

**ARKANSAS STATE HIGHWAY COMMISSION**

**SUBJECT:** Restore Sign Visibility Policy

**DESCRIPTION:** The Restore Sign Visibility Policy (RSVP) establishes procedures whereby sign owners may obtain permits from the Arkansas State Highway and Transportation Department to restore the visibility to their signs from adjacent state highways. This policy allows the mowing, bush hogging, cutting, trimming, pruning, and the selective removal of vegetation on state highway rights of way to restore the visibility of outdoor advertising devices of legal signs, but will not allow the cutting of trees more than six inches in diameter.

**PUBLIC COMMENT:** A public hearing was held on March 8, 2013, and the public comment period expired on that date. Public comments were as follows:

**Merle Stovall**

**COMMENT:** Objects to allowing any additional visibility of bill boards as they do not promote the scenic beauty of the state of Arkansas.

**RESPONSE:** Comments reviewed and considered.

**Arkansas Outdoor Advertising Association**

**COMMENT:** (1) Objects to last clause in opening paragraph denying RSVP permits to sign owners with other illegal or abandoned signs; (2) Object to paragraph 3 – no need to involve a city or county in process; (3) Change from 400 feet to 500 feet-standardize with billboard spacing requirements; (4) Object to paragraph 12 entirely; believes it results in a taking without compensation; discriminatory manner; (5) Alternate mitigation language requested; (6) Objection to the potential revocation of state billboard permits if the RSVP permits are violated. Also that other parties might damage an area in front of the sign that is outside the control of the billboard company; (7) Objection to the taking of the permit.

**RESPONSE:**

(1) RSVP permits will not be issued to sign owners with other illegal or abandoned signs. The department kept this provision because the department is required by the Federal Highway Administration, federal law, and state law to remove illegal and abandoned signs. It is counterproductive to issue RSVP permits to companies that are unwilling to resolve other sign issues.

(2) Department removed requirement for city or county approval. Permittees are responsible for determining compliance with local regulations.

(3) The allowable mowing distance was increased from 400 feet in one direction to 500 feet in one direction.

(4) The department does not view it as a "taking" because the RSVP program is voluntary, and sign owners do not have to participate if they object to its requirements. The department kept this provision (with modification) because it was originally adopted at the industry's request and helped the department reduce the number of nonconforming signs. RSVP permits for legal, nonconforming signs will only be granted upon the surrender of another nonconforming sign. The department changed the requirement to allow RSVP permits to be issued to small sign companies that cannot meet the requirement. These will be reviewed on a case by case basis and a permit may be issued without a "donated sign." Moreover, an administrative hearing is provided for to address any concerns regarding the enforcement of this policy or any mitigating factors.

(5) Any mitigation required will be in the form of replacement plantings.

(6) An administrative hearing process was established to review suspected RSVP violations and permit revocation. This provides due process to the permit holders. Also, the billboard industry did not want to lose a sign as a penalty for violations; instead, they preferred a maximum fine of \$1,000 after an administrative hearing. This was not adopted because some signs are rented for \$1,000 per month. If the maximum penalty were imposed, the loss would only be one month's rent. The commission raised the fine to \$10,000 for the first violation or revocation of the sign permit to be decided at an administrative hearing.

(7) See response to comment number 4, above.

**Jay Chessir, Little Rock Regional Chamber of Commerce**

**COMMENT:** Asked us to review Arkansas Outdoor Advertising Association comments and meet with the large company representatives.

**RESPONSE:** Comments reviewed and considered. See above response to Arkansas Outdoor Advertising Association.

**William Dawkins, Jr., Stephens Production Company**

**COMMENT:** Supports the proposed changes and comments by Arkansas Outdoor Advertising Association.

**RESPONSE:** Comments reviewed and considered.

**Randy Langhove, Owner-Cosmic Cavern**

**COMMENT:** Believes the policy to be cumbersome and unworkable. Did not provide specific comments to provisions

**RESPONSE:** Comments reviewed and considered.

**Kdcastor49aol.com**

**COMMENT:** No specific comment, question on allowing sign to remain.

**RESPONSE:** A response requesting more information was sent, but no response received; determined to be irrelevant to these regulations.

**Senator Cecile Bledsoe**

**COMMENT:** Comment on rule by telephone, questions regarding the program in general and who it applied to.

**RESPONSE:** Returned phone call and explained the process of who the permit applies to, being those areas where access is limited to the Highway Department and the billboards are located on private property.

**Mr. Phil Gray, Harrison, AR**

**COMMENT:** (1) Believes the Good Neighbor Policy should be extended and no permit should be required for mowing; (2) Tree trimming and removal would require prior approval, but no permit; (3) Highway Department should not plant trees if a community does not want them; (4) Would like a tree replacement program and allow all trees to be cut in front of billboards.

**RESPONSE:** Comments reviewed and considered.

**Schlereth Family, LLC**

**COMMENT:** (1) Believes it is an important issue and agrees with having a policy; (2) Believes current version is too strict; (3) Requests we consider the changes proposed by the Arkansas Outdoor Advertising Association.

**RESPONSE:** Comments reviewed and considered. See above response to Arkansas Outdoor Advertising Association.

**H. Chris Stokes, Lamar Advertising**

**COMMENT:** (1) The two year time frame is overly burdensome; (2) The 400 foot view zone is randomly selected. 500 feet creates the proper view zone; (3) FHWA has no official issue with gates placed in fences that abut interstate highways and this should be removed; (4) Currently there are a large number of trees greater than 6 inches growing in the right of way that have no economic or scenic value. They are a traffic hazard and should be cut; (5) If the right of way is damaged by a vehicle with a RSVP Permit, the company should be forced to repair the damage or face a fine. Restricting the ability to economically cut the right of way is poor policy; (6) Revocation of permit, requests an administrative hearing, believes it to be an illegal exaction; (7) Recommends 5 year time frame for filing renewal permits; (8) Imposing fines and bond forfeitures for violations is consistent with how other AHDT ROW Permits are enforced; (9) Removal of the sign

after violation of permit is overly burdensome; (10) The industry should not have to contact the landowner or adjacent landowners; (11) Local and county government should not have to be contacted for approval of the permit; (12) The forfeiture of legal nonconforming signs should not be required and will result in litigation; (13) Permit application should be issued or denied within 45 days and if more staff is required, increase the fees

**RESPONSE:**

- (1) Department made a change tying the RSVP permit to the relevant sign permit and maintained the 2 year renewal cycle.
- (2) The allowable mowing distance was increased from 400 feet in one direction to 500 feet in one direction.
- (3) Gates will only be permitted after the AHTD notifies the Federal Highway Administration and receives concurrence.
- (4) No change was made.
- (5) Department amended the language to state that “[a]ll mowing or cutting must be accomplished with hand tools, wheeled machinery, or rubber tracked machines not exceeding three (3) tons. No steel track equipped machines are allowed.”
- (6) An administrative hearing process was established to review suspected RSVP violations and permit revocation. This provides due process to the permit holders.
- (7) No change was made.
- (8) The billboard industry did not want to lose a sign as a penalty for violations; instead, they preferred a maximum fine of \$1,000 after an administrative hearing. This was not adopted because some signs are rented for \$1,000 per month. If the maximum penalty were imposed, the loss would only be one month’s rent. The commission raised the fine to \$10,000 for the first violation or revocation of the sign permit to be decided at an administrative hearing.
- (9) See response to comment number 8.
- (10) The billboard industry objected to the current RSVP requirement that allows them to mow ROW in front of adjacent landowners only if the landowner has given them written permission. This provision was retained, because some adjacent landowners may prefer to keep a vegetation screen as a noise or visual barrier from traffic. If they do not, then they have the option to agree with the sign company. The billboard industry’s proposal would ignore the preference of neighboring landowners.
- (11) Department removed requirement for city or county approval. Permittees are responsible for determining compliance with local regulations.

(12) The department does not view it as a “taking” because the RSVP program is voluntary, and sign owners do not have to participate if they object to its requirements. The department kept this provision (with modification) because it was originally adopted at the industry’s request and helped the department reduce the number of nonconforming signs. RSVP permits for legal, nonconforming signs will only be granted upon the surrender of another nonconforming sign. The department changed the requirement to allow RSVP permits to be issued to small sign companies that cannot meet the requirement. These will be reviewed on a case by case basis and a permit may be issued without a “donated sign.” Moreover, an administrative hearing is provided for to address any concerns regarding the enforcement of this policy or any mitigating factors.

(13) Language was amended to require that a permit application be issued or denied within 60 days.

**Shannon Kee, Shannon Kee Construction**

**COMMENT:** No specific comments directed at the policy. An affirmation of implementing regulations to allow billboards to be seen and maintained.

**RESPONSE:** Comments reviewed and considered.

**Jerry Anderson**

**COMMENT:** Proposed a question about it being legal to have a sign on his own land.

**RESPONSE:** Contact was attempted to explain this policy does not prohibit signs on private land.

**David Hamilton, Arkansas Outdoor Advertising Association**

**COMMENT:** Proposed the comments from the Arkansas Outdoor Advertising Association.

**RESPONSE:** See above response to Arkansas Outdoor Advertising Association.

**David Hamilton, Seiz Sign Company**

**COMMENT:** (1) Believes the sign rules apply to both on premise and off premise signs and this should be clarified; (2) The penalty provisions apply only to off-premise signs and has a discriminatory effect on outdoor advertising industry; (3) Penalties resulting in revocation of a permit and the removal of a structure are too severe; (4) If a tree is removed, mitigation through replanting is appropriate and would result in more trees and a safer right of way in the case of vehicles leaving the roadway.

**RESPONSE:**

The definitions section was amended to clarify the different classes of signs and permit types.

The billboard industry did not want to lose a sign as a penalty for violations; instead, they preferred a maximum fine of \$1,000 after an administrative hearing. This was not adopted because some signs are rented for \$1,000 per month. If the maximum penalty were imposed, the loss would only be one month's rent. The commission raised the fine to \$10,000 for the first violation or revocation of the sign permit to be decided at an administrative hearing.

**Caroline Campbell**

**COMMENT:** (1) Expressed concerns that the policy was burdensome and did not understand why this was required and the areas in front of businesses did not require this type of permit; (2) Did not address specific parts of the policy, but expressed it was too complicated.

**RESPONSE:** Comments reviewed and considered.

**Mac Vineyard, Pyramid Leasing Company, Inc.**

**COMMENT:** Asked us to review and consider the Arkansas Outdoor Advertising Association comments.

**RESPONSE:** Comments reviewed and considered. See above response to Arkansas Outdoor Advertising Association.

**David Hogue, CBS Outdoor**

**COMMENT:** (1) Believes current version is too "stringent"; (2) Objects to adjoining property owner restrictions; (3) Believes certain trees should be cut regardless of size.

**RESPONSE:** Comments reviewed and considered.

**Lloyd Childress, Clear Channel**

**COMMENT:** Asked us to review and consider the Arkansas Outdoor Advertising Association comments.

**RESPONSE:** Comments reviewed and considered. See above response to Arkansas Outdoor Advertising Association.

**George Dodson, Fairway Outdoor Advertising**

**COMMENT:** (1) Asked us to consider proposed changes made by the Arkansas Outdoor Advertising Association; (2) Believes it is too cumbersome process.

**RESPONSE:** Comments reviewed and considered. See above response to Arkansas Outdoor Advertising Association.

**Tom Gibbons, Lamar Advertising**

**COMMENT:** Objects to the entire policy as written, including mowing distances, permit revocation and requested mitigation for removal of “nuisance trees.”

**RESPONSE:** Comments reviewed and considered. See above response to Arkansas Outdoor Advertising Association.

**Mr. Patel, Pat Shockey, Samantha Shockey, Ranaii Shockey, Linda Hunt, Chris Canbrum**

**COMMENT:** Each commenter asked that the Department implement regulations so that billboards may be seen and easily maintained. Forwarded by Lamar Outdoor Advertising as advertisers with their company.

**RESPONSE:** Comments reviewed and considered.

**Connie Gray, Cash Outdoor Advertising**

**COMMENT:** (1) Requests the following: The Highway Department will not allow trees to be planted or allowed to grow on the right of way that abuts an existing commercial property but may be cut at landowners expense. Commercial development shall not have the right to a line of sight if none existed before other than that to mow, bush-hog or weed-eat; (2) Private property shall not be taken or surrendered as a requirement for any permit; (3) RSVP permit shall remain separate from the requirements and legal status of any other permits; (4) No permit needed by land owner to mow, bush-hog, or weed-eat the right of way which abuts their property. If AHTD or county has installed barriers to the right of way, landowner may install a locked gate to use with mowing; (5) RSVP permits only required for removal of any vegetation too large to be bush hogged, but no topping of trees; (6) Any trees larger than 6 inches will require payment of 3 times the value of said tree into a state park fund dedicated to planting or landscaping in state owned parks or visitor centers

**RESPONSE:** Comments reviewed and considered. Requested to speak before the full commission prior to adoption and was allowed 10 minutes during Commission meeting.

**Frank Booth**

**COMMENT:** (1) Glad there is a policy in place for vegetation control but believes it to be too restrictive; (2) Rapid growth of non-ornamental trees and brush does not enhance the beauty and would like more open guidelines on removing it.

**RESPONSE:** Comments reviewed and considered.

**Doug Boydston**

**COMMENT:** By telephone: Was concerned that there doesn't seem to be any punishment for those that cut without a permit, while those that get a permit are limited to what they can cut.

**RESPONSE:** Comments reviewed and considered.

**Bill Sue Hill, Pilot Travel Center**

**COMMENT:** It sounds like a good idea.

**RESPONSE:** No response required.

**Floyd Fenix, Fenix Industries**

**COMMENT:** (1) By telephone: the part where landowner approval, city and county approval is required should be removed, land changes hands and the new owner may not be agreeable; (2) We need to make it clear that it pertains only to controlled access highways; (3) It should be clear that it applies to signs that require permits to be erected (interstate, primary, etc.) secondary routes aren't covered.

**RESPONSE:** Comments reviewed and considered. Department removed requirement for city or county approval. Permittees are responsible for determining compliance with local regulations.

**Steve Rush, Mystic Caverns**

**COMMENT:** By telephone: Stated didn't really affect them since they don't have any signs on the freeway.

**RESPONSE:** Clarified that the policy only applied to the state highway right of way, not private property.

**Bill Locke, Peterbuilt of Ft. Smith**

**COMMENT:** Has two billboards on his property that belong to Clear channel, his lease payment was reduced by them because of vegetation. He is in favor of tree removal, not just mowing, and would also be in favor of clearing in the median area.

**RESPONSE:** Comments reviewed and considered.

**Bill Scrimshire, Hot Spring County Judge**

**COMMENT:** By telephone: Requested a copy of proposed changes. He is in favor of mowing and removing small trees and brush in front of the signs.



**RESPONSE:** Comments reviewed and considered.

Jessica Sutton, an attorney with the Bureau of Legislative Research, asked questions concerning the commission's fee authority. The agency responded by seeking legislation in the 2013 session to ensure department compliance with Act 1159 of 2011.

After revisions were made to the rule adding a fine for a first offense up to \$10,000, Ms. Sutton asked the department where its statutory authority was for fines/penalties, as it was not contained in the 2013 act authorizing its fees. As of July 8, 2013, there has been no explanation offered by the agency, nor any citation to its statutory authority for imposition of this fine.

The proposed effective date is 30 days after approval by the legislative subcommittee or July 1, 2013.

**CONTROVERSY:** This rule may be controversial. Outdoor advertisers may have disagreements with the specific requirements for granting the permit and other requirements such as the bonding requirement.

**FINANCIAL IMPACT:** The cost is \$80 to any sign owner that applies for and is granted a permit that is for a two year period of time. There is no cost to the agency to implement the rule. The program will be implemented with existing staff.

**LEGAL AUTHORIZATION:** The State Highway Commission is authorized "[t]o adopt reasonable rules and regulations from time to time for the protection of, and covering, traffic on and in the use of the state highway system and in controlling use of, and access to, the highways." Ark. Code Ann. § 27-65-107(a)(14). The commission is also authorized "[t]o establish by properly promulgated and adopted rules reasonable fees that are necessary to carry out the powers and duties of the commission for applications, permits, licenses, and other administrative purposes including but not limited to driveways, logos, billboards, signage, sign visibility, and weight restricted roadway maintenance, to support the administration and operation of programs for which the fees are assessed." Ark. Code Ann. § 27-65-107(a)(17).

