Highway Beautification and Outdoor Advertising Workshop

INTRODUCTION
Highway Beautification and Outdoor Advertising Workshop

Highway Beautification overview video:

https://youtu.be/16vxVJYITaw
Highway Beautification and Outdoor Advertising Workshop

TOPICS:

1. Authorities – Laws and Regulations
2. Federal and State Responsibilities
   - Effective Control – How to begin
   - Zoning
   - Types of Signs
   - Off Premise Signs
3. Junkyard Control
Introductions

• Your name and job title/function

• Years with in outdoor advertising control.

• Your expectations for this workshop
Highway Beautification and Outdoor Advertising Workshop

Authorities
Learning Outcomes
At the end of this session you will be able to:

• Identify the Act that started Outdoor Advertising Control (OAC)
• Explain ISTEA changes to OAC
• Explain how MAP-21 affected OAC
• Explain the FAST Act impacts to OAC
OAC Authorities

• 23 USC 131 - The Highway Beautification Act of 1965

• Code of Federal Regulations 23 CFR 750

• Federal/State Agreement

ALSO

• State laws and regulations, DOT Manuals
BONUS STATES
California (CA)
Colorado (CO)
Connecticut (CT)
Delaware (DE)
Hawaii (HI)
Illinois (IL)
Iowa (IA)
Kentucky (KY)
Maine (ME)
Maryland (MD)
Nebraska (NE)
New Hampshire (NH)
New Jersey (NJ)
New York (NY)
Ohio (OH)
Oregon (OR)
Pennsylvania (PA)
Rhode Island (RI)
Vermont (VT)
Virginia (VA)
Washington (WA)
West Virginia (WV)
Wisconsin (WI)

NO SIGNS
Alaska
Hawaii
Maine
Vermont

1958 Kerr/Cotton Exclusions

1959 Kerr Exclusion (Only)
The Highway Beautification Act of 1965

The objective of the HBA Program legislation was:

• to protect residential and agricultural areas from the intrusion of outdoor advertising signs and

• to control size, lighting and spacing in commercial or industrial areas and let those that did not “sunset” away.
The Highway Beautification Act of 1965

• Specifically, it was enacted to:
  – Protect the public investment of the highways from the proliferation of signs
  – Promote the safety and recreational value of public travel
  – Preserve natural beauty along our nation’s roadways
  – Limit billboards to areas of similar land use (i.e., commercial and industrial areas)
  – Required effective control of junkyards within 1,000 ft of ROW
1968 Amendments to the HBA

• Required the States to accept State and local determinations of "customary use" for size, lighting, and spacing for signs in commercial and industrial areas.

• Allowed States to remain eligible for bonus payments if they complied with their 1958 Bonus agreement.

• Established that nonconforming signs did not have to be removed unless Federal funds were available for participation.
• Federal-Aid Highway Act of 1970
  – Created the Highway Beautification Commission to study highway beautification problems and make recommendations for change needed to increase the effectiveness and workability of the program.

• Federal-Aid Highway Act of 1974
  – Extended control beyond 660 feet of the right-of-way
  – Added landmark signs (in existence on October 22, 1965)
Federal-Aid Highway Act of 1976

- Provided for Secretary approval for sign removal exemption in a defined area if demonstrated that removal would cause a substantial economic hardship in such defined area - **submissions made were not approved**.

- Provided 100% Federal participation for signs removed and relocated prior to the 1974 Amendments, which had to be moved again because of those Amendments.

- Authorized Federal participation in the establishment of tourist information centers and alternate information systems.

- Directed a restudy of the Federal regulations and National standards for both directional signs outside the right-of-way and Logo signs within the right-of-way.

- Allowed for extension of the optional Logo program to the primary system.
Surface Transportation Assistance Act of 1978

1. Required the payment of just compensation for the removal of lawfully erected signs not permitted under subsection 131(t)

2. Allowed electronic variable message on-premise signs in bonus States

3. Created a new category of exempt signs that advertise free coffee by nonprofit organizations.
ISTEA of 1991

• Amended 23 U.S.C. 131 in four areas
  1. Defined the Primary System for OAC
  2. Funding – funds from HTF rather than General Fund
  3. Removal of Illegal signs
  4. Scenic Byway Prohibition

Let’s look at each area in more detail...
Dire Emergency Supplemental Appropriations Act of June 22, 1992

• Amended 23 U.S.C. 131(n) making the expenditure of section 104 funds for the purpose of acquiring and removing nonconforming signs entirely discretionary with respect to the States.
National Highway System Designation Act of 1995

• Accepted NHS as submitted by Secretary of Transportation map dated November 13, 1995
  – Included United States, DC and Puerto Rico
  – Provided for future modifications by the Secretary

• Amended 23 U.S.C. 131(s)
  – allows a State to exclude a from Scenic Designation, any segment of the highway that is inconsistent with the States’ Scenic Byway criteria
TEA-21

• MUTCD allows food businesses only open 6 days to be included on Food Service Logo Service signs

• Added approximately 2,123 miles to the NHS
One major change directly impacted the outdoor advertising program...

• National Highway System definition
  ❖ Added in a lot more roadway classifications
  ❖ Resulted in lots more roadways to oversee
  ❖ May be overlap

Remember: outdoor advertising control applies to Interstates, the Federal-aid primary system in existence on June 1, 1991 and the NHS.
• Signs on newly designated NHS roads that were in place prior to MAP-21
  – Legal conforming
  – Legal nonconforming
  – Illegal
  – Exempt
OAC CHANGES
SEC. 1425. SERVICE CLUB, CHARITABLE ASSOCIATION, OR RELIGIOUS SERVICE SIGNS.

• Date of Enactment: 12/04/2015

• If a State notifies the FHWA, the State may allow the maintenance of a sign of a service club, charitable association, or religious service organization—
OAC CHANGES

SEC. 1425. SERVICE CLUB, CHARITABLE ASSOCIATION, OR RELIGIOUS SERVICE SIGNS.

• If a State notifies the FHWA, the State may allow...
  (1) that exists on the date of enactment of this Act (or was removed in the 3-year period ending on such date of enactment); and
  (2) the area of which is less than or equal to 32 square ft.
FHWA FAST Act Memo and FAQs on OAC:

- **7/29/2016 FHWA MEMO - SEC. 1425. SERVICE CLUB, CHARITABLE ASSOCIATION, OR RELIGIOUS SERVICE SIGNS**
- **Fixing America's Surface Transportation Act (FAST Act) Q&A Sec. 1425**
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National HBA – OAC Lawsuit/Case Law and Current Issue Updates
REVIEW

• Identify the Act that started Outdoor Advertising Control (OAC)
• Explain ISTEA changes to OAC
• Explain how MAP-21 affected OAC
• Explain the FAST Act impacts to OAC
• What are we required to do under these authorities?
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Federal and State Responsibilities
Learning Outcomes

At the end of this session you will be able to:

• Explain FHWA’s responsibilities regarding OAC
• Explain State’s responsibilities regarding OAC
• Identify what a State must do to provide effective control
• Identify key information needed to begin outdoor advertising control (OAC)
Learning Outcomes

At the end of this session you will also be able to:

• Identify key information needed to begin outdoor advertising control (OAC)
• Describe zoning and its relationship to outdoor advertising control (OAC)
• List and explain the types of signs
• Describe Legal Conforming Signs
• Describe and explain Nonconforming signs
FHWA Responsibility

• To interpret major legislation and make effective decisions in support of Outdoor Advertising Control (OAC)

• Oversee the State OAC program to ensure the effective control minimums as set out in the Highway Beautification Act (HBA) are being satisfied

• Provide oversight or program reviews of state programs
State Responsibility

• Enact State Regulations to provide effective control
• Maintain current sign accounting (inventory)
  – Sign location
  – Zoning
  – Classification of sign
  – Permit information - date built, date issues, owner
  – Size, type, photograph
• Map of Control Area
• Procedures for Effective Control
  – Could include inventory and permitting
  – Surveillance to discover illegal signs
  – Process for removal of illegal signs
• Collaborate with FHWA in oversight review
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Federal and State Responsibilities: Effective Control
Effective Control

• FHWA’s primary concern is that each State DOT has effective control of their outdoor advertising program

• In order to provide effective control of outdoor advertising, the State must:
Effective Control

• Prohibit the erection of new signs other than those which fall under §750.704(a)(1) through (6)
  – (1) Directional and official signs and notice which shall conform to national standards promulgated by the Secretary in subpart B, part 750, chapter I, 23 CFR, National Standards for Directional and Official Signs;
Effective Control
Effective Control

• Prohibit the erection of new signs other than those which fall under §750.704(a)(1) through (6)
  – (1) Directional and official signs...
  – (2) Signs advertising the sale or lease of property upon which they are located
Effective Control
Effective Control

• Prohibit the erection of new signs other than those which fall under §750.704(a)(1) through (6)
  – (1) Directional and official signs...
  – (2) Signs advertising the sale or lease of property upon which they are located
  – (3) Signs advertising activities conducted on the property on which they are located
Effective Control
Effective Control

• Prohibit the erection of new signs other than those which fall under §750.704(a)(1) through (6)
  – (1) Directional and official signs...
  – (2) Signs advertising the sale or lease...
  – (3) Signs advertising activities...conducted on the property
  – (4) Signs within 660 feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and Federal-aid Primary Systems which are zoned industrial or commercial under the authority of State law;
Effective Control
Effective Control

• Prohibit the erection of new signs other than those which fall under §750.704(a)(1) through (6)
  – (1) Directional and official signs...
  – (2) Signs advertising the sale or lease...
  – (3) Signs advertising activities...conducted on the property
  – (4) Signs within 660 feet of the nearest edge of the right-of-way...zoned industrial or commercial
  – (5) Signs within 660 feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and Federal-aid Primary Systems which are unzoned commercial or industrial areas, which areas are determined by agreement between the State and the Secretary
Effective Control
Effective Control

• Prohibit the erection of new signs other than those which fall under §750.704(a)(1) through (6)
  – (1) Directional and official signs...
  – (2) Signs advertising the sale or lease...
  – (3) Signs advertising activities...conducted on the property
  – (4) Signs within 660 feet of the nearest edge of the right-of-way...zoned industrial or commercial...
  – (5) Signs within 660 feet of the nearest edge of the right-of-way...unzoned commercial or industrial areas...
  – (6) Signs lawfully in existence on October 22, 1965, which are determined to be landmark signs
Effective Control
Effective Control

- Assure that signs erected under §750.704(a)(4) and (5) comply, at a minimum, with size, lighting, and spacing criteria contained in the agreement between the Secretary and the State.
• Remove illegal signs expeditiously

• Remove nonconforming signs with just compensation within the time period set by 23 U.S.C. 131 (subpart D, part 750, chapter I, 23 CFR, sets forth policies for the acquisition and compensation for such signs)
Effective Control

• 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.
Effective Control
Effective Control

• Develop laws, regulations, and procedures to accomplish the requirements of this subpart

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

• Submit regulations and enforcement procedures to FHWA for approval
Effective Control

• Adhere to the criteria set forth in their Federal/State Agreement
  – Size, spacing, lighting
  – Definitions
  – Certified City oversight

• FHWA support for amending the Federal/State Agreement
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Federal and State Responsibilities: OAC – How To Begin
OAC – How to begin

• First thing first
  – Is this a controlled route?
    ➢ Interstate, 6/1/1991, NHS
  – Is the sign located within an urban area and
    ➢ within 660 feet of the controlled route and
    ➢ visible from the controlled route?
  – Is the sign located outside of urban area and
    ➢ visible from the main-traveled way and
    ➢ erected with the purpose of their message being read from such main-traveled way?
OAC – How to begin

Control Area

- Controlled Highway
- Limit of Visibility
- Urban Area

660 ft.
OAC – How to begin
OAC – How to begin

• Determine where the sign is located
  – Inside the Right of Way?
    • Look to the MUTCD for allowable advertising
      – TOD signs
      – Logo signs
      – Rest area advertising (MAP-21 Sec. 1539 amended 23 U.S.C. § 111)
      – Sponsorship (Policy on Sponsorship Acknowledgment and Agreements within the Highway Right-of-Way FHWA Order 5160.1A)
  – Outside the Right of Way?
    – Covered under OAC
Zoning

• What type of land is it located on?

  – Zoned commercial or industrial under State law

  – Unzoned commercial or industrial as defined in your Federal/State Agreement
Zoning

- Zoned commercial or industrial under State law
  - Most appropriate for commerce, industry, or trade, regardless of how labeled.
  - Common categories:
    - Commercial
    - Industrial
    - Business
    - Manufacturing
    - Highway service or highway business (when these latter are intended for highway-oriented business)
    - Retail
    - Trade
    - Warehouse
Zoning
Zoning

- Zoned commercial or industrial under State law
  - Avoid zoning that is inconsistent with the intent of the HBA, commonly known as spot or sham zoning
Zoning

• Unzoned commercial or industrial as defined in your Federal/State Agreement
Zoning

- 2004 Legal Opinion on the FHWA's Interpretation of 23 CFR § 750.708(b), Acceptance of State Zoning for Purposes of the Highway Beautification Act
Scenic Byway

- Must be State designated scenic byway
- No new outdoor advertising signs (ISTEA)
- Control of existing outdoor advertising signs
- Can segment if inconsistent with the State’s criteria for designating scenic byways
Types of Signs

• What is type of sign is it?
  – On-premise/On-property advertising
  – Directional and Official signs or other allowable signs
  – Legal off-premise advertising
  – Illegal signs
Types of Signs

• **On-premise/On-property advertising**
  - 23 U.S.C. 131(c)(3) and 23 CFR §750.709
  - Consists solely of the name of the establishment
  - Advertising activities conducted on the property on which the sign located
  - Bonus provision (Class 2)
  - Not more than one sign, visible to traffic proceeding in any one direction on any one Interstate Highway and advertising activities being conducted upon the real property where the sign is located, may be permitted under this class more than 50 feet from the advertised activity.
  - May have to conduct a property and purpose test
Types of Signs

• On-premise/On-property advertising
Types of Signs

• On-premise/On-property advertising
Types of Signs

• On-premise/On-property advertising
Types of Signs

• What is **NOT** On-premise/On-property advertising?
  – Products incidental to the principal activity
  – Brings in rental income
Types of Signs
Types of Signs

• What is type of sign is it?
  – On-premise/On-property advertising
  – Directional and Official signs or other allowable signs
  – Legal off-premise advertising
  – Illegal signs
Types of Signs

• Examples of Directional and Official signs or other allowable signs
  – Directional signs (museums, etc.)
  – Official signs and notices (church signs, etc.)
  – For sale or lease signs
  – Public utility signs
  – Service club and religious notices
  – Landmark signs
  – Free coffee signs
Types of Signs

• Directions Signs
Types of Signs

• Official Signs and Notices
Types of Signs

- For Sale or For Lease Signs
Types of Signs

• Public Utility Signs
Types of Signs

- Service club and religious notices
Types of Signs

- Landmark signs
Types of Signs

• Free Coffee Signs
Types of Signs

• What type of sign is it?
  – On-premise/On-property advertising
  – Directional and Official signs or other allowable signs
  – Legal off-premise advertising
  – Illegal signs
Types of Signs

• Legal Off-Premise Advertising
  – Legal Conforming Signs
  – Legal Nonconforming Signs
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Federal and State Responsibilities: Off Premise Advertising Signs
OAC – Legal Conforming Signs

• Legal Off-Premise Advertising
  – Legal Conforming Signs
    • Located:
      – In areas zoned commercial or industrial under State law
      – Or in unzoned commercial or industrial areas as defined in your Federal/State Agreement
    • Meets:
      – Size*
      – Spacing*
      – Lighting*
OAC – Legal Conforming Signs

• Legal Off-Premise Advertising
  – CEVMS
    • Guidance
    • Lawsuit
OAC – Legal Nonconforming Signs
(b) 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.
OAC – Legal Nonconforming Signs

• Two key elements of a nonconforming sign:
  – Lawfully erected
  – Does not comply due to a changed condition

23 CFR §750.707(b)
OAC – Legal Nonconforming Signs
Grandfather Clause

23 CFR §750.707(c)
OAC – Legal Nonconforming Signs
OAC – Legal Nonconforming Signs
OAC – Legal Nonconforming Signs

Existing property rights

23 CFR §750.707(d)(2)
OAC – Legal Nonconforming Signs

These would not pass the test for existing property rights!
OAC – Legal Nonconforming Signs

Lawful on effective date and remain lawful

23 CFR §750.707(d)(4)
May be sold, leased, transferred but not moved

23 CFR §750.707(d)(3)
OAC – Legal Nonconforming Signs
OAC – Legal Nonconforming Signs

Remain substantially the same

23 CFR §750.707(d)(5)
OAC – Legal Nonconforming Signs

• Remains substantially the same
  – Acceptable by regulations
  – Reasonable repair and maintenance

• Change of message
  – State responsibility
  – Develop criteria to determine threshold of customary maintenance versus substantial change

23 CFR §750.707(d)(5)
OAC – Legal Nonconforming Signs

Remain as long as it is not destroyed, abandoned or discontinued

23 CFR §750.707(d)(5)
OAC – Legal Nonconforming Signs
OAC – Legal Nonconforming Signs

Entitled to just compensation

23 CFR §750.707(e)
REVIEW

• What are FHWA’s responsibilities regarding OAC?
• What are State’s responsibilities regarding OAC?
• Identify what a State must do to provide effective control
• Identify key information needed to begin outdoor advertising control (OAC)
REVIEW

• Identify key information needed to begin outdoor advertising control (OAC)
• Describe zoning and its relationship to outdoor advertising control (OAC)
• List and explain the types of signs
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Junkyard Control
Learning Outcomes

At the end of this session you will be able to:

• Define a junkyard
• Define an Automobile Graveyard
• Explain effective control as it relates to junkyards
• State the penalty amount for ineffective junkyard control revised under MAP-21
Junkyard Control
Junkyard Control

- A Junkyard is an establishment or place of business which is maintained, operated or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard. This definition includes scrap metal processors, auto-wrecking yards, salvage yards, scrap yards, auto recycling yards, used auto parts yards and temporary storage of automobile bodies and parts awaiting disposal as a normal part of a business operation when the business will continually have like materials located on the premises. The definition includes garbage dumps and sanitary landfills. The definition does not include litter, trash, and other debris scattered along or upon the highway, or temporary operations and outdoor storage of limited duration. 23 CFR 751.7(a)(1)
Junkyard Control

• An Automobile Graveyard is an establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. Ten or more such vehicles will constitute an automobile graveyard. 23 CFR 751.7(a)(2)
Junkyard Control

• Effective Control
  – 23 CFR 751
    • Applicable to all areas within 1,000 feet of the nearest edge of the right-of-way and visible from the main traveled way of any roadway on the NHS
    • Require such junkyards located outside of zoned and unzoned industrial areas to be screened or located so as not to be visible from the main traveled way, or be removed from sight.
    • Require the screening or removal of nonconforming junkyards within a reasonable time, but no later than 5 years after the date the junkyard becomes nonconforming*
Junkyard Control

• Nonconforming Junkyards

  – Must have been actually in existence at the time the State law or regulations became effective. 23 CFR 751.11(a), in part

  – The nonconforming junkyard may continue as long as it is not extended, enlarged, or changed in use. Once a junkyard has been made conforming, the placement of junk so that it may be seen above or beyond a screen, or otherwise becomes visible, shall be treated the same as the establishment of a new junkyard. 23 CFR 751.11(e)

  – The nonconforming junkyard may continue as long as it is not abandoned, destroyed, or voluntarily discontinued. Each State should develop criteria to define these terms. 23 CFR 751.11(f)
Junkyard Control

• Change of Controlled Routes
  
  – Junkyard Control = National Highway System
  
  – October 1, 2012
  
  – Existing junkyards
  
  – Screening or removing legal nonconforming junkyards
Junkyard Control

• Program Highlights
  – Inventory
  – Classification
  – Land owner/ business owner notification
  – Surveillance
  – Issues
REVIEW

• Define a junkyard
• Define an Automobile Graveyard
• Explain effective control as it relates to junkyards
• State the penalty amount for ineffective junkyard control revised under MAP-21
Quiz

1. What Federal Act included requirements for Junkyard control?

2. Must a Bonus State comply with the both Bonus Act and the Highway Beautification Act?

3. True or False - The Surface Transportation Assistance Act of 1978 created a new category of a new category of exempt signs that advertise free coffee by nonprofit organizations?

4. Will States receive more Federal money for OAC activities?

5. Who pays for the removal of an illegal sign?

6. True or False – New signs are allowed on Scenic Byways.

7. Under the FAST Act, what is the key dates for maintenance of service signs up to 32 square feet?
Resources

• Office of Real Estate Services: http://www.fhwa.dot.gov/real_estate/

• Outdoor Advertising Control http://www.fhwa.dot.gov/real_estate/oac/

• Contacts:
  – Joi Singh: Joi.Singh@dot.gov
Outdoor Advertising Control

https://www.fhwa.dot.gov/real_estate/oac/

- 2016 Memorandum: FAST Act Information Regarding Service Club, Charitable Association, Or Religious Service Signs
- 2016 OAC Fixing America's Surface Transportation Act (FAST Act) Q&A
- 2014 Memorandum: Updated Process for Amending the FSAs under the OAC Program
- 2009 Destroyed Sign Guidance
OAC Laws, Regs and Policy Guidance

https://www.fhwa.dot.gov/real_estate/oac/policy_and_guidance/

• **An Outdoor Advertising Control Language Guide**
• **Guidance on Adjustment of Non-conforming Outdoor Advertising Signs**
• **Guidance On Off-Premise Changeable Message Signs**
• **Memorandum: Guidance on the Approval Process For Outdoor Advertising Control Pilots**
• **Memorandum: Guidance on the Clarification of On-Property or On-Premise Advertising**
• **Non-Regulatory Supplements**