



# OUT OF HOME ADVERTISING FROM A TO Z



Out of Home Advertising Association of America

# [TABLE OF CONTENTS]

## A

Audience & Advertisers	1
Amortization	2
Appraisal & Valuation of Billboards	3

## B

Bans	5
Bonus States	5
Books About Outdoor Advertising	6

## C

Certification by Localities	8
Content Control	8

## D

Dark Skies/Night Lighting	10
Digital Billboards	10

## E

Economic Impact	17
Environment	17
Exactions	18

## H

Highway Beautification Act of 1965 (23 USC 131)	19
History of Outdoor Advertising	22

## I

Indian Lands	25
--------------	----

## J

Just Compensation	26
-------------------	----

## L

Local Regulation	28
Logo Signs & Tourist-Oriented Directional Signs (TODS) on Highway Right-of-Way	27

## N

Noise Barriers	29
Nonconforming Signs	29

## O

OAAA Headquarters and Information	31
OAAA Code of Industry Principles	31
Operations	33

## P

Permits and Licensing Fees	35
Public Opinion Polls	35
Public Service	37

## S

Scenic Byways & Segmentation	38
------------------------------	----

## T

Taxes	42
Technology & Trends	42
Traffic Safety	43
Travel and Tourism	44

## U

Unzoned Commercial and Industrial Areas	45
---	----

## V

Vegetation and Selective Pruning Control	46
--	----

## Z

Zoning	48
--------	----

# [A]

## [AUDIENCE & ADVERTISERS]

While still very much a local medium, out of home (OOH) advertising continues to grow in popularity for regional and national advertisers. The top OOH advertisers are 65 percent local and 35 percent national (businesses and services.) One of the hallmarks of the OOH client base is a broad range of customers

But, these are the top six categories:

1. Services (of all types), amusements, and retail (of all types)\
2. Media and Communications
3. Restaurants, transportation, hotels, & resorts
4. Financial, insurance, and real estate
5. Government and political including lotteries
6. Automotive

### Outdoor Advertisers – Top 20

- |                          |                          |
|--------------------------|--------------------------|
| 1. Mcdonald's Restaurant | 11. Netflix              |
| 2. Apple                 | 12. Warner Bros Pictures |
| 3. Geico                 | 13. Sprint               |
| 4. American Express      | 14. State Farm           |
| 5. Google                | 15. AT&T                 |
| 6. Amazon                | 16. Metro Pcs            |
| 7. Coca-Cola             | 17. Samsung              |
| 8. HBO                   | 18. Disney               |
| 9. Verizon               | 19. Toyota               |
| 10. Chevrolet            | 20. Comcast              |

OOH is one of the most noticeable forms of advertising. According to the Arbitron OOH Advertising Study, 71 percent of travelers often look at the messages on roadside billboards and more than one-third (37%) report looking at an OOH ad each or most of the time they pass one.

- Fifty-nine percent (59%) of travelers aged 18 or older have noticed a public bus, not including a school bus, in the past week, and 39 percent have noticed an advertising message on a bus (that's 66% of all travelers who noticed a bus).
- Nearly half of travelers noticed a bus shelter in the past week, and 21 percent of them noted an ad on it (that's 44% of travelers who noticed a bus stop).
- Taxi cabs have been spotted by 38 percent of travelers and 15 percent of them noticed an ad message on it (or 39% of travelers who noticed a taxi).

Billboard viewers recall seeing a wide range of actionable information, including stores and restaurants they later visited, radio and TV programs they were interested in, events they wanted to attend, or something funny they shared with friends later that day.

More than half of viewers aged 18 or older have learned about an event they were interested in attending (58%), learned about a restaurant they later visited (58%), or talked about something funny they saw (56%) on a roadside billboard. More than one third of viewers have been reminded to tune into a TV program (33%) or a radio station (44%); and more than one-quarter of viewers have noted a phone number (26%) or web site address (28%) written on an OOH ad.

OOH advertising also drives sales. Nearly threequarters of billboard viewers shop on their way home from work, more than two-thirds make their shopping decisions while in the car, and more than one-third make the decision to stop at the store while on their way home – all times when OOH advertising has the opportunity to be influential.

Nearly one-quarter of billboard viewers say they were motivated to visit a particular store that day because of an OOH ad message, and nearly one-third visited a retailer they saw on a billboard later that week. Half of viewers reported receiving directional information from a billboard, and one-quarter said they immediately visited a business because of an OOH ad message.

## [A]

### [AMORTIZATION]

#### Background: What is Amortization?

Amortization is an artificial device by which government seeks to take property rights while not having to pay anything for that action. Government's authority to take private property for public purposes is restricted by the Fifth Amendment to the United States Constitution, which requires that "just compensation" be paid whenever such private rights are extinguished. In recent years, the Supreme Court has made it clear that such a "taking" occurs when a governmental regulation "goes too far" and effectively extinguishes "all beneficial rights" or otherwise destroys the property owner's investment-backed expectations.

The literal definition of amortize means to "extinguish," as in paying the principal and interest to retire a mortgage debt. Amortization, when applied to property, is a scheme to take assets without paying for them. Opponents of outdoor advertising promote amortization as a device whereby government attempts to circumvent the Fifth Amendment by permitting the owner of a billboard or other property to continue to use its property for a period of time before the sign or other right to use of the property is eliminated without payment by the government of any compensation for the underlying value. The Federal Highway Administration has stated clearly that amortization is not just compensation. In the 2007 conflict assessment of the federal outdoor advertising control program, amortization was determined not to be an issue.

#### Industry Position

The use of amortization for the taking of legal nonconforming land uses – such as billboards – is unfair and unconstitutional because it destroys the investment-backed expectations of property owners and deprives property owners of the full beneficial use of their property.

#### Explanation

Amortization is intrinsically unfair.

When applied to billboards, amortization forces an owner who has complied with existing laws, paid for and obtained a legal permit, and expended money to construct and maintain the billboard, to remove the owner's investment at the owner's expense without a return on the investment.

#### Amortization is not just compensation.

Amortization deprives the property owner of the full use and income producing potential of the property and does not compensate the property owner. Amortization allows a short-term return on the owner's investment, but it never provides a return of the investment.

#### Most states protect billboard property against amortization.

Of the 46 states that allow billboards, 44 prohibit amortization and require just (cash) compensation, regardless of the roadway where the billboard is located. These states have enacted recent anti-amortization provisions: Florida (2002), Colorado (2003), North Carolina (2004), Wisconsin (2005), and South Carolina (2006).

#### Congress repeatedly has rejected amortization.

The Federal Highway Beautification Act of 1965, as amended, mandates the payment of just, i.e. cash, compensation upon the removal by government of billboards on federally controlled highways. The Act was amended in 1978 to clarify that cash compensation is required for the removal of any lawfully erected billboard along a controlled road (National Highway System, Interstate Highways, and Federal-Aid roads as of June 1, 1991).

#### Quotes

"Amortization has nothing to do with fair market value of the property at its highest and best use on the date the property is deemed condemned. The City's claim, that amortization is just compensation, fails."

THE CITY OF OAKBROOK TERRACE V. SUBURBAN BANK AND TRUST COMPANY, APPELLATE COURT OF ILLINOIS, SECOND DISTRICT, MARCH 24, 2006

“As a strong supporter of the rights of private property owners, I believe that condemning authorities must adhere literally to the ‘just compensation’ clause of the Fifth Amendment to the U.S. Constitution. SB 251 is meant to ensure that property owners are properly compensated for any change in property use codes by local government.”

COLORADO GOVERNOR BILL OWENS, IN A STATEMENT EXPLAINING WHY HE SIGNED PROPERTY RIGHTS LEGISLATION, JUNE 11, 2003

“Imagine a government that can amortize your home or your business as a means of taking your property?”

FLORIDA GOVERNOR JEB BUSH, IN A STATEMENT EXPLAINING WHY HE SIGNED PROPERTY RIGHTS LEGISLATION, APRIL 4, 2002

“Indeed, if amortization were to be viewed as a constitutionally acceptable substitute for compensation, eminent domain would become a meaningless concept. Zoning boards could perform urban planning at no cost – except to the property owners whose investments would be sacrificed for the perceived public benefit,”

ATTORNEY THEODORE B. OLSON (GIBSON, DUNN & CRUTCHER –FORMER SOLICITOR GENERAL OF THE UNITED STATES) IN A LEGAL OPINION, JUNE 10, 1991

## [APPRAISAL & VALUATION OF BILLBOARDS]

### Background

Government entities at times seek to acquire private property – including outdoor advertising structures and the leasehold (land) – for such public reasons as widening highways. Debates are common concerning the proper appraisal and valuation methods to determine just com-

pensation. The fundamental law pertaining to billboard valuation is the Fifth Amendment: “nor shall private property be taken for public use, without just compensation.”

### Industry Position

When government causes removal of a sign, the owner of both the billboard and the leased property are required to receive just compensation. Just compensation is measured by determining the “market value” based on a bona fide appraisal of the economic value of the lost property interest. An explanation of valuation for outdoor advertising is contained in Nichols on Eminent Domain, Chapter 23, Condemnation of Billboard Interests, by Mark Ulmer.

### Explanation

Each billboard is an income producing entity/property.

Billboards are permanent structures affixed to real estate and each structure is a unique property. Each structure and location generates revenues and should be acquired at its full “market value” as if the property is being sold.

Relocation or replacement is not “market value” because the billboard is location-dependent.

Highly restrictive billboard laws at all levels of government make each billboard structure uniquely valuable. Relocation of a billboard to another lawful location can be extremely difficult, if not impossible. Relocation is not a substitute for just compensation because it does not provide the owner of the billboard with anything he or she didn’t already have.

Numerous court decisions state that the “market value” formula to value billboards is the best appraisal tool, consistent with the provisions of USPAP (Uniform Standards of Professional Appraisal Practice).

Contemporary billboard valuation is guided by the same income capitalization, market valuation techniques, or gross income multiplier approach to determine “market value” that is ap-

plied to other governmental takings of property. There is no basis for distinguishing the appraisal techniques used to value billboards from those used for any other income producing property.

The FHWA has issued policy clarifications (via letters to Senator Harry Reid and Representatives Bud Shuster and Nick Rahall in 2000) concerning valuation of billboards. Previously, FHWA recommended the use of the cost approach only to value billboards. The new policy allows federal reimbursement for any eligible, legal cost incurred by the state, including consideration of the market approach, cost approach, and income approach to determine market value.

State courts have affirmed this policy, that three methods of valuation are equally applicable to establishing fair market value in eminent domain cases: income, cost, and market comparison.

The key to the assessment of billboard property for tax purposes today is best expressed by the Wisconsin Supreme Court in the case, *Adams Outdoor Advertising, Ltd. v. City of Madison* (2006). The court summed up the crux of this case by stating:

*Although the same appraisal methods may be used to establish fair market value for condemnation purposes as may be used to establish true cash value for purposes of personal property tax assessments, the property valued differs depending upon the purpose. In eminent domain, fair market value of a billboard is the price “the aggregate asset—the lease, permit, and sign—would bring in the marketplace.” (Vivid, Inc. v. Fiedler 1998) ... In contrast, an appraisal for personal property tax assessment purposes includes only the value of personal property and therefore excludes the value of the leasehold and billboard permit. ...*

*Therefore, we conclude the same methods of appraisal may be used in eminent domain as are used in appraising personal property for tax purposes, provided care is taken to exclude from a personal property tax assessment any value attributable to elements other than tangible personal property. (Adams Outdoor Advertising, Ltd. v. City of Madison 2006, 823–824)*



## [B]

### [BANS]

#### Background

Billboards are subject to comprehensive regulation that limits placement to commercial and industrial areas. Federal law establishes a national regulatory framework for billboards (such as size, lighting, and spacing); state and local zoning and land use laws further restrict outdoor advertising.

This regulatory system has consistently matched public opinion. Americans find outdoor advertising to be an important medium for commercial and non-commercial speech, and support careful location of billboards in commercial and industrial (i.e. business) areas with compatible uses.

#### Industry Position

Outdoor advertising is an important medium of communication used for commercial and non-commercial dissemination of information to the public. Bans and moratoria on business development are generally regarded as punitive measures that are not in accord with good zoning practices.

#### Explanation

- A ban on outdoor advertising carries serious First and Fifth Amendment implications.
- Bans and moratoria impact directly on local business and employment. More than three quarters (76.9%) of the businesses that use billboards report they would lose sales if they did not have access to billboards. (Taylor, 2000)
- Most states and municipalities in the United States have rejected bans and moratoria with only 6.5% of jurisdictions in a study of 215 localities having adopted regulations aimed at entirely eliminating outdoor advertising. (Weinstein, 2010)
- An overwhelming majority (85%) of Americans believe billboards are useful. (Taylor 2000, 2002)

- More than three quarters of Americans surveyed believe that billboards should be allowed in areas zoned commercial and industrial. (Taylor, 2002)

### [BONUS STATES]

#### Background

In 1958, Congress passed the first outdoor advertising control legislation commonly known as the Bonus Act, PL 85-381. It was replaced by the Highway Beautification Act of 1965, and is now found in the United States Code at 23 U.S.C. 131. The Bonus Act provisions still exist by reason of agreements with the states.

The Bonus Act provided an incentive to states to control outdoor advertising within 660 feet of the Interstate highway system. States that volunteered for the program receive a bonus of one-half of one percent of the federal highway construction costs on segments of Interstate highways controlling outdoor advertising.

The program is an unfunded federal incentive since no federal transportation funds can be used to pay states for the stricter control requirements along the Interstate highways and no general funds are available.

#### Bonus Act Amendments

Two amendments were adopted which allowed outdoor advertising along portions of Interstate highways. The first amendment was known as the "Cotton Amendment," which exempted any areas adjacent to part of a right-of-way, acquired prior to July 1, 1956. This allowed billboards in areas adjacent to interchanges, overpasses, and along roads that ran parallel to the Interstate.

A second measure, known as the "Kerr Amendment," had three key features:

- Allowed outdoor advertising signs in commercial and industrial zones
- Froze incorporated municipal boundaries as of September 21, 1959 (the date of the amendment); permitted new signs outside city limits in commercial and industrial zones as of September 21, 1959
- Allowed signs inside city limits



Twenty-two states remain in the Bonus program since Georgia (court decision), North Dakota (legislation), and Iowa (legislation) have dropped out:

California	Maryland	Rhode Island
Colorado	Nebraska	Vermont
Connecticut	New Hampshire	Virginia
Delaware	New Jersey	Washington
Hawaii	New York	West Virginia
Illinois	Ohio	Wisconsin
Kentucky	Oregon	
Maine	Pennsylvania	

## [BOOKS ABOUT OUTDOOR ADVERTISING]

### Advertising for Dummies

Chapter 9 of the 2001 edition of this book is entitled “Outdoor Ads: Eat at Joe’s and Get Gas.” All kidding aside, this 12 page comprehensive chapter from the popular “Dummies” series of books includes clearly worded information on the different forms of outdoor advertising to work for you, the key elements of an effective outdoor ad, targeting your message to the people who will read it, and keeping your ad brief. Written by Gary Dahl, Hungry Minds, Inc.

### Advertising Outdoors

An essential book for designers and ad professionals, David Bernstein’s book, *Advertising Outdoors*, looks at the rise of commercial art, the development of advertising as a discipline and an industry, and the role that advertising plays in modern life. Phaidon, 1997.

### Advertising Today

This hefty (8 pounds and 500 pages) book by ad writer Warren Berger provides a “thematic overview of the evolution of advertising around the world over the past 30 years.” Included are more than 400 advertisements originally seen in a wide range of media—print, television, billboards and the internet, along with recent “guerilla advertising.” Phaidon, 2001.

### Billboard: Art on the Road

This is the companion catalogue to The Massachusetts’ Museum of Contemporary Art’s to its retrospective exhibition of the billboard as an artist’s medium. The exhibit ran from May-September 1999, with 20 billboards in the roadside retrospective and five new ones commissioned by the museum and installed in the city of North Adams.

### Buyways: Billboards, Automobiles, and the American Landscape

Catherine Gudis traces the way outdoor advertising helped to turn the highway into a commercial “buyway,” and transformed the landscape into advertising space. Routledge, 2004.

### Gotcha! and Gotcha Twice!

This award winning work displays images of billboards from advertising agencies and design studios

from around the world arranged by subject. They include public service, consumer products and services, entertainment, recreation and leisure, financial institutions, newspapers and more. Two volumes: edited by Wei Yew.

### Great Outdoor

Rob Morris and Steve Grounds have literally “written the book” on great outdoor. Filled with insight on what works and what doesn’t in outdoor advertising, Great Outdoor is a terrific resource for understanding the outdoor advertising industry. Published in 1998.

### Signs and Wonders: The Spectacular Marketing of America

Edward Hayman and Artkraft Strauss’ Tama Starr have written Signs & Wonders: The Spectacular Marketing of America. Doubleday, 1998.

### The American Billboard: 100 Years

Published in 1991, this is a historical and pictorial documentation of the billboard industry’s first 100 hundred years. Written by Dr. James Fraser, this coffee table book is a collector’s item for anyone interested in the heritage of outdoor advertising.

### Signs of Opportunity: How Lamar Advertising Grew into the Biggest Billboard Business in America

Dan Marin has written about the remarkable story of Lamar Advertising and what it takes to succeed in business over the long haul. Acadian house Publishing, 2008.

## [C]

### [CERTIFICATION BY LOCALITIES]

In 1968, an amendment was made to the HBA to allow certification of local billboard controls in lieu of state requirements.

Certification, as defined in the HBA and federal regulations, means:

1. There must be comprehensive zoning within the locality.
2. It applies only to zoned commercial and industrial areas within a locality.
3. The locality preempts the state on billboard controls.
4. There must be a determination made of “customary use” (industry practices for size, lighting, and spacing within commercial and industrial areas).

Certification provides an opportunity for localities to regulate billboards along controlled highways compatible with their community values yet allows a natural fit for standardized billboards to support business and economic growth.

#### Section 131 (d) “Customary Use” Provision

(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.

Note: underlined portions denote “customary use” mention in the HBA.

### [CONTENT CONTROL]

#### Background

Freedom of speech is a founding principle of our nation. The U.S. Supreme Court has upheld the First Amendment protection of commercial speech. The Court found that attempts to censor speech and expression concerning legal products are invalid under the First Amendment. In a ruling issued June 28, 2001, (*Lorillard Tobacco Co. v. Reilly*), the U.S. Supreme Court upheld the right of business to advertise legal products and struck down government’s attempt to limit commercial speech. *Lorillard* involved a Massachusetts regulation that prohibited cigarette advertising on signs within 1,000 feet of schools, churches and parks. The Supreme Court held that states and localities had no authority to impose such a restriction.

The *Lorillard* decision had swift impact on the lower courts. On July 24, 2001, the City of Chicago effectively conceded the invalidity of its prohibition on alcoholic beverage and tobacco advertising, citing the Supreme Court ruling in *Lorillard*. On August 1, 2001, a federal court in Cleveland granted summary judgment, invalidating Cleveland’s restrictions on alcoholic beverage advertising. Upon appeal, the ruling was upheld prohibiting restrictions on alcoholic beverage advertising on billboards.

## Industry Position

OAAA supports the First Amendment right of businesses to promote legal products and the outdoor advertising industry's right to carry advertisements for legal products.

OAAA believes that advertisements for products illegal to be sold to minors should not be located in areas where children congregate, and has established advertising practices for children within the voluntary OAAA Code of Principles that such advertising not be placed within 500 feet of schools, churches and playgrounds. (See Page 28 for OAAA Code of Industry Principles).

## Explanation

In the past, much of the content control debate in outdoor advertising focused on the promotion of tobacco and alcohol. However, a major agreement that took effect in 1999 to provide payments from cigarette companies to states ended the outdoor promotion of cigarettes.

On November 23, 1998, the attorneys general from 46 states, the District of Columbia and five territories signed a record-setting \$206 billion settlement with the five leading cigarette companies (Philip Morris, RJR, Brown and Williamson, Lorillard and Liggett). States wanted to recoup health costs of treating smokers. Four states (Florida, Minnesota, Mississippi, and Texas) had reached prior settlements.

The following provisions were included in the Master Settlement Agreement:

- Bans outdoor cigarette advertising including billboards, signs, placards in arenas, stadiums, shopping malls and video game arcades.
- Limits advertising outside retail establishments to 14 square feet.
- Bans tobacco product advertising in transit.
- Allows states to substitute, for the duration of the billboard lease periods, place-based advertising to discourage youth smoking.

## [D]

### [DARK SKIES/NIGHT LIGHTING]

#### Background

Billboards produce a small fraction of overall outdoor lighting. Meanwhile, the outdoor advertising industry is converting to more efficient lighting that also reduces light “spillage” from billboards.

#### Industry Position

Illumination is fundamental to effective outdoor advertising, a round-the-clock medium of communication to mobile customers. Unreasonable limits on lighting hurt the traveling public, advertisers and public safety.

#### Explanation

- Illumination enhances public safety and security. Lack of adequate lighting compromises safety, promotes criminal activity, damages consumer confidence, and depresses nighttime commerce.
- Billboard lighting is a tiny fraction of the overall ambient light level. Research conducted in Denver, CO, by Lighting Sciences, Inc., of Phoenix, AZ, concludes that over 96 % of sky glow is a product of urban development, not billboards.
- Technology is improving the energy efficiency of billboard lighting, while reducing light “spillage.” Innovative reflector and prism designs reduce energy use and also reduce the amount of light leaking in the night sky.
- Digital billboards are equipped with light sensors that adjust billboard brightness to surrounding light conditions. Industry practices conform to guidelines issued by the Federal Highway Administration for digital billboards.
- The prescribed “cure” can be worse than the problem. Proposals to require retrofitting of lighting structures on existing billboards would be cost prohibitive. The IDA (International Dark Skies Association) manual acknowledges that it’s “impractical” to mandate retro-fitting. (Cite: IDA Lighting for Exterior Environments Manual, 2003)

- OAAA digital billboard brightness guidelines provide for a measurement level of 0.3 foot-candles above ambient light levels

### [DIGITAL BILLBOARDS]

#### Background

Keeping pace with technology, government has regulated and authorized digital billboards. The federal government says states can allow digital billboards as long as they do not flash, scroll, or feature full motion. Industry practices conform to federal guidance, such as display times and lighting. Federal guidelines, issued in 2007, say digital billboards should “adjust brightness in response to changes in light levels so that the signs are not unreasonably bright for the safety of the motoring public.” See page XX

Anti-billboard Scenic America attacked the federal guidelines in court; in 2014 a federal judge dismissed the case, with prejudice. On October 16, 2017, the US Supreme Court denied Scenic’s request to hear the case.

#### Chronology

The industry and FHWA prevailed at every round of this case:

**2007:** FHWA (Federal Highway Administration) issued Guidance to the States, suggesting regulatory parameters for digital billboards such as display times and avoidance of glare

**2013:** Scenic America sued US-DOT/FHWA in federal court, attacking digital billboards. OAAA intervened as a co-defendant on behalf of the industry.

**2014:** A federal judge dismissed the case, with prejudice (Obama-appointed James E. Boasberg); Scenic appealed

**2015:** A three-judge panel for the US Circuit Court of Appeals for the District of Columbia heard the case (eight years to the day after the FHWA Guidance was issued)

**2016:** The federal appeals court rejected the appeal; Scenic asked the Supreme Court to take the case

**2017:** The Supreme Court denied Scenic’s writ of certiorari (October 16, 2017)

Nearly all states with billboards allow digital billboards, which operate in nearly 1,000 communities.

### Industry Position

Delivery of real time information via digital billboards serves advertisers and communities.

### Advantages of Digital Billboards:

Most advertisements on digital billboards promote local businesses, and most of those are considered “small businesses.” Digital billboards can adapt quickly in fast-changing, competitive environments.

Government uses digital billboards on behalf of the public. When Albuquerque faced a natural gas shortage, local emergency officials communicated with public via digital billboards. The Federal Emergency Management Agency (FEMA) posted a [case study](#) on its website to explain partnerships to deliver emergency messages via digital billboards.

Since June of 2008, the National Center for Missing & Exploited Children (NCMEC) has transmitted more than 1,800 AMBER Alerts to digital billboards. The FBI and other law enforcement agencies rely on digital billboards to help find fugitives.

### Traffic Safety

Research shows that digital billboards are not associated with traffic safety problems. Analysis of accident data spanning years before and after installation of digital billboards showed no statistical relationship between the billboards and accidents.

The outdoor advertising industry pioneered years of intense research, investing more than \$1 million to analyze accident data and driver behavior. Its research on driver behavior showed that drivers tend to glance in the direction of digital billboards a bit longer compared to conventional

billboards. However, the typical glance at a digital billboard was less than one second. A separate federal study on driver distraction – also conducted by Virginia Tech Transportation Institute (VTTI) – said risks of crashes and near-crashes increase if glances exceed two seconds.

The outdoor industry has commissioned engineers to analyze more than 160,000 accident records in five different markets (Cleveland, OH; Rochester, MN; Albuquerque, NM; Reading, PA; and Richmond, VA). [See summary here.](#)

The consistent outcome is that digital billboards are not linked to accidents. Accident reports are a standard tool for policy makers.

On December 30, 2013, the Federal Highway Administration (FHWA) released the findings of its multi-year research on drivers’ behavior in proximity to digital billboards.

“DOT study finds digital billboards don’t distract drivers,” said the headline in *The Hill* newspaper in Washington, DC (January 7, 2014).

The government’s findings tracked the outcome of industry-sponsored research, which found no connections to accidents.

FHWA’s sister agency the National Highway Traffic Safety Administration (NHTSA) said in 2006: “Short, brief glances away from the forward roadway for the purpose of scanning the driving environment are safe and actually decrease near-crash/crash risk.”

This 2006 NHTSA study (“100-Car Naturalistic Driving Study”) said glances totaling more than 2 seconds increase crash risk. FHWA’s later research on digital billboards, released December 30, 2013, said the longest glances toward digital billboards were less than 1.3 seconds.

### Digital Billboard Lighting

The Outdoor Advertising Association of America (OAAA) commissioned Dr. Ian Lewin, a principal at Lighting Sciences, Inc., Scottsdale, AZ, to recommend criteria for brightness levels on digital billboards. The standards are designed to

minimize the risk of glare or unreasonable driver distraction. The criteria conform to FHWA guidelines for reasonable lighting levels. Highlights from the lighting research follow:

- The recommended criteria follows the lighting standards established by the Illuminating Engineering Society of North America (IESNA)
- Recommended regulatory criteria:
- Lighting levels will not increase by more than 0.3 foot candles (over ambient levels) as measured using a foot candle meter at a pre-set distance
- Pre-set distances to measure the foot candles impact vary with the expected viewing distances of each size sign. Measurement distance criteria follows:

Posters	150'	14x48 Bulletins	250'
10'6x36 Bulletins	200'	20x60 Bulletins	350'

- Each display must have a light-sensing device that will adjust the brightness as ambient light conditions change

#### Background to support the regulations:

- The measurement distances were selected based on the average minimum viewing of any digital billboard.
- Enforcement: Standards can be easily enforced as follows:
  1. At least 30 minutes past sunset, use a foot-candle meter to record the ambient light reading for the area. This is done while the digital billboard is off or displaying all black copy.
  2. The reading should be taken with the meter aim directly at the digital sign at the appropriate pre-set distance.
  3. Turn on the digital display to full white copy and take another reading.
  4. If the difference between the readings is 0.3 foot-candles or less, the brightness is properly adjusted.

These lighting standards will decrease the night time brightness of the sign to approximately 4 to 15 percent of its capable output. The light output spread is due to the variation in the ambient lighting level of each location.

The daytime brightness will operate near maximum output (7,500 nits), which is required to overcome full sunlight.



Memorandum



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

Subject: INFORMATION: Guidance on  
Off-Premise Changeable Message Signs

Date: September 25, 2007

In Reply Refer To:

HEPR -20

Original signed by:

From: Gloria M. Shepherd  
Associate Administrator for  
Planning, Environment, and Realty

To: Division Administrators  
Attn: Division Realty Professionals

Purpose

The purpose of this memorandum is to provide guidance to Division offices concerning off-premises changeable message signs adjacent to routes subject to requirements for effective control under the Highway Beautification Act (HBA) codified at 23 U.S.C. 131. It clarifies the application of the Federal Highway Administration (FHWA) July 17, 1996 memorandum on this subject. This office may provide further guidance in the future as a result of additional information received through safety research, stakeholder input, and other sources.

Pursuant to 23 CFR 750.705, a State DOT is required to obtain FHWA Division approval of any changes to its laws, regulations, and procedures to implement the requirements of its outdoor advertising control program. A State DOT should request and Division offices should provide a determination as to whether the State should allow off-premises changeable electronic variable message signs (CEVMS) adjacent to controlled routes, as required by our delegation of responsibilities under 23 CFR 750.705(j). Those Divisions that already have formally approved CEVMS use on HBA controlled routes, as well as those that have not yet issued a decision, should re-evaluate their position in light of the following considerations. The decision of the Division should be based upon a review and approval of a State's affirmation and policy that: (1) is consistent with the existing Federal/State Agreement (FSA) for the particular State, and (2) includes but is not limited to consideration of requirements associated with the duration of message, transition time, brightness, spacing, and location, submitted for FHWA approval, that evidence reasonable and safe standards to regulate such signs are in place for the protection of the motoring public. Proposed laws, regulations, and procedures

that would allow permitting CEVMS subject to acceptable criteria (as described below) do not violate a prohibition against “intermittent” or “flashing” or “moving” lights as those terms are used in the various FSAs that have been entered into during the 1960s and 1970s.

This Guidance is applicable to conforming signs, as applying updated technology to nonconforming signs would be considered a substantial change and inconsistent with the requirements of 23 CFR 750.707(d)(5). As noted below, all of the requirements in the HBA and its implementing regulations, and the specific provisions of the FSAs, continue to apply.

## Background

The HBA requires States to maintain effective control of outdoor advertising adjacent to certain controlled routes. The reasonable, orderly and effective display of outdoor advertising is permitted in zoned or unzoned commercial or industrial areas. Signs displays and devices whose size, lighting and spacing are consistent with customary use determined by agreement between the several States and the Secretary, may be erected and maintained in these areas (23 U.S.C. § 131(d)). Most of these agreements between the States and the Secretary that determined the size, lighting and spacing of conforming signs were signed in the late 1960’s and the early 1970’s.

On July 17, 1996, this Office issued a Memorandum to Regional Administrators to provide guidance on off-premise changeable message signs and confirmed that FHWA has “always applied the Federal law 23 U.S.C. 131 as it is interpreted and implemented under the Federal regulations and individual Federal/State agreements.”. It was expressly noted that “in the twenty-odd years since the agreements have been signed, there have been many technological changes in signs, including changes that were unforeseen at the time the agreements were executed. While most of the agreements have not changed, the changes in technology require the State and FHWA to interpret the agreements with those changes in mind”. The 1996 Memorandum primarily addressed tri-vision signs, which were the leading technology at the time, but it specifically noted that changeable message signs “regardless of the type of technology used” are permitted if the interpretation of the FSA allowed them. Further advances in technology and affordability of LED and other complex electronic message signs, unanticipated at the time the FSAs were entered into, require the FHWA to confirm and expand on the principles set forth in the 1996 Memorandum.

The policy espoused in the 1996 Memorandum was premised upon the concept that changeable messages that were fixed for a reasonable time period do not constitute a moving sign. If the State set a reasonable time period, the agreed-upon prohibition against moving signs is not violated. Electronic signs that have stationary messages for a reasonably fixed time merit the same considerations.

## Discussion

Changeable message signs, including Digital/LED Display CEVMS, are acceptable for conforming off-premise signs, if found to be consistent with the FSA and with acceptable and approved State regulations, policies and procedures.

This Guidance does not prohibit States from adopting more restrictive requirements for permitting CEVMS to the extent those requirements are not inconsistent with the HBA, Federal regulations, and existing FSAs. Similarly, Divisions are not required to concur with State proposed regulations, policies, and procedures if the Division review determines, based upon all relevant information, that the proposed regulations, policies and procedures are not consistent with the FSA or do not include adequate standards to address the safety of the motoring public. If the Division Office has any ques-

tion that the FSA is being fully complied with, this should be discussed with the State and a process to change the FSA may be considered and completed before such CEVMS may be allowed on HBA controlled routes. The Office of Real Estate Services is available to discuss this process with the Division, if requested.

If the Division accepts the State's assertions that their FSA permits CEVMS, in reviewing State-proposed regulations, policy and procedures for acceptability, Divisions should consider all relevant information, including but not limited to duration of message, transition time, brightness, spacing, and location, to ensure that they are consistent with their FSA and that there are adequate standards to address safety for the motoring public. Divisions should also confirm that the State provided for appropriate public input, consistent with applicable State law and requirements, in its interpretation of the terms of their FSA as allowing CEVMS in accordance with their proposed regulations, policies, and procedures.

Based upon contacts with all Divisions, we have identified certain ranges of acceptability that have been adopted in those States that do allow CEVMS that will be useful in reviewing State proposals on this topic. Available information indicates that State regulations, policy and procedures that have been approved by Divisions to date, contain some or all of the following standards:

#### Duration of Message

Duration of each display is generally between 4 and 10 seconds – 8 seconds is recommended.

#### Transition Time

Transition between messages is generally between 1 and 4 seconds – 1-2 seconds is recommended.

#### Brightness

Adjust brightness in response to changes in light levels so that the signs are not unreasonably bright for the safety of the motoring public.

#### Spacing

Spacing between such signs not less than minimum spacing requirements for signs under the FSA, or greater if determined appropriate to ensure the safety of the motoring public.

#### Locations

Locations where allowed for signs under the FSA except such locations where determined inappropriate to ensure safety of the motoring public.

Other standards that States have found helpful to ensure driver safety include a default designed to freeze a display in one still position if a malfunction occurs; a process for modifying displays and lighting levels where directed by the State DOT to assure safety of the motoring public; and requirements that a display contain static messages without movement such as animation, flashing, scrolling, intermittent or full-motion video.

#### Conclusion

This Memorandum is intended to provide information to assist the Divisions in evaluating proposals and to achieve national consistency given the variations in FSAs, State law, and State regulations, policies and procedures. It is not intended to amend applicable legal requirements. Divisions are strongly encouraged to work with their State in its review of their existing FSAs and, if appropriate, assist in pursuing amendments to address proposed changes relating to CEVMS or other matters. In this regard, our Office is currently reviewing the process for amending FSAs, as established in 1980, to determine appropriate revisions to streamline requirements while continuing to ensure there is adequate opportunity for public involvement.

For further information, please contact your Office of Real Estate Point of Contact or Catherine O'Hara ([Catherine.O'Hara@dot.gov](mailto:Catherine.O'Hara@dot.gov)).

## [E]

### [ECONOMIC IMPACT]

Outdoor advertising is fundamentally important to small businesses and local communities.

In 2009, research by IMapData, Inc. showed that 75 percent of billboard messages promoted local advertisers, 17 percent national goods and services, and eight percent displayed public service and other ads.

Four out five of these local businesses are considered “Small and Medium Sized Enterprises (SMEs), with fewer than 50 employees. The typical business relying on billboard advertising employs 35 workers.

Nationwide, more than 300,000 unique local businesses used billboard advertising in 2006; these local businesses employ more than 9 million people.

Plus, tens of thousands of landowners benefit from lease payments for billboards located on their property, helping pay property taxes, mortgages, and living expenses. A comprehensive analysis of land parcels in Hillsborough County, FL (Tampa) showed billboards enhance property values.

#### Immediate Harm if Billboards Lost

Three out of four businesses using billboards say they’d lose sales if they lost their billboards. Of those who expected losses, they estimated decreased sales of 18 percent. (Taylor, 2001)

“In our hurried lifestyles, many potential customers don’t have the time to read a newspaper/magazine or even watch TV shows,” said Glenn Moss, president of Moss Brothers Auto Group in Riverside, CA. “Since these are the people we count on to build our business, it would be a great loss if we did not have the ability to reach them with our ads while they are out on the roads.”

Bob Evans Farms, Inc. owns and operates over 500 full-service family restaurants in 22 states. The company’s field marketing manager provided an analysis about billboard use and its importance to restaurant promotion plans. “ Our use of outdoor billboards for nearly 40 years has confirmed the importance and cost effectiveness of this advertising medium . . . Billboards drive sales and generate customer awareness . . . we test the billboard effectiveness by temporarily covering the advertising copy . . . the result being an immediate loss of at least 10% in sales . . . in other cases when we have lost billboards due to storms or highway construction and have suffered a loss in sales until a replacement board could be found.”

### [ENVIRONMENT]

The outdoor industry has developed a new generation of materials and lighting, to reduce its impact on the environment and lead the way to more environmentally friendly materials and practices. These innovations reduce the environmental footprint of outdoor advertising structures and decrease the energy and natural resources used by the industry.

Billboard posters are converting from paper to recyclable polyethylene (PE).

#### New Lighting Design Saves Energy

- Innovative new reflector and prism designs reduce energy use by 50 percent
- Breakthrough LED lighting reduces power consumption up to 82 percent
- New engineering reduces light spillage by focusing 80 percent of the illumination onto the ad
- Thousands of conversions of existing structures are underway

## [EXACTIONS]

### Background: What is an Exaction?

“Exaction” means to call for, demand, require, force or compel. In local land-use governance, an exaction is a conditional use requirement. It applies to outdoor advertising when a locality requires a landowner seeking a permit or license to compel removal of a lawfully erected billboard as a condition of governmental approval.

### Industry Position

The use of exactions for the taking of legal nonconforming land uses, such as billboards, is unfair and unconstitutional because it destroys the investment backed expectations of property

owners and deprives property owners the full beneficial use of their property.

- Exaction is a ruse created by government entities in order to take and remove private property without paying just (i.e. cash) compensation. This action is similar to a “forced” taking by the government, without compensation to the owners.
- Basic fairness calls for government to compensate property owners if government uses its extraordinary powers to take private property. Motivated to protect property rights, states are enacting anti-exaction protections. Missouri did so in 2007; Indiana, Minnesota, and Wisconsin in 2006.

## [H]

### [HIGHWAY BEAUTIFICATION ACT OF 1965 (23 USC 131)]

“The authors of this landmark legislation wanted something that would withstand the test of time and meet the test of fairness. Their legacy is alive and well.”

CONGRESSMAN JIM OBERSTAR (D-MN), AUGUST 15, 2005

#### Federal & State Highway Beautification Act Controls

At the federal level, the Highway Beautification Act of 1965 (HBA) controls outdoor advertising along 306,000 miles of Federal-Aid Primary, Interstate and the National Highway System (NHS) roads. Signed into law by President Lyndon B. Johnson on October 22, 1965, the HBA (P.L. 89-285) allows the location of billboards in commercial and industrial areas, mandates a state compliance program, requires the development of state standards for size, lighting and spacing, promotes the expeditious removal of illegal signs, and requires just compensation for takings. Failure on the part of the state to maintain “effective control” could result in a 10% reduction of the state’s Federal-Aid Highway funds.

During the proceedings of the White House Conference on Beauty, prior to enactment of the Highway Beautification Act, President Johnson said on May 25, 1965: “Advertising has a vital place in our economy.” The Act itself calls for the “reasonable, orderly and effective display of outdoor advertising.

23 U.S.C., Section 131 (d)

(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.

#### Summary of Existing Outdoor Advertising Control Programs

- Billboards are allowed, by statute, in commercial and industrial areas consistent with size, lighting and spacing provisions as agreed to by the state and federal governments.
- Billboard controls apply to all Federal-Aid Primaries (FAP’s) as of June 1, 1991, Interstates and other highways that are part of the National Highway System (NHS). The FAP routes were highways noted by state DOTs to be of significant service value and importance. Approximately 260,800 FAP miles existed as of June 1, 1991 (226,440 rural miles and 34,360 urban miles). Maps can be obtained from your state DOT, FHWA Division office or from the OAAA in Washington, D.C.
- States have the discretion to remove legal nonconforming signs along highways; however, the payment of just (cash) compensa-



tion is required for the removal of any lawfully erected billboard along the Federal-Aid Primary, Interstate and National Highway System roads. When a state or locality takes a sign, the owner of both the billboard and leased property should receive just compensation which is measured by determining "fair market value" based on a bona fide appraisal of the economic value of the property interest that is being lost.

- States not complying with the "effective control" provisions of the HBA are subject to a 10% reduction in their highway allocations.
- States and localities may enact stricter laws than stipulated in the HBA.
- No new signs can be erected along the scenic portions of state designated scenic byways of the Interstate and Federal-Aid Primary highways, but billboards are allowed in "segmented" non-scenic areas along such routes.

The HBA – while not perfect – has stood the test of time. A senior lawmaker explains why:

**Congressional Record – October 14, 1988 – S 16230**

**SENATOR JENNINGS RANDOLPH (D-WV),  
PRIMARY SPONSOR (1965), ON THE HISTORY OF  
THE HIGHWAY BEAUTIFICATION ACT**

Twenty-three years ago this month, the Congress enacted the Highway Beautification Act and thus launched a major effort to improve the scenic vistas along our Nation's major highways. This legislation, inspired by the work of the First Lady, Mrs. Lyndon B. Johnson, was signed into law by the President on October 22, 1965.

By any measure the Act has been a success in moving toward its objectives. But after nearly a quarter-century, there remain those individuals who continue to denigrate those objectives and the implementation of the Highway Beautification Act as it relates to the control of outdoor advertising. Many opponents of the program have attempted to buttress their case with misleading

assertions, and they have been critical of those who have worked to make outdoor advertising control effective.

As the principal Senate sponsor of the Administration's original highway beautification proposal, I had the opportunity to help shape the legislation in its final form, and I have been a close observer of its operation since the beginning. With that experience, I have compared the facts with the arguments advanced to support drastic changes that could make billboard control ineffective. I would like to share my observations with you.

First, it should be understood that the Highway Beautification Act was never intended to completely ban billboards. It was a control measure, and the Committee on Public Works emphatically stated that outdoor advertising was a legitimate business that should be permitted where other industrial and commercial activities were conducted. Billboards were excluded along rural Interstate and primary highways.

The Act gave states the option of either controlling or prohibiting billboards. Forty-six states have chosen regulation while the other four (Maine, Alaska, Hawaii and Vermont) have exercised their right to forbid outdoor advertising.

The other central feature of the program was the congressional requirement that "just compensation" be paid for any sign removed for public purposes. This is a standard feature of many federal and state laws on numerous subjects, but it has become the most controversial feature of the program. Critics of the billboard removal program as it is structured decline to acknowledge that this is a basic issue of property rights. Privately owned land needed to build a road is routinely bought - not confiscated - from its owner. There should be no question that the owners of signs removed to enhance the appearance of certain highways also should be paid for their property.

None of these components of the Act seems unreasonable. Yet they have been misunderstood and challenged almost from the day President Johnson signed the bill. Among the more star-



ting assertions is that there are more signs along America's highways today than there were in 1965. This is not the case, and the actual situation is shown in statistics developed by the U.S. Department of Transportation. The latest figures, compiled in 1987, show that nearly 600,000 "illegal" signs - 95 percent of the original number - have been removed from the roadways. Compensation payments were not required for this category of signs, and they were eliminated at no cost to taxpayers. Even in commercial and industrial areas - where billboards are permitted - the number of signs is 4,120 less than in 1966. In addition, the Department of Transportation has estimated that the Highway Beautification Act has kept 150,000 new signs from being erected.

At a time when our country is deeply concerned about ozone depletion, the greenhouse effect and acid rain, we are told that billboards also are a form of pollution. This is certainly stretching a point. But even if it were true, the federal billboard control program has made substantial progress toward its goals. Expenditures of \$208 million in federal funds have resulted in the removal of more than half of the 222,000 "non-conforming" signs targeted under the Highway Beautification Act and for which compensation payments were mandated. By contrast, billions of dollars have been invested in correcting the true environmental hazards posed by air and water pollution, but huge further expenditures still are needed.

The curious belief that billboards provoke accidents likewise cannot stand close scrutiny. An examination of accident records shows that roads in the four states without billboards are no safer than those of the 46 states where outdoor advertising is allowed and regulated. In fact, rural primary highways in Alaska and Hawaii, both without any billboards, had higher fatality rates than the high traffic states of New York, Pennsylvania and North Carolina.

Finally, there is a widespread belief that the outdoor advertising industry opposes any form of billboard control and would like to see programs of the Highway Beautification Act abandoned so it could fill the landscape with signs. The record clearly shows the falsity of this notion.

The industry supported the Act in 1965 and for 23 years has endorsed its implementation in a fair and reasonable way. If we had this kind of support and understanding from other industries subject to federal regulation, life would be easier for everybody and we would be further along, for instance, in reducing air and water pollution.

I hope these thoughts will be helpful to you as you lead the Committee in its continuing oversight of the Highway Beautification Act. The statute was carefully devised, it has been conscientiously implemented and - despite opposition and funding shortages - it has been successful.

### Removal of Billboard Funding Options

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) amendments and subsequent HBA amendments to 23 USC 131 (n) in 1992 made federal funds available for billboard removal and control at state discretion.

Specific discretionary ISTEA funding programs:

- National Highway System and Interstate System Funds were established. In 1995, the National Highway System Designation Act approved the NHS under ISTEA. Portions of the FAP system, Interstate highways and other key arterial highways are on the new NHS program.
- Surface Transportation Program - Transportation Enhancement Activities Funds.
- National Scenic Byways Funds were authorized.

### Funding/Sign Removal

The Federal Highway Administration (FHWA) in its 1996 Nationwide Statistical Report on the outdoor advertising control program reports that there are nearly 875,000 fewer signs along controlled highways since enactment of the Highway Beautification Act in 1965.

FHWA statistics as of 9/30/96 indicate:

- Over 127,000 legal nonconforming compensable signs have been removed.

- Fewer than 74,000 legal nonconforming signs remain.
- Nearly 750,000 illegal signs have been removed by owners or the government, or 98 percent of all illegal signs.
- Approximately 14,600 illegal signs remain to be removed (reports show most are not standardized billboards but agriculture and farm signs.)

### Control Mileage Under HBA of 1965

- Total Interstate, Federal-Aid Primary highways (as of June 1, 1991) and the new National Highway system is 306,000 miles.
- Total number of National Highways System (NHS) miles (as of October 1995 when the NHS was enacted) is 156,500. Of those, 110,700 are NHS roads and 45,800 are on the Interstate highways.
- Outdoor advertising controls are established by rural and urban area boundaries ("urban area" means population of 5,000 or more).
- The urban area boundary definition is established in the statute to be 5,000 or more in population.

## [HISTORY OF OUTDOOR ADVERTISING]

### Early History

In 1450, Johannes Gutenberg invented movable type printing, and advertising, in the modern sense, was launched in the form of the handbill.

When the lithographic process was perfected in 1796, the illustrated poster became a reality.

Gradually, measures were taken to ensure exposure of a message for a fixed period of time. In order to offer more desirable locations where traffic was heavy, billposters began to erect their own structures.

### U.S. Billboard Origins In 1830's

The large American outdoor poster (more than 50 square feet) originated in New York when Jared Bell printed posters for the circus in 1835.

In the beginning, as now, American roadside advertising was generally local. Merchants painted signs or glued posters on walls and fences to notify the passersby that their establishments up the road sold horse blankets, rheumatism pills, and the like.

### First Association in the 1870's

The earliest recorded leasings of boards occurred in the U.S. in 1867.

By 1870 close to 300 small sign painting and bill posting companies existed.

In 1872, the International Bill Posters' Association of North America was formed in St. Louis.

### National Association in the 1890's

In 1891 the Associated Bill Posters' Association of the U.S. and Canada was formed in Chicago. The name was later changed to the Outdoor Advertising Association of America. Its purpose:

to promote a greater understanding of the poster medium.

to provide an expanded nationwide organization for coordinating the services offered by member companies.

to continue to address the ethical concerns of early industry leaders.

Michigan formed the first state bill posters association in 1871, followed by Indiana, New York, Minnesota, Ohio, and Wisconsin, all of which had active state associations by 1891.

### Standardization In 1900

In 1901, a standardized billboard structure was created in America, and ushered in a boom in national billboard campaigns. Confident that the same ad would fit billboards from Connecticut to

Kansas, big advertisers like Palmolive, Kellogg, and Coca-Cola began mass-producing billboards for the national market.

By 1912, standardized outdoor service was at the disposal of national advertisers in nearly every major urban center.

In 1913, the Association established an education committee, which served to encourage the industry to donate public service advertising. The practice of filling “open boards” with public service messages has continued to this day. During periods of war, the industry has responded by mobilizing outdoor advertising resources. In peacetime, the concern has been for those causes that could generally improve society.

The National Outdoor Advertising Bureau (NOAB) was formed in 1915 to serve the outdoor advertising needs advertising agencies had with their various clients and to regularly inspect the showings in the field.

In 1931, Outdoor Advertising, Inc. (OAI) was formed to sell the concept of outdoor advertising.

In 1925, the Poster Advertising Association and the Painted Outdoor Advertising Association joined to become the Outdoor Advertising Association of America (OAAA) combining the interests of posters and bulletins into one association.

In the mid-twenties, the outdoor advertising industry was at last generally accepted by the banking community. New York’s Outdoor Advertising Company was listed on the New York Stock Exchange.

In 1925, the first major merger of outdoor advertising firms took place. The Fulton Group and the Cusack Co. combined to become the General Outdoor Advertising Company (GOA).

In February 1934, the industry established the Traffic Audit Bureau (TAB) to provide advertisers with data to determine outdoor audience size.

In 1958, Congress passed the first federal legislation to voluntarily control billboards along Interstate highways. The law was known as the

Bonus Act because states were given bonus incentives to control signs.

On October 22, 1965, President Johnson signed into law the Highway Beautification Act. It controlled billboards on Interstate and Federal-Aid Primary highways by limiting billboards to commercial and industrial areas, and by requiring states to set size, lighting and spacing standards and requiring just compensation for removal of lawfully erected signs.

In 1975, the Institute of Outdoor Advertising (IOA) developed a campaign to measure billboards’ effectiveness. The concept featured Shirley Cochran, the newly crowned Miss America, on billboards that were displayed across the country. Her name recognition soared 940% after the campaign.

In the 1970’s, a group of billboard companies commissioned studies at MIT to paint bulletins by computer. This ultimately led to large-scale computer painting on vinyl which was advanced by Metromedia Technologies and Computer Image Systems.

In 1978, Congress clarified that just compensation is required for any billboard removed along controlled highways.

In 1991, Congress expanded billboard control routes for billboards along Federal-Aid Primary routes as of June 1, 1991, as well as the National Highway System (which was designated in 1995).

In 1992, Congress said that removal of nonconforming billboards is a matter of state discretion.

In 1995, Congress clarified that billboards are allowed within non-scenic portions of Scenic Byways.

In 1996, FHWA Headquarters distributed a memorandum allowing changeable message technology to be deployed on conforming billboard structures

In 1999, in an agreement between the state attorneys general and major cigarette companies

voluntarily banned outdoor advertising of their products.

In 2004, the Virginia Tech Transportation Institute released a traffic safety study that confirmed that billboards DO NOT significantly affect driver behavior.

In 2005, digital billboard networks are deployed.

In 2006, FHWA conducts nationwide assess-

ment of the outdoor advertising control program (report published February, 2007).

In 2007, FHWA distributes a policy memorandum (9-25-07) that provides guidance for allowing changeable message (i.e. digital technology) and recommended standards for implementation.

In 2009, FHWA distributes a policy memorandum (9-09-09) that provides guidance for state criteria for nonconforming storm damage



## [INDIAN LANDS]

“Indian country” is the term used to classify land considered as the benchmark for the allocation of federal, tribal and state authority with respect to Indians and Indian lands. The U.S. Supreme Court has held that land held in trust by the U.S. for a tribe is Indian country subject to tribal control whether or not that land has reservation status. The establishment of trust land status effectively removes the land from the police powers of state and local governments.

Further, the Supreme Court has recognized that state laws may reach into Indian country only if Congress has expressly provided that provision.

In enacting the HBA of 1965, Section 131 (h), Congress noted that “reservations of the United States” were subject to HBA restrictions but this

did not include Indian trust lands or reservations. The statute did not specify the responsible government or agency in charge of providing “effective control” of outdoor advertising on these lands.

The states must accept the erection of outdoor advertising signs on such lands or seek a voluntary agreement with the responsible tribal council to get comprehensive zoning established by the tribe, including a sign code that is consistent with state and local sign codes and the HBA.

A recent decision by the United States Court of Appeals for the Tenth Circuit in *Shivwits Band and Kunz & Company v. State of Utah et al.*, 428 F. 3d 966 (2005) reaffirmed that state and local billboard regulations have no legal effect on Indian lands.

## [J]

### [JUST COMPENSATION]

#### Background

Basic fairness calls for government to compensate property owners if government uses its extraordinary powers to take private property. Federal law (23 USC 131, the Highway Beautification Act of 1965, as amended) protects property rights along federal highways by requiring payment of just (cash) compensation for taking of legal billboards. Likewise, most states have similar property rights protections along non-federal roads. Currently, 44 of the 46 states require just (cash) compensation for the removal of lawfully erected signs, regardless of whether billboards are located along federal controlled roadways.

In addition to the fundamental property rights established by the Fifth Amendment to the U.S. Constitution and parallel state constitutional provisions, there are state and federal statutory remedies that specifically protect the rights of sign owners and land owners for the payment of just (cash) compensation.

After the Highway Beautification Act was amended in 1978 to clarify just compensation for takings, FHWA headquarters sent the following clearly worded memo to its regional offices:

**“Question: Are we to measure the value of ‘just compensation’ without regard to the remaining economic life of the sign under establishment of amortization periods?”**

**“Answer: The March 6, 1979, opinion coupled with clear legislative history of the 1978 amendments, indicate that the Congress intended to completely reject amortization for signs af-**

**fectured.”** (FHWA memo signed by G. B. Saunders, Chief, Real Property Acquisition Division, dated May 30, 1979).

The FHWA’s manual for employees issued by its Office of Real Estate Services clearly defines just compensation:

“Federal law required that just compensation be paid for the rights and interests of the sign and site owner for:

1. Removal of signs as a result of the Highway Beautification Act.
2. Removal of signs as a result of stricter State or local controls within the area controlled by federal law.
3. Removal of signs pursuant to other legal purposes within the controlled area.

“Failure to pay just compensation in the form of cash could subject the State to a 10 percent penalty action.”

[Kelo v. City of New London \(04-108\) 268 Conn. 1, 843 A 2d 500 \(2005\)](#)

Meanwhile, the Supreme Court’s 5-4 decision on Kelo sparked a backlash against perceived government over-reaching in eminent domain actions. The high court, in 2005, upheld the right of cities to condemn private property – even homes – to make way for economic-development projects. However, the Kelo decision affirmed the long-held principle that government must pay just compensation when it takes private property for public use.

For more on just compensation, see Page 2, Amortization.



## [L]

### [LOCAL REGULATION]

Alan Weinstein, Professor of Land Use and Urban Affairs at Cleveland State University, conducted a study of local regulation of outdoor advertising in 215 U.S. jurisdictions. A summary of the research follows:

#### Executive Summary

This study examined the type and extent of land use regulation of outdoor advertising for 215 cities in the 46 states that do not impose a state-wide ban on commercial outdoor advertising. The group of 215 cities was selected by first identifying all cities in these states with a population of 150,000 or greater based on the U.S. Census Bureau's 2009 population estimates, and then, for states which had fewer than two cities of that size, adding additional cities in descending order of population to ensure that each of the 46 states had at least two cities represented in the study.

This study found that 66.5 percent of the 215 cities allowed new outdoor advertising signs to be constructed while only 6.5 percent had adopted regulations aimed at entirely eliminating outdoor advertising. The study also found that each of the cities allowing the construction of new signs regulates the “physical” aspects of outdoor advertising by imposing some form of restriction on the location, size, height, illumination, etc.

A statistical summary of the study's most critical findings appears below:

- 83 of the 215 cities (38.6%) permit new sign construction “as-of-right.”
  - 76 of these 83 cities (90.5%) permit new signs of at least 300 sq. ft.
  - 48 of these 83 cities (57.1%) permit new signs of at least 672 sq. ft.
- 17 of these 83 cities (20.2%) permit new signs of at least 750 sq. ft.
- 28 of the 215 cities (13%) permit new sign construction as a “conditional use.”
- 31 of the 215 cities (14.4%) condition the construction of new signs on the removal or relocation of one or more existing signs.
- 72 of the 215 cities (33.5%) totally prohibit the construction of new signs, with 46 of these 72 cities (63.9%) concentrated in six states (AZ, CA, FL, TX, VA, WA).
- Only 14 of the 215 cities (6.5%) have adopted ordinances that seek to eliminate outdoor advertising entirely.

In sum, the study finds that regulation – not prohibition – is the norm among the 271 cities studied throughout the U.S.

### [LOGO SIGNS & TOURIST-ORIENTED DIRECTIONAL SIGNS (TODS) ON HIGHWAY RIGHT-OF-WAY]

#### Background

The Highway Beautification Act of 1965 allows states to place logo signs for essential motorist services (gas, food, lodging, camping, attractions, and 24-hour pharmacies) along the Interstate and primary highways in rural areas. Tourist-oriented directional signs (TODS) are located along rural, non-freeway routes and provide business identification and directional information for cultural, historical and recreational activities and commercial establishments are also allowed by statute.

The Manual on Uniform Traffic Control Devices (MUTCD) is the regulatory authority for all on-right-of-way signs including stop signs, yields signs, exit signs, as well as Logos and TODS).



## Industry Position

The industry supports Logo and TODS programs as a supplement to billboards in providing basic motorist services information in non-urban areas.

## Explanation

- Logos and TODS are not intended to replace commercial off-premise billboards.
- The legislative history of the logo program specifies that its purpose was to give information for essential motorist services along rural Interstate and primary highways. These services are explicitly restricted to gas, food, lodging and camping, and more recently attractions.
- TODS are allowed on rural, non-freeway routes only.
- Small businesses with no well known brand identity or logo may be discriminated against or penalized because their little known logo alone cannot communicate their unique services or products.
- Logos and TODS may be difficult for drivers to see because of their small size and their placement inside the right-of-way.
- Many businesses, including tourist attractions, are excluded from advertising on logo signs due to restrictions noted in the Manual on Uniform Traffic Control Devices (MUTCD).
- The fifth logo for attractions must have clear criteria which only includes a logo for activities of national or regional significance or those from primarily non-profit tourist attraction organizations.
- An amendment in TEA-21 (The Transportation Equity Act for the 21<sup>st</sup> Century, 1998) allows a food establishment that is open only six days a week to display a specific service logo.
- An amendment to SAFETEA-LU (Safe, Accountable, Flexible, Efficient, Transportation Equity Act – A Legacy for Users, 2005) established that 24-hour pharmacies be allowed to display a specific service logo.

## [N]

### [NOISE BARRIERS]

#### Background

Noise barriers are a common feature of roadway design in urban and suburban areas. At times, noise barriers can block motorists' line of sight to existing legally permitted billboards, reducing or eliminating their effectiveness.

#### Industry Position

- If noise barriers obscure billboard visibility, then billboards should be raised to preserve line of sight.
- The Federal Highway Administration (FHWA) has authorized billboard height adjustments. For example, when roadways in the Salt Lake City area were retrofitted for the 2002 Winter Olympic Games (adding noise barriers), federal regulators approved height adjustments based on state law.
- There are no federal criteria and/or restrictions concerning the height of a billboard. It is a state or local matter.

### [NONCONFORMING SIGNS]

The term “nonconforming” in connection with billboards, is a neutral term for a legally erected and maintained billboard. An example of nonconforming status is a change in spacing requirements between billboards. Nonconforming billboards are:

- common, and they are legal
- providing essential services by giving directional and tourist information, such as where to find food, lodging, camping, local attractions and retail operations
- mainly advertising small, local business
- generating fee and tax revenue for state and local governments

- have been in existence for many years without alteration to the size or shape of the signs
- have been maintained consistent with state requirements

#### Background

As part of the control provisions of the original HBA of 1965, lawfully erected nonconforming signs were given a five-year time period to be acquired and removed. Specific funding from General Funds (not Highway Trust Funds) was authorized for such removals. Subsequent funding appropriations provided nominal acquisitions and removals and expired in 1983. In 1991, funding was provided for states choosing to remove nonconforming billboards and FHWA mandated that states remove its nonconforming sign inventory.

The intent of the original HBA was to acquire, via just compensation, billboards located in rural, agricultural and residential areas. FHWA, in early policy documents, said that “grandfathered” nonconforming signs did not have to be acquired. The agency had an inventory category for two types of nonconforming billboards:

- 1) Compensable sign: a sign erected legally in a noncommercial or industrial area under the state law which is not now permitted.
- 2) “Grandfathered” sign: a nonconforming sign that is located in a bona fide commercial or industrial area, but violates spacing, size, or height or other restrictive state criteria.

In 1992, the HBA was amended to make nonconforming sign removals voluntary on the part of the states, (23 USC 131 (n) and the FHWA rulemaking to require removals was cancelled.

The key policy question concerning nonconforming signs is the remodeling, renovation, and relocation of such signs. A core principle of the federal Highway Beautification Act (HBA) is state flexibility.

In 2009, FHWA issued guidance to states that give authority to state agencies to establish “destruction” standards for nonconforming signs.

The FHWA guidance memo, dated September 9, 2009, states:

Guidance definition for destroyed signs:

“Destroyed” means that (a specified percentage\*) or more of the upright supports of a sign structure are physically damaged such that normal repair practices would call for: in the case of wooden sign structures, replacement of the broken supports or, in the case of metal sign structures, replacement of at least (a specified

percentage\*\*) of the length above ground of each broken, bent, or twisted support.

\*A range of 40 to 60% would be considered effective control.

\*\*A range of 20 to 30% would be considered effective control.

Meanwhile, regulators are considering a pilot project along Interstate highways in South Carolina and Florida for removal, relocation and renovation of certain nonconforming billboards. Relocation is a win-win for stakeholders, including taxpayers, advertisers, and communities.



## [OAAA HEADQUARTERS AND INFORMATION]

The Outdoor Advertising Association of America (OAAA) is the national trade association for the \$7.8 billion US out of home advertising (OOH) industry, which includes digital out of home (DOOH), and is comprised of billboards, street furniture, transit advertising, and place-based media.

Comprised of 800+ member media companies, advertisers, agencies, ad-tech providers, and suppliers that represent over 90 percent of the industry, OAAA is a unified voice, an authoritative thought leader, and a passionate advocate that protects, unites, and advances OOH advertising in the United States. Since its founding in 1891, OAAA has promoted the responsible growth of OOH with federal, state, and local government, communities, and the general public. Today, fueled by smart data, digital technology, unrelenting innovation, and an exciting vision for the future, OOH advertising has never been more relevant, more impactful, or more effective.

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## [OAAA CODE OF INDUSTRY PRINCIPLES]

In addition to adhering to external laws and regulations, the members of the Outdoor Advertising Association of America (OAAA) have adopted a set of voluntary industry principles. OAAA endorses this code and encourages its members to operate in conformance with these principles.

### Observe Highest Free Speech Standards

We support the First Amendment right of advertisers to promote legal products and services, however, we also support the right of media companies to reject advertising that is misleading, offensive, or otherwise incompatible with individual community standards, and in particular, we reject the posting of obscene words or pictorial content.

### Respect for Privacy

- We support responsible use of data for advertising purposes.
- We recognize that mobile phone and digital technology bring benefits to consumers seeking information, way-finding, entertainment, and connection to others. Increasingly, mobile-social-and-online media are connected to out of home advertising.
- We encourage member companies to work with suppliers that provide appropriate notice and control for the collection of precise location data from mobile phone devices used for advertising purposes.

- Anticipating technological changes, OAAA will continue to monitor developments in this area.

### **Protect the Children**

- We are careful to place advertisements for products illegal for sale to minors on advertising displays that are a reasonable distance from the public places where children most frequently congregate.
- We are committed to a program that establishes exclusionary zones that prohibit stationary advertisements of products illegal for sale to minors that are intended to be read from, at least 500 feet of, elementary and secondary schools, public playgrounds and established places of worship.
- We support reasonable limits on the total number of advertising displays in a market that may carry messages about products that are illegal for sale to minors.
- We seek to maintain broad diversification of customers that advertise using the medium.

### **Support Worthy Public Causes**

- We are committed to providing pro bono public service messages to promote worthy community causes.
- We advocate the use of out of home advertising for political, editorial, public service, and other noncommercial messages.

### **Provide an Effective, Attractive Medium for Advertisers**

- We are committed to providing value and service to advertisers in communities nationwide.
- We are committed to maintaining and improving the quality, appearance, and safety of advertising structures and locations.
- We encourage the use of new technologies to continuously improve the service provided to advertisers and the information provided to the public.

- We are committed to excellence in the ads we exhibit because our medium provides the most public “art gallery” there is.

### **Respect the Environment**

- We are committed to environmental stewardship.
- We encourage environmentally friendly business practices for the reduction of waste, improvement of energy efficiency, and use of recyclable materials.

### **Provide Effective and Safe Digital Billboards**

- We are committed to ensuring that the commercial and noncommercial messages disseminated on standard-size digital billboards will be static messages and the content shall not include animated, flashing, scrolling, intermittent or full-motion video elements (outside established entertainment areas)
- We are committed to ensuring that the ambient light conditions associated with standard-size digital billboards are monitored by a light sensing device at all times and that display brightness will be appropriately adjusted as ambient light levels change.

### **Uphold Billboard Industry Self Regulation**

- We support billboard advertising as a business use to be erected in commercial and industrial areas.
- We support new billboard locations in unzoned commercial and industrial areas only where there is business activity.
- We oppose the construction of stacked bulletins (i.e., two 14' x 48' faces or larger facing in the same direction)
- We oppose the construction of new billboards on truly scenic segments of highways outside of commercial and industrial area
- We oppose illegal cutting and are committed to reasonable control and maintenance of vegetation surrounding billboards.

- We support the expeditious removal of illegally erected billboards without compensation; OAAA member companies are encouraged to inform responsible authorities if they become aware that illegal billboards are being erected.

### **Protect Billboard Industry Rights**

- We support the right of out of home advertising companies to maintain lawfully erected billboards.
- We support laws that assure just compensation for removal of legal billboards.

## **[OPERATIONS]**

### **Occupational Safety & Health Administration (OSHA)**

#### **Employee and Structure Safety**

The outdoor advertising industry is governed by OSHA regulations contained in:

- Code of Federal Regulations 29 Part 1910 – General Industry
- Code of Federal Regulations 29 Part 1926 – Construction

OSHA was formed in April 1971 as part of the Department of Labor to administer the Williams-Steiger Occupational Safety and Health Act.

The Act requires employers to provide a safe work place for their employees and places heavy responsibilities on foremen, supervisors and managers to assure a safe work environment.

The “General Duty Clause” of the Act mandates:

- Each employer shall furnish to each of his employees a place of employment which is free from recognized hazards that are causing or likely to cause death or serious harm to employees.
- Each employer shall comply with the Occupational Safety and Health Standards promulgated under this Act.

- Each employee shall comply with the Occupational Safety and Health Standards, and all rules, regulations, and orders issued pursuant to this Act which is applicable to his own actions and conduct. OSHA's broad responsibilities include:

- Promulgating health standards.
- Conducting workplace inspections.
- Issuing citations and proposed penalties.
- Restraining imminent danger situations by seeking injunctive relief.
- Approving state OSHA plans.

OSHA uses ten regional offices to carry out its duties. Each office services a number of area offices. Twenty-six states have state approved plans and the local contact will be the state OSHA officer.

Penalties for OSHA violations, along with the range of permissible civil and criminal penalties for each violation, are generally defined by statute. The act requires minimum penalties for certain classifications of violations as follows (listed in descending degree of seriousness with permissible civil penalty ranges):

- Willful: \$5,000 to \$70,000 for each violation.
- Repeated: \$5,000 to \$70,000 for each violation.
- Serious: up to \$7,000 for each violation.
- Other than serious: up to \$7,000 for each violation.
- De Minimis: Generally no penalty assessed.
- Egregious: A flagrant violation, the effect of the penalty is multiplied and the penalty applies to the entire company in all locations.

Criminal sanctions are severe if an employer willfully violates any standard, rule or order and causes the death of an employee and can result

in a fine up to \$10,000 and imprisonment for no more than six months.

### OAAA Operations Guidelines

The OAAA publishes an OAAA Safety Manual and an Operations Manual that provide voluntary guidelines for member companies on OSHA, Hazmat, motor carrier safety and other matters important to the business of outdoor advertising. However, it is always the responsibility of the outdoor company to provide a working environment that is free from known hazards.

OSHA published a final rule concerning crane

safety and operations effective November 8, 2010. Training and certification requirements for outdoor advertising industry crane operators are included.

In August, 2010, OAAA submitted comments to an OSHA rulemaking concerning walking-worker safety requirements. Included within the rule-making was a continued exemption for outdoor advertising professional climbers. Since the early 1990's, the outdoor advertising industry has had an exemption for professional climbers who climb fixed ladders on billboard structures. OSHA hearings on proposed rule were held in January, 2011 with a final rule expected in late 2011.



## [P]

### [PERMITS AND LICENSING FEES]

#### Background

State permit fees, user fees, and licensing fees are designed to cover the costs of maintaining regulatory and administrative compliance of the business community. The outdoor advertising industry supports fair and equitable permit fees and licensing fees as the basis for the government to regulate the outdoor advertising medium.

#### Industry Position

Billboard companies believe that government should impose fair, equitable fees; not excessive or discriminatory licensing fees that are punitive or become a de facto tax specific to outdoor advertising companies.

#### Explanation

- There is no universal fee schedule at the state and local levels. Billboard companies pay permit fees and other administrative fees for which they are obligated under law to government.
- The law requires that regulatory fees be related to the cost of regulation. Excessive fees are deemed taxes.
- Protections exist:
  - First Amendment guarantees are violated if a tax imposes a financial impediment to suppress expression.
  - The Fifth Amendment's substantive due process clause is violated if the tax is so arbitrary and excessive as to be confiscatory.
  - The Fourteenth Amendment procedural due process clause is violated if a locality fails to provide a "clear and certain" remedy for a taxpayer to challenge the accuracy and legal validity of the assessment.

### [PUBLIC OPINION POLLS]

#### Background

For decades, public opinion has been consistent with the policy goal of the Federal Highway Beautification Act of 1965, which is regulation, not elimination of billboards.

#### The Taylor Study

Since its passage in 1965, the highway Beautification Act (HBA) has been the single most important piece of legislation regulating outdoor advertising. Professor Charles Taylor, PhD, Professor of Marketing at Villanova University, completed an assessment of the HBA's consistency with American public opinion (April, 2002). This study analyzes the collective results of major public opinion polls conducted over 30 years. Collectively, these studies contained responses from more than 26,000 Americans.

The findings of the Taylor study suggest that the HBA's provisions are remarkably consistent with public opinion:

- Across the public opinion polls conducted over 30 years, support for a ban on billboards in recent years (i.e., the 1990s and 2000s) is lower than was the case in the 1970s.
- In terms of zoning restrictions, most than 75 percent of Americans surveyed say billboards should be allowed in commercial and industrial areas.
- A majority of the public supports billboard owners and landowners being provided with just compensation if a legal billboard is removed.

The results of this study clearly demonstrate that a substantial majority of Americans believe that the benefits of billboards outweigh any costs associated with them:

- More than 85 percent believe that billboards are useful to travelers.

- More than 80 percent agree that billboards both help create jobs and help businesses attract customers.
- Over 83 percent agree that billboards are informative.

While public opinion on most of the issues has remained stable over time, a few trends are worth noting:

- The proportion of the public favoring a ban on billboards has actually been lower in the 1990s and 2000s than was the case in the 1970s.
- Consumer agreement that billboards are informative has increased in recent years.
- The public increasingly agrees that billboards help businesses attract customers.

#### Other Significant Polls Gauging Public Opinion

Arbitron – 2009 – Los Angeles Digital Billboard Survey

- 73 percent of Los Angeles county residents felt digital billboards can be of service to the community by providing important and timely emergency information such as AMBER Alerts.
- Nearly 50 percent viewed digital billboards as attractive (with 20 percent being neutral to their appearance)
- 42 percent said the signs make their commute more interesting (with 18 percent feeling neutral).
- Only 22 percent of Los Angeles residents are aware of any political or legal issues related to roadside billboards; and, just 6 percent rated the issue as important or very important to their daily lives.

Arbitron – 2008

- Digital billboards are a new “cool” method to deliver news and advertising, as well as public notices such as AMBER Alerts

- Viewers feeling strongly that digital billboards provide helpful information about their community and drive traffic to local businesses

- More than 80 percent of viewers recalled at least one ad.

- Nine out of 10 motorists notice digital billboard advertising messages at least some of the time.

- More than four out of five surveyed said digital billboards display timely news, traffic, weather, and emergency information important to the public.

Arbitron – 2002

Public opinion research conducted indicated 71 percent of Americans find billboard messages useful.

Decision Resources, Ltd. (St. Paul, MN) - 1999

- Sixty-seven percent believed that billboards were very or somewhat helpful to tourists or visitors to St. Paul.
- Fifty-seven percent felt that it was unfair for government to eliminate a legal business.
- Sixty-four percent of the respondents did not feel that billboards were a problem in St. Paul.

Greene Marketing, Inc. (Missouri), 1997

- Seventy-one percent use billboards to locate dining, entertainment and lodging when traveling.
- Nearly seventy-three percent do not support a ban on billboards within their communities.
- Nearly fifty-five percent said they believe billboards are helpful to travelers.
- Over seventy-two percent of respondents believe billboards generate business.

Penn, Schoen & Berland - 1997 (a national poll conducted for the OAAA)

- Three in four (76%) Americans say the information on billboards is useful.
- Nearly two in three (64%) favor compensation to businesses and landowners for the removal of their billboards.
- Nearly three in four (71%) favor businesses trimming tree limbs to maintain clear views of their billboards.

Virginia Commonwealth University Poll (Virginia) - 1997

- 7 out of 10 Virginians agree the benefits of outdoor advertising outweigh the negative aspects.
- Nearly ninety percent (87.9%) say billboard help travelers find traveler services.
- Over sixty-four percent say billboards break up the monotony of long drives.
- Fifty-seven percent agree most of the billboards they see are interesting.

## [PUBLIC SERVICE]

The outdoor industry's public service – a long, proud tradition – has expanded in scope and in the use of new technology. The value of these donations exceeds \$500 million a year. OAAA and its members have maintained a long and valued partnership with the Ad Council by providing significant out of home inventory for placement of important public service messages.

The Federal Emergency Management Agency (FEMA) posted a case study on its website about how digital billboards can be used for emergency messaging. The best-practices guide on FEMA's website said emergency officials use high-tech billboards to communicate targeted messages on weather warnings, evacuations, shelter locations, and road detours.

The National Center for Missing & Exploited Children (NCMEC) – an arm of the Justice Department – has been transmitting AMBER Alerts to digital billboards in partnership with OAAA since June 2008. Starting in 2010, the FBI could transmit a law enforcement alert nationwide to digital billboards for the first time. The FBI used this new high-tech tool on August 2, 2010, as part of a manhunt to find a serial bank robber dubbed “The Granddad Bandit.” Nine days later, the elusive fugitive was arrested at his home. Federal authorities said a tip prompted by a billboard helped lead to the arrest. The US Marshals Service also is using billboard to help find fugitives.

“I applaud these federal law enforcement agencies for innovative use of technology to empower the public to help protect our safety,” said Congressman John J. “Jimmy” Duncan, chairman of the House Highways & Transit Subcommittee.

The “Pass It On” public service campaign to promote common values enters its second decade. Launched in 2001 to help unify the country after the 9-11 attacks, “Pass It On” images feature celebrities like Mr. Rogers (friendship) and Susan Boyle (live your dreams), along with lesser known heroes, like a cobbler who donated \$100,000 in tips to help children (charity). The Boys & Girls Clubs of America (BGCA) feature well-known club alumni using outdoor advertising formats. Other national public service partners included American Red Cross, the National Park Foundation, the National Geographic Society, and more.

## [S]

### [SCENIC BYWAYS & SEGMENTATION]

#### Background

As a national policy, America seeks to conserve scenic areas and to promote tourism in truly scenic areas by designating “scenic byways.” Federal legislation (1991, 1995, and 1998) provides guidelines for states to designate scenic byways.

Scenic byways legislation is intended as an economic development tool to promote tourism and attract visitors to scenic areas, as well as a conservation tool. OAAA supports the National Scenic Byways and All-American Roads Program including segmentation of non-scenic areas.

#### Industry Position

The National Scenic Byways and All-American Roads Program gives states and localities the flexibility and discretion to exclude from state or federal scenic byways designation those segments inconsistent with the state’s criteria for designating scenic byways. Billboard construction is allowed in these segmented areas.

#### Explanation

- The outdoor advertising industry supports scenic byways.
- The preservation of pristine and scenic areas should be genuine and not a veiled attempt to impose adjacent zoning laws or land use regulations.
- Federal law is very clear—there is no automatic ban on billboards within a designated scenic route, and there is no categorical exemption allowing billboards in commercial and industrial areas.
- Billboards belong on non-scenic portions of scenic byways because they are useful to travelers as well as affordable and effective for advertisers, especially small local businesses, along designated routes.
- Billboards can be viewed as “roadside information units” and a part of an integrated communications system for rural, suburban, or urban designated scenic byways.
- The Virginia DOT has developed a model plan to determine segmented areas along a state scenic byway eligible for commercial and industrial use (including billboards) (see below).

#### Model State Scenic Byways Plan

##### Statutory Framework for the Model Scenic Byways Plan

The National Highway System Designation Act, S.440 (PL 104-59), was signed into law on November 28, 1995. Included in the legislation is an amendment to the Highway Beautification Act (HBA), specifically, subsection (s), scenic byways.

- The amendment gives states the flexibility to exclude from state or federal scenic byways designation any segment of a road that it determines to be inconsistent with the state’s criteria for designating scenic byways. It is only in these segments that new billboard construction is permitted.
- The amendment requires the state to show there is a reasonable basis for excluding certain scenic byways segments along scenic byway routes.
- The amendment eliminates any federal requirement to ban new billboards along state or federally designated scenic byways on segments that do not meet the state’s criteria. Discretion by state or locality is not usurped.

#### Virginia DOT Scenic Byways Plan

Virginia’s plan to “determine” segmented areas along a state scenic byway eligible for commercial and industrial use (including billboards) was printed in the Congressional Record as a model

for other states.

The plan permits de-designation of a specific portion of the scenic byway if a determination is made (i.e., on-site inspection) that the portion no longer meets the scenic byways criteria. It also permits trailblazer signs on the highway right of way. Key steps to follow are:

- Obtain county/city zoning maps in zoned jurisdictions to determine land use and zoning adjacent to the designation scenic byway. If unzoned, a physical inspection is necessary to determine that the number and type of businesses qualify the area as an unzoned commercial and industrial area.
- Determine through a physical inspection if the zoned and unzoned commercial and industrial areas have “scenic qualities.” If considered scenic, these areas are then included in the scenic byways route.
- Work with the community to create awareness of the applicable federal, state and local billboard regulations. Obtain local input and agreement that non-scenic areas are eligible to be segmented from the scenic byway route.
- Check to see if public notice and/or a public hearing are required for state scenic byways approval.

## Role of FHWA in Outdoor Advertising Control on Scenic Byways and the National Highway System

From a US Department of Transportation Federal Highway Administration Memo

Subject: INFORMATION: Outdoor Advertising

Date: April 5, 1996

Control on Scenic Byways and the National Highway System (NHS)

Reply to attn of: HRW-20

From: Associate Administrator for Program Development

To: Regional Administrators Federal Lands Highway Program Administrator

The purpose of this memorandum is to provide an update on the role of the Federal Highway Administration (FHWA). In assuring that the intent of Congress is met concerning the implementation of 23 U.S.C. 131, Control of Outdoor Advertising.

### Scenic Byways

Title 23, United States Code, Section 131(s) prohibits the erection of new signs which do not conform to Section 131(c) in areas adjacent to Interstate and primary highways which are designated as a scenic byway under a State scenic byway program. A State is considered to have a scenic byway program when one or more public roads or highways under State, Federal, or local ownership have been designated by the State through legislation or some other official declaration as a scenic byway, highway, road, trail, etc., consistent with the State's unique criteria for designating scenic byways.

The actual label, specific identifying characteristics and termini for these designated scenic byways are the responsibility of each State. State law governs the issue of what constitutes a designated scenic byway. By separate Action memo dated April 1, we are requesting each State to update information to be used in compiling a National Inventory of State scenic byway programs and their byways.

In June 1993, we advised that these byways do not need to be continuous. That is, a State may exclude those highway sections from designation that lack scenic value and which otherwise would be included only to preserve system continuity. Such exclusion, however, must have a reasonable basis and not done solely to evade federal requirements.

A few States have attempted to automatically exclude commercial and industrial areas from scenic byway designation without justification. The FHWA has worked with these States to assist them in meeting the requirements of the federal law.

Section 314, Scenic Byways, of the National Highway System Designation Act of 1995 amended Section 131(s). This section codified FHWA's existing policy on State designated scenic byways as articulated in our June 14, 1993, memorandum. It allows States to exclude from scenic byways designation, any segment of the highway that is inconsistent with the State's criteria for designation. The Secretary of Transportation has the authority to prevent actions that evade federal requirements. Trailblazer signs and mapping of excluded segments is not prohibited. Although the State does not have to obtain prior approval from FHWA, this would not preclude FHWA from examining proposed exclusions to ensure that these exclusions are made on a reasonable basis.

### National Highway System

With approval of the NHS, there are probably some highways that are included in the NHS that were



not formerly on the primary system. These highways would now be subject to outdoor advertising control including the Section 131(s) restrictions if part of a State designated scenic byway. Identification of highways subject to control under the Highway Beautification Act and the NHS are the responsibility of each FHWA Division Office and State highway agency.

Because Section 131(s) of Title 23, United States Code, defined “primary system” and “Federal-aid primary system” for purposes of control under the Highway Beautification Act, it will generally not be necessary to amend Federal/State Agreements or State law to include routes added to the NHS which were not on the Federal-Aid Primary system. However, agreements and State laws should be examined to assure there is not prohibitive language precluding States from extending outdoor advertising controls to the NHS.

There may be instances where a State, local government, etc., has an ongoing amortization program which would impact a route that is now subject to the control of outdoor advertising under the Highway Beautification Act. In these cases, no lawfully erected outdoor advertising sign located adjacent to a controlled highway on the NHS can be required to be removed without payment of just compensation. For example, if an existing sign on a route added to the NHS is in the middle of an amortization period where the ordinance declared the sign to be removed in 1992, with a 5-year amortization period, the sign cannot be removed without the payment of just compensation.

The States should update their outdoor advertising sign inventories to include highways not previously controlled but which are now included in the NHS. Additionally, each State must continue to make a good effort and reasonable progress in expeditiously removing illegal signs located adjacent to controlled highways.

Thomas J. Ptak

## [T]

### [TAXES]

#### Background

Billboards are located in thousands of jurisdictions across the country and assessed by localities for the purpose of levying property taxes. At times, taxation of property can be confused with valuation of a billboard for the purpose of governmental taking of the asset.

#### Industry Position

The industry rejects any notion linking the taxes assessed against a billboard and the billboard's value for just compensation. OAAA strongly opposes taxes disguised as punitive and excessive permit fees and discriminatory user fees.

#### Explanation

- There is no universal tax schedule. Different cities, counties, and states tax people, businesses, and property differently. For example, while most states levy a personal income tax, some don't. While most cities do not levy a personal income tax, some do.
- Different cities, counties, and states treat outdoor advertising companies and billboards differently for tax assessment purposes.
- Out of home advertising companies pay all taxes and fees for which they are obligated under law to local, state, and federal governments.
- There is no rational link between property taxes paid on a billboard and its fair compensation value under condemnation. Each billboard is an income producing entity/property and thus its value can only be determined by its income producing potential and a fair market value appraisal when acquired by a governmental entity.
- Personal property taxes are typically assessed on the "cost" value of the billboard, not the income producing capability of the business.
- The Wisconsin Supreme Court reversed a lower court decision which had used an income valuation technique to assess billboards.
- Florida, California, and Texas have administrative policies that billboards are to be assessed on a cost less depreciation basis.

### [TECHNOLOGY & TRENDS]

#### Vinyl & Computerized Painting

Vinyl and computerized painting were introduced to the outdoor marketplace in the late 1970's and have since revolutionized the medium. Images printed on flexible vinyl give advertisers creative versatility, vibrant color, durability and precision image reproduction.

#### Other vinyl products

- Eco-friendly recyclable vinyl
- Removable vinyl graphics
- 30-sheet wraps
- Vertical squares
- Bus wraps

#### Recycling

The outdoor industry has developed a new generation of materials and lighting, to reduce its impact on the environment and lead the way to more environmentally friendly materials and practices. These innovations reduce the environmental footprint of outdoor advertising structures and decrease the energy and natural resources used by the industry.

#### Three Dimensional & Special Effects

Special effects and 3-D billboards have captured the imagination of creative designers and the minds of advertisers. The creative genius behind

billboard props comes from fine arts professionals, engineers, sculptors, and building experts who offer their expertise to advertisers. Three-dimensional ads include motion, lights, and other dramatic effects.

### Backlighting

Backlit billboards house light boxes or cabinets of florescent bulbs placed one foot apart to illuminate billboards from behind the image. The images are digitally printed on both sides of translucent flexible vinyl to bring depth, color and density to the nighttime images.

### Interactive Media

Three talked about interactive technologies currently in the out of home industry are as follows:

- SMS/MMS (short message service/multiple messaging service)
- Bluetooth
- WiFi

### A growing number of devices are capable of receiving content

- Mobile Telephones
- Personal Digital Assistants (PDA)
- Laptop computers
- Portable Games Consoles

### Digital Technology

The advantages of digital billboards are numerous. Authorities can deliver emergency and law enforcement information such as AMBER Alerts to find missing children, weather and disaster bulletins, and “Wanted” information to help police find fugitives. Most advertisements on digital billboards promote local businesses. Advertisers can deliver information that can adapt quickly in fast-changing, competitive environments through the potential to target and purchase by day part, location or geography.

### Organic Ink

New electronic display technology based on full-color programmable media is being developed in Israel and Great Britain. The smart billboard technology utilizes a display core made of an organic substrate that changes color according to the wavelength and density of light it reflects in response to electronic signals received. When an electrical field is transmitted through the “paste,” it transforms a matrix of “domains” or pixels, each of which is prompted by the electronic signal to reflect the appropriate color of an image as a routine copy change.

## [TRAFFIC SAFETY]

### Background

Over the years, government agencies have conducted studies on the correlation between driver behavior and billboards. Motorists can be distracted by a variety of factors – in and out of vehicles.

### Industry Position

Billboards are not a traffic safety problem.

### Explanation

Traffic safety experts have studied the relationship between outdoor advertising and traffic accidents since the 1950s, finding no scientific or authoritative evidence that billboards are linked to traffic accidents. Meanwhile, recent research focused on digital billboards revealed no correlation to traffic accidents (see Digital Billboards on pages 10-12 ).

Real gains in traffic safety come from proper design and maintenance of roads, and reduction of roadway hazards. A comprehensive study released in December 2001 by The Road Information Program (TRIP) said urban fatalities are typically caused by poor road conditions and mistakes by drivers. The TRIP report identified these steps to improve safety:

- Provide medians or median barriers to separate traffic, when practical

- Build or widen lanes on major routes to 12 feet
- Repair potholes and improve pavement conditions to reduce sudden swerving
- Improve intersection safety by building turn lanes, clearly marking lanes, improving signalization, improving lighting and using larger lettering on street signs and directional signs
- Reduce road-side hazards such as trees and utility poles
- De-ice roads in bad weather

## [TRAVEL AND TOURISM]

By any measure, outdoor advertising is fundamental to travel and tourism.

Top tourist destinations in America are sign-centric Times Square in New York City and the Las Vegas Strip, according to Forbes. The Times Square Alliance estimates an average of 2,000+ pedestrians travel a block of 7th Avenue during a 15-minute weekday period.

The world's leading destinations, based on international tourist arrivals, feature plenty of outdoor advertising: France, United States, Spain, China, Italy, United Kingdom, Lithuania, Turkey, Germany, and Mexico.

### All Outdoor Platforms

Tourism advertisers rely on every out of home platform.

Posters in the Washington, DC, transit system promote a West Virginia casino in Chinese, Vietnamese, and Korean. In the depths of winter, Florida tourism officials toured Times Square in a Beachmobile, a clear cabin on wheels with sand and bikini-clad model.

Miami's tourism office launched winter ad

campaigns in the New York City subway showing platters of stone crabs and other inviting warm-weather images.

Philadelphia uses billboards to foster civic pride and promote tourism. Billboards in the metro area invited the public to click on VisitPhilly.com to submit "love letters" to Philly; the winning message was posted on a billboard along I-95. Sometimes, one sign tells the tourism story. In rural Tennessee, Campbell County put up a billboard along I-75 showcasing its wildlife.

"We are the elk capital of Tennessee," says E.L. Morton, director of the Campbell County Chamber of Commerce.

Government tourism agencies that sponsor cooperative marketing include billboards as eligible media. Louisiana's Office of Tourism instructs that coop advertising must be directed toward areas outside a 50-mile radius of the destination -- except interstate billboards.

### The "Vermont Argument"

Ever since billboards were banned in Vermont in 1968, the ban lobby has touted the lack of signs as an engine for Vermont's tourism.

A rich irony: Vermont ski resorts and other businesses buy outdoor ads in neighboring states (Long Island Rail Road, New York subway, and billboards in multiple states).

Birdseye Diner in Castleton, VT, bought billboard space on the New York State side of Route 4. "That's an important road for us. There aren't many chances for us to get to folks coming to Vermont for tourism," says Robert Staudter of the local company that owns the diner. Likewise, there are no billboards in Hawaii, but Hawaiian tourism relies on outdoor advertising. In 2010, the Hawaii Tourism Authority spent more than \$1 million on outdoor advertising in the USA, second only to Mexico in the tourism promotion category.

## [U]

### [UNZONED COMMERCIAL AND INDUSTRIAL AREAS]

#### Background

The Highway Beautification Act of 1965 (HBA) permits outdoor advertising to be erected along controlled highways located in zoned or unzoned commercial and industrial (C & I) areas.

#### Industry Position

The industry supports the ability of sign companies and advertisers to erect and maintain outdoor advertising in legitimate unzoned commercial and industrial areas, consistent with state laws and regulations.

#### Explanation

- Much of this country is unzoned and substantial business activity takes place in “Unzoned Commercial and Industrial Areas.”
- The Highway Beautification Act of 1965 and subsequent federal/state sign control agreements specified size, lighting and spacing of billboards in unzoned commercial and industrial areas.
- The intent of the HBA was to control, not ban, billboards.
- Unzoned area definitions are used only in those local jurisdictions where there is no comprehensive zoning in place or the locality cannot zone.
- OAAA only supports the erection of signs in unzoned commercial and industrial areas when part of otherwise rural or non-scenic areas.
- Only legitimate business activities should become the qualifier of an unzoned commercial and industrial area.
- There should be specific, tangible criteria tied to the dollar volume of the business activity, number of employees, or business operation hours.
- Several states (Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, and Texas) have amended their laws in order to strengthen criteria for unzoned commercial and industrial activity.
- FHWA/State agreements typically do not consider the following as eligible unzoned area qualifiers. Businesses in:
  - Residences
  - Vegetable Stands
  - Utilities
  - Seasonal Businesses
  - Buildings Beyond 660'
  - Non-Visual Business Activities
  - Railroad Tracks
  - Other Billboards

## [V]

### [VEGETATION AND SELECTIVE PRUNING CONTROL]

#### Background

Outdoor advertising signs depend on line of sight. The billboard industry works cooperatively with states to facilitate guidelines and practices to foster reasonable visibility criteria.

#### Industry Position

The outdoor advertising industry supports responsible state regulations in order to conduct selective pruning and trimming as part of state highway landscaping and maintenance programs.

#### Explanation

- Vegetation control is a common, longstanding practice along roadways, for the sake of safety and visibility. Using widely accepted practices, utilities routinely trim vegetation so power lines can be maintained.
- Vegetation control standards are created by experts at a respected not-for-profit organization that administers a wide variety of voluntary consensus standards for U.S. business: the American National Standards Institute (ANSI). OAAA encourages adherence to ANSI standards.
- Selective trimming control is common to good highway landscaping practices. The American Association of State Highway and Transportation Officials' "Guide for Highway Landscape and Environmental Design" contains guidelines for the selective thinning of trees. AASHTO says, in part, "to create a natural transition between open clearing of the site and the undisturbed woods, to form bays and open areas in woods, to thin heavy stands, to remove undesirable species, and to open views to vistas."
- Highway safety is not compromised by a vegetation clearance or maintenance policy and, in fact, it may be improved.
- Businesses routinely trim vegetation that obstructs access to their facilities or obscures their visibility from prospective customers.
- Private sector initiated vegetation control saves taxpayers the cost of scarce highway maintenance resources.
- States incur no costs when the private sector shares costs for landscaping, litter pick-up and irrigation under state monitored guidelines.
- The taxpayer is the recipient of reduced costs under private sector cost-sharing programs.
- The OAAA discourages vegetation control that is not in compliance with state and local laws and regulations.

#### States with Vegetation Programs

The industry has worked cooperatively with many states to develop guidelines and practices in drafting vegetation control agreements. In 2006, Florida codified a FDOT rule allowing for vegetation management and extended the view zone from 250 feet to 500 feet.

"All interested parties (FOAA, FDOT, Florida League of Cities, Florida Association of Counties) worked together to resolve issues of concern with this bill. It now represents a fair balance between the interests of the public, local government, and private property rights," said Charlotte Brand, President and CEO, Outdoor Advertising Association of Florida.

Thirty states have vegetation control agreements or laws in effect with billboard companies that are reasonable to all parties. The states are:



Alabama	Michigan	Oklahoma
Arkansas	Minnesota	Oregon
California	Mississippi	Pennsylvania
Connecticut	Missouri	Rhode Island
Florida	Montana	South Carolina
Georgia	New Jersey	Tennessee
Illinois	New Mexico (one city)	Utah
Kansas	New York	Virginia
Louisiana	North Carolina	West Virginia
Maryland	Ohio	Wisconsin

## [Z]

### [ZONING]

#### Background

The HBA of 1965 permits outdoor advertising to be erected in controlled areas if the signs are located in zoned (or unzoned) commercial and industrial areas. Outside of urban areas, such signs must be erected within 660 feet of the right of way. Also, the signs are subject to size, lighting and spacing restrictions set forth in the state/federal agreements.

#### Industry Position

The industry supports approval of the zoning actions taken pursuant to a state's zoning enabling statute or constitutional authority. Action must be a part of a comprehensive plan and not created primarily to permit outdoor advertising only in that zone (spot or strip zoning).

#### Explanation

There is a history of disagreement over the status of zoned commercial or industrial areas especially when a zoning authority uses its power to zone merely to circumvent the intent of the law. The HBA specifically provides in Section 131 (d) that:

- “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.”
- Federal regulations state that no “bad faith” zoning will be accepted as complying with the law. The regulations define commercial

and industrial zones, provide for notification to FHWA of jurisdictions where local zoning controls apply, and state what type of zoning action will be accepted pursuant to Section 131 (d). Commercial or industrial zones are those: “established by the zoning authorities as being most appropriate for commerce, industry, or trade, no matter how labeled.”

- Another problem addressed by the regulations and the courts is what uses will qualify a zone as commercial or industrial under the Act. The regulations state that 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. It is important to note that terminology may vary among zoning jurisdictions as to areas of a commercial or industrial nature. For instance, signs are allowed in an area zoned “central business” but not in an area zoned “agricultural.”
- Several states require an actual business use to qualify signs in zoned areas. For instance, Massachusetts and New Hampshire require two businesses; California requires one business; while Washington State requires three businesses.
- The federal regulations concerning zoning criteria were adopted in the mid 1970's and there has been no policy change since that date.



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