



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

# Memorandum

**Subject:** INFORMATION: Guidance on the Approval Process  
For Outdoor Advertising Control Pilots

**Date:** August 30, 2005

**From:** Susan B. Lauffer, Director *Susan Lauffer*  
Office of Real Estate Services

**Reply to  
Attn. of:** HEPR

**To:** Division Administrators  
Attn: Division Realty Professionals

The purpose of this memorandum is to provide guidance for implementing existing policies under 23 United States Code (U.S.C.) §131 and 23 U.S.C. §502 on the approval process for Outdoor Advertising Control (OAC) pilot projects. This guidance details the standards for evaluating pilot proposals and the procedural requirements for approval of an outdoor advertising control pilot. The FHWA will monitor the results of this guidance and will revise it as appropriate.

## Background

The purpose of the OAC pilot program is to better implement the objectives of the Highway Beautification Act of 1965, as amended (23 U.S.C. §131) (HBA). The authority to authorize a pilot project is granted under Surface Transportation Research in 23 U.S.C. §502. A pilot under §502 provides a testing opportunity for outcomes from possible statutory and/or regulatory changes. This experimental authority extends only to statutory, regulatory, and policy provisions under Title 23 of the United States Code, and does not change the requirements under other statutes, such as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act), or the National Environmental Policy Act (NEPA).

## Guidance

The Federal Highway Administration (FHWA) will consider a number of factors when evaluating a proposal. While individual cases may involve a balancing of considerations in addition to those listed below, we believe that these factors constitute the minimum standards against which a pilot proposal should be measured.

1. Likely to result in a proposal for change at the national level.

A pilot project must propose testing a concept, process, or procedure that, if successful, may lead to a proposal for change to a law, regulation, or national policy or practice of the national OAC Program.

2. Meets statutory purpose.

The proposal must promote the purposes of the HBA, as articulated by Congress at 23 U.S.C. §131(a). Those purposes are the protection of the public investment in the controlled highways, the promotion of the safety and recreational value of public travel, and the preservation of natural beauty.



### 3. In the public interest.

The pilot project proposal must be in the public interest. Considerations relevant to the public interest determination may vary with the nature of the experimental proposal and the parts of the law affected. A pilot proposal will be approved by the FHWA only if the benefits to the public are significant and, in the judgment of the FHWA, outweigh any potential adverse effects from activities under the pilot. This requirement is especially important because actions taken under the authority of a pilot may have long term or permanent effects. The public benefit requirement does not preclude consideration of benefits and harm to private interests. However, the defining rationale and effect of a pilot must be to serve the public interest and further the purposes of the HBA, such as natural beauty and safety.

### 4. Complies with NEPA.

A proposed pilot project also must comply with the appropriate sections of NEPA. As stated above, if a State wants to test a concept, process, or procedure that conflicts with the HBA or its implementing regulations, FHWA approval under 23 USC §502 is required. Absent such approval, the State could lose up to ten percent of its Federal-aid highway funds. This approval requirement meets the broad definition of "federal action" in NEPA. Therefore, before the FHWA will approve a pilot proposal, there must be compliance with NEPA. A pilot proposal of limited scope or effect might well be a documented Categorical Exclusion (CE), while a larger project might require an Environmental Assessment (EA).

### 5. Developed with public involvement.

Because OAC is a controversial area, we believe that a public involvement process is essential to the development of a successful pilot proposal. This should include reaching out to affected communities and interest groups and, if possible, achieving consensus about the terms of the pilot proposal. The public involvement process used must satisfy the FHWA requirements in 23 CFR 771.111(h). This public involvement requirement applies even if the Division determines that the proposal is a CE under NEPA.

6. Expected risks from the proposed experiment are proportionate to the potential positive results. Additional considerations include the nature of the problem the pilot is expected to address and whether the pilot is expected to improve program results or increase efficiency in government. The fact that a pilot proposes to test a concept that might solve a long-standing program problem may provide a rationale for approving a particularly creative experimental approach.

While the FHWA would not rule out the possibility of a statewide pilot under the proper circumstances, we feel that using a limited geographic area often will be a more appropriate testing mechanism. We suggest looking for a few corridors where it is likely that the pilot will produce data that will permit a good analysis of the positive and negative effects of the pilot. Using geographically limited corridors also will make the processes of stakeholder involvement and building consensus more manageable.

### **Proposal Submission and Processing**

A State Department of Transportation (SDT) must initiate the pilot proposal. The FHWA encourages States to seek an informal initial evaluation by the FHWA Division to determine whether the proposal is likely to meet the FHWA OAC pilot criteria. This step will avoid unnecessary work and help ensure that proposals are fully developed before the SDT transmits a formal proposal to FHWA.

SDTs should address their proposals in writing to their FHWA Division Administrator. The FHWA Division will coordinate with the State on NEPA compliance, and will review and evaluate the SDT's proposal.

When a formal proposal is submitted to the Division, the Division should determine whether the proposal package is complete. If the submission does not meet the documentation requirements of this guidance, the Division should return the proposal to the State with advice on what needs to be done to complete the proposal. If the proposal is complete, the Division should evaluate the merits of the proposal and forward the Division's recommendation, together with the pilot proposal, to Headquarters. The Division should send the materials to its Office of Real Estate Services Point of Contact (POC). The POC will serve as the Headquarters coordinator for the review and determination process.

The Office of Real Estate Services, in consultation with the Office of Chief Counsel, will review the Division's recommendation on a proposal for a §502 pilot project. If those Offices recommend approval of the pilot, they will forward the proposal and recommendation to the Associate Administrator for Planning, Environment and Realty for concurrence. The final decision whether to approve the pilot rests with the Associate Administrator. After the Associate Administrator acts on the proposal, the Division will notify the State of the outcome.

A written proposal must include:

1. A description of the potential change in Federal laws or regulations that the pilot is intended to test.
2. Specification of each provision of the Federal laws, regulations, and applicable Federal-State Agreement(s) that would require a waiver under 23 U.S.C. §502 in order for the pilot to take place.
3. A detailed description of how the pilot would work, including any special safeguards and the SDT's proposed monitoring and measurement of impacts. An analysis of potential increase or decrease in administrative burden to the State should be one of the impacts measured by the State.
4. The intended scope and time period for the proposed practice. For example, geographic limits may range from broad to restricted (statewide, one area, one project, etc.). The proposed length of the pilot should be limited to that time period needed to obtain measurable results. The legal authority for the pilot practice ends at the termination of the pilot.
5. A description of the expected effects of the pilot, including potential benefits, harm, and burdens to the public and/or to private persons or entities.
6. An analysis of how the pilot meets the minimum standards described in this guidance.

7. A summary of the public involvement process, including a report on the issues and interests expressed by those in support of and those opposing the pilot.
8. The appropriate NEPA documentation, including documentation required under 23 CFR 771.111(h).

The FHWA may accept, accept with conditions or revisions, or reject any pilot proposal. Every approved pilot will be subject to the condition that the State diligently will monitor compliance with the conditions of the pilot approval. Any sign that is erected, relocated, modified, altered in legal status, or otherwise affected under the authority of the pilot will be deemed by the FHWA to be in compliance with the requirements of the HBA so long as such sign is, and remains, in compliance with the conditions of the approved pilot. Any violation of such conditions, during or after the pilot, automatically will render such sign illegal under the HBA and the State immediately must act to have such sign removed.

The pilot proposal's description of the performance metrics that the State will use to track the effects of the pilot should support an independent evaluation and analysis of the pilot's results at the end of the pilot period. The metrics, and the State's commitment to collect and report the data, will be a key factor in the FHWA determination whether to approve the pilot. Such data is vital to any subsequent FHWA evaluation of the pilot's effects.

The Office of Chief Counsel has approved this guidance. Questions on this guidance may be directed to Janis Gramatins at (202) 366-2030 or (e-mail [Janis.Gramatins@fhwa.dot.gov](mailto:Janis.Gramatins@fhwa.dot.gov)), or Janet Myers at (202) 366-2019 or (e-mail [Janet.Myers@fhwa.dot.gov](mailto:Janet.Myers@fhwa.dot.gov)).