



U.S. Department of Transportation
Federal Highway Administration

A HISTORY AND OVERVIEW OF THE FEDERAL OUTDOOR ADVERTISING CONTROL PROGRAM

May 5, 1994
Minor Revisions July 8, 1997

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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.

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 ½ 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.

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. Expedient 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.

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.

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.

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.

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.

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.

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.

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.

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).

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.

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.

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.

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

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.

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 advertising 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.

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 has interpreted the lighting provision in the various State/Federal agreements relative to flashing lights, etc. to include surfaces that reflect light in a flashing manner including reflective disks [even though not CEVMS] and rotating slates [tri-vision] that may have the effect of flashing or moving lights. The applicable State law and agreement should be interpreted on an individual State basis looking at past practices and court interpretations. Case law in a given State may be considered determinative in deciding whether to allow off-premise signs using rotating slats (tri-vision or bi-vision), glow cubes, or moving reflective disks.

Federal regulations provide that where the agreement and State law permit control by local zoning authorities, the State may certify to FHWA upon receipt of a written determination from the locality that their controls reflect customary use and that these controls may govern in lieu of the size, lighting and spacing criteria set forth in the agreement, consistent with customary use [must have been lawful] and the intent of the Highway Beautification Act of 1965. The local controls may be more restrictive or less restrictive.

There is increased interest in several States to allow the erection of off-premise commercial electronic variable message signs (CEVMS). We have historically considered that the prohibition of flashing, intermittent, or moving light or lights in most of the various State/Federal agreements applies to all off-premise CEVMS regardless of message interval.

In summary, in deciding whether to allow off-premise signs using rotating slats, glow cubes, or moving reflective disks, the applicable State law and agreement should be interpreted on an individual State basis looking at customary use, and if applicable, Court interpretations.

Off-premise message center type signs using internal lighting are not yet approved for general off-premise application.

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.

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.

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.

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.

HIGHWAY BEAUTIFICATION ACT OF 1965, 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 were 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.

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?

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

There must also be adequate coordination with the appropriate parties to assure prompt physical removal if the sign owner fails to remove the sign.

4. 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.
5. 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.
6. 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.

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.

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.

May 5, 1994/minor rev. July 8, 1997

HF 5843.5 H636 c.2

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