

- 1 (c) IT DOES NOT EXCEED TWO HUNDRED SQUARE FEET IN AREA.
- 2 (d) IT IS NOT CHANGED MORE THAN ONCE EVERY SIX SECONDS WITH A ONE
- 3 SECOND INTERVAL BETWEEN CHANGING MESSAGES.
- 4 (e) IT DISPLAYS A STATIC, NONANIMATED MESSAGE.
- 5 (f) A PERMIT IS OBTAINED BEFORE INSTALLATION UNDER AN ELECTRONIC
- 6 VARIABLE MESSAGE BOARD PERMIT SYSTEM AS REQUIRED IN RULES ADOPTED BY THE
- 7 DIRECTOR. FEES FOR AN ELECTRONIC VARIABLE MESSAGE BOARD PERMIT SHALL NOT
- 8 EXCEED THE ACTUAL COSTS TO THE DEPARTMENT.
- 9 5. AN ELECTRONIC VARIABLE MESSAGE BOARD SHALL NOT BE PLACED IN
- 10 VIOLATION OF 23 UNITED STATES CODE SECTION 131 OR SECTION 28-7907.

PLEASE NOTE: In most BUT NOT ALL instances, the page and line numbering of bills on this web site correspond to the page and line numbering of the official printed version of the bills.

Conference Engrossed

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

HOUSE BILL 2461

AN ACT

AMENDING SECTIONS 28-7901, 28-7903, 28-7906, 28-7909 AND 28-7914, ARIZONA
REVISED STATUTES; RELATING TO HIGHWAY BEAUTIFICATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 28-7901, Arizona Revised Statutes, is amended to
3 read:

4 28-7901. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Business area" means an area that is outside municipal limits,
7 that embraces all of the land on the same side of the highway on which one or
8 more commercial or industrial activities are conducted, including all land
9 within one thousand feet measured in any direction from the nearest edge of
10 the actual land used or occupied for such activity, its parking, storage and
11 service areas, its driveways and its established front, rear and side yards,
12 that constitutes an integral part of such activity and that is zoned, under
13 authority of law, primarily to permit industrial or commercial activity. If
14 one or more commercial or industrial activities are located within one
15 thousand feet of a freeway interchange, the business area shall extend three
16 thousand feet measured in each direction parallel to the freeway from the
17 center line of the crossroad but shall not extend beyond the limits of the
18 established commercial or industrial zone.

19 2. "ELECTRONIC VARIABLE MESSAGE SIGN" MEANS A SIGN CAPABLE OF CHANGING
20 MESSAGES ELECTRONICALLY BY REMOTE OR AUTOMATIC MEANS.

21 ~~2-~~ 3. "Freeway" means a divided arterial highway on the interstate or
22 primary system with full control of access and with grade separations at
23 intersections.

24 ~~3-~~ 4. "Information center" means a site that is established and
25 maintained at a safety rest area to inform the public of places of interest
26 in this state and that provides other information the board considers
27 desirable.

28 ~~4-~~ 5. "Interstate system" means the portion of the national system of
29 interstate and defense highways located in this state that are officially
30 designated by the board and approved by the United States secretary of
31 transportation pursuant to 23 United States Code.

32 ~~5-~~ 6. "Main traveled way":

33 (a) Means the portion of a roadway for the movement of vehicles,
34 excluding shoulders, on which through traffic is carried.

35 (b) In the case of a divided highway, means the traveled way of each
36 of the separated roadways for traffic in opposite directions.

37 (c) Does not include facilities such as frontage roads or parking
38 areas.

39 ~~6-~~ 7. "Outdoor advertising" means any outdoor sign, display, light,
40 device, figure, painting, drawing, message, plaque, poster, billboard or
41 other thing that is designed, intended or used to advertise or inform and the
42 message of which is visible from any place on the main traveled way of the
43 interstate, secondary or primary systems.

44 ~~7-~~ 8. "Primary system" means that portion of connected main highways
45 located in this state that are officially designated by the board and

1 approved by the United States secretary of transportation pursuant to 23
2 United States Code.

3 ~~8-~~ 9. "Safety rest area" means a site established and maintained by
4 or under public supervision or control for the convenience of the traveling
5 public within or adjacent to the right-of-way of the interstate or primary
6 systems.

7 ~~9-~~ 10. "Secondary system" means that portion of connected highways
8 located in this state that are officially designated by the board and
9 approved by the United States secretary of transportation pursuant to 23
10 United States Code.

11 ~~10-~~ 11. "Tourist related advertising display" means any outdoor
12 advertising that advertises a specific public or private facility,
13 accommodation, goods or service, at a particular location or site, including
14 an overnight lodging, campsite, food service, recreational facility, tourist
15 attraction, educational or historical site or feature and automotive service
16 facility or garage.

17 ~~11-~~ 12. "Unzoned commercial or industrial area" means an area that is
18 not zoned under authority of law and in which land use is characteristic of
19 that generally permitted only in areas that are actually zoned commercial or
20 industrial under authority of state law, that embraces all land on the same
21 side of the highway on which one or more commercial or industrial activities
22 are conducted, including all land within one thousand feet measured in any
23 direction from the nearest edge of the actual land used or occupied by this
24 activity, its parking, storage and service areas, its driveways and its
25 established front, rear and side yards, and that constitutes an integral part
26 of this activity. As used in this paragraph, commercial or industrial
27 activities do not include:

- 28 (a) Outdoor advertising structures.
- 29 (b) Agricultural, forestry, grazing, farming and related activities.
- 30 (c) Transient or temporary activities, including wayside fresh produce
31 stands.
- 32 (d) Activities not visible from the main traveled way.
- 33 (e) Activities conducted in a building principally used as a
34 residence.
- 35 (f) Railroad tracks and minor sidings and aboveground or underground
36 utility lines.

37 Sec. 2. Section 28-7903, Arizona Revised Statutes, is amended to read:

38 28-7903. Outdoor advertising prohibited

39 A. Outdoor advertising shall not be placed or maintained adjacent to
40 the interstate, secondary or primary systems at the following locations or
41 positions, under any of the following conditions or if the outdoor
42 advertising is of the following nature:

- 43 1. If it is within view of, directed at and intended to be read from
44 the main traveled way of the interstate, primary or secondary systems, except
45 outdoor advertising authorized under section 28-7902.

1 2. If it is visible from the main traveled way and simulates or
2 imitates a directional, warning, danger or information sign permitted under
3 this article, if it is likely to be mistaken for any such permitted sign or
4 if it is intended or likely to be construed as giving warning to traffic,
5 such as by the use of the words "stop" or "slow down".

6 3. If it is within any stream or drainage channel or below the flood
7 water level of any stream or drainage channel where the outdoor advertising
8 might be deluged by floodwaters and swept under any highway structure
9 crossing the stream or drainage channel or against the supports of the
10 highway structure.

11 4. If it is visible from the main traveled way and displays a red,
12 flashing, blinking, intermittent or moving light or lights likely to be
13 mistaken for a warning or danger signal, except that part necessary to give
14 public service information such as time, date, weather, temperature or
15 similar information. FOR THE PURPOSES OF THIS PARAGRAPH:

16 (a) "BLINKING" MEANS A FORM OF FLASHING WHERE THE PATTERN OF SUDDEN
17 ILLUMINATION CHANGES OCCURS WITH MORE THAN TWO ON-OFF CYCLES PER SECOND.

18 (b) "FLASHING" MEANS A PATTERN OF CHANGING LIGHT ILLUMINATION WHERE
19 THE SIGN ILLUMINATION ALTERNATES SUDDENLY BETWEEN FULLY ILLUMINATED AND FULLY
20 NONILLUMINATED IN A TIME FRAME OF LESS THAN SIX SECONDS. ANY INVERSION OF
21 THE SIGN COPY AND THE SIGN BACKGROUND WITHIN SIX SECONDS OF ANY PREVIOUS
22 CHANGE IN THE SIGN MESSAGE SHALL BE CONSIDERED FLASHING.

23 (c) "INTERMITTENT" MEANS A PATTERN OF CHANGING LIGHT INTENSITY, OTHER
24 THAN THAT ACHIEVED WITH IMMEDIATE, FADE OR DISSOLVE TRANSITIONS BETWEEN
25 MESSAGES, WHERE ANY MESSAGE REMAINS STATIC FOR LESS THAN SIX SECONDS. FOR
26 THE PURPOSES OF THIS SUBDIVISION:

27 (i) "DISSOLVE" MEANS A TRANSITION BETWEEN STATIC MESSAGE DISPLAYS THAT
28 IS ACHIEVED WITH VARYING LIGHT INTENSITY AND WHERE THE FIRST MESSAGE
29 GRADUALLY APPEARS TO DISSIPATE AND LOSE LEGIBILITY SIMULTANEOUS TO THE
30 GRADUAL APPEARANCE AND LEGIBILITY OF THE SECOND MESSAGE.

31 (ii) "FADE" MEANS A TRANSITION BETWEEN STATIC MESSAGE DISPLAYS THAT IS
32 ACHIEVED WITH VARYING LIGHT INTENSITY AND WHERE THE FIRST MESSAGE GRADUALLY
33 REDUCES LIGHT INTENSITY TO THE POINT OF BEING NOT LEGIBLE AND THE SUBSEQUENT
34 MESSAGE GRADUALLY INCREASES INTENSITY TO THE POINT OF LEGIBILITY.

35 (d) "MOVING" MEANS THE PHYSICAL CHANGE IN POSITION OF ANY VISIBLE
36 ILLUMINATION SOURCE WHILE LIGHTED OR THE SIMULATION OF THE MOVEMENT ACHIEVED
37 WITH A PATTERN OF SEQUENTIALLY ILLUMINATING VISIBLE ILLUMINATION SOURCES
38 WITHIN CLOSE PROXIMITY TO EACH OTHER WITHIN ANY SIX SECOND TIME SPAN.

39 5. If an illumination on the outdoor advertising is of such brilliance
40 and in such a position as to blind or dazzle the vision of travelers on the
41 main traveled way.

42 6. If it exists under a permit as required by this article and is not
43 maintained in safe condition.

44 7. If it is obviously abandoned.

45 8. If it is placed in a manner that either:

1 (a) Obstructs or otherwise physically interferes with an official
2 traffic sign, signal or device.

3 (b) Obstructs or physically interferes with the vision of drivers in
4 approaching, merging or intersecting traffic.

5 9. If it is placed on trees or painted or drawn on rocks or other
6 natural features, except signs permitted by section 28-7902, subsection A,
7 paragraph 2.

8 B. At interchanges on freeways or interstate highways outside
9 municipal limits, an outdoor advertising sign, display or device shall not be
10 erected in the area between the crossroad and a point five hundred feet
11 beyond the beginning or ending of pavement widening at the exit from or
12 entrance to the main traveled way.

13 Sec. 3. Section 28-7906, Arizona Revised Statutes, is amended to read:

14 28-7906. Outdoor advertising and property right acquisition;
15 compensation; removal; hearing

16 A. The director shall acquire by gift, agreement, purchase, exchange,
17 eminent domain or other lawful means all right, title, leasehold and interest
18 in any outdoor advertising together with the right of the owner of the real
19 property on which the outdoor advertising is located to erect and maintain
20 the outdoor advertising on the real property, if the outdoor advertising is
21 prohibited by this article. Damages resulting from any taking of property in
22 eminent domain shall be determined in the manner provided by law.

23 B. If compensation is required by federal law and if federal
24 participation in the compensation is required by federal law, nonconforming
25 outdoor advertising is not required to be removed until federal monies for
26 the federal share of compensation as required by federal law are made
27 available to the department.

28 C. If outdoor advertising is placed after July 1, 1974 contrary to
29 this article or the rules adopted by the director or if a permit is not
30 obtained as prescribed in this article, the outdoor advertising is unlawful.

31 D. The director shall give notice by certified mail of the director's
32 intention to remove advertising deemed unlawful to both the owner or the
33 occupant of the land on which the outdoor advertising is located and the
34 owner of the outdoor advertising, if the latter is known, or if unknown, by
35 posting notice in a conspicuous place on the outdoor advertising. Within
36 seven days after the notice is mailed or posted, the owner of the land or the
37 outdoor advertising may make a written request to the director for a hearing
38 to show cause why the outdoor advertising should not be removed. IN CASES
39 INVOLVING ELECTRONIC VARIABLE MESSAGE SIGNS, IF THE DIRECTOR FINDS THAT THE
40 PUBLIC MAY BE ENDANGERED BY A VIOLATION OF SECTION 28-7903, SUBSECTION A,
41 PARAGRAPH 2, 4, 5 OR 8, ON MAILING OR POSTING OF THE NOTICE OF INTENT TO
42 REMOVE THE OUTDOOR ADVERTISING AND PENDING ANY ADMINISTRATIVE OR JUDICIAL
43 DETERMINATION IF A HEARING IS REQUESTED, THE ELECTRONIC VARIABLE MESSAGE SIGN
44 SHALL EITHER:

45 1. BE OPERATED AS PRESCRIBED BY THIS CHAPTER AND AS REQUIRED BY THE
46 NOTICE.

1 2. BE TURNED OFF.

2 E. The director shall designate a hearing officer, who is an
3 administrative employee of the department, to conduct and preside at the
4 hearing. If a hearing is requested, the department shall hold the hearing
5 within thirty days after the hearing is requested and the department shall
6 give the party requesting the hearing at least five days' notice of the time
7 of the hearing. The department shall conduct the hearing at department
8 administrative offices. A full and complete record and transcript of the
9 hearing shall be taken.

10 F. Within ten days after the hearing, the hearing officer shall make a
11 written determination of findings of fact, conclusions and decision and shall
12 mail a copy by certified mail to the owner or the party who requested the
13 hearing.

14 G. If the decision is adverse to the party, within ten days after the
15 decision is rendered the party may petition the superior court in the county
16 in which the outdoor advertising is located to determine whether the decision
17 of the hearing officer was lawful and reasonable. If the decision of the
18 court upholds that of the director, the owner of the land or the outdoor
19 advertising, or both, shall pay all costs from the time of the administrative
20 hearing, including court costs.

21 H. If a hearing before the director is not requested, if an appeal is
22 not taken from the director's decision of the hearing or if the director's
23 decision is affirmed on appeal, the director shall immediately remove the
24 offending outdoor advertising. The owner of the outdoor advertising, the
25 owner or occupant of the land or the owner of the outdoor advertising and the
26 owner or occupant of the land are liable for the costs of this removal. The
27 director has no liability for the removal.

28 Sec. 4. Section 28-7909, Arizona Revised Statutes, is amended to read:
29 28-7909. Permits; fees; disposition

30 A. The director shall issue permits to place or maintain, or both,
31 outdoor advertising authorized under section 28-7902, subsection A,
32 paragraphs 1, 4, 5, 6, 7 and 8 and ~~to~~ establish and collect fees for the
33 issuance of the permits. The fees FOR OUTDOOR ADVERTISING PERMITS shall not
34 exceed the actual costs to the department. IN ADDITION TO THE OUTDOOR
35 ADVERTISING PERMIT, A SEPARATE PERMIT IS REQUIRED FOR ANY ELECTRONIC VARIABLE
36 MESSAGE SIGN. THE DIRECTOR SHALL SEPARATELY ESTABLISH AND COLLECT FEES FOR
37 THE ISSUANCE OF A PERMIT FOR AN ELECTRONIC VARIABLE MESSAGE SIGN.

38 B. The department shall deposit, pursuant to sections 35-146 and
39 35-147, the fees collected under this article in the state highway fund.

40 Sec. 5. Section 28-7914, Arizona Revised Statutes, is amended to read:
41 28-7914. Construction of article

42 A. This article is cumulative and supplemental to other provisions of
43 law and does not affect or enlarge any authority of counties, cities or towns
44 pursuant to any other provisions of law that may exist to enact ordinances
45 regulating the size, lighting and spacing of outdoor advertising.

H.B. 2461

1 B. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO LIMIT THE AUTHORITY
2 OF ANY COUNTY, CITY OR TOWN TO ENACT AND ENFORCE ZONING REGULATIONS OF
3 OUTDOOR ADVERTISING SIGNS OR ELECTRONIC VARIABLE MESSAGE SIGNS THAT ARE MORE
4 RESTRICTIVE THAN PROVIDED IN THIS ARTICLE.

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Real Estate

[FHWA > HEP > Realty > Outdoor Advertising](#)U.S. Department of Transportation
Federal Highway Administration

Memorandum

Subject: **INFORMATION:** Guidance On Off-Premise Changeable Message SignsDate: September 25,
2007**ORIGINAL SIGNED BY:** Gloria M. ShepherdFrom: Gloria M. Shepherd
Associate Administrator for
Planning, Environment, and Realty

Reply to: HEPR-20

To: Division Administrators
ATTN: Division Realty Professionals**Purpose**

The purpose of this memorandum is to provide guidance to Division Realty Professionals 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 the 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 the 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). The 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 the 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, the Office of Real Estate Services issued a memorandum to Regional Administrators to provide guidance on off-premise changeable message signs and confirmed that the FHWA has "*always applied the Federal*

law 23 U.S.C. 131 as it is interpreted and implemented under the Federal regulations and individual FSAs." 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 the FHWA to interpret the agreements with those changes in mind." The July 17, 1996, memorandum primarily addressed television 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 July 17, 1996, memorandum.

The policy espoused in the July 17, 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, the 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. The 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 the 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 the 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 guidance 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, the Office of Realty Estate Services 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 on guidance on *Off-Premise Changeable Message Signs*, you may contact the Office of Real Estate Services' "Point of Contact" serving your Division or Catherine O'Hara by e-mail: (Catherine.O'Hara@dot.gov).

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United States Department of Transportation - Federal Highway Administration



U.S. Department
of Transportation
**Federal Highway
Administration**

February 28, 2008

1200 New Jersey Avenue, SE.
Washington, DC 20590

In Reply Refer To:
HEPR
FOIA 2008-0002

Mr. William D. Brinton
1301 Riverplace Boulevard
Jacksonville, FL 32207

Dear Mr. Brinton:

This is in reply to your e-mail of October 1, 2007, to our Freedom of Information Act (FOIA) Officer regarding the memorandum, dated September 25, 2007, on "Guidance on Off-Premise Changeable Message Signs." Our FOIA Liaison, Mr. Jeb Kreischer, acknowledged your FOIA request on October 4 and forwarded it to this office for reply.

Under the FOIA, you requested four types of documents: (1) All e-mails to and from me on the development of the guidance issued on September 25, 2007; (2) All e-mails since January 1, 2006, discussing whether new or further guidance on Off-Premise Changeable Message Signs would require NPRM action or be a significant change; (3) All FOIA requests submitted by the Outdoor Advertising Association of America (OAAA) since January 1, 2004; and (4) all documents and communications from OAAA since January 1, 2006.

We have reviewed files in this office, as well as the Office of Chief Counsel, to locate documents covered by your FOIA request. We have located documents under items (1) and (2) in your e-mail; none are from before 2007. After reviewing the documents, I am releasing them to you except as noted. The following documents contain material that is subject to the deliberative process and/or attorney-client privilege under FOIA (5 USC 552(b)(5)). Where the document containing this material is part of an e-mail exchange, I am identifying the document by referencing the "top" (or most recent) e-mail in the exchange:

E-mail dated August 30, 2007, from Mr. Janis Gramatins of the Office of Real Estate Services (HEPR) to Mr. Robert Black of the Office of Chief Counsel ("RE: Eyes only"). This e-mail is part of an exchange of e-mails that includes Mr. Black's August 30 e-mail response to an e-mail earlier that day from Mr. Gramatins seeking Mr. Black's review. I am withholding the substantive portion of Mr. Black's e-mail because it contains privileged attorney-client advice and the document that Mr. Gramatins transmitted to Mr. Black for review under the deliberative process privilege.

**MOVING THE
AMERICAN
ECONOMY**

E-mail dated August 30, 2007, from Mr. Gerald Solomon of HEPR to Mr. Gramatins and Associate Administrator Gloria Shepherd ("RE: DRAFT – CEVMS"). This document contains an exchange of e-mails that includes an e-mail from Ms. Jennifer Outhouse of the Office of Chief Counsel, dated August 30, to Mr. Solomon and Mr. Black. I am withholding all but the first and last paragraphs of Ms. Outhouse's email, along with the attachment to the e-mail, because the withheld material contains privileged attorney-client advice.

E-mail dated August 31, 2007, from Mr. Solomon to Ms. Outhouse ("RE: DRAFT – CEVMS"). I am withholding two paragraphs from Mr. Solomon's e-mail under the deliberative process privilege. In addition, am withholding one sentence from the August 30 e-mail from Ms. Outhouse's e-mail because it contains privileged attorney-client advice.

E-mail dated September 5, 2007, from Mr. Edward Kussy of the Office of Chief Counsel to Ms. Outhouse and Chief Counsel James Ray ("RE: Guidance for Your Review – Changeable Message Signs"). This document consists of an e-mail from Ms. Outhouse to Mr. Kussy, with copies for other members of the Office of Chief Counsel; Mr. Kussy's e-mail, also with copies to other members of Mr. Ray's staff; and an attached version of the guidance. I am withholding the substantive portion of Mr. Kussy's e-mail in its entirety, along with two sentences from Ms. Outhouse's e-mail under the attorney-client privilege.

E-mail dated September 5, 2007, from Mr. Kussy to Mr. Black ("Re: Digital billboards"). In this exchange of five e-mails, we are withholding the contents of Mr. Black's e-mail to Mr. Kussy on September 5 at 5:06 p.m. under the attorney-client privilege.


E-mail dated September 24, 2007, from Mr. Black to Mr. Ray, Mr. Kussy, Ms. JoAnne Robinson, and Mr. Harold Aikens of the Office of Chief Counsel ("CEVMS Sign Memo"). I am withholding the substantive portion of this e-mail because the withheld material contains privileged attorney-client advice.

Regarding your items (3) and (4), we have not received any FOIA requests from OAAA since January 1, 2004, and we do not have any documents or communications received from OAAA since January 1, 2006, pertaining to LED signs and electronic changeable message signs.

The undersigned is the official responsible for determining which documents are withheld and whether we have documents that are responsive to your FOIA request. Pursuant to the regulations of the Department of Transportation (49 CFR 7.21), you have the right to appeal these decisions to Ms. Patricia Prosperi, Associate Administrator for Administration, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, D.C. 20590. Should you wish to appeal, her decision will be administratively final. Your appeal must be made in writing within 30 days after receipt of this letter and must include all information and arguments relied upon in making the appeal.

This letter completes our initial determinations in response to your FOIA request.

Sincerely yours,


Gloria M. Shepherd
Associate Administrator for Planning,
Environment, and Realty

Enclosures

Weingroff, Richard <FHWA>

From: Gramatins, Janis <FHWA>
Sent: Tuesday, August 28, 2007 9:24 AM
To: Black, Robert <FHWA>; O'Hara, Catherine <FHWA>; Keith, Don <FHWA>
Cc: Solomon, Gerald <FHWA>
Subject: RE: CEVMS An epiphany at NAHAB, Jackson Miss.

Interesting idea, Bob - could we use this "reasonable interval" idea to differentiate intermittence from the (potentially distracting) flashing or moving light prohibitions, thus somehow allowing the reasonable, periodic change of copy? Copy change has never been an issue (certainly not in the days of paste and paper that our regs seem to reflect), and somehow defining "reasonable interval" could be an avenue to look at in wrestling with the intermittent issue... I know that sounds like what the industry is promoting, but is there some room for us to explore here?

Janis

From: Black, Robert <FHWA>
Sent: Tuesday, August 28, 2007 9:17 AM
To: O'Hara, Catherine <FHWA>; Keith, Don <FHWA>; Gramatins, Janis <FHWA>
Cc: Solomon, Gerald <FHWA>
Subject: RE: CEVMS An epiphany at NAHAB, Jackson Miss.

One note about the 131(c)(3) reference to "reasonable interval" signs. That came in the 1978 HBA amendments because Bonus State on premise signs could not have "flashing, intermittent, or moving lights" (23 CFR 750108(c)) while the other States could. This statutory amendment rectified this different treatment of on premise signs.

I don't know if that means anything or not in this discussion but you pick up a lot of arcane bits when you read the legislative history of the HBA.

From: O'Hara, Catherine <FHWA>
Sent: Tuesday, August 28, 2007 9:06 AM
To: Keith, Don <FHWA>; Gramatins, Janis <FHWA>; Black, Robert <FHWA>
Cc: Solomon, Gerald <FHWA>
Subject: CEVMS An epiphany at NAHAB, Jackson Miss.

It is my opinion, regardless of Jeremy Johnson presentation, that 23 USC 131 Section 131(c)(3) indicates that the only signs that may be changed at reasonable intervals by electronic process or by remote control, are on premise signs.

To me, any illuminations which go on or off more than once a day are intermittent lights. In my humble opinion, the signs which are affixed to the outside of the sign with lights that go on or off once during the 24 hours, i.e., comes on at night, go off at day light, are the illumination that 23 USC131 allows on off-premise commercial signs. But then, I am no attorney, but it is as clear as day and night to me, just as these signs are as clear at day and night to the traveler.

From: Keith, Don [mailto:Don.Keith@fhwa.dot.gov]
Sent: Tuesday, August 28, 2007 8:45 AM
To: Gramatins, Janis <FHWA>; Black, Robert <FHWA>; O'Hara, Catherine <FHWA>
Subject: An epiphany at NAHAB, Jackson Miss.

Hopefully we all come away from conferences with at least a couple/few ah ha's, I learned something new. Jeremy Johnson, Daktronics, during our panel discussions on digital technologies and the infamous and dastardly LED CEVMS, said something that made a heck of a lot of sense to me relative to the \$64 question of what constitutes flashing, intermittent and moving lights which are verboten in most all of our state/FHWA size, spacing and lighting agreements and commercial signs in C&I areas adjacent to our controlled routes. Of course, that all depends upon your definition of flashing, intermittent, etc. Jeremy Johnson said something to the effect that the litmus test relative to CEVMS, including those of the LED variety, should be a purpose test, i.e., when making a call or interpretation as to whether or not we have intermittent, flashing or moving lights, the test should address the purpose and the cycle of the

change in the lights/LED display. Johnson's suggestion was that if the purpose was simply to change copy/message and the purpose was not to get attention and the change in message/copy was at defined reasonable intervals, then one could reasonably interpret or conclude that the change did not constitute flashing, intermittent or moving lights. Change copy v. get attention or to get more attention, that might be the better issue. The Minnesota empirical study that came up with reasonable changeable message intervals of 8 and 2/3 seconds using 80-65 mph travel speeds and 500 foot spacing intervals, attempted to define flashing v. non flashing in terms of reasonable intervals as I recall. One also might argue that flashing and intermittent lights are somewhat synonymous, although flashing connotes perhaps a stronger degree of distraction, i.e., a blinding effect. Additionally, intermittent lights could apply to any lighted sign where the lights whether they be incandescent, halogen, or whatever, are turned on at night and off during daylight hours. That's intermittent also by the purest definition. Again, if the purpose and outcome of the message change is not to get attention or to get more attention but simply to change or transition copy within reasonable time parameters, then I submit we can *reasonably interpret* our agreements to allow CEVMS with LED tech as long as we have reasonable interval message change. Now, if we and others can demonstrate conclusively with objective, empirical engineering studies that CEVMS LED signs are inherently distractive and cause crashes, then we should restrict them for safety sake.

I greatly enjoyed the Conference and was good to see all of you again. If we ever do a Gettysburg II, I volunteer!

Don R. Keith
Illinois Division Right-of-Way Manager



U.S. Department
of Transportation
Federal Highway
Administration

Memorandum

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

Date: JUL 17 1996

Director, Office of Real Estate Services

Reply to
Attn. of: HRE-20

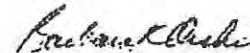
To:

Regional Administrators

A number of States are taking the position that certain off-premise changeable message signs are consistent with State law and do not violate the lighting provisions of their State/Federal agreement. The State of Georgia recently amended its State law to allow off-premise signs having panels or slats that rotate provided they meet State criteria for frequency of message change and spacing. The State of Oklahoma recently considered amending its State law to also allow these signs. Because of the increased use of changeable message signs, we believe it is timely to restate our position concerning these signs.

The Federal Highway Administration (FHWA) has always applied the Federal law 23 U.S.C. 131 as it is interpreted and implemented under the Federal regulations and individual State/Federal agreements. Because there is considerable variation among the States, the importance of these agreements cannot be overstated. 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. Changeable message signs are acceptable for off-premise signs, regardless of the type of technology used, if the interpretation of the State/Federal agreement allows such signs. In nearly all States, these signs may still not contain flashing, intermittent, or moving lights.

The FHWA will concur with a State that can reasonably interpret the State/Federal agreement to allow changeable message signs if such interpretation is consistent with State law. The frequency of message change and limitation in spacing for these signs should be determined by the State. This interpretation is limited to conforming signs, as applying updated technology to nonconforming signs would be considered a substantial change and inconsistent with 23 CFR 750.707(d)(5).


Barbara K. Orski

FHWA:HRE-20:RPHarter:gs:62026:June 24, 1996

cc: Reader Chron HRE-20

G:\12\RP\H\CMS.110



P.O. BOX 5075 • AUSTIN, TEXAS 78783-5075 • (512) 416-2901

March 10, 2006

Robert M. Callan
Acting Division Director
Federal Highway Administration - Texas Division
300 East Eighth Street, Room 826
Austin, Texas 78701

REC'D
FOR THE
TEXAS
FHWA

Dear Mr. Callan:

Recently, outdoor advertising providers have approached the Texas Department of Transportation ("TxDOT") regarding the use of light-emitting diode ("LED") displays on Interstate and Federal-Aid highways. The 1972 Federal-State Agreement ("Agreement") executed by the Federal Highway Administration ("FHWA") and TxDOT states in pertinent part:

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

- I. Signs which contain, include or are illuminated by any flashing, intermittent or moving light or lights are prohibited...

Since the technology necessary for LED displays did not exist at the time of the Agreement, TxDOT requests guidance from the FHWA regarding whether the use of such displays violate the Agreement. Should you be unfamiliar with this technology, an outdoor advertising company has provided a DVD on such displays which I will be glad to forward to you.

Should the FHWA determine that such displays currently violate the Agreement, TxDOT is considering applying to the FHWA to amend the Agreement. In your response to the above, could you provide an outline of the steps necessary for such an amendment?

Thank you for your assistance. If you have any questions, please do not hesitate to contact me at (512) 416-2926.

Sincerely,

Timothy C. Anderson, Esq.
Right Of Way Division
Texas Department of Transportation

An Equal Opportunity Employer



US Department
of Transportation
Federal Highway
Administration

LED Displays
Texas Federal/State Agreement

Mr. Timothy C. Anderson, Esq.
Right of Way Division
Texas Department of Transportation
P.O. Box 5075
Austin, Texas 78701

Dear Mr. Anderson:

This letter is in response to your letter dated March 10, 2006 requesting guidance from FHWA regarding the use of light-emitting diode (LED) displays on Interstate and Federal-Aid highways in Texas. In particular your letter requested FHWA's determination whether the use of this type of display is in violation of the 1972 Federal-State Agreement executed by the Federal Highway Administration and TxDOT.

The Highway Beautification Act (HBA) directs the US Secretary of Transportation to enter into agreements with each State to determine the limits or specifications for size, spacing and lighting of outdoor advertising signs in commercial and industrial areas (see 23 U.S.C. § 131(d)). These agreed-upon limits were supposed to be "consistent with customary use" within the State.

The Texas/Federal Agreement executed pursuant to § 131(d) on May 2, 1972, prohibits signs which contain, include or are "illuminated by any flashing, intermittent or moving light or lights... except those giving public service information such as time, date, temperature, weather or similar information." The State has always abided by the terms of the agreement. As you are aware, the Texas Administrative Code, Rule 21.154, addresses lighting and movement of signs. Section 21.154 (a) (1) states; Signs may be illuminated except for signs that contain, include, or are illuminated by any flashing, intermittent, or moving light or lights, including any type of screen using animated or scrolling displays, such as LED (light emitting diode) screen or any other type of video display, even if the message is stationary, except those giving only public service information such as time, date, temperature, weather, or similar information.

While the technology for LED displays did not exist at the time of the agreement, the wording in the agreement clearly prohibits such signs. After careful consideration and review of your request for guidance, the FHWA Texas Division has determined that such displays do not conform to the existing Texas/Federal Agreement.



J.J. Pickle Federal Building
300 E. 8th Street, Room 826
Austin, Texas 78701

March 13, 2006

In Reply Refer To: HPP-TX

Timothy C. Anderson, Esq.

March 15, 2005

As you requested, outlined below is the process to amend a Federal-State Agreement:

1. A State must first submit its proposed change, along with the reasons for the change and the effects of such change, to the FHWA Division Office.
2. The Division and FHWA headquarters offices review and comment on the proposal.
3. If the concept is approved by the FHWA, the State must hold statewide public hearings on the proposed change in order to receive comments from the public.
4. If the State then, wishes to amend the agreement, it must submit to the FHWA:
 - a. The justification for the change
 - b. The record of hearings and
 - c. An assessment of the impact.
5. Then, these are summarized and published in the Federal Register for comments
6. Comments on the proposed amended agreement will then be evaluated by the FHWA.
7. The FHWA will then decide if the agreement should be amended as proposed and will publish its decision in the Federal Register.

The FHWA would certainly entertain a request by a State to amend the State/Federal agreement pertaining to § 131(d) signs, but the FHWA would have to determine if a proposed change was consistent with the HBA and its implementing regulations found at 23 CFR Part 750. In the past fifteen years, there have been amended agreements with two States, Nevada and Oregon. As you can see, it is not a common practice.

I hope that this letter clearly sets forth the FHWA's position on the matter.

Sincerely,



Robert M. Callan
Acting Division Administrator

Weingroff, Richard <FHWA>

From: Shepherd, Gloria <FHWA>
Sent: Wednesday, August 08, 2007 4:17 PM
To: Gramatins, Janis <FHWA>
Cc: Solomon, Gerald <FHWA>; O'Hara, Catherine <FHWA>; Black, Robert <FHWA>
Subject: RE: Digital Billboards
Attachments: Nat- LED Boards 8-8-08.doc

Janis: Please see my revisions and let me know if there are any issues with them. Thank you.

From: Gramatins, Janis <FHWA>
Sent: Wednesday, August 08, 2007 8:54 AM
To: Shepherd, Gloria <FHWA>
Cc: Solomon, Gerald <FHWA>; O'Hara, Catherine <FHWA>; Black, Robert <FHWA>
Subject: FW: Digital Billboards
Importance: High

Gloria - Interesting that Jim Cheatham's request to the DAs has gained some interesting responses. It appears from this and other responses that the DAs really desire a national position on this, and HQ guidance of a more prescriptive nature. I am attaching a first draft effort that Gerry, Cathy and I have developed, with incipient comments by Bob Black upon his return next week.

We are proposing some ranges that have been adopted in the 30 states that have permitted CEVMS as guidelines for Division review, and restating the importance of their efforts. The tone of our memo is not very strident, but we are trying to indicate the need for closer FHWA Division review and approval standards in this controversial area. We could use stronger language, as the Kentucky DA suggests, but I am not sure how well this would "sell" given the contemporary tone of FHWA communications. Your thoughts on this are eagerly sought...

Janis

From: Beyer, Linda [mailto:Linda.Beyer@fhwa.dot.gov]
Sent: Wednesday, August 08, 2007 7:42 AM
To: Gramatins, Janis <FHWA>
Subject: FW: Digital Billboards
Importance: High

From: Merida, Dennis
Sent: Wednesday, August 08, 2007 7:12 AM
To: Jorgenson, Russell; Cullari, Lawrence; Beyer, Linda; Yunk, Karen; Hoffman, William
Subject: FW: Digital Billboards
Importance: High

Good Morning Everyone:

I thought you might enjoy Kentucky's response on billboards. The article is worth reading. At least for now, local officials have some backbone.

10/21/2007

Amicus App. 80

Dennis

From: Sepulveda, Jose
Sent: Tuesday, August 07, 2007 5:47 PM
To: Cheatham, James; ##ALLHDA
Cc: Merida, Dennis; Otto, Sandra; Jackson-Grove, Amy; Barnes, Philip; Michael, Olivia; Luhrs, Dennis
Subject: Digital Billboards
Importance: High

Jim

Attached below is KY's response from this DA perspective.

The use of LED-screen billboards is growing and some industry members are blatantly disregarding state and local controls, regulations, and even statutes designed to orderly control billboard installations. See the following link to get an idea of the challenges agencies are having enforcing state laws; <http://www.kentucky.com/181/story/138224.html>. In this case the City of Lexington appears to have prevailed. However, this is deceiving as the billboard will likely pop-up elsewhere within days of its removal.

At the state level little has been done by our Transportation Cabinet to remove LED billboards installed elsewhere where the locals are not interested or suited to enforce the law. In Kentucky LAMAR has installed several of these boards even though they are explicitly prohibited by commonwealth statute and by regulations. LAMAR appears to also have influenced the introduction of proposed bills in the KY Assembly to amend the law and allow the use of LED billboards. Last year a bill received serious consideration in both the House and the Senate, and would have been approved if not for other controversial language attached.

Our Division has received ambiguous assistance from Hqtrs. The program office appears to prefer a "soft" position in remedying the deviations from applicable regs and statutes. My concern is that industry is playing serious hardball to roll back billboard controls and FHWA seems unable to understand the strength of this effort. I know IA, NY, NJ, AR and us are facing some issues with our states in this area.

It would be desirable to have a clear nationwide FHWA position that strongly advocates for the integrity of the letter and intent of the law. This would help Divisions proceed in a reasonably consistent manner when dealing with this spreading issue.

Jose M. Sepulveda
U.S. Department of Transportation
Federal Highway Administration - Kentucky Division
330 West Broadway
Frankfort, KY 40601-1981
Land Line: (502) 223-6721
Cell Line: (502) 330-5800
Fax Line: (502) 223-6735
E-mail: jose.sepulveda@fhwa.dot.gov

10/21/2007

Weingroff, Richard <FHWA>

From: O'Hara, Catherine <FHWA>
Sent: Thursday, August 23, 2007 1:52 PM
To: Broils-Cox, Robin <FHWA>; Facer, Kathleen <FHWA>; Solomon, Gerald <FHWA>; Turpin, John <FHWA>; Wainright, Marshall <FHWA>; Walterscheid, David <FHWA>
Subject: FW: CEVMS issue
Attachments: CEVMS_State_Summary(3).xls

Since this is a hot topic, and several States were identified, I am sending the information to all POC's.

From: O'Hara, Catherine <FHWA>
Sent: Thursday, August 23, 2007 1:01 PM
To: Hecox, Doug <FHWA>
Cc: Gramatins, Janis <FHWA>; Solomon, Gerald <FHWA>
Subject: RE: Hey Billboard Gurus...! Can you call me when you get a sec?

Billboard Gurus works for me.

There is just a point which I feel needs some clarification. It is not necessarily that the FHWA is telling the State that CEVMS are prohibited in the States. In most case, it is the States which prohibit the signs since they can not interpret that CEVMS are allowed based on language in various federal/state agreements, signed during the late 1960's and early 1970's. Most contain language similar to "Signs shall not be erected which contain, include or are illuminated by any flashing, intermittent, revolving or moving lights or lights, except those giving public service....."

The only state on record, that I am aware of, that FHWA has interpreted CEVMS as intermittent light is Texas. And, there is considerable pressure by Texas to require the FHWA Division office to reverse on their position.

Several States have enacted legislation that permit CEVMS, but the FHWA is requiring that the State provide an opinion or interpretation of the federal/state agreement on lighting restriction before the FHWA will approve or disapprove. (Tennessee, Alabama, Arkansas, New York)

Several States have enacted legislation that permit CEVMS, but not request approval for the enacted legislation. (Arkansas, Maryland, Minnesota, Nevada, New Hampshire, New Jersey)

I am attaching a recently State survey, which you may find useful and better demonstrates the diversity of States.



CEVMS_State_Summary(3).xls (38...

From: Gramatins, Janis <FHWA>
Sent: Thursday, August 23, 2007 11:48 AM
To: O'Hara, Catherine <FHWA>
Cc: Hecox, Doug <FHWA>; Solomon, Gerald <FHWA>
Subject: FW: Hey Billboard Gurus...! Can you call me when you get a sec?

Cathy - can you get with Doug to discuss, as you have been talking with them on the survey? Thanks!

Janis

From: Hecox, Doug <FHWA>
Sent: Thursday, August 23, 2007 11:25 AM
To: Solomon, Gerald <FHWA>; Gramatins, Janis <FHWA>
Subject: Hey Billboard Gurus...! Can you call me when you get a sec?

I've got a reporter asking for an example of some of the states we have told can't use LED billboards, or who had them and we made them take them down.

Are there two or three states I can cite?

Thanks –
Doug

PS I think of you guys as Billboard Gurus, so I apologize if you prefer Outdoor Advertising Gurus (it takes too long to type)!
☺

Weingroff, Richard <FHWA>

From: Gramatins, Janis <FHWA>
Sent: Thursday, August 30, 2007 10:50 AM
To: Black, Robert <FHWA>; O'Hara, Catherine <FHWA>
Cc: Solomon, Gerald <FHWA>
Subject: CEVMS ideas

Attachments: CO-NoCEVMS(2).doc; yesCEVMS8-29-07.doc

Attached are two clear options that Bob and Cathy have helped to develop. One is a clear "NO" and the other is a "Yes-but" version that provides parameters to the 1996 guidance.

Please take a look at these two versions and provide me with any markups needed to clarify the points so that we can present these options to Gloria next week. I will see what her schedule permits, and possible we can sit down with her to have a meeting to discuss how to proceed on this sensitive issue.

Thanks for your incisive and helpful "upgrades" to these documents!



CO-NoCEVMS(2).doc yesCEVMS8-29-07.doc
c (149 KB) doc (150 KB)

Janis

Janis Gramatins
Program Implementation Team
Office of Real Estate Services
Federal Highway Administration
Rm. 74-320
1200 New Jersey Ave SE
Washington DC 20590
202-366-2030 (tel)
202-366-3713 (fax)
janis.gramatins@dot.gov



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

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

Date:

From: 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 of effective control under 23 U.S.C. 131, and supersedes the Federal Highway Administration (FHWA) July 17, 1996 memorandum on this same subject.

As required by 23 C.F.R. 750.705(j) a State DOT is required to submit regulations and procedures to the FHWA for approval in order to provide effective control of outdoor advertising. Any changes of regulation which allow for changeable electronic message signs are a regulation modification. When requested by a State DOT, Division offices are required to provide a determination as to whether the state should allow off-premises changeable electronic variable message (CEVMS) signs adjacent to controlled routes, by our delegation of responsibilities under 23 CFR 750.706(j).

It is noted that a majority of federal/state agreements have similar language that prohibit "flashing, intermittent, or moving light or lights" This language prohibits signs which are illuminated by lights that permits the message of the advertising to be changed at reasonable intervals by electronic process or by remote control. This language does not prohibit lights that are affixed to a sign to illuminate the sign during the night time and normally changed to on or off, once each day.

This Guidance is applicable to conforming signs, as applying updated technology to nonconforming signs is considered a substantial change and inconsistent with 23 CFR 750.707(d)(5). As noted below, all requirements in the Highway Beautification Act and implementing regulations, and specific provisions of the Federal/State agreements, continue to apply.

Background

The Highway Beautification Act (codified at 23 U.S.C. 131), which requires states to maintain effective control of outdoor advertising adjacent to certain controlled routes provides, in part, that in order to promote 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 . .

In defining "effective control" the implementing regulations at 23 CFR 750.705 provide that in order to provide effective control, states must, among other things, assure signs comply with size, lighting, and spacing criteria contained in the agreement between the Secretary and the State; develop laws, regulations, and procedures to accomplish the requirements of this subpart; and submit regulations and enforcement procedures to FHWA for approval.

On July 17, 1996, this Office issued a Memorandum to Regional Administrators to provide guidance on this subject, 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 state/Federal 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 guidance was primarily directed at tri-vision signs, which were the leading technology at the time. Such change is the case again, and as a result of our concerns about the possible impact of further advances in technology and affordability of LED and other complex electronic message signs, unanticipated at the time the Federal/State agreements were entered into, we are presenting this superseding guidance.

Several FHWA Divisions have approved CEVMS based on the July 27, 1996, memorandum issued to Regional Administrators. Effective this date, the State DOTs are required to stop permitting CEVMS with federal/state agreements which lighting restriction which prohibit flashing, intermittent, or moving light or lights and action must to taken by any State DOT to identify all CEVMS signs on their State sign inventory which have been issued a State permit or license. Future guidance regarding the status of these signs will be forthcoming.

Discussion

The prior Guidance did not prohibit states from adopting more restrictive requirements for permitting of CEVMS signs to the extent they are consistent with the Highway Beautification Act, Federal regulations, and its existing Federal-State Agreement. 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 Federal-State Agreement or do not include adequate standards to address the safety of the motoring public.

Conclusion

This Memorandum is intended to provide information to assist the Divisions in evaluating proposals and to achieve national consistency given the variations in Federal-State Agreements, 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 Federal-State Agreements 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 Federal-State Agreements, 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 (POC) or Catherine O'Hara (Catherine.O'Hara@dot.gov)



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: **INFORMATION:** Guidance on
Off-Premise Changeable Message Signs
(YES-but)

Date:

From: 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 of effective control under 23 U.S.C. 131, and **supersedes** the Federal Highway Administration (FHWA) July 17, 1996 memorandum on this same subject.

As discussed below, 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 its outdoor advertising control. If requested by a State DOT, Division offices should provide a determination as to whether the state should allow off-premises changeable electronic variable message (CEVMS) signs adjacent to controlled routes, by our delegation of responsibilities under 23 CFR 750.706(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 also 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 is: (1) **consistent with the existing Federal -State agreement for the particular state**, and (2) includes but is not limited to consideration of requirements associated with duration of message, transition time, brightness, spacing, and location, submitted for FHWA approval, that evidence reasonable and safe standards to regulate such signs for the protection of the motoring public. Proposed laws, regulations, and procedures that would allow permitting CEVMS signs subject to acceptable criteria (as described below) does not violate a prohibition against "intermittent" or "flashing" or "moving" lights as those terms are used in the various Federal-State agreements that have been entered into during the 1970s.

This Guidance is applicable to conforming signs, as applying update technology to nonconforming signs would be considered a substantial change and inconsistent with 23 CFR 750.707(d)(5). As noted below, all requirements in the Highway Beautification Act and implementing regulations, and specific provisions of the Federal/State agreements, continue to apply.

Background

The Highway Beautification Act (codified at 23 U.S.C. 131), which requires states to maintain effective control of outdoor advertising adjacent to certain controlled routes provides, in part, that in order to promote 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 . .

In defining "effective control" the implementing regulations at 23 CFR 750.705 provide that in order to provide effective control, states must, among other things, assure signs comply with size, lighting, and spacing criteria contained in the agreement between the Secretary and the State; develop laws, regulations, and procedures to accomplish the requirements of this subpart; and submit regulations and enforcement procedures to FHWA for approval.

On July 17, 1996, this Office issued a Memorandum to Regional Administrators to provide guidance on this subject, 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 state/Federal 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 executed¹. 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 guidance was primarily directed at tri-vision signs, which were the leading technology at the time. Such change is the case again, and as a result of our concerns about possible effects of further advances in technology and affordability of LED and other complex electronic message signs, unanticipated at the time the Federal/State agreements were entered into, we are presenting this superseding guidance.

Discussion

Much of the 1996 Guidance continues to be relevant and is restated here. Changeable message signs, including Digital/LED Display changeable electronic variable message signs (CEVMS), are acceptable for off-premise signs, if found to be consistent with the Federal/State agreement and with acceptable and approved state regulations, policy and procedures².

¹ The Memorandum was in response to mechanically rotating, commonly known as tri-vision, signs.

² As there is variation in State/Federal agreements and state laws, requests for approval of regulations/ policy procedures, must be undertaken on a case-by-case basis. It should be noted, however, that nearly all federal/state agreements do not permit signs that contain flashing, intermittent, or moving lights. If this is the case, the standards must establish that technology resulting in the changeable messages is not through such activities.

This Guidance does not prohibit states from adopting more restrictive requirements for permitting of CEVMS signs to the extent not inconsistent with the Highway Beautification Act, Federal regulations, and its existing Federal-State Agreement. 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 Federal-State Agreement 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 signs 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 State-Federal Agreement 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 Federal/State agreement 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 Federal-State Agreement as allowing permitting of CEVMS signs 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 signs 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, with most at the mid to higher end of the range³
- Transition Time
 - Transition between messages is generally between 1 and 4 seconds, with most at the lower end of the range⁴
- 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 Federal/State agreement, or greater if determined appropriate to ensure the safety of the motoring public.
- Locations
 - Locations where allowed for signs under the Federal/State agreement except such locations where determined inappropriate to ensure safety of the motoring public.

³ Information from Industry indicates that a typical static time is 6 seconds

⁴ Information from Industry indicates that a typical transition time is 1-2 seconds

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 Federal-State Agreements, 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 Federal-State Agreements 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 Federal-State Agreements, 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 (POC) or Catherine O'Hara (Catherine.O'Hara@dot.gov)

Weingroff, Richard <FHWA>

From: Shepherd, Gloria <FHWA>
Sent: Monday, September 24, 2007 2:20 PM
To: Feldman, Arnold <FHWA>
Cc: O'Hara, Catherine <FHWA>; Gramatins, Janis <FHWA>; Solomon, Gerald <FHWA>; Dorsey, Cleo <FHWA>
Subject: RE: CEVMS Sign Memo

Today is fine. Tomorrow will do.

From: Feldman, Arnold <FHWA>
Sent: Monday, September 24, 2007 2:18 PM
To: Shepherd, Gloria <FHWA>
Cc: O'Hara, Catherine <FHWA>; Gramatins, Janis <FHWA>; Solomon, Gerald <FHWA>; Dorsey, Cleo <FHWA>
Subject: RE: CEVMS Sign Memo

Absolutely. I just spoke to Bob Black. He is working on getting time with Ed and Jim to finalize their comments.

When do we need to have the memorandum prepared for your signature?

From: Shepherd, Gloria <FHWA>
Sent: Monday, September 24, 2007 2:16 PM
To: Feldman, Arnold <FHWA>
Cc: O'Hara, Catherine <FHWA>; Gramatins, Janis <FHWA>; Solomon, Gerald <FHWA>; Dorsey, Cleo <FHWA>
Subject: RE: CEVMS Sign Memo

Please pass it be HCC to make certain that we have captured their edits. Thank you.

From: Feldman, Arnold <FHWA>
Sent: Monday, September 24, 2007 2:01 PM
To: Shepherd, Gloria <FHWA>; Gramatins, Janis <FHWA>; Solomon, Gerald <FHWA>
Cc: O'Hara, Catherine <FHWA>
Subject: RE: CEVMS Sign Memo

Gloria,

I just talked to Janis and am working on a clean up of the memo. I will forward the edited version to Cleo this afternoon to get it prepared for your review and signature.

If possible I would like Catherine to take a final look at the document tomorrow morning.

From: Shepherd, Gloria <FHWA>
Sent: Monday, September 24, 2007 10:28 AM
To: Gramatins, Janis <FHWA>; Solomon, Gerald <FHWA>
Cc: O'Hara, Catherine <FHWA>; Feldman, Arnold <FHWA>
Subject: FW: CEVMS Sign Memo

Everyone: Are Bob's edits consistent with the message that we agreed. They seem all right to me. Thank you.

From: Black, Robert <FHWA>

Sent: Monday, September 24, 2007 9:58 AM

To: Shepherd, Gloria <FHWA>; Ray, James <FHWA>; Kussy, Edward <FHWA>; Robinson, JoAnne <FHWA>; Aikens, Harold <FHWA>

Cc: Solomon, Gerald <FHWA>; O'Hara, Catherine <FHWA>

Subject: CEVMS Sign Memo

Attached are my suggested edits to the CEVMS memo. I tried to tie this memo to the 1996 memo more so that it is seen as the natural evolution of the 1996 policy.

I am having a tough time with coming up with a clear way to define the term "intermittent" (used in all or most Fed/State agreements). I am still playing with it, and any suggestions are welcome. I do think we need some explanation. The scenic organizations are going to hit us hard on that point, and any lawsuits might turn on that word.

Bob Black

Black, Robert <FHWA>

From: Black, Robert <FHWA>
Sent: Monday, September 24, 2007 9:58 AM
To: Shepherd, Gloria <FHWA>; Ray, James <FHWA>; Kussy, Edward <FHWA>; Robinson, JoAnne <FHWA>; Aikens, Harold <FHWA>
Cc: Solomon, Gerald <FHWA>; O'Hara, Catherine <FHWA>
Subject: CEVMS Sign Memo
Attachments: Guidance - OAC- CVEMS (9-24-07).doc

Attached are my suggested edits to the CEVMS memo.

**WITHHELD UNDER
FOIA (5 USC 552(b)(5))**

Bob Black



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

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

Date:

From: 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 of effective control under 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.

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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 its outdoor advertising control. If requested by a State DOT, Division offices should provide a determination as to whether the state should allow off-premises changeable electronic variable message (CVEMS) signs adjacent to controlled routes, by our delegation of responsibilities under 23 CFR 750.706(j). Those Divisions that already have formally approved CVEMS use on HBA controlled routes, as well as those that have not yet issued a decision should also 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 is: (1) consistent with the existing Federal-State agreement for the particular state, and (2) includes but is not limited to consideration of requirements associated with duration of message, transition time, brightness, spacing, and location, submitted for FHWA approval, that evidence reasonable and safe standards to regulate such signs for the protection of the motoring public. **Proposed laws, regulations, and procedures that would allow permitting CVEMS signs 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 Federal-State agreements that have been entered into during the 1960s and 1970s.**

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This Guidance is applicable to conforming signs, as applying update technology to nonconforming signs would be considered a substantial change and inconsistent with 23 CFR 750.707(d)(5). As noted below, all requirements in the Highway Beautification Act and implementing regulations, and specific provisions of the Federal/State agreements, continue to apply.

Background

The Highway Beautification Act (codified at 23 U.S.C. 131), 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, and 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 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 state/Federal 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 guidance was primarily directed at 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" was permitted if the interpretation of the Federal/State agreement allowed them. Further advances in technology and affordability of LED and other complex electronic message signs, unanticipated at the time the Federal/State agreements were entered into, require the FHWA to confirm and expand the principles set forth in the 1996 memorandum.

The policy espoused in the 1996 was premised upon the concept that changeable messages that were fixed for a reasonable time period did not constitute a moving sign. If the State set a reasonable time period, the agreed-upon prohibition against moving signs was 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 changeable electronic variable message signs (CEVMS), are acceptable for off-premise signs, if found to be consistent with the Federal/State agreement and with acceptable and approved state regulations, policy and procedures.

This Guidance does not prohibit states from adopting more restrictive requirements for permitting of CEVMS signs to the extent not inconsistent with the Highway Beautification Act, Federal regulations, and its existing Federal-State Agreement. Similarly, Divisions are not required to concur with state proposed regulations, policies, and procedures if the

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Deleted: In defining "effective control" the implementing regulations at 23 CFR 750.705 provide that in order to provide effective control, states must, among other things, assure signs comply with size, lighting, and spacing criteria contained in the agreement between the Secretary and the State; develop laws, regulations, and procedures to accomplish the requirements of this subpart; and submit regulations and enforcement procedures to FHWA for approval. ¶

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Division review determines, based upon all relevant information, that the proposed regulations, policies and procedures are not consistent with the Federal-State Agreement 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 signs 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 State-Federal Agreement 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 Federal/State agreement 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 Federal-State Agreement as allowing permitting of CEVMS signs 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 signs 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 Federal/State agreement, or greater if determined appropriate to ensure the safety of the motoring public.
- Locations
 - Locations where allowed for signs under the Federal/State agreement 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.

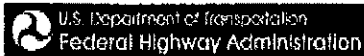
Conclusion

This Memorandum is intended to provide information to assist the Divisions in evaluating proposals and to achieve national consistency given the variations in Federal-State Agreements, 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 Federal-State Agreements and, if appropriate, assist in pursuing amendments to address proposed changes relating to CVEMS or other matters. In this regard, our Office is currently reviewing the process for amending Federal-State Agreements, 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 (POC)* or Catherine O'Hara (Catherine.O'Hara@dot.gov).

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A History and Overview of the Federal Outdoor Advertising Control Program

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Recognized Sign Categories Under Federal Law & Regs

Bonus Program - Interstate

Class 1 - Official Signs

Class 2 - On-Premise Signs

Class 3 - Signs within 12 Miles of Activity

Class 4 - Signs in Specific Interest of Public

Highway Beautification Act of 1965, As Amended

Directional Signs

Official Signs

On-Property Signs

Public Utility Signs

Service Club Notices

Religious Notices

Public Ser. Signs on School Bus Stop Shelters

Public Service Information Signs

Landmark Signs

Free Coffee Signs

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Guidelines for State Rules and Regulations

Sign Permits

Maintenance and Continuance of Nonconforming Signs

Acquisition and Removal of Signs

Just Compensation

Determination of Just Compensation

Approval of Sign Acquisition

Uniform Act

Payment of Just Compensation

Sign Removal

Program Administration

Vegetation Clearance

Motorist Information Signs

A HISTORY AND OVERVIEW OF THE FEDERAL OUTDOOR ADVERTISING CONTROL PROGRAM

NOTE: *This is the text material from the Outdoor Advertising Control Manual used for a number of technical assistance presentations. It is being presented here as an invaluable overview of this complex program, and contains many valuable insights. For specific guidance and current policy, contact your FHWA Division, Region or Headquarters office.*

THE BONUS PROGRAM

The initial Federal attempt at controlling outdoor advertising was enacted in the Federal-Aid Highway Act of 1958, Public Law 85-381, April 16, 1958.

The Act provided that States which voluntarily agreed to control outdoor advertising adjacent to Interstate highways in accordance with national standards presently codified at 23 CFR 750, Subpart A, would receive a bonus of one-half of one percent of the highway's cost of construction. The eligibility to participate in the program expired on June 30, 1965.

The bonus States must still comply with the provisions of the Highway Beautification Act of 1965 as well as adhere to the national standards and the terms of the required bonus agreement.

The 23 States participating in the bonus program include California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, West Virginia and Wisconsin.

 **TOP**

Federal-Aid Highway Act of 1958

Established the voluntary Bonus Program to control outdoor advertising signs adjacent to the Interstate System.

First Federal government attempt to control outdoor advertising signs adjacent to highways.

Provided a monetary incentive to the States of $\frac{1}{2}$ of 1 percent of the construction cost of Interstate highways for those route sections that meet the criteria in the National Standards.

States control signs under this program under State law.

Controls signs within 660 feet [201 meters] of the Interstate.

Allows only certain signs:

- Directional and official signs.
- On-premise signs - sale, lease or activity.
- Signs within 12 air miles of advertised activity.
- Signs in the specific interest of the traveling public, i.e. historic sites, natural phenomena, naturally suited for outdoor recreation, and places for camping, lodging, eating, and vehicle service and repair.

No compensation was required by the Federal government.

- Localities could remove signs by exercising their power of land use control, i.e. amortization under zoning ordinances.
- States could exercise their right of eminent domain such as the purchase of negative easements.

\$44 million has been paid to the 23 Bonus States to date under this program.

No Federal funds are available to pay \$10 million in outstanding claims from 21 Bonus States.

 TOP

THE OUTDOOR ADVERTISING CONTROL PROGRAM

President Lyndon B. Johnson signed the Highway Beautification Act, Public Law 89-285, on October 22, 1965. The first section of the law sets forth the basic program objectives: "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**."

The law mandated State compliance and the development of standards for certain signs as well as the removal of nonconforming signs. Expeditious removal of illegal signs was required by Federal regulations.

While the States are not forced directly to control signs, failure to impose the required controls could result in a substantial penalty.

The penalty for noncompliance with the Act is a 10 percent reduction of the State's annual Federal-aid highway apportionment.

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EFFECTIVE CONTROL UNDER THE 1965 LAW AND AMENDMENTS

The States must provide continuing "effective control" of outdoor advertising or be subject to a loss of 10 percent of their Federal-aid highway funds. The States have established control procedures, usually through sign permit systems, inventories, and periodic surveillance of the controlled routes, in order to discover illegal signs and monitor other signs and areas controlled by the Act. The States are required to take action under the provisions of State law to have any illegal signs expeditiously removed.

 TOP

Highway Beautification Act of 1965

Increased the scope of controlling signs to include the primary system and applied to all States.

Controlled signs within 660 feet - this resulted in many jumbo signs being erected beyond 660 feet.

Is a mandatory program with a 10 percent penalty of a State's annual highway apportionment if the State is not providing effective control.

Bonus States must continue to control signs under both programs.

Compensation was required for signs removed because of the Act.

Federal participation was 75 percent.

Funded out of General Fund - Last appropriation made in 1983.

Allows only certain signs:

- Directional and official signs.
- On-property signs - sale, lease or activity
- New signs in commercial and industrial areas consistent with the size, lighting and spacing criteria in the State/Federal agreements.

Provided for Logo signs on the Interstate System.

Provided for information centers in safety rest areas.

Required control of junkyards adjacent to the Interstate and primary highways.

- Junkyards located outside of industrial areas and within 1,000 feet of controlled highways.
- Payment of just compensation was required with 75 percent Federal participation.

Provided for landscaping and scenic enhancement.

- This was a popular part of the overall highway beautification program because it provided 100 percent Federal funding.

▲ TOP

1968 Amendments to the Highway Beautification Act of 1965

Amended 1965 Act to require acceptance of State and local determinations of "customary use" for size, lighting, and spacing for signs in commercial and industrial areas.

Allowed States to remain eligible for bonus payments if they complied with their 1958 Bonus agreement.

A State that received bonus payments under the bonus program could also at the same time be subject to the 10 percent penalty under the 1965 Act.

Nonconforming signs did not have to be removed unless Federal funds were available for participation.

▲ TOP

Federal-Aid Highway Act of 1970

Created the Highway Beautification Commission to study highway beautification problems and make recommendations for change needed to increase the effectiveness and workability of the program.

Federal-Aid Highway Act of 1974

Extended control beyond 660 feet of the right-of-way to all signs outside urban areas and visible from the main-traveled way with the purpose of their message being read from the controlled highway.

Added landmark signs as an allowed category of signs that were in existence on October 22, 1965.

Increased the number of signs eligible for compensation before they could be removed.

 TOP

Federal-Aid Highway Act of 1976

Provided for Secretary approval for exemption of signs from removal in a defined area for which it could be demonstrated that removal would cause a substantial economic hardship in such defined area - submissions made were not approved.

Required the Secretary to encourage the States to adopt programs to assure that removal of certain signs providing necessary directional information about facilities in the interest of the traveling public, be deferred until all other nonconforming signs are removed.

Provided 100 percent Federal participation for signs removed and relocated prior to the 1974 Amendments, which had to be moved again because of those Amendments.

Authorized Federal participation in the establishment of tourist information centers and alternate information systems.

Directed a restudy of the Federal regulations and National standards for both directional signs outside the right-of-way and Logo signs within the right-of-way.

Allowed for extension of the optional Logo program to the primary system.

De-emphasized landscaping and scenic enhancement by eliminating the availability of 100 percent Federal funding for the program.

Authorized but did not appropriate funds for landscaping and litter removal.

 TOP

Surface Transportation Assistance Act of 1978

On November 6, 1978 the Surface Transportation Assistance Act of 1978 (Public Law 95-599) amended 23 U.S.C. 131 in essentially three areas, i.e.

1. required the payment of just compensation for the removal of lawfully erected signs not permitted under subsection 131(t); whether or not removed pursuant to or because of the Highway Beautification Act (HBA) (e.g. signs subject to removal or removed by localities due to more restrictive local control), (this requirement overrides traditional zoning and land use control which have provided for the termination of nonconforming uses through amortization);
2. **allowed electronic variable message on-premise signs in bonus States;**
3. created a new category of exempt signs that advertise free coffee by nonprofit organizations.

Those signs affected by the just compensation amendment due to stricter local controls included those signs in

existence on or after November 6, 1978 and those signs removed prior to November 6, 1978 but that were the subject of litigation as of November 6, 1978. On a national basis 38,027 signs were in existence on November 6, 1978. Also on a national basis 258 signs had been removed prior to November 6, 1978 but were the subject of litigation as of November 6, 1978. Therefore, on a national basis there were 38,285 1978 Amendment signs identified in a one-time tabulation.

We essentially refer to the 1978 Amendment signs as being those that fall in the first group in the first paragraph above, i.e. that were lawfully erected adjacent to controlled highways but were subject to removal because of more restrictive local controls.

TOP

Intermodal Surface Transportation Efficiency Act of 1991

(ISTEA), Public Law 102-240, December 18, 1991.

In general the ISTEA:

- Provided funding from highway funds for control and removal of outdoor advertising, thus linking the availability of funding to the requirement for acquisition and removal of nonconforming signs under the Highway Beautification Act of 1965.
- Required removal of illegal signs.
- Prohibited new signs on designated scenic byways.
- Redefined the primary system.
- More specifically, the ISTEA enacted December 18, 1991 included several significant provisions concerning the control of outdoor advertising. Section 1046 amended 23 U.S.C. 131 in four areas:

Primary System Defined

Apply the scope of control to include the Interstate System, the primary system as it existed on June 1, 1991, and roads added to the National Highway System;

- New subsection 131(t) in Title 23 United States Code defines the primary system for purposes of outdoor advertising control, i.e. 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.
- This means that any highway which was on the Federal-aid primary (FAP) system as of June 1, 1991, will remain subject to control regardless of any subsequent change in its functional classification. Of course, the Interstate System remains subject to control.
- Further, following Congressional approval of the designated National Highway System (NHS), any highway which is not on either of the foregoing but which is part of the approved NHS will also be subject to control. However, for purposes of outdoor advertising control, we are not recognizing the NHS until it is approved by Congress.
- Following approval of the NHS there will be highways, or sections of highways, not on the NHS that will still be subject to control because they were on the FAP as of June 1, 1991. State law must be sufficient to maintain effective control of outdoor advertising under 23 U.S.C. 131.

Funding

Provide funding from the Highway Trust Fund rather than the General Fund to remove nonconforming signs. By making funds available, States were now required to remove nonconforming signs in order to meet the requirement for effective control purposes.

Removal of Illegal Signs

- Require removal of illegal signs by owners within 90 days of enactment, or by State if owner does not remove sign, with removal cost in either case paid by the owner;
- The Congressional mandate to remove illegal signs within a relatively short period of time may be significant as some States may not be able to demonstrate reasonable progress or a good faith effort and thereby be found to not be providing effective control required under the Highway Beautification Act of 1965.
- States not providing effective control may be subject to the 10 percent sanction of highway funds on an annual basis until compliance is achieved. No specific time limit was mandated by which the States were to remove these illegal signs.
- To enable us to measure reasonable progress and good faith effort, we have asked for quarterly reports on the removal of illegal signs including the following information:
 - a. Number of illegal sign notices sent by the State during the quarterly period and since December 18, 1991.
 - b. Number of illegal signs removed by the owner or others during the quarterly period.
 - c. Number of illegal signs removed by the State during the quarterly period.
- The number of illegal signs remaining varies as some States are updating their inventories. The tabulation of September 30, 1992 indicates some 25,000 illegal signs remain.
- STP funds are available to the States for the physical removal of illegal signs and control costs that are project related.

4. Scenic Byway Prohibition

Prohibit the erection of any new signs on the Interstate and primary system (other than exempt signs) that are designated a scenic byway.

New subsection 131(s) in Title 23 United States Code provides that 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 131(c). New signs allowed under 131© include directional and official signs and notices, sale or lease signs, on-property signs and free coffee signs.

States that have a scenic byways program must withhold the issuance of permits for new signs on Interstate and primary highways that are designated a scenic byway under the State's program. This includes the prohibition of new signs in zoned or unzoned commercial and industrial areas adjacent to designated scenic byways.

States should consider withholding permits for signs on routes under consideration as a designated Interstate or primary scenic byway until a final determination has been made.

Additional guidance on controlling outdoor advertising signs on scenic byways was issued on June 14, 1993. It explains that since the passage of ISTEA, several questions have come up regarding outdoor advertising on scenic byways. Section 1046© of ISTEA added a new subsection (s) to 23 U.S.C. 131, Control of Outdoor Advertising.

Section 131(s) prohibits the erection of new signs which do not conform to subsection 131© in areas adjacent to Interstate and primary highways which are designated as a scenic byway by a State before, on or after December 18, 1991. The precise effect of this subsection is to extend the current prohibition on the erection of outdoor advertising signs adjacent to a controlled highway into commercial or industrial areas or economic hardship areas if such highway is designated as a scenic byway under a State scenic byways program.

 TOP

What is a State Designated Scenic Byway?

Neither Section 131(s) nor the ISTEA legislative history defines this term explicitly. The actual label and specific identifying characteristics, including termini, for these designated scenic byways were, and are, the responsibility of each State. State law governs the issue of what constitutes a designated scenic byway. According to past inventories a significant number of miles of byways are on Federal-aid Interstate or Primary System routes and are therefore currently subject to the new outdoor advertising control prohibition.

Scenic byways designated before, on, or after December 18, 1991, need not be continuous. A State may wish to exclude from existing or future scenic byway designation highway sections that have no scenic value, and which have been designated solely to preserve system continuity. We do not find that Section 131(s) restricts a state from taking administrative action to remove from scenic byway designation any section lacking in scenic value which was included for continuity purposes. However, the exclusion of a highway section must have a reasonable basis. The Federal interest is in preventing action designed solely to evade Federal requirements.

The characteristics of a scenic byway are not restricted to visual beauty. The criteria developed by the National Scenic Byway Advisory Committee established by §1047 of the ISTEA are natural, scenic, historical, cultural, recreational or archeological qualities. The designation of a scenic byway for cultural or historical purposes, for example, could easily involve areas of commercial or industrial activity. If such areas are included in the designated scenic byway they would be subject to the scenic byway prohibition at 23 U.S.C. 131(s).

 **TOP**

What is a State Scenic Byway Program?

Again, ISTEA is not explicit other than to emphasize that scenic byways subject to outdoor advertising control must be designated by a State under its scenic byway program. The essential element of a program is action made under authority of State law, policies or administrative procedure that authorizes establishment of such routes or designates specific routes as scenic. In short, if a State has a designated scenic byway, it is construed to have a scenic byway program for purposes of 23 U.S.C. 131(s).

The State highway agency may be the cognizant agency for both outdoor advertising control and the designation of State scenic byways. Often it is not. These duties often cut across organizational or even agency lines. It is essential that State highway staff when considering permits for signs on controlled highways have current knowledge of State designated scenic byways. To improve the information sharing and coordination, a list of the scenic byways contact persons for each State has been issued. FHWA encourages these officials to meet in order to improve mutual understanding of their respective responsibilities, obtain a listing of State scenic byways and their termini, and review the criteria for designating State scenic byways. There should be a formal record of designated scenic byways available to the public. This task should be completed no later than October 1, 1993 with a listing of scenic byways including termini provided to FHWA.

It is FHWA's responsibility to ensure that the State highway agency is fully cognizant of this new dimension of control of outdoor advertising. Failure to comply with Section 131(s) subjects a State to a reduction of its Federal-aid highway apportionments for failing to effectively control outdoor advertising.

 **TOP**

Significant Subsequent Events

On January 9, 1992 the Federal Highway Administration (FHWA) issued a memorandum to all field offices as interim guidance on implementation of the provisions of the ISTEA that effect the control of outdoor advertising.

On February 20 the FHWA sent letters to every Governor advising of the ISTEA provisions affecting the control of outdoor advertising and cautioning that a State may lose vitally needed Federal-aid highway funds if it does not have an effective outdoor advertising control program.

On March 6, 1992 the FHWA published in the Federal Register a notice setting forth the goals and objectives for States to achieve in order to maintain effective control and requested the States to advise the FHWA by June 18,

1992 of its process, program and timetable to ensure that effective control is achieved and maintained. The FHWA also issued a memorandum to all field offices advising of this notice.

On May 8, 1992 the FHWA published in the Federal Register a Notice of Proposed Rulemaking (NPRM) on the removal of nonconforming signs. The notice set forth four options for the removal of nonconforming signs, required the States to develop a plan for the acquisition and removal of nonconforming signs and established a docket for comments.

▲ TOP

Dire Emergency Supplemental Appropriations Act of June 22, 1992

Public Law 102-302.

- This Act, in part, amended 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 States. This meant that 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. 720
- As a result of the above statutory change concerning nonconforming signs, the FHWA published in the Federal Register on July 16, 1992 a notice titled, "Removal of Nonconforming Signs"; which was a withdrawal of the May 8 Notice of Proposed Rulemaking and closed the docket.
- Also on July 16 the FHWA published in the Federal Register a notice titled, "Intermodal Surface Transportation Efficiency Act of 1991 Amendments to 23 U.S.C. 131, Control of Outdoor Advertising"; which rescinded that portion of the March 6 notice concerning nonconforming signs. The March 6 notice is still in effect regarding the prohibition of signs on scenic byways and the removal of illegal signs.

The use of highway funds to remove nonconforming signs is now discretionary on the part of the States. Although it seems unlikely that many of the States would use their highway funds for this purpose, this could rise to a significant cost if a number of States would choose to do so.

As of September 30, 1992 the States had reported some 90,000 nonconforming signs remaining which are subject to removal.

The cost to remove these signs is estimated at over \$400 million in Federal funds.

All 104 funds including STP funds are available to the States for the acquisition and removal of nonconforming signs, as well as section 1047 funds for removal of any outdoor advertising signs adjacent to scenic byways.

▲ TOP

LAND USE AND POLICE POWER

Controls required by the Act are universally achieved by the exercise of State police power and land use controls. The police power enables States to reasonably regulate for health, safety, moral, and general welfare. The Federal law does not control any sign on its own, for it must rely on State police power law to enforce the land use control concepts.

Two distinct enforcement impacts emanate from the "effective control" provisions:

1. The removal of illegal signs, and
2. The reasonable enforcement of land use control concepts that are applicable to nonconforming signs such as abandonment, discontinuance, destruction, and customary maintenance requirements, which if violated, would render the nonconforming signs illegal and subject to removal without compensation.

An illegal sign is one which is erected and/or maintained in violation of State law.

A sign is considered to be nonconforming if it was lawfully erected prior to the effective date of the State law, but does not conform to the law's requirements.

A nonconforming sign must be maintained in accordance with applicable State law. Failure to do so may result in loss of the right to operate the sign and require removal of the sign without compensation.

A conforming sign is one that complies entirely with all provision of the State law. Only conforming signs can remain or be erected adjacent to controlled highway systems after the effective date of the State law. The greatest impact of land use and police power controls have been to prevent the erection of signs which do not conform to the Highway Beautification Act.

To achieve effective control a State must take 3 steps:

1. Enact legislation
2. Enter into agreement
3. Enforce State law

▲ TOP

IDENTIFICATION OF HIGHWAYS SUBJECT TO CONTROL

Interstate highways are identified by route number beginning with "I", such as I-95. In many States, the Federal-aid primary system largely coincides with the U.S. numbered highways, such as U.S. 1 or U.S. 66. Since not all U.S. highways are on the primary system and, conversely, not all primary highways have U.S. numbers, it is best to determine from the State highway department what highways are on the primary system. They will usually have maps or lists of these roads. Toll highways could be included as a controlled route.

▲ TOP

THE CONTROL AREA

1. Inside urban areas--outdoor advertising is controlled within 660 feet from the edge of the right-of-way.
2. Outside urban areas--outdoor edvertising is controlled to the limits of visibility. In commercial and industrial areas, conforming signs must be erected within 660 feet of the controlled highway.

The urban area boundary definition and maps are available from the respective State department of transportation or highway agencies. Generally, the law states that urbanized areas or urban places of 5,000 population or more are considered urban areas. The boundaries of these urban areas are set by agreement between State, Federal, and local governments.

▲ TOP

STATE/FEDERAL AGREEMENTS--TERMS

Another feature of "effective control" included the mandatory State agreement with the Federal government that set forth sign controls in commercial and industrial areas based on customary usage within the individual States.

The objective of the Highway Beautification Program legislation was to limit billboards to areas of similar land use (i.e., commercial and industrial areas). In so doing, the areas not having commercial or industrial character would be protected from the intrusion of off-premise outdoor advertising signs. In pursuit of this concept, the erection of new

off-premise signs (conforming signs) in commercial areas is subject to the provisions of the State/Federal agreements for size, lighting, and spacing criteria.

Acceptable Standards for size, lighting and spacing must be consistent with customary use (not to be exceeded), orderly and effective display (no proliferation or hazards), and purposes of the Act (no conflict with objectives).

In the lighting provision of most State/Federal agreements off-premise signs in commercial and industrial areas that contain, include, or are illuminated by any flashing, intermittent, or moving light(s) are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.

In 1978, Congress amended 23 U.S.C. 131 to allow signs advertising activities conducted on the property on which the signs are located to change their message at reasonable intervals by electronic process or by remote control. The reasonableness in the frequency of message changes has been left up to the individual States. During debate in the Senate, the congressional intent was made clear that this change did not affect off-property signs.

FHWA, historically considered that the prohibition of flashing, intermittent, or moving lights in the various State/Federal agreements applied to all off-premise commercial electronic variable message signs (CEVMS), regardless of message interval. Several States have determined that such signs did not violate the lighting provision in their State/Federal agreement. Consequently, the FHWA provided guidance during 1996 and again on September 25, 2007 which provides States latitude to interpret their agreement to determine lighting requirements. Guidance reference: <http://www.fhwa.dot.gov/realestate/offprmsgsguid.htm>

In deciding whether to allow off-premise signs using rotating slats, or CEVMS, the applicable State law and agreement should be interpreted on an individual State basis, and if applicable, with court interpretation.

Off-premise message center type signs that use internal lighting are not yet approved for general off-premise application without consideration of duration of message, transition time, brightness, spacing and other factors. Therefore, off-premise CEVMS are restricted to States that have adopted standards, rules, or regulations to ensure both safety and compliance with their State/Federal agreements.

 TOP

IDENTIFICATION OF COMMERCIAL AND INDUSTRIAL AREAS

Zoned Areas

A function of police power is zoning, which is a widespread public exercise usually delegated by the States to local governmental entities. Where the land adjacent to the highway is zoned, it is necessary to know the location of commercial and industrial zones in order to know where billboards may be permitted. Zoning jurisdictions, such as cities or counties, maintain zoning maps for public inspection which show such locations. Zones established by the zoning authorities as commercial or industrial zones, under comprehensive zoning, are those for commerce, industry, or trade.

Unzoned Areas

Where there is no zoning in effect within a jurisdiction, signs may be permitted in unzoned commercial or industrial areas, which are also defined by the agreement between the State and the Federal government.

Generally speaking, such an area would include as parameters the land within a specified distance of an established and visible commercial or industrial activity usually limited to the same side of the highway as the activity. Each State transportation or highway department has an approved unzoned commercial and industrial area definition if off-premise advertising is allowed.

 TOP

RECOGNITION OF ZONING

The labeling of long stretches adjacent to controlled highways as "commercial" or "industrial" solely to permit billboards and thereby circumvent the intent of the Highway Beautification Act may subject the State to the 10 percent penalty. Likewise, the spot-zoning of tracts near highway interchanges to allow only signs is a circumvention of the law.

 TOP

RECOGNIZED SIGN CATEGORIES UNDER FEDERAL LAW AND REGULATIONS

There are several categories of signs recognized under Federal law and regulations. The States can allow all exempted sign categories set out in the Federal law and regulations and still maintain necessary minimum compliance. On the other hand, the State law can be more restrictive, ranging from the stricter control of one specific program element to a total ban of all off-premise outdoor advertising signs as in the case of the States of Alaska, Hawaii, Maine, Rhode Island, and Vermont.

 TOP

BONUS PROGRAM - INTERSTATE

Class 1 - Official signs (directional, official and notices).

No size, lighting or spacing limitations.

Class 2 - On-premise signs.

No size or spacing limits within 50 feet of advertised activity.

Up to 20 feet in length, width or height, but not to exceed 150 sf. beyond 50 feet of advertised activity.

Class 3 - Signs within 12 miles of advertised activities.

Up to 20 feet in length, width or height, but not to exceed 150 sf.

Class 4 - Signs in the specific interest of the traveling public.

Up to 20 feet in length, width or height, but not to exceed 150 sf.

 TOP

HIGHWAY BEAUTIFICATION ACT OF 1966, AS AMENDED

Directional signs Up to 20 feet in height or length, but not to exceed 150 sf.

Directional signs are permitted as an exempt category of sign under 23 U.S.C. 131(c)(1) which specifically mentions only natural wonders, and scenic and historical attractions as qualifying for this type of sign. Since it also provided that these signs include, but not be limited to signs for these attractions, the National Standards expanded the list of qualifying activities to include cultural, scientific, educational, and religious sites, and areas of natural scenic beauty or naturally suited for outdoor recreation. The National Standards at 23 CFR 750.154 apply to all directional signs as defined at 23 CFR 750.153(r).

The selection method and criteria required at 23 CFR 750.154(f) applies to both privately and publicly owned activities or attractions, i.e. subsections 154(f)(1) and 154(f)(2) apply only to privately owned activities or attractions, whereas subsection 154(f)(3) applies to selection methods and criteria for all directional signs. Therefore, before the State permits the erection of any directional sign, it must develop specific selection methods and criteria to be used in determining whether or not an activity qualifies for this type of signing, whether it be publicly or privately owned,

and submit these requirements to the FHWA Division office.

In summary, although it would appear that 23 CFR 750.153(r) might allow directional signs for any publicly owned place, such activities or attractions must qualify as one of the types of activities or attractions listed in subsection 153(r) and meet the selection method and criteria developed by the State under subsection 154(f)(3).

These signs contain 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. The directional sign cannot exceed 150 square feet in area and must comply with stringent spacing and lighting requirements. It may contain only identification of the activity and directional information; advertising and the use of logos is prohibited.

Official Signs (including historical markers)

No size, lighting or spacing limitations

State, county, or city officials may erect signs under authority of law.

The following criteria should be applied in determining whether specific signs conform to the requirements for "official signs and notices" within the meaning of 23 U.S.C. 131 (c)(1) and the National Standards for Directional and Official Signs as set forth in 23 CFR 750.153(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 purpose of carrying out an official duty or responsibility..."

This should be viewed as a four-part test:

1. The sign must be erected and maintained by a public officer or agency.
2. The sign must be erected within the territorial jurisdiction or zoning jurisdiction of the public officer or agency. This means that the officer or agency must exercise some form of governmental authority over the area upon which the sign is located. Governmental authority means the authority to enact or administer the law.
3. The sign must be erected pursuant to direction or authorization contained in Federal, State or local law. This means that the officer must be directed by statute and/or must have the specific authority by statute to erect and maintain signs and notices.
4. The sign must be erected for the purpose of carrying out an official duty or responsibility. There are no restrictions on the message content so long as the activity being described is in furtherance of an official duty or responsibility. The State must determine whether the activity relates to an official duty or responsibility.

In summary an "official" sign must be erected for the purpose of carrying out an official duty or responsibility. We have not defined "official duty or responsibility" in either Federal law or regulations. Therefore, what is and is not an official duty or responsibility is a question of State or local law. "Official" signs do not create a large opportunity for abuse because there are other controls on what is an "official" sign. These controls are both political and legal (depending on the State and the situation). When questions arise that involve advertised activities, we will defer to the State or local government to determine that the erection of and operation of the sign is by public officers or a public agency within its territorial or zoning jurisdiction and for purposes of carrying out an official duty or responsibility.

Sale or Lease Signs

No size, lighting or spacing limitations

There are no Federal controls or regulations concerning for sale or lease signs when located on the property which is for sale or lease except for such signs along the Interstate highways in the Bonus States.

On-Property Signs

No size or spacing limitations

On-property signs advertise goods or services offered by business enterprises on the property where the sign is located.

In the Bonus States, there are size, lighting, and spacing controls for such signs along the Interstate. These States may now allow the installation of on-premise electronic variable message signs as the result of a Federal legislative change in 1978. Such signs had been previously prohibited in Bonus States.

Signs are exempt from control if they solely advertise activities conducted on the property on which they are located. However, sufficient flexibility is provided in the Federal regulations for the individual States to provide for the differences that exist in State laws with respect to the critical term, "property" and further to provide for differing State desires with respect to criteria. The intent of the Federal regulations is to provide a broad general requirement for on-property criteria. It would be advantageous for the States to develop a property test and a purpose test.

State laws or regulations are to contain criteria for determining exemptions. The only limitation imposed is that 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.

All States are to develop regulations to determine which signs are indeed on-property signs and preclude the improper qualification of signs that are not on-property. Examples of such regulations include:

- a. A property test and a purpose test.
- b. A test to preclude signs located on narrow strips of land contiguous to the advertised activity qualifying as an on-premise sign.

Suggested factors for consideration include: the effect of leases or easement in the property test, what should be considered in determining when the purpose is clearly to circumvent 23 U.S.C. 131, intervening land uses separating the sign from the activity, whether the activity advertised is visible from the controlled highway, and a rational relationship between the site where the activity is advertised and that part of the property on which the activity takes place. The criteria should identify how large and/or complicated holdings will be treated such as multiple uses of property under a single ownership.

Public Utility Signs

No size, lighting or spacing limitations

Signs providing a warning or certain information essential to the operation of publicly or privately owned utilities.

Service Club Notices

Limited to 8 sf.

No lighting or spacing limitations

Religious Notices

Limited to 8 sf.

No lighting or spacing limitations

Public Service Signs on School Bus Stop Shelters

Signs identifying the donor or sponsor of school bus stop shelters may not exceed 32 square feet.

The public service message must occupy not less than 50 percent of the sign.

Public Service Information Signs

Public service information such as time, date, temperature, weather or similar information may be advertised on electronic variable message signs located in commercial and industrial areas.

Landmark Signs

No size or spacing limitations

This category of sign was added by the Federal-aid Highway Amendments of 1974, Public Law 93-643, and permitted signs lawfully in existence on October 22, 1965, including those on farm structures or natural surfaces, of historic or artistic significance, the preservation of which is consistent with the attempt to keep a part of the American heritage intact for future generations.

Free Coffee Signs

No size, lighting or spacing limitations.

The Surface Transportation Assistance Act of 1978, Public Law 95-599, added another exempt category of sign. This exemption allows signs to be erected outside of the highway right-of-way which advertise the distribution of free coffee by nonprofit organizations.

Off-property signs in Commercial and Industrial Areas

Subject to size, lighting and spacing criteria in individual State/Federal agreements.

The Federal/State agreements specify the size, lighting, and spacing requirements for billboards in these areas.

Generally, the sizes of these billboards are as follows:

POSTER PANEL 12 x 25 = 300 sf.

30 sheets, or posters. These billboards are lithographed or silkscreened, prepasted, and applied in sections on location. Poster panels are concentrated along primary, secondary and tertiary arteries.

PAINTED BULLETIN 14 x 48 = 672 sf.

They are either hand painted in the studio or painted on location. Painted bulletins are located along Interstate and primary highways.

JUMBO SIGNS Usually range between 1,200 and 2,500 sf.; sometimes exceeding 5,000 sf.

Jumbo signs are located beyond 660 feet of Interstate and primary highways.

JUNIOR PANEL 6 x 12 = 72 sf.

Although a few junior panel or eight sheet billboards are located along primary highways, most are concentrated in urban areas, along city streets not controlled by the Highway Beautification Act.

SOME CONSIDERATIONS IN ALLOWING AN OFF-PROPERTY SIGN

1. Sign must be erected off of the highway right-of-way.
2. Location must be in a zoned or unzoned commercial or industrial (C/I) area.
3. Have written permission of property owner.
4. Be in compliance with local zoning ordinance.
5. The C/I activity qualifying an unzoned area must be within _____ feet of the highway, and be visible from the controlled highway.
6. In an unzoned C/I area, the sign must be erected within _____ feet of the qualifying activity, on the same side of the highway.
7. Outside incorporated municipalities, the sign must be at least _____ feet from any other off-property sign; within incorporated municipalities, _____ feet from any other off-property sign.
8. Flashing or intermittent light or lights that create glare for the traffic on the highway is not permitted.
9. Vegetation may not be cut in the right-of-way to provide visibility to a new sign.
10. Meet State vegetation clearance requirements.
11. A sign may not create a traffic hazard, i.e., a site distance problem, for traffic on the controlled highway.
12. An annual sign permit must be secured from the State Highway Department.
13. A business in a residence does not constitute a C/I use.
14. Meet State requirements for size, lighting and spacing in C/I area.
15. Be in compliance with State law and regulations.
16. Sign owner has an outdoor advertising business license.
17. On Interstate or primary highway.
18. May not be erected adjacent to an Interstate or primary highway designated as a scenic byway.

13. Economic Hardship Signs

No signs in this category yet approved

Certain nonconforming signs may be eligible for retention if the following criteria were met:

1. The sign was in existence on May 5, 1976.
2. It provided directional information about goods and services in the interest of the traveling public.
3. Removal would work a substantial economic hardship in a specific area defined by the States. Individual claims of hardship are not allowed by Federal regulation. This regulation requires that to allow these retentions a determination must be made that economic hardship exists throughout the defined area.

▲ TOP

GUIDELINES FOR STATE RULES AND REGULATIONS

Do State law or regulations:

- A. Prohibit the erection of new signs other than the following:
 - 1. Directional and official signs?
 - 2. For sale or lease signs?
 - 3. On-property signs?
 - 4. Free coffee signs by nonprofit organizations?
 - 5. Signs in commercial or industrial areas?
- B. Assure that signs erected in commercial or industrial areas comply with size, lighting, and spacing criteria?
- C. Assure that directional and official signs comply with the National Standards (including development of specific selection methods and criteria to be used in determining whether or not an activity qualifies for this type of signing)?
- D. Provide for the expeditious removal of illegal signs?
- E. Provide for the removal of nonconforming signs with just compensation?
- F. Assure that landmark signs comply with Federal regulations? (if State recognizes landmark signs)
- G. Establish criteria for determining which signs have been erected with the purpose of their message being read from the controlled highway?
- H. Contain criteria to determine when customary maintenance ceases and a substantial change has occurred?
- I. Contain criteria to define destruction, abandonment, and discontinuance?
- J. Contain criteria for determining on-premise/on-property sign exemptions?
- K. Prohibit new signs on designated scenic byways located on Interstate and Federal-aid primary highways?

 TOP

SIGN PERMITS

Almost all State laws require permits for certain controlled signs. Permit system requirements may be obtained from the State department of transportation or highway agency. Generally, signs which have been granted a permit will display a small tag bearing the permit or identification number. Failure to obtain a permit, where required, prior to erecting a sign almost always renders the sign illegal under the State law and subject to removal.

 TOP

MAINTENANCE AND CONTINUANCE OF NONCONFORMING SIGNS

Nonconforming signs must remain substantially the same as they were on the effective date of the State law or regulations that made them nonconforming. Reasonable repair and maintenance of the sign, including a change of advertising message, is not a change which would terminate nonconforming rights.

Each State must develop its own criteria to determine when customary maintenance ceases and a substantial change has occurred which would terminate nonconforming rights. When nonconforming rights are terminated under State law, the sign must be removed as an illegal sign without compensation.

Nonconforming signs may continue as long as they are 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.

A clarification of the definition of what constitutes a blank sign under Federal regulations was issued on January 17, 1977. This guidance essentially indicated that

23 CFR 750.707(d)(6)(ii) provides 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.

The regulation further provides that 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 year as a reasonable period for change or 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.

 TOP

ACQUISITION AND REMOVAL OF SIGNS

The acquisition aspect of the Highway Beautification Program concerns the matter of the removal of nonconforming signs from protected areas and the payment of compensation to the sign and site owners. Nonconforming signs were lawfully erected prior to the enactment of State law. The acquisition portion of the program is based upon the concept of eminent domain, where the public welfare is promoted by the taking of property from the owner and appropriating it to some particular use.

Federal funds will participate in the cost to remove nonconforming signs including the payment of just compensation.

 TOP

JUST COMPENSATION

Federal law required that just compensation be paid for the rights and interests of the sign and site owner for:

1. Removal of signs as a result of the Highway Beautification Act.
2. Removal of signs as a result of stricter State or local controls within the area controlled by Federal law.
3. Removal of signs pursuant to other legal purposes within the controlled area. Implies the removal is still related to outdoor advertising control.

Failure to pay just compensation in the form of cash could subject the State to a 10 percent penalty action. The Federal requirements are applicable only along the Interstate and Federal-aid primary highways.

 TOP

DETERMINATION OF JUST COMPENSATION

1. Schedules--the valuation of signs and sites can be developed through the use of schedules and formulas, as well as other methods for the purpose of minimizing administrative and legal expenses.
2. Appraisals--the State may use its approved conventional appraisal procedures such as are used for appraisals of property for transportation related projects. This is required if the sign is acquired through eminent domain.

 TOP

APPROVAL OF SIGN ACQUISITION

The State must develop an order of priorities for the acquisition and removal of nonconforming signs.

A sign removal project may consist of any grouping of signs. The project is programmed in accordance with normal Federal-aid procedures for right-of-way projects.

 TOP

UNIFORM RELOCATION AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (Uniform Act)

Certain provisions of the Uniform Act apply to the acquisition and removal of nonconforming signs.

 TOP

PAYMENT OF JUST COMPENSATION

A sign owner is entitled to receive payment for the right, title, and interest in a sign, and if applicable, any leasehold value in a sign site.

The site owner is entitled to the right and interest in the site, which is usually calculated as the right to erect and maintain the existing nonconforming sign on the site, based on the remaining economic life of the sign.

There must be satisfactory indication of ownership of the sign and compensable interest, for example, a lease or other agreement with the property owner, and an affidavit, certification, or other evidence of ownership.

After evidence that the right, title, or interest pertaining to the sign has passed to the State or that the sign has been removed, the owners will be paid by the State.

 TOP

SIGN REMOVAL

Nonconforming signs acquired by the States can be removed by either:

1. Owner retention--similar to right-of-way project activity.
2. State removal--by utilizing personnel of a force account basis or by contract.

Illegal signs must be removed by the owner or by removal with State personnel on a force account basis or by contract.

The State, in cooperation with the owner, may choose to relocate a nonconforming sign to a conforming location to the extent that the relocation cost does not exceed the cost to acquire the sign, less salvage value.

 TOP

PROGRAM ADMINISTRATION

1. Inventory - it is essential for the control program.
 - a. It serves as the fundamental control document and should include an accurate accounting of all relevant data for each sign.
 - b. It serves as a surveillance tool which will be useful in determining:
 1. Illegal sign erection.
 2. Illegal maintenance.
 - c. It can be used as a control for the acquisition of nonconforming signs.
 - d. It may be used as evidence in a court case concerning the legality of a sign or signs.
2. Surveillance - routine route inspection and an adequate reporting system are critical for effective control. A surveillance routine utilizing an accurate inventory will result in:
 - a. The discovery of new illegal signs.
 - b. The detection of unlawful expansion of nonconforming signs, such as addition of lighting, addition of panels, tack-ons, etc.
 - c. Starting the "clock" on the "blank sign" rule.
 - d. Assurance that permits are current and that new signs are erected in the proper location, etc.
3. Removal of illegal signs in an expeditious manner. In order to accomplish this control task, there must be an adequate reporting system or mechanism that triggers issuance of proper notification to the offender immediately upon discovery by surveillance personnel.
4. There must also be adequate coordination with the appropriate parties to assure prompt physical removal if the sign owner fails to remove the sign.
5. Permits and licenses - optional by the State. The Federal law does not require a permit or license system. Most States have adopted such a system as a control measure and most have proved to be a valuable administrative tool. Fees received may offset the administrative costs of the control program and/or the permit or license system.
6. Acquisition - removal with compensation. Removal and is at the discretion of the State. Nonconforming signs must be acquired or relocated to conforming sites. The States establish the priority for removals.

Coordination - all levels of government.

- a. State - internal coordination
Administration - personnel and priorities

- Right-of-Way - acquisition
- Maintenance - control and removal
- Legal - condemnation, police power

- b. State - external coordination
 - FHWA - programming, policy
 - Local jurisdictions
 - Zoning authorities
 - Planning officials
 - Court system
 - State and local police
 - Private contractors - removal
 - Sign owners
 - Site owners
 - Fee appraisers.

▲ TOP

VEGETATION CLEARANCE

Should vegetation within the right-of-way be destroyed to improve the visibility of adjacent land uses?

While the issue of vegetation clearance is related to any land use on the other side of the right-of-way, it is most usually connected with outdoor advertising. In 1977 guidance was issued 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.

In May, 1990 as one of our scenic enhancement initiatives, we clarified our 1977 memorandum that permitted vegetation clearance to improve the visibility of outdoor advertising signs and stated that because it is Federal Highway Administration policy to be sensitive to environmental concerns, such vegetation clearance can no longer be endorsed.

We recognized that maintenance of highway rights-of-way for safety and other highway operations is a State responsibility, but noted the clearing of vegetation to improve the visibility of signs(nonconforming) subject to removal under the Highway Beautification Program, or to improve the visibility of other land uses, was not environmentally responsive.

Sign owners and other property owners want to keep their signs and activities visible from the highway and environmentalists want to discourage or prevent the destruction of vegetation including trees solely to increase the visibility of adjacent land uses.

It is FHWA policy to assist States to maintain and preserve the roadside in a safe, pleasant, and forgiving manner for the highway user but overall maintenance of the roadway and roadside has largely been the responsibility of the States.

The 10 percent penalty authorized by the Highway Beautification Act for a State's failure to maintain effective control over outdoor advertising on the Interstate and Federal-aid primary Systems is not related to the issue of proper maintenance of the highway right-of-way as such vegetation clearance takes place within the right-of-way.

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MOTORIST INFORMATION SYSTEMS

Several alternate information systems are allowed within the highway right-of-way. These systems are addressed here due to the distinct differences as to location, placement, and purpose that these information systems have in relation to the off right-of-way signs allowed by the law. These systems function as traffic control devices and provide directional information to the motorist and do not have as their primary purpose to act as an advertising medium.

The Manual on Uniform Traffic Control Devices (MUTCD) provides the basic principles that govern the design and usage of traffic control signs, specific interest signs (logos), and Tourist oriented directional signs (TODS). The Highway Beautification Act does not regulate traffic control signs.

Traffic control signs include signs such as stop signs, yield signs, one way, do not enter, no right turn, etc.

Regulatory signs such as speed limit, do not pass, no parking, etc. inform highway users of traffic laws or regulations and indicate the applicability of legal requirements that would not otherwise be apparent.

Warning signs are used when it is necessary to warn traffic of existing or potentially hazardous conditions on or adjacent to a highway or street. They are generally diamond-shaped and include curve, winding road, cross road, narrow bridge, etc.

Guide signs serve to provide direction to destinations as the motorist approaches an intersection or interchange. These signs may show distances or identify routes and are identified with white letters or symbols on a green background.

General service signs have white lettering on a blue background and are utilized on highways where desirable or necessary motorist services exist.

Recreational and cultural interest area signs have white lettering on a brown background and are allowed where a demonstrable need exists for this special type of signing. They include categories such as fishing, marina, winter recreation area, picnic area, etc.

Specific service (logo) signs provide motorists with business identification and directional information about four categories of essential motorist services which are gas, food, lodging, and camping.

Tourist oriented directional signs provide motorists with business identification and directional information about businesses, including seasonal agricultural products, services and activities the major portion of whose income or visitors are derived during the normal business season from motorists not residing in the immediate area of the business or activity. These signs are limited to nonfreeway type highways.

The Highway Beautification Act authorizes States to provide information in the interest of the traveling public such as to maintain maps and permit information directories and advertising pamphlets at safety rest areas and travel information system centers within the highway right-of-way.

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To provide Feedback, Suggestions or Comments for this page contact Janis Gramatins (janis.gramatins@doh.gov).

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