

§ 750.706

Landmark Signs, if landmark signs are allowed;

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

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

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

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

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

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

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

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

(b) Agreement criteria which permit multiple sign structures to be considered as one sign for spacing purposes must limit multiple sign structures to

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signs which are physically contiguous, or connected by the same structure or cross-bracing, or located not more than 15 feet apart at their nearest point in the case of back-to-back or "V" type signs.

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

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

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

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

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

(5) Nothing contained herein shall relieve the State of the responsibility of limiting signs within controlled areas to commercial and industrial zones.

§ 750.707 Nonconforming signs.

(a) *General.* The provisions of § 750.707 apply to nonconforming signs which must be removed under State laws and regulations implementing 23 U.S.C. 131. These provisions also apply to nonconforming signs located in commercial and industrial areas within 660 feet of the nearest edge of the right-of-way

which come under the so-called grandfather clause contained in State-Federal agreements. These provisions do not apply to conforming signs regardless of when or where they are erected.

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

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

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

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

(i) Where a permit or similar specific State governmental action was granted for the construction of a sign prior to the effective date of the State law or regulations and the sign owner acted in good faith and expended sums in reli-

ance thereon. This exception shall not apply in instances where large numbers of permits were applied for and issued to a single sign owner, obviously in anticipation of the passage of a State control law.

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

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

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

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

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

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

(i) Each state shall develop criteria to define destruction, abandonment and discontinuance. These criteria may

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provide that a sign which for a designated period of time has obsolete advertising matter or is without advertising matter or is in need of substantial repair may constitute abandonment or discontinuance. Similarly, a sign damaged in excess of a certain percentage of its replacement cost may be considered destroyed.

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

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

§ 750.708 Acceptance of state zoning.

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

(b) State and local zoning actions must be taken pursuant to the State’s zoning enabling statute or constitutional authority and in accordance therewith. Action which is not a part

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of comprehensive zoning and is created primarily to permit outdoor advertising structures, is not recognized as zoning for outdoor advertising control purposes.

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

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

§ 750.709 On-property or on-premise advertising.

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

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

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

(d) Signs are exempt from control under 23 U.S.C. 131 if they solely advertise the sale or lease of property on which they are located or advertise activities conducted on the property on which they are located. These signs are subject to regulation (subpart A, part 750, chapter I, 23 CFR) in those States which have executed a bonus agreement, 23 U.S.C. 131(j). State laws or regulations shall contain criteria for determining exemptions. These criteria may include:

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