STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
ENVIRONMENTAL DIVISION
BEAUTIFICATION OFFICE
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JOHN C. SCHROER
COMMISSIONER

BILL HASLAM
GOVERNOR

MEMORANDUM

TO: Kevin Callaghan, Director
Records Management
FROM: Shawn Bible, Coordinator
TDOT Beautification Office
DATE: June 13, 2014
RE: Justification for permanent retention for Beautification Office RDA's 2976, 2363, 2361, 2360, 2349, 2293

All TDOT Beautification Office RDA's involve Outdoor Advertising or Junkyard programs. These programs are mandated by, and require the enforcement of, Federal law (23 CFR Part 750 Highway Beautification), State law (TCA 54-21-101 through 54-21-123) and the Rules and Regulations for the Control of Outdoor Advertising. In addition, TDOT has a signed agreement with the Federal Highway Administration that charges TDOT with providing effective control of outdoor advertising. **If TDOT does not provide effective control we risk the loss of 10% of our total transportation funding ($175 million).**

We regulate more than 10,000 signs statewide and approximately 100 junkyards. The industry pays a fee for permit applications, yearly permit renewals, permit transfers, tag replacements etc. These funds are required by law to be spent in support of the outdoor advertising regulatory program. Outdoor advertising is an extremely lucrative business and extremely litigious. We currently have 9 active court cases, but we've had as many as 26 at one time. To provide effective control we must ensure that we win our cases and that the sign industry is operating within the legal parameters that have been set by Federal and State law. In addition, winning cases or avoiding them altogether, saves state funding that can then be spent on other program needs.

Sign location, type, and spacing approvals are based on the entire sign history in that location. Each sign permit carries its history along with it through our records. We use those records to determine the legality of any future signs in the same area. We often need to know when a sign was first permitted, who was the landowner at that time, how many times the ownership been transferred and to which company. Our legal cases often involve extensive documentation of sign histories and the specific actions of the Department in permitting those signs. Through this documentation and research we win our cases and preserve appropriate control of billboards. More importantly, because we have such excellent records, we often are able to avoid litigation when we show our customers that we can prove our case through our records.

Our records also contain extensive documentation of our legal paperwork such as discovery, interrogatories, requests for admissions, court transcripts, land surveys and legal rulings. We also have extensive documentation of customer requests for changes in sign status, cancellation of permits, replacement of tags and lease agreements.

We use our records every day and often work with records from the 1960's forward. Therefore, we must retain these records to be able to complete our day to day activities and for our ongoing legal issues and litigation. We appreciate your support of our programs and any help you can provide.

*** Current through the 2013 Regular Session ***

Title 54 Highways, Bridges And Ferries
Chapter 21 Billboard Regulation and Control Act of 1972

Tenn. Code Ann. § 54-21-101 (2014)

54-21-101. Short title.

This chapter shall be known and may be cited as the "Billboard Regulation and Control Act of 1972."

54-21-102. Chapter definitions.

As used in the chapter:

(1) "Adjacent area" means that area within six hundred sixty feet (660') of the nearest edge of the right-of-way of interstate and primary highways and visible from the main traveled way of the interstate or primary highways;

(2) "Changeable message sign" means an off-premise advertising device that displays a series of messages at intervals by means of digital display or mechanical rotating panels;

(3) "Commissioner" means the commissioner of transportation;

(4) "Customary maintenance" means maintenance of a nonconforming outdoor advertising device, which may include, but shall not exceed, the replacement of the sign face and stringers in like materials, and the replacement in like materials of up to fifty percent (50%) of the device's poles, posts or other support structures; provided, that the replacement of any poles, posts or other support structures is limited to one (1) time within a twenty-four-month period;

(5) "Destroyed" means, with respect to a nonconforming outdoor advertising device, that more than fifty percent (50%) of the device's poles, posts or other support structures are damaged to the extent that they will no longer support the sign face;

(6) "Digital display" means a type of changeable message sign that displays a series of messages at intervals through the electronic coding of lights or light emitting diodes or any other means that does

not use or require mechanical rotating panels;

(7) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish, but does not apply to changes of copy treatment on existing outdoor advertising;

(8) "Information center" means an area or site established and maintained at a safety rest area for the purpose of informing the public of places of interest within this state and providing other information the commissioner may consider desirable;

(9) "Interstate system" means that portion of the national system of interstate and defense highways, located within this state, as officially designated, or as may hereafter be designated, by the commissioner, and approved by the secretary of transportation of the United States, pursuant to title 23 of the United States Code;

(10) "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. "Main traveled way" does not include such facilities as frontage roads, turning roadways, or parking areas;

(11) "Nonconforming" means an outdoor advertising device that does not conform to the zoning, size, lighting or spacing criteria established by and in accordance with either the current agreement entered into between the commissioner and the secretary of transportation of the United States, or in accordance with the original agreement entered into on or about November 11, 1971, as authorized in § 54-21-116. Any outdoor advertising device that continues to conform to either the current agreement or the original agreement as provided in § 54-21-116 shall not be considered nonconforming;

(12) "Outdoor advertising" means any outdoor sign, display, device, bulletin, figure, painting, drawing, message, placard, poster, billboard or other thing that is used to advertise or inform, any part of the advertising or informative contents of which is located within an adjacent area and is visible from any place on the main traveled way of the state, interstate, or primary highway systems;

(13) "Person" means and includes an individual, a partnership, an association, a corporation, or other entity;

(14) "Primary system" means that portion of connected main highways, located within this state, as officially designated, or as may hereafter be designated by the commissioner, and approved by the secretary of transportation of the United States, pursuant to title 23 of the United States Code;

(15) "Safety rest area" means an area or site established and maintained within or adjacent to the right-of-way by or under public supervision or control, for the convenience of the traveling public;

(16) "State system" means that portion of highways located within this state, as officially designated, or as may hereafter be designated by the commissioner; and

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

HISTORY: Acts 1972, ch. 655, § 2; impl. am. Acts 1972, ch. 829, § 7; T.C.A., § 54-2602; Acts 1980, ch. 470, §§ 1, 2; 2007, ch. 76, § 1; 2007, ch. 427, §§ 1, 2; 2008, ch. 1155, § 1.

54-21-103. Restrictions on outdoor advertising on interstate and primary highways.

No outdoor advertising shall be erected or maintained within six hundred sixty feet (660') of the nearest edge of the right-of-way and visible from the main traveled way of the interstate or primary highway systems in this state except the following:

(1) Directional or other official signs and notices including, but not limited to, signs and notices pertaining to natural wonders, scenic and historical attractions that are authorized or required by law;

(2) Signs, displays and devices advertising the sale or lease of property on which they are located;

(3) Signs, displays and devices advertising activities conducted on the property on which they are located;

(4) Signs, displays and devices located in areas that are zoned industrial or commercial under authority of law and whose size, lighting and spacing are consistent with customary use as determined by agreement between the state and the secretary of transportation of the United States; and

(5) Signs, displays and devices located in unzoned commercial or industrial areas as may be determined by agreement between the state and the secretary of transportation of the United States and subject to regulations promulgated by the commissioner.

HISTORY: Acts 1972, ch. 655, § 3; impl. am. Acts 1972, ch. 829, § 7; T.C.A., § 54-2603; Acts 1980, ch. 470, § 2.

54-21-104. Permits and tags -- Fees.

(a) Unless otherwise provided in this chapter, no person shall construct, erect, operate, use, maintain, or cause or permit to be constructed, erected, operated, used, or maintained, any outdoor advertising within six hundred sixty feet (660') of the nearest edge of the right-of-way and visible from the main traveled way of the interstate or primary highway systems without first obtaining from the commissioner a permit and tag.

(b) Permits and tags shall not be issued until applications are made in accordance with and on forms provided by the commissioner and accompanied by payment of a fee of two hundred dollars ($200) for each permit and tag requested. This fee shall represent payment for the required tag and for the first annual permit and shall not be subject to return upon rejection of any application. The commissioner shall use best efforts to process an application for a permit, in accordance with the rules of the department of transportation, within no greater than one hundred and eighty (180) days after a completed application is received. An application for an addendum to an existing permit requesting authorization to upgrade an existing outdoor advertising device to a changeable message sign with a digital display, as provided in § 54-21-122, shall also be accompanied by payment of a fee of two hundred dollars ($200), which shall not be subject to return upon rejection of the application. No outdoor advertising device with a digital display lawfully permitted, erected and in operation prior to June 1, 2008, shall be required to apply for such an addendum or to pay the fee.

(c) (1) All tags issued shall be permanent; however, permits shall be renewed annually between November 1 and December 31, and the commissioner shall charge the sum of forty dollars ($40.00) for the year 2008, fifty dollars ($50.00) for 2009, sixty dollars ($60.00) for 2010, and seventy dollars ($70.00) for 2011 and thereafter for annual renewal of each permit.

(2) In the event that a permit has not been renewed by December 31 for the following year as required by subdivision (c)(1), the permit shall not be considered void until the commissioner has given the permit holder notice of the failure to renew and the opportunity to correct the unlawfulness, as provided in § 54-21-105(b). The failure to renew may be remedied by submitting a late renewal form and paying the annual permit renewal fee together with a late fee, in the total amount of two hundred dollars ($200), within thirty (30) days of receipt of the notice. If a permit holder fails to renew the permit within this thirty-day notice period, then the permit shall be void and the outdoor advertising device shall be considered unlawful and subject to removal as further provided in § 54-21-105. The notice given by the commissioner shall include the requirements for renewal and consequences of failure to renew as provided by this subdivision (c)(2).

(d) For each permit issued, the commissioner shall deliver to the applicant a serially numbered permit tag, which shall be attached on the outdoor advertising in a manner as to be visible from the main traveled way of the interstate or primary highway. If more than one (1) side of any structure is used for outdoor advertising, a permit and tag shall be required for each side. Any outdoor advertising sculptured in the round shall be considered to have three (3) sides.

(e) For each replacement tag issued, the commissioner shall deliver to the applicant a serially numbered permit tag. The cost of this replacement tag shall be twenty-five dollars ($25.00), payable at the time of request.

(f) Whenever it becomes necessary to transfer a permit from one (1) permit holder to another, the department will charge a ten-dollar ($10.00) transfer fee to the permit holder of record.

HISTORY: Acts 1972, ch. 655, § 4; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 47, §§ 1, 2;

1976, ch. 431, § 1; 1979, ch. 235, §§ 1, 2; T.C.A., § 54-2604; Acts 1980, ch. 470, § 2; 1983, ch. 133, § 1; 2007, ch. 427, §§ 4-7; 2008, ch. 1155, § 2; 2009, ch. 451, § 1; 2012, ch. 516, § 1.

54-21-105. Failure to comply with § 54-21-104 -- Effect.

(a) (1) Any person, either owner or lessee, of any outdoor advertising who has failed to act in accordance with § 54-21-104 shall remove the outdoor advertising immediately.

(2) Failure to remove the outdoor advertising shall render the outdoor advertising a public nuisance and subject to immediate disposal, removal or destruction.

(3) In addition, the failure constitutes a Class C misdemeanor. Each separate day of violation constitutes a separate offense.

(4) In addition, or in lieu of subdivisions (a)(1)-(3), the commissioner may enter upon any property on which outdoor advertising is located and dispose of, remove, or destroy the outdoor advertising, all without incurring any liability for those actions.

(b) Prior to invoking the provisions of this section, the commissioner shall give notice either by certified mail or by personal service to the owner of the sign, or occupant of the land on which the advertising structure is located. The notice shall specify the basis for the alleged unlawfulness, shall specify the remedial action that is required to correct the unlawfulness and shall advise that a failure to take the remedial action within thirty (30) days shall result in the sign being removed. For good cause shown, the commissioner may extend the thirty-day period for remedial action for up to an additional one hundred fifty (150) days, so long as all advertising content is removed from the unlawful device within the thirty-day period. If advertising content is placed on the device during any extended period, the device may be immediately removed by the commissioner without further notice. The owner of the structures shall be liable to the state for damages equal to three (3) times the cost of removal, in addition to any other applicable fees, costs or damages, but the owner of the land on which the sign is located shall not be presumed to be the owner of the sign simply because it is on the owner's property.

(c) (1) In addition to any other action authorized in this section, the commissioner shall not issue or transfer any outdoor advertising permits or tags, or issue annual renewal permits for any existing outdoor advertising devices, subject to the limitations set forth in subdivision (c)(5), to any person who has erected a new outdoor advertising device at a new location without first obtaining a permit and tag as required under § 54-21-104, or issue any permits or tags to any other person acting in affiliation with that person, until either:

(A) The person has removed the unlawful outdoor advertising device within the time period established in the notice given by the department, or any extension of that time period, as provided in subsection (b); or

(B) In the event the department has removed the device, the person has made full payment to the department in the amount of three (3) times the cost of removal, as well as payment of any other fees, costs or damages, as provided in subsection (b).

(2) Solely for the purpose of applying and enforcing the sanctions established in this subsection (c):

(A) "Acting in affiliation with" means any person who, with respect to any violation or request for a permit or tag, or both, as described in subdivision (c)(1), acts in concert with or under the direct or indirect control of, or who has the power to control, any person who has erected an outdoor advertising device in violation of this subsection (c);

(B) "New outdoor advertising device" means any outdoor advertising device erected on or after April 1, 2009; and

(C) "New location" means any location adjacent to a highway on the interstate system or primary system and subject to regulation by the department as provided in this chapter for which the person erecting an outdoor advertising device does not then possess a current permit issued by the department for each sign face of the device; provided, however, that the sanctions established in this subsection (c) shall not apply if the person erecting a new outdoor advertising device then possesses a current permit from the department for each sign face of the device at a different location on the same side and at the same log mile of the highway where the new device is erected, but the person either has failed to erect the device at the actual permitted location or has removed a device from the permitted location.

(3) This subsection (c) shall not apply to any existing outdoor advertising device that, at the time it was erected, did not require a permit from the department under this chapter, even though the device may subsequently require a permit from the department due to changed conditions at the location or within the vicinity of the device.

(4) The additional sanctions provided in this subsection (c) shall not apply to a person who purchases an unlawful outdoor advertising device subsequent to its erection, so long as the person purchasing the device did not erect the device or act in affiliation with the person who erected the device.

(5) (A) The commissioner shall not apply this subsection (c) as cause for refusing to issue an annual renewal permit to any person prior to the expiration of one hundred eighty (180) days from the date of initial notice of violation given to the person pursuant to subsection (b).

(B) Under this subsection (c), nonrenewal of any person's existing permits for outdoor advertising devices shall be applied on a graduated basis based on the number of violations as provided in this subdivision (c)(5)(B). Each separate outdoor advertising structure erected without a permit shall be considered a separate violation. The department shall choose, in its absolute discretion, which existing permits shall be subject to nonrenewal and voiding.

(i) For the first violation of erecting an outdoor advertising device without a permit, the person shall forfeit the same number of permits as the number of unlawful sign faces on the unpermitted device; i.e., one (1) permit for one (1) unlawful sign face, two (2) permits for two (2) unlawful sign faces, etc.;

(ii) For the second violation, the person shall forfeit twice the number of permits as the number of unlawful sign faces on the unpermitted device; and

(iii) For the third and any subsequent violation, the person shall forfeit four (4) times the number of permits as the number of unlawful sign faces on the unpermitted device.

(6) In the event that an existing outdoor advertising device is not issued an annual renewal permit in accordance with this subsection (c), after notice has been given in accordance with subsection (b), the permit for the existing device shall be voided, subject to the opportunity for a contested case hearing in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and the device shall be subject to removal as an unlawful outdoor advertising device by any means authorized in § 54-21-105.

(7) All gross revenues received or payable from the operation of any outdoor advertising device erected without first obtaining a permit as required under § 54-21-104 are subject to being forfeited to the state and placed in the highway fund for the administration of this chapter or any other purpose authorized under § 54-21-106. For the enforcement of this subdivision (c)(7), the department may file a petition in the chancery court for the county in which the unlawful outdoor advertising device is or was located or in the county where the person erecting the device resides. In such case, the jurisdiction of the chancery court shall be limited solely to the authority to issue appropriate orders for the enforcement of this subdivision (c)(7), including, without limitation, the authority to establish a constructive trust for an accounting and receipt of revenues obtained from the operation of the unlawful outdoor advertising device.

(8) This subsection (c) shall be construed to accomplish the purposes of this section both to deter unlawful conduct and to prevent any person from benefitting from unlawful conduct or evading the sanctions authorized in this subsection (c). The sanctions authorized in subsection (c) shall not be construed to apply in any circumstance other than as expressly authorized by the general assembly in this subsection (c).

(d) Notwithstanding any other law to the contrary, in any case or controversy arising from any regulatory or enforcement action taken by the commissioner or department under § 54-21-105 or this chapter, wherein any cause of action, claim, counterclaim, cross-claim or any other claim or request for remedy whatsoever is asserted against the state, the commissioner, the department or any official or employee thereof, jurisdiction shall be vested exclusively in the chancery court for Davidson County; provided, that any contested case hearing with respect to the issuance, denial, nonrenewal or voiding of

any outdoor advertising permit shall remain under the jurisdiction of the commissioner in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(e) It shall be no defense to any enforcement action taken under § 54-21-105 that the person who erects or operates an outdoor advertising device without first obtaining a permit and tag as required under § 54-21-104 may then have a pending contested case proceeding under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, in which the person's entitlement to a permit for the outdoor advertising device is at issue.

HISTORY: Acts 1972, ch. 655, § 5; impl. am. Acts 1972, ch. 829, § 7; T.C.A., § 54-2605; Acts 1980, ch. 470, § 2; 1990, ch. 936, § 1; 2009, ch. 451, §§ 2, 3.

54-21-106. Disposition of fees.

All fees received by the commissioner under § 54-21-104 shall be paid into the state treasury and placed in the highway fund for the administration of this chapter, and any fees received in excess of those administration costs shall be allocated for the purpose of funding litter prevention education programs administered by the department of transportation.

HISTORY: Acts 1972, ch. 655, § 6; impl. am. Acts 1972, ch. 829, § 7; Acts 1973, ch. 69, § 1; T.C.A., § 54-2606; Acts 1980, ch. 470, § 2; 2007, ch. 427, § 8.

54-21-107. Exemptions.

(a) The following outdoor advertising are exempt from § 54-21-104:

(1) Those advertising activities conducted on the property on which they are located;

(2) Those advertising the sale or lease of property on which they are located; and

(3) Those that are official as established under authority of any statute or regulation promulgated with respect to the outdoor advertising.

(b) Any advertising structure existing along the parkway system by and for the sole benefit of an educational, religious or charitable organization shall be exempt from the payment of fees for permits or tags under § 54-21-104.

HISTORY: Acts 1972, ch. 655, § 7; T.C.A., § 54-2607; Acts 1982, ch. 865, § 8.

54-21-108. Acquisition by commissioner of signs along the interstate and primary highway systems.

(a) The commissioner is authorized to acquire by purchase, gift, or condemnation, and to pay just compensation upon the removal of the following outdoor advertising in areas adjacent to the interstate and primary highway systems:

(1) Those lawfully in existence on April 4, 1972; and

(2) Those lawfully erected on or after April 4, 1972.

(b) (1) Compensation is authorized to be made only for the following:

(A) The taking from the owner of the outdoor advertising of all right, title, leasehold and interest in the outdoor advertising; and

(B) The taking from the owner of the real property on which the outdoor advertising is located, of the right to erect and maintain the signs, displays and devices on the property.

(2) If funds other than federal funds are used, the state shall follow the following order of purchasing priorities:

(A) Volunteer nonconforming devices;

(B) Hardship situations;

(C) Normal value signs;

(D) Signs in areas that are designated scenic or parkway;

(E) Product advertising on:

(i) Rural interstate;

(ii) Rural primary; and

(iii) Urban areas;

(F) Non-tourist oriented directional advertising; and

(G) Tourist oriented devices.

(3) All funds other than federal funds, acquired by the state from whatever source for the purpose of

acquiring nonconforming structures, shall be appropriated by the general assembly to the department and shall not be earmarked for acquisitions at any particular location.

(4) Funds obtained from private sources not appropriated within one (1) year shall revert to the donor.

(5) Upon funds being made available, owners of outdoor advertising structures shall be notified of the availability of the funds for the purpose of volunteering nonconforming structures for purchase by the state.

(c) Upon the request of the commissioner, the owner of the outdoor advertising and the owner of the property upon which the outdoor advertising is located, who are seeking compensation as provided under subdivisions (b)(1)(A) and (B) shall present evidence satisfactory to the commissioner that the outdoor advertising in question was in existence or lawfully erected, as the case may be, on, before, or after the appropriate dates set out in subdivisions (a)(1) and (2). No payment shall be made by the commissioner under subdivisions (b)(1)(A) and (B) until the proof has been presented except by court order. Notwithstanding any other provisions of this chapter, those signs legally in existence on April 4, 1972, shall be entitled to remain in place and in use until compensation for removal has been made as provided in this section.

(d) In determining whether any outdoor advertising is lawful or unlawful, any failure to have obtained a license or permit, or to have attached a permit, or failure to have complied with setback requirements shall not be a cause for declaring any outdoor advertising unlawful. Any person having constructed, erected, operated, used, maintained or having caused or permitted any outdoor advertising sign to be constructed, erected, operated, used, or maintained, shall pay the fee prescribed by § 54-21-104; provided, that the outdoor advertising was erected prior to April 4, 1972.

HISTORY: Acts 1972, ch. 655, § 8; impl. am. Acts 1972, ch. 829, § 7; Acts 1973, ch. 113, § 1; T.C.A., § 54-2608; Acts 1980, ch. 470, § 2; 1983, ch. 133, § 2.

54-21-109. Restrictions on advertising adjacent to state highways.

(a) Control of outdoor advertising signs, displays and devices is extended to signs, displays and devices located beyond six hundred sixty feet (660') of the edge of the right-of-way of the federal-aid interstate or primary systems outside of urban areas erected with the purpose of their message being read from the main traveled ways of the systems. The signs, displays or devices are prohibited, whether or not in commercial or industrial areas, unless they are of a class or type allowed under existing law within six hundred sixty feet (660') of the edge of the right-of-way of the systems outside of commercial or industrial areas.

(b) Those outdoor advertising signs, displays or devices lawfully erected prior to July 1, 1976, but prohibited as of July 1, 1976, by subsection (a) shall be removed upon the payment of just compensation in the same manner and subject to the same limitations as signs lawfully erected

within six hundred sixty feet (660') of the edge of the right-of-way of the federal-aid interstate and primary systems outside of commercial and industrial areas.

(c) Signs lawfully in existence on October 22, 1965, determined by the commissioner, subject to the concurrence of the secretary of transportation of the United States, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance, the preservation of which would be consistent with the purposes of this section, are not required to be removed.

HISTORY: Acts 1976, ch. 740, § 1; T.C.A., § 54-2609; Acts 1980, ch. 470, § 2.

54-21-110. Affixing outdoor advertising to signs on state highways prohibited.

No person shall affix any outdoor advertising on any sign erected under the authority of the department, or on any right-of-way of any state highway.

HISTORY: Acts 1972, ch. 655, § 10; T.C.A., § 54-2610; Acts 1981, ch. 264, § 12; 2013, ch. 308, § 3.

54-21-111. Information for traveling public.

In order to provide information in the specific interest of the traveling public, the commissioner is authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available at safety rest areas for the purpose of informing the public of places of interest within the state and providing other information considered desirable.

HISTORY: Acts 1972, ch. 655, § 11; impl. am. Acts 1972, ch. 829, § 7; T.C.A., § 54-2611; Acts 1980, ch. 470, § 2.

54-21-112. Power of commissioner to enforce provisions.

The commissioner is given full authority to promulgate and enforce any and all regulations as required and necessary to fully carry out this chapter and 23 U.S.C. § 131.

HISTORY: Acts 1972, ch. 655, § 12; impl. am. Acts 1972, ch. 829, § 7; T.C.A., § 54-2612; Acts 1980, ch. 470, § 2; 1983, ch. 133, § 3.

54-21-113. Violations of this chapter.

A person violating any provision of this chapter, and any regulations promulgated and any agreement entered into, for which violation no other penalty is prescribed, commits a Class C misdemeanor. The person commits a separate offense for each month during any portion of which any violation of this

chapter is committed or continued.

HISTORY: Acts 1972, ch. 655, § 13; T.C.A., § 54-2613; Acts 1989, ch. 591, § 113.

54-21-114. Outdoor advertising as public nuisance.

(a) Any outdoor advertising that otherwise violates this chapter is declared to be a public nuisance, and shall be disposed of by the commissioner at the expense of the owner of the property and the owner of the outdoor advertising, who shall be jointly liable for the cost.

(b) Any private citizen who maintains property within a right-of-way in which an unlawful sign is located may remove and dispose of the advertising at the citizen's own expense; provided, however, that this subsection (b) shall not apply to an outdoor advertising sign as defined by § 54-21-102.

HISTORY: Acts 1972, ch. 655, § 14; impl. am. Acts 1972, ch. 829, § 7; T.C.A., § 54-2614; Acts 1980, ch. 470, § 2; 2006, ch. 678, § 1.

54-21-115. Commissioner's authority to enter on property without penalty.

The commissioner and all employees under the commissioner's direction, in the performance of their functions and duties under this chapter, may enter into and upon any property without penalty, upon which outdoor advertising is located and make examinations and surveys as may be relevant or dispose of the outdoor advertising when disposal is provided for under this chapter.

HISTORY: Acts 1972, ch. 655, § 15; impl. am. Acts 1972, ch. 829, § 7; T.C.A., § 54-2615; Acts 1980, ch. 470, § 2.

54-21-116. Commissioner's authority to enter into agreement with secretary of transportation.

(a) The commissioner is authorized and directed to enter into agreements with the secretary of transportation of the United States regarding the definition of unzoned industrial and commercial areas; and regarding the size, lighting and spacing of outdoor advertising that may be erected and maintained within six hundred sixty feet (660') of the nearest edge of the right-of-way within the areas adjacent to the interstate and primary systems that are zoned industrial or commercial under the authority of state or local law, or in unzoned industrial or commercial areas that may be permitted in accordance with the terms of the agreement between the commissioner and the secretary of transportation of the United States. In any agreement entered into with the secretary of transportation, the commissioner shall reserve the right to renegotiate or make whatever modifications are necessary to conform to any subsequent amendments to the federal Highway Beautification Act of 1965, compiled in 23 U.S.C. §§

131, 136, and 319. The agreement with the department of transportation that the commissioner signed on or about November 11, 1971, and that is to become effective upon passage of this chapter is authorized and approved, and the commissioner is directed, if required by the department to re-sign this agreement after passage of this chapter. Any modification of this agreement or any subsequent agreement shall become effective only upon passage of an act authorizing the modification by the general assembly.

(b) The commissioner is authorized to execute a modification of the agreement signed on or about November 11, 1971, to change the maximum area for any one (1) sign from one thousand two hundred square feet (1,200 sq. ft.) to seven hundred seventy-five square feet (775 sq. ft.); to reduce the optional maximum square footage of signs authorized in counties having a population greater than two hundred fifty thousand (250,000) from three thousand square feet (3,000 sq. ft.) to one thousand two hundred square feet (1,200 sq. ft.); to modify the agreement to change the minimum spacing of signs on the interstate system and controlled access highways on the primary system from five hundred feet (500') to one thousand feet (1,000') where the same are not separated by buildings or other obstructions, so that only one (1) sign is visible from the highway at any one (1) time; to change the minimum spacing on noncontrolled access highways on the primary system outside the corporate limits of a municipality from three hundred feet (300') to five hundred feet (500'); and to change the minimum distance from an interchange, or intersection at grade, on the interstate system or controlled access highways on the primary system, outside incorporated cities, from five hundred feet (500') to one thousand feet (1,000'). Inside the corporate limits of a municipality, the distance between signs shall remain one hundred feet (100'). Permits issued prior to any change authorized for outdoor advertising or for outdoor advertising subsequently erected pursuant to the permit, that meet size, lighting, spacing and zoning criteria shall be unaffected thereby. Whenever any existing outdoor advertising or outdoor advertising erected pursuant to permit issued as mentioned in this subsection (b) is removed within the corporate limits of Memphis, Nashville, Knoxville or Chattanooga, the location of the outdoor advertising shall be subject to the issuance of a permit for a period of eighteen (18) months following the date of its removal. Thereafter, no further outdoor advertising development may occur.

(c) The commissioner is further authorized to change the definition of an unzoned commercial or industrial area to provide that only those areas on which there is located one (1) or more permanent structures within which a commercial or an industrial business is actively conducted, and that are equipped with all customary utilities facilities and open to the public regularly or regularly used by employees of the business as their principal work station, or that, due to the nature of the business, are equipped, staffed and accessible to the public as is customary, may be so defined.

(d) The commissioner is authorized to execute a modification of the agreement signed on or about November 11, 1971, to change the minimum distance from an interchange, or intersection, at grade, on the interstate system or controlled access highway on the primary system, outside incorporated cities, to five hundred feet (500') when the interchange or intersection is within two thousand five hundred feet (2,500') of an interchange or intersection, at grade, of a welcome station. This distance may be measured from that side of the interstate or controlled access highway on which the outdoor

advertising is to be located if a determination is made by the commissioner that there exists a geographical feature or foliage in the median of the highway that would substantially block visibility of such outdoor advertising from any lane of highway on the opposite side of the median.

(1) If the commissioner is formally notified by the appropriate federal offices of the United States department of transportation that as a result of any provision of this subsection (d), the state will lose federal funds or if a loss of federal funds occurs, then the provision shall be void and inoperative.

(2) If subsection (d) is found to be void and inoperative, or if notice is received from the United States department of transportation as provided in subdivision (d)(1), then any outdoor advertising placed pursuant to this subsection (d) shall be removed immediately by and at the expense of the owner. Failure to remove the outdoor advertising shall render the sign a public nuisance and § 54-21-105 shall apply. Nothing in this subsection (d) shall be construed to grant an absolute right in the placement of an outdoor advertising sign or make the state in any way liable under this subsection (d), if this subsection (d) is found in violation of any federal regulations as provided in subdivision (d)(1).

HISTORY: Acts 1972, ch. 655, § 16; impl. am. Acts 1972, ch. 829, § 7; T.C.A., § 54-2616; Acts 1980, ch. 470, § 2; impl. am. Acts 1981, ch. 264, § 12; 1983, ch. 133, § 4; 1989, ch. 22, § 1.

54-21-117. Exceptions.

This chapter shall not apply to signs or markers identifying the location or depth of underground communications and power cables, water mains, gas transmission lines, and other utility facilities located within or without the boundary of the right-of-way of the interstate or primary highway systems in the state.

HISTORY: Acts 1972, ch. 655, § 17; T.C.A., § 54-2617.

54-21-118. Outdoor advertising on certain interstate highways prohibited -- Penalty -- Exceptions.

No outdoor advertising shall be erected or continued in use for the purpose of having its message read from the main traveled ways of Interstate 26 from State Route 1 in Sullivan County to State Route 67 in Washington County (formerly Interstate 181), except those portions within the boundaries of an incorporated municipality on March 3, 1994, Interstate 440 in Davidson County, Interstate 640 in Knox County, or the section of State Route 840 in Williamson County from State Route 246 to one (1) mile from the intersection with State Route 100. Failure to comply with this section shall render the outdoor advertising a nuisance constituting a Class C misdemeanor, subject to immediate disposal, removal, or destruction and subject to the punishment and remedies provided in § 54-21-105. Valid permits for outdoor advertising structures located along Interstate 640 in Knox County issued prior to May 13, 1982,

shall remain valid after May 13, 1982, and the holders of the permits shall be permitted to construct, reconstruct, maintain or repair the structures according to the original application for which a permit was issued. Valid permits for outdoor advertising structures located along Interstate 26 from State Route 1 in Sullivan County to State Route 67 in Washington County (formerly Interstate 181), issued prior to March 3, 1994, shall remain valid after March 3, 1994, and the holders of the permits shall be permitted to construct, reconstruct, maintain or repair the structures according to the original application for which a permit was issued.

HISTORY: Acts 1980, ch. 837, § 2; 1982, ch. 932, §§ 1, 2; Acts 1989, ch. 591, § 113; 1994, ch. 562, §§ 1, 2; 2012, ch. 547, § 1.

54-21-119. Vegetation control permits and fees.

(a) The commissioner shall issue to the owners or holders of lawfully issued outdoor advertising permits, which definition includes those described as legal conforming, grandfathered and nonconforming structures in federal regulations, when the face of the outdoor advertising is generally visible to occupants of vehicles from the main traveled ways of the system on the date of erection, permits to remove, cut and trim vegetation located on the right-of-way adjacent to the outdoor advertising and replace the vegetation as directed, whenever the vegetation prevents clear visibility for a distance not to exceed five hundred yards (500 yds.) to occupants of vehicles using the main traveled ways of the controlled systems. Notwithstanding any other provision of this chapter to the contrary, vegetation that, on the date of erection of the outdoor advertising, blocks the view of the outdoor advertising, in whole or in any part, for a distance not to exceed five hundred yards (500 yds.), to occupants of vehicles using the main traveled ways, shall not be eligible for removal under a vegetation control permit. The maximum area to be controlled shall not exceed five hundred feet (500'). The regional engineering director for the department shall issue a vegetation control permit where all criteria are met, following submission of information specified and a nonrefundable fee of one hundred dollars ($100) for each face involved. Vegetation control permits will be issued upon payment of a fee of one hundred fifty dollars ($150) per face for supervision of the work. All fees received by the commissioner under this section shall be deposited to the highway fund for the administration of this part and for other purposes. Each subsequent year a maintenance permit may be purchased for fifty dollars ($50.00) to provide annual maintenance at any one (1) location that is consistent with the original vegetation control permit.

(b) One (1) vegetation control permit fee will be waived for those owners who voluntarily remove a nonconforming structure. If the nonconforming structure to be removed is not at least one hundred fifty square feet (150 sq. ft.) in size, two (2) nonconforming structures must be removed to authorize waiver. The latter applies only when the structure around which control is to occur is larger than three hundred square feet (300 sq. ft.).

(c) This waiver shall not be used as evidence in any future eminent domain proceeding relating to

nonconforming structures.

(d) Notwithstanding any other law to the contrary, it is the legislative intent that issuance of permits and carrying out of the work pursuant to the permits are lawful activities and shall not be construed as violating any provision of law.

(e) The commissioner may revoke, suspend or modify any vegetation control permit for cause, including violation of any terms or conditions of the permit.

HISTORY: Acts 1983, ch. 133, §§ 5, 6; 1984, ch. 850, § 1; 1999, ch. 63, § 1.

54-21-120. Unauthorized removal, cutting or trimming of vegetation.

(a) If, before obtaining an outdoor advertising permit and a vegetation control permit, vegetation located on the right-of-way is removed, cut or trimmed, and application is subsequently made for an outdoor advertising permit within five hundred (500) yards of the affected location, then the commissioner may deny the permits. There shall be a rebuttable presumption that the applicant was responsible for the unauthorized removal, cutting or trimming of the vegetation.

(b) If, before applying for a vegetation control permit, vegetation located on the right-of-way is removed, cut or trimmed in the vicinity of outdoor advertising, which action was reasonably calculated to afford greater visibility of the outdoor advertising, then the commissioner may revoke the outdoor advertising permit or permits for the affected outdoor advertising; however, if the vegetation prevented clear visibility of the outdoor advertising to occupants of vehicles using the main traveled ways within five hundred (500) yards of the main traveled ways, and the holder of the lawfully issued outdoor advertising permit for the affected outdoor advertising whose face was generally visible to occupants of vehicles from the main traveled ways on the date of erection agrees to restitution for the removal, cutting or trimming of vegetation, then the commissioner may authorize the permittee to obtain a vegetation control permit subject to all requirements contained in the permit, or may revoke the outdoor advertising permit. There shall be a rebuttable presumption that the holder of the outdoor advertising permit for the affected outdoor advertising was responsible for the unauthorized removal, cutting or trimming of the vegetation.

(c) Prior to invoking the provisions of this section, the commissioner or the commissioner's designee shall advise the affected outdoor advertising permit applicant or holder, whichever is appropriate, that a preliminary determination of illegality has been made. The party so advised shall be given the opportunity to request a hearing to be conducted pursuant to contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, before the commissioner may make a final determination of illegality.

HISTORY: Acts 1984, ch. 850, § 2.

54-21-121. Restrictions on new outdoor advertising devices.

(a) After July 1, 2001, no permits shall be issued pursuant to this chapter for any new outdoor advertising device in which two (2) or more displays are stacked one (1) above the other. Outdoor advertising devices with two (2) or more displays stacked one (1) above the other that were legally erected on or before July 1, 2001, shall be unaffected by this subsection (a).

(b) The holder of a legal permit under subsection (a) may move the device to a new location, if that location is otherwise eligible for a permit.

HISTORY: Acts 2001, ch. 357, § 1; 2007, ch. 427, § 9.

First of 2 versions of this section

54-21-122. Changeable message signs. [Effective until July 1, 2014. See the version effective on July 1, 2014.]

(a) Changeable message signs may be double faced, back to back or V- type signs.

(b) Changeable message signs with a digital display that meet all other requirements pursuant to this chapter are permissible subject to the following restrictions:

(1) The message display time shall remain static for a minimum of eight (8) seconds with a maximum change time of two (2) seconds;

(2) Video, continuous scrolling messages and animation are prohibited; and

(3) The minimum spacing of the changeable message signs with a digital display on the interstate system or controlled access highways is two thousand feet (2,000'); provided, however, that an outdoor advertising device that uses only a small digital display, not to exceed one hundred square feet (100 sq. ft.) in total area, to give public information, such as time, date, temperature or weather, or to provide the price of a product, the amount of a lottery prize or similar numerical information supplementing the content of a message otherwise displayed on the sign face shall not be subject to the minimum spacing requirement established in this subdivision (b)(3), or to any application for a specific digital display permit or permit addendum as established in subsections (c) and (d), or to any fee for a permit addendum as established in § 54-21-104(b).

(c) No person shall erect, operate, use or maintain a changeable message sign with a digital display in a new location without first obtaining a permit and tag expressly authorizing a changeable message sign with a digital display, and annually renewing the permit and tag, as provided in § 54-21-104. No outdoor advertising device with a digital display lawfully permitted, erected and in operation prior to June 1, 2008, shall be required to obtain any additional permit under this subsection (c).

(d) No person shall erect, operate, use or maintain a changeable message sign with a digital display in place of or as an addition to any existing permitted outdoor advertising device without first obtaining, and annually renewing with the permit, an addendum to the permit expressly authorizing a changeable message sign with a digital display in that location. No outdoor advertising device with a digital display lawfully permitted, erected and in operation prior to June 1, 2008, shall be required to obtain any addendum under this subsection (d).

(e) The commissioner shall under no circumstances permit or authorize any person to erect, operate, use or maintain a changeable message sign of any type as a replacement for or as an addition to any nonconforming outdoor advertising device or in any nonconforming location.

(f) Notwithstanding any other state law or regulation to the contrary, a person who is granted a permit or an addendum to a permit authorizing a changeable message sign with a digital display in accordance with subsection (c) or (d) shall have up to, but no more than, one hundred eighty (180) calendar days after the date on which the permit or addendum is granted within which to erect and begin displaying an outdoor advertising message on the changeable message sign. If the permitted or authorized changeable message sign with a digital display is not erected and displaying a message within this required time, the permit or addendum to the permit shall be revoked and the changeable message sign with the digital display shall be removed by the applicant or subject to removal by the commissioner as provided in § 54-21-105.

(g) Any application for a permit or addendum for a digital display as described in this section may be made using the form for an application for permit for an outdoor advertising device existing on June 1, 2008, until a separate form is available.

HISTORY: Acts 2007, ch. 76, § 2; 2008, ch. 1155, §§ 3, 4.

Second of 2 versions of this section

54-21-122. Changeable message signs. [Effective on July 1, 2014. See the version effective until July 1, 2014.]

(a) Changeable message signs may be double faced, back to back or V- type signs.

(b) Changeable message signs with a digital display that meet all other requirements pursuant to this chapter are permissible subject to the following restrictions:

(1) The message display time shall remain static for a minimum of eight (8) seconds with a maximum change time of two (2) seconds;

(2) Video, continuous scrolling messages and animation are prohibited; and

(3) The minimum spacing of the changeable message signs with a digital display on the interstate system or controlled access highways is two thousand feet (2,000'); provided, however, that an outdoor advertising device that uses only a small digital display, not to exceed one hundred square feet (100 sq. ft.) in total area, to give public information, such as time, date, temperature or weather, or to provide the price of a product, the amount of a lottery prize or similar numerical information supplementing the content of a message otherwise displayed on the sign face shall not be subject to the minimum spacing requirement established in this subdivision (b)(3), or to any application for a specific digital display permit or permit addendum as established in subsections (c) and (d), or to any fee for a permit addendum as established in § 54-21-104(b).

(c) No person shall erect, operate, use or maintain a changeable message sign with a digital display in a new location without first obtaining a permit and tag expressly authorizing a changeable message sign with a digital display, and annually renewing the permit and tag, as provided in § 54-21-104. No outdoor advertising device with a digital display lawfully permitted, erected and in operation prior to June 1, 2008, shall be required to obtain any additional permit under this subsection (c).

(d) No person shall erect, operate, use or maintain a changeable message sign with a digital display in place of or as an addition to any existing permitted outdoor advertising device without first obtaining, and annually renewing with the permit, an addendum to the permit expressly authorizing a changeable message sign with a digital display in that location. No outdoor advertising device with a digital display lawfully permitted, erected and in operation prior to June 1, 2008, shall be required to obtain any addendum under this subsection (d).

(e) The commissioner shall under no circumstances permit or authorize any person to erect, operate, use or maintain a changeable message sign of any type as a replacement for or as an addition to any nonconforming outdoor advertising device or in any nonconforming location.

(f) Notwithstanding any other state law or regulation to the contrary, a person who is granted a permit or an addendum to a permit authorizing a changeable message sign with a digital display in accordance with subsection (c) or (d) shall have up to, but no more than, one hundred eighty (180) calendar days after the date on which the permit or addendum is granted within which to erect and begin displaying an outdoor advertising message on the changeable message sign. If the permitted or authorized changeable message sign with a digital display is not erected and displaying a message within this required time, the permit or addendum to the permit shall be revoked and the changeable message sign with the digital display shall be removed by the applicant or subject to removal by the commissioner as provided in § 54-21-105.

(g) Any application for a permit or addendum for a digital display as described in this section may be made using the form for an application for permit for an outdoor advertising device existing on June 1, 2008, until a separate form is available.

(h) (1) All changeable message signs installed on or after July 1, 2014, shall come equipped with a light sensing device that automatically adjusts the brightness in direct correlation with ambient light conditions.

(2) The brightness of light emitted from a changeable message sign shall not exceed 0.3 foot candles over ambient light levels measured at a distance of one hundred fifty feet (150') for those sign faces less than or equal to three hundred square feet (300 sq. ft.), measured at a distance of two hundred feet (200') for those sign faces greater than three hundred square feet (300 sq. ft.) but less than or equal to three hundred eighty-five square feet (385 sq. ft.), measured at a distance of two hundred fifty feet (250') for those sign faces greater than three hundred eighty-five square feet (385 sq. ft.) and less than

or equal to six hundred eighty square feet (680 sq. ft.), measured at a distance of three hundred fifty feet (350') for those sign faces greater than six hundred eighty square feet (680 sq. ft.), or subject to the measuring criteria in the applicable table set forth in subdivision (h)(4).

(3) Any measurements required pursuant to this subsection (h) shall be taken from a point within the highway right-of-way at a safe distance from the lane of the main traveled way and as close to perpendicular to the face of the changeable message sign as practical. If perpendicular measurement is not practical, valid measurements may be taken at an angle up to forty-five degrees (45 degrees) from the center point of the sign face.

(4) In the event it is found not to be practical to measure a changeable message sign at the distances prescribed in subdivision (h)(2) a measurer may opt to measure the sign at any of the alternative measuring distances described in the applicable table set forth in this subdivision (h)(4). In the event the sign measurer chooses to measure the sign using an alternative measuring distance, the prescribed foot candle level above ambient light shall not exceed the prescribed level, to be determined based on the alternative measuring distances set forth in the following tables in subdivisions (h)(4)(A), (B), (C), and (D), as applicable:

(A) For changeable message signs less than or equal to three hundred square feet (300 sq. ft.): Click here to view image.

(B) For changeable message signs greater than three hundred square feet (300 sq. ft.) but less than or equal to three hundred eighty-five square feet (385 sq. ft.): Click here to view image.

(C) For changeable message signs greater than three hundred eighty-five square feet (385 sq. ft.) but less than or equal to six hundred eighty square feet (680 sq. ft.): Click here to view image.

(D) For changeable message sign greater than six hundred eighty square feet (680 sq. ft.): Click here to view image.

(5) This subsection (h) shall apply to all changeable message signs located in this state operated pursuant to a permit issued by the commissioner.

HISTORY: Acts 2007, ch. 76, § 2; 2008, ch. 1155, §§ 3, 4; 2013, ch. 401, § 1.

54-21-123. Removal of nonconforming device that is destroyed.

A nonconforming outdoor advertising device that is destroyed shall no longer be permitted and shall be removed, except when the device is destroyed by vandalism or some other criminal or tortious act.

HISTORY: Acts 2007, ch. 427, § 3.

PART 750—HIGHWAY BEAUTIFICATION

Subpart A—National Standards for Regulation by States of Outdoor Advertising Adjacent to the Interstate System Under the 1958 Bonus Program

Subpart B—National Standards for Directional and Official Signs

Subpart C [Reserved]

Subpart D—Outdoor Advertising (Acquisition of Rights of Sign and Sign Site Owners)

Subpart E—Signs Exempt From Removal In Defined Areas

Subpart F [Reserved]

Subpart G—Outdoor Advertising Control

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

Subpart A—National Standards for Regulation by States of Outdoor Advertising Adjacent to the Interstate System Under the 1958 Bonus Program

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

§ 750.101 Purpose.

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

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

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

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

[38 FR 16044, June 20, 1973, as amended at 39 FR 28629, Aug. 9, 1974]

§ 750.102 Definitions.

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

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

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

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

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

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

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

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

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

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

(g) *Informational site* means an area or site established and maintained within or adjacent to the right-of-way of a highway on the Interstate System by or under the supervision or control of a State highway department, wherein panels for the display of advertising and informational signs may be erected and maintained.

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

(i) *Maintain* means to allow to exist.

(j) *Main-traveled way* means the traveled way of an Interstate Highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

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

to the centerline of the highway, protected areas also means all areas inside the boundary of such State which are within 660 feet of the edge of the right-of-way of the Interstate Highway in the adjoining State.

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

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

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

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

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

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

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

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

§ 750.103 Measurements of distance.

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

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

[38 FR 16044, June 20, 1973, as amended at 41 FR 9321, Mar. 4, 1976]

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

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

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

(b) Obsolete signs.

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

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

(e) Signs that are not consistent with the standards in this part.

§ 750.105 Signs that may be permitted in protected areas.

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

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

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

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

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

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

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

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

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

(d) Notwithstanding the provisions of paragraph (b) of this section, Class 2 or Class 3 signs which also qualify as Class 4 signs may display trade names in accordance with the provisions of paragraph (c) of this section.

§ 750.106 Class 3 and 4 signs within informational sites.

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

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

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

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

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

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

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

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

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

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

[23 FR 8793, Nov. 13, 1958, as amended at 35 FR 18719, Dec. 10, 1970, 41 FR 9321, Mar. 4, 1976]

§ 750.107 Class 3 and 4 signs outside informational sites.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) No Class 3 or 4 signs other than those permitted by this section may be permitted to be erected or maintained within protected areas, outside informational sites.

§ 750.108 General provisions.

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

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

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

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

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

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

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

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

§ 750.109 Exclusions.

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

§ 750.110 State regulations.

A State may elect to prohibit signs permissible under the standards in this part without forfeiting its rights to any benefits provided for in the act.

Subpart B—National Standards for Directional and Official Signs

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

§ 750.151 Purpose.

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

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

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

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

[38 FR 16044, June 30, 1973, as amended at 40 FR 21934, May 20, 1975]

§ 750.152 Application.

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

[40 FR 21934, May 20, 1975]

§ 750.153 Definitions.

For the purpose of this part:

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

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

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

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

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

(f) *Maintain* means to allow to exist.

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

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

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

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

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

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

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

(n) *Official signs and notices* means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in Federal, State, or local law for the purposes of carrying out an official duty or responsibility. Historical markers authorized by State law and erected by State or local government agencies or nonprofit historical societies may be considered official signs.

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

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

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

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

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

(3) Contain no other message;

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

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

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

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

(t) *Urban area* means an urbanized area or, in the case of an urbanized area encompassing more than one State, that part of the urbanized areas in each such State, or an urban place as designated by the Bureau of the Census having a population of five thousand or more and not within any urbanized area, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of the Census.

[38 FR 16044, June 30, 1973, as amended at 40 FR 21934, May 20, 1975]

§ 750.154 Standards for directional signs.

The following apply only to directional signs:

(a) *General.* The following signs are prohibited:

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

(2) Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic

sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.

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

(4) Obsolete signs.

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

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

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

(b) *Size.* (1) No sign shall exceed the following limits:

(i) Maximum area—150 square feet.

(ii) Maximum height—20 feet.

(iii) Maximum length—20 feet.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 750.155 State standards.

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

[38 FR 16044, June 20, 1973, as amended at 40 FR 21934, May 20, 1975]

Subpart C [Reserved]

Subpart D—Outdoor Advertising (Acquisition of Rights of Sign and Sign Site Owners)

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

SOURCE: 39 FR 27436, July 29, 1974, unless otherwise noted.

§ 750.301 Purpose.

To prescribe the Federal Highway Administration (FHWA) policies relating to Federal participation in the costs of acquiring the property interests necessary for removal of nonconforming advertising signs, displays and devices on the Federal-aid Primary and Interstate Systems, including toll sections on such systems, regardless of whether Federal funds participated in the construction thereof. This regulation should not be construed to authorize any additional rights in eminent domain not already existing under State law or under 23 U.S.C. 131(g).

§ 750.302 Policy.

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

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

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

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

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

[39 FR 27436, July 29, 1974; 39 FR 30849, Aug. 22, 1974, as amended at 41 FR 31198, July 27, 1976]

§ 750.303 Definitions.

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

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

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

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

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

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

(g) *Abandoned sign.* One in which no one has an interest, or as defined by State law.

§ 750.304 State policies and procedures.

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

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

(1) Illegal and abandoned signs.

(2) Hardship situations.

(3) Nominal value signs.

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

(5) Product advertising on:

(i) Rural interstate highway.

(ii) Rural primary highway.

(iii) Urban areas.

(6) Nontourist-oriented directional advertising.

(7) Tourist-oriented directional advertising.

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

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

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

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

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

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

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

and appraisal justification for payment of these damages. To assist the FHWA in its evaluation, the following data will accompany any submission regarding severance:

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

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

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

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

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

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

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

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

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

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

(1) Owner retention.

(2) Salvage value.

(3) State removal.

[39 FR 27436, July 29, 1974; 42 FR 30835, June 17, 1977, as amended at 50 FR 34093, Aug. 23, 1985]

§ 750.305 Federal participation.

(a) Federal funds may participate in:

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

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

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

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

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

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

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

(b) Federal funds may not participate in:

(1) Cost of title certificates, title insurance, title opinion or similar evidence or proof of title in connection with the acquisition of a landowner's right to erect and maintain a sign or signs when the amount of payment to the landowner for his interest is $2,500 or less, unless required by State law. However, Federal funds may participate in the costs of securing some lesser evidence or proof of title such as searches and investigations by State highway department personnel to the extent necessary to determine ownership, affidavit of ownership by the owner, bill of sale, etc. The State's procedure for determining evidence of title should be set forth in the State's policy and procedure submission.

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

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

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

§ 750.306 Documentation for Federal participation.

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

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

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

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

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

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

(6) Evidence that the right, title, or interest pertaining to the sign has

passed to the State, or that the sign has been removed.

(b) *Payment to the site owner.* (1) Evidence that an agreement has been reached between the State and owner.

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

(3) Satisfactory indication of ownership or compensable interest.

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

[39 FR 27436, July 29, 1974, as amended at 41 FR 31198, July 27, 1976]

§ 750.307 FHWA project approval.

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

(a) A general description of the project.

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

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

§ 750.308 Reports.

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

[39 FR 27436, July 29, 1974, as amended at 41 FR 9321, Mar. 4, 1976]

Subpart E—Signs Exempt From Removal in Defined Areas

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

SOURCE: 41 FR 45827, Oct. 18, 1976, unless otherwise noted.

§ 750.501 Purpose.

This subpart sets forth the procedures pursuant to which a State may, if it desires, seek an exemption from the acquisition requirements of 23 U.S.C. 131 for signs giving directional information about goods and services in the interest of the traveling public in defined areas which would suffer substantial economic hardship if such signs were removed. This exemption may be granted pursuant to the provisions of 23 U.S.C. 131(o).

§ 750.502 Applicability.

The provisions of this subpart apply to signs adjacent to the Interstate and primary systems which are required to be controlled under 23 U.S.C. 131.

§ 750.503 Exemptions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subpart F [Reserved]

Subpart G—Outdoor Advertising Control

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

SOURCE: 40 FR 42844, Sept. 16, 1975, unless otherwise noted.

§ 750.701 Purpose.

This subpart prescribes the Federal Highway Administration (FHWA) policies and requirements relating to the effective control of outdoor advertising under 23 U.S.C. 131. The purpose of these policies and requirements is to assure that there is effective State control of outdoor advertising in areas adjacent to Interstate and Federal-aid primary highways. Nothing in this subpart shall be construed to prevent a State from establishing more stringent outdoor advertising control requirements along Interstate and Primary Systems than provided herein.

§ 750.702 Applicability.

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

§ 750.703 Definitions.

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

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

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

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

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

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

(f) *Lease* means an agreement, license, permit, or easement, oral or in writing, by which possession or use of land or interests therein is given for a

specified purpose, and which is a valid contract under the laws of a State.

(g) *Maintain* means to allow to exist.

(h) *Main-traveled way* means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

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

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

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

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

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

(n) *Visible* means capable of being seen, whether or not readable, without visual aid by a person of normal visual acuity.

§ 750.704 Statutory requirements.

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

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

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

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

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

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

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

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

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

(d) 23 U.S.C. 131 provides that signs not permitted under §750.704 of this regulation must be removed by the State.

§ 750.705 Effective control.

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

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

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

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

(d) Remove illegal signs expeditiously;

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

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

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

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

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

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

[40 FR 42844, Sept. 16, 1975; 40 FR 49777, Oct. 24, 1975]

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

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

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

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

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

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

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

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

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

(5) Nothing contained herein shall relieve the State of the responsibility of

limiting signs within controlled areas to commercial and industrial zones.

§ 750.707 Nonconforming signs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) *Just compensation.* The States are required to pay just compensation for the removal of nonconforming lawfully existing signs in accordance with the terms of 23 U.S.C. 131 and the provisions of subpart D, part 750, chapter I, 23 CFR. The conditions which establish a right to maintain a nonconforming sign and therefore the right to compensation must pertain at the time it is acquired or removed.

§ 750.708 Acceptance of state zoning.

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

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

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

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

§ 750.709 On-property or on-premise advertising.

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

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

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

(d) Signs are exempt from control under 23 U.S.C. 131 if they solely advertise the sale or lease of property on which they are located or advertise activities conducted on the property on which they are located. These signs are subject to regulation (subpart A, part 750, chapter I, 23 CFR) in those States

which have executed a bonus agreement, 23 U.S.C. 131(j). State laws or regulations shall contain criteria for determining exemptions. These criteria may include:

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

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

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

§ 750.710 Landmark signs.

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

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

(c) Reasonable maintenance, repair, and restoration of a landmark sign is permitted. Substantial change in size, lighting, or message content will terminate its exempt status.

§ 750.711 Structures which have never displayed advertising material.

Structures, including poles, which have never displayed advertising or informative content are subject to control or removal when advertising content visible from the main-traveled way is added or affixed. When this is done, an "outdoor advertising sign" has then been erected which must comply with the State law in effect on that date.

§ 750.712 Reclassification of signs.

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

§ 750.713 Bonus provisions.

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

PART 751—JUNKYARD CONTROL AND ACQUISITION

Sec.

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

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