

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 6—Outdoor Advertising

PROPOSED EMERGENCY

7 CSR 10-6.060 Nonconforming Signs. The Missouri Highways and Transportation Commission is amending section (3)(E).

PURPOSE: This proposed emergency amendment carries into effect a recent directive made by the Federal Highway Administration (FHWA) on September 28, 2007 to ensure that Missouri continues to maintain effective control over outdoor advertising as required by Title 23, United States Code (USC), Section 131 and Title 23 Code of Federal Regulations (CFR) Part 750.

EMERGENCY STATEMENT: The Missouri Highways and Transportation Commission (MHTC) finds that an immediate danger to the public health, safety or welfare requires emergency action, or that this emergency amendment is necessary to preserve a compelling governmental interest that requires an early effective date of December 2, 2007 to ensure the continued effective control over outdoor advertising and to comply with the directive of FHWA by revising the rule governing the maintenance of nonconforming outdoor advertising to: (1) prohibit the upgrade of such signs to use new types of message display technology; (2) establish criteria for the use of temporary cutouts and extensions, including time limitations; and (3) prohibit the use of advertisements to fill in the space between stacked signs and side by side signs.

History: Section 23 USC 131 requires states to maintain effective control over outdoor advertising along regulated routes. States that fail to do so will be subject to a 10% reduction in federal highway funding. FHWA makes the determination as to whether a state is maintaining effective control over outdoor advertising. Failure to implement FHWA's directives on nonconforming signs and a subsequent determination by FHWA that Missouri is not maintaining effective control of outdoor advertising, would subject MoDOT to a withholding of 10% of its National Highway System, Surface Transportation Program, Congestion Mitigation and Air Quality, Interstate Maintenance and Recreational Trail federal funds. Based on fiscal year 2007 federal apportionments, this would result in a withholding of approximately \$55 million.

In response to this federal law, Missouri enacted 226.500 RSMo, et. seq, to regulate outdoor advertising. Among the statutes adopted is 225.502 RSMo, which states control over outdoor advertising is necessary to the safety of the state. In addition, 226.150 RSMo directs MHTC to comply with all acts of the United States Congress and directives of federal agencies to ensure full federal highway funding for Missouri. Finally, 226.530 RSMo mandates that the Commission only adopt rules of minimal necessity to ensure full federal highway funding.

Compelling Governmental Interest for this Emergency Amendment: FHWA informed the Missouri Department of Transportation (MoDOT) staff on September 28, 2007 that a change to Missouri's administrative rule governing the maintenance of nonconforming signs is necessary in order for Missouri to continue to be in compliance with federal directives and maintain effective control over outdoor advertising required by federal law. According to FHWA in a subsequent November 1, 2007 draft letter to MoDOT, failure to make this change may result in FHWA determining that Missouri is not effectively controlling outdoor advertising and subjects Missouri to a 10% reduction of federal highway funds. An emergency rule is necessary because without it, some owners may try to upgrade their nonconforming signs in contravention of the FHWA directives noted above, which are currently forbidden by federal regulation but may arguably be allowed under current state regulations. If regular rulemaking alone was followed, it would allow ample time and opportunity for nonconforming signs to be upgraded in violation of current federal directives, which could result in a determination by FHWA that Missouri is not effectively controlling outdoor advertising and thereby exposing Missouri to a 10% reduction of federal highway funds, which is in contravention of the intent stated in 226.150 RSMo.

Proposed Permanent Amended Rule Filed: Also, MHTC is filing an identical, proposed permanent amended administrative rule regarding this same subject with the Secretary of State's Office and the Joint Committee on Administrative Rules, which will appear in the April 15, 2008, Missouri Register but is not intended to become effective until May 30, 2008.

Limited Scope: This emergency rulemaking is limited in scope to nonconforming outdoor advertising, which are signs that conformed to statutory requirements when built, but no longer do so, and the emergency rulemaking only pertains to the prohibition on the upgrade to new message technologies. This rule does not apply to outdoor advertising that is in full conformance with state statutes.

Fairness to All Interested Parties and Support from Industry: MHTC believes this emergency amendment is fair to all interested persons and parties under the circumstances. MoDOT's Outdoor Advertising Manager, Joyce Musick, sent a copy of the Commission's proposed and emergency rulemaking to William May, Missouri Outdoor Advertising Association (MOAA) Executive Director on October 29, 2007 for review and comments. On October 31, 2007 the Department received an e-mail stating that May does not intend to file any objections or negative comments on behalf of MOAA in regard to the rules and said that MOAA and its members sincerely appreciated the Department's open and honest efforts to work with MOAA and address its concerns.

Effective Date and Duration: MHTC filed this emergency amendment on November 15, 2007, which becomes effective on December 2, 2007, and will expire on May 30, 2008.

(3) Criteria for Maintenance of Nonconforming Signs. Reasonable maintenance and repair of nonconforming signs is permissible, however, violation of any one (1) or more of the following subsections (3)(A)–(E) of this rule disqualifies any sign from being maintained as a nonconforming sign and subjects it to removal by the commission without the payment of just compensation:

(C) Size. The size or area of a sign shall not be increased after the date the sign becomes a nonconforming sign. A net decrease in the face of the sign will be permitted;

1. Temporary cutouts and extensions will not be considered a substantial increase in size provided the cutout or extension meets the following criteria:

(a) The cutout or extension area is thirty-three percent (33%) or less of the total display area for each side of the sign, prior to the cutout or extension addition. For the purpose of determining the percentage of a temporary cutout or extension; the area of the smallest square, rectangle, triangle, circle, or contiguous combination of shapes that will encompass the cutout or extension will be calculated and divided by the area of the smallest square, rectangle, triangle, circle or contiguous combination of shapes that will encompass the permanent display area of the outdoor advertising structure;

(b) A cutout or extension may be added to a structure for a period of time of no more than three (3) years or the term of the display contract, which ever is the shortest. After an outdoor advertising structure has had a cutout or extension for that time period, a cutout or extension cannot be placed on that structure for a period of six (6) months;

(c) Proof regarding the dates the cutouts or extensions were installed and will be removed shall be provided to MoDOT, upon request.

(E) Other Improvements. The following shall be prohibited for nonconforming signs:

1. Illumination of the sign structure by a light(s) either attached or detached, for the purpose of illuminating the display; and

2. Raising or lowering of the height of any sign structure;

3. Changing the mode of advertising or message transition to a trivision, digital, projection, or other changeable message sign.

4. Filling in the open space between stacked signs and/or side by side signs with advertisement resulting in only one display area, except if the result would cause the sign to become a lawful conforming sign under section 226.540 RSMo.

AUTHORITY: sections 226.150, RSMo 2000 and 226.500–226.600, RSMo 2000 and Supp. 2006. Original rule filed May 16, 1977, effective Oct. 15, 1977. Amended: Filed Jan. 16, 1990, effective June 11, 1990. Amended: Filed June 15, 1993, effective Jan. 31, 1994. Amended: Filed Aug. 31, 1999, effective March 30, 2000. Amended: Filed April 15, 2003, effective Nov. 30, 2003. Emergency amendment filed Nov. 15, 2007, effective Dec. 2, 2007, expires May 30, 2008. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.*