

2004

Young Electric Sign Company, Inc. v. Utah Department of Transportation: Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

YOUNG ELECTRIC SIGN COMPANY, INC.,
a Utah Corporation,

Plaintiff and Appellant,

v.

UTAH DEPARTMENT OF
TRANSPORTATION,

Defendant and Appellee.

APPELLATE CASE NO. 20040265-CA

BRIEF OF APPELLEE

APPEAL FROM A DECISION OF THE SECOND JUDICIAL DISTRICT COURT
DAVIS COUNTY, FARMINGTON DEPARTMENT, STATE OF UTAH
HONORABLE DARWIN C. HANSEN, DISTRICT JUDGE

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STATEMENT OF JURISDICTION

This is an appeal by Young Electric Sign Company (“YESCO”) from the district court’s review of informal adjudicative proceedings conducted by the Utah Department of Transportation (“UDOT”). This Court transferred the case to the Utah Supreme Court pursuant to Utah Code Ann. § 78-2-2(3)(j) (West 2004) on the ground that the appeal was taken from an order, judgment, or decree of a district court. The Utah Supreme Court subsequently transferred the case to the Utah Court of Appeals under Utah Code Ann. § 78-2-2(4) (West 2004). This Court has jurisdiction pursuant to Utah Code Ann. § 78-2a-3(2)(j) (West 2004).

STATEMENT OF ISSUES AND STANDARD OF REVIEW

1. Did the district court correctly interpret the phrase “point of pavement widening” in the Utah Outdoor Advertising Act (“Act”) as being governed by the measurement standard set forth in Utah Code Ann. § 72-7-505(3)(c)(i)(A) and Section III.A.2.(b) of the Utah-Federal Agreement (“Agreement”)? [R167-168]
2. Was the district court correct in rejecting Appellant’s interpretation of the “point of pavement widening” because it failed to give meaning to the term “pavement” as that term is used in the Act and the Agreement? [R163-171]

Standard of Review: Appellant correctly states that the appellate court reviews questions of statutory interpretation for correctness, giving no deference to the district court’s legal conclusions. Br. Aplt. at 2. This Court should review both issues set forth above according to this standard. As the district court noted, however, in the case of any

conflict between the Act and the Agreement, the Agreement supercedes the conflicting provision of Utah law pursuant to Utah Code Ann. § 72-7-515(2) (West 2004).

DETERMINATIVE STATUTORY PROVISIONS AND RULES

The relevant text of the following determinative statutes and rules pertinent to the issues before the Court is attached as Addendum B:

23 U.S.C. § 131 (2003)

23 C.F.R. § 750.704 (2003)

23 C.F.R. § 750.705 (2003)

23 C.F.R. § 750.707 (2003)

UTAH CODE ANN. § 72-7-501(2) and (3) (West 2004)

UTAH CODE ANN. § 72-7-502(9), (12) and (19) (West 2004)

UTAH CODE ANN. § 72-7-504 (West 2004)

UTAH CODE ANN. § 72-7-505(3)(c)(i)(A) (West 2004)

UTAH CODE ANN. § 72-7-515(2) (West 2004)

UTAH ADMIN. CODE R933-2-3(2) (West 2004)

UTAH ADMIN. CODE R933-5-2 (West 2004)

STATEMENT OF THE CASE

A. NATURE OF THE CASE

On July 31, 2002, YESCO submitted an application to UDOT for a permit to relocate an existing billboard in Davis County, Utah. [R2, 20, 62, 76] On August 15, 2002, after reviewing the application and measuring the distance from the proposed sign

site to the nearest point of pavement widening for the interchange, UDOT concluded that the proposed sign location would violate state law and denied the application. [R2, 19, 76, 164] After an informal hearing, UDOT again denied YESCO's permit because the proposed location for the billboard was only 108 feet from the nearest point of pavement widening. [R3, 20, 77, 164; See also Addendum A hereto] Following the hearing, YESCO filed a complaint in the Second Judicial District Court, Davis County. The district court upheld UDOT's decision following briefing and argument on cross-motions for summary judgment. [R163-171] YESCO now appeals the district court's decision.

B. STATEMENT OF FACTS

YESCO erected the original billboard in 1978 prior to the construction of the current Antelope Drive interchange. [R30, 37, 53, 163] In 2002, the owner of the property upon which the original billboard was located informed YESCO that the sign needed to be moved to the north end of the property in order to accommodate development of the land. [R32, 39, 77, 82, 84-85] YESCO then removed the original sign, and on July 31, 2002, submitted an application to relocate the non-conforming billboard further north on the east side of Interstate 15, north of Antelope Drive, at milepost 336.18. [R2, 20, 62, 76, 82]¹

¹YESCO removed the old billboard in 2002 to address issues raised by the property developer. In YESCO's words, "The property owner made us aware that it was pursuing development on its land, such that the sign would have to be moved to the north end of the site." [R82, 84-85; R77]

On August 15, 2002, after reviewing the application and measuring the distance from the proposed sign site to the nearest point of pavement widening for the interchange, UDOT concluded that the proposed sign location would be within 500 feet of the interchange – a violation of Utah Code Ann. § 72-7-505(3)(c)(i)(A) and the Utah-Federal Agreement of 1968. [R76, 89-91] Specifically, the proposed new location is 108 feet from the point of the ending of pavement widening at the entrance to the main-traveled way. [R32, 52, 76, 82, 90; see also Addendum A hereto].

On appeal, YESCO argues that the district court erred in (a) “defining the ‘point of the gore’ as that term is used in Utah Code Ann. § 72-7-502(19);” (b) “defining ‘point of widening’ or the point of pavement widening” as that phrase is used in Utah Code Ann. §§ 72-7-502(19) and/or as allegedly used in 72-7-505(3)(c)(i); (c) “applying the definition of an ‘interchange’ as that term is used in Utah Code Ann. §§ 72-7-502(9) and 72-7-505(3)(c)(i);” and (d) holding that UDOT properly denied YESCO’s application to relocate its billboard. Br. Aplt. at 1-2.

SUMMARY OF ARGUMENT

On August 15, 2002, Region One of the Utah Department of Transportation denied YESCO a permit to relocate a billboard. A UDOT Hearing Officer and the district court upheld this decision. The basis was that the proposed location was 108 feet from the point of pavement widening at the entrance to the main-traveled way.

UDOT maintains that this ramp area is part of the interchange in that it channels traffic onto I-15. YESCO contends that this area is not part of the interchange. There is

no dispute that state law and the Utah-Federal Agreement concerning outdoor advertising prohibit the construction of billboards within 500 feet of an interchange. The narrow issue in this appeal is whether the proposed location is within the prohibited area.

This Court should uphold the determination of the court below because YESCO's proposed billboard location is less than 500 feet from the Antelope Drive/I-15 interchange as measured "along the interstate highway or freeway from the sign to the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way." Utah Code Ann. § 72-7-505(3)(c)(i)(A). Specifically, the court below was correct when it held that the "point of beginning or ending of pavement widening," which defines the boundaries of the interchange, is the "point at which the 'on-ramp dies into the freeway.'" [R166 (Ruling on Plaintiff's Motion for Summary Judgment and Ruling on Defendant's Motion for Summary Judgment)] In arriving at its conclusion, the court was also correct in rejecting YESCO's proffered interpretations of "interchange," "point of widening," "acceleration and deceleration lanes."

ARGUMENT

INTRODUCTION

In 1965, Congress passed the Highway Beautification Act (the "HBA") to control "the erection and maintenance of outdoor advertising signs" in areas adjacent to the interstate highway system. 23 U.S.C. § 131(a). The HBA requires states to exercise "effective control" over the erection and maintenance of outdoor advertising signs or

forfeit ten percent of their federal highway funding. 23 U.S.C. § 131(b). Effective control is exercised under the HBA and its accompanying regulations through separate agreements between the Secretary of Transportation and each of the states, defining the size, lighting, and spacing requirements that govern outdoor advertising signs within that state. 23 U.S.C. § 131(d); 23 C.F.R. § 750.705.

Following passage of the HBA, Utah manifested its intention to comply with the federal requirements in order to maintain its highway funding by executing the Utah-Federal Agreement (the “Agreement”). The Utah Legislature ratified the Agreement in the Outdoor Advertising Act (the “Act”), Utah Code Ann. §§ 72-7-501 to -516 (West 2004), which incorporated many of the Agreement’s provisions verbatim, including the standard for measuring interchanges. See Utah Code Ann. §§ 72-7-501(3) and -505(3)(c)(i)(A) (West 2004); see also Utah Admin. R933-5-2 (West 2004).

The Utah Outdoor Advertising Act provides “a statutory basis for the reasonable regulation of outdoor advertising” in “areas adjacent to the interstate, federal aid primary highway, and the national highway systems highways.” Utah Code Ann. § 72-7-501(2) (West 2004). Subject to certain exceptions, the Act prohibits the erection of outdoor advertising signs that are “capable of being read or comprehended from any place on the main-traveled way of an interstate or primary system.” Utah Code Ann. § 72-7-504 (West 2004). Signs that may be allowed by one of the exceptions, such as signs within commercial or industrial areas, are still prohibited if they are located within 500 feet of an interchange. Utah Code Ann. § 72-7-505(3)(c)(i)(A) (West 2004). In the instant case, the

district court applied the appropriate measurement standard according to its plain language and properly held that the proposed location for YESCO's sign falls within that prohibition.

I. YESCO'S PROPOSED SIGN LOCATION IS LESS THAN 500 FEET FROM THE ANTELOPE DRIVE/I-15 INTERCHANGE.

Utah Code § 72-7-505(3)(c)(i)(A) states that "signs may not be located on an interstate highway or limited access highway on the primary system within 500 feet of an interchange . . . measured along the interstate highway or freeway from the sign to the nearest point of beginning or ending of the pavement widening at the exit from or entrance to the main-traveled way." Id. (emphasis added); see also Utah-Federal Agreement, Section III.A.2.(b) (using same measurement standard). Utah Code Ann. § 72-7-502(9) defines an "interchange or intersection" as "those areas and approaches where traffic is channeled off or onto an interstate route, excluding the deceleration lanes, acceleration lanes, or feeder systems, from or to another federal, state, county, city, or other route."

The proposed site is within 500 feet of the point of pavement widening for the entrance ramp to I-15 northbound. More precisely, the requested new location is only 108 feet from the point of pavement widening. [R65; see also Addendum A hereto] Therefore, it does not meet the spacing requirement of Utah Code Ann. § 72-7-505. As YESCO's representative conceded in his deposition:

Q. (by Mr. Burns): So the point of pavement widening in this instance is

less than 500 feet, right?

A. (by Mr. Short): Yes.

[R65]. This was the conclusion of the district court in the proceedings below and was the principal basis for upholding UDOT's denial of the requested permit.

The beginning or ending of pavement widening marks the boundary of the interchange. Utah Code Ann § 72-7-505(3)(c)(i)(A). It is UDOT's position that some interchanges, like the I-15/Antelope Drive interchange, do not include acceleration and deceleration lanes as part of their configuration. See Utah Admin. Code R. 933-2-3(2). This position is based on the fact that on-ramps and acceleration lanes are not synonymous. If they were, the Legislature's exclusion of acceleration lanes would effectively eliminate all control over billboard spacing near and within interchanges. There would be no "effective control" of outdoor advertising within the meaning of the Highway Beautification Act or its implementing regulations. See 23 C.F.R. § 750.705.

The primary distinction between UDOT's recent decision in Application of ROA General, Inc. dba Reagan Outdoor Advertising, UDOT File No. 03-03-001 (not a part of the record, but attached as Exhibit E to Appellant's Brief) and the instant case is that the BJBD matter involved a statutorily-excluded deceleration lane and the on-ramp in this case did not. See Utah Code Ann. § 72-7-502(9). It has been UDOT's position that there is no statutorily excluded acceleration or deceleration lane in the area that is the subject of this appeal.

Apparently recognizing its failed attempt to argue to the district court that the

terms “on-ramp” and “acceleration lane” were synonymous (R128, 150), YESCO now asserts that UDOT’s position incorrectly relies on an interpretation of an “auxiliary lane” that it argues is inconsistent with the traffic code (Utah Code, Title 41). Br. Aplt. at 23-24. Nowhere in the court below did UDOT make this argument. It certainly does not need to rely on it here.

As stated above, UDOT’s position is based on the fact that there are no statutorily-excluded acceleration or deceleration lanes in this area. There is no dispute that the pavement physically widens at a specific point to accommodate this on-ramp, within 108 feet of the proposed sign site. YESCO’s counsel conceded this fact in the court below. [R128, 150] That is the “point of pavement widening” referenced in the Utah Code Ann. § 72-7-505(3)(c)(i)(A) and the Utah-Federal Agreement. That is the measurement standard that the district court correctly applied.

Relying on the measurement method prescribed by Section 72-7-505, the district court correctly determined that the distance from the proposed sign to the nearest point of beginning or ending of pavement widening was less than 500 feet. [R76, 89-90] YESCO does not contest this measurement, but argues that UDOT should have disregarded the point of pavement widening because it was beyond “2,640 feet from the centerline of the intersecting highway.” Br. Aplt. at 20. This argument fails to give meaning to the term pavement as that term is used to define the boundaries of an interchange. The district court correctly interpreted these requirements in the only way that gives meaning to the statute as a whole, and upheld UDOT’s measurement from the sign to the point where the

pavement widens to allow traffic to merge with the interstate. [R170]

II. THE POINT OF PAVEMENT WIDENING

A. The district court's interpretation of state law was accurate.

YESCO's argument on appeal is founded on the premise that the statutorily defined "point of widening" in Section 72-7-502(19), is synonymous with the "point of the beginning or ending of pavement widening" in Section 72-7-505(3)(c)(i)(A). This premise is not supported by the Act.

When interpreting statutory language, a court looks "first to the plain language of the statute . . . assum[ing] that each term in the statute was used advisedly; thus the statutory words are read literally, unless such a reading is unreasonably confused or inoperable." State v. Bluff, 2002 UT 66, ¶ 34, 52 P.3d 1210 (citing Harmon City, Inc. v. Nielsen & Senior, 907 P.2d 1162, 1167 (Utah 1995)). Utah Code Ann. § 72-7-505(3)(c)(i)(A) sets the demarcation points for what is referred to by Appellant as the "sign-free zone." The boundaries of this area are set by the places where the main-traveled way physically widens to accommodate an on-ramp or off-ramp, plus 500 feet. [R166-168] This "point of pavement widening" is then used by UDOT permit officers to determine whether a proposed sign is within 500 feet of the interchange. [R88-91] YESCO argues that the court should ignore the demarcation point in this area and instead use either "the point of the gore or the point where the intersecting lane begins to parallel the other lanes of traffic." Utah Code Ann. § 72-7-502(19).

YESCO's suggested interpretation of the "point of widening" and "interchange" conflicts with the measurement standard set forth in the Utah-Federal Agreement. The Agreement makes no reference to the point of the gore² as being an appropriate basis to set the demarcation points for the sign-free zone - it refers to the "point of pavement widening." Instead of determining that these provisions of state law conflicted with the Utah-Federal Agreement, the court below harmonized the "point of the gore" in the only way that would not create a conflict with the measurement standard in Section III.A.2.(b) of the Agreement (as codified in Utah Code Ann. § 72-7-505(3)(c)(i)(A)).

In the court's words: "The 'point of the gore' in this instance is the point at which the on-ramp tapers to an end on I-15, or in other words, where it completely merges with I-15 . . . the point at which the 'on-ramp dies into the freeway.'" [R165]. This was a reasonable interpretation by the district court, as it construes the Outdoor Advertising Act in a way that does not conflict with the Utah Federal Agreement. For those reasons, this Court should uphold its conclusion.

B. Federal law prohibits the movement of this billboard to a new location.

The district court's conclusion is also supported by federal law, which states that the location of non-conforming signs may not be changed. See 23 C.F.R. § 750.707 (a non-conforming sign "may be sold, leased, or otherwise transferred without affecting its

²The word "gore" does not appear in the Utah-Federal Agreement. Similarly, there is no 2,640 foot limitation regarding the location of the "point of pavement widening." Compare Utah Code Ann. § 72-7-502(19) with Utah-Federal Agreement Section III, A.2.(b), as adopted in Utah Admin. Code R 933-5-2.

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.") (emphasis added). Simply put, a non-conforming sign must "remain substantially the same" as it was on the effective date of the State law or regulations that established the state's outdoor advertising laws. 23 C.F.R. § 750.707(d)(3) and (5); see also 23 C.F.R. § 750.704(b) (signs in 23 § C.F.R. 750.704(a)(4) must comply with spacing requirements of the Agreement between the State and the Secretary of Transportation) and 23 C.F.R. § 750.704(d) (signs not permitted under 23 C.F.R. § 750.704 must be removed).

C. UDOT's administrative rules prohibit non-conforming signs from being relocated or repositioned.

As noted above, YESCO's original sign had a "non-conforming" status because, if proposed under current regulations, it would not be allowed.³ Under UDOT's administrative rules, signs with a non-conforming status may not be relocated or repositioned. The rules reflect the federal policy described above that a non-conforming sign may continue to exist in its original location, as long as the structure is not moved.

Utah Admin. Code R933-2-5 states:

³ 23 C.F.R. § 750.707(b) states: "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." See also Utah Code Ann. § 72-7-510 (West 2004).

(1) Sign changes or repairs, including those for signs in a commercial or industrial zone, are subject to the following requirements:

....

(b) A nonconforming sign with "Grandfather Status" may not be relocated, structurally altered, nor repositioned, including reversing the direction of the sign face.

Id. (emphasis added). YESCO's application proposed to do precisely what is prohibited by the rule - move the sign to a new location. See also Utah Code Ann. § 72-7-504(4) (West 2004) ("Outdoor advertising under Subsections (1)(a), (d), (e), and (f) shall conform to the rules made by the department under Sections 72-7-506 and 72-7-507.").

Relying on UDOT Admin. Rule R933-2-3(2), YESCO argues that the area in question is an excluded "acceleration lane" that is not part of the interchange. This interpretation is based on a misreading of the rule, which plainly states that "an acceleration lane begins and ends at a point no closer than 500 feet from the nearest point of . . . ending of pavement widening at the . . . entrance to the main-traveled way." Id. (emphasis added).

One important fact remains undisputed – the entrance to the main-traveled way in this area (i.e., the on-ramp) merges with the interstate. This is not a situation where the entrance to the main-traveled way eventually becomes an exit. That unique situation, which is not present in this case, is the circumstance that the definition of acceleration and deceleration lane addresses. See Addendum C.

III. THE UTAH-FEDERAL AGREEMENT SUPERSEDES ANY CONFLICTING PROVISIONS IN THE UTAH CODE.

The Utah-Federal Agreement indicates Utah's commitment to "implement and carry out the provisions of [the Highway Beautification Act] . . . in order to remain eligible to receive the full amount of all federal-aid highway funds to be apportioned to such state." Utah Admin. Code R933-5-2 (West 2004). It also establishes the standards by which the state regulates billboards. Id. As interpreted by district court, the Agreement and the Act are consistent with one another and with federal law, but it is important to note that Utah law contemplates the possibility that portions of the Outdoor Advertising Act may be found to conflict with the Utah-Federal Agreement. See Utah Code Ann. § 72-7-515(2) (West 2004) ("The provisions of this part are subject to and shall be superseded by conflicting provisions of the Utah-Federal Agreement."). Where a conflict exists, the offending provision is superseded by the Agreement. Id.

In this case, Appellant's interpretation of the Outdoor Advertising Act, which allows a sign to be located on an interstate highway or freeway within 500 feet of the nearest point of beginning or ending of pavement widening at the entrance to or exit from the main-traveled way, creates a conflict with the measurement standard set forth in the Utah-Federal Agreement. Therefore, to the extent that Utah Code Ann. § 72-7-502(9) (definition of "interchange"), Section 72-7-502(19) (definition of "point of widening") or Utah Admin. Code R. 933-2-3(2) (definition of "acceleration and deceleration lanes") allows the construction of billboards in this area, the conflicting provision is superseded

by the Agreement, as required by Utah Code Ann. § 72-7-515(2). Simply put, YESCO's interpretation of the Utah Code conflicts with the interchange measurement standard set forth in the Utah-Federal Agreement and should be rejected by this court.

CONCLUSION

This Court should uphold the District Court's conclusion that UDOT correctly determined the parameters of the interchange in this case. YESCO proposed to put a billboard in an area prohibited by outdoor advertising law. The proposed sign site is illegal because it is too close to the Antelope Drive on-ramp entering I-15 Northbound in this area.

YESCO's interpretation would create a conflict between Utah law and the Utah-Federal Agreement. Adopting YESCO's interpretation of the phrase "point of widening" and the terms "interchange" and "acceleration lane" would create an inconsistency between the Utah Outdoor Advertising Act and the Utah-Federal Agreement. The offending provision(s), which use terminology (i.e. the "gore") and distance limitations (i.e. point of widening may not exceed 2,640 feet from intersecting highway) that do not appear in the Agreement, are superceded pursuant to Utah Code Ann. § 72-7-515(2) and the Court should so find.

The court below interpreted Utah Code Ann. § 72-7-505(3) in the only way that gives meaning to the term "pavement." It agreed that UDOT measured the interchange, as the law requires, from the point where the pavement widens to allow traffic to merge

with the interstate UDOT respectfully requests that this Court uphold the district court's interpretation of the Utah Outdoor Advertising Act.

DATED this 13th day of October, 2004.

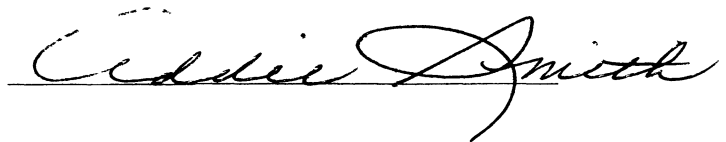
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MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing **APPELLEES' BRIEF** was served by hand-delivering the same this 13th day of October, 2004 to:

HEIDI E. C LEITHEAD
PARR, WADDOUPS, BROWN, GEE & LOVELESS
185 S STATE ST STE 1300
SALT LAKE CITY, UT 84111



ADDENDUM A

108'

PROPOSED
SIGN LOCATION

UDOT Point of Pavement Widening

846'

END OF SIGN FREE AREA

500'

ACCELERATION LANE
END OF "INTERCHANGE"

500'

TO END OF WIDENING
2937'

POINT OF WIDENING

1164'

ANTELOPE DRIVE

CLEARFIELD CITY

PHOTOGRAPH DATE: JULY 1, 1978
SCALE: 1" = 100'
#33-2

EXHIBIT 1

ADDENDUM B

23 U.S.C.A. § 131

CUnited States Code Annotated CurrentnessTitle 23. Highways (Refs & Annos) [⌘]Chapter 1. Federal-aid Highways (Refs & Annos) [⌘]Subchapter I. General Provisions

➔§ 131. Control of outdoor advertising

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

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

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

(d) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent

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

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

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

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

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

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

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

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

C

**CODE OF FEDERAL REGULATIONS
TITLE 23--HIGHWAYS
CHAPTER I--FEDERAL HIGHWAY
ADMINISTRATION, DEPARTMENT OF
TRANSPORTATION
SUBCHAPTER H--RIGHT-OF-WAY AND
ENVIRONMENT
PART 750--HIGHWAY BEAUTIFICATION
SUBPART G--OUTDOOR ADVERTISING
CONTROL
Current through January 21, 2004; 69 FR 2967**

§ 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.

<General Materials (GM) - References, Annotations,
or Tables>

23 C. F. R. § 750.704

23 CFR § 750.704

END OF DOCUMENT

23 CFR § 750.705
23 C.F.R. § 750.705

C

**CODE OF FEDERAL REGULATIONS
TITLE 23--HIGHWAYS
CHAPTER I--FEDERAL HIGHWAY
ADMINISTRATION, DEPARTMENT OF
TRANSPORTATION
SUBCHAPTER H--RIGHT-OF-WAY AND
ENVIRONMENT
PART 750--HIGHWAY BEAUTIFICATION
SUBPART G--OUTDOOR ADVERTISING
CONTROL**

Current through January 21, 2004; 69 FR 2967

§ 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]

<General Materials (GM) - References, Annotations, or Tables>

23 C. F. R. § 750.705

23 CFR § 750.705

END OF DOCUMENT

23 CFR § 750.707
23 C F R § 750.707

C

CODE OF FEDERAL REGULATIONS
TITLE 23--HIGHWAYS
CHAPTER I--FEDERAL HIGHWAY
ADMINISTRATION, DEPARTMENT OF
TRANSPORTATION
SUBCHAPTER H--RIGHT-OF-WAY AND
ENVIRONMENT
PART 750--HIGHWAY BEAUTIFICATION
SUBPART G--OUTDOOR ADVERTISING
CONTROL

Current through March 12, 2003, 68 FR 11750

§ 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 maybe 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.

<General Materials (GM) - References, Annotations,
or Tables>

23 C F R § 750.707

23 CFR § 750.707

END OF DOCUMENT

72-7-501. Purpose of part -- Utah-Federal Agreements ratified.

(1) The purpose of this part is to provide the statutory basis for the regulation of outdoor advertising consistent with zoning principles and standards and the public policy of this state in providing public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in highways, to preserve the natural scenic beauty of lands bordering on highways, and to ensure that outdoor advertising shall be continued as a standardized medium of communication throughout the state so that it is preserved and can continue to provide general information in the specific interest of the traveling public safely and effectively.

(2) It is the purpose of this part to provide a statutory basis for the reasonable regulation of outdoor advertising consistent with the customary use, zoning principles and standards, the protection of private property rights, and the public policy relating to areas adjacent to the interstate, federal aid primary highway existing as of June 1, 1991, and the national highway systems highways.

(3) The agreement entered into between the governor of the state of Utah and the Secretary of Transportation of the United States dated January 18, 1968, regarding the size, lighting, and spacing of outdoor advertising which may be erected and maintained within areas adjacent to the interstate, federal aid primary highway existing as of June 1, 1991, and national highway systems highways which are zoned commercial or industrial or in other unzoned commercial or industrial areas as defined pursuant to the terms of the agreement is hereby ratified and approved, subject to subsequent amendments.

Renumbered and Amended by Chapter 270, 1998 General Session
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Last revised: Tuesday, July 13, 2004

72-7-502. Definitions.

As used in this part:

(1) "Commercial or industrial activities" means those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following are commercial or industrial activities:

(a) agricultural, forestry, grazing, farming, and related activities, including wayside fresh produce stands;

(b) transient or temporary activities;

(c) activities not visible from the main-traveled way;

(d) activities conducted in a building principally used as a residence; and

(e) railroad tracks and minor sidings.

(2) "Commercial or industrial zone" means only:

(a) those areas within the boundaries of cities or towns that are used or reserved for business, commerce, or trade, or zoned as a highway service zone, under enabling state legislation or comprehensive local zoning ordinances or regulations;

(b) those areas within the boundaries of urbanized counties that are used or reserved for business, commerce, or trade, or zoned as a highway service zone, under enabling state legislation or comprehensive local zoning ordinances or regulations;

(c) those areas outside the boundaries of urbanized counties and outside the boundaries of cities and towns that:

(i) are used or reserved for business, commerce, or trade, or zoned as a highway service zone, under comprehensive local zoning ordinances or regulations or enabling state legislation; and

(ii) are within 8420 feet of an interstate highway exit, off-ramp, or turnoff as measured from the nearest point of the beginning or ending of the pavement widening at the exit from or entrance to the main-traveled way; or

(d) those areas outside the boundaries of urbanized counties and outside the boundaries of cities and towns and not within 8420 feet of an interstate highway exit, off-ramp, or turnoff as measured from the nearest point of the beginning or ending of the pavement widening at the exit from or entrance to the main-traveled way that are reserved for business, commerce, or trade under enabling state legislation or comprehensive local zoning ordinances or regulations, and are actually used for commercial or industrial purposes.

(3) "Commercial or industrial zone" does not mean areas zoned for the sole purpose of allowing outdoor advertising.

(4) "Comprehensive local zoning ordinances or regulations" means a municipality's comprehensive plan required by Section 10-9-301, the municipal zoning plan authorized by Section 10-9-401, and the county master plan authorized by Sections 17-27-301 and 17-27-401. Property that is rezoned by comprehensive local zoning ordinances or regulations is rebuttably presumed to have not been zoned for the sole purpose of allowing outdoor advertising.

(5) "Directional signs" means signs containing 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, or religious sites, and areas of natural scenic beauty or naturally suited for outdoor recreation, that the department considers to be in the interest of the traveling public.

(6) (a) "Erect" means to construct, build, raise, assemble, place, affix, attach, create,

paint, draw, or in any other way bring into being.

(b) "Erect" does not include any activities defined in Subsection (6)(a) if they are performed incident to the change of an advertising message or customary maintenance of a sign.

(7) "Highway service zone" means a highway service area where the primary use of the land is used or reserved for commercial and roadside services other than outdoor advertising to serve the traveling public.

(8) "Information center" means an area or site established and maintained at rest areas for the purpose

of informing the public of:

(a) places of interest within the state; or

(b) any other information that the department considers desirable.

(9) "Interchange or intersection" means those areas and their approaches where traffic is channeled off or onto an interstate route, excluding the deceleration lanes, acceleration lanes, or feeder systems, from or to another federal, state, county, city, or other route.

(10) "Maintain" means to allow to exist, subject to the provisions of this chapter.

(11) "Maintenance" means to repair, refurbish, repaint, or otherwise keep an existing sign structure safe and in a state suitable for use, including signs destroyed by vandalism or an act of God.

(12) "Main-traveled way" means the through traffic lanes, including auxiliary lanes, acceleration lanes, deceleration lanes, and feeder systems, exclusive of frontage roads and ramps. For a divided highway, there is a separate main-traveled way for the traffic in each direction.

(13) "Official signs and notices" means signs and notices erected and maintained by public agencies within their territorial or zoning jurisdictions for the purpose of carrying out official duties or responsibilities in accordance with direction or authorization contained in federal, state, or local law.

(14) "Off-premise signs" means signs located in areas zoned industrial, commercial, or H-1 and in areas determined by the department to be unzoned industrial or commercial.

(15) "On-premise signs" means signs used to advertise the major activities conducted on the property where the sign is located.

(16) "Outdoor advertising" means any outdoor advertising structure or outdoor structure used in combination with an outdoor advertising sign or outdoor sign.

(17) "Outdoor advertising corridor" means a strip of land 350 feet wide, measured perpendicular from the edge of a controlled highway right-of-way.

(18) "Outdoor advertising structure" or "outdoor structure" means any sign structure, including any necessary devices, supports, appurtenances, and lighting that is part of or supports an outdoor sign.

(19) "Point of widening" means the point of the gore or the point where the intersecting lane begins to parallel the other lanes of traffic, but the point of widening may never be greater than 2,640 feet from the center line of the intersecting highway of the interchange or intersection at grade.

(20) "Public assembly facility" means a convention facility as defined under Section 59-12-602 and that:

(a) is wholly or partially funded by public moneys; and

(b) requires a person attending an event at the public assembly facility to purchase a ticket or that otherwise charges for the use of the public assembly facility as part of its regular operation.

(21) "Relocation" includes the removal of a sign from one situs together with the erection of a new sign upon another situs in a commercial or industrial zoned area as a substitute.

(22) "Relocation and replacement" means allowing all outdoor advertising signs or permits the right to maintain outdoor advertising along the interstate, federal aid primary highway existing as of June 1, 1991, and national highway system highways to be maintained in a commercial or industrial zoned area to accommodate the displacement, remodeling, or widening of the highway systems.

(23) "Remodel" means the upgrading, changing, alteration, refurbishment, modification, or complete substitution of a new outdoor advertising structure for one permitted pursuant to this part and that is located in a commercial or industrial area.

(24) "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.

(25) "Scenic or natural area" means an area determined by the department to have aesthetic value.

(26) "Traveled way" means that portion of the roadway used for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

(27) (a) "Unzoned commercial or industrial area" means:

(i) those areas not zoned by state law or local law, regulation, or ordinance that are occupied by one

or more industrial or commercial activities other than outdoor advertising signs;

(ii) the lands along the highway for a distance of 600 feet immediately adjacent to those activities; and

(iii) lands covering the same dimensions that are directly opposite those activities on the other side of the highway, if the department determines that those lands on the opposite side of the highway do not have scenic or aesthetic value.

(b) In measuring the scope of the unzoned commercial or industrial area, all measurements shall be made from the outer edge of the regularly used buildings, parking lots, storage, or processing areas of the activities and shall be along or parallel to the edge of pavement of the highway.

(c) All signs located within an unzoned commercial or industrial area become nonconforming if the commercial or industrial activity used in defining the area ceases for a continuous period of 12 months.

(28) "Urbanized county" means a county with a population of at least 125,000 persons.

Amended by Chapter 166, 2003 General Session

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Last revised: Tuesday, July 13, 2004

72-7-504. Advertising prohibited near interstate or primary system -- Exceptions -- Logo advertising -- Department rules.

(1) Outdoor advertising that is capable of being read or comprehended from any place on the main-traveled way of an interstate or primary system may not be erected or maintained, except:

(a) directional and other official signs and notices authorized or required by law, including signs and notices pertaining to natural wonders and scenic and historic attractions, informational or directional signs regarding utility service, emergency telephone signs, buried or underground utility markers, and above ground utility closure signs;

(b) signs advertising the sale or lease of property upon which they are located;

(c) signs advertising activities conducted on the property where they are located, including signs on the premises of a public assembly facility as provided in Section 72-7-504.5;

(d) signs located in a commercial or industrial zone;

(e) signs located in unzoned industrial or commercial areas as determined from actual land uses; and

(f) logo advertising under Subsection (2).

(2) (a) The department may itself or by contract erect, administer, and maintain informational signs on the main-traveled way of an interstate or primary system for the display of logo advertising and information of interest to the traveling public if:

(i) the department complies with Title 63, Chapter 56, Utah Procurement Code, in the lease or other contract agreement with a private party for the sign or sign space; and

(ii) the private party for the lease of the sign or sign space pays an amount set by the department to be paid to the department or the party under contract with the department under this Subsection (2).

(b) The amount shall be sufficient to cover the costs of erecting, administering, and maintaining the signs or sign spaces.

(c) The department may consult the Division of Travel Development in carrying out this Subsection (2).

(3) (a) Revenue generated under Subsection (2) shall be:

(i) applied first to cover department costs under Subsection (2); and

(ii) deposited in the Transportation Fund.

(b) Revenue in excess of costs under Subsection (2)(a) shall be deposited in the General Fund as a dedicated credit for use by the Division of Travel Development no later than the following fiscal year.

(4) Outdoor advertising under Subsections (1)(a), (d), (e), and (f) shall conform to the rules made by the department under Sections 72-7-506 and 72-7-507.

Amended by Chapter 166, 2003 General Session

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Last revised: Tuesday, July 13, 2004

**72-7-505. Sign size -- Sign spacing -- Location in outdoor advertising corridor --
Limit on implementation.**

(1) (a) Except as provided in Subsection (2), a sign face within the state may not exceed the following limits:

- (i) maximum area - 1,000 square feet;
- (ii) maximum length - 60 feet; and
- (iii) maximum height - 25 feet.

(b) No more than two facings visible and readable from the same direction on the main-traveled way may be erected on any one sign structure. Whenever two facings are so positioned, neither shall exceed the maximum allowed square footage.

(c) Two or more advertising messages on a sign face and double-faced, back-to-back, stacked, side-by-side, and V-type signs are permitted as a single sign or structure if both faces enjoy common ownership.

(d) A changeable message sign is permitted if the interval between message changes is not more frequent than at least eight seconds and the actual message rotation process is accomplished in three seconds or less.

(2) (a) An outdoor sign structure located inside the unincorporated area of a nonurbanized county may have the maximum height allowed by the county for outdoor advertising structures in the commercial or industrial zone in which the sign is located. If no maximum height is provided for the location, the maximum sign height may be 65 feet above the ground or 25 feet above the grade of the main traveled way, whichever is greater.

(b) An outdoor sign structure located inside an incorporated municipality or urbanized county may have the maximum height allowed by the municipality or urbanized county for outdoor advertising structures in the commercial or industrial zone in which the sign is located. If no maximum height is provided for the location, the maximum sign height may be 65 feet above the ground or 25 feet above the grade of the main traveled way, whichever is greater.

(3) Except as provided in Section 72-7-509:

(a) Any sign allowed to be erected by reason of the exceptions set forth in Subsection 72-7-504(1) or in H-1 zones may not be closer than 500 feet to an existing off-premise sign adjacent to an interstate highway or limited access primary highway, except that signs may be erected closer than 500 feet if the signs on the same side of the interstate highway or limited access primary highway are not simultaneously visible.

(b) Signs may not be located within 500 feet of any of the following which are adjacent to the highway, unless the signs are in an incorporated area:

- (i) public parks;
- (ii) public forests;
- (iii) public playgrounds;
- (iv) areas designated as scenic areas by the department or other state agency having and exercising this authority; or
- (v) cemeteries.

(c) (i) (A) Except under Subsection (3)(c)(ii), signs may not be located on an interstate highway or limited access highway on the primary system within 500 feet of an interchange, or intersection at grade, or rest area measured along the interstate highway or freeway from the sign to the nearest point of the beginning or ending of **pavement** widening at the exit from or entrance to the main-traveled way.

(B) Interchange and intersection distance limitations shall be measured separately for

72-7-515. Utah-Federal Agreement -- Severability clause.

(1) As used in this section, "Utah-Federal Agreement" means the agreement relating to outdoor advertising that is described under Section 72-7-501, and it includes any modifications to the agreement that are signed on behalf of both the state and the United States Secretary of Transportation.

(2) ~~The provisions of this part are subject to~~ **and shall be superseded by** conflicting provisions of the Utah-Federal Agreement.

(3) If any provision of this part or its application to any person or circumstance is found to be unconstitutional, or in conflict with or superseded by the Utah-Federal Agreement, the remainder of this part and the application of the provision to other persons or circumstances shall not be affected by it.

R933-2-3. Definitions.

Rule text

All references in these Rules to Title 72, Chapter 7, Part 5, are to those sections of the Utah Code known as the Utah Outdoor Advertising Act. In addition to the definitions in that part, the following definitions are supplied:

(1) "Abandoned Sign" means any controlled sign, the sign facing of which has been partially obliterated, has been painted out, has remained blank or has obsolete advertising matter for a continuous period of 12 months or more.

(2) "Acceleration and deceleration lanes" means speed change lanes created for the purpose of enabling a vehicle to increase or decrease its speed to merge into, or out of, traffic on the main-traveled way. As used in the Act, an acceleration or deceleration lane begins and ends at a point no closer than 500 feet from the nearest point of the beginning or ending of **pavement** widening at the exit from or entrance to the main-traveled way.

(3) "Act" means the Utah Outdoor Advertising Act.

(4) "Advertising" means any message, whether in words, symbols, pictures or any combination thereof, painted or otherwise applied to the face of an outdoor advertising structure, which message is designed, intended, or used to advertise or inform, and which message is visible from any place on the main travel-way of the interstate or primary highway system.

(5) "Areas zoned for the primary purpose of outdoor advertising" as used in the Act is defined to include areas in which the primary activity is outdoor advertising.

(6) "Commercial or industrial zone" as defined in of the Act is further defined to mean, with regard to those areas outside the boundaries of urbanized counties and outside the boundaries of cities and towns referred to in that subsection, those areas not within 8,420 feet of an interstate highway exit-ramp or entrance-ramp as measured from the nearest point of the beginning or **ending** of the pavement widening at the exit from or entrance to the main traveled way that are **reserved** for business, commerce, or trade under enabling state legislation or **comprehensive** local zoning ordinances or regulations, and are actually used for commercial or industrial purposes, including the land along both sides of a controlled highway for 600 feet immediately abutting the area of use, measurements under this subsection being made from the outer edge of **regularly** used buildings, parking lots, gate-houses, entrance gates, or storage or processing areas.

(7) "Conforming Sign" means an off-premise sign maintained in a location that conforms to the size, lighting, spacing, zoning and usage requirements as provided by law and these rules.

(8) "Controlled Sign" means any off-premise sign that 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 any interstate or federal-aid primary highway in this State.

(9) "Destroyed Sign" means a sign damaged by natural elements wherein the costs of re-erection exceeds 30% of the depreciated value of the sign as established by departmental appraisal methods.

(10) "Freeway" means a divided highway for through traffic with full control access.

(11) "Grandfather Status" refers to any off-premise controlled sign erected in zoned or

R933-5. Utah-Federal Agreement for the Control of Outdoor Advertising.

Rule text

R933-5-1. Introduction.

R933-5-2. Utah-Federal Agreement.

R933-5-1. Introduction.

Rule text

The Utah-Federal Agreement was executed by the **governor** of Utah and the secretary of the United States Department of Transportation's Federal Highway Administrator on January 18, 1968. It sets out the parameters by which Utah agrees to manage and regulate outdoor advertising along the federal highway system. Though never placed in the Utah Code, the legislature has ratified the governor's execution of the agreement under Section 72-7-501 (Supp. 2001).

R933-5-2. Utah-Federal Agreement.

Rule text

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

THIS AGREEMENT made and entered into this 18th day of January, 1968, by and between the United states of America represented by the Secretary of Transportation acting by and through the Federal Highway Administrator, hereinafter referred to as the Administrator, and the state of Utah, acting by and through its Governor, hereinafter referred to as the State.

Witnesseth:

WHEREAS, the governor is authorized by Senate Bill No. 94, enacted by the Thirty-seventh Utah State Legislature, to enter into agreements with the Secretary of Commerce, whose functions, powers and duties in regard to highway matters have been transferred to the Secretary of Transportation by Public Law 89-760, 89th Congress, on behalf of the State of Utah to comply with Title I of the Highway Beautification Act of 1965; and

WHEREAS, Section 131(d) of Title 23, United states Code provides for agreement between the Secretary of Transportation and the several states to determine the size, lighting, and spacing of signs, displays, and devices, consistent with customary sue, which may be erected and maintained within 660 feet of the nearest edge of the right-of-way within areas adjacent to the interstate and primary systems which are zoned industrial or commercial under authority of state law or in unzoned commercial or industrial areas, which areas are also to be determined by agreement, and

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

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

Spacing of Signs

1. Signs may not be located within 500 feet of any of the following which are adjacent to the highway:

- (a) Public parks
- (b) Public forests
- (c) Playgrounds
- (d) Cemeteries

2. Interstate Highways and Limited-Access Highways on the Primary System.

(a) Spacing between sign structures along each side of the highway shall be a minimum of 500 feet except that this spacing shall not apply to signs which are separated by a building or other obstruction in such a manner that only one sign located within the minimum spacing distance set forth above is visible from the highway at any one time.

(b) No sign may be located on an interstate highway or freeway within 500 feet of an interchange, or intersection at grade, or rest area (measured along the interstate highway or freeway from the sign to the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way).

3. Non-Limited Access Primary Highways.

The location of sign structures situated between streets, roads or highway entering into or intersecting the main traveled way shall conform to the following minimum spacing criteria to be applied separately to each side of the primary highway:

(a) Where the distance between centerlines of intersecting streets or highways is less than 1000 feet, a minimum spacing between structures of 150 feet (double-faced, V-type and/or back-to-back) may be permitted between such intersecting streets or highways.

(b) Where the distance between centerlines of intersecting streets or highways is 1000 feet or more, minimum spacing between sign structures (double-faced, V-type and/or back-to-back) shall be 300 feet.

4. Explanatory Notes

(a) Alleys, undeveloped rights-of-way, private roads and driveways shall not be regarded as intersecting streets, roads or highways.

(b) Only roads, streets and highways which enter directly into the main-traveled way of the primary highway shall be regarded as intersecting.

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

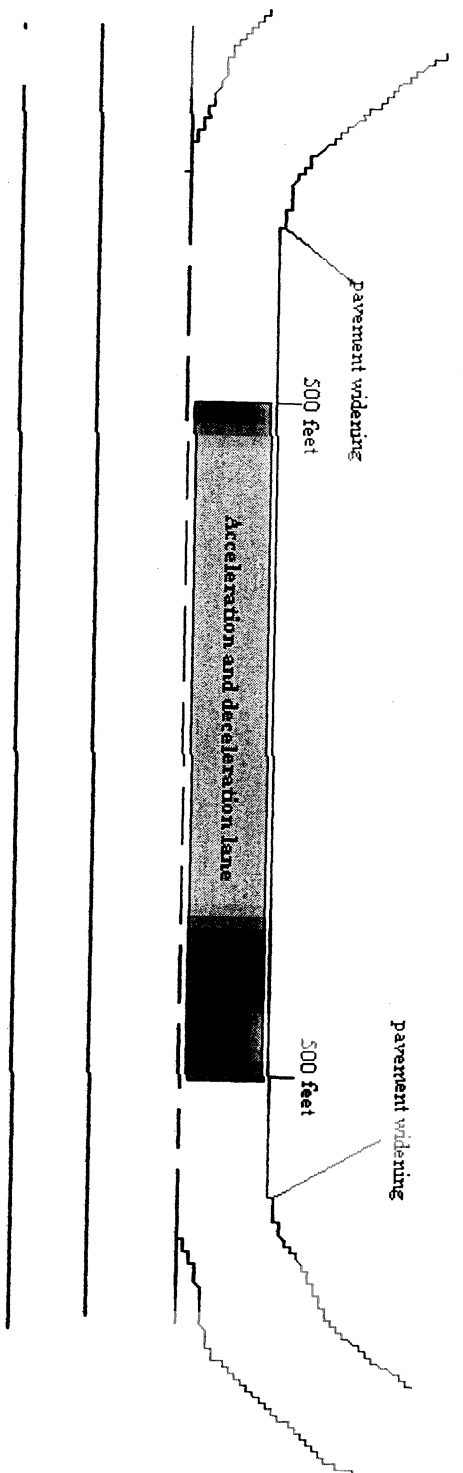
(d) The minimum distance between signs shall be measured along the nearest edge of the pavement between points directly opposite the signs.

Lighting

Signs may be illuminated, subject to the following restrictions:

1. Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information

ADDENDUM C



FOR DEMONSTRATIVE PURPOSES ONLY