Repealed and reenacted by Laws 1981, H.B.1154, § 1, eff. July 1, 1981. Amended by Laws 1991, H.B.91-1198, § 117, eff. July 1, 1991; Laws 1996, H.B.96-1028, § 1, eff. May 23, 1996; Laws 2006, Ch. 29, § 1, eff. Aug. 7, 2006; Laws 2008, Ch. 80, § 1, eff. Aug. 5, 2008.

C. R. S. A. § 43-1-403, CO ST § 43-1-403
Current through the First Regular Session of the Sixty-Ninth General Assembly (2013)

West's Colorado Revised Statutes Annotated
Title 43. Transportation
General and Administrative
Article 1. General and Administrative
Part 4. Roadside Advertising (Refs & Annos)

Effective: July 1, 2010

C.R.S.A. § 43-1-404

§ 43-1-404. Advertising devices allowed--exception

Currentness

(1) The following advertising devices as defined in section 43-1-403 may be erected and maintained when in compliance with all provisions of this part 4 and the rules adopted by the department:

(a) Official advertising devices;

(b) On-premise advertising devices;

(c) Directional advertising devices;

(d) Advertising devices located in areas which were zoned for industrial or commercial uses under authority of state law prior to January 1, 1970;

(e)(I) Advertising devices located along primary and secondary highways in areas which were zoned for industrial or commercial uses under authority of state law on and after January 1, 1970, provided:

(A) The advertising device shall be no larger than one hundred fifty square feet; and

(B) The advertising device shall be located within one thousand feet of an industrial or commercial building in place; and

(C) The advertising device shall only inform the traveling public of necessary goods or services available within a five-mile radius of the advertising device; necessary goods and services shall be limited to lodging, camping, food, gas, vehicle repair, health-related goods or services, recreational facilities or services, and places of cultural importance; and

(D) No person providing necessary goods or services shall be eligible for more than two advertising devices pursuant to this paragraph (e); and

(E) The advertising device shall predominately display the name and location of the necessary goods or services advertised.

(II) In enacting the provisions of this paragraph (e), the general assembly declares each and every provision is necessary and not severable in order to further the substantial state interests contained in section 43-1-402. It is not the intent of the general assembly to allow advertising devices in areas zoned for industrial or commercial uses on or after January 1, 1970, unless each and every provision contained in this paragraph (e) is satisfied.

(III) The department shall consult with the council on creative industries and the state historical society to determine places of cultural importance which are eligible to erect advertising devices pursuant to sub-subparagraph (C) of subparagraph (I) of this paragraph (e). It is the intent of the general assembly that no state moneys nor any federal funds be used to erect such advertising devices.

(f)(I) Notwithstanding any other provision of law, with the exception of section 43-1-416, any advertising device, except for a nonconforming advertising device, may contain a message center display with movable parts and a changeable message that is changed

by electronic processes or by remote control. The illumination of an advertising device containing a message center display is not the use of a flashing, intermittent, or moving light for the purposes of any rule, regulation, and standard promulgated by the department or any agreement between the department and the secretary of transportation of the United States. No message center display may include any illumination that is in motion or appears to be in motion, that changes in intensity or exposes its message for less than four seconds, or that has an interval between messages of less than one second. No advertising device with a message center display may be placed within one thousand feet of another advertising device with a message center display on the same side of a highway. No message center display may be placed in violation of section 131 of title 23 of the United States code.

(II) Subparagraph (I) of this paragraph (f) shall not apply if the department receives written notification from the applicable federal authority that the proposed advertising device with a message center display will directly cause the repayment or denial of federal moneys that would otherwise be available or would otherwise be inconsistent with federal law, but only to the extent necessary to prevent the repayment or denial of the moneys or to eliminate the inconsistency with federal law.

(2) Nonconforming advertising devices in compliance with this part 4 and the rules and regulations adopted by the department pursuant to this part 4 may be maintained.

(3) Nothing in this section shall be construed to allow advertising devices which are prohibited in bonus areas adjacent to the interstate system as provided for in section 43-1-406.

(4) Notwithstanding paragraphs (d) and (e) of subsection (1) of this section, any advertising device which is more than six hundred sixty feet off the nearest edge of the right-of-way, located outside urban areas as such areas are defined in 23 U.S.C. sec. 101, and which is visible from the roadway of the state highway system and erected with the purpose of its message being read from such roadway is prohibited. Advertising devices beyond six hundred sixty feet of the right-of-way which were lawfully erected under state law prior to January 4, 1975, shall be compensated for and removed pursuant to this part 4.

(5)(a) Notwithstanding any other provision of law, except for section 43-1-416, as an alternative to removing any advertising device that is otherwise permitted by this part 4 or acquiring all real and personal property rights pertaining to the device, the department may permit the advertising device to be remodeled and relocated on the same property in a commercial or industrial zoned area, or on another area where the device would otherwise be permitted under this article.

(b) Paragraph (a) of this subsection (5) shall not apply if the department receives written notification from the applicable federal authority that the proposed advertising device to be remodeled and relocated will directly cause the repayment or denial of federal moneys that would otherwise be available or would otherwise be inconsistent with federal law, but only to the extent necessary to prevent the repayment or denial of the moneys or to eliminate the inconsistency with federal law.

Credits

Repealed and reenacted by Laws 1981, H.B.1154, § 1, eff. July 1, 1981. Amended by Laws 1983, H.B.1315, § 1, eff. June 10, 1983; Laws 1992, S.B.92-24, § 8, eff. March 25, 1992; Laws 2002, Ch. 170, §§ 1, 2, eff. Aug. 7, 2002; Laws 2006, Ch. 29, § 2, eff. Aug. 7, 2006; Laws 2010, Ch. 231, § 5, eff. July 1, 2010.

Notes of Decisions (11)

C. R. S. A. § 43-1-404, CO ST § 43-1-404
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C.R.S.A. § 43-1-405

§ 43-1-405. Informational sites authorized

Currentness

(1)(a) The department may erect, administer, and maintain informational sites for the display of advertising and information of interest to the traveling public, provided the lease fees are sufficient to pay the costs of erecting, administering, and maintaining the sites.

(b) The department may issue leases for plaques in informational sites.

(c) Leases shall be issued for a period of one year, beginning each January 1, without proration for periods less than a year. Each application for an initial lease or for a renewal of an existing lease shall be accompanied by a fee determined by the department, not to exceed one hundred dollars.

(2) The department may enter into agreements with any governmental entity to lease land in rest areas for the construction, maintenance, and administration of informational sites.

Credits

Repealed and reenacted by Laws 1981, H.B.1154, § 1, eff. July 1, 1981.

C. R. S. A. § 43-1-405, CO ST § 43-1-405
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C.R.S.A. § 43-1-406

§ 43-1-406. Bonus areas

Currentness

(1) No person shall erect or maintain or allow to be erected or maintained any advertising device within bonus areas.

(2) As used in this section:

(a) "Acquired for right-of-way" means acquired for right-of-way for any public road by the state, a county, a city, or any other political subdivision of the state by donation, dedication, purchase, condemnation, use, or any other means. The date of acquisition shall be the date upon which title, whether fee title or a lesser interest, vested in the public for right-of-way purposes under applicable state law.

(b) "Bonus areas" means any portion of the area within six hundred sixty feet of the nearest edge of the right-of-way of any portion of the federal interstate system of highways which is constructed upon any part of right-of-way, the entire width of which is acquired for right-of-way after July 1, 1956. A portion shall be deemed so constructed if, within such portion, no line normal or perpendicular to the center line of the highway and extending to both edges of the right-of-way will intersect any right-of-way acquired for right-of-way on or before July 1, 1956. Bonus areas do not include:

(I) Kerr areas, which are segments of the interstate system which traverse commercial or industrial zones within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the interstate system is subject to municipal regulation or control, or which traverse other areas where the use of land as of September 21, 1959, was clearly established by state law as industrial or commercial. Signs in Kerr areas are subject to size, lighting, and spacing requirements.

(II) Cotton areas, which are areas adjacent to the interstate system where any part of the highway right-of-way was acquired prior to July 1, 1956. Signs in Cotton areas are prohibited unless such areas are zoned commercial or industrial. Signs in Cotton areas are subject to size, lighting, and spacing requirements.

(c) "Center line of the highway" means a line equidistant from the edges of the median separating the main-traveled ways of a divided interstate highway or the center line of the main-traveled way of a nondivided interstate highway.

(3) A map illustrating the bonus areas shall be maintained for public inspection at reasonable hours in the offices of the department.

(4) The department may remove all advertising devices within bonus areas and may acquire with state funds all real and personal property rights pertaining to advertising devices by gift, purchase, agreement, exchange, or eminent domain. Just compensation shall be paid to the owner of the advertising device for the taking of all right, title, leasehold, and interest in the advertising device and to the owner of the real property on which the advertising device is located for the taking of the right to erect and maintain the device if the advertising device was lawfully erected.

(5) The following shall be exempt from the provisions of this section but shall in all respects comply with applicable rules and regulations issued by the department:

(a) On-premise advertising devices;

(b) Advertising devices located in a Kerr area;

(c) Advertising devices located in a Cotton area;

(d) Directional or official advertising devices.

Credits

Repealed and reenacted by Laws 1981, H.B.1154, § 1, eff. July 1, 1981. Amended by Laws 2006, Ch. 29, § 3, eff. Aug. 7, 2006.

Notes of Decisions (1)

C. R. S. A. § 43-1-406, CO ST § 43-1-406
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C.R.S.A. § 43-1-407

§ 43-1-407. Permits

Currentness

(1) A permit from the department shall be required for the erection or maintenance of the following advertising devices:

(a) Each nonconforming advertising device as defined in section 43-1-403(12);

(b) Each directional advertising device as defined in section 43-1-403(4), except that the following advertising devices shall not require permits:

(I) Advertising devices which are no larger than eight square feet and which advertise farms, ranches, or nonprofit educational, veterans', religious, charitable, or civic organizations; or

(II) Directory signs no larger than thirty-two square feet, the sole purpose of which is to provide direction to individual farms or ranches by way of individual signs, each of which is no larger than eight square feet.

(c) Each advertising device allowed pursuant to section 43-1-404(1)(d) and (1)(e). Renewals of such permits are subject to the provisions of section 43-1-409.

(2)(a)(I) Any other provision of law notwithstanding, the department shall issue a permit to erect or maintain an advertising device on a bus bench or bus shelter located either within the right-of-way of any state highway or on land adjacent to or visible from the right-of-way of any state highway if the local governing body having authority over the state highway pursuant to section 43-2-135 has approved such advertising device. The state shall accept the local permit as a state approved permit if the approval procedure of the local governing body included a determination that the advertising device does not restrict pedestrian traffic and is not a safety hazard to the motoring public.

(II) Except for safety requirements for bus benches or bus shelters located within the right-of-way of any state highway, the department shall not impose any additional requirements or more strict requirements in connection with permits for advertising devices on a bus bench or bus shelter than those imposed by the local governing body unless specifically required by federal law.

(III) The department shall implement this subsection (2) with the purpose of promoting the use of bus transportation.

(b) This subsection (2) shall not apply if the department receives written notification from the applicable federal authority that compliance with this subsection (2) will directly cause denial of federal moneys that would otherwise be available or would otherwise be inconsistent with federal law, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with federal law.

Credits

Repealed and reenacted by Laws 1981, H.B.1154, § 1, eff. July 1, 1981. Amended by Laws 1992, H.B.92-1354, § 1, eff. July 1, 1992; Laws 1996, H.B.96-1028, § 2, eff. May 23, 1996; Laws 2001, Ch. 137, § 1, eff. April 19, 2001.

Notes of Decisions (3)

C. R. S. A. § 43-1-407, CO ST § 43-1-407
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Part 4. Roadside Advertising (Refs & Annos)

C.R.S.A. § 43-1-408

§ 43-1-408. Application for permit--contents

Currentness

(1) Application for a permit for each advertising device shall be made on a form provided by the department, shall be signed by the applicant or his duly authorized officer or agent, and shall show:

(a) The name and address of the owner of the advertising device;

(b) The type, location, and dimensions of the advertising device, and such other pertinent information as may be prescribed;

(c) The name and address of the lessor of property upon which the device has been or will be located and a copy of the lease agreement or letter of consent;

(d) The year in which the advertising device was erected;

(e) An agreement by the applicant to erect and maintain the advertising device in a safe, sound, and good condition;

(f)(I) For all devices erected on or after July 1, 1981, certification from the local zoning administrator or authority that the advertising device conforms to local zoning requirements or a copy of a local government permit for the device;

(II) For devices erected prior to July 1, 1981, an affidavit from the sign owner that the advertising device was lawfully erected under local law.

Credits

Repealed and reenacted by Laws 1981, H.B.1154, § 1, eff. July 1, 1981.

Notes of Decisions (1)

C. R. S. A. § 43-1-408, CO ST § 43-1-408
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C.R.S.A. § 43-1-409

§ 43-1-409. Permit term--renewal--fees

Currentness

(1)(a) Applications for renewal of permits shall be made before June 1 of each year and shall be issued for a one-year period beginning July 1 and ending June 30. Permits shall be issued without proration for periods of less than one year. If the sign authorized by a permit is not erected within one year from the date the permit was issued, then the permit is void as of one year from the date it was issued.

(b) Each application for a permit or renewal of a permit shall be accompanied by a permit fee for each advertising device, in accordance with the following schedule:

Sign size 100 square feet of face area or less	$10.00
Sign size 101 square feet of face area to 250 square feet of face area	$20.00
Sign size 251 square feet of face area to 600 square feet of face area	$40.00
Sign size 601 square feet of face area or more	$75.00

(2) No permit renewals from the department shall be required for any advertising device erected in an area zoned for industrial or commercial use where the local zoning authority has entered into an agreement of certification with the department and where the local zoning authority has enacted rules, regulations, or ordinances concerning the control of advertising devices in industrial or commercial areas that are at least as restrictive as this part 4 and the rules and regulations promulgated under this part 4 as to size, lighting, spacing, use, and maintenance. As used in this subsection (2), an "agreement of certification" means the local zoning authority agrees to: Enforce its rules, regulations, or ordinances concerning outdoor advertising devices or billboards; require a permit be obtained from the department before any new device is erected within the certification area; require a new permit be obtained from the department before any material change is made to a device in existence at the time of certification; tender to the department semiannually inspection records and records of actions taken on violations. If the department determines after public hearing that the local zoning authority has failed to comply with its agreement of certification, the department may rescind the agreement of certification by serving a written decision on the local zoning authority by certified mail. The decision of the department shall constitute final agency action. Upon rescission the department shall require all permit holders to renew their permits unless the device is otherwise in violation of this part 4 in which case the department shall proceed pursuant to section 43-1-412.

(3) Renewal applications may be made by reference to the identifying number of the permit being renewed only, in the absence of material change in the information shown by the original application.

(4) The name of the owner of the advertising device for which a permit has been issued and the identifying permit number assigned by the department shall be placed in a conspicuous place on each advertising device structure within thirty days after the date of issuance of the permit.

(5) The permit holder shall, during the term thereof, have the right to change the advertising copy, ornamentation, or trim on the structure or sign for which it was issued without payment of any additional fee. The permit holder shall also have the right and obligation to repair, replace, and maintain in good condition any damaged advertising

device structure, however caused, if the right to maintain any nonconforming advertising device has not been terminated pursuant to section 43-1-413.

(6) Deleted by Laws 1992, H.B.92-1354, § 2, eff. July 1, 1992.

(7) Any permit holder or new owner shall, within sixty days of purchasing, selling, or otherwise transferring ownership in any advertising device for which a permit is required by this part 4, send a written notice of such fact to the department and shall include in such notice the name and address of the purchaser or transferee and its permit number.

Credits

Repealed and reenacted by Laws 1981, H.B.1154, § 1, eff. July 1, 1981. Amended by Laws 1992, H.B.92-1354, § 2, eff. July 1, 1992.

Notes of Decisions (2)

C. R. S. A. § 43-1-409, CO ST § 43-1-409
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C.R.S.A. § 43-1-410

§ 43-1-410. Denial or revocation of permit or renewal

Currentness

A permit under this part 4 may be denied or revoked, or a renewal denied, for false or misleading information given in the application for such permit or renewal or for the erection or maintenance of an advertising device in violation of the provisions of this part 4 or in violation of the rules and regulations of the department promulgated to enforce and administer this part 4.

Credits

Repealed and reenacted by Laws 1981, H.B.1154, § 1, eff. July 1, 1981.

Notes of Decisions (1)

C. R. S. A. § 43-1-410, CO ST § 43-1-410
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C.R.S.A. § 43-1-411

§ 43-1-411. Issuance of permits prohibited--when

Currentness

(1) No permit shall be issued for the erection, use, or maintenance of any advertising device which is or would be:

(a) At a point where it would encroach upon the right-of-way of a public highway without written approval of the department;

(b) Along the highway within five hundred feet of the center point of an intersection of such highway at grade with another highway or with a railroad in such manner as materially to obstruct or reduce the existing view of traffic on the other highway or railroad trains approaching the intersection and within five hundred feet of such center point;

(c) Along a highway at any point where it would reduce the existing view of traffic in either direction or of traffic control or official highway signs to less than five hundred feet;

(d) Designed, used, or intended to be designed or used to include more than two advertising panels on an advertising device facing in the same direction.

(2) On or after July 1, 1981, no permit shall be issued for any advertising device which required a permit under state law prior to July 1, 1981, and for which no permit was obtained.

(3) No permit shall be issued for any advertising device which simulates any official, directional, or warning sign erected or maintained by the United States, this state, or any county or municipality or which involves light simulating or resembling traffic signals or traffic control signs.

(4) No permit shall be issued for any advertising device nailed, tacked, posted, or attached in any manner on trees, perennial plants, rocks, or other natural objects or on fences or fence posts or poles maintained by public utilities.

(5) No permit shall be issued nor any renewal issued for any advertising device which becomes decayed, insecure, or in danger of falling or otherwise is unsafe or unsightly by reason of lack of maintenance or repair, or from any other cause.

(6) No permit shall be issued for any advertising device which does not conform to size, lighting, and spacing standards as prescribed by rules and regulations adopted by the department, where such rules and regulations were adopted prior to the erection of said device.

Credits

Repealed and reenacted by Laws 1981, H.B.1154, § 1, eff. July 1, 1981. Amended by Laws 2001, Ch. 137, § 2, eff. April 19, 2001.

Notes of Decisions (1)

C. R. S. A. § 43-1-411, CO ST § 43-1-411
Current through the First Regular Session of the Sixty-Ninth General Assembly (2013)

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Part 4. Roadside Advertising (Refs & Annos)

C.R.S.A. § 43-1-412

§ 43-1-412. Notice of noncompliance--removal authorized

Currentness

(1) Any outdoor advertising device which does not comply with this part 4 and the rules and regulations issued by the department shall be subject to removal as provided in this section.

(2)(a) If no permit has been obtained for the advertising device as required by this part 4, the department shall give written notice by certified mail to the owner of the property on which the advertising device is located informing said landowner that the device is illegal and requiring him within sixty days of receipt of the notice to remove the device or have a permit obtained if such permit may be issued and advising him of the right to request the department to conduct a hearing.

(b) If no application for renewal of a permit is received by the department as required by this part 4, the department shall give written notice by certified mail to the permittee requiring him within sixty days of receipt of the notice to apply for a renewal permit and pay an additional late fee of fifty dollars or remove the advertising device and advising him of the right to request the department to conduct a hearing.

(c) If the department determines that an application for renewal permit should be denied or that an existing permit should be revoked, the department shall give written notice by certified mail to the applicant or permittee specifying in what respect he has failed to comply with the requirements of this part 4 and requiring him within sixty days of receipt of the notice to remove the device or correct the violation if correction is permissible pursuant to this part 4 and advising him of the right to request the department to conduct a hearing.

(3) A request for a hearing shall be made in writing and must be received by the department no later than sixty days after receipt of notice. Such hearings shall be held pursuant to the "State Administrative Procedure Act"[1].

(4) After the sixty-day notice period has expired, the department is authorized to make a determination with or without hearing that the device is or is not in compliance with this part 4. If the department determines the device is not in compliance with this part 4 and the rules and regulations promulgated under this part 4, it shall issue an order setting forth the provisions violated, the facts alleged to constitute the violation, and the time by which the device must be removed at the party's expense. The order shall be served upon the party by certified mail.

(5) If the party does not remove the device as ordered, the department is authorized to remove the device forthwith. If the landowner does not consent to entry upon the land by the department to remove the device and no party has sought judicial review pursuant to the "State Administrative Procedure Act", the department may apply to a court of competent jurisdiction for an order allowing the department to enter upon the land for the purpose of removing the device forthwith. The court shall issue such order upon proof the device has not been removed and judicial review has not been sought.

(6) Upon removal of an advertising device pursuant to this section, neither the owner of the property upon which the advertising device was erected nor the department shall be liable in damages to anyone who claims to be the owner of the advertising device who has not obtained a permit. The department shall not be responsible for damages

otherwise created by the removal of said advertising device or for its destruction subsequent to removal.

Credits

Repealed and reenacted by Laws 1981, H.B.1154, § 1, eff. July 1, 1981.

Notes of Decisions (3)

Footnotes

1 Section 24-4-101 et seq.

C. R. S. A. § 43-1-412, CO ST § 43-1-412
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Effective: August 5, 2008

C.R.S.A. § 43-1-413

§ 43-1-413. Nonconforming advertising devices

Currentness

(1) A nonconforming advertising device may be continued to be maintained at the same location at which the nonconforming advertising device was lawfully erected.

(2) The right to maintain any nonconforming advertising device shall be terminated by:

(a) Abandonment of the nonconforming advertising device;

(b) Increase of any dimension of the nonconforming advertising device;

(c) Change of any aspect of or in the character of the nonconforming device;

(d) Failure to comply with the provisions of this part 4, concerning permits for the maintenance of advertising devices;

(e) Damage to or destruction of the nonconforming advertising device from any cause whatsoever, except willful destruction, where the cost of repairing the damage or destruction exceeds fifty percent of the cost of such device on the date of damage or destruction, as determined by the department-approved schedule of compensation;

(f) Obsolescence of the nonconforming advertising device where the cost of repairing the device exceeds fifty percent of the replacement cost of such device on the date that the department determines said device is obsolete.

(3) Reasonable and customary repair and maintenance of the device, including a change of advertising message or design, is not a change that would violate subsection (2) of this section. However, such message or design change shall not be compensable under section 43-1-414.

(4) If the right to maintain any nonconforming advertising device is terminated under this section, the advertising device shall become illegal and shall be removed pursuant to section 43-1-412.

Credits

Repealed and reenacted by Laws 1981, H.B.1154, § 1, eff. July 1, 1981. Amended by Laws 2008, Ch. 80, § 2, eff. Aug. 5, 2008.

Notes of Decisions (3)

C. R. S. A. § 43-1-413, CO ST § 43-1-413
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C.R.S.A. § 43-1-414

§ 43-1-414. Removal of nonconforming devices

Currentness

(1) The department may remove any nonconforming advertising device and may acquire all real and personal property rights pertaining to the nonconforming advertising device by gift, purchase, agreement, exchange, or eminent domain. All proceedings in eminent domain shall be conducted as may be provided by law. The department may adopt appraisal concepts and acquisition procedures which are appropriate to the evaluation and removal of nonconforming advertising devices.

(2) Just compensation shall be paid for each lawfully permitted nonconforming advertising device. Where the nonconforming advertising device has been modified with approval of the department, just compensation shall be determined as if no changes had been made, unless the changes shall have resulted in a decrease in value. Just compensation shall be paid for the taking, from the owner of such advertising device, of all right, title, leasehold, and interest in such advertising device and for the taking from the owner of real property on which such advertising device is located and of the right to maintain such advertising device.

(3) No advertising device shall be required to be removed until the federal share of the compensation required to be paid upon acquisition of such device becomes available to the state. Nothing in this subsection (3) shall be construed to prevent the department from acquiring any advertising device when the federal share of the compensation required to be paid for such device becomes available to the state, and no state funds shall be used to pay just compensation for any advertising device located along a secondary highway in this state until the federal share of such compensation becomes available to the state.

(4) The department shall promulgate reasonable rules and regulations governing acquisition procedures for the advertising devices, appraisal of advertising devices, and the administration and enforcement of this section. Rules for the appraisal of advertising devices shall take into account normal depreciation.

(5) Tourist-related advertising devices which comply with the rules and regulations adopted by the department may be exempted from removal under the following conditions:

(a) Upon receipt of a declaration, resolution, certified copy of an ordinance, or other clear direction from a state agency, board of county commissioners, city and county, municipality, or other governmental agency, which includes or has attached, on forms provided by the department, an analysis of negative economic impacts provided by such entity and which follows the criteria and method of economic analysis established by the department that removal of tourist-related advertising devices in a defined area would work a substantial economic hardship on that defined area, the department shall review the entity's economic analysis and such defined area. If the department finds that the entity has used the method of economic analysis as prescribed and the entity has determined that the defined area would suffer substantial economic hardship by such removal and that the declaration complies with all applicable rules and regulations, the department shall forward such declaration, resolution, or document and economic analysis with its recommendations to the United States secretary of transportation pursuant to 23 U.S.C. sec. 131(o). Any such declaration, resolution, or document submitted to the department shall further find that such tourist-related advertising

devices provide directional information about goods and services in the interest of the traveling public and request the retention by the state in such defined areas of such tourist-related advertising devices.

(b) Each exempted tourist-related advertising device must comply with requirements of the department concerning the directional contents of the device.

(c) The department will review and evaluate each defined area at least every three years to determine if each exemption continues to be warranted.

(6) The provisions of this section shall not be construed to affect the application of any of the provisions of this part 4 to any advertising device until such date as the advertising device is required to be removed under this section. This section is enacted to comply with the requirements of the federal "Highway Beautification Act of 1965".[1]

Credits

Repealed and reenacted by Laws 1981, H.B.1154, § 1, eff. July 1, 1981.

Notes of Decisions (12)

Footnotes

1 23 U.S.C.A. § 131.

C. R. S. A. § 43-1-414, CO ST § 43-1-414
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C.R.S.A. § 43-1-415

§ 43-1-415. Administration and enforcement--authority for agreements

Currentness

(1) The department shall administer and enforce the provisions of this part 4 and shall promulgate and enforce rules, regulations, and standards necessary to carry out the provisions of this part 4 including, but not limited to:

(a) Regulations necessary to qualify the state for payments made available by congress to those states that meet federal standards of roadside advertising control;

(b) Regulations relating to the maintenance of nonconforming advertising devices;

(c) Regulations to control the erection and maintenance on all state highways of official advertising devices, directional advertising devices, on-premise advertising devices, and advertising devices located in areas zoned for industrial or commercial uses;

(d) Regulations governing the removal and acquisition of nonconforming advertising devices;

(e) Regulations necessary to permit the exemption of tourist-related advertising devices by the secretary of transportation under 23 U.S.C. sec. 131(o);

(f) Regulations governing specific information signs under section 43-1-420.

(2) Nothing in this part 4 shall be construed to permit advertising devices to be erected or maintained which would disqualify the state for payments made available to those states which meet federal standards of roadside advertising control.

(3) The department may enter into agreements with the secretary of transportation of the United States to carry out the national policy concerning outdoor advertising adjacent to the interstate system and federal-aid primary highways and to accept any allotment of funds by the United States, or any department or agency thereof, appropriated in furtherance of federal-aid highway legislation.

(4) The rules and regulations of the department shall not impose any additional requirements or more strict requirements than those imposed by this part 4.

Credits

Repealed and reenacted by Laws 1981, H.B.1154, § 1, eff. July 1, 1981. Amended by Laws 1992, H.B.92-1354, § 3, eff. July 1, 1992.

Notes of Decisions (10)

C. R. S. A. § 43-1-415, CO ST § 43-1-415
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C.R.S.A. § 43-1-416

§ 43-1-416. Local control of outdoor advertising devices

Currentness

Nothing in this part 4 shall be construed to prevent use of zoning powers and establishment of stricter limitations or controls on advertising devices by any municipality or county within its boundaries so long as such limitations or controls do not jeopardize the receipt by the state of its full share of federal highway funds.

Credits

Repealed and reenacted by Laws 1981, H.B.1154, § 1, eff. July 1, 1981.

Notes of Decisions (3)

C. R. S. A. § 43-1-416, CO ST § 43-1-416
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C.R.S.A. § 43-1-417

§ 43-1-417. Violation and penalty

Currentness

(1) The erection, use, or maintenance of any advertising device in violation of any provision of this part 4 is declared to be illegal and, in addition to other remedies provided by law, the department is authorized to institute appropriate action or proceeding to prevent or remove such violation in any district court of competent jurisdiction. The removal of any advertising device unlawfully erected shall be at the expense of the person who erects and maintains such device.

(2) Any person who violates any provisions of this part 4 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars for each offense. Each day of violation of the provisions of this part 4 shall constitute a separate offense.

(3)(a) Except as provided in section 43-1-421, no person other than the department without written approval of the department shall erect or maintain any advertising device located either wholly or partly within the right-of-way of any state highway that is a part of the state highway system, including streets within cities, cities and counties, and incorporated towns. All advertising devices so located are hereby declared to be public nuisances, and any law enforcement officer or peace officer in the state of Colorado or employee of the department is hereby authorized and directed to remove the same without notice.

(b) The department may grant written permission to erect official advertising devices within the right-of-way of any state highway.

Credits

Repealed and reenacted by Laws 1981, H.B.1154, § 1, eff. July 1,1981. Amended by Laws 1995, H.B.95-1103, § 2, eff. April 20, 1995.

Notes of Decisions (1)

C. R. S. A. § 43-1-417, CO ST § 43-1-417
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C.R.S.A. § 43-1-418

§ 43-1-418. Roadside advertising fund

Currentness

There is hereby created in the department the roadside advertising fund. All permit fees collected under this part 4 shall be deposited by the department in such fund to carry out its duties under this part 4. The fee structure shall be reviewed by the department every four years.

Credits

Repealed and reenacted by Laws 1981, H.B.1154, § 1, eff. July 1, 1981.

C. R. S. A. § 43-1-418, CO ST § 43-1-418
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C.R.S.A. § 43-1-419

§ 43-1-419. Scenic byways--Independence pass scenic area highway

Currentness

(1)(a) State highways designated as scenic byways by the transportation commission shall have no new advertising devices erected which are visible from the highway, except the following:

(I) Official advertising devices, as defined in section 43-1-403(13);

(II) On-premise advertising devices, as defined in section 43-1-403(14); or

(III) Directional advertising devices, as defined in section 43-1-403(4).

(b) Existing advertising devices along scenic byways which are in compliance with this part 4 and the rules and regulations of the department may be maintained as long as they remain in compliance with all provisions of this part 4 and the rules and regulations of the department.

(c)(I) An advertising device shall be considered to be visible from a designated highway if it is plainly visible to the driver of a vehicle who is proceeding in a legally designated direction and traveling at the posted speed.

(II) As used in this paragraph (c), "visible" shall have the same meaning as provided in section 43-1-403(17).

(2) Independence pass on state highway 82 and sixteen miles of said highway extending on either side of Independence pass in Pitkin and Lake counties, Colorado, is designated as a scenic area highway, and no advertising devices shall be erected on or near said highway so as to be visible to motor vehicle operators on said highway.

Credits

Repealed and reenacted by Laws 1981, H.B.1154, § 1, eff. July 1,1981. Amended by Laws 1992, H.B.92-1354, § 4, eff. July 1, 1992; Laws 1993, S.B.93-167, § 2, eff. June 6, 1993.

C. R. S. A. § 43-1-419, CO ST § 43-1-419
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Effective: August 7, 2013

C.R.S.A. § 43-1-420

§ 43-1-420. Specific information signs and tourist-oriented directional signs authorized--rules

Currentness

(1)(a) The department may erect, administer, and maintain signs within highway rights-of-way for the display of advertising and information of interest to the traveling public, pursuant to the federal authority set forth in 23 U.S.C. secs. 109(d), 131(f), and 315 and 49 CFR 1.48(b).

(b) In addition to erecting, administering, and maintaining the signs authorized by paragraph (a) of this subsection (1), the department may authorize the erection, administration, and maintenance of specific information signs within highway rights-of-way upon the interstate system for the purpose of providing information pursuant to federal authority.

(1.5) As used in this section, "urbanized area" means that area within the boundary of a metropolitan area having a population of fifty thousand or more as determined by the United States bureau of the census in its latest census and as included on the urbanized area map approved by the department.

(2) The department may issue permits for business signs to be installed on specific information signs, all such specific information signs and business signs to be constructed and installed at the expense of the business being identified unless otherwise specified by a contractor in an agreement negotiated pursuant to section 43-1-1202(1)(a)(XI). Permits for such business signs shall be issued for a period of one year, beginning each January 1, without proration for periods less than a year. Each application for an initial permit or for a renewal of an existing permit shall be accompanied by an administration and maintenance fee to be determined by the department or by the contractor in an agreement negotiated pursuant to section 43-1-1202(1)(a)(XI). In the event that the number of applications for permits for a particular location exceeds the number of business signs that can be accommodated at that location, the department or, if so specified in an agreement negotiated pursuant to section 43-1-1202(1)(a)(XI), the contractor, shall develop a method for the annual rotation of such business signs. The department shall not condition eligibility for business signs on the utilization of any other off-premise outdoor advertising devices.

(3) The department may issue permits and adopt rules for the erection, administration, and maintenance of tourist-oriented directional signs within highway rights-of-way not on the interstate system and not on freeways or expressways, as such highways are defined in the rules, that are in urbanized areas, for the display of information of interest to the traveling public pursuant to the federal authority therefor as set forth in 23 U.S.C. secs. 109(d), 315, and 402 (a) and 49 CFR 1.48 (b) and in accordance with federal requirements. Any tourist-oriented directional sign erected pursuant to this subsection (3) shall be required to comply with all applicable regulations of the county, city and county, or municipality in which the sign is located. A county, city and county, or municipality may choose to authorize such signs within its jurisdiction by adoption of a resolution to that effect by the governing body of the county, city and county, or municipality, which resolution shall be directed to the executive director of the department or the executive director's designee. Upon receipt of the resolution, the department shall authorize further implementation of the tourist-oriented directional

sign program within the affected jurisdiction subject to the rules adopted by the department. The department shall not condition eligibility for business signs on the utilization of any other off-premise outdoor advertising devices.

(4) The department may contract with private businesses to implement all or part of the sign programs authorized by this section pursuant to the public-private initiatives program set forth in part 12 of this article.

(5) Repealed by Laws 2013, Ch. 316, § 142, eff. Aug. 7, 2013.

Credits

Repealed and reenacted by Laws 1981, H.B.1154, § 1, eff. July 1, 1981. Amended by Laws 1987, H.B.1039, § 1, eff. March 12, 1987; Laws 1989, S.B.91, § 1, eff. May 26, 1989; Laws 1998, Ch. 65, § 2, eff. Aug. 5, 1998; Laws 2004, Ch. 4, § 1, eff. Aug. 4, 2004; Laws 2008, Ch. 91, § 1, eff. Aug. 5, 2008; Laws 2012, Ch. 187, § 1, eff. Aug. 8, 2012; Laws 2013, Ch. 316, § 142, eff. Aug. 7, 2013.

C. R. S. A. § 43-1-420, CO ST § 43-1-420
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C.R.S.A. § 43-1-421

§ 43-1-421. On-premise advertising device--extension authorized

Currentness

(1) Notwithstanding any other provision of law and except as otherwise provided in subsection (2) of this section, on-premise advertising devices shall be allowed to extend over existing rights-of-way and future rights-of-way as described in section 43-1-210(3) of any state highway if all of the following requirements are met:

(a) The on-premise advertising device is attached to and extended from a building and only advertises activities or services offered in that building;

(b) The building and attached on-premise advertising device is adjacent to the state highway within a city, city and county, or incorporated town having authority over the state highway pursuant to section 43-2-135;

(c) The on-premise advertising device does not restrict pedestrian traffic and is not a safety hazard to the motoring public; and

(d) Before erecting the on-premise advertising device, the owner of the on-premise advertising device obtains written permission from the city, city and county, or incorporated town.

(2) This section shall not apply if the department determines that compliance with this section will cause denial of federal moneys that would otherwise be available or would otherwise be inconsistent with federal law, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with federal law. The department shall pursue every lawful remedy available to obtain permission or authority, if required by federal law, to apply this section in any such case.

Credits

Added by Laws 1995, H.B.95-1103, § 1, eff. April 20, 1995. Amended by Laws 1996, H.B.96-1028, § 3, eff. May 23, 1996.

C. R. S. A. § 43-1-421, CO ST § 43-1-421
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COLORADO
Department of
Transportation

Section 2
Federal Authority

United States Code Annotated
Title 23. Highways (Refs & Annos)
Chapter 1. Federal-Aid Highways (Refs & Annos)

Effective: October 1, 2012

23 U.S.C.A. § 131

§ 131. Control of outdoor advertising

Currentness

(a) The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, and Federal-aid highway funds apportioned on or after January 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of those additional outdoor advertising signs, displays, and devices which are more than six hundred and sixty feet off the nearest edge of the right-of-way, located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

(c) Effective control means that such signs, displays, or devices after January 1, 1968, if located within six hundred and sixty feet of the right-of-way and, on or after July 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, if located beyond six hundred and sixty feet of the right-of-way, located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall, pursuant to this section, be limited to (1) directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, (3) signs, displays, and devices, including those which may be changed at reasonable intervals by electronic process or by remote control, advertising activities conducted on the property on which they are located, (4) signs lawfully in existence on October 22, 1965, determined by the State, subject to the approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, or historic or artistic significance the preservation of which would be consistent with the purposes of this section, and (5) signs, displays, and devices advertising the distribution by nonprofit organizations of free coffee to individuals traveling on the Interstate System or the primary system. For the purposes of this

subsection, the term "free coffee" shall include coffee for which a donation may be made, but is not required.

(d) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use is to be determined by agreement between the several States and the Secretary, may be erected and maintained within six hundred and sixty feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as may be determined by agreement between the several States and the Secretary. The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act. Whenever a bona fide State, county, or local zoning authority has made a determination of customary use, such determination will be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority. Nothing in this subsection shall apply to signs, displays, and devices referred to in clauses (2) and (3) of subsection (c) of this section.

(e) Any sign, display, or device lawfully in existence along the Interstate System or the Federal-aid primary system on September 1, 1965, which does not conform to this section shall not be required to be removed until July 1, 1970. Any other sign, display, or device lawfully erected which does not conform to this section shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

(f) The Secretary shall, in consultation with the States, provide within the rights-of-way for areas at appropriate distances from interchanges on the Interstate System, on which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. The Secretary may also, in consultation with the States, provide within the rights-of-way of the primary system for areas in which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. Such signs shall conform to national standards to be promulgated by the Secretary.

(g) Just compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under State law and not permitted under subsection (c) of this section, whether or not removed pursuant to or because of this section. The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

(h) All public lands or reservations of the United States which are adjacent to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary.

(i) In order to provide information in the specific interest of the traveling public, the State transportation departments are authorized to maintain maps and to permit information directories and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas and other travel information systems within the rights-of-way for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable. The Federal share of the cost of establishing such an information center or travel information system shall be that which is provided in section 120 for a highway project on that Federal-aid system to be served by such center or system. A State may permit the installation of

signs that acknowledge the sponsorship of rest areas within such rest areas or along the main traveled way of the system, provided that such signs shall not affect the safe and efficient utilization of the Interstate System and the primary system. The Secretary shall establish criteria for the installation of such signs on the main traveled way, including criteria pertaining to the placement of rest area sponsorship acknowledgment signs in relation to the placement of advance guide signs for rest areas.

(j) Any State transportation department which has, under this section as in effect on June 30, 1965, entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State transportation department shall be entitled to such payments unless the State maintains the control required under such agreement: *Provided*, That permission by a State to erect and maintain information displays which may be changed at reasonable intervals by electronic process or remote control and which provide public service information or advertise activities conducted on the property on which they are located shall not be considered a breach of such agreement or the control required thereunder. Such payments shall be paid only from appropriations made to carry out this section. The provisions of this subsection shall not be construed to exempt any State from controlling outdoor advertising as otherwise provided in this section.

(k) Subject to compliance with subsection (g) of this section for the payment of just compensation, nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section.

(l) Not less than sixty days before making a final determination to withhold funds from a State under subsection (b) of this section, or to do so under subsection (b) of section 136, or with respect to failing to agree as to the size, lighting, and spacing of signs, displays, and devices or as to unzoned commercial or industrial areas in which signs, displays, and devices may be erected and maintained under subsection (d) of this section, or with respect to failure to approve under subsection (g) of section 136, the Secretary shall give written notice to the State of his proposed determination and a statement of the reasons therefor, and during such period shall give the State an opportunity for a hearing on such determination. Following such hearing the Secretary shall issue a written order setting forth his final determination and shall furnish a copy of such order to the State. Within forty-five days of receipt of such order, the State may appeal such order to any United States district court for such State, and upon the filing of such appeal such order shall be stayed until final judgment has been entered on such appeal. Summons may be served at any place in the United States. The court shall have jurisdiction to affirm the determination of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the United States court of appeals for the circuit in which the State is located and to the Supreme Court of the United States upon certiorari or certification as provided in title 28, United States Code, section 1254. If any part of an apportionment to a State is withheld by the Secretary under subsection (b) of this section or subsection (b) of section 136, the amount so withheld shall not be reapportioned to the other States as long as a suit brought by such State under this subsection is pending. Such amount shall remain available for apportionment in accordance with the final judgment and this subsection. Funds withheld from apportionment and subsequently apportioned or reapportioned under this section shall be available for expenditure for three full fiscal years after the date of such apportionment or reapportionment as the case may be.

(m) There is authorized to be appropriated to carry out the provisions of this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for the fiscal year ending June 30, 1966, not to exceed $20,000,000 for the fiscal year ending June 30, 1967, not to exceed $2,000,000 for the fiscal year ending June 30, 1970, not to exceed $27,000,000 for the fiscal year ending June 30, 1971, not to exceed $20,500,000 for the fiscal year ending June 30, 1972, and not to exceed $50,000,000 for the fiscal year ending June 30, 1973. The provisions of this chapter relating to the obligation, period of availability and expenditure of Federal-aid primary

highway funds shall apply to the funds authorized to be appropriated to carry out this section after June 30, 1967. A State may use any funds apportioned to it under section 104 of this title for removal of any sign, display, or device lawfully erected which does not conform to this section.

(n) No sign, display, or device shall be required to be removed under this section if the Federal share of the just compensation to be paid upon removal of such sign, display, or device is not available to make such payment. Funds apportioned to a State under section 104 of this title shall not be treated for purposes of the preceding sentence as being available to the State for making such a payment except to the extent that the State, in its discretion, expends such funds for such a payment.

(o) The Secretary may approve the request of a State to permit retention in specific areas defined by such State of directional signs, displays, and devices lawfully erected under State law in force at the time of their erection which do not conform to the requirements of subsection (c), where such signs, displays, and devices are in existence on the date of enactment of this subsection and where the State demonstrates that such signs, displays, and devices (1) provide directional information about goods and services in the interest of the traveling public, and (2) are such that removal would work a substantial economic hardship in such defined area.

(p) In the case of any sign, display, or device required to be removed under this section prior to the date of enactment of the Federal-Aid Highway Act of 1974, which sign, display, or device was after its removal lawfully relocated and which as a result of the amendments made to this section by such Act is required to be removed, the United States shall pay 100 per centum of the just compensation for such removal (including all relocation costs).

(q)(1) During the implementation of State laws enacted to comply with this section, the Secretary shall encourage and assist the States to develop sign controls and programs which will assure that necessary directional information about facilities providing goods and services in the interest of the traveling public will continue to be available to motorists. To this end the Secretary shall restudy and revise as appropriate existing standards for directional signs authorized under subsections 131(c)(1) and 131(f) to develop signs which are functional and esthetically compatible with their surroundings. He shall employ the resources of other Federal departments and agencies, including the National Endowment for the Arts, and employ maximum participation of private industry in the development of standards and systems of signs developed for those purposes.

(2) Among other things the Secretary shall encourage States to adopt programs to assure that removal of signs providing necessary directional information, which also were providing directional information on June 1, 1972, about facilities in the interest of the traveling public, be deferred until all other nonconforming signs are removed.

(r) Removal of illegal signs.--

(1) By owners.--Any sign, display, or device along the Interstate System or the Federal-aid primary system which was not lawfully erected, shall be removed by the owner of such sign, display, or device not later than the 90th day following the effective date of this subsection.

(2) By States.--If any owner does not remove a sign, display, or device in accordance with paragraph (1), the State within the borders of which the sign, display, or device is located shall remove the sign, display, or device. The owner of the removed sign, display, or device shall be liable to the State for the costs of such removal. Effective control under this section includes compliance with the first sentence of this paragraph.

(s) Scenic byway prohibition.--If a State has a scenic byway program, the State may not allow the erection along any highway on the Interstate System or Federal-aid primary system which before, on, or after the effective date of this subsection, is designated as a scenic byway under such program of any sign, display, or device which is not in conformance with subsection (c) of this section. Control of any sign, display, or

device on such a highway shall be in accordance with this section. In designating a scenic byway for purposes of this section and section 1047 of the Intermodal Surface Transportation Efficiency Act of 1991, a State may exclude from such designation any segment of a highway that is inconsistent with the State's criteria for designating State scenic byways. Nothing in the preceding sentence shall preclude a State from signing any such excluded segment, including such segment on a map, or carrying out similar activities, solely for purposes of system continuity.

(t) Primary system defined.--For purposes of this section, the terms "primary system" and "Federal-aid primary system" mean the Federal-aid primary system in existence on June 1, 1991, and any highway which is not on such system but which is on the National Highway System.

CREDIT(S)

(Pub.L. 85-767, Aug. 27, 1958, 72 Stat. 904; Pub.L. 86-342, Title I, § 106, Sept. 21, 1959, 73 Stat. 612; Pub.L. 87-61, Title I, § 106, June 29, 1961, 75 Stat. 123; Pub.L. 88-157, § 5, Oct. 24, 1963, 77 Stat. 277; Pub.L. 89-285, Title I, § 101, Oct. 22, 1965, 79 Stat. 1028; Pub.L. 89-574, § 8(a), Sept. 13, 1966, 80 Stat. 768; Pub.L. 90-495, § 6(a) to (d), Aug. 23, 1968, 82 Stat. 817; Pub.L. 91-605, Title I, § 122(a), Dec. 31, 1970, 84 Stat. 1726; Pub.L. 93-643, § 109, Jan. 4, 1975, 88 Stat. 2284; Pub.L. 94-280, Title I, § 122, May 5, 1976, 90 Stat. 438; Pub.L. 95-599, Title I, §§ 121, 122, Nov. 6, 1978, 92 Stat. 2700, 2701; Pub.L. 96-106, § 6, Nov. 9, 1979, 93 Stat. 797; Pub.L. 102-240, Title I, § 1046(a) to (c), Dec. 18, 1991, 105 Stat. 1995, 1996; Pub.L. 102-302, § 104, June 22, 1992, 106 Stat. 253; Pub.L. 104-59, Title III, § 314, Nov. 28, 1995, 109 Stat. 586; Pub.L. 105-178, Title I, § 1212(a)(2)(A), June 9, 1998, 112 Stat. 193; Pub.L. 112-141, Div. A, Title I, §§ 1519(c)(7), 1539(b), July 6, 2012, 126 Stat. 576, 587.)

Notes of Decisions (66)

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23 C.F.R. § 1.35

§ 1.35 Bonus program.

Currentness

(a) Any agreement entered into by a State pursuant to the provisions of section 12 of the Federal–Aid Highway Act of 1958, Pub.L. 85–381, 72 Stat. 95, as amended, shall provide for the control or regulation of outdoor advertising, consistent with the advertising policy and standards promulgated by the Administrator, in areas adjacent to the entire mileage of the Interstate System within that State, except such segments as may be excluded from the application of such policy and standards by section 12.

(b) Any such agreement for the control of advertising may provide for establishing publicly owned informational sites, whether publicly or privately operated, within the limits of or adjacent to the right-of-way of the Interstate System on condition that no such site shall be established or maintained except at locations and in accordance with plans, in furtherance of the advertising policy and standards, submitted to and approved by the Administrator.

(c) No advertising right in the acquisition of which Federal funds participated shall be disposed of without the prior approval of the Administrator.

Credits

[39 FR 28628, Aug. 9, 1974]
SOURCE: 25 FR, 4162, May 11, 1960, as amended at 35 FR, 18719, Dec. 10, 1970; 53 FR 18276, May 23, 1988, unless otherwise noted.

AUTHORITY: 23 U.S.C. 315; 49 CFR 1.48(b).

Current through December 26, 2013; 78 FR 78691

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23 C.F.R. § 750.101

§ 750.101 Purpose.

Currentness

(a) In section 12 of the Federal–Aid Highway Act of 1958, Pub.L. 85–381, 72 Stat. 95, hereinafter called the act, the Congress declared that

(1) To promote the safety, convenience, and enjoyment of public travel and the free flow of interstate commerce and to protect the public investment in the National System of Interstate and Defense Highways, hereinafter called the Interstate System, it is in the public interest to encourage and assist the States to control the use of and to improve areas adjacent to such system by controlling the erection and maintenance of outdoor advertising signs, displays, and devices adjacent to that system.

(2) It is a national policy that the erection and maintenance of outdoor advertising signs, displays, or devices within 660 feet of the edge of the right-of-way and visible from the main-traveled way of all portions of the Interstate System constructed upon any part of right-of-way, the entire width of which is acquired subsequent to July 1, 1956, should be regulated, consistent with national standards to be prepared and promulgated by the Secretary of Transportation.

(b) The standards in this part are hereby promulgated as provided in the act.

Credits

[38 FR 16044, June 20, 1973, as amended at 39 FR 28629, Aug. 9, 1974]
SOURCE: 38 FR 16044, June 20, 1973, unless otherwise noted.

AUTHORITY: Sec. 12, Pub.L. 85–381, 72 Stat. 95, as amended; 23 U.S.C. 131; delegation of authority in 49 CFR 1.48(b).

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23 C.F.R. § 750.102

§ 750.102 Definitions.

Currentness

The following terms when used in the standards in this part have the following meanings:

(a) Acquired for right-of-way means acquired for right-of-way for any public road by the Federal Government, a State, or a county, city, or other political subdivision of a State, by donation, dedication, purchase, condemnation, use, or otherwise. The date of acquisition shall be the date upon which title (whether fee title or a lesser interest) vested in the public for right-of-way purposes under applicable Federal or State law.

(b) Centerline of the highway means a line equidistant from the edges of the median separating the main-traveled ways of a divided Interstate Highway, or the centerline of the main-traveled way of a nondivided Interstate Highway.

(c) Controlled portion of the Interstate System means any portion which:

(1) Is constructed upon any part of right-of-way, the entire width of which is acquired for right-of-way subsequent to July 1, 1956 (a portion shall be deemed so constructed if, within such portion, no line normal or perpendicular to the centerline of the highway and extending to both edges of the right-of-way will intersect any right-of-way acquired for right-of-way on or before July 1, 1956);

(2) Lies within a State, the highway department of which has entered into an agreement with the Secretary of Transportation as provided in the act; and

(3) Is not excluded under the terms of the act which provide that agreements entered into between the Secretary of Transportation and the State highway department shall not apply to those segments of the Interstate System which traverse commercial or industrial zones within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or which traverse other areas where the land use as of September 21, 1959, was clearly established by State law as industrial or commercial.

(d) Entrance roadway means any public road or turning roadway, including acceleration lanes, by which traffic may enter the main-traveled way of an Interstate Highway from the general road system within a State, irrespective of whether traffic may also leave the main-traveled way by such road or turning roadway.

(e) Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(f) Exit roadway means any public road or turning roadway including deceleration lanes, by which traffic may leave the main-traveled way of an Interstate Highway to reach the general road system within a State, irrespective of whether traffic may also enter the main-traveled way by such road or turning roadway.

(g) Informational site means an area or site established and maintained within or adjacent to the right-of-way of a highway on the Interstate System by or under the

supervision or control of a State highway department, wherein panels for the display of advertising and informational signs may be erected and maintained.

(h) Legible means capable of being read without visual aid by a person of normal visual acuity.

(i) Maintain means to allow to exist.

(j) Main-traveled way means the traveled way of an Interstate Highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated 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.

(k) Protected areas means all areas inside the boundaries of a State which are adjacent to and within 660 feet of the edge of the right-of-way of all controlled portions of the Interstate System within that State. Where a controlled portion of the Interstate System terminates at a State boundary which is not perpendicular or normal to the centerline of the highway, protected areas also means all areas inside the boundary of such State which are within 660 feet of the edge of the right-of-way of the Interstate Highway in the adjoining State.

(l) Scenic area means any public park or area of particular scenic beauty or historical significance designated by or pursuant to State law as a scenic area.

(m) Sign means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of a controlled portion of the Interstate System.

(n) State means the District of Columbia and any State of the United States within the boundaries of which a portion of the Interstate System is located.

(o) State law means a State constitutional provision or statute, or an ordinance, rule, or regulation enacted or adopted by a State agency or political subdivision of a State pursuant to State constitution or statute.

(p) Trade name shall include brand name, trademark, distinctive symbol, or other similar device or thing used to identify particular products or services.

(q) Traveled way means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

(r) Turning roadway means a connecting roadway for traffic turning between two intersection legs of an interchange.

(s) Visible means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

SOURCE: 38 FR 16044, June 20, 1973, unless otherwise noted.

AUTHORITY: Sec. 12, Pub.L. 85–381, 72 Stat. 95, as amended; 23 U.S.C. 131; delegation of authority in 49 CFR 1.48(b).

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23 C.F.R. § 750.103

§ 750.103 Measurements of distance.

Currentness

(a) Distance from the edge of a right-of-way shall be measured horizontally along a line normal or perpendicular to the centerline of the highway.

(b) All distances under § 750.107 (a)(2) and (b) shall be measured along the centerline of the highway between two vertical planes which are normal or perpendicular to and intersect the centerline of the highway, and which pass through the termini of the measured distance.

Credits

[38 FR 16044, June 20, 1973, as amended at 41 FR 9321, Mar. 4, 1976]
SOURCE: 38 FR 16044, June 20, 1973, unless otherwise noted.

AUTHORITY: Sec. 12, Pub.L. 85–381, 72 Stat. 95, as amended; 23 U.S.C. 131; delegation of authority in 49 CFR 1.48(b).

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23 C.F.R. § 750.104

§ 750.104 Signs that may not be permitted in protected areas.

Currentness

Erection or maintenance of the following signs may not be permitted in protected areas:

(a) Signs advertising activities that are illegal under State or Federal laws or regulations in effect at the location of such signs or at the location of such activities.

(b) Obsolete signs.

(c) Signs that are not clean and in good repair.

(d) Signs that are not securely affixed to a substantial structure, and

(e) Signs that are not consistent with the standards in this part.
SOURCE: 38 FR 16044, June 20, 1973, unless otherwise noted.

AUTHORITY: Sec. 12, Pub.L. 85–381, 72 Stat. 95, as amended; 23 U.S.C. 131; delegation of authority in 49 CFR 1.48(b).

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23 C.F.R. § 750.105

§ 750.105 Signs that may be permitted in protected areas.

Currentness

(a) Erection or maintenance of the following signs may be permitted in protected areas:

Class 1--Official signs. Directional or other official signs or notices erected and maintained by public officers or agencies pursuant to and in accordance with direction or authorization contained in State of Federal law, for the purpose of carrying out an official duty or responsibility.

Class 2--On-premise signs. Signs not prohibited by State law which are consistent with the applicable provisions of this section and § 750.108 and which advertise the sale or lease of, or activities being conducted upon, the real property where the signs are located.

Not more than one such sign advertising the sale or lease of the same property may be permitted under this class in such manner as to be visible to traffic proceeding in any one direction on any one Interstate Highway.

Not more than one such sign, visible to traffic proceeding in any one direction on any one Interstate Highway and advertising activities being conducted upon the real property where the sign is located, may be permitted under this class more than 50 feet from the advertised activity.

Class 3--Signs within 12 miles of advertised activities. Signs not prohibited by State law which are consistent with the applicable provisions of this section and §§ 750.106, 750.107, and 750.108 and which advertise activities being conducted within 12 air miles of such signs.

Class 4--Signs in the specific interest of the traveling public. Signs authorized to be erected or maintained by State law which are consistent with the applicable provisions of this section and §§ 750.106, 750.107, and 750.108 and which are designed to give information in the specific interest of the traveling public.

(b) A Class 2 or 3 sign, except a Class 2 sign not more than 50 feet from the advertised activity, that displays any trade name which refers to or identifies any service rendered or product sold, used, or otherwise handled more than 12 air miles from such sign may not be permitted unless the name of the advertised activity which is within 12 air miles of such sign is displayed as conspicuously as such trade name.

(c) Only information about public places operated by Federal, State, or local governments, natural phenomena, historic sites, areas of natural scenic beauty or naturally suited for outdoor recreation and places for camping, lodging, eating, and vehicle service and repair is deemed to be in the specific interest of the traveling public. For the purposes of the standards in this part, a trade name is deemed to be information in the specific interest of the traveling public only if it identifies or characterizes such a place or identifies vehicle service, equipment, parts, accessories, fuels, oils, or lubricants being offered for sale at such a place. Signs displaying any other trade name may not be permitted under Class 4.

(d) Notwithstanding the provisions of paragraph (b) of this section, Class 2 or Class 3 signs which also qualify as Class 4 signs may display trade names in accordance with the provisions of paragraph (c) of this section.
SOURCE: 38 FR 16044, June 20, 1973, unless otherwise noted.

AUTHORITY: Sec. 12, Pub.L. 85–381, 72 Stat. 95, as amended; 23 U.S.C. 131; delegation of authority in 49 CFR 1.48(b).

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Part 750. Highway Beautification (Refs & Annos)
Subpart A. National Standards for Regulation by States of Outdoor Advertising Adjacent to the Interstate System Under the 1958 Bonus Program (Refs & Annos)

23 C.F.R. § 750.106

§ 750.106 Class 3 and 4 signs within informational sites.

Currentness

(a) Informational sites for the erection and maintenance of Class 3 and 4 advertising and informational signs may be established in accordance with § 1.35 of this chapter. The location and frequency of such sites shall be as determined by agreements between the Secretary of Transportation and the State highway departments.

(b) Class 3 and 4 signs may be permitted within such informational sites in protected areas in a manner consistent with the following provisions:

(1) No sign may be permitted which is not placed upon a panel.

(2) No panel may be permitted to exceed 13 feet in height or 25 feet in length, including border and trim, but excluding supports.

(3) No sign may be permitted to exceed 12 square feet in area, and nothing on such sign may be permitted to be legible from any place on the main-traveled way or a turning roadway.

(4) Not more than one sign concerning a single activity or place may be permitted within any one informational site.

(5) Signs concerning a single activity or place may be permitted within more than one informational site, but no Class 3 sign which does not also qualify as a Class 4 sign may be permitted within any informational site more than 12 air miles from the advertised activity.

(6) No sign may be permitted which moves or has any animated or moving parts.

(7) Illumination of panels by other than white lights may not be permitted, and no sign placed on any panel may be permitted to contain, include, or be illuminated by any other lights, or any flashing, intermittent, or moving lights.

(8) No lighting may be permitted to be used in any way in connection with any panel unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way of the Interstate System, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

Credits

[23 FR 8793, Nov. 13, 1958, as amended at 35 FR 18719, Dec. 10, 1970; 41 FR 9321, Mar. 4, 1976]
SOURCE: 38 FR 16044, June 20, 1973, unless otherwise noted.

AUTHORITY: Sec. 12, Pub.L. 85–381, 72 Stat. 95, as amended; 23 U.S.C. 131; delegation of authority in 49 CFR 1.48(b).

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23 C.F.R. § 750.107

§ 750.107 Class 3 and 4 signs outside informational sites.

Currentness

(a) The erection or maintenance of the following signs may be permitted within protected areas, outside informational sites:

(1) Class 3 signs which are visible only to Interstate highway traffic not served by an informational site within 12 air miles of the advertised activity;

(2) Class 4 signs which are more than 12 miles from the nearest panel within an informational site serving Interstate highway traffic to which such signs are visible.

(3) Signs that qualify both as Class 3 and 4 signs may be permitted in accordance with either paragraph (a)(1) or (2) of this section.

(b) The erection or maintenance of signs permitted under paragraph (a) of this section may not be permitted in any manner inconsistent with the following:

(1) In protected areas in advance of an intersection of the main-traveled way of an Interstate highway and an exit roadway, such signs visible to Interstate highway traffic approaching such intersection may not be permitted to exceed the following number:

Distance from intersection	Number of signs
0-2 miles	0.
2-5 miles	6.
More than 5 miles	Average of one sign per mile.

The specified distances shall be measured to the nearest point of the intersection of the traveled way of the exit roadway and the main-traveled way of the Interstate highway.

(2) Subject to the other provisions of this paragraph, not more than two such signs may be permitted within any mile distance measured from any point, and no such signs may be permitted to be less than 1,000 feet apart.

(3) Such signs may not be permitted in protected areas adjacent to any Interstate highway right-of-way upon any part of the width of which is constructed an entrance or exit roadway.

(4) Such signs visible to Interstate highway traffic which is approaching or has passed an entrance roadway may not be permitted in protected areas for 1,000 feet beyond the furthest point of the intersection between the traveled way of such entrance roadway and the main-traveled way of the Interstate highway.

(5) No such signs may be permitted in scenic areas.

(6) Not more than one such sign advertising activities being conducted as a single enterprise or giving information about a single place may be permitted to be erected or maintained in such manner as to be visible to traffic moving in any one direction on any one Interstate highway.

(c) No Class 3 or 4 signs other than those permitted by this section may be permitted to be erected or maintained within protected areas, outside informational sites.
SOURCE: 38 FR 16044, June 20, 1973, unless otherwise noted.

AUTHORITY: Sec. 12, Pub.L. 85–381, 72 Stat. 95, as amended; 23 U.S.C. 131; delegation of authority in 49 CFR 1.48(b).

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23 C.F.R. § 750.108

§ 750.108 General provisions.

Currentness

No Class 3 or 4 signs may be permitted to be erected or maintained pursuant to § 750.107, and no Class 2 sign may be permitted to be erected or maintained, in any manner inconsistent with the following:

(a) No sign may be permitted which attempts or appears to attempt to direct the movement of traffic or which interferes with, imitates or resembles any official traffic sign, signal or device.

(b) No sign may be permitted which prevents the driver of a vehicle from having a clear and unobstructed view of official signs and approaching or merging traffic.

(c) No sign may be permitted which contains, includes, or is illuminated by any flashing, intermittent or moving light or lights.

(d) No lighting may be permitted to be used in any way in connection with any sign unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way of the Interstate System, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

(e) No sign may be permitted which moves or has any animated or moving parts.

(f) No sign may be permitted to be erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(g) No sign may be permitted to exceed 20 feet in length, width or height, or 150 square feet in area, including border and trim but excluding supports, except Class 2 signs not more than 50 feet from, and advertising activities being conducted upon, the real property where the sign is located.

SOURCE: 38 FR 16044, June 20, 1973, unless otherwise noted.

AUTHORITY: Sec. 12, Pub.L. 85–381, 72 Stat. 95, as amended; 23 U.S.C. 131; delegation of authority in 49 CFR 1.48(b).

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23 C.F.R. § 750.109

§ 750.109 Exclusions.

Currentness

The standards in this part shall not apply to markers, signs and plaques in appreciation of sites of historical significance for the erection of which provisions are made in an agreement between a State and the Secretary of Transportation, as provided in the Act, unless such agreement expressly makes all or any part of the standards applicable.
SOURCE: 38 FR 16044, June 20, 1973, unless otherwise noted.

AUTHORITY: Sec. 12, Pub.L. 85–381, 72 Stat. 95, as amended; 23 U.S.C. 131; delegation of authority in 49 CFR 1.48(b).

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23 C.F.R. § 750.110

§ 750.110 State regulations.

Currentness

A State may elect to prohibit signs permissible under the standards in this part without forfeiting its rights to any benefits provided for in the act.
SOURCE: 38 FR 16044, June 20, 1973, unless otherwise noted.

AUTHORITY: Sec. 12, Pub.L. 85–381, 72 Stat. 95, as amended; 23 U.S.C. 131; delegation of authority in 49 CFR 1.48(b).

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C.F.R. T. 23, Ch. I, Subch. H, Pt. 750, Subpt. B, Refs & Annos
Currentness

Authority: 23 U.S.C. 131, 315, 49 U.S.C. 1651; 49 CFR 1.48(b).

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23 C.F.R. § 750.151

§ 750.151 Purpose.

Currentness

(a) In section 131 of title 23 U.S.C., Congress has declared that:

(1) The erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate Syst
controlled in order to protect the public investment in such highways, to promote safety and recreational value of public travel, and to preserve natural beauty.

(2) Directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, shall conform to national standards authorized to be promulgated by the Secretary, which standards shall contain provisions concerning the lighting, size, number and spacing of signs, and such other requirements as may be appropriate to implement the section.

(b) The standards in this part are issued as provided in section 131 of title 23 U.S.C.

Credits

[38 FR 16044, June 30, 1973, as amended at 40 FR 21934, May 20, 1975]
SOURCE: 38 FR 16044, June 20, 1973, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131, 315, 49 U.S.C. 1651; 49 CFR 1.48(b).

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Subpart B. National Standards for Directional and Official Signs (Refs & Annos)

23 C.F.R. § 750.152

§ 750.152 Application.

Currentness

The following standards apply to directional and official signs and notices located within six hundred and sixty (660) feet of the right-of-way of the Interstate and Federal-aid primary systems and to those located beyond six hundred and sixty (660) feet of the right-of-way of such systems, outside of urban areas, visible from the main traveled way of such systems and erected with the purpose of their message being read from such main traveled way. These standards do not apply to directional and official signs erected on the highway right-of-way.

Credits

[40 FR 21934, May 20, 1975]
SOURCE: 38 FR 16044, June 20, 1973, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131, 315, 49 U.S.C. 1651; 49 CFR 1.48(b).

Notes of Decisions (1)

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23 C.F.R. § 750.153

§ 750.153 Definitions.

Currentness

For the purpose of this part:

(a) Sign means an outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main traveled way of the Interstate or Federal-aid primary highway.

(b) Main traveled way means the through traffic lanes of the highway, exclusive of frontage roads, auxiliary lanes, and ramps.

(c) Interstate System means the National System of Interstate and Defense Highways described in section 103(d) of title 23 U.S.C.

(d) Primary system means the Federal-aid highway system described in section 103(b) of title 23 U.S.C.

(e) Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(f) Maintain means to allow to exist.

(g) Scenic area means any area of particular scenic beauty or historical significance as determined by the Federal, State, or local officials having jurisdiction thereof, and includes interests in land which have been acquired for the restoration, preservation, and enhancement of scenic beauty.

(h) Parkland means any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.

(i) Federal or State law means a Federal or State constitutional provision or statute, or an ordinance, rule, or regulation enacted or adopted by a State or Federal agency or a political subdivision of a State pursuant to a Federal or State constitution or statute.

(j) Visible means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

(k) Freeway means a divided arterial highway for through traffic with full control of access.

(l) Rest area means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control for the convenience of the traveling public.

(m) Directional and official signs and notices includes only official signs and notices, public utility signs, service club and religious notices, public service signs, and directional signs.

(n) Official signs and notices means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to

and in accordance with direction or authorization contained in Federal, State, or local law for the purposes of carrying out an official duty or responsibility. Historical markers authorized by State law and erected by State or local government agencies or nonprofit historical societies may be considered official signs.

(o) Public utility signs means warning signs, informational signs, notices, or markers which are customarily erected and maintained by publicly or privately owned public utilities, as essential to their operations.

(p) Service club and religious notices means signs and notices, whose erection is authorized by law, relating to meetings of nonprofit service clubs or charitable associations, or religious services, which signs do not exceed 8 square feet in area.

(q) Public service signs means signs located on school bus stop shelters, which signs:

(1) Identify the donor, sponsor, or contributor of said shelters;

(2) Contain public service messages, which shall occupy not less than 50 percent of the area of the sign;

(3) Contain no other message;

(4) Are located on schoolbus shelters which are authorized or approved by city, county, or State law, regulation, or ordinance, and at places approved by the city, county, or State agency controlling the highway involved; and

(5) May not exceed 32 square feet in area. Not more than one sign on each shelter shall face in any one direction.

(r) Directional signs means signs containing directional information about public places owned or operated by Federal, State, or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public.

(s) State means any one of the 50 States, the District of Columbia, or Puerto Rico.

(t) Urban area means an urbanized area or, in the case of an urbanized area encompassing more than one State, that part of the urbanized areas in each such State, or an urban place as designated by the Bureau of the Census having a population of five thousand 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 Secretary. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of the Census.

Credits

[38 FR 16044, June 30, 1973, as amended at 40 FR 21934, May 20, 1975]
SOURCE: 38 FR 16044, June 20, 1973, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131, 315, 49 U.S.C. 1651; 49 CFR 1.48(b).

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Subpart B. National Standards for Directional and Official Signs (Refs & Annos)

23 C.F.R. § 750.154

§ 750.154 Standards for directional signs.

Currentness

The following apply only to directional signs:

(a) General. The following signs are prohibited:

(1) Signs advertising activities that are illegal under Federal or State laws or regulations in effect at the location of those signs or at the location of those activities.

(2) Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.

(3) Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.

(4) Obsolete signs.

(5) Signs which are structurally unsafe or in disrepair.

(6) Signs which move or have any animated or moving parts.

(7) Signs located in rest areas, parklands or scenic areas.

(b) Size.

(1) No sign shall exceed the following limits:

(i) Maximum area--150 square feet.

(ii) Maximum height--20 feet.

(iii) Maximum length--20 feet.

(2) All dimensions include border and trim, but exclude supports.

(c) Lighting. Signs may be illuminated, subject to the following:

(1) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited.

(2) Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(3) No sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal.

(d) Spacing.

(1) Each location of a directional sign must be approved by the State highway department.

(2) No directional sign may be located within 2,000 feet of an interchange, or intersection at grade along the Interstate System or other freeways (measured along the Interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).

(3) No directional sign may be located within 2,000 feet of a rest area, parkland, or scenic area.

(4)(i) No two directional signs facing the same direction of travel shall be spaced less than 1 mile apart;

(ii) Not more than three directional signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity;

(iii) Signs located adjacent to the Interstate System shall be within 75 air miles of the activity; and

(iv) Signs located adjacent to the primary system shall be within 50 air miles of the activity.

(e) Message content. The message on directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit numbers. Descriptive words or phrases, and pictorial or photographic representations of the activity or its environs are prohibited.

(f) Selection method and criteria.

(1) Privately owned activities or attractions eligible for directional signing are limited to the following: natural phenomena; scenic attractions; historic, educational, cultural, scientific, and religious sites; and outdoor recreational areas.

(2) To be eligible, privately owned attractions or activities must be nationally or regionally known, and of outstanding interest to the traveling public.

(3) Each State shall develop specific selection methods and criteria to be used in determining whether or not an activity qualifies for this type of signing. A statement as to selection methods and criteria shall be furnished to the Secretary of Transportation before the State permits the erection of any such signs under section 131(c) of title 23, U.S.C., and this part.

SOURCE: 38 FR 16044, June 20, 1973, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131, 315, 49 U.S.C. 1651; 49 CFR 1.48(b).

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23 C.F.R. § 750.155

§ 750.155 State standards.

Currentness

This part does not prohibit a State from establishing and maintaining standards which are more restrictive with respect to directional and official signs and notices along the Federal-aid highway systems than these national standards.

Credits

[38 FR 16044, June 20, 1973, as amended at 40 FR 21934, May 20, 1975]
SOURCE: 38 FR 16044, June 20, 1973, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131, 315, 49 U.S.C. 1651; 49 CFR 1.48(b).

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23 C.F.R. § 750.301

§ 750.301 Purpose.

Currentness

To prescribe the Federal Highway Administration (FHWA) policies relating to Federal participation in the costs of acquiring the property interests necessary for removal of nonconforming advertising signs, displays and devices on the Federal-aid Primary and Interstate Systems, including toll sections on su
Federal funds participated in the construction thereof. This regulation should not be construed to authorize any additional rights in eminent domain not already existing under State law or under 23 U.S.C. 131(g).
SOURCE: 38 FR 16044, June 20, 1973; 39 FR 27436, July 29, 1974, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315; 23 CFR 1.32 and 1.48(b).

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Subpart D. Outdoor Advertising (Acquisition of Rights of Sign and Sign Site Owners) (Refs & Annos)

23 C.F.R. § 750.302

§ 750.302 Policy.

Currentness

(a) Just compensation shall be paid for the rights and interests of the sign and site owner in those outdoor advertising signs, displays, or devices which are lawfully existing under State law, in conformance with the terms of 23 U.S.C. 131.

(b)(1) Federal reimbursement will be made on the basis of 75 percent of the acquisition, removal and incidental costs legally incurred or obligated by the State.

(2) Federal funds will participate in 100 percent of the costs of removal of those signs which were removed prior to January 4, 1975, by relocation, pursuant to the provisions of 23 CFR § 750.305(a)(2), and which are required to be removed as a result of the amendments made to 23 U.S.C. 131 by the Federal–Aid Highway Amendments of 1974, Pub.L. 93–643, section 109, January 4, 1975. Such signs must have been relocated to a legal site, must have been legally maintained since the relocation, and must not have been substantially changed, as defined by the State maintenance standards, issued pursuant to 23 CFR 750.707(b).

(c) Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651, et seq.) applies except where complete conformity would defeat the purposes set forth in 42 U.S.C. 4651, would impede the expeditious implementation of the sign removal program or would increase administrative costs out of proportion to the cost of the interests being acquired or extinguished.

(d) Projects for the removal of outdoor advertising signs including hardship acquisitions should be programed and authorized in accordance with normal program procedures for right-of-way projects.

Credits

[39 FR 27436, July 29, 1974; 39 FR 30349, Aug. 22, 1974, as amended at 41 FR 31198, July 27, 1976]
SOURCE: 38 FR 16044, June 20, 1973; 39 FR 27436, July 29, 1974, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315; 23 CFR 1.32 and 1.48(b).

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Current through December 26, 2013; 78 FR 78691

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Subpart D. Outdoor Advertising (Acquisition of Rights of Sign and Sign Site Owners) (Refs & Annos)

23 C.F.R. § 750.303

§ 750.303 Definitions.

Currentness

(a) Sign. An outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard or other thing which is designed, intended of the advertising or informative contents of which is visible from any place on the main-traveled way of the Interstate or Primary Systems, whether the san
installation.

(b) Lease (license, permit, agreement, contract or easement). An agreement, oral or in writing, by which possession or use of land or interests therein is given by the owner or other person to another person for a specified purpose.

(c) Leasehold value. The leasehold value is the present worth of the difference between the contractual rent and the current market rent at the time of the appraisal.

(d) Illegal sign. One which was erected and/or maintained in violation of State law.

(e) Nonconforming sign. One which was lawfully erected, but which does not comply with the provisions of State law or State regulations passed at a later date or which later fails to comply with State law or State regulations due to changed conditions. Illegally erected or maintained signs are not nonconforming signs.

(f) 1966 inventory. The record of the survey of advertising signs and junkyards compiled by the State highway department.

(g) Abandoned sign. One in which no one has an interest, or as defined by State law.
SOURCE: 38 FR 16044, June 20, 1973; 39 FR 27436, July 29, 1974, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315; 23 CFR 1.32 and 1.48(b).

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23 C.F.R. § 750.304

§ 750.304 State policies and procedures.

Currentness

The State's written policies and operating procedures for implementing its sign removal program under State law and complying with 23 U.S.C. 131 and its proposed time schedule for sign removal and procedure for reporting its accomplishments shall be submitted to the FHWA for approval within 90 days of the date of this regulation. This statement should be supported by the State's regulations implementing its program. Revisions to the State's policies and procedures shall be submitted to the FHWA for approval. The statement should contain provisions for the review of its policies and procedure to meet changing conditions, adoption of improved procedures, and for internal review to assure compliance. The statement shall include as a minimum the following:

(a) Project priorities. The following order of priorities is recommended.

(1) Illegal and abandoned signs.

(2) Hardship situations.

(3) Nominal value signs.

(4) Signs in areas which have been designated as scenic under authority of State law.

(5) Product advertising on:

(i) Rural interstate highway.

(ii) Rural primary highway.

(iii) Urban areas.

(6) Nontourist-oriented directional advertising.

(7) Tourist-oriented directional advertising.

(b) Programing.

(1) A sign removal project may consist of any group of proposed sign removals. The signs may be those belonging to one company or those located along a single route, all of the signs in a single county or other locality, hardship situations, individually or grouped, such as those involving vandalized signs, or all of a sign owner's signs in a given State or area, or any similar grouping.

(2) A project for sign removal on other than a Federal-aid primary route basis e.g., a countywide project or a project involving only signs owned by one company, should be identified as CAF–000B( ), continuing the numbering sequence which began with the sign inventory project in 1966.

(3) Where it would not interfere with the State's operations, the State should program sign removal projects to minimize disruption of business.

(c) Valuation and review methods--

(1) Schedules--formulas. Schedules, formulas or other methods to simplify valuation of signs and sites are recommended for the purpose of minimizing administrative and legal expenses necessarily involved in determining just compensation by individual appraisals and litigation. They do not purport to be a basis for the determination of just compensation under eminent domain.

(2) Appraisals. Where appropriate, the State may use its approved appraisal report forms including those for abbreviated or short form appraisals. Where a sign or site owner does not accept the amount computed under an approved schedule, formula, or other simplified method, an appraisal shall be utilized.

(3) Leaseholds. When outdoor advertising signs and sign sites involve a leasehold value, the State's procedures should provide for determining value in the same manner as any other real estate leasehold that has value to the lessee.

(4) Severance damages. The State has the responsibility of justifying the recognition of severance damages pursuant to 23 CFR 710.304(h), and the law of the State before Federal participation will be allowed. Generally, Federal participation will not be allowed in the payment of severance damages to remaining signs, or other property of a sign company alleged to be due to the taking of certain of the company's signs. Unity of use of the separate properties, as required by applicable principles of eminent domain law, must be shown to exist before participation in severance damages will be allowed. Moreover, the value of the remaining signs or other real property must be diminished by virtue of the taking of such signs. Payments for severance damages to economic plants or loss of business profits are not compensable. Severance damage cases must be submitted to the FHWA for prior concurrence, together with complete legal and appraisal justification for payment of these damages. To assist the FHWA in its evaluation, the following data will accompany any submission regarding severance:

(i) One copy of each appraisal in which this was analyzed. One copy of the State's review appraiser analysis and determination of market value.

(ii) A plan or map showing the location of each sign.

(iii) An opinion by the State highway department's chief legal officer that severance is appropriate in accordance with State law together with a legal opinion that, in the instant case, the damages constitute severance as opposed to consequential damage as a matter of law. The opinion shall include a determination, and the basis therefor, that the specific taking of some of an outdoor advertiser's signs constitutes a distinct economic unit, and that unity of use of the separate properties in conformity with applicable principles of eminent domain law had been satisfactorily established. A legal memorandum must be furnished citing and discussing cases and other authorities supporting the State's position.

(5) Review of value estimates. All estimates of value shall be reviewed by a person other than the one who made the estimate. Appraisal reports shall be reviewed and approved prior to initiation of negotiations. All other estimates shall be reviewed before the agreement becomes final.

(d) Nominal value plan.

(1) This plan may provide for the removal costs of eligible nominal value signs and for payments up to $250 for each nonconforming sign, and up to $100 for each nonconforming sign site.

(2) The State's procedures may provide for negotiations for sign sites and sign removals to be accomplished simultaneously without prior review.

(3) Releases or agreements executed by the sign and/or site owner should include the identification of the sign, statement of ownership, price to be paid, interest acquired, and removal rights.

(4) It is not expected that salvage value will be a consideration in most acquisitions; however, the State's procedures may provide that the sign may be turned over to the sign owner, site owner, contractor, or individual as all or a part of the consideration for its removal, without any project credits.

(5) Programing and authorizations will be in accord with § 750.308 of this regulation. A detailed estimate of value of each individual sign is not necessary. The project may be programed and authorized as one project.

(e) Sign removal. The State's procedural statement should include provision for:

(1) Owner retention.

(2) Salvage value.

(3) State removal.

Credits

[39 FR 27436, July 29, 1974; 42 FR 30835, June 17, 1977; 50 FR 34093, Aug. 23, 1985]
SOURCE: 38 FR 16044, June 20, 1973; 39 FR 27436, July 29, 1974, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315; 23 CFR 1.32 and 1.48(b).

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23 C.F.R. § 750.305

§ 750.305 Federal participation.

Currentness

(a) Federal funds may participate in:

(1) Payments made to a sign owner for his right, title and interest in a sign, and where applicable, his leasehold value in a sign site, and to a site owner for his right and interest in a site, which is his right to erect and maintain the existing nonconforming sign on such site.

(2) The cost of relocating a sign to the extent of the cost to acquire the sign, less salvage value if any.

(3) A duplicate payment for the site owner's interest of $2,500 or less because of a bona fide error in ownership, provided the State has followed its title search procedures as set forth in its policy and procedure submission.

(4) The cost of removal of signs, partially completed sign structures, supporting poles, abandoned signs and those which are illegal under State law within the controlled areas, provided such costs are incurred in accordance with State law. Removal may be by State personnel on a force account basis or by contract. Documentation for Federal participation in such removal projects should be in accord with the State's normal force account and contractual reimbursement procedures. The State should maintain a record of the number of signs removed. These data should be retained in project records and reported on the periodic report required under § 750.308 of this regulation.

(5) Signs materially damaged by vandals. Federal funds shall be limited to the Federal pro-rata share of the fair market value of the sign immediately before the vandalism occurred minus the estimated cost of repairing and reerecting the sign. If the State chooses, it may use its FHWA approved nominal value plan procedure to acquire these signs.

(6) The cost of acquiring and removing completed sign structures which have been blank or painted out beyond the period of time established by the State for normal maintenance and change of message, provided the sign owner can establish that his nonconforming use was not abandoned or discontinued, and provided such costs are incurred in accordance with State law, or regulation. The evidence considered by the State as acceptable for establishing or showing that the nonconforming use has not been abandoned or voluntarily discontinued shall be set forth in the State's policy and procedures.

(7) In the event a sign was omitted in the 1966 inventory, and the State supports a determination that the sign was in existence prior to October 22, 1965, the costs are eligible for Federal participation.

(b) Federal funds may not participate in:

(1) Cost of title certificates, title insurance, title opinion or similar evidence or proof of title in connection with the acquisition of a landowner's right to erect and maintain a sign or signs when the amount of payment to the landowner for his interest is $2,500 or less, unless required by State law. However, Federal funds may

participate in the costs of securing some lesser evidence or proof of title such as searches and investigations by State highway department personnel to the extent necessary to determine ownership, affidavit of ownership by the owner, bill of sale, etc. The State's procedure for determining evidence of title should be set forth in the State's policy and procedure submission.

(2) Payments to a sign owner where the sign was erected without permission of the property owner unless the sign owner can establish his legal right to erect and maintain the sign. However, such signs may be removed by State personnel on a force account basis or by contract with Federal participation except where the sign owner reimburses the State for removal.

(3) Acquisition costs paid for abandoned or illegal signs, potential sign sites, or signs which were built during a period of time which makes them ineligible for compensation under 23 U.S.C. 131, or for rights in sites on which signs have been abandoned or illegally erected by a sign owner.

(4) The acquisition cost of supporting poles or partially completed sign structures in nonconforming areas which do not have advertising or informative content thereon unless the owner can show to the State's satisfaction he has not abandoned the structure. When the State has determined the sign structure has not been abandoned, Federal funds will participate in the acquisition of the structure, provided the cost are incurred in accordance with State law.

SOURCE: 38 FR 16044, June 20, 1973; 39 FR 27436, July 29, 1974, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315; 23 CFR 1.32 and 1.48(b).

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23 C.F.R. § 750.306

§ 750.306 Documentation for Federal participation.

Currentness

The following information concerning each sign must be available in the State's files to be eligible for Federal participation.

(a) Payment to sign owner.

(1) A photograph of the sign in place. Exceptions may be made in cases where in one transaction the State has acquired a number of a company's nominal value signs similar in size, condition and shape. In such cases, only a sample of representative photographs need be provided to document the type and condition of the signs.

(2) Evidence showing the sign was nonconforming as of the date of taking.

(3) Value documentation and proof of obligation of funds.

(4) Satisfactory indication of ownership of the sign and compensable interest therein (e.g., lease or other agreement with the property owner, or an affidavit, certification, or other such evidence of ownership).

(5) Evidence that the sign falls within one of the three categories shown in § 750.302 of this regulation. The specific category should be identified.

(6) Evidence that the right, title, or interest pertaining to the sign has passed to the State, or that the sign has been removed.

(b) Payment to the site owner.

(1) Evidence that an agreement has been reached between the State and owner.

(2) Value documentation and proof of obligation of funds.

(3) Satisfactory indication of ownership or compensable interest.

(c) In those cases where Federal funds participate in 100 percent of the cost of removal, the State file shall contain the records of the relocation made prior to January 4, 1975.

Credits

[39 FR 27436, July 29, 1974, as amended at 41 FR 31198, July 27, 1976]
SOURCE: 38 FR 16044, June 20, 1973; 39 FR 27436, July 29, 1974, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315; 23 CFR 1.32 and 1.48(b).

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23 C.F.R. § 750.307

§ 750.307 FHWA project approval.

Currentness

Authorization to proceed with acquisitions on a sign removal project shall not be issued until such time as the State has submitted to FHWA the following:

(a) A general description of the project.

(b) The total number of signs to be acquired.

(c) The total estimated cost of the sign removal project, including a breakdown of incidental, acquisition and removal costs.

SOURCE: 38 FR 16044, June 20, 1973; 39 FR 27436, July 29, 1974, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315; 23 CFR 1.32 and 1.48(b).

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23 C.F.R. § 750.308

§ 750.308 Reports.

Currentness

Periodic reports on site acquisitions and actual sign removals shall be submitted on FHWA Form 1424 and as prescribed. [1]

Credits

[39 FR 27436, July 29, 1974, as amended at 41 FR 9321, Mar. 4, 1976]
SOURCE: 38 FR 16044, June 20, 1973; 39 FR 27436, July 29, 1974, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315; 23 CFR 1.32 and 1.48(b).

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Footnotes

1 Forms are available at FHWA Division Offices located in each State.

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23 C.F.R. § 750.501

§ 750.501 Purpose.

Currentness

This subpart sets forth the procedures pursuant to which a State may, if it desires, seek an exemption from the acquisition requirements of 23 U.S.C. 131 for signs giving directional information about goods and services in the interest of the traveling public in defined areas which would suffer substantial economic hardship if such signs were removed. This exemption may be granted pursuant to the provisions of 23 U.S.C. 131(o).
SOURCE: 38 FR 16044, June 20, 1973; 41 FR 45827, Oct. 18, 1976, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315, 49 CFR 1.48, 23 CFR 1.32.

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23 C.F.R. § 750.502

§ 750.502 Applicability.

Currentness

The provisions of this subpart apply to signs adjacent to the Interstate and primary systems which are required to be controlled under 23 U.S.C. 131.
SOURCE: 38 FR 16044, June 20, 1973; 41 FR 45827, Oct. 18, 1976, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315, 49 CFR 1.48, 23 CFR 1.32.

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23 C.F.R. § 750.503

§ 750.503 Exemptions.

Currentness

(a) The Federal Highway Administration (FHWA) may approve a State's request to exempt certain nonconforming signs, displays, and devices (hereinafter called signs) within a defined area from being acquired under the provisions of 23 U.S.C. 131 upon a showing that removal would work a substantial economic hardship throughout that area. A defined area is an area with clearly established geographical boundaries defined by the State which the State can evaluate as an economic entity. Neither the States nor FHWA shall rely on individual claims of economic hardship. Exempted signs must:

(1) Have been lawfully erected prior to May 5, 1976, and must continue to be lawfully maintained.

(2) Continue to provide the directional information to goods and services offered at the same enterprise in the defined area in the interest of the traveling public that was provided on May 5, 1976. Repair and maintenance of these signs shall conform with the State's approved maintenance standards as required by subpart G of this part.

(b) To obtain the exemption permitted by 23 U.S.C. 131(o), the State shall establish:

(1) Its requirements for the directional content of signs to qualify the signs as directional signs to goods and services in the defined area.

(2) A method of economic analysis clearly showing that the removal of signs would work a substantial economic hardship throughout the defined area.

(c) In support of its request for exemption, the State shall submit to the FHWA:

(1) Its requirements and method (see § 750.503(b)).

(2) The limits of the defined area(s) requested for exemption, a listing of signs to be exempted, their location, and the name of the enterprise advertised on May 5, 1976.

(3) The application of the requirements and method to the defined areas, demonstrating that the signs provide directional information to goods and services of interest to the traveling public in the defined area, and that removal would work a substantial economic hardship in the defined area(s).

(4) A statement that signs in the defined area(s) not meeting the exemption requirements will be removed in accordance with State law.

(5) A statement that the defined area will be reviewed and evaluated at least every three (3) years to determine if an exemption is still warranted.

(d) The FHWA, upon receipt of a State's request for exemption, shall prior to approval:

(1) Review the State's requirements and methods for compliance with the provisions of 23 U.S.C. 131 and this subpart.

(2) Review the State's request and the proposed exempted area for compliance with State requirements and methods.

(e) Nothing herein shall prohibit the State from acquiring signs in the defined area at the request of the sign owner.

(f) Nothing herein shall prohibit the State from imposing or maintaining stricter requirements.

SOURCE: 38 FR 16044, June 20, 1973; 41 FR 45827, Oct. 18, 1976, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315, 49 CFR 1.48, 23 CFR 1.32.

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23 C.F.R. § 750.701

§ 750.701 Purpose.

Currentness

This subpart prescribes the Federal Highway Administration (FHWA) policies and requirements relating to the effective control of outdoor advertising under 23 U.S.C. 131. The purpose of these policies and requirements is to assure that there is effective State control of outdoor advertising in areas adjacent to Interstate and Federal-aid primary highways. Nothing in this subpart shall be construed to prevent a State from establishing more stringent outdoor advertising control requirements along Interstate and Primary Systems than provided herein.
SOURCE: 38 FR 16044, June 20, 1973; 40 FR 42844, Sept. 16, 1975, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315; 49 CFR 1.48.

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23 C.F.R. § 750.702

§ 750.702 Applicability.

Currentness

The provisions of this subpart are applicable to all areas adjacent to the Federal-aid Interstate and Primary Systems, including toll sections thereof, except that within urban areas, these provisions apply only within 660 feet of the nearest edge of the right-of-way. These provisions apply regardless of whether Federal funds participated in the costs of such highways. The provisions of this subpart do not apply to the Federal-aid Secondary or Urban Highway System.

SOURCE: 38 FR 16044, June 20, 1973; 40 FR 42844, Sept. 16, 1975, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315; 49 CFR 1.48.

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23 C.F.R. § 750.703

§ 750.703 Definitions.

Currentness

The terms as used in this subpart are defined as follows:

(a) Commercial and industrial zones are those districts established by the zoning authorities as being most appropriate for commerce, industry, or trade, regardless of how labeled. They are commonly categorized as commercial, industrial, business, manufacturing, highway service or highway business (when these latter are intended for highway-oriented business), retail, trade, warehouse, and similar classifications.

(b) Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(c) Federal-aid Primary Highway means any highway on the system designated pursuant to 23 U.S.C. 103(b).

(d) Interstate Highway means any highway on the system defined in and designated, pursuant to 23 U.S.C. 103(e).

(e) Illegal sign means one which was erected or maintained in violation of State law or local law or ordinance.

(f) Lease means an agreement, license, permit, or easement, oral or in writing, by which possession or use of land or interests therein is given for a specified purpose, and which is a valid contract under the laws of a State.

(g) Maintain means to allow to exist.

(h) 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.

(i) Sign, display or device, hereinafter referred to as "sign," means an outdoor advertising sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of the Interstate or Primary Systems, whether the same be permanent or portable installation.

(j) State law means a State constitutional provision or statute, or an ordinance, rule or regulation, enacted or adopted by a State.

(k) Unzoned area means an area where there is no zoning in effect. It does not include areas which have a rural zoning classification or land uses established by zoning variances or special exceptions.

(l) Unzoned commercial or industrial areas are unzoned areas actually used for commercial or industrial purposes as defined in the agreements made between the Secretary, U.S. Department of Transportation (Secretary), and each State pursuant to 23 U.S.C. 131(d).

(m) Urban area is as defined in 23 U.S.C. 101(a).

(n) Visible means capable of being seen, whether or not readable, without visual aid by a person of normal visual acuity.
SOURCE: 38 FR 16044, June 20, 1973; 40 FR 42844, Sept. 16, 1975, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315; 49 CFR 1.48.

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23 C.F.R. § 750.704

§ 750.704 Statutory requirements.

Currentness

(a) 23 U.S.C. 131 provides that signs adjacent to the Interstate and Federal-aid Primary Systems which are visible from the main-traveled way and within 660 feet of the nearest edge of the right-of-way, and those additional signs beyond 660 feet outside of urban areas which are visible from the main-traveled way and erected with the purpose of their message being read from such main-traveled way, shall be limited to the following:

(1) Directional and official signs and notice which shall conform to national standards promulgated by the Secretary in subpart B, part 750, chapter I, 23 CFR, National Standards for Directional and Official Signs;

(2) Signs advertising the sale or lease of property upon which they are located;

(3) Signs advertising activities conducted on the property on which they are located;

(4) Signs within 660 feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and Federal-aid Primary Systems which are zoned industrial or commercial under the authority of State law;

(5) Signs within 660 feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and Federal-aid Primary Systems which are unzoned commercial or industrial areas, which areas are determined by agreement between the State and the Secretary; and

(6) Signs lawfully in existence on October 22, 1965, which are determined to be landmark signs.

(b) 23 U.S.C. 131(d) provides that signs in § 750.704(a)(4) and (5) must comply with size, lighting, and spacing requirements, to be determined by agreement between the State and the Secretary.

(c) 23 U.S.C. 131 does not permit signs to be located within zoned or unzoned commercial or industrial areas beyond 660 feet of the right-of-way adjacent to the Interstate or Federal-aid Primary System, outside of urban areas.

(d) 23 U.S.C. 131 provides that signs not permitted under § 750.704 of this regulation must be removed by the State.
SOURCE: 38 FR 16044, June 20, 1973; 40 FR 42844, Sept. 16, 1975, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315; 49 CFR 1.48.

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23 C.F.R. § 750.705

§ 750.705 Effective control.

Currentness

In order to provide effective control of outdoor advertising, the State must:

(a) Prohibit the erection of new signs other than those which fall under § 750.704(a)(1) through (6);

(b) Assure that signs erected under § 750.704(a)(4) and (5) comply, at a minimum, with size, lighting, and spacing criteria contained in the agreement between the Secretary and the State;

(c) Assure that signs erected under § 750.704(a)(1) comply with the national standards contained in subpart B, part 750, chapter I, 23 CFR;

(d) Remove illegal signs expeditiously;

(e) Remove nonconforming signs with just compensation within the time period set by 23 U.S.C. 131 (subpart D, part 750, chapter I, 23 CFR, sets forth policies for the acquisition and compensation for such signs);

(f) Assure that signs erected under § 750.704(a)(6) comply with § 750.710, Landmark Signs, if landmark signs are allowed;

(g) Establish criteria for determining which signs have been erected with the purpose of their message being read from the main-traveled way of an Interstate or primary highway, except where State law makes such criteria unnecessary. Where a sign is erected with the purpose of its message being read from two or more highways, one or more of which is a controlled highway, the more stringent of applicable control requirements will apply;

(h) Develop laws, regulations, and procedures to accomplish the requirements of this subpart;

(i) Establish enforcement procedures sufficient to discover illegally erected or maintained signs shortly after such occurrence and cause their prompt removal; and

(j) Submit regulations and enforcement procedures to FHWA for approval.

Credits

[40 FR 42844, Sept. 16, 1975; 40 FR 49777, Oct. 24, 1975]
SOURCE: 38 FR 16044, June 20, 1973; 40 FR 42844, Sept. 16, 1975, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315; 49 CFR 1.48.

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23 C.F.R. § 750.706

§ 750.706 Sign control in zoned and unzoned commercial and industrial areas.

Currentness

The following requirements apply to signs located in zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way adjacent to the Interstate and Federal-aid primary highways.

(a) The State by law or regulation shall, in conformity with its agreement with the Secretary, set criteria for size, lighting, and spacing of outdoor advertising signs located in commercial or industrial zoned or unzoned areas, as defined in the agreement, adjacent to Interstate and Federal-aid primary highways. If the agreement between the Secretary and the State includes a grandfather clause, the criteria for size, lighting, and spacing will govern only those signs erected subsequent to the date specified in the agreement. The States may adopt more restrictive criteria than are presently contained in agreements with the Secretary.

(b) Agreement criteria which permit multiple sign structures to be considered as one sign for spacing purposes must limit multiple sign structures to signs which are physically contiguous, or connected by the same structure or cross-bracing, or located not more than 15 feet apart at their nearest point in the case of back-to-back or "V" type signs.

(c) Where the agreement and State law permits control by local zoning authorities, these controls may govern in lieu of the size, lighting, and spacing controls set forth in the agreement, subject to the following:

(1) The local zoning authority's controls must include the regulation of size, of lighting and of spacing of outdoor advertising signs, in all commercial and industrial zones.

(2) The regulations established by local zoning authority may be either more restrictive or less restrictive than the criteria contained in the agreement, unless State law or regulations require equivalent or more restrictive local controls.

(3) If the zoning authority has been delegated, extraterritorial, jurisdiction under State law, and exercises control of outdoor advertising in commercial and industrial zones within this extraterritorial jurisdiction, control by the zoning authority may be accepted in lieu of agreement controls in such areas.

(4) The State shall notify the FHWA in writing of those zoning jurisdictions wherein local control applies. It will not be necessary to furnish a copy of the zoning ordinance. The State shall periodically assure itself that the size, lighting, and spacing control provisions of zoning ordinances accepted under this section are actually being enforced by the local authorities.

(5) Nothing contained herein shall relieve the State of the responsibility of limiting signs within controlled areas to commercial and industrial zones.

SOURCE: 38 FR 16044, June 20, 1973; 40 FR 42844, Sept. 16, 1975, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315; 49 CFR 1.48.

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23 C.F.R. § 750.707

§ 750.707 Nonconforming signs.

Currentness

(a) General. The provisions of § 750.707 apply to nonconforming signs which must be removed under State laws and regulations implementing 23 U.S.C. 131. These provisions also apply to nonconforming signs located in commercial and industrial areas within 660 feet of the nearest edge of the right-of-way which come under the so-called grandfather clause contained in State–Federal agreements. These provisions do not apply to conforming signs regardless of when or where they are erected.

(b) Nonconforming signs. A nonconforming sign is a sign which was lawfully erected but does not comply with the provisions of State law or State regulations passed at a later date or later fails to comply with State law or State regulations due to changed conditions. Changed conditions include, for example, signs lawfully in existence in commercial areas which at a later date become noncommercial, or signs lawfully erected on a secondary highway later classified as a primary highway.

(c) Grandfather clause. At the option of the State, the agreement may contain a grandfather clause under which criteria relative to size, lighting, and spacing of signs in zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way apply only to new signs to be erected after the date specified in the agreement. Any sign lawfully in existence in a commercial or industrial area on such date may remain even though it may not comply with the size, lighting, or spacing criteria. This clause only allows an individual sign at its particular location for the duration of its normal life subject to customary maintenance. Preexisting signs covered by a grandfather clause, which do not comply with the agreement criteria have the status of nonconforming signs.

(d) Maintenance and continuance. In order to maintain and continue a nonconforming sign, the following conditions apply:

(1) The sign must have been actually in existence at the time the applicable State law or regulations became effective as distinguished from a contemplated use such as a lease or agreement with the property owner. There are two exceptions to actual existence as follows:

(i) Where a permit or similar specific State governmental action was granted for the construction of a sign prior to the effective date of the State law or regulations and the sign owner acted in good faith and expended sums in reliance thereon. This exception shall not apply in instances where large numbers of permits were applied for and issued to a single sign owner, obviously in anticipation of the passage of a State control law.

(ii) Where the State outdoor advertising control law or the Federal–State agreement provides that signs in commercial and industrial areas may be erected within six (6) months after the effective date of the law or agreement provided a lease dated prior to such effective date was filed with the State and recorded within thirty (30) days following such effective date.

(2) There must be existing property rights in the sign affected by the State law or regulations. For example, paper signs nailed to trees, abandoned signs and the like are not protected.

(3) The sign may be sold, leased, or otherwise transferred without affecting its status, but its location may not be changed. A nonconforming sign removed as a result of a right-of-way taking or for any other reason may be relocated to a conforming area but cannot be reestablished at a new location as a nonconforming use.

(4) The sign must have been lawful on the effective date of the State law or regulations, and must continue to be lawfully maintained.

(5) The sign must remain substantially the same as it was on the effective date of the State law or regulations. Reasonable repair and maintenance of the sign, including a change of advertising message, is not a change which would terminate nonconforming rights. Each State shall develop its own criteria to determine when customary maintenance ceases and a substantial change has occurred which would terminate nonconforming rights.

(6) The sign may continue as long as it is not destroyed, abandoned, or discontinued. If permitted by State law and reerected in kind, exception may be made for signs destroyed due to vandalism and other criminal or tortious acts.

(i) Each state shall develop criteria to define destruction, abandonment and discontinuance. These criteria may provide that a sign which for a designated period of time has obsolete advertising matter or is without advertising matter or is in need of substantial repair may constitute abandonment or discontinuance. Similarly, a sign damaged in excess of a certain percentage of its replacement cost may be considered destroyed.

(ii) Where an existing nonconforming sign ceases to display advertising matter, a reasonable period of time to replace advertising content must be established by each State. Where new content is not put on a structure within the established period, the use of the structure as a nonconforming outdoor advertising sign is terminated and shall constitute an abandonment or discontinuance. Where a State establishes a period of more than one (1) year as a reasonable period for change of message, it shall justify that period as a customary enforcement practice within the State. This established period may be waived for an involuntary discontinuance such as the closing of a highway for repair in front of the sign.

(c) Just compensation. The States are required to pay just compensation for the removal of nonconforming lawfully existing signs in accordance with the terms of 23 U.S.C. 131 and the provisions of subpart D, part 750, chapter I, 23 CFR. The conditions which establish a right to maintain a nonconforming sign and therefore the right to compensation must pertain at the time it is acquired or removed.
SOURCE: 38 FR 16044, June 20, 1973; 40 FR 42844, Sept. 16, 1975, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315; 49 CFR 1.48.

Notes of Decisions (23)

Current through December 26, 2013; 78 FR 78691

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Subchapter H. Right–Of–Way and Environment
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Subpart G. Outdoor Advertising Control (Refs & Annos)

23 C.F.R. § 750.708

§ 750.708 Acceptance of state zoning.

Currentness

(a) 23 U.S.C. 131(d) provide that signs "may be erected and maintained within 660 feet of the nearest edge of the right-of-way within areas . . . which are zoned industrial or commercial under authority of State law." Section 131(d) further provides, "The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act."

(b) State and local zoning actions must be taken pursuant to the State's zoning enabling statute or constitutional authority and in accordance therewith. Action which is not a part of comprehensive zoning and is created primarily to permit outdoor advertising structures, is not recognized as zoning for outdoor advertising control purposes.

(c) Where a unit of government has not zoned in accordance with statutory authority or is not authorized to zone, the definition of an unzoned commercial or industrial area in the State–Federal agreement will apply within that political subdivision or area.

(d) A zone in which limited commercial or industrial activities are permitted as an incident to other primary land uses is not considered to be a commercial or industrial zone for outdoor advertising control purposes.

SOURCE: 38 FR 16044, June 20, 1973; 40 FR 42844, Sept. 16, 1975, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315; 49 CFR 1.48.

Notes of Decisions (15)

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23 C.F.R. § 750.709

§ 750.709 On-property or on-premise advertising.

Currentness

(a) A sign which consists solely of the name of the establishment or which identifies the establishment's principal or accessory products or services offered on the property is an on-property sign.

(b) When a sign consists principally of brand name or trade name advertising and the product or service advertised is only incidental to the principal activity, or if it brings rental income to the property owner, it shall be considered the business of outdoor advertising and not an on-property sign.

(c) A sale or lease sign which also advertises any product or service not conducted upon and unrelated to the business or selling or leasing the land on which the sign is located is not an on-property sign.

(d) Signs are exempt from control under 23 U.S.C. 131 if they solely advertise the sale or lease of property on which they are located or advertise activities conducted on the property on which they are located. These signs are subject to regulation (subpart A, part 750, chapter I, 23 CFR) in those States which have executed a bonus agreement, 23 U.S.C. 131(j). State laws or regulations shall contain criteria for determining exemptions. These criteria may include:

(1) A property test for determining whether a sign is located on the same property as the activity or property advertised; and

(2) A purpose test for determining whether a sign has as its sole purpose the identification of the activity located on the property or its products or services, or the sale or lease of the property on which the sign is located.

(3) The criteria must be sufficiently specific to curb attempts to improperly qualify outdoor advertising as "on-property" signs, such as signs on narrow strips of land contiguous to the advertised activity when the purpose is clearly to circumvent 23 U.S.C. 131.

SOURCE: 38 FR 16044, June 20, 1973; 40 FR 42844, Sept. 16, 1975, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315; 49 CFR 1.48.

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23 C.F.R. § 750.710

§ 750.710 Landmark signs.

Currentness

(a) 23 U.S.C. 131(c) permits the existence of signs lawfully in existence on October 22, 1965, determined by the State, subject to the approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance, the preservation of which is consistent with the purpose of 23 U.S.C. 131.

(b) States electing to permit landmark signs under 23 U.S.C. 131(c) shall submit a one-time list to the Federal Highway Administration for approval. The list should identify each sign as being in the original 1966 inventory. In the event a sign was omitted in the 1966 inventory, the State may submit other evidence to support a determination that the sign was in existence on October 22, 1965.

(c) Reasonable maintenance, repair, and restoration of a landmark sign is permitted. Substantial change in size, lighting, or message content will terminate its exempt status. SOURCE: 38 FR 16044, June 20, 1973; 40 FR 42844, Sept. 16, 1975, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315; 49 CFR 1.48.

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23 C.F.R. § 750.711

§ 750.711 Structures which have never displayed advertising material.

Currentness

Structures, including poles, which have never displayed advertising or informative content are subject to control or removal when advertising content visible from the main -traveled way is added or affixed. When this is done, an "outdoor advertising sign" has then been erected which must comply with the State law in effect on that date.
SOURCE: 38 FR 16044, June 20, 1973; 40 FR 42844, Sept. 16, 1975, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315; 49 CFR 1.48.

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Subpart G. Outdoor Advertising Control (Refs & Annos)

23 C.F.R. § 750.712

§ 750.712 Reclassification of signs.

Currentness

Any sign lawfully erected after the effective date of a State outdoor advertising control law which is reclassified from legal-conforming to nonconforming and subject to removal under revised State statutes or regulations and policy pursuant to this regulation is eligible for Federal participation in just compensation payments and other eligible costs.

SOURCE: 38 FR 16044, June 20, 1973; 40 FR 42844, Sept. 16, 1975, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315; 49 CFR 1.48.

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23 C.F.R. § 750.713

§ 750.713 Bonus provisions.

Currentness

23 U.S.C. 131(j) specifically provides that any State which had entered into a bonus agreement before June 30, 1965, will be entitled to remain eligible to receive bonus payments provided it continues to carry out its bonus agreement. Bonus States are not exempt from the other provisions of 23 U.S.C. 131. If a State elects to comply with both programs, it must extend controls to the Primary System, and continue to carry out its bonus agreement along the Interstate System except where 23 U.S.C. 131, as amended, imposes more stringent requirements.
SOURCE: 38 FR 16044, June 20, 1973; 40 FR 42844, Sept. 16, 1975, unless otherwise noted.

AUTHORITY: 23 U.S.C. 131 and 315; 49 CFR 1.48.

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Code of Federal Regulations
Title 23. Highways
Chapter I. Federal Highway Administration, Department of Transportation
Subchapter H. Right–Of–Way and Environment
Part 751. Junkyard Control and Acquisition

C.F.R. T. 23, Ch. I, Subch. H, Pt. 751, Refs & Annos
Currentness

Authority: 23 U.S.C. 136 and 315, 42 U.S.C. 4321–4347 and 4601–4655, 23 CFR 1.32, 49 CFR 1.48.

Credits

Source: 40 FR 8551, Feb. 28, 1975, unless otherwise noted.

Current through December 26, 2013; 78 FR 78691

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COLORADO
Department of Transportation

Section 3
Federal State Agreements and FHWA Memoranda

Federal State Agreements with Colorado

July 9, 1971 / June 30, 1965

A G R E E M E N T

STATE OF COLORADO

FOR CARRYING OUT NATIONAL POLICY RELATIVE TO CONTROL OF OUTDOOR ADVERTISING IN AREAS ADJACENT TO THE NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS AND THE FEDERAL-AID PRIMARY SYSTEM

THIS AGREEMENT made and entered into this 9th day of July, 1971, by and between the United States of America represented by the Secretary of Transportation acting by and through the Federal Highway Administrator, hereinafter referred to as the "Administrator," and the State of Colorado, represented by the Department of Highways acting by and through its Executive Director, hereinafter referred to as the "State."

Witnesseth:

WHEREAS, Congress has declared that Outdoor Advertising in areas adjacent to the Interstate and Federal-aid primary systems should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel and to preserve natural beauty; and

WHEREAS, Section 131(d) of Title 23, United States Code, authorizes the Secretary of Transportation to enter into agreements with the several States to determine the size, lighting, and spacing of signs, displays, and devices, consistent with customary use, which may be erected and maintained within 660 feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and Federal-aid Primary Systems which are zoned industrial or commercial under authority of State law or in unzoned commercial or industrial areas, also to be determined by agreement; and

WHEREAS, the purpose of said agreement is to promote the reasonable, orderly, and effective display of outdoor advertising while remaining consistent with the national policy to protect the public investment in the Interstate and Federal-aid primary highways, to promote the safety and recreational value of public travel and to preserve natural beauty; and

WHEREAS, Section 131(b) of Title 23, United States Code, provides that Federal-aid highway funds apportioned on or after January 1, 1968 to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under Section 104 of Title 23, United States Code, until such time as such State shall provide for such effective control; and

WHEREAS, the State of Colorado desires to implement and carry out the provisions of Section 131 of Title 23, United States Code, and the national policy in order to remain eligible to receive the full amount of all Federal-aid highway funds to be apportioned to such State on or after January 1, 1968, under Section 104 of Title 23, United States Code; and

WHEREAS, the State of Colorado and the Federal Highway Administrator entered into an agreement dated June 30, 1965 whereby the State agreed to control the erection and maintenance of outdoor advertising signs,

displays, and devices in areas adjacent to the National System of Interstate and Defense Highways in accordance with the provisions of Section 131 of Title 23, United States Code, and the national standards as in effect on June 30, 1965; and

WHEREAS, Section 131(j) of Title 23, United States Code provides that a State shall be entitled to receive the bonus payments as set forth in the agreement provided the State maintains the control required under such agreement; and

WHEREAS, the State of Colorado elects to maintain the control as set forth in such agreement except where the control required by Section 131 of Title 23, United States Code, is more restrictive;

NOW THEREFORE, the parties hereto do mutually agree as follows:

Section I

1. Definitions

A. Act means Section 131 of Title 23, United States Code (1965) commonly referred to as Title I of the Highway Beautification Act of 1965.

B. Zoned commercial or industrial areas means those areas which are zoned for business, industry, commerce, or trade pursuant to a State or local zoning ordinance or regulation.

C. National System of Interstate and Defense Highways and Interstate System mean the system presently defined in and designated pursuant to subsection (d) of Section 103 of Title 23, United States Code.

D. Federal-aid primary highway means any highway within that portion of the State highway system as designated, or as may hereafter be so designated by the State, which has been approved by the Secretary of Transportation pursuant to subsection (b) of Section 103 of Title 23, United States Code.

E. Traveled way means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

F. 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 separated roadways for traffic in opposition directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

G. Sign means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or information contents of which is visible from any place on the main-traveled way of the Interstate or Federal-aid Primary Highway Systems.

H. Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish, but it shall not include any of the foregoing activities when performed as an incident to the change of advertising message or normal maintenance or repair of a sign structure.

I. Maintain means to allow to exist.

J. Safety rest area means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control, for the convenience of the traveling public.

K. Visible means that the advertising copy or informative contents are capable of being seen without visual aid by a person of normal visual acuity.

Section II. Scope of Agreement

This agreement shall apply to the following areas:

A. All commercial or industrial zones within the boundaries of incorporated municipalities, as those boundaries existed on September 21, 1959, and all other areas where the land use as of September 21, 1959, was clearly established by State law as industrial or commercial within 660 feet of the nearest edge of the right-of-way of all portions of the Interstate System within the State of Colorado in which the outdoor advertising signs may be visible from the main-traveled way of said system.

B. All zoned commercial and industrial areas within 660 feet of the portions of the Interstate System which are constructed upon right-of-way, any part of which was acquired on or before July 1, 1956, in which outdoor advertising signs may be visible from the main-traveled way of said system.

C. All zoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way of all portions of the Federal-aid primary system within the State of Colorado in which outdoor advertising signs may be visible from the main-traveled way of said system.

III. State Control

The State hereby agrees that, in all areas within the scope of this agreement, the State shall effectively control, or cause to be controlled, the erection and maintenance of outdoor advertising signs, displays, and devices erected subsequent to the effective date of this agreement other than those advertising the sale or lease of the property on which they are located, or activities conducted thereon, in accordance with the following criteria:

A. In zoned commercial and industrial areas, the State may notify the Administrator as notice of effective control that there has been established within such areas regulations which are enforced with respect to the size, lighting, and spacing of outdoor advertising signs consistent with the intent of the Highway Beautification Act of 1965 and with customary use. In such areas, the size, lighting, and spacing requirements set forth below shall not apply.

B. In all other zoned commercial and industrial areas, the criteria set forth below shall apply:

Size of Signs

1. The maximum area for any one sign shall be 1,200 square feet with a maximum height of 30 feet and maximum length of 60 feet, inclusive of any border and trim but excluding the base or apron, supports, and other

structural members.

2. The area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof which will encompass the entire sign.
3. The maximum size limitations shall apply to each side of a sign structure; and signs may be placed back-to-back, side-by-side, or in V-type construction with not more than two displays to each facing, and such sign structure shall be considered as one sign.

Spacing of Signs

1. Interstate and Federal-aid Primary Highways
   a. Signs may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness of an official traffic sign, signal, or device, obstruct or physically interfere with the driver's view of approaching, merging, or intersecting traffic.
2. Interstate Highways and Freeways on the Federal-aid Primary System
   a. No two structures shall be spaced less than 500 feet apart.
   b. Outside of incorporated villages and cities, no structure may be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety rest area. Said 500 feet 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.

3. Non-freeway Federal-aid Primary Highways

   a. Outside of incorporated villages and cities - no two structures shall be spaced less than 300 feet apart.

   b. Within incorporated villages and cities - no two structures shall be spaced less than 100 feet apart.

4. The above spacing-between-structures provisions do not apply to structures separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distances is visible from the highway at any one time.

5. Explanatory Notes

   a. Official and "on-premise" signs, as defined in Section 131(c) of Title 23, United States Code, and structures that are not lawfully maintained shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.

   b. The minimum distance between structures shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway and shall apply only to structures located on the same side of the highway.

Lighting

Signs may be illuminated, subject to the following restrictions:

1. Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.
2. Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the Interstate or Federal-aid primary highways and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.
3. No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.
4. All such lighting shall be subject to any other provisions relating to lighting of signs presently applicable to all highways under the jurisdiction of the State.

At any time that a bona fide county or local zoning authority adopts regulations which include the size, lighting, and spacing of outdoor advertising, the State may so notify the Administrator and control of outdoor advertising in the commercial or industrial zones within the geographical jurisdiction of said authority will transfer to subsection A of this section.

IV. Interpretation

The provisions contained herein shall constitute the standards for effective control of signs, displays, and devices within the scope of this agreement.

The provisions contained herein pertaining to the size, lighting, and spacing of outdoor advertising signs permitted in zoned commercial and industrial areas shall apply only to those signs erected subsequent to the effective date of this agreement except for those signs erected within 6 months after the effective date of this agreement in zoned commercial or industrial areas on land leased prior to such effective date, provided that a copy of such lease be filed with the State highway department within 30 days following such effective date.

In the event the provisions of the Highway Beautification Act of 1965 are amended by subsequent action of Congress or the State legislation is amended, the parties reserve the right to re-negotiate this agreement or to modify it to conform with any amendment.

VI. Effective Date

This Agreement shall have an effective date of July 9, 1971.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of July 9, 1971.

ATTEST:

Chief Clerk

STATE DEPARTMENT OF HIGHWAYS
STATE OF COLORADO

Executive Director

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION

By
Federal Highway Administrator

AGREEMENT
FOR CARRYING OUT THE NATIONAL POLICY RELATIVE
TO ADVERTISING ADJACENT TO THE NATIONAL
SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS

In order to promote the safety, convenience and enjoyment of public travel and the free flow of interstate commerce, and to protect the public investment in the National System of Interstate and Defense Highways, hereinafter referred to as the "Interstate System", the United States of America represented by the Secretary of Commerce acting through the Federal Highway Administrator, hereinafter referred to as the "Administrator", and the State of Colorado acting through its Department of Highways, hereinafter referred to as the "State", have entered into this Agreement.

I. DEFINITIONS.

A. The term "Act" means section 131 of title 23, United States Code (1958), as amended, 23 U.S.C. § 131 (Supp. III, 1961).

B. The term "National Standards" means the National Standards for Regulation by States of Outdoor Advertising Signs, Displays and Devices Adjacent to the National System of Interstate and Defense Highways promulgated by the Secretary of Commerce pursuant to the Act, 23 C.F.R. Part 20 (Supp. 1962).

C. Unless the context requires otherwise, the terms used herein shall have the same meaning as in the Act and the National Standards.

II. SCOPE OF AGREEMENT.

Except as otherwise expressly set forth herein, this Agreement shall apply to all areas adjacent to, and within 660 feet of the edge of the right-of-way of, all portions of the Interstate System within the State, the entire width of the right-of-way for which has been acquired after July 1, 1956, or may be acquired in the future. Such areas, not specifically exempted by the terms of this Agreement, are designated as "Adjacent Areas".

Neither this Agreement nor the National Standards shall apply to areas zoned commercial or industrial which are adjacent to segments of the Interstate System if those areas are within the September 21, 1959, boundaries of an incorporated municipality which has the authority to control or regulate the use of real property adjacent to the Interstate System, or if those areas were not within such a municipality on September 21, 1959, but on that date were clearly established by State law as commercial or industrial.

III. THE STATE'S OBLIGATION.

The State shall, in accordance with the terms of this Agreement, control, or cause to be controlled, the erection and maintenance of outdoor advertising signs, displays and devices in Adjacent Areas consistent with the terms of the Act and the National Standards. Nothing contained herein shall prohibit the State from controlling or regulating outdoor advertising signs to a degree greater than that required or contemplated by the Act and the National Standards.

IV. INCREASE IN FEDERAL SHARE PAYABLE.

When sufficient funds are appropriated and available for that purpose, the Federal share payable on account of any segment of the Interstate System provided for by sums authorized under section 108 of the Federal-aid Highway Act of 1956, as amended, to which the National Standards and this Agreement apply, shall be increased by one-half of one percent of the total cost thereof, subject to the condition that no additional cost incurred in carrying out this Agreement shall be included in that total cost upon which the increased share is calculated.

V. PAYMENT UPON EVIDENCE OF THE STATE'S COMPLIANCE.

Payment of the increased Federal share will be made by the Administrator with respect to an Interstate segment upon the submission by the State to the Administrator of a satisfactory showing that the State has fulfilled its obligations under this Agreement in connection with that segment, and that the State is continuing to carry out its obligations hereunder with respect to all other segments of the Interstate System to which this Agreement applies.

With the first request for payment of the increased Federal share the State will submit detailed maps in triplicate showing those portions of the Interstate System within its borders which have been completed to that date. The maps shall clearly indicate by means of color coding the portions of the Interstate System to which the national standards and this Agreement apply and those portions which are excluded from such application.

As other segments of the Interstate System are completed or added to the Interstate System, additional maps, similarly color coded, will be submitted showing the segments to which the National Standards and this Agreement apply.

VI. REMOVAL OF ADVERTISING SIGNS, DISPLAYS OR DEVICES.

A. No outdoor advertising sign, display, or device which is inconsistent with the Act or the National Standards shall be permitted in an adjacent area after July 1, 1969.

B. No part of the increased Federal share payable under the Act shall be paid on account of an Adjacent Area until outdoor advertising control in such area complies completely with the National Standards.

VII. FAILURE OF THE STATE TO PERFORM ITS OBLIGATIONS ASSUMED HEREUNDER.

If, after receiving the increased Federal payments with regard to an Adjacent Area, the State shall fail to perform its obligations assumed under this Agreement in conjunction with that area, the State expressly agrees that, if without good cause shown to the satisfaction of the Administrator, it fails to correct the defect within 30 days after the date of mailing by the Administrator of written notice thereof, it shall repay all increased Federal payments paid on account of such area. If such repayment is not made within a reasonable time, the State expressly authorizes the Administrator to withhold from the State an amount equal to such payments out of any Federal-aid highway funds due or that may become due to the State.

Notwithstanding any other provisions of this Agreement if the failure of the State to perform any obligation assumed hereunder is caused by a decision of a court of competent jurisdiction or by a ruling of the Attorney General of the State that the State is without legal authority to perform that obligation, the State shall not be required to repay all increased Federal payments made under this Agreement until 60 days have elapsed after the adjournment of the State legislative session next following such declaration or ruling.

VIII. REPAYMENT NECESSITATED BY CHANGES IN ZONING WITHIN INCORPORATED MUNICIPALITIES.

When an Adjacent Area within the boundaries of an incorporated municipality possessing authority to control the use of real property acent to the Interstate System, as those boundaries existed on September 21, 1959, is rezoned as commercial or industrial, the National Standards and this Agreement shall no longer apply thereto. The State expressly agrees that it shall repay all increased Federal payments paid on account of such area. If such repayment is not made within thirty days after it is requested, the State expressly authorizes the Administrator to withhold from the State an amount equal to such payments made out of any Federal-aid highway funds due or that may become due to the State.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of June 30, 1965.

DEPARTMENT OF HIGHWAYS

By _____

Name:

Title: Chief Engr.

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS

By _____

DATE: April 8, 2011
ENTITY: Office of Real Estate Services
SUBJECT: Installation of Wind Turbines and Solar Panels on Outdoor Advertising
LAW CITE: 23 U.S.C. 131; 23 C.F.R. 750

SUMMARY

Placement of wind turbines and solar panels on outdoor advertising to generate electricity can be consistent with the Highway Beautification Act. The alternative energy mechanisms may not, however, display logos or advertising or be made part of the message area. Additionally, State policies should prohibit attachment of alternative energy mechanisms to non-conforming signs, as this would constitute a substantial change in violation of 23 C.F.R. 750.707(d)(ii)(5). States considering the placement of these mechanisms on or near a billboard need to adopt policies and procedures for such installations.

U.S. Department of Transportation
Federal Highway Administration

Memorandum

Subject: **INFORMATION:** Installation of Wind Turbines and Solar Panels on Outdoor Advertising

Date: April 8, 2011

From: Nelson Castellanos
Director, Office of Real Estate Services

In Reply Refer To:
HEPR-20

To: Division Administrators
Attn: Division Realty Specialists

The purpose of this message is to address the growing interest in placing wind turbines and solar panels on outdoor advertising to generate electricity. We want to let you know our conclusion that such installations can be consistent with the Highway Beautification Act (HBA).

Alternative energy ideas have found their way into many areas of contemporary society, including outdoor advertising. Outdoor advertisers and the alternative energy industry have expressed interest in attaching mechanisms such as wind turbines and solar panels to billboards or placing them near billboards outside the right-of-way. In fact, the Office of Real Estate Services recently found that several States have been approached by the energy and advertising industries and are considering such installations or have approved them, some with U.S. Department of Energy funds.

In principle, the installation of these alternative energy mechanisms on conforming signs for the sole purpose of generating electricity complies with the HBA, as they are not added "signs, displays or devices" under 23 U.S.C. 131 or 23 CFR Part 750. In practice, the alternative energy mechanisms may not display logos or advertising or be made part of the message area. If they do, they are subject to control and HBA compliance.

States and/or local jurisdictions that are considering the placement of these mechanisms on or near a billboard need to adopt policies and procedures for such installations. The States should develop these policies and procedures in consultation with the FHWA division office to ensure compliance with the conditions in their State/Federal agreement. The State policies should prohibit attachment of alternative energy mechanisms to non-conforming signs, as this would constitute a substantial change in violation of 23 CFR 750.707(d)(ii)(5).

If you have any questions, please contact Mr. Janis Gramatins at 202-366-2030 or at Janis.gramatins@dot.gov.

FHWA:HEPR:N. Castellanos:rw:6-2058:03/24/11
File Name: Billboard/Alternative Energy Devices.Guidance
FHWA Control No.
cc: HOAES

Mr. Castellanos HEPR
Mr. Gramatins HEPR
Mr. Lindley HOP-1
Mr. Black HCC-30

Files E76-334
Mr. Toole HSA-1

DATE: September 9, 2009
ENTITY: Office of Real Estate Services
SUBJECT: Destroyed Sign Guidance
LAW CITE: 23 C.F.R. 750.707(d)(6)(i)

SUMMARY

January 2007 Conflict Assessment: Federal Outdoor Advertising Control Program findings show the need to develop a definition of "destroyed signs." Representative group comprised of State outdoor advertising regulators, representatives of the Outdoor Advertising Industry, and Scenic America was assembled for a collaborative workshop to develop a definition of "destroyed signs." Definition provided for guidance is as follows:

> "Destroyed" means that (a specified percentage*) or more of the upright supports of a sign structure are physically damaged such that normal repair practices would call for: in the case of wooden sign structures, replacement of the broken supports or, in the case of metal sign structures, replacement of at least (a specified percentage**) of the length above ground of each broken, bent, or twisted support.

*A range of 40 to 60% would be considered effective control
**A range of 20 to 30% would be considered effective control

U.S. Department of Transportation
Federal Highway Administration

Memorandum

Subject: **INFORMATION**: Destroyed Sign Guidance

Date: September 9, 2009

From: Gerald Solomon, Esq.
Director, Office of Real Estate Services

In Reply Refer To: HEPR-20

To: Division Administrators
Director of Technical Services
Directors of Field Services
ATTN: Division and Federal Lands Realty Professionals

In 2008 the FHWA entered into an interagency agreement with the U.S. Institute for Environmental Conflict Resolution (Institute) in an effort to implement recommendations contained in the January 2007 Conflict Assessment: Federal Outdoor Advertising Control Program (Assessment). The Assessment was prepared by the Osprey Group of Boulder, Colorado and the Executive Summary included issues that were both important to stakeholders and having reasonable potential for agreement.

The Office of Real Estate Services worked with the Institute to determine how to implement recommendations in the Assessment and to identify what issues to examine first. After careful review of the Assessment report with the Institute we focused on the Acts of God/definition of "destroyed signs" issue as the first step for collaboration with stakeholders.

A representative group of stakeholders comprised of State outdoor advertising regulators, representatives of the Outdoor Advertising Industry and Scenic America was assembled by the Institute for a collaborative workshop in December 2008 that focused on developing a definition of "destroyed signs." With the help of a facilitator, the State and FHWA representatives developed a draft definition. The Scenic America representatives expressed support for the definition. While the Outdoor Advertising Industry did not support the definition they did commit to continued involvement in the collaboration.

It was agreed by FHWA that the draft definition would be discussed with the National Alliance of Highway Beautification Agencies and the Outdoor Advertising Technical Council of the AASHTO Right of Way & Utilities Subcommittee to allow for a further exchange of ideas from interested parties prior to issuing any further guidance. The need for

guidance was identified in the original Assessment because of the difficulty in addressing the destroyed sign provision of the Outdoor Advertising Regulations in 23 CFR 750.707(d)(6)(i). Additionally it appears some States may not have addressed this issue appropriately in their rules and regulations.

After extensive consideration and consultation as noted above we are providing the following guidance for your use in determining if the state has developed adequate criteria to define a destroyed sign.

> Destroyed" means that (a specified percentage*) or more of the upright supports of a sign structure are physically damaged such that normal repair practices would call for: in the case of wooden sign structures, replacement of the broken supports or, in the case of metal sign structures, replacement of at least (a specified percentage**) of the length above ground of each broken, bent, or twisted support.
>
> *A range of 40 to 60% would be considered effective control.
>
> **A range of 20 to 30% would be considered effective control.

Please review your State's outdoor advertising rules and regulations to see if they contain criteria to implement 23 CFR 750.707(d)(6)(i). If the State has criteria different from the above guidance, please ensure that it provides for effective control of destroyed signs

If you have any questions or comments on this guidance, please contact Ed Kosola by telephone (202) 493-0350 or e-mail Edward.Kosola@dot.gov.

DATE: September 25, 2007
ENTITY: Administration for Planning, Environment, and Realty
SUBJECT: Guidance on Off-Premise Changeable Message Signs
LAW CITE: 23 C.F.R. 750.705(j)

SUMMARY

Provides guidance to Division offices concerning off-premises changeable message signs adjacent to routes subject to requirements for effective control under the HBA codified at 23 U.S.C. 131. As required by the delegation of responsibilities under 23 C.F.R 750.705(j), a State should request and Division offices should provide a determination as to whether the State should allow off-premises changeable electronic variable message signs (CEVMS) adjacent to controlled routes. The decision of the Division should be based upon a review and approval of a State's affirmation and policy that: (1) is consistent with the existing Federal/State Agreement (FSA) and (2) includes but is not limited to consideration of requirements associated with the duration of the message, transition time, brightness, spacing, and location, submitted for FHWA approval, that evidence reasonable and safe standards to regulate such signs are in place for the protection of the motoring public. Because the terms "intermittent" or "flashing" or "moving" lights are used in various FSAs that were entered into during the 1960s and 1970s, proposed laws that would allow permitting CEVMS subject to acceptable criteria do not violate the FSAs.

It has been expressly noted that "in the twenty-odd years since the Federal/State agreements have been signed, there have been many technological changes in signs, including changes that were unforeseen at the time the agreements were executed. While most of the agreements have not changed, the changes in technology require the State and FHWA to interpret the agreements with those changes in mind." Therefore, changeable message signs, including Digital/LED Display CEVMS, and acceptable for conforming off-premise signs, if found to be consistent with the FSA and with acceptable and approved State regulations, policies, and procedures.

Based upon contacts with all Divisions, the Administration has identified certain ranges of acceptability that have been approved to date that contain some of all of the following standards:

- Duration of Message
  - Duration of each display is generally between 4 and 10 seconds – 8 seconds is recommended.
- Transition Time
  - Transition between messages is generally between 1 and 4 seconds – 1 to 2 seconds is recommended
- Brightness
  - Adjust brightness in response to changes in light levels so that the signs are not unreasonably bright for the safety of the motoring public.
- Spacing
  - Spacing between such signs not less than minimum spacing requirements for signs under the FSA, or greater if determining appropriate to ensure the safety of the motoring public.

- Locations
  - Locations where allowed for signs under the FSA except such locations where determined inappropriate.

Other standards that States have found helpful to ensure driver safety include a default display message if a malfunction occurs and requirements that a display contain static messages without movement such as animation, scrolling, flashing, or full-motion video.

U.S. Department of Transportation
Federal Highway Administration

Memorandum

Subject: **INFORMATION:** Guidance on Off-Premise Changeable Message Signs

Date: September 25, 2007

From: Original signed by:
Gloria M. Shepherd
Associate Administrator for
Planning, Environment, and Realty

In Reply Refer To:
HEPR -20

To: Division Administrators
Attn: Division Realty Professionals

Purpose

The purpose of this memorandum is to provide guidance to Division offices concerning off-premises changeable message signs adjacent to routes subject to requirements for effective control under the Highway Beautification Act (HBA) codified at 23 U.S.C. 131. It clarifies the application of the Federal Highway Administration (FHWA) July 17, 1996 memorandum on this subject. This office may provide further guidance in the future as a result of additional information received through safety research, stakeholder input, and other sources.

Pursuant to 23 CFR 750.705, a State DOT is required to obtain FHWA Division approval of any changes to its laws, regulations, and procedures to implement the requirements of its outdoor advertising control program. A State DOT should request and Division offices should provide a determination as to whether the State should allow off-premises changeable electronic variable message signs (CEVMS) adjacent to controlled routes, as required by our delegation of responsibilities under 23 CFR 750.705(j). Those Divisions that already have formally approved CEVMS use on HBA controlled routes, as well as those that have not yet issued a decision, should re-evaluate their position in light of the following considerations. The decision of the Division should be based upon a review and approval of a State's affirmation and policy that: (1) is consistent with the existing Federal/State Agreement (FSA) for the particular State, and (2) includes but is not limited to consideration of requirements associated with the duration of message, transition time, brightness, spacing, and location, submitted for FHWA approval, that evidence reasonable and safe standards to regulate such signs are in place for the protection of the motoring public. **Proposed laws, regulations, and procedures that would allow permitting CEVMS subject to acceptable criteria (as described below) do not violate a prohibition against "intermittent" or "flashing" or "moving" lights as those terms are used in the various FSAs that have been entered into during the 1960s and 1970s.**

This Guidance is applicable to conforming signs, as applying updated technology to nonconforming signs would be considered a substantial change and inconsistent with the requirements of 23 CFR 750.707(d)(5). As noted below, all of the requirements in the HBA and its implementing regulations, and the specific provisions of the FSAs, continue to apply.

Background

The HBA requires States to maintain effective control of outdoor advertising adjacent to certain controlled routes. The reasonable, orderly and effective display of outdoor advertising is permitted in zoned or unzoned commercial or industrial areas. Signs displays and devices whose size, lighting and spacing are consistent with customary use determined by agreement between the several States and the Secretary, may be erected and maintained in these areas (23 U.S.C. § 131(d)). Most of these agreements between the States and the Secretary that determined the size, lighting and spacing of conforming signs were signed in the late 1960's and the early 1970's.

On July 17, 1996, this Office issued a Memorandum to Regional Administrators to provide guidance on off-premise changeable message signs and confirmed that FHWA has "always applied the Federal law 23 U.S.C. 131 as it is interpreted and implemented under the Federal regulations and individual Federal/State agreements.". It was expressly noted that "in the twenty-odd years since the agreements have been signed, there have been many technological changes in signs, including changes that were unforeseen at the time the agreements were executed. While most of the agreements have not changed, the changes in technology require the State and FHWA to interpret the agreements with those changes in mind". The 1996 Memorandum primarily addressed tri-vision signs, which were the leading technology at the time, but it specifically noted that changeable message signs "regardless of the type of technology used" are permitted if the interpretation of the FSA allowed them. Further advances in technology and affordability of LED and other complex electronic message signs, unanticipated at the time the FSAs were entered into, require the FHWA to confirm and expand on the principles set forth in the 1996 Memorandum.

The policy espoused in the 1996 Memorandum was premised upon the concept that changeable messages that were fixed for a reasonable time period do not constitute a moving sign. If the State set a reasonable time period, the agreed-upon prohibition against moving signs is not violated. Electronic signs that have stationary messages for a reasonably fixed time merit the same considerations.

Discussion

Changeable message signs, including Digital/LED Display CEVMS, are acceptable for conforming off-premise signs, if found to be consistent with the FSA and with acceptable and approved State regulations, policies and procedures.

This Guidance does not prohibit States from adopting more restrictive requirements for permitting CEVMS to the extent those requirements are not inconsistent with the HBA, Federal regulations, and existing FSAs. Similarly, Divisions are not required to concur with State proposed regulations, policies, and procedures if the Division review determines, based upon all relevant information, that the proposed regulations, policies and procedures are not consistent with the FSA or do not include adequate standards to address the safety of the motoring public. If the Division Office has any question that the FSA is being fully complied with, this should be discussed with the State and a process to change the FSA may be considered and completed before such CEVMS may be allowed on HBA controlled routes. The Office of Real Estate Services is available to discuss this process with the Division, if requested.

If the Division accepts the State's assertions that their FSA permits CEVMS, in reviewing State-proposed regulations, policy and procedures for acceptability, Divisions should consider all relevant information, including but not limited to duration of message, transition time, brightness, spacing, and location, to ensure that they are consistent with their FSA and that there are adequate standards to address safety for the motoring public. Divisions should also confirm that the State provided for appropriate public input, consistent with applicable State law and requirements, in its interpretation of the terms of their FSA as allowing CEVMS in accordance with their proposed regulations, policies, and procedures.

Based upon contacts with all Divisions, we have identified certain ranges of acceptability that have been adopted in those States that do allow CEVMS that will be useful in reviewing State proposals on this topic. Available information indicates that State regulations, policy and procedures that have been approved by Divisions to date, contain some or all of the following standards:

- Duration of Message
  - Duration of each display is generally between 4 and 10 seconds – 8 seconds is recommended.
- Transition Time
  - Transition between messages is generally between 1 and 4 seconds – 1-2 seconds is recommended.
- Brightness
  - Adjust brightness in response to changes in light levels so that the signs are not unreasonably bright for the safety of the motoring public.
- Spacing
  - Spacing between such signs not less than minimum spacing requirements for signs under the FSA, or greater if determined appropriate to ensure the safety of the motoring public.
- Locations
  - Locations where allowed for signs under the FSA except such locations where determined inappropriate to ensure safety of the motoring public.

Other standards that States have found helpful to ensure driver safety include a default designed to freeze a display in one still position if a malfunction occurs; a process for modifying displays and lighting levels where directed by the State DOT to assure safety of the motoring public; and requirements that a display contain static messages without movement such as animation, flashing, scrolling, intermittent or full-motion video.

Conclusion

This Memorandum is intended to provide information to assist the Divisions in evaluating proposals and to achieve national consistency given the variations in FSAs, State law, and State regulations, policies and procedures. It is not intended to amend applicable legal requirements. Divisions are strongly encouraged to work with their State in its review of their existing FSAs and, if appropriate, assist in pursuing amendments to address proposed changes relating to CEVMS or other matters. In this regard, our Office is currently reviewing the process for amending FSAs, as established in 1980, to determine appropriate revisions to streamline requirements while continuing to ensure there is adequate opportunity for public involvement.

For further information, please contact your Office of Real Estate Point of Contact or Catherine O'Hara (Catherine.O'Hara@dot.gov).

DATE: August 6, 2007
ENTITY: Office of Real Estate Services
SUBJECT: Definitions for "Development Directory Signs"
LAW CITE: 23 U.S.C. 131

SUMMARY

Intent is to permit the display of individual business unit signs on any part of a large property that is jointly owned and marketed, whereby all of the owners have the right to use common areas, such as parking. With the new definition, signs advertising the activities conducted within that comprehensive "development" would be on-premise signs and exempt from controls under the HBA. FHWA agrees that it is possible for multiple commercial or industrial businesses developed as a "unified commercial development" to be viewed as a single premises for HBA purposes under certain conditions. Conditions include:

- There is a common development and ownership plan that incudes common areas.
- Development operates as common association which all owners have rights and obligations.
- All parts of the development are on the same side of a controlled route and are contiguous.
- Developments hold themselves out to the public as a common development through their signage.
- Development have necessary and true value to the constituent businesses' regular operations.

To: Mike LaPietra, Iowa Division
From: Catherine O'Hara, Outdoor Advertising Control Specialist
Office of Real Estate Services
Date: August 6, 2007

This is to provide feedback to your July 2007 request to review the proposed changes to Iowa Code to adopt new definitions for "development directory signs."

In 2005, we responded to a similar issue in Arizona regarding the definition of on premise signs. Similar to Iowa, the intent in Arizona was to permit the display of individual business unit signs on any part of a large property that is jointly owned and marketed, whereby all of the owners have the right to use common areas, such as parking. Such developments would include situations where there are multiple businesses and multiple ownerships. With the new Iowa definition signs advertising the activities conducted within that comprehensive "development" would be on-premise signs and exempt from controls under the HBA.

The FHWA agrees, in concept, that it is possible for multiple commercial or industrial businesses or activities developed as a "unified commercial development" (hereinafter referred to as "UCD") to be viewed as a single premises for HBA purposes under certain conditions. The UCD criteria include:

1. There is a common development and ownership plan that includes common and/or limited common areas such as sidewalks, roadways, gardens, parking, storage, and service areas, to which all constituent businesses have irrevocable shared ownership and use rights, and for which they have irrevocable shared obligations.

2. The UCD operates through an underlying common association or other entity, actively managed and maintained, through which all owners have irrevocable rights and obligations with respect to the UCD and its common/limited common areas.

3. The contiguity requirement is met because no part of the development is separated from the other part(s) by a controlled route, as defined in 23 USC §131. All parts of the UCD are on the same side of a controlled route and are contiguous except for roadways or driveways that provide access to the development and are not themselves controlled routes.

4. The UCD and its constituent businesses hold themselves out to the public as a common development through their signage and other marketing efforts.

5. The "common areas" or "limited common areas" of the UCD have necessary and true value to the constituent businesses' regular operations. That is, common areas are not created purely for the purpose of establishing eligibility for on-premise signing or other non-operational purposes.

A development that involves merely reciprocal easements or use agreements among individual properties would not meet the UCD test. The significant difference we are recognizing with UCDs is that, based on the characteristics discussed above, a UCD satisfies the primary intent underlying the concept of on-premise signs. Similarly, if the owners in a UCD were to subdivide the UCD into individual lots that do not meet the above criteria, that action would destroy the basis for defining activities as a single "premises" for sign control purposes.

Thank you for the opportunity to comment. If the new definition is implemented as outlined above, the FHWA feels the language of the proposed code revision would not conflict with the HBA. As indicated above, it will be important for the application of any such code to meet the intent of the HBA as well. The Office of Real Estate Services suggests that Iowa Division continue to monitor the implementing regulation to assure it is implemented in conformance with the criteria above.

Questions on this guidance may be directed to Catherine O'Hara at (202) 366-9901.

DATE: September 21, 2006
ENTITY: Operations – Federal Highway Administration
SUBJECT: Interim Approval to Display More than Six Specific Service Logo Panels for a Type of Service
LAW CITE: Manual on Uniform Traffic Control Devices

SUMMARY

Allows State and local highway agencies the option of displaying up to 12 logo panels for any one specific service type (i.e. Gas, Food, Lodging, Camping, Attraction, and 24-hour Pharmacy) by using no more than two specific service signs. Findings done by the Virginia Department of Transportation demonstrated that displaying additional food logo panels on a second specific service sign when the first specific service sign was full did not create any additional safety risks and that there was a benefit to having additional information on food availability for motorists.

U.S. Department of Transportation
Federal Highway Administration

Memorandum

via Electronic Mail

Subject: **ACTION:** Interim Approval to Display More than Six Specific Service Logo Panels for a Type of Service

Date: September 21, 2006

From: Jeffrey F. Paniati
Associate Administrator for Operations

Reply to
Attn. of: HOTO-1

To: Associate Administrators
Chief Counsel
Directors of Field Services
Resource Center Director and Operations Managers
Division Administrators
Federal Lands Highway Division Engineers

Purpose: The purpose of this memorandum is to issue an Interim Approval to allow State and local highway agencies the option of displaying up to 12 logo panels for any one specific service type (i.e., Gas, Food, Lodging, Camping, Attraction, and 24-Hour Pharmacy) by using no more than two specific service signs.

Background: The Specific Service Sign Program (also known as the Logo program) was established in 1969. This State-sponsored program provides the traveling public with information about specific motorist services available at approaching interchanges. Eligible service facilities can use their business identification logo for services and attractions. The MUTCD provides minimum parameters on the number, spacing and specific service types allowed on the signs, and the States develop policies and criteria for selecting the eligible businesses that appear on the signs.

The current MUTCD language limits the number of specific service signs along an interchange or intersection approach to four signs. Each of these four signs must be allocated to one of the following services types: Gas, Food, Lodging, Camping, Attraction, or 24-Hour Pharmacy. Each sign can display a maximum of 6 logo panels for any service type. No service type is allowed to appear on more than one sign.

The MUTCD establishes these guidelines to ensure that State implementation of the program does not introduce safety concerns. The current language in the MUTCD provides States flexibility with respect to the selection criteria for the specific service sign program. The FHWA believes that States are in the best position to determine local needs with respect to criteria for availability of the various types of services.

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However, the FHWA recognizes that the demand for logo positions in the Specific Service Sign program has increased dramatically and that there is often significant competition for logo panels at an interchange.

Research on More Than Six Logo Panels: In May 2004, the FHWA approved a request from the Virginia Department of Transportation (VDOT) to experiment with the food specific service signs in situations where there were more than six eligible food businesses at an interchange or intersection. In these situations, VDOT was allowed to use the empty space on the camping sign to display additional food logo panels. In cases where there were no camping services and therefore no camping sign, VDOT was allowed to install a second food specific service sign in the normal location of a camping sign. The VDOT submitted their final report in October 2005. Results from the surveys and crash analysis studies conducted by VDOT showed that displaying additional food logo panels on a second specific service sign when the first specific service sign is full did not create any additional safety risks and that there was a benefit to having additional information on food availability for the motorists. The complete evaluation study and report findings are posted on the Interim Approval page of the MUTCD website at http://mutcd.fhwa.dot.gov.

FHWA Position: Based on Virginia's experimentation results, the FHWA is issuing this Interim Approval to give States and local highway authorities more flexibility on the selection of businesses based on local needs. The FHWA believes that the flexibility to add food logo panels can be extended to other service types, as long as the maximum of four signs on the approach is not exceeded.

Conditions of Interim Approval: Interim Approval for the option of displaying up to 12 logo panels for any one specific service type will be granted to any jurisdiction that submits a written request to the Office of Transportation Operations. A State may request Interim Approval for all jurisdictions in that State. Jurisdictions using traffic control devices under an Interim Approval must agree to maintain an inventory list of all locations where the devices are placed and to comply with item F at the bottom of page 1A-6 of the 2003 MUTCD, Section 1A.10 which requires:

"An agreement to restore the site(s) of the Interim Approval to a condition that complies with the provisions in this Manual within 3 months following the issuance of a Final Rule on this traffic control device. This agreement must also provide that the agency sponsoring the Interim Approval will terminate use of the device or application installed under the Interim Approval at any time that it determines significant safety concerns are directly or indirectly attributable to the device or application. The FHWA Office of Transportation Operations has the right to terminate the Interim Approval at any time if there is an indication of safety concerns."

If an agency opts to use this Interim Approval, the following design and operational requirements shall apply, and shall take precedence over any conflicting provisions of existing Section 2F.02 of the 2003 MUTCD for the interchanges and intersection approaches where the option granted under this Interim Approval is exercised:

- A maximum of 12 logo panels may be displayed on no more than two signs at any interchange or intersection approach for any one of the following specific service types: Gas, Food, Lodging, Camping, Attraction, and 24-hour Pharmacy.
- The additional logo panels may be displayed by either: (1) Sharing the empty space with another specific service type or (2) Using a separate specific service sign in situations where there are fewer than four specific service signs at an interchange or intersection approach.
- Each specific service sign shall be limited to no more than six logo panels.
- No specific service type shall appear on more than two specific service signs.
- No more than three types of services shall be represented on any one sign or sign assembly (See MUTCD Section 2F.02).
- If three types of services are shown on one sign, then the logo panels shall be limited to two for each service and if two types of services are displayed on one sign, there shall be no more than four logo panels for any one of the two service types (See MUTCD Sections 2F.02 and 2F.04).
- The legend and logo panels applicable to a service type shall be displayed such that the road user will not associate them with another service type on the same sign (See MUTCD Figure 2F-1). When more than one service type is displayed, the logo panels for each service must be separated.
- The number of Specific Service signs along an approach to an interchange or intersection, regardless of the number of service types displayed, shall be limited to a maximum of four (See MUTCD Section 2F.02).
- Specific Service ramp signs shall only be installed along the ramp or at the ramp terminal for facilities that have logo panels displayed along the main roadway. Ramp logo panels may be omitted if the facilities are readily visible from the ramp terminal (see MUTCD Section 2F.07). The spacing between ramp signs should be determined based on an engineering study that considers factors such as the length of the ramp and the safe mobility needs of the road user. In some cases, it might not be feasible to install all four Specific Service signs on the mainline because of the ramp constraints. An order of priority is especially critical where space is limited for sign installation and there is a demand for different types of ramp signs. Regulatory and warning information should be displayed rather than guide signing in cases where conflicts occur (see MUTCD Section 2A.16).

- The successive order for Specific Service signs (i.e., 24-hour Pharmacy, Attraction, Camping, Lodging, Food, and Gas) as discussed in MUTCD Section 2F.02 will not be required for purposes of this interim approval. For example if the Specific Service signs in the direction approaching the exit ramp are currently one for lodging, one for food and one for gas, then you can add a 4th Specific Service sign for food in the location preceding the lodging sign. You would not have to move the lodging sign.

Any questions concerning this Interim Approval should be directed to Ms. Linda Brown at Linda.L.Brown@dot.gov or by telephone at 202-366-2192.

DATE: August 30, 2005
ENTITY: Office of Real Estate Services
SUBJECT: Guidance on the Approval Process for Outdoor Advertising Control Pilots
LAW CITE: 23 U.S.C. 131; 23 U.S.C. 502

SUMMARY

Memorandum provides guidance on the standards for evaluating pilot proposals and the procedural requirements for approval of an outdoor advertising control pilot. The minimum standards that the FHWA considers in evaluating a State pilot program are as follows:

1. Likely to result in a proposal change at the national level.
2. Meets the statutory purposes of the HBA, which are: the protection of the public investment in the controlled highways, the promotion of the safety and recreational value of public travel, and the preservation of natural beauty.
3. In the public interest. A pilot proposal will be approved by the FHWA only if the benefits to the public are significant.
4. Complies with the National Environmental Policy Act (NEPA).
5. Developed with public involvement via the FHWA requirements in 23 C.F.R. 771.111(h).
6. Expected risks from the proposed experiment are proportionate to the potential positive results.

Additional considerations include the nature of the problem the pilot is expected to address and whether the pilot is expected to improve program results or increase efficiency in government. It is also encouraged that States seek an initial evaluation by the FHWA Division to determine whether the proposal is likely to meet the FHWA Outdoor Advertising Control pilot criteria.

When a formal proposal is submitted to the Division, the Division will determine whether the proposal package is complete. The Office of Real Estate Services, in consultation with the Office of Chief Counsel, will then review the Division's recommendation on a proposal for a §502 pilot project. The final decision whether to approve the pilot rests with the Associate Administrator.

Memorandum

U.S. Department of Transportation
Federal Highway Administration

Subject: **INFORMATION**: Guidance on the Approval Process For Outdoor Advertising Control Pilots

Date: August 30, 2005

From: Susan B. Lauffer, Director
Office of Real Estate Services

Reply to Attn. of: HEPR

To: Division Administrators
Attn: Division Realty Professionals

The purpose of this memorandum is to provide guidance for implementing existing policies under 23 United States Code (U.S.C.) §131 and 23 U.S.C. §502 on the approval process for Outdoor Advertising Control (OAC) pilot projects. This guidance details the standards for evaluating pilot proposals and the procedural requirements for approval of an outdoor advertising control pilot. The FHWA will monitor the results of this guidance and will revise it as appropriate.

Background

The purpose of the OAC pilot program is to better implement the objectives of the Highway Beautification Act of 1965, as amended (23 U.S.C. §131) (HBA). The authority to authorize a pilot project is granted under Surface Transportation Research in 23 U.S.C. §502. A pilot under §502 provides a testing opportunity for outcomes from possible statutory and/or regulatory changes. This experimental authority extends only to statutory, regulatory, and policy provisions under Title 23 of the United States Code, and does not change the requirements under other statutes, such as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act), or the National Environmental Policy Act (NEPA).

Guidance

The Federal Highway Administration (FHWA) will consider a number of factors when evaluating a proposal. While individual cases may involve a balancing of considerations in addition to those listed below, we believe that these factors constitute the minimum standards against which a pilot proposal should be measured.

1. Likely to result in a proposal for change at the national level.

A pilot project must propose testing a concept, process, or procedure that, if successful, may lead to a proposal for change to a law, regulation, or national policy or practice of the national OAC Program.

2. Meets statutory purpose.

The proposal must promote the purposes of the HBA, as articulated by Congress at 23 U.S.C. §131(a). Those purposes are the protection of the public investment in the controlled highways, the promotion of the safety and recreational value of public travel, and the preservation of natural beauty.

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3. In the public interest.
The pilot project proposal must be in the public interest. Considerations relevant to the public interest determination may vary with the nature of the experimental proposal and the parts of the law affected. A pilot proposal will be approved by the FHWA only if the benefits to the public are significant and, in the judgment of the FHWA, outweigh any potential adverse effects from activities under the pilot. This requirement is especially important because actions taken under the authority of a pilot may have long term or permanent effects. The public benefit requirement does not preclude consideration of benefits and harm to private interests. However, the defining rationale and effect of a pilot must be to serve the public interest and further the purposes of the HBA, such as natural beauty and safety.

4. Complies with NEPA.
A proposed pilot project also must comply with the appropriate sections of NEPA. As stated above, if a State wants to test a concept, process, or procedure that conflicts with the HBA or its implementing regulations, FHWA approval under 23 USC §502 is required. Absent such approval, the State could lose up to ten percent of its Federal-aid highway funds. This approval requirement meets the broad definition of "federal action" in NEPA. Therefore, before the FHWA will approve a pilot proposal, there must be compliance with NEPA. A pilot proposal of limited scope or effect might well be a documented Categorical Exclusion (CE), while a larger project might require an Environmental Assessment (EA).

5. Developed with public involvement.
Because OAC is a controversial area, we believe that a public involvement process is essential to the development of a successful pilot proposal. This should include reaching out to affected communities and interest groups and, if possible, achieving consensus about the terms of the pilot proposal. The public involvement process used must satisfy the FHWA requirements in 23 CFR 771.111(h). This public involvement requirement applies even if the Division determines that the proposal is a CE under NEPA.

6. Expected risks from the proposed experiment are proportionate to the potential positive results. Additional considerations include the nature of the problem the pilot is expected to address and whether the pilot is expected to improve program results or increase efficiency in government. The fact that a pilot proposes to test a concept that might solve a long-standing program problem may provide a rationale for approving a particularly creative experimental approach.

While the FHWA would not rule out the possibility of a statewide pilot under the proper circumstances, we feel that using a limited geographic area often will be a more appropriate testing mechanism. We suggest looking for a few corridors where it is likely that the pilot will produce data that will permit a good analysis of the positive and negative effects of the pilot. Using geographically limited corridors also will make the processes of stakeholder involvement and building consensus more manageable.

Proposal Submission and Processing
A State Department of Transportation (SDT) must initiate the pilot proposal. The FHWA encourages States to seek an informal initial evaluation by the FHWA Division to determine whether the proposal is likely to meet the FHWA OAC pilot criteria. This step will avoid unnecessary work and help ensure that proposals are fully developed before the SDT transmits a formal proposal to FHWA.

SDTs should address their proposals in writing to their FHWA Division Administrator. The FHWA Division will coordinate with the State on NEPA compliance, and will review and evaluate the SDT's proposal.

When a formal proposal is submitted to the Division, the Division should determine whether the proposal package is complete. If the submission does not meet the documentation requirements of this guidance, the Division should return the proposal to the State with advice on what needs to be done to complete the proposal. If the proposal is complete, the Division should evaluate the merits of the proposal and forward the Division's recommendation, together with the pilot proposal, to Headquarters. The Division should send the materials to its Office of Real Estate Services Point of Contact (POC). The POC will serve as the Headquarters coordinator for the review and determination process.

The Office of Real Estate Services, in consultation with the Office of Chief Counsel, will review the Division's recommendation on a proposal for a §502 pilot project. If those Offices recommend approval of the pilot, they will forward the proposal and recommendation to the Associate Administrator for Planning, Environment and Realty for concurrence. The final decision whether to approve the pilot rests with the Associate Administrator. After the Associate Administrator acts on the proposal, the Division will notify the State of the outcome.

A written proposal must include:

1. A description of the potential change in Federal laws or regulations that the pilot is intended to test.
2. Specification of each provision of the Federal laws, regulations, and applicable Federal-State Agreement(s) that would require a waiver under 23 U.S.C. §502 in order for the pilot to take place.
3. A detailed description of how the pilot would work, including any special safeguards and the SDT's proposed monitoring and measurement of impacts. An analysis of potential increase or decrease in administrative burden to the State should be one of the impacts measured by the State.
4. The intended scope and time period for the proposed practice. For example, geographic limits may range from broad to restricted (statewide, one area, one project, etc.). The proposed length of the pilot should be limited to that time period needed to obtain measurable results. The legal authority for the pilot practice ends at the termination of the pilot.
5. A description of the expected effects of the pilot, including potential benefits, harm, and burdens to the public and/or to private persons or entities.
6. An analysis of how the pilot meets the minimum standards described in this guidance.

7. A summary of the public involvement process, including a report on the issues and interests expressed by those in support of and those opposing the pilot.
8. The appropriate NEPA documentation, including documentation required under 23 CFR 771.111(h).

The FHWA may accept, accept with conditions or revisions, or reject any pilot proposal. Every approved pilot will be subject to the condition that the State diligently will monitor compliance with the conditions of the pilot approval. Any sign that is erected, relocated, modified, altered in legal status, or otherwise affected under the authority of the pilot will be deemed by the FHWA to be in compliance with the requirements of the HBA so long as such sign is, and remains, in compliance with the conditions of the approved pilot. Any violation of such conditions, during or after the pilot, automatically will render such sign illegal under the HBA and the State immediately must act to have such sign removed.

The pilot proposal's description of the performance metrics that the State will use to track the effects of the pilot should support an independent evaluation and analysis of the pilot's results at the end of the pilot period. The metrics, and the State's commitment to collect and report the data, will be a key factor in the FHWA determination whether to approve the pilot. Such data is vital to any subsequent FHWA evaluation of the pilot's effects.

The Office of Chief Counsel has approved this guidance. Questions on this guidance may be directed to Janis Gramatins at (202) 366-2030 or (e-mail Janis.Gramatins@fhwa.dot.gov), or Janet Myers at (202) 366-2019 or (e-mail Janet.Myers@fhwa.dot.gov).

DATE: August 10, 2005
ENTITY: Federal Highway Administration
SUBJECT: Optional Use of Acknowledgement Signs on Highway Rights-of-Way
LAW CITE: Chapter 2A of the Manual on Uniform Traffic Control Devices

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SUMMARY

Memorandum sets forth distinction between advertisement and acknowledgement signs, and provides guidance on the content and placement of acknowledgement signs. Acknowledgement signs are a way of recognizing a company or business, or a volunteer group that provides a highway-related service. This includes sponsorship signs for adopt-a-highway programs and other highway maintenance or beautification sponsorship programs. Advertising signs, conversely, have little if any relationship to a highway service provided. Additionally, use of highway right-of-way for advertising purposes is not allowed.

If a state or local highway agency elects to have an acknowledgement sign program, that agency should develop an acknowledgement sign policy. This policy should include requirements that eligible sponsoring organizations must comply with State laws prohibiting discrimination based on race, religion, color, age, sex, national origin, and other applicable laws. All such sign designs shall be consistent with the following provisions:

- Does not contain any contact information, directions, slogans, telephone numbers, and Internet addresses.
- Use the Standard Highway Signs alphabet series fonts.
- Have a sponsor acknowledgement logo that is not more than 1/3 of the total area of the sign.
- Does not contain any messages, lights, symbols, and trademarks that resemble any official traffic control devices.
- Does not contain any light-emitting diodes, luminous tubing, fiber optics, luminescent panels or other flashing, moving, or animated features.

U.S. Department of Transportation
Federal Highway Administration

Memorandum

ELECTRONIC MAIL

Subject: **INFORMATION**: Optional Use of Acknowledgment Signs on Highway Rights-of-Way

Date: August 10, 2005

From: *Original signed by*
J. Richard Capka
Acting Administrator

Reply to
Attn. of: HOTO-1

To: Associate Administrators
Chief Counsel
Directors of Field Services
Resource Center Director and Operations Managers
Division Administrators
Federal Lands Highway Division Engineers

It is the Federal Highway Administration's (FHWA) policy to allow the use of signs to acknowledge the provision of highway-related services. State and local programs for acknowledgment signs are growing in popularity because they can provide additional revenue for highway facility maintenance programs. Therefore, we are issuing this guidance memorandum to set forth the distinction between advertisement and acknowledgment signs, and provide guidance on the content and placement of acknowledgment signs. Although the information contained in this memorandum is considered policy guidance, the FHWA intends to propose these provisions in the rulemaking for the next edition of the Manual on Uniform Traffic Control Devices (MUTCD). The proposed rulemaking will more clearly identify standards, guidance, and options and the public will have an opportunity to provide comments.

This policy memorandum on acknowledgment signs replaces the previous policy memorandum dated October 29, 2003, and applies to both corporate and volunteer sponsorship programs. The term "highway" is used in a generic way throughout this memorandum to apply to all streets and roadways open to public travel. The guidance provided in this memorandum applies to new and modified installations and is intended to promote a degree of national uniformity and consistency. Existing acknowledgment signs already installed do not have to be changed. However, we encourage State and local highway agencies to consider the guidance provided in this memorandum when replacing or upgrading existing signs. While this guidance provides flexibility to the States and local highway agencies, attempts should be made to follow good, basic engineering practices such as simplifying sign message content, reasonable sign sizes, and minimizing driver distraction.

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Acknowledgment signs are a way of recognizing a company or business, or a volunteer group that provides a highway-related service. Acknowledgment signs include sponsorship signs for adopt-a-highway litter removal programs, maintenance of a parkway or interchange, and other highway maintenance or beautification sponsorship programs. Acknowledgment signs should clearly indicate the type of highway services provided by the sponsor. The FHWA recognizes a distinction between signing intended as advertising and signing intended as an acknowledgment for services provided. Advertising generally has little if any relationship to a highway service provided. The advertiser basically wants to get its recognizable message, company emblem, or logo before the public, and if possible, information on how or where to obtain the company's product or services. In most cases, if the sign goes beyond recognizing the company's contribution to a particular highway service at a specific highway site or includes telephone numbers or internet addresses, the sign is more properly classified as an advertising sign and not an acknowledgment sign.

Use of highway right-of-way for advertising purposes is not allowed. This policy position is consistent with the principles and intent of several laws including 23 U.S.C. §1.23(b), 23 U.S.C. §109(d), and 23 U.S.C. § 131. The MUTCD Section 1A.01 states that "Traffic control devices or their supports shall not bear any advertising message or any other message that is not related to traffic control." This position is founded on safety and operational concerns, particularly as related to driver distraction. Highway signs and other traffic control devices convey crucial information. In order for road users to perceive and respond appropriately to critical information, we must make sure that its conspicuity is preserved so that the safe and orderly movement of traffic is not compromised.

If a State or local highway agency elects to have an acknowledgment sign program, then that agency should develop an acknowledgement sign policy. This policy should include requirements that eligible sponsoring organizations must comply with State laws prohibiting discrimination based on race, religion, color, age, sex, national origin, and other applicable laws. State or local agencies must also be aware of and comply with the general provisions for signs as covered in Chapter 2A of the MUTCD and sign design principles covered in the Standard Highway Signs Book. The acknowledgment sign policy should conform at a minimum to the considerations for sign design and placement covered below.

Sign Placement:

With respect to placement of traffic control signs, regulatory, warning, and guide signs have a higher priority than acknowledgement signs. In fact, acknowledgment signs are the lowest priority of information-type signs and may only be placed where adequate spacing between higher priority signs is available. In no case shall the acknowledgment sign be placed such that it obscures road users' view of other traffic control devices. The following minimum spacing is recommended:

1. On roads with speed limits of less than 30 mph, acknowledgment signs should not be placed within 150 feet of any other traffic control signs, except parking regulation signs.

2. On roads with speed limits of 30 to 45 mph, acknowledgment signs should not be placed within 200 feet of any traffic control signs, except parking regulation signs.

3. On roads with speed limits greater than 45 mph, acknowledgment signs should not be placed within 500 feet of any traffic control signs, except parking regulation signs.

~~Due to public safety concerns, acknowledgment signs shall not be allowed at the~~ following locations:

1. On the front, back, adjacent to or around any traffic control device, including traffic signs, signals, changeable message signs, traffic control device posts or structures, or bridge piers.

2. At key decision points where a driver's attention is more appropriately focused on traffic control devices, roadway geometry, or traffic conditions. These locations include, but are not limited to exit and entrance ramps, intersections controlled by traffic signals or by stop or yield signs, highway-rail grade crossings, work zones, and areas of limited sight distance.

If the placement of an acknowledgment sign conflicts with newly installed higher priority signs, or traffic signals, or temporary traffic control devices, or other priority devices, the acknowledgment sign should be removed, covered, or relocated.

Sign Design:

State or local highway agencies may develop their own acknowledgment sign designs and may also use their own pictograph logo and/or a brief jurisdiction-wide program slogan as part of any portion of the acknowledgement sign. However, all such designs shall be consistent with the following provisions:

- Does not contain any contact information, directions, slogans (other than a brief jurisdiction-wide program slogan, if used), telephone numbers, and internet addresses.
- Use the Standard Highway Signs alphabet series fonts. This does not apply to the sponsor acknowledgment logo.
- Have a sponsor acknowledgment logo that is not more than 1/3 of the total area of the sign. The reason for this is to keep the main focus on the highway-related service and not on the sponsor logo. The sponsor acknowledgment logo may contain text, a sponsor logo, or both.

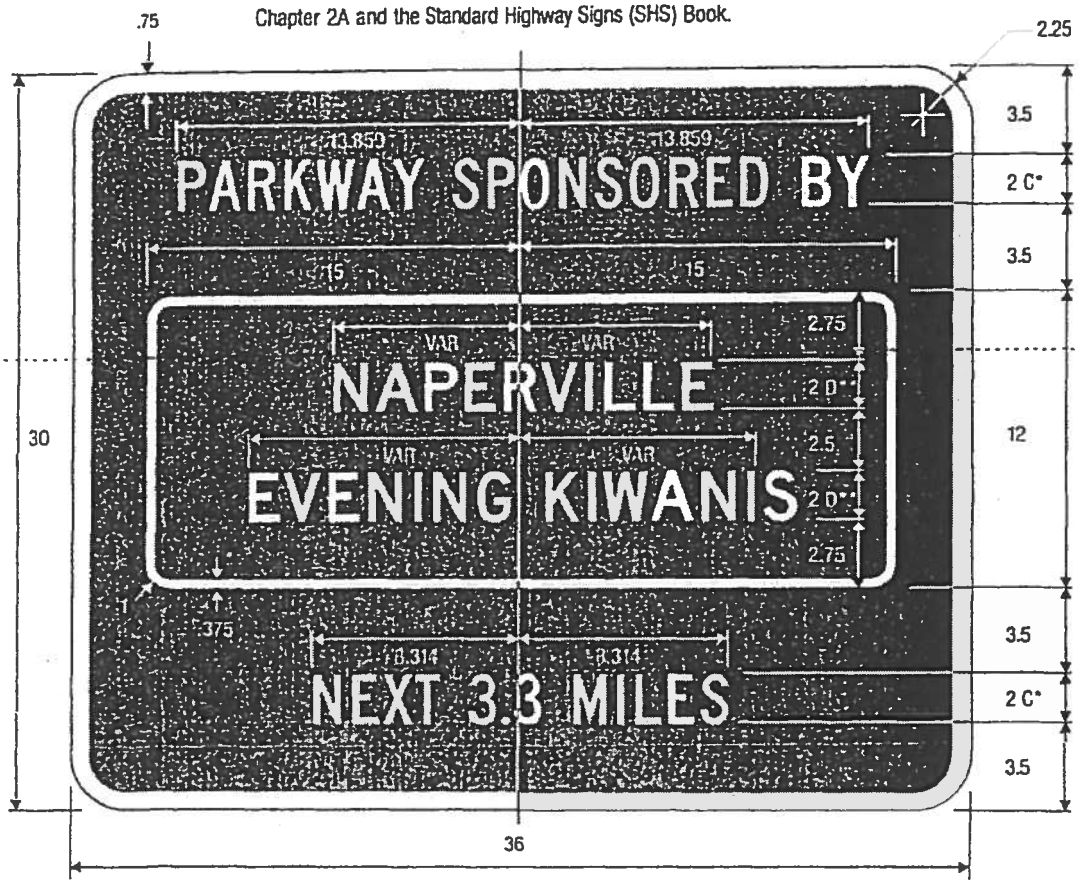
- Does not contain any messages, lights, symbols, and trademarks that resemble any official traffic control devices.
- Does not contain any light-emitting diodes, luminous tubing, fiber optics, luminescent panels or other flashing, moving, or animated features.
- Does not distract from official traffic control messages such as regulatory, warning, or guidance messages.

Examples of design layouts (D14-1, D14-2, and D14-3) are included as an attachment for consideration by State and local agencies interested in developing acknowledgment sign designs. These examples are intended as a starting point for those agencies that may be developing a new or modifying an existing acknowledgment sign program. If there are any further questions about this issue, please contact Mr. Hari Kalla at 202-366-5915 or via email at hari.kalla@fhwa.dot.gov.

Attachments

SAMPLE DRAWINGS

- Dimensions in this drawing are for illustration purpose only.
- All signs shall be designed according to specifications presented in the Manual for Uniform Traffic Control Devices (MUTCD) Chapter 2A and the Standard Highway Signs (SHS) Book.



*Series 2000 Standard Alphabets.

D14-1
ADOPT A HIGHWAY

**Series C or D may be used depending upon length of legend.

ALTERNATE LEGENDS:

ADOPT A HIGHWAY (STREET) (ROADSIDE)

HIGHWAY (ROADSIDE) (PARKWAY) MAINTAINED BY

LITTER PICKUP (REMOVED) BY

LANDSCAPING BY

SNOW REMOVED BY

SPONSORED BY

COLORS: LEGEND — WHITE (RETROREFLECTIVE)
BACKGROUND — BLUE (RETROREFLECTIVE)

INSET — BLUE (RETROREFLECTIVE)
SPONSOR LEGEND — WHITE (RETROREFLECTIVE)

X-XX

SAMPLE DRAWINGS

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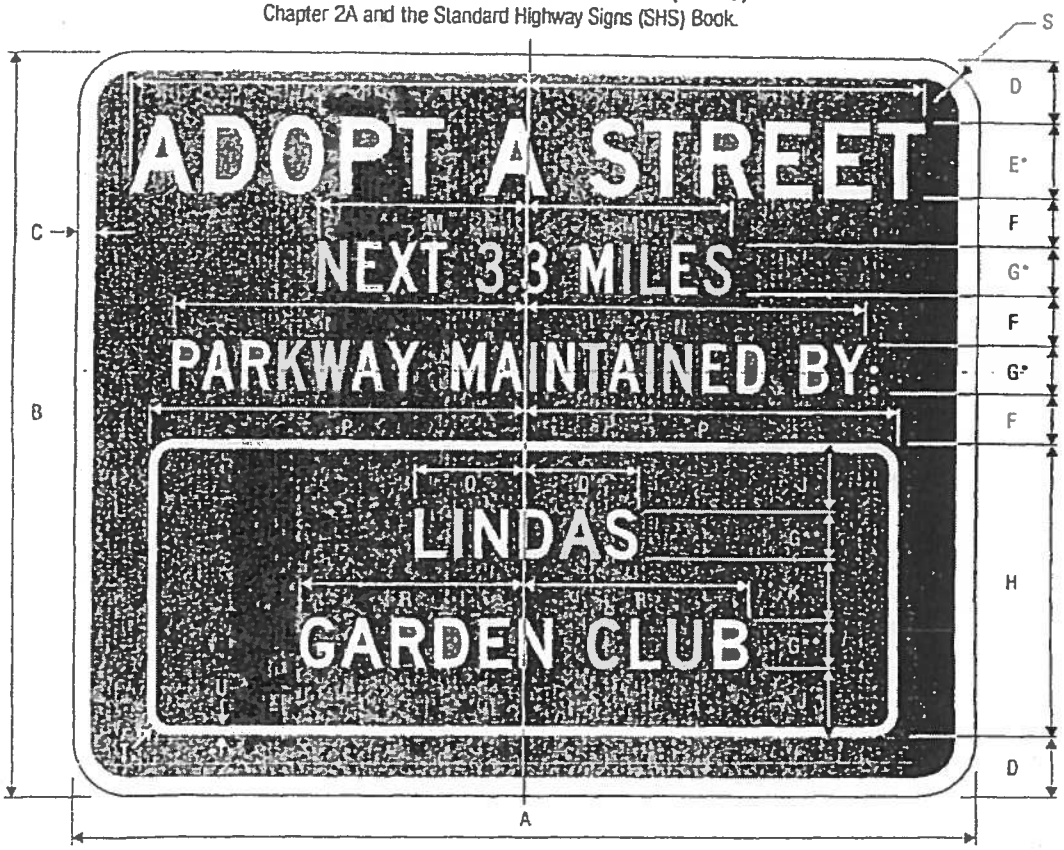

*Series 2000 Standard Alphabets.

D14-2

**Series C or D may be used depending upon length of legend.

ADOPT A HIGHWAY

ALTERNATE LEGENDS:

ADOPT A HIGHWAY (STREET) (ROADSIDE)

HIGHWAY (ROADSIDE) (PARKWAY) MAINTAINED BY

LITTER PICKUP (REMOVED) BY

LANDSCAPING BY

SNOW REMOVED BY

SPONSORED BY

A	B	C	D	E	F	G	H	J	K	L
36	30	.75	2.5	3 D	2	2 C	12	2.75	2.5	15.904
72	48	1.25	4	6 D	3	4 C	17	3	3	31.812

M	N	P	Q	R	S	T	U
8.314	14.122	15	VAR	VAR	2.25	1	.375
16.635	28.256	33	VAR	VAR	3	1.5	.625

COLORS: LEGEND — WHITE (RETROREFLECTIVE)
BACKGROUND — BLUE (RETROREFLECTIVE)

INSET — BLUE (RETROREFLECTIVE)
SPONSOR LEGEND — WHITE (RETROREFLECTIVE)

X-XX

SAMPLE DRAWINGS

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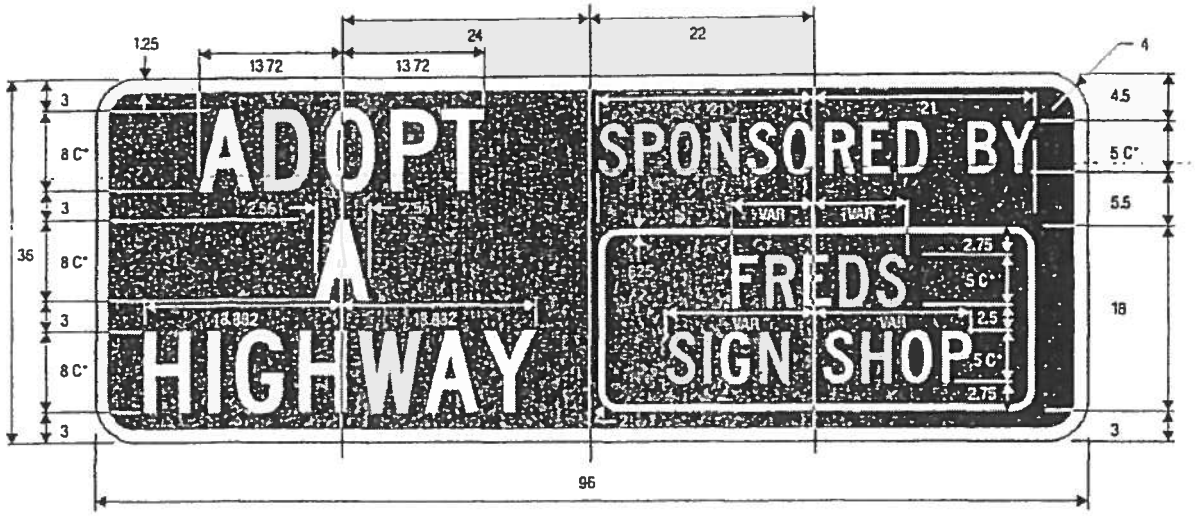

D14-3

*Series 2000 Standard Alphabets.

ADOPT A HIGHWAY

ALTERNATE LEGENDS:

ADOPT A HIGHWAY (STREET) (ROADSIDE)

HIGHWAY (ROADSIDE) (PARKWAY) MAINTAINED BY

LITTER PICKUP (REMOVED) BY

LANDSCAPING BY

SNOW REMOVED BY

SPONSORED BY

COLORS: LEGEND —WHITE (RETROREFLECTIVE)
BACKGROUND —BLUE (RETROREFLECTIVE)

INSET —BLUE (RETROREFLECTIVE)
SPONSOR LEGEND—WHITE (RETROREFLECTIVE)

DATE: March 10, 2005
ENTITY: Office of Real Estate Services
SUBJECT: Non-conforming Outdoor Advertising Signs Destroyed by Natural Disasters
LAW CITE: 23 CFR 750.707(d)(6); Tennessee State Rule 1680-2-4-.04

SUMMARY

The HBA prohibits the reconstruction of non-conforming billboards that are destroyed by hurricanes, fires, winds, or other acts of God. While the definition of what is destroyed rests on the State's outdoor advertising control regulations, a regulation that is designed to circumvent the reconstruction prohibition would not comply with the HBA. At 23 CFR § 750.707(d)(6), there is a prohibition on the re-erection of destroyed, abandoned, or discontinued signs except in instances of vandalism or other criminal or tortious acts. Tennessee's proposed adoption, in which a grandfathered non-conforming device will be allowed to be rebuilt in the case of a natural disaster, is not in conformance with § 750.707(d)(6).

Memorandum

U.S. Department of Transportation
Federal Highway Administration

Subject: **INFORMATION**: Non-conforming Outdoor Advertising Signs Destroyed by Natural Disasters

Date: MAR 10 2005

From: Susan B. Lauffer
Director Office of Real Estate Services

Reply to Attn of: HEPR

To: Mr. Bobby W. Blackmon
Division Administrator
Nashville, Tennessee

The purpose of this memorandum is to concur with the Tennessee Division's decision to work with the Tennessee Department of Transportation (TDOT) to achieve compliance with the prohibition against the reconstruction of storm-damaged non-conforming signs. This concurrence is consistent with previous guidance on this question, as most recently reaffirmed via my email to Division Realty Professionals on September 23, 2004, that the Highway Beautification Act (HBA) prohibits the reconstruction of non-conforming billboards that are destroyed by hurricanes, fires, winds, or other acts of God. While the definition of what is destroyed rests on the State's outdoor advertising control regulations, a regulation that is designed to circumvent the reconstruction prohibition would not comply with the HBA. The passage of time since Tennessee's adoption of a non-conforming regulation does not relieve the State of its obligations under the HBA and Federal-State Agreement.

BACKGROUND

The Tennessee Legislature enacted the current Tennessee State Rule 1680-2-3-.04 stating:

> A non-conforming device or grandfathered non-conforming device will be allowed to be rebuilt in the case of natural disaster. Non-conforming and grandfathered non-conforming devices destroyed or damaged during a natural disaster may be rebuilt to their original height and size using like materials.

ANALYSIS

Congress adopted the HBA with the finding that "erection and maintenance of outdoor advertising signs...should be controlled" to protect the public investment in highways, to promote safety and recreational value, and to preserve natural beauty. Consequently, the Federal Highway Administration's (FHWA) regulations on outdoor advertising include provisions on maintenance of non-conforming signs. At Title 23 of the Code of Federal Regulations (CFR) §750.707(d)(6), there is a prohibition on the re-erection of destroyed, abandoned or discontinued signs except in instances of vandalism or other criminal or tortuous acts. Each State is required to develop criteria to define destruction, abandonment and discontinuance.

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According to 23 CFR §750.705(j), FHWA has the authority and responsibility to determine the reasonableness of the criteria of destruction set by the State. This authority was upheld in South Dakota v. Volpe, 353 F. Supp.535 (D.S.D. 1973). In its decision, the court noted that "Congress never intended to [subordinate] the [HBA]'s stated purpose to arbitrary actions taken by the individual State legislatures." South Dakota v. Volpe at 340. According to the attached FHWA Memorandum dated July 20, 1999:

> The intent of allowing non-conforming signs to remain in place, has been with the view that if such signs are not purchased, they would eventually be eliminated through natural causes. If a sign is "destroyed" it would cease to exist and therefore lose its non-conforming status and not be allowed to be re-erected.

When the HBA regulations were promulgated in 1975, the FHWA specifically considered the question of whether acts of God should be an exception for destroyed signs:

> "Comments were made with regard to §750.707(d)(6) that the exceptions allowed should also include acts of God as they too constitute events beyond the sign owner's control. No change has been made. The exceptions made for vandalism and other criminal or tortuous acts were due solely to the fact that the Highway Beautification Act of 1965, Pub. L. 89-295, October 22, 1965, created an impetus for unauthorized persons to deliberately chop down or vandalize signs as a part of the environmental movement. Such a practice is not condoned. However, non-conforming uses are terminated by natural attrition in the normal course of events. Thus, a non-conforming sign destroyed or substantially damaged by an act of God is terminated because it would need to be rebuilt or a new sign would have to be erected in its place. New signs, or substantially new signs, must be located in conforming areas. To allow new signs to be erected in a non-conforming area only to be later acquired by the State would unduly burden the taxpayers with an unwarranted cost."
> 40 Fed.Reg. 42,843 (Sept. 16, 1975).

Therefore, the Office of Real Estate Services in consultation with the Office of Chief Counsel of the FHWA concurs with the Division's assessment that Tennessee's State Rule 1680-2-3-.04 is not in conformance with 23 CFR §750.707(d)(5) and (6), nor is it in conformance with the Tennessee Federal-State Agreement, 23 USC §131 and 23 CFR §750.705(h) for effective control.

Tennessee Rule 1680-2-3-.04 is inconsistent with the purpose of the Tennessee Federal-State agreement "to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the National policy to protect...." It provides a lesser degree of control of outdoor advertising than the Federal law because it is much less restrictive than the minimum requirements of the Federal regulations. The Tennessee rule, if applied, raises a question whether the TDOT is maintaining effective control. Failure to exercise effective control may subject the State to a sanction of up to 10 percent of its apportioned Federal funds.

A concern has been raised about the time elapsed since Tennessee's adoption of the rule. The State has the responsibility under its Federal-State Agreement to adhere to the HBA as amended and its implementing Regulations. The Federal-State Agreement and the HBA requires the State to maintain effective control, regardless of when specific Federal oversight is provided. The Division should direct TDOT to work with the Tennessee Legislature to resolve this conflict.

Questions on this matter may be directed to Marshall Wainright at (202) 366-4842 (email Marshall.Wainright@fhwa.dot.gov) or Janis Gramatins at (202) 366-2030 (e-mail Janis.Gramatins@fhwa.dot.gov).

Attachment

DATE: March 8, 2005
ENTITY: Office of Real Estate Services
SUBJECT: Guidance on Adjustment of Non-conforming Outdoor Advertising Signs
LAW CITE: 23 C.F.R. 750.707(c)

SUMMARY

Memorandum addresses whether non-conforming signs may be adjusted where action by the State transportation obstructs visibility of the sign from the highway, such as when a noise wall is constructed. FHWA regulations permit non-conforming signs to remain "at its particular location for the duration of its normal life subject to customary maintenance." Under this definition, a height increase, for example, is an expansion and improvement of a sign, thereby being inconsistent with the concept of limiting non-conforming signs to the duration of their normal lives. However, States could demonstrate that height adjustments come within the term "customary maintenance," despite being very unlikely.

Memorandum

U.S. Department of Transportation
Federal Highway Administration

Subject: **INFORMATION:** Guidance on Adjustment of of Non-conforming Outdoor Advertising Signs

Date: MAR - 8 2005

From: Susan Lauffer
Director, Office of Real Estate Services

Reply to Attn. of: HEPR-1

To: Directors of Field Services
Division Administrators
ATTN: Division Realty Professionals

The purpose of this memorandum is to provide guidance on the question whether non-conforming signs may be adjusted where action by the State transportation agency obstructs visibility of the sign from the highway. Consistent with previous guidance on this question, the provisions of the Highway Beautification Act (HBA) and its implementing regulations do not permit such adjustments to non-conforming outdoor advertising signs.

BACKGROUND

With the broader use of noise walls around the country, the conflict between the HBA prohibition against substantial improvement of non-conforming signs and sign owners' demands to maintain sign visibility is arising with increasing frequency. Sign owners typically argue that their investment in the signs, and the economic benefits that flow from the signs, are unfairly lost if a State does anything to inhibit the effectiveness of the signs. Some States see this as a problem of growing significance, with implications for projects involving noise walls, grade changes, and road widening. At least one State perceives a risk that litigation may result in financial liability and in the establishment of a legal "right-to-be viewed" for outdoor advertising signs. That State proposed that the FHWA consider classifying non-conforming sign height adjustments in noise wall cases as an allowable "customary maintenance" activity.

The States where this issue recently arose indicated that sign owners affected by this situation are citing State laws and practices in other States, including an incident in one State where sign height adjustments occurred and the FHWA did not initiate an enforcement action. However, in that unique case, the signs in question became non-conforming as a result of a project location decision. The FHWA concluded that if there had been better coordination between the State and the sign owners about the impacts of the project design, the signs legally could have been raised before they became non-conforming. The FHWA determined that "turning back the clock" to permit adjustment of those signs was an equitable outcome in that case. That special situation raised different issues than the question of permitting adjustments to already non-conforming signs.

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ANALYSIS AND GUIDANCE

The purpose of the HBA is to control the erection and maintenance of outdoor advertising signs in areas adjacent to the Interstate System and primary system "in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty." 23 USC Section 131(a). Under the HBA, the use of highway rights-of-way for sign viewsheds is anticipated. However, it is not an unqualified use, and preservation of the sign viewshed within the highway right-of-way cannot be permitted to trump the needs of the highway. The HBA reaches out to regulate adjacent property for the good of the highway facility and its users, not vice versa. It is clear that the creation of a highway corridor is not intended to create any rights in adjacent property owners that are fundamentally at odds with the safe and efficient operation and maintenance of the highway facility.

Current FHWA regulations permit a non-conforming sign to remain "at its particular location for the duration of its normal life subject to customary maintenance." 23 CFR 750.707(c). The intent of the HBA is to permit a non-conforming sign to continue in place until it is destroyed, abandoned, or discontinued, or is removed by the State (which can use 75 percent Federal funding for the removal of the sign). A non-conforming sign must "remain substantially the same as it was on the effective date of the State law or regulations" adopted to implement the HBA. 23 CFR Section 750.707(d)(5). A height increase is an expansion and improvement of a sign. In addition, increasing sign height to clear a noise wall typically will require new structural measures, such as use of a monopole design, that would be inconsistent with the concept of limiting non-conforming signs to the duration of their normal lives.

State definitions of "customary maintenance" must not exceed the limits allowed by the Federal statutes and regulations. Height adjustments could come within the term "customary maintenance" if the State could demonstrate that its long-established and regular practices previously included allowing alterations to non-conforming sign height to accommodate changes in surrounding conditions. The FHWA believes such a result is unlikely, especially in view of the language in 23 CFR 750.707(d)(5).

The FHWA acknowledges the States' concern about the possibility that a court may determine that refusal to permit a change in the height of a non-conforming sign is a taking. If such event occurs, then that State will face a decision whether to pay to acquire such signs as a part of its projects. In such instances, the potential acquisition cost for those signs becomes an element in project decision-making just like other aspects such as noise protection and project alignment.

If a State fails to comply with the non-conforming sign provisions of the HBA, it will become necessary to evaluate whether the State is maintaining effective control. The Office of Real Estate Services suggests that the FHWA Divisions review this situation with their State counterparts to determine the status of this issue within the State and whether any corrective action is required.

Questions on this guidance may be directed to Janis Gramatins at (202) 366-2030 (e-mail Janis.Gramatins@fhwa.dot.gov), or Janet Myers at (202)-366-2019 (e-mail Janet.Myers@fhwa.dot.gov).

DATE: November 30, 2004
ENTITY: Office of Real Estate Services
SUBJECT: Guidance on Bonus Act Repayments
LAW CITE: 23 U.S.C. 131(j)

SUMMARY

The 23 States that participate in the Bonus Program (enacted in the Federal-aid Highway Act of 1958), have expressed difficulties in administering the Program. Unless a Congressional statutory change is made, the only recourse available to a State that wishes to extinguish the control provisions imposed by the Bonus Program is to repay the funds received. The scope of repayment is addressed in each Federal-State Bonus Agreement in the section governing the failure of the State to perform its obligations under the Agreement.

Memorandum

U.S. Department of Transportation
Federal Highway Administration

Subject: **INFORMATION:** Guidance on Bonus Act Repayments

Date: November 30, 2004

From: Susan Lauffer
Director, Office of Real Estate Services

Reply to Attn. of: HEPR

To: Directors of Field Services
Division Administrators
Attn: Division Realty Professionals

The purpose of this memorandum is to provide guidance for implementing existing policy under Title 23 Section 131 on the question of the process for State repayment of amounts received under the Bonus Act for control of outdoor advertising.

The Bonus Program is almost 40 years old, having originated in the Federal-aid Highway Act of 1958. Twenty-three States participate in the program, and their Federal-State Bonus Agreements remain in effect under the provisions of Title 23 USC Section 131(j). A considerable amount of sentiment has been expressed over the years about the difficulties States experience administering the Bonus Program. Many States have expressed support for rescission of the Bonus Program, a step that would require an act of Congress.

In recognition of the problems faced by the various States in controlling outdoor advertising under both the Bonus Program and the Highway Beautification Act of 1965 (HBA), FHWA proposed several modifications as part of the 1991 reauthorization process and in subsequent legislative cycles. Repeal of the Bonus Act was one such modification. Congress chose instead to emphasize the removal of illegal signs and provide Federal-aid funding for States to continue removal of non-conforming signs. Therefore, the Bonus Act and the binding requirements of the Federal-State Bonus Agreements remain in full force and effect.

Unless and until a statutory change is made, the only recourse available to a State that wishes to extinguish the control provisions imposed by the Bonus Act and its Federal-State Bonus Agreement is created by the terms of the Federal-State Bonus Agreement. That option is to repay funds received under the Bonus Program. The repayment of funds, although not popular, is the only course of action FHWA can offer at this time.

The scope of this repayment is addressed in each Federal-State Bonus Agreement in the section governing the failure of the State to perform its obligations under the Agreement. In some cases, like Iowa, repayment by segments is permitted by the terms of the Agreement. In other States, like Kentucky, the Agreement permits only a one-time, 100 percent repayment of all amounts received by the State under the Bonus Act. For States that elect not to enforce the Bonus Act, the action that triggers the repayment requirement is the act of allowing a sign to be erected or maintained in a location that is prohibited under the Bonus Act.

BUCKLE UP AMERICA

Three caveats are in order for States contemplating repayment. The first is that the money for Bonus payments originally was supplied from the General Fund, not from Title 23 entitlements [see 23 USC Sections 131(j) and (m)]. As a result, it appears that the Bonus monies received will have to be returned to the General Fund and may not be retained for Title 23 purposes. This repayment process will require coordination with FHWA fiscal personnel to assure that proper administrative controls are utilized.

The second caveat is that termination of control pursuant to the contractual repayment provisions of the Federal-State Bonus Act agreement does not affect the status of any easement acquired by a State to control outdoor advertising. If a State acquired such easements, then further guidance is required to address whether and how disposal of the easement rights can be accomplished.

The third caveat is that the repayment funds must come from the State, as the party required to enforce the Bonus Act and the Federal-State Bonus Agreement. Direct payment to FHWA from third parties, such as sign owners, is not permitted.

Where a State has authority to repay by project segment, it will be necessary for the FHWA Division to work with the State to determine whether the available Bonus payment records adequately define the project segment and the Bonus Program payments attributable to the segment. Where records are adequate to identify the amount paid for a particular segment, the calculation of the repayment amount should be based on the concept of returning the funds received for the affected segment. If adequate records are not available to define a segment or the amount paid under the Bonus Program, alternative methods must be used to calculate the repayment. In such cases, we encourage the Divisions to work with the Office of Real Estate Services on the best method for establishing logical termini for the repayment area. The goal will be to approximate the original project segment and related payments, keeping in mind the need to avoid arbitrary "carve-outs." In all cases, the provisions of the HBA of 1965 will remain in effect.

Because the repayment provisions are contained in the existing Federal-State Bonus Agreements, there is no decision to be made by FHWA and the repayment action does not require analysis or review under the National Environmental Policy Act. However, there often are high levels of local governmental. community and interest group, and industry concern about outdoor advertising signs and the administration of the outdoor advertising control program. We recommend that Divisions encourage States to include some type of public involvement in their decision-making process if termination of Bonus Act controls is considered.

Questions on this guidance may be directed to Janis Gramatins at (202) 366-2030 or (e-mail Janis.Gramatins@fhwa.dot.gov), or Janet Myers at (202) 366-2019 or (e-mail Janet.Myers@fhwa.dot.gov).

DATE: December 11, 2000
ENTITY: Office of Right of Way
SUBJECT: Position of FHWA Regarding Fall Protection Devices on Non-conforming Billboards
LAW CITE: 23 C.F.R. 750.707(d)(5)

SUMMARY

A permit holder may add a catwalk or other fall protection device to a non-conforming sign when necessary to provide for worker safety, provided such addition does not increase the structural integrity of the sign or prolong the life of the sign. No violation notices should be issued for non-conforming signs when only a catwalk or other fall protection device has been added.

605 Suwannee Street, Mail Station 22
Tallahassee, Florida 32399
(850) 414-4605
SC 994-4605

Office of Right of Way – Central Office

Memo

To: District Outdoor Advertising Administrators

From: Juanice M. Hagan, Assistant State R/W Manager, Operations

CC: K. Towcimak, District R/W Managers, J. Garner

Date: 12/11/00

Re: Position of FHWA Regarding Fall Protection Devices on Nonconforming Billboards

We have recently received clarification from the Federal Highway Administration concerning the issue of adding a catwalk or other fall protection device to a nonconforming sign for safety purposes.

Based on their guidance, a permit holder may add a catwalk or other fall protection device to a nonconforming sign when necessary to provide for worker safety, provided such addition does not increase the structural integrity of the sign or prolong the life of the sign. In addition, the permit holder may use materials that are standard for the industry in making such modification (i.e., a steel catwalk can be added to a wooden sign; bracing required to support the catwalk to the poles is permitted, etc.).

We have discussed this issue with several structural engineers (both within the Department and in private practice), and the consensus is that the addition of a catwalk (whether it be wood or steel) or other fall protection device does not necessarily add to the life of the sign nor enhance the structure.

We are currently in the rulemaking process for Rule 14-10, F.A.C., and this revised policy on nonconforming signs will be included in the rule revisions. We anticipate it will take at least six (6) months to go through rulemaking.

Effective immediately, no violation notices should be issued for nonconforming signs when only a catwalk or other fall protection device has been added. If additional modifications are discovered (such as lighting packages for signs not previously having lights, a change to the footers, additional reinforcement of poles, etc.), please discuss with Central Office prior to issuing an NOV.

Our office will be notifying permit holders of this clarification (see attached). We will encourage them to notify the Department before a catwalk or other fall protection device is added; however, we have no statutory authority to require that such notification be given.

While we do not know how many permit holders will add fall protection devices, we anticipate some of the larger billboard companies will immediately begin making such modifications. Eller Media has already made a corporate decision to add catwalks to bring their boards into compliance with OSHA standards.

DATE: November 14, 2000
ENTITY: Federal Highway Administration
SUBJECT: Catwalks Added to Non-conforming Signs
LAW CITE: 23 C.F.R. 750.707(d)(5)

SUMMARY

Reasonable maintenance and the determination of when customary maintenance ceases and a substantial change has occurred is the State's determination (23 CFR 750.707(d)(5)). Adding a catwalk for the purpose of safety is not considered a substantial change that does not enhance the structural integrity of the sign or prolong its life.

Wade, Bill
<FHWA@fhwa.dot.gov>

11/14/00 09:56 AM

To: Juanice Hagan/CO/FDOT@FDOT
cc:
Subject: Re: Catwalks added to nonconforming signs

Jaunice:
We have talked about this issue over here and also below is an e-mail from Marsha in response to your inquiry. The bottom line is we don't really have a problem with the catwalks. Please let me know if you feel this issue deserves additional attention.

Bill Wade
==========
Bill,

I received the cc of your e-mail to Juanice Hagan on catwalks. In 1995 Steve Fennel sent in a similar question to Bob Harter. I found Bob's response and have attached it for you. FHWA has not issued any guidance with regard to catwalks. The determination of reasonable maintenance and the determination of when customary maintenance ceases and a substantial change has occurred is the State's determination (23 CFR 750.707 (d) (5).

We do not have an issue with catwalks for the purpose of safety on nonconforming signs and do not consider that a substantial change.

Where safety is concerned we would encourage the State to make allowances. The fact that the State had their engineering office evaluate the signs and determined that the addition of a catwalk does not enhance the structure of the billboard or prolong it's life, indicates that Florida is operating well within 23 CFR 750.707 (d) (5).

If I can be of further assistance, let me know.

DATE: June 12, 1998
ENTITY: Office of Real Estate
SUBJECT: Off-premise Changeable Message Sign
LAW CITE: State/Federal Agreement

SUMMARY

Because signs that use flashing, intermittent, or moving lights to display animated or scrolling advertising raises significant highway safety questions, off-premise signs using such lighting are not conforming. Existing off-premise signs of this nature must be removed or operationally changed.

CEVMS POLICY DEVELOPMENT

Memorandum

U.S. Department of Transportation
Federal Highway Administration

Subject: **INFORMATION:** Off-premise Changeable Message Sign (CMS) Scottsbluff, Nebraska

Date: June 12, 1998

From: Chief, Program Services Division
Office of Real Estate Services

Reply to Attn. of: HRE-20

To: Mr. Ronald J. Rogers
Director, Program Development (HPD-07)
Kansas City, MO

On March 4, 1998, the Division office asked for advice from Region 7 and sought guidance on what changes would be permitted relating to changeable message signs. The request included a video tape of a recently erected sign that employs highly advanced, full-motion video. The Region forwarded the information on March 13 and requested guidance in two areas dealing with State options to develop criteria and rules relating to CMS, and how to handle new technology.

In 1996, based on positions taken by several States regarding tri-vision signs we acknowledged that technological changes could require the State/Federal agreement to be reinterpreted. Latitude to accommodate new technology and accept use of changeable message signs in off premise locations was dependant on a reasoned interpretation of the State/Federal agreement. Any type of technology could be used provided the signs did not contain flashing, intermittent, or moving lights. Only conforming signs were eligible to use updated technology.

The full-motion video sign depicted on the tape goes substantially beyond a changeable message display that could be controlled based on timing standards. By including animated ads that are dependant on use of flashing, intermittent, or moving lights the sign does not conform to either the existing Nebraska State/Federal agreement or the wording in our July 17, 1996, memorandum.

After careful consideration, we have concluded that such signs using flashing, intermittent or moving lights to display animated, or scrolling advertising raises significant highway safety questions because of their potential to be extremely bright, large, rapidly changing, and distracting to motorists. We are therefore reaffirming our policy that off-premise signs using animated or scrolling displays are not conforming. Existing off-premise signs of this nature must be removed or operationally changed to conform with existing State law and regulation.

Robert A. Johnson

FHWA:HRE-20:RAJohnson:gs:62020:6/11/98
cc: Reader Chron
g:\hba1965\cevms\cms_ne.wpd

For signs that are modified in this regard, please ensure your inspectors get a photograph of the sign loaded in the ODAIMS database.

If you have questions, please contact Lynn or me.

/jh
Attachment

DATE: April 5, 1996
ENTITY: Administrator for Program Development
SUBJECT: Outdoor Advertising Control on Scenic Byways and the National Highway System
LAW CITE: 23 U.S.C. 131(s)

SUMMARY

State law governs the issue of what constitutes a designated scenic byway through legislation or some other official declaration. Because §131(t) defined "primary system" and "Federal-aid primary system" for purposes of control under the HBA, it will generally not be necessary to amend Federal/State agreements to include routes added to the National Highway System (NHS) which were not on the Federal-aid primary system initially. However, agreements and State laws should be examined to assure there is not prohibitive language precluding States from extending outdoor advertising controls to the NHS. Additionally, it is left to the States to exclude certain highway sections from designation that lack scenic value. Such exclusion, however, must have a reasonable basis and not done solely to evade Federal requirements.

U.S. Department of Transportation
Federal Highway Administration

Memorandum

HDA-MT

APR 10 1998

HE IS THE ATTACHMENT TO Mr. LORNEZ'S MEMORANDUM... (sorry for the inconvenience.)

Subject: **INFORMATION:** Outdoor Advertising Control on Scenic Byways and the National Highway System (NHS)

Date: April 5, 1996

From: Associate Administrator for Program Development

Reply to Attn. of: HRW-20

To: Regional Administrators
Federal Lands Highway Program Administrator

The purpose of this memorandum is to provide an update on the role of the Federal Highway Administration (FHWA) in assuring that the intent of Congress is met concerning the implementation of 23 U.S.C. 131, Control of Outdoor Advertising.

SCENIC BYWAYS

Title 23, United States Code, Section 131(s) prohibits the erection of new signs which do not conform to Section 131(c) in areas adjacent to Interstate and primary highways which are designated as a scenic byway under a State scenic byway program. A State is considered to have a scenic byway program when one or more public roads or highways under State, Federal, or local ownership have been designated by the State through legislation or some other official declaration as a scenic byway, highway, road, trail, etc., consistent with the State's unique criteria for designating scenic byways.

The actual label, specific identifying characteristics and termini for these designated scenic byways are the responsibility of each State. State law governs the issue of what constitutes a designated scenic byway. By separate Action memo dated April 2, we are requesting each State to update information to be used in compiling a National inventory of State scenic byway programs and their byways.

In June 1993, we advised that these byways do not need to be continuous. That is, a State may exclude those highway sections from designation that lack scenic value and which otherwise would be included only to preserve system continuity. Such exclusion, however, must have a reasonable basis and not done solely to evade Federal requirements.

A few States have attempted to automatically exclude commercial and industrial areas from scenic byway designation without justification. The FHWA has worked with these States to assist them in meeting the requirements of the Federal law.

Section 314, Scenic Byways, of the National Highway System Designation Act of 1995 amended Section 131(s). This section codified FHWA's existing policy on State designated scenic byways as articulated in our June 14, 1993, memorandum. It allows States to exclude from

scenic byways designation, any segment of the highway that is inconsistent with the State's criteria for designation. The Secretary of Transportation has the authority to prevent actions that evade Federal requirements. Trail blazer signs and mapping of excluded segments is not prohibited.

Although the State does not have to obtain prior approval from FHWA, this would not preclude FHWA from examining proposed exclusions to ensure that these exclusions are made on a reasonable basis.

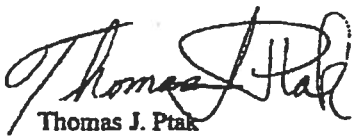
NATIONAL HIGHWAY SYSTEM

With approval of the NHS, there are probably some highways that are included in the NHS that were not formerly on the primary system. These highways would now be subject to outdoor advertising control including the Section 131(s) restrictions if part of a State designated scenic byway. Identification of highways subject to control under the Highway Beautification Act and the NHS are the responsibility of each FHWA Division Office and State highway agency.

Because Section 131(t) of Title 23, United States Code, defined "primary system" and "Federal-aid primary system" for purposes of control under the Highway Beautification Act, it will generally not be necessary to amend Federal/State Agreements or State law to include routes added to the NHS which were not on the Federal-aid primary system. However, agreements and State laws should be examined to assure there is not prohibitive language precluding States from extending outdoor advertising controls to the NHS.

There may be instances where a State, local government, etc., has an ongoing amortization program which would impact a route that is now subject to the control of outdoor advertising under the Highway Beautification Act. In these cases, no lawfully erected outdoor advertising sign located adjacent to a controlled highway on the NHS can be required to be removed without payment of just compensation. For example, if an existing sign on a route added to the NHS is in the middle of an amortization period where the ordinance declared the sign to be removed in 1992, with a 5-year amortization period, the sign cannot be removed without the payment of just compensation.

The States should update their outdoor advertising sign inventories to include highways not previously controlled but which are now included in the NHS. Additionally, each State must continue to make a good effort and reasonable progress in expeditiously removing illegal signs located adjacent to controlled highways.



Thomas J. Ptak

DATE: January 25, 1996
ENTITY: Senate of Virginia
SUBJECT: Highways, Bridges and Ferries: Outdoor Advertising in Sight of Public Highways
LAW CITE: Code of Virginia § 33.1370

SUMMARY

Class 2, on-premise signs (no size limits within 50 feet of advertised activity; up to 20 feet in length, width, or height, but not to exceed 150 sq. ft. beyond 50 feet of advertised activity) requirement apply to those signs adjacent to interstate, national highway system, or federal-aid primary highway. An on-premises sign that is located adjacent to and within 660 feet of any interstate highway is subject to the requirements enumerated in § 33.1370(B).

HIGHWAYS, BRIDGES AND FERRIES: OUTDOOR ADVERTISING IN SIGHT OF PUBLIC HIGHWAYS.

Class 2, on-premises signs requirements apply to those signs adjacent to interstate, national highway system or federal-aid primary highway; three additional requirements limiting number, location and type of advertisement apply to such signs located adjacent to and within 660 feet of interstate highway.

The Honorable Kevin G. Miller

Member, Senate of Virginia

January 25, 1996

You ask whether the provisions of § 33.1370 of the *Code of Virginia* pertaining to Class 2, on-premises signs are applicable to signs located adjacent to highways that are part of any national highway system and federal-aid primary highway or only to signs located adjacent to any interstate highway.[1]

You note that the term "interstate" is used four times without the terms "national highway system" or "federal-aid primary highway" within the Class 2, on-premises signs requirements in § 33.1370. You also note that throughout the remainder of § 33.1370, the term "interstate" is used in conjunction with the terms "national highway system" or "federal-aid primary highway."

Section 33.1370(A) does not permit any sign to be erected that is visible from and adjacent to (within 660 feet) an interstate, national highway system or federal-aid primary highway, except as permitted by § 33.1370(B). An on-premises sign, however, that is "located adjacent to and within 660 feet of any interstate highway" is subject to three additional requirements enumerated in § 33.1370(B).

It is well-settled that "[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it."[2] It is unnecessary to resort to any rules of statutory construction when the language of a statute is unambiguous.[3] In those situations, the statute's plain meaning and intent govern. It is clear, and consequently it is my opinion, that the requirements of § 33.1370(B) pertaining to Class 2, on-premises signs apply to those signs adjacent to any interstate, national highway system or federal-aid primary highway, and that there are three additional requirements that apply to such signs "located adjacent to and within 660 feet of any interstate highway."

[1]Section 33.1370 provides, in part:

"A. Notwithstanding the territorial limitation set out in § 33.1353, *no sign or advertisement adjacent to any interstate, national highway system, or federal-aid primary*

highway shall be erected, maintained or displayed which is visible from the main traveled way within 660 feet of the nearest edge of the right-of-way, *except as provided in subsection*[ ] *B* ... of this section[.]

"B. The following signs, advertisements or advertising structures may be erected, maintained and displayed within 660 feet of the right-of-way of *any interstate, national highway system, or federal-aid primary highway*:

***

"Class 2-On-premises signs.-Signs not prohibited by other parts of [Article 1, Chapter 7 of Title 33.1, e.g., signs listed in § 33.1369] which are consistent with the applicable provisions of this section and which advertise the sale or lease of, or activities being conducted upon, the real property where the signs are located; provided, that any such signs, which are located adjacent to and within 660 feet of any interstate highway and do not lie in commercial or industrial zones within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or in areas where land use as of September 21, 1959, was clearly established by state law as industrial or commercial, shall comply with [three additional requirements limiting number and location of, and type of advertisement appearing on, such on-premises signs]." (Emphasis added.)

[2]*Temple v. City of Petersburg*, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944); *see also* 1993 Op. Va. Att'y Gen. 256, 257.

[3]*See Ambrogi v. Koontz*, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982); 1993 Op. Va. Att'y Gen. 99, 100.

DATE: October 16, 1995
ENTITY: Office of Right of Way/Florida Department of Transportation
SUBJECT: Re-construction of Metal Outdoor Advertising Signs to Comply with OSHA Safety Requirements
LAW CITE: Occupational Safety and Health Act

SUMMARY

Because OSHA has defined an outdoor advertising sign as "work place," outdoor advertisers will conduct maintenance on metal outdoor advertising signs for the purpose of adding the required safety features to the sign. There should be no changes to the structure that would terminate the non-conforming status of any signs that are presently designated non-conforming. Conforming signs have no specific maintenance restrictions while non-conforming signs cannot: (1) enlarge its dimensions; (2) raise the HAGL of the sign; (3) enhance its visibility; (4) change its location; (5) change its general appearance or structure type.

MEMORANDUM

FLORIDA DEPARTMENT OF TRANSPORTATION
OFFICE OF RIGHT OF WAY MAIL STATION 22 PHONE 488-2661

DATE: October 16, 1995

TO: District Right of Way Managers
District Maintenance Engineers, Districts 4 & 6

RECEIVED
OCT 24 1995

FROM: Kenneth M. Towcimak, Director, Office of Right of Way

COPIES: Bill Deyo, John Garner, Caroline Fleurissaint, District Outdoor Advertising Administrators, Pam Leslie, Paul Sexton

SUBJECT: RE-CONSTRUCTION OF METAL OUTDOOR ADVERTISING SIGNS TO COMPLY WITH OSHA SAFETY REQUIREMENTS

The Occupational Safety and Health Administration (OSHA) recently defined an outdoor advertising sign as a "work place" within the meaning of Federal worker safety requirements and violation citations have been issued requiring correction. Safety problems occur only with regard to metal signs, since the sheets of advertising copy must be attached on that type of sign from the back of the sign face. Most previously erected metal signs were not designed with the OSHA required safety features. Accordingly, outdoor advertising companies are conducting maintenance on metal outdoor advertising signs for the purpose of adding the required safety features to the sign. The addition of such safety features as inside walkways between the sign faces may change the appearance of the signs slightly when viewed down the side, but the general appearance of the structure should remain the same.

You are cautioned to be alert to this type of maintenance activity. There should be NO changes to the structure that would terminate the nonconforming status of any such signs that are presently designated nonconforming.

Conforming signs have no specific maintenance restrictions. Please ensure that the maintenance of any nonconforming signs will not: (1) enlarge the dimensions of the sign facing; (2) raise the HAGL of the sign; (3) enhance the sign's visibility; (4) change the location of the sign; or (5) change the general appearance or structure type. Also, all work must be done in compliance with local building regulations. Replacement or refurbishing of materials in the structure with similar or like materials (for example, I-beams replacing similar I-beams) is permitted. The signs may be taken down and reerected to make these

modifications.

We are asking the Florida Outdoor Advertising Association to request their member companies to voluntarily coordinate with our District Outdoor Advertising Offices, the proposed beginning and ending of each such OSHA related maintenance effort for a nonconforming sign. In that regard, attached is a suggested format for such a coordination notice.

Please contact me if I can answer any questions about this issue or if you experience any problems regarding noncompliance with these requirements.

KMT:gk

Kenneth M. Towcimak

Attachment: Notice of OSHA Maintenance Activity

DATE: November 24, 1992
ENTITY: Requirements Division – Federal Highway Administration
SUBJECT: Vegetation Clearance - Texas
LAW CITE:

SUMMARY

The overall maintenance of the roadway and roadside is clearly the day-to-day responsibility of the States. However, the FWHA no longer endorses the practice of clearing trees and vegetation to improve visibility of signs that are subject to removal under the HBA. Whether foliage and trees growing in front of a billboard can be removed by the billboard's owner or by the highway department can best be answered by the State.

U.S. Department of Transportation
Federal Highway Administration

Memorandum

Subject: Vegetation Clearance - Texas

Date: NOV 24 1992

Reply to Attn. of: HRW-12

From: Chief, Program Requirements Division
Washington, D.C. 20590

To: Mr. Wesley S. Mendenhall, Jr.
Regional Federal Highway Administrator (HPP-06)
Fort Worth, Texas

By memorandum of November 2, you transmitted the Texas Department of Transportation's September 15 letter asking three questions on vegetation clearance along with the Division's September 23 memorandum asking for assistance in responding to the State's letter.

As background information, in 1977, the Federal Highway Administration (FHWA) issued administrative guidance which permitted, but did not require, States to enter into agreements with billboard companies to clear trees and other vegetation on the public highway right-of-way to enhance the visibility of billboards.

On May 18, 1990, FHWA issued a memorandum rescinding the guidance issued in 1977. This was a change in the direction FHWA had been giving State highway agencies. The FHWA no longer endorsed the practice of clearing trees and vegetation to improve visibility of signs that are subject to removal under the Highway Beautification Act. The overall maintenance of the roadway and roadside, however, is clearly the day-to-day responsibility of the States. Therefore, whether foliage and trees growing up in front of a billboard can be removed by the billboard's owner or by the highway department can best be answered by the State.

The following comments are provided in answer to the State's questions:

1. Are other states permitting vegetation clearance to improve the visibility of outdoor advertising signs?

   Answer - Over the years, this practice was adopted in varying ways by several states. When we checked in June of 1990 on the number of states that allowed some kind of vegetation clearance within the highway right-of-way, we found there were 20 states.

2. If other states permit vegetation clearance, does the FHWA authorize that action?

Answer — The FHWA is not involved in authorizing such vegetation clearance. However, we do not endorse vegetation clearance for this purpose as indicated above, and more particularly, we believe it to be inappropriate for nonconforming signs as Federal-aid funds are now available for the acquisition and removal of these signs.

3. Does FHWA grant any exceptions to its vegetation clearance policy?

Answer - The FHWA does not have a "vegetation clearance policy." It is FHWA's policy to assist States to maintain and preserve the roadside in a safe, pleasant and forgiving manner for the highway user. As already noted, vegetation clearance, which relates to the overall maintenance of the roadway and roadside, is clearly the day-to-day responsibility of the State.

F. D. Luckow

F. D. Luckow

DATE: June 23, 1992
ENTITY: Office of Right of Way; Montana Department of Transportation
SUBJECT: Control of Outdoor Advertising
LAW CITE: 23 U.S.C. 131(n)

SUMMARY

Amendment of 23 U.S.C. 131(n) makes the expenditure of §104 funds for the purpose of acquiring and removing non-conforming signs entirely discretionary with respect to the State. A State *may* use Federal-aid funds to acquire non-conforming signs but if it chooses not to do so, there is no risk of penalty.

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4.8.2

U.S.Department
of Transportation
Federal Highway
Administration
Montana Division

301 South Park Street
Room 448
Helena, Montana 59626

June 23, 1992

HRW-MT

John Rothwell, Director
Montana Department of Transportation
Helena, Montana 59620

Dear Mr. Rothwell:

Subject: Control of Outdoor Advertising

Public Law 102-302, relating to Dire Emergency Supplemental Appropriations, signed into law June 22, 1992, amends 23 U.S.C. 131(n) making the expenditure of section 104 funds for the purpose of acquiring and removing nonconforming signs entirely discretionary with respect to the State. Text follows:

> Sec. 104 Control of Outdoor Advertising
>
> Section 131(n) of Title 23, United States Code, is amended by adding at the end the following new sentence: "Funds apportioned to a State under section 104 of this title shall not be treated for purposes of the preceding sentence as being available to the State for making such a payment except to the extent that the State, in its discretion, expends such funds for such a payment."

We interpret this to mean a State may use Federal-aid funds to acquire nonconforming signs but if it chooses not to do so, there is no risk of penalty.

Additional guidance related to the March 6 and May 8 Notices in the Federal Register involving the acquisition and removal of nonconforming signs is expected in the near future.

Sincerely,

Merlin J. Voegele
Division Right-of-Way Officer

DATE: August 30, 1988
ENTITY: Office of Right-of-Way
SUBJECT: Responsibilities in Monitoring Compliance of Outdoor Advertising and Junkyard Programs
LAW CITE: 23 U.S.C. 131; 23 U.S.C. 136

SUMMARY

Reaffirms position of the FHWA regarding enforcement of the Outdoor Advertising and Junkyard Control program requirements even though there are no new funds available for removal of existing non-conforming signs and/or screening of existing junkyards.

POLICY - OVERSIGHT

Memorandum

U.S. Department of Transportation
Federal Highway Administration

Subject: FHWA Responsibilities in Monitoring Compliance of Outdoor Advertising and Junkyard Programs

Date: AUG 3 0 1988

From: Associate Administrator for Right-of-Way and Environment
Washington, D.C. 20590

Reply to Attn of: HRW-10

To: Regional Federal Highway Administrators

The Federal Highway Administration (FHWA) has determined that each State has made provision for effective control of outdoor advertising and junkyards along the Interstate and primary systems as required by 23 U.S.C. 131 and 136. The primary responsibility for the continuing exercise of such control rests with the State. The FHWA has a continuing oversight responsibility to assure that effective control is being maintained by the States.

This memorandum is to reaffirm the position of the FHWA regarding the enforcement of the Outdoor Advertising (ODA) and Junkyard Control (JYC) program requirements even though there are no new funds available for removal of existing nonconforming signs and/or screening of existing junkyards.

Shortage of manpower resources will require special consideration relative to the most effective way our oversight responsibilities can be carried out. In this regard, it is not expected that program compliance reviews will be carried out to monitor the ODA and JYC programs unless specific circumstances warrant. However, consideration should be given to accomplishing the oversight responsibilities in conjunction with other program activities. Surveillance might be accomplished by other Division Office staff, such as area engineers on routine travel, being alert for new illegal signs and/or junkyards which can be reported to the right-of-way staff for handling by the State.

Recently, we have also seen that some States are introducing new legislation and/or revising their existing regulations and operating procedures. These changes are often significant and should be closely monitored by the Division Offices.

ADB 4.1.2

We would appreciate your assistance in advising the FHWA Division Offices of their continuing responsibilities in the Highway Beautification program.

A. R. Kane

Anthony R. Kane

DATE: August 9, 1978
ENTITY: Executive Director – Federal Highway Administration
SUBJECT: Bus Shelters with Advertising
LAW CITE: 23 C.F.R. 1.23

SUMMARY

Provides guidance for the exercise of State's discretion under 23 C.F.R. 1.23 as it relates to advertisements on bus shelters. In determining whether a facility installed on the right-of-way of a previously approved Federal-aid highway project is permissible, the mere presence of advertising would not always render impermissible an otherwise permissible use of the right-of-way for a highway or other public purpose. However, there should be assurance that such use will not impair the highway or interfere with the safe flow of traffic thereon. The only requirement for States specifically is to award bus shelter franchises equally to all qualified advertisers. Proposed bus shelter franchise agreements, additionally, should be reviewed to ensure adequate controls are provided.

Form FHWA 121 (Rev. 8-73)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

DATE: July 17, 1978

In reply refer to: HOA-3

SUBJECT: INFORMATION: Bus Shelters with Advertising

FROM: Executive Director

TO: All Regional Federal Highway Administrators
Regions 1-10 and 15

It has come to our attention that many local jurisdictions are seeking to negotiate agreements with private companies for the free installation and maintenance of bus shelters along highways in urbanized areas, in return for the granting of a franchise to sell advertising space on portions of the shelters. We recognize that this is an attractive proposition for local government, both from an economic and fiscal point of view, and in the interest of promoting public mass transportation.

Since some of the roadways along which these shelters would be installed are covered by Federal-aid highway project agreements, the provisions of 23 CFR 1.23 are applicable. In FHWA Order 1-1, the authority to make determinations under that regulation is delegated to the Regional Administrators (with further authority to redelegate to the Division Administrators). The purpose of this memorandum is to provide you with some guidance for the exercise of your discretion under 23 CFR 1.23.

In determining whether a facility installed on the right-of-way of a previously approved Federal-aid highway project is permissible, the mere presence of advertising, which is understood to be the source of profit for a private enterprise, would not always render impermissible an otherwise permissible use of the right-of-way for a highway or other public purpose. However, there should be satisfactory assurance that such use will not impair the highway or interfere with the free and safe flow of traffic thereon. The same advice would apply to the approval of new Federal-aid highway projects when such facilities are in existence on the right-of-way.

We have conducted an informal review of a bus shelter program which has been in effect in New York City for the last three years, and it is our opinion that the presence of shelters of this design, with their limited use for advertising, is not inconsistent with

the purposes of 23 CFR 1.23 in urbanized areas. Since the various jurisdictions interested in these programs should be allowed enough flexibility to resolve competing interests in light of their own particular local conditions, we see little need at the present to impose specific restrictions on the approval of these programs.

At this time, we only require specifically that State or local jurisdictions award bus shelter franchises on the basis of public invitations, and that equal access should be provided to all qualified advertisers at reasonable rates. Proposed bus shelter franchise agreements should be reviewed, however, to assure that adequate controls are provided over items such as, but not limited to, location (site specific), design, amount of advertising space, and advertising content.

The previous advice on this subject from the Office of Traffic Operations, provided in a memorandum dated April 26, 1978, and in an attachment thereto dealing with a Minnesota request, is rescinded and superseded by this memorandum. We are, however, interested in taking a continuing look at bus shelter programs as they are put into operation. Thus, those programs that are approved should be subject to continuing review and informational reports should be prepared for the Office of Traffic Operations. These reports should provide a basis for evaluating the approaches taken at local, State, and Federal levels to exercise control, and determining what appropriate Federal Highway Administration policy should be in this area.

L. P. Lamm

DATE: January 17, 1977
ENTITY: Real Property Acquisition Division
SUBJECT: Blank Signs
LAW CITE: 23 U.S.C. 750.707(G)

SUMMARY

Where a non-conforming sign ceases to display advertising matter, each State must establish a reasonable time period to replace the content. When a sign remains blank for the established time period, it loses its non-conforming status and must be treated as an abandoned or discontinued sign. An "available for lease" or similar message that concerns the sign's availability does not constitute advertising matter.

Blank Sign Memo Link Number 25

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

DATE: JAN 17 1977

IN REPLY REFER TO: HRW-10

SUBJECT: Blank Signs

FROM: Chief, Real Property Acquisition Division
Washington, D.C.

TO: Regional Federal Highway Administrators
Regions 1 - 10

This is to clarify the definition of what constitutes a blank sign under Federal regulations.

Subpart G, Part 750.707, Title 23, CFR, and FHPM 7-6-2, paragraph 8d(6)(b), provide that where an existing nonconforming sign ceases to display advertising matter, a reasonable period of time to replace advertising content must be established by each State.

When a sign remains blank for the established period, it loses its nonconforming status or rights and must be treated as an abandoned or discontinued sign. Blank is defined as void of advertising matter. An "available for lease" or similar message that concerns the availability of the sign itself does not constitute advertising matter. A sign with such a message is treated as abandoned or discontinued after expiration of the time period established by the State. When a sign displays such a message, the sign owner is in fact acknowledging that the sign facing is without live copy.

Similarly, a sign whose message has been partially obliterated by the owner so as not to identify a particular product, service or facility is treated as a blank sign.

/s/ G. B. Saunders
G. B. Saunders

bb

DATE: August 9, 1975
ENTITY: General Counsel for Department of Transportation
SUBJECT: Highway Beautification Act
LAW CITE: 23 U.S.C. 131(b)

SUMMARY

Addresses responsibilities of the Federal government and the States under the outdoor advertising and junkyard control provisions of the HBA and the manner in which those responsibilities have been affected by the 1976 amendments to the Act. After review, the roles of the Federal government and the State governments have not been changed significantly by the amendments.

Memorandum discusses the role of the Secretary of Transportation in controlling outdoor advertising under the HBA. The general rule set forth in the Act is that if a State does not limit signs along interstate and primary highways as required by the Act, the Secretary must withhold ten percent of that State's highway funds for a particular year.

In summary, the amendments have expanded provisions of the Act that control advertising without reducing the Federal role.

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Form DOT F 1320.1 (1-67)

UNITED STATES GOVERNMENT

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

Memorandum

DATE AUG 9 1976

In reply refer to

SUBJECT: Highway Beautification Act

FROM: Acting General Counsel

TO: The Deputy Secretary

Ms. Knapp of your office requested the views of the General Counsel's office concerning the respective responsibilities of the federal government and the states under the outdoor advertising and junkyard control provisions of the Highway Beautification Act of 1965, as amended, and the manner in which those responsibilities have been affected by the 1976 amendments to that Act.

We have reviewed the Act and the 1976 amendments and have concluded that the roles of the federal and state governments have not been changed significantly by the 1976 amendments.

The Secretary of Transportation ("the Secretary") has the responsibility of monitoring the performance of states in controlling signs along Interstate and primary highways to determine whether states have complied with the statute. To make this determination, the Secretary must review the provisions and enforcement of state laws and the adherence to agreements with DOT. The Secretary cannot abrogate his responsibilities to review states' compliance with the Act. The 1976 amendments permit more signs that provide information to the traveling public; in particular, they allow certain signs to be retained if a state demonstrates, among other requirements, that removal of a sign would work an economic hardship on an area. Although the state makes an initial determination of economic hardship, the Secretary must review the states' decision and decide whether to permit the signs.

Our views are discussed more fully in the attached opinions.

Donald T. Bliss

Attachments

cc: L. Knapp

OPINION OF COUNSEL

Questions

What are the respective roles of the federal government and the states in setting and enforcing standards to control outdoor advertising under the Highway Beautification Act of 1965, as amended?

Have the amendments to the Highway Beautification Act in the Federal-Aid Highway Act of 1976 changed the roles of the federal government and the states in the outdoor advertising program?

Answer

The role of the Secretary of Transportation ("the Secretary") in controlling outdoor advertising under the Highway Beautification Act of 1965 as amended ("the Act") is to police state adherence to the requirements of the Act. Actions required of the states and the enforcement responsibilities of the Secretary vary according to the location of signs. The general rule set forth in the Act is that if a state does not limit signs along interstate and primary highways as required by the Act, the Secretary must withhold ten percent of that state's highway funds for a particular year. In areas that are zoned commercial or industrial under state law, signs may be built in accordance with agreement reached between the Secretary and a state about the characteristics of signs. Moreover, if a state determines that certain sign characteristics are of customary use in commercial or industrial zones, then agreement with the federal government is not necessary. In unzoned areas, advertising signs may be erected only if the Secretary and the state agree that the area is used for industrial or commercial purposes. Such signs must conform to standards agreed to by the Secretary and the states. If advertising displays erected in commercial or industrial zones or areas do not conform to the terms of agreements or if agreements are not in effect, the Secretary must withhold a portion of the state's highway funds.

The 1976 amendments provide for more signs to give information to travelers, but the amendments do not change the basic statutory scheme governing the control of advertising by the state and federal governments.

Discussion

The general rule regarding outdoor advertising is set forth in 23 U.S.C. 131(b) and (c) as follows:

(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, and Federal-aid highway funds apportioned on or after January 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of those additional outdoor advertising signs, displays, and devices which are more than six hundred and sixty feet off the nearest edge of the right-of-way located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State . . . until such time as such State shall provide for such effective control. . . . Whenever he determines it to be in the public interest, the Secretary may suspend, for such period as he deems necessary, the application of this subsection to a State. . . .

(c) Effective control means that such signs, displays, or devices . . . shall, pursuant to this section, be limited to (1) directional and official signs and notices, which signs and notices shall include . . . signs and notices pertaining to natural wonders, scenic and historical attractions . . . , which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located (3) signs, displays, and devices advertising activities conducted on the property on which they are located, and (4) signs lawfully in existence on October 22, 1965, determined by the State, subject to the approval of the Secretary, to be landmark signs . . . of historic or artistic significance the preservation of which would be consistent with the purposes of this section. 23 U.S.C. 131 (b), (c).

Originally, these subsections applied only to signs within 660 feet of a right-of-way. Their scope was expanded in the Federal-Aid Highway Act of 1975 because the erection of "jumbo signs" outside the land covered by the Act prevented the Act's goals from being fulfilled. Other amendments, in particular attempts by the Public Works Committee of the House of Representatives to expand the definition of directional signs, have been rejected repeatedly by Congress.

Under this statutory framework, a state must provide for "effective control" over signs, displays, and devices by enacting laws that restrict advertising displays to the four types permitted by subsection (c). Directional signs must conform to the national standards promulgated by the Secretary (see 23 C.F.R. 750). Although the statute specifies that the standards must control lighting, spacing, and size and number of signs, it is important to note that subsection (c) allows the Secretary to include other requirements that further the purposes of the advertising controls.

It is the Secretary's responsibility to review these State laws carefully to see that they limit advertising as required by subsection (c). Although that subsection contains specific requirements, the Secretary may look beyond a state's laws to its administrative procedures. In judging the effectiveness of these procedures, the Secretary should consider subsection (a), which sets forth congressional purpose in enacting this section:

> (a) . . . to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty. 23 U.S.C. 131(a).

If the Secretary determines that the requirements of subsection (c) have not been met, he must withhold 10% of the state's highway funds unless he determines that it would be in the public interest to waive the requirements of subsection (b). "Public interest" is a broad standard that leaves the Secretary a great deal of discretion. The legislative history establishes that the waiver provision "is to preclude the unjust penalizing of a State which is acting in good faith to comply with the provisions of this section, but which, for technical, legal or constitutional reasons may not be able to meet the . . . deadline." S. Rep. 709, 83th Cong., 1st Sess. 4 (1954). Therefore, funds should not be withheld if the Secretary concludes that the state is acting as expeditiously as possible to comply with the Act.

It has been argued that state participation in the highway beautification program is voluntary because states can refuse to enact and enforce laws limiting signs. This is true, but if a state simply declines to limit outdoor advertising as required by the Act, the Secretary must comply with the statutory mandate to withhold highway funds. Furthermore, the statutory language requiring the Secretary to determine if a state has "made provision for effective control" of outdoor advertising permits him to consider whether procedures adopted under the state laws can be expected to limit advertising expeditiously and to penalize a state if he concludes that a state's procedures are unreasonably slow.

The Act contains the following special provisions for commercial and industrial areas:

> (d) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use is to be determined by agreement between the several States and the Secretary, may be erected and maintained within six hundred and sixty feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as may be determined by agreement between the several States and the Secretary. The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act. Whenever a bona fide State, county, or local zoning authority has made a determination of customary use, such determination will be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority . . . . 23 U.S.C. 131(d).

Both the language of the subsection and the legislative history emphasize that the States have complete authority to zone lands because determination of land use is a state function requiring special knowledge of local conditions. The only limitation on state discretion here is that state

"zoning" laws must constitute true zoning. They may not subvert the statute by "strip zoning" land along highways for commercial or industrial use. S. Rep. No. 709, 89th Cong. 1st Sess. (1965). The Secretary's authority to refuse to recognize "strip zoning" as a legitimate exercise of state zoning power has been upheld. See South Dakota v. Volpe, 353 F. Supp. 335 (D. S. D., 1973).* Unzoned areas can be designated as being used for commercial or industrial purposes only if the state and the Secretary agree on the designation. The Public Works Committee of the House of Representatives specifically approved the statement by Secretary of Commerce John Conner that the Secretary was given a role in the designation of unzoned areas "to make sure that 'unzoned' commercial or industrial areas along our primary highways will be defined on the same basis as those which are actually zoned." H.R.Rep. No. 1088, 89th Cong., 1st Sess. 4 (1965). If the Secretary has not agreed to the designation, then he must withhold ten percent of the highway funds of a state that allows signs other than those permitted by subsection (c) to be built in an unzoned, undesignated area. Id. The purpose of permitting such enforcement is to allow the Secretary to ensure that, in the absence of zoning, a designation by the state of land for commercial or industrial purposes is consistent with the purposes of limiting outdoor advertising and not an attempt by the state to create an exception not intended by federal law. 111 Cong. Rec. S. 23242 (daily ed., Sept. 10, 1965).

Once land is either zoned or designated as commercial or industrial, advertising signs that conform to standards agreed to by the Secretary and a state may be erected; or if a state has determined the "customary use" of signs, signs that meet those criteria may be erected without such

*In South Dakota, the State had enacted a new title 31 to its code to comply with the Highway Beautification Act of 1965. Title 31 provided strips of "commercial zoning" along the state highways. When the Secretary began action to withhold ten percent of its highway funds, the State sought a court order to compel the Secretary to release its funds. The court ruled that the Secretary's decision was reasonable and that the Secretary had authority to refuse to recognize untraditional zoning that would be inconsistent with the Act's purposes. The court also upheld the Secretary's refusal to negotiate with the State on the designation of unzoned areas because the State statute precluded meaningful negotiation by State officials. Finally, the court held that the Secretary could reject the State's determination of customary use of signs under section 131(d) as being below a minimum standard used by other states.

an agreement. In the 1965 Act, standards for signs in commercial and industrial areas could be determined only by agreement between the Secretary and the states. The provision allowing determination of customary use by a state for commercial and industrial zones in lieu of agreement with the Secretary was added in section 6 of the Federal-Aid Highway Act of 1968. That amendment, which increased the states' authority in those zones, reflected what Secretary of Transportation Boyd informed the Congress would be the practice in any case. 114 Cong. Rec. 9679 (daily ed., July 29, 1968). The Secretary may, however, reject a state determination of customary use when he determines that it fails to meet an acceptable minimal level. See South Dakota, at 341. At the same time this amendment was adopted, Congress refused to extend similar authority to the states for areas designated commercial or industrial under agreement with the Secretary.

The states clearly have the power to zone land and to set standards for signs in commercial and industrial zones. However, it is equally clear from the Congressional rejection of amendments to reduce the Secretary's control over unzoned areas that Congress intends that the Secretary retain authority over those areas and use the penalty provision of the sections. Under subsection (f) of section 131, the Secretary must, in consultation with the states, provide for signs giving information to travelers within the interstate rights-of-way. These signs, which are intended to be state signs, must conform to national standards issued by the Secretary. The legislative history indicates that the Secretary is to permit brand names of products to be displayed to the extent that such names would be useful to the public. S. Rep. 709, 89th Cong., 1st Sess. 5 (1965). The Secretary's control over characteristics and location of these signs gives him final authority in placing such signs even though he must consult with the states.

In summary, until the enactment of the 1978 amendments, the Act delineated varying degrees of authority for the Secretary depending on the location and nature of a sign. Although responsibility for providing "effective control" over signs rests with the states, it is the Secretary who determines what state statutes meet the criteria of subsection (c) and effectuate the purposes of the Act set forth in subsection (a). Except for the 1968 amendment that allowed states to determine "customary use" of signs in commercial and industrial areas, the amendments have expanded the provisions of the Act that control advertising without reducing the federal role. As the court stated in South Dakota:

> [N]othing within the legislative history. . . precludes the Secretary's overall supervision and exercise of power where local authorities have failed to measure up to the objectives of the Act. The Secretary has the responsibility to police performance of the agreements, to promote the reasonable orderly and effective display of outdoor advertising adjacent to our federally assisted highways." South Dakota, at 844.

1976 Amendments

The Federal-Aid Highway Act of 1976 amends subsection (i) (above) to provide more information to motorists. Subsection 122(a) of the 1976 Act extends provision for signs at rest areas to the primary highways. There is not any indication in the language of the amendment or in its legislative history that Congress intended to expand the states' control.

Subsection (i) of the Act, 23 U.S.C. 131(i), which allowed information centers and advertising pamphlets at safety rest areas, has been expanded by subsection 122(e) of the 1976 Act to permit "other travel information systems within the rights of way. . ." These additional information systems may be provided only with the Secretary's approval. H.R.Rep. No. 94-1017, 94th Cong. 2d Sess. 49 (1976).

Section 122 of the Federal-Aid Highway Act of 1976 adds three new subsections to section 131. These subsections provide further guidance to the Secretary in administering the national sign removal program, indicating Congressional concern that travelers receive information. They do not, however, shift control of the program from the federal government to the states.

New subsection (o) provides:

> (o) The Secretary may approve the request of a State to permit retention in specific areas defined by such State of directional signs, displays, and devices lawfully erected under State law in force at the time of their erection which do not conform to the requirements of subsection (c), where such signs, displays, and devices are in existence on the date of enactment of this subsection and where the State demonstrates that such signs, displays, and devices (1) provide directional information about goods and services in the interest of the traveling public, and (2) are such that removal would work a substantial economic hardship in such defined area.

The language of subsection (e) is permissive (note underlined language). It gives the Secretary discretion over whether or not to permit signs to remain rather than being taken down. Moreover, the state must demonstrate the directional nature of the signs and the economic hardship that will result from their removal in order for the Secretary to consider the request. The legislative history of this subsection indicates that the state will determine economic hardship, but in so doing a state may not rely on individual claims of economic hardship. H.R. Rep No. 94-1617, 94th Cong., 2d Sess., 49 (1976). The Secretary must still review and approve the state's decision since, like the state, he may not rely on individual claims. Id.

In discussing the determination of economic hardship, the legislative history also calls attention to the provision in subsection (d) that state authority to zone areas for industrial or commercial use shall be accepted for the purposes of this Act. That provision of subsection (d) has been in the statute since 1965. As discussed above, it has been interpreted to permit the Secretary to refuse to recognize "strip zoning" along highways. This reference does not shift the federal and state roles. Its inclusion probably reflects the Committee's view that determination of economic hardship requires knowledge of local conditions, as does zoning. In view of the case law and legislative history, any such curtailment of the Secretary's authority to disregard strip zoning would require an amendment to the Act.

The other new subsection that is pertinent to the roles of the federal government and the states, subsection (q), provides:

> (q)(1) During the implementation of State laws enacted to comply with this section, the Secretary shall encourage and assist the States to develop sign controls and programs which will assure that necessary directional information about facilities providing goods and services in the interest of the traveling public will continue to be available to motorists. To this end the Secretary shall restudy and revise as appropriate existing standards for directional signs authorized under subsections 131(c)(1) and 131(f) to develop signs which are functional and esthetically compatible with their surroundings. He shall employ the resources of other Federal departments and agencies, including the National Endowment for the Arts, and employ maximum participation of private industry in the development of standards and systems of signs developed for those purposes.

(2) Among other things the Secretary shall encourage States to adopt programs to assure that removal of signs providing necessary directional information, which also were providing directional information on June 1, 1972, about facilities in the interest of the traveling public, be deferred until all other non-conforming signs are removed.

This section does not dilute the Secretary's authority. The direction to the Secretary to revise the standards or directional signs is intended to provide travelers with sufficient information. It does not lessen federal control of outdoor advertising. Indeed, this direction to the Secretary explicitly recognizes his authority to issue the standards. Paragraph (2) recognizes the Secretary's responsibility to direct the states in their sign removal programs. The guidance given the Secretary merely places in the statute the policy already set forth in the regulations. See 23 C.F.R. 750.304(a) (1976).

These new subsections, although taken from the highway bill introduced in the House of Representatives, do not indicate a shift from a federal to a state-run program. Although the sections give direction to the Secretary and allow certain existing signs to remain, the language of both recognizes the Secretary's role in managing advertising restrictions. Inclusion of a provision in the legislative history giving heavy weight to a state determination of economic hardship under one of these subsections does not shift control of the advertising program.

Acting General Counsel

Section 7