

# Outdoor Advertising Control

## When does it begin?

## When does it end?

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# Points to Remember:

- Federal agencies love to use acronyms and it may appear that staffers are speaking a foreign language at times.
- FHWA – Federal Highway Administration
- NHS – National Highway System
- HBA – Highway Beautification Act
- USC – United States Code
- CFR – Code of Federal Regulations
- NEPA – National Environmental Policy Act

# Points to Remember

- Controlled routes are those routes that are part of the National Highway System, which includes the Interstate Highway System, and the Primary System prior to June 1, 1991.
- Provisions differ slightly between Bonus States and Non-bonus States. This presentation is geared towards Non-bonus States, such as Missouri.

# When does control end?

- State DOTs are required to control lands adjacent to the NHS and routes on the primary system prior to June 1, 1991.
- For routes on the primary system prior to June 1, 1991 – there is truly no end to ODA control.
- For routes that are currently part of the NHS, but were not part of the primary system prior to June 1, 1991, ODA control would end when the route is removed from the NHS by FHWA.

# When does control begin?

- This is the hard of the two questions. The next several slides will deal with when does ODA control begin. Please understand, that there is no set in stone answer, as this question is not addressed in the HBA, 23 CFR Part 750 or by FHWA policy or guidance. In truth, each state probably does something a little different.

# Scenario One:

- The State DOT accepts an existing roadway into its highway system and requests that FHWA add the roadway to the National Highway System (NHS). In this situation, control would begin once FHWA accepts the roadway into the NHS.

# Scenario Two:

- The State DOT is constructing on new alignment a portion of the Interstate system or NHS. This is the more problematic scenario as the state will have control of the roadway from its conception in planning through NEPA through design and through construction.

# What does the HBA say?

- 23 USC 131(a)
- (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.

# What does 23 CFR Part 750 say?

- Sec. 750.101
- (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.

# What does 23 CFR Part 750 say?

- Sec. 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.

# What does 23 CFR Part 750 say?

- Sec. 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.

# What does 23 CFR Part 750 say?

- Sec. 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 Sec. 750.704(a)(1) through (6);
  - (b) Assure that signs erected under Sec. 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;
  - (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);

# What goes into a roadway

- Planning - 23 CFR Part 470 Subpart A
- NEPA – First real investment of public funds; Public investment through public involvement
- Design - AASHTO Green Book
- ROW - Public funds
- Construction - Public funds

# When does control begin?

- Based upon our earlier discussion, there are three reasonable options to consider, all of which are being practiced in different states. It is the state DOT's responsibility to decide the correct option with consultation and support of its FHWA division office.

# Option One...

- Upon FHWA acceptance of the roadway into the interstate system or NHS.
  - Advantage: There is a roadway from which the state DOT can make determination whether a proposed structure will meet state laws and regulations for the issuance of a permit.
  - Disadvantage: If billboards are erected during construction, said billboards may be non-conforming. If this happens, has the public investment in the roadway been protected as intended by the HBA?

# Option Two...

- Begin control when acquisition authority is given.
  - Advantage: ROW plans will have been completed, and the state DOT will know the project ROW boundaries.
  - Disadvantage: Without a highway on which to drive, a state DOT will most likely not be able to make permit determinations. The state DOT will need to determine how to handle permit applications submitted prior to a drivable road.

# Option Three...

- Begin control once ROW is acquired.
  - Advantage: This might be the cleanest, because you then know exactly the route boundaries and what are all areas adjacent to the roadway, as referenced in 23 CFR Part 750.
  - Disadvantage: Without a highway on which to drive, a state DOT will most likely not be able to make permit determinations. The state DOT will need to determine how to handle permit applications submitted prior to a drivable road.

# Conclusion...

- When it comes to the question of “when does ODA control being?” there is no national answer. Currently, states are doing things a little different. Some are waiting until roads are open, others are starting control at ROW acquisition, and still others are beginning control at bid letting.



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