

Permanent Rulemaking Hearing

2 CCR 601-3

“Rules Governing Outdoor Advertising in Colorado”

Exhibits

Rulemaking Hearing on the Rules Governing Outdoor Advertising in Colorado

2 CCR 601-3 Index of Exhibits

Exhibit	Description
1	A. Delegation of Authority from the Executive Director to the Deputy Executive Director to open the outdoor advertising rules. B. Notice of Rulemaking from the Deputy Executive Director, the Executive Director's Designee, opening the rulemaking process and delegating authority to an administrative hearing officer.
2	A. Confirmation that proposed rules were noticed with the SOS on August 31, 2021. B. Proposed Permanent Rules filed with the SOS to open rule making. C. Notice of Rulemaking Hearing published in Colorado Register on September 10, 2021. D. Notice required to be posted at least five days prior to the hearing.
3	A. DORA Notice of Rulemaking Confirmation dated August 31, 2021. B. Verification of DORA's Publication of Hearing Date. C. DORA Notice to Stakeholders re: Cost-Benefit Analysis. D. DORA Notice that no Cost-Benefit Analysis is necessary.
4	Screenshot of CDOT rules website indicating that CDOT posted rulemaking hearing date, time, and location on CDOT website 5 days prior to the hearing.
5	Proposed Statement of Basis and Purpose and Statutory Authority.
6	Senate Bill 21-263
7	A. Adoption of Emergency Rules. B. Notice of Adoption of Emergency Rules. C. Questions and Answers. D. Summary of Proposed Emergency Rule Changes. E. Request for AGO Opinion. F. AGO Opinion. G. Rule Filing Confirmation. H. Publication in Colorado Register. I. Comments on the ER Rules. J. Emails to Stakeholders.
8	A. List of Representative Group Members. B. Email to Representative Group dated August 04, 2021. C. Email dated September 1, 2021, to Representative Group regarding notice of hearing and proposed permanent rules. D. Comments received on or before August 18, 2021.
9	A. Email to Interested Parties dated August 04, 2021. B. Email dated September 1, 2021, to Interested Parties regarding notice of hearing and proposed permanent rules.
10	Memo to maintain permanent rulemaking record
11	A. Rulemaking Hearing Registration Form B. Rulemaking Hearing Attendance Sheet
12	Written Comments
13	A. Rulemaking Hearing Recording B. Rulemaking Hearing Recording Transcript
14	Delegation of Authority dated September 20, 2021, from ED Lew to Deputy ED Stockinger

Exhibit 1

**COLORADO****Department of Transportation**

Office of the Executive Director

2829 W. Howard Place
Denver, CO 80204-2305

Delegation of Rulemaking Authority
Rules Governing Outdoor Advertising in Colorado, 2 CCR 601-3, *et seq.*

I, Shoshana Lew, Executive Director of the Colorado Department of Transportation in my absence during the week of August 1, 2021, hereby delegate and/or assign all duties relating to the adoption of emergency rules governing outdoor advertising in Colorado, 2 CCR 601-3, *et seq.* and the authorization to commence permanent rulemaking to Herman Stockinger, Deputy Executive Director of the Colorado Department of Transportation pursuant to § 43-1-105, § 43-1-107, C.R.S. and other relevant authority.

Shoshana Lew
Executive Director

8/3/2021

Date



**COLORADO****Department of Transportation**

Office of the Executive Director

2829 W. Howard Place
Denver, CO 80204-2305**NOTICE OF COMMENCEMENT OF PERMANENT RULEMAKING**

Pursuant to the authority granted by §§ 43-1-105(6), 43-1-107, 24-4-103, 24-4-105(11), 43-1-414(4) and 43-1-415, C.R.S., the Executive Director of the Colorado Department of Transportation (the "Department") hereby authorizes the Department to commence permanent rulemaking with regards to Rules Governing Outdoor Advertising in Colorado, 2 CCR 601-3, and appoints a CDOT Administrative Hearing Officer to conduct a rulemaking hearing and to develop a summary and recommendation, which will then be submitted to the Executive Director for review and decision.

Herman Stockinger
Acting on behalf of the Executive Director
Colorado Department of Transportation

_____ 8/4/2021 _____
Date



Exhibit 2



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Official Publication of the State Administrative Rules (24-4-103(11) C.R.S.)

Click on the Tracking Number to see more details

Tracking Number	Agency	CCR Number	CCR Title	Type of Filing	Notice Filed with SOS	Adopted Date	AG Opinion Issued	Rules Filed with SOS/OLLS	Effective Date	Inserted into CCR	Terminated
2021-00561	Transportation Commission and Office of Transportation Safety	2 CCR 601-3	RULES GOVERNING OUTDOOR ADVERTISING IN COLORADO	Permanent	08/31/2021 19:46:20						

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Details of Tracking Number 2021-00561

CCR details

Tracking Number	2021-00561
Type of Filing	Permanent Rule
Department	600 Department of Transportation
Agency	601 Transportation Commission and Office of Transportation Safety
CCR Number	2 CCR 601-3
CCR Title	RULES GOVERNING OUTDOOR ADVERTISING IN COLORADO

Proposed rule

Notice Filed with SOS	08/31/2021
Rule	ProposedRuleAttach2021-00561.pdf
Additional Information	AddInfoAttach2021-00561.pdf
Statutory Authority	§§ 43-1-105(6), 43-1-414(4), and 43-1-415, C.R.S

Description of Subjects/Issues

The specific purpose of this rulemaking is to consider changes to align CDOT's processes for permitting and enforcement of outdoor advertising devices with Senate Bill 21-263. CDOT proposes to establish a new compensation-based approach within the rules for permitting and enforcement of outdoor advertising devices in areas near interstates and state highways and visible to the traveling public from the roadway. The previous categories of outdoor advertising devices (i.e., On-Premise Sign, Off-Premise Sign, Official Sign, and Directional Sign) will be removed from the rules. The noncompliance requirements will be modified to give a property owner or sign owner the option to execute an affidavit in the event the property owner or sign owner does not believe their sign is an advertising device requiring a CDOT permit. The hearing procedures will be modified to allow an applicant who was denied a permit to request an expedited hearing within 30 days of the notice of denial. The proposed rules also clarify that Changeable Electronic Variable Message Signs may not be within 1000 feet of each other that are facing the same direction. The materials incorporated by reference will be updated. A new proposed rule will be added to allow interested and affected parties to petition for a declaratory order to increase transparency and be in compliance with the Colorado Administrative Procedure Act. Finally, other non-substantive changes will be made.

Comments

You must click on the registration link in the table within the attachment to register for the hearing. When you register, you must provide your full name and email address. You may also provide your telephone number and the organization that you are representing. Finally, please indicate whether you plan to testify during the hearing and/or submit written comments. When you submit your registration, you should receive a confirmation email including details about how to join the webinar. You can also find the registration link on CDOT website at <https://www.codot.gov/business/rules/proposed-rules>.

Submitted in response to issues raised by COLS/OLLS?

Is this rule adopted in response to recent legislation?

Hearing Date	10/01/2021
Hearing Time	10:00 AM
Hearing Location	Department of Transportation Headquarters, 2829 W. Howard Place Denver, CO 80204, Virtual Rulemaking Hearing Only
Contact Name	Natalie Lutz
Contact Title	Rules, Policies and Procedures Administrator
Contact Telephone	303-757-9441
Contact email	natalie.lutz@state.co.us

Adopted rule

Adopted Rules

Redline

AGO requested date

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DEPARTMENT OF TRANSPORTATION

Executive Director

RULES GOVERNING OUTDOOR ADVERTISING IN COLORADO

2 CCR 601-3

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

8.31.21 Version

Please note the following formatting key:

Font Effect	Meaning
<u>Underline</u>	New Language from Emergency Rule
Strikethrough	Deletions from Emergency Rule
<u>Underline</u>	New Language Proposed for Permanent Rule
Strikethrough	Deletions Proposed for Permanent Rule
...	Omission of Unaffected Rules
[Blue Font Text]	Annotation

...

1.00 Definitions

1.1 All definitions set forth in 23 C.F.R. § 750.102, 23 C.F.R. § 750.703, and § 43-1-403, C.R.S. shall apply to these Rules. If there is a conflict between the definitions in state and federal law and regulations and these Rules, the state and federal law definitions shall govern. Definitions are not listed in alphabetical order.

1.2 "Advertising Device" ~~means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, structure, or any other contrivance designed, intended, or used to advertise or to give information in the nature of advertising and having the capacity of being visible from the main traveled way of any state highway, except any advertising device on a vehicle using the highway. The term "vehicle using the highway" does not include any vehicle parked near said highway for advertising purposes. has the same meaning pursuant to~~ § 43-1-403(1), C.R.S.]

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- 1.6 ~~“Commercial Advertising” means advertising of commercial interests which promotes or identifies goods and/or services as a result of the exposure of the business name rather than advocating a social or political cause. Repealed.~~

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- 1.8 ~~“Comprehensive Development” shall include all land used or to be used or occupied for the activities of the development, including buildings, parking, storage and service areas, streets, driveways, and reasonably necessary landscaped areas. A Comprehensive Development includes only land that is used for a purpose reasonably related to the activities of the development other than an attempt to qualify the land for On-Premise advertising. has the same meaning pursuant to ~~{§ 43-1-403 (1.5)(a), C.R.S.}~~~~

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- 1.12 ~~“Directional Sign” shall have the same meaning as § 43-1-403(4), C.R.S. (i.e., shall include but not be limited to: Advertising devices containing directional information to facilitate emergency vehicle access to remote locations or about public places owned or operated by federal, state, or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public). Repealed.~~

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- 1.18 ~~“Off-Premise Sign” means an Advertising Device which advertises an activity, service or product not conducted on the Property upon which the Sign is located. Repealed.~~
- 1.19 ~~“Official Sign” shall have the same meaning as § 43-1-403(13), C.R.S. (Any advertising device erected for a public purpose authorized by law, but the term shall not include devices advertising any private business) Repealed.~~
- 1.20 ~~“On-Premise Sign” means an Advertising Device: (1) advertising the sale or lease of a Property on which it is located; (2) or advertising activities on the Property on which it is located; or (3) located within a Comprehensive Development that advertises any activity conducted within the Comprehensive Development. Repealed.~~

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- 1.23 ~~“Permit Number Identifier” means a series of numbers assigned by the Department that is unique to the Advertising Device and identifies it for purposes of oversight. The Permit Number~~

~~Identifier for Advertising Devices is different from the number identifier used for Official Signs (that do not require a Permit).~~

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1.25 ~~“Premises” means the central, actual physical location where an activity is routinely conducted. Premises include the primary structures, parking facilities and private roadway if they are necessary to the principal activity.~~Repealed.

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1.34 “Compensation” has the same meaning pursuant to § 43-1-403 (1.3), C.R.S.

2.00 Permitting

2.1 Signs Requiring a CDOT Permit

- A. A permit from the Department shall be required for all Signs within the Control Area as provided for in § 43-1-407 and 408, C.R.S. A permit is required for all ~~Off-Premise~~ Signs, including:
1. Nonconforming Advertising Devices [§ 43-1-403(12), C.R.S.];
 2. Advertising Devices located in areas Zoned for Commercial or Industrial Uses by law. [§ 43-1-404(1)(d) and (e), and § 43-1-407(1)(~~II~~)(c), C.R.S.]; and
 3. Advertising on Bus Benches and Shelters. [§ 43-1-407(2)(a)(I) through (III), C.R.S.]
 4. ~~Directional Signs not excepted under § 43-1-407(1)(b)(I) through (II), C.R.S.~~Repealed.

2.2 ~~Signs Not Requiring a Permit from CDOT~~Repealed.

- A. ~~A Sign Permit is not required for:~~
1. ~~On-Premise Signs;~~
 2. ~~Directional Signs that are:~~
 - a. ~~No larger than 8 square feet and that advertises farms, ranches, nonprofit educational, veterans’, religious, charitable, or civic organizations. §43-1-407(1)(b)(II), C.R.S.;~~
 - b. ~~No larger than 32 square feet, the sole purpose of which is to provide direction to individual farms or ranches by way of individual Signs that are no larger than 8 square feet. [§43-1-407(1)(b)(II), C.R.S.];~~

~~c. — A Sign indicating a public utility and not advertising a product, including informational Signs, notices, or markers, erected and maintained by a public or private public utility company. [23 C.F.R. 750.153(o)]~~

~~3. — Official Signs. [§ 43-1-404(1)(a) and § 43-1-407, C.R.S.]~~

2.3 Conditions that Prohibit CDOT from Issuing or Renewing a Permit [§ 43-1-411, and § 43-1-417(3)(a), C.R.S. and 23 C.F.R. § 750.108]

- A. The Department is prohibited from issuing ~~or renewing~~ a Permit for any Advertising Device pursuant to § 43-1-411, C.R.S. and 23 C.F.R. § 750.108 if the Sign:
1. Does not conform to size, lighting, and spacing standards as prescribed by these Rules where the Rules were adopted prior to the erection of the Advertising Device;
 2. Would encroach upon the right-of-way of a public highway absent prior written approval from the Department;
 3. Is within 500 feet of the center point of an intersection of a Controlled Route at grade with another highway or with a railroad so as to materially obstruct or reduce the existing view of traffic on the other highway or railway trains approaching the intersection;
 4. Is along a Controlled Route where it would reduce the existing view of traffic in either direction or of traffic control or official highway ~~Signs-signs~~ to less than 500 feet;
 5. Includes more than two advertising panels on an Advertising Device facing the same direction;
 6. Required a permit prior to July 1, 1981, and no permit was obtained;
 7. Simulates any official, directional, or warning ~~Sign-sign~~ erected or maintained by the federal or state government or local governing body which involves light that simulates or resembles traffic signals or traffic control ~~Signs-signs~~;
 8. Is nailed, tacked, posted, or attached in any manner on trees, plants, fence posts, public utility poles, rocks or other natural objects; or
 9. The Department is prohibited from issuing or renewing a Permit if the Sign becomes ~~Becomes~~ decayed, insecure, or in danger of falling or otherwise is unsafe or unsightly due to lack of maintenance or repair, or from any other cause.

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[Note: Rule 2.11 will be repealed in its entirety and re-enacted as listed below.]

~~**2.11 — Permit Denial, Revocation or Denial of Renewal** [23 C.F.R. 750.104; § 43-1-410, C.R.S.]~~

- ~~A. The Department may deny, revoke, or deny the renewal of a Permit for any violation of state or federal law or these Rules, including but not limited to:~~
- ~~1. False or misleading information in the Permit application or Renewal;~~
 - ~~2. Advertisement of illegal activities;~~
 - ~~3. Failure to maintain the Sign in good repair;~~
 - ~~4. Failure to comply with all Permit provisions;~~
 - ~~5. Increasing the permitted size of an Advertising Device; or~~
 - ~~6. Any violation of federal law referenced herein, § 43-1-401, et seq., C.R.S. or these Rules.~~
- ~~B. Pursuant to § 43-1-412(4), C.R.S., the applicant or permit holder shall have 60 days within which to provide CDOT with proof of compliance.~~

2.11 Permit Denial, Revocation, or Denial of Renewal [23 C.F.R. § 750.104; § 43-1-410, C.R.S.]

- ~~A. The Department may deny, revoke, or deny the renewal of a Permit for any violation of state or federal law or these Rules, including but not limited to:~~
- ~~1. False or misleading information in the Permit application or renewal;~~
 - ~~2. Failure to maintain the Sign in good repair;~~
 - ~~3. Failure to comply with all Permit provisions;~~
 - ~~4. Increasing the permitted size of an Advertising Device; or~~
 - ~~5. Any violation of federal law referenced herein, § 43-1-401, et seq., C.R.S. or these Rules.~~
- ~~B. The Department will notify the Applicant or Permittee in writing stating the reasons for the denial of the application, the denial of the renewal of the Permit, or the revocation of the Permit along with the opportunity to request a hearing as set forth in Rule 5.00.~~

3.00 Notice of Noncompliance Pursuant to § 43-1-412, C.R.S.

3.1 ~~Issuance of Written Notice~~Repealed.

- ~~A. If the Department determines that an application for renewal should be denied, or that an existing Permit should be revoked, the Department shall give written notice by certified mail to the Applicant or Permittee.~~
- ~~B. If the Department revokes a Permit, the Department shall send a Notice of Noncompliance pursuant to Rule 3.00 to the Permittee.~~
- ~~C. In either case, the notice shall specify in what respect the Sign does not comply with relevant federal or state law and/or these Rules.~~

~~D. Pursuant to § 43-1-412(4), C.R.S., the applicant or permit holder shall have 60 days within which to provide CDOT with proof of compliance.~~

3.2 Grounds for Noncompliance

- A. Sign ~~Lacking~~lacking a CDOT Permit [§ 43-1-412(2)(a), C.R.S.]
1. If a Permit has not been obtained for the Advertising Device, the Department shall give written Notice of Noncompliance by certified mail to the owner of the Property on which the Sign is located. Such notice will:
 - a. Inform the Property owner that the Advertising Device is illegal;
 - b. Require the owner to remove the Sign within 60 days of receipt of the notice, execute an affidavit under the penalty of perjury as evidence that the device is not an Advertising Device, or obtain a permit; and
 - c. Advise the Property owner of the right to request a hearing.

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- C. Permit ~~Application~~Revoked or Renewal Denied. § 43-1-412(2)(c), C.R.S.

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[Note: Rule 5.00 will be repealed in its entirety and re-enacted as listed below.]

~~5.00 Request for Hearing~~

- ~~A. A request for a hearing must be received by the Department no later than 60 days after receipt of the notice. [§ 43-1-412(3), C.R.S.]~~
- ~~B. The request for hearing must be made in writing, by certified mail, addressed to and received by:~~
- ~~Outdoor Advertising Program
Colorado Dept. of Transportation
4201 East Arkansas Ave.
Denver, Colorado, 80222~~
- ~~C. Upon receipt of a request for a hearing, the Department shall arrange for and give written notice of the hearing.~~
- ~~D. At least 30 days prior to the hearing, the Department shall provide notice of the hearing either by personal service or certified mail to the last address furnished by the person requesting the hearing. The notice shall meet the requirements of § 24-4-105(2)(a), C.R.S.~~

- ~~E. Any person(s) given such notice shall file a written answer within 30 days after the service or mailing of such notice.~~
- ~~F. If such person fails to answer, the Department, upon motion, may enter a default. For good cause shown, the entry of default may be set aside within 10 days after the date of such entry. [§ 24-4-105(2)(b), C.R.S.]~~
- ~~G. A person who may be affected or aggrieved by the Department action shall be admitted as a party to the proceeding upon the person's filing with the Department a written request to be included, setting forth a brief statement of the facts which entitle the person to be admitted and the matters which should be decided. The Department may admit any person or agency as a party to the proceeding for limited purposes. [§ 24-4-105(2)(c), C.R.S.]~~
- ~~H. The hearing shall be presided over by an Administrative Law Judge pursuant to § 24-4-105(3), C.R.S.~~

5.00 Hearings

5.1 Request for Hearing

- ~~A. A request for a hearing must be received by the Department no later than sixty (60) days after receipt of the notice. An Applicant who was denied a Permit may request an expedited hearing within thirty (30) days of the notice of denial pursuant to § 43-1-408(3), C.R.S.~~
- ~~B. The request for hearing must be made in writing, by certified mail, addressed to and received by:~~
- ~~Colorado Department of Transportation
Outdoor Advertising Program
2829 W. Howard Place
Denver, Colorado, 80204~~
- ~~C. All hearings and appeals will be conducted pursuant to §§ 24-4-105 and 106, C.R.S.~~

6.00 Signs Allowed in Control Areas

[§ 43-1-404, C.R.S., 23 USC 131, 23 C.F.R. 750.105; 23 C.F.R. 750.108]

6.01 Advertising Devices Allowed

- A. The following Signs may be allowed within the Control Area adjacent to the Controlled Route:
1. ~~On-Premise Signs~~~~Repealed~~;
 2. ~~Off-Premise Signs~~~~Advertising Devices~~, which include:
 - a. Signs in Areas Zoned for Commercial or Industrial Uses²;

- b. Nonconforming Signs;
- c. ~~Directional and Official Signs Repealed;~~
- d. Advertising Devices on Scenic Byways (See Rule 9.00);
- e. ~~Landmark Signs Repealed;~~
- f. ~~Free Coffee Signs Repealed;~~
- g. ~~Tourist-Oriented Directional Signs (TODS) and Specific Information Signs (LOGO). Rules Governing TODS and LOGO Signs are addressed in a separate set of rules, 2 CCR 601-7 Repealed; and~~
- h. Changeable Electronic Variable Message Signs (“CEVMS”).

6.02 ~~On-Premise Signs Repealed.~~

~~{23 U.S.C. 131(c) and (j); 23 C.F.R. 750.704(a); 23 C.F.R. 750.105, 23 C.F.R. 750.108, and 23 C.F.R. 750.709(d)}~~

~~A. Authority. This section of the Rules pertains to On-Premise Signs located outside of 50 feet from the advertised or principal activity and Visible from the Main Travelled Way of the State Highway System.~~

~~1. Size~~

- ~~a. On-Premise Signs which are located outside of 50 feet from the advertised or principal activity shall not exceed 20 feet in length, width or height, or 150 square feet in area, including border and trim, but excluding supports. [23 C.F.R. 750.108(g)].~~
- ~~b. No Sign may attempt or appear to attempt to direct the movement of traffic or interfere with, imitate or resemble any official traffic sign, signal or device.~~
- ~~c. No Sign may prevent the driver of a vehicle from having a clear and unobstructed view of Official Signs and approaching or merging traffic.~~
- ~~d. No Sign may be erected or maintained upon trees or painted or drawn upon rocks or other natural features.~~
- ~~e. No On-Premise Sign may be erected in an area across a public or private roadway from the Property where the business is conducted unless the purpose of the public or private roadway is for the exclusive use of a Comprehensive Development.~~

~~2. Lighting~~

- ~~a. On-Premise Signs shall comply with the lighting requirements of § 43-1-404(1)(f)(i), C.R.S.; however, for purposes of spacing, On-Premise Signs~~

~~shall not be counted within the 1,000 feet limitation for Off-Premise Signs.~~

- ~~b. No Sign may contain, include, or be illuminated by any flashing, intermittent or moving light or lights.~~
 - ~~c. No lighting may be used in any way in connection with any Sign unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the Main-Traveled Way of the State Highway System or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.~~
 - ~~d. No On-Premise Sign may move or have any animated or moving parts.~~
- ~~B. An On-Premise Sign must be located upon the same Property as the activity advertised. An On-Premise Sign may:~~
- ~~1. Advertise the principal or primary activities, goods or services available upon the premises;~~
 - ~~2. Identify the property upon which the Sign is located;~~
 - ~~3. Advertise the property upon which the Sign is located for sale or lease;~~
 - ~~4. When located within a Comprehensive Development, advertise activities conducted within the Comprehensive Development;~~
 - ~~5. Direct the traveling public to the closest entrance to the premises located upon the property;~~
 - ~~6. Include non-Commercial Advertising devices (ex. religious, social or political commentaries) erected by the owner or lessee of property.~~
- ~~C. Where the Sign site is located at or near the end of a narrow strip contiguous to the advertised activity, the Sign site shall not be considered part of the Premises on which the activity being advertised is conducted when the purpose is clearly to circumvent 23 U.S.C. 131(j). See 23 C.F.R. 750.709(3).~~
- ~~D. An On-Premise Sign does not include:~~
- ~~1. A Sign that advertises activities, goods, or services not available upon the property.~~
 - ~~2. A Sign that consists principally of brand name or trade name advertising of a product or service which is only incidental to the principal activity conducted upon the premises.~~
 - ~~3. A Sign which brings in rental income to the premise/property and /or Sign owner. [23 C.F.R. 750.709]~~

- ~~E. On-Premise Signs that Identify the Property upon which They Are Located.~~
- ~~1. An On-Premise Sign identifying the property upon which it is located shall contain only the:
 - ~~a. Name of the property,~~
 - ~~b. Type of property,~~
 - ~~c. Logo, and/or~~
 - ~~d. Name of the owner of the property.~~~~
 - ~~2. Such Signs may also direct the traveling public to the closest entrance to the premises.~~
 - ~~3. On-Premise Signs directing the travelling public to the closest entrance to the premises are limited to two Signs Visible to traffic proceeding in any one direction if the highway frontage of the property is less than one mile in length.~~
 - ~~4. If the highway frontage of the property is more than one mile in length, one Sign Visible to traffic proceeding in any one direction per mile is allowed.~~
 - ~~5. The purpose of such Signs shall not be to advertise specific goods or services available upon the premises.~~
- ~~F. On-Premise Signs that Advertise the Primary Activities, Goods or Services Conducted on the Premises which are located outside of 50 feet from the activity shall not exceed 20 feet in length, width or height, or 150 square feet in area, including border and trim, but excluding supports. [23 C.F.R. 750.108(g)]~~
- ~~G. On-Premise Signs that Advertise the Sale or Lease of the Property upon which the Sign is Located.~~
- ~~1. An On-Premise Sign that advertises the sale or lease of the property may not contain any product or service other than the logo and/or name, type of real property, address, and contact information of the party offering the property for sale or lease.~~
 - ~~2. Real property offered for sale or lease must only be for the uses of record for zoned or platted areas.~~
 - ~~3. On-Premise Signs advertising the sale or lease of the property are limited to one Sign Visible to traffic proceeding in any one direction less than one mile apart.~~
 - ~~4. On-Premise Signs advertising the sale or lease of the property may be no larger than 96 square feet including border and trim, but excluding supports.~~
 - ~~5. Not more than one such Sign advertising the sale or lease of the same property may be allowed in such manner as to be visible to traffic proceeding in any one direction on any one Interstate Highway. [23 C.F.R. 750. 105(a)].~~

~~H. On-Premise Signs – Non-Commercial:~~

- ~~1. Non-commercial Signs are limited to two Signs visible to traffic proceeding in any one direction if the highway frontage of the property upon which the premises is located is less than one mile in length.~~
- ~~2. If the highway frontage of the property upon which the premises is located is more than one mile in length, one non-commercial Sign visible to traffic proceeding in any one direction per mile is allowable.~~

~~I. A property owner who has an On-Premise Sign that was in existence upon the property on the effective date of these Rules and who could have reasonably believed such advertising device was on-premise under prior rules shall be allowed one year from the effective date of the Rules to bring such advertising device into compliance with these Rules.~~

~~J. Measurement of On-Premise Signs~~

- ~~1. These Rules do not apply to On-Premise Signs located within 50 feet of the principal activity.~~
- ~~2. When the advertised activity is a business, is commercial, or concerns industrial land use, the 50-foot distance shall be measured from the regularly used buildings, parking lots, storage or processing areas, or other structures which are essential and customary to the conduct of the business. The distance shall not be measured from driveways, fences, or similar facilities.~~
- ~~3. When the advertised activity is a non-commercial or non-industrial land use such as a residence, farm, or orchard, the 50-foot distance shall be measured from the major structures on the Property.~~
- ~~4. A Sign that is located within 50 feet of the premises and advertises the primary activities, goods and services available upon the premises is an On-Premise Sign unless the land upon which the Sign is located is used for, or devoted to, a separate purpose unrelated to the principal activity advertised. For example, land adjacent to or adjoining a service station, but devoted to raising of crops, residence, or farmstead uses or other commercial or industrial uses having no direct relationship to the service station activity is a separate purpose unrelated to the principal activity advertised.~~

~~K. Obsolescence of On-Premise Signs~~

- ~~1. Upon the termination or cessation for one consecutive year of the activities, services or products advertised by an On-Premise Sign, the Sign advertising the activity shall no longer qualify as an On-Premise Sign and shall be deemed illegal and subject to removal by the Department at the expense of the Sign owner.~~

~~L. On-Premise Signs – Right-of-Way Encroachment~~

- ~~1. On-Premise Signs shall be allowed to extend over existing right-of-way and future rights-of-way of any State Highway if:
 - ~~a. The Sign is attached to and extends from a building and only advertises activities or services offered in that building;~~
 - ~~b. The building and attached Sign is adjacent to the State Highway within a city, city and county, or incorporated town having authority over the State Highway pursuant to § 43-2-135, C.R.S.;~~
 - ~~c. The Sign does not restrict pedestrian traffic and is not a safety hazard to the motoring public; and~~
 - ~~d. Before erecting the Sign, the owner has obtained written permission from the city, city and county or incorporated town. [§ 43-1-421, C.R.S.]~~~~
- ~~2. No On-Premise Sign may encroach over an Interstate right-of-way nor any portion of a roadway.~~

~~M. Comprehensive Development On-Premise Signs~~

- ~~1. On-Premise Signs for Comprehensive Developments shall adhere to the requirements of On-Premise Signs in Rule 6.02.~~
- ~~2. A Comprehensive Development includes all land used or to be used or occupied for the activities of the development, including buildings, parking, storage and service areas, streets, driveways, and reasonably necessary landscaped areas.~~
- ~~3. A Comprehensive Development includes only land that is used for a purpose reasonably related to the activities of the development other than an attempt to qualify the land for On-Premise advertising.~~
- ~~4. A Comprehensive Development is a group of two or more lots or parcels of land used primarily for multiple separate commercial or industrial activities and must meet all of the following requirements pursuant to § 43-1-403 (1.5)(a) and (b); C.R.S.:
 - ~~a. Is located entirely on one side of a highway;~~
 - ~~b. Consists of lots or parcels that are contiguous except for public or private roadways or driveways that provide access to the development;~~
 - ~~c. Has been approved by the relevant local government as a development with a common identity and plan for public and private improvements;~~
 - ~~d. Has common areas such as parking, amenities, and landscaping; and~~
 - ~~e. Has an approved plan of common ownership in which the owners have recorded irrevocable rights to use common areas and that provides for the management and maintenance of common areas.~~~~

6.03 ~~Off-Premise Signs~~ Advertising Devices**6.03.1 General Requirements**

- A. ~~Off-Premise~~ Signs include:
1. Signs in Areas Zoned for Commercial or Industrial Uses;
 2. Nonconforming Signs;
 3. ~~Directional and Official Signs~~Repealed; and
 4. Advertising Devices on Scenic Byways~~;~~
 5. ~~Landmark Signs, and~~Repealed.
 6. ~~Free Coffee Signs~~Repealed.
- B. An ~~Off-Premise Sign~~Advertising Device shall comply with the requirements set forth in these Rules and 23 C.F.R. § 750.108. All Signs shall not:
-
2. Interfere with a driver's clear and unobstructed view of ~~Official Signs~~official signs and approaching, intersecting or merging traffic; [23 C.F.R. § 750.108(b)]
-
- C. No ~~Off-Premise Sign~~new Advertising Device shall be erected adjacent to a Scenic Byway, ~~except for Directional and Official Signs~~. [§ 43-1-419, C.R.S.]
- D. ~~An Off-Premise~~A Sign shall be considered abandoned if it meets the requirements of Rule 6.03.3-(B).
- E. Measuring Distances between ~~Off-Premise~~ Signs [23 C.F.R. § 750.103]
-

6.03.3 Sign Repairs [23 C.F.R. § 750.707; § 43-1-413, C.R.S.]

-
- B. Abandoned, Discontinued or Obsolete Nonconforming Signs. [23 U.S.C. § 131; 23 C.F.R. § 750.707; § 43-1-413(2)(f), C.R.S.]
1. Abandoned or Discontinued Signs

- a. An abandoned or discontinued Sign is one that for one year or more ~~years displays out-of-date advertising matter, or~~ is without advertising matter, or is in need of substantial repair. Such Signs determined by the Department as abandoned or discontinued are subject to removal as Illegal Signs under § 43-1-412, C.R.S.

...

- C. Damage or Destruction of Nonconforming Signs. [23 C.F.R. § 750.707(d)(6); § 43-1-413(2)(e), C.R.S.]

...

- 4. The Department shall determine whether a Sign has been damaged or destroyed to a degree that terminates the Nonconforming Sign’s nonconforming status based on the schedule of compensation referenced in § 43-1-413(2)(e), C.R.S., as follows:

...

- d. The procedure under (1) through (5) below shall determine whether the damaged or destroyed Nonconforming Sign may be repaired or restored:

...

- (5) The Department shall make a determination whether the ~~sign~~ Sign may be repaired or restored based on (3) and

...

7.00 Signs in Areas Zoned by Law for Industrial or Commercial Uses

[23 C.F.R. § 750.708; § 43-1-404(1)(e)(I); § 43-1-406(2)(b)(I) and (II), C.R.S.]

...

- B. Size Requirements [§ 43-1-404(1), C.R.S.]

...

5. ~~Requirements for Signs Erected After 1970 Advertising Necessary Goods and Services Repealed.~~
- a. ~~Advertising Devices located along non-interstate Controlled Routes shall be subject to the following requirements:~~
- (1) ~~Only inform the traveling public of necessary goods or services available within a five-mile radius of the Advertising Device. Necessary goods and services shall be limited to those set forth in § 43-1-404(1)(e)(I)(c), C.R.S.~~
- (2) ~~No person providing necessary goods or services shall be eligible for more than two Advertising Devices.~~
- (3) ~~The Advertising Device shall predominately display the name and location of the necessary goods or services advertised.~~
- (4) ~~If the necessary goods and services are not available 12 months out of the year, the Sign must clearly display the dates such goods and services are available.~~

C. Lighting

1. Advertising Devices that contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, ~~except those giving public service information, such as time, date, temperature, weather, or similar information.~~

...

D. Spacing of Signs

...

6. Signs that are not lawfully maintained, ~~and Official and On-Premise Signs as defined in 23 U.S.C. 131(c) and these Rules,~~ shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.

...

8.00 ~~Directional and Official Signs Repealed.~~

~~[§ 43-1-403(4), C.R.S.; 23 U.S.C 131(c)(1); 23 C.F.R. 750.105; 23 C.F.R. 750.153]~~

~~A. CDOT's Jurisdiction over Directional and Official Signs.~~

- ~~1. Directional and Official Signs under CDOT control are located within 660 feet of the right-of-way and Directional and Official Signs located beyond 660 feet of the right-of-way outside of Urban Areas, Visible from the Main Traveled Way of the system, and erected with the purpose of their message being read from such Main Traveled Way.~~
- ~~2. Urban Area means an area as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by CDOT and local officials, subject to approval by the Secretary of Transportation. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of the Census. [23 C.F.R. 750.153(t)]~~

~~B. Definitions. The Definitions listed below are specific to this Rule on Directional and Official Signs.~~

- ~~1. "Directional Sign" includes, but is not limited to:~~
 - ~~a. Signs containing directional information to facilitate emergency vehicle access to remote locations;~~
 - ~~b. Signs referring to public places owned or operated by federal, state, or local governments or their agencies;~~
 - ~~c. Publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites;~~
 - ~~d. Areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public. 23 C.F.R. 750.153(r); § 43-1-403 (4) C.R.S.; or~~
 - ~~e. Public utility signs, service club and religious notices, and public service signs. [23 C.F.R. 750.153(m)]~~
- ~~2. A "Notice" for purposes of this section of the Rules is a temporary sign providing the content as stated in the "Official Sign" or "Public Utility Sign" definitions but which is posted for a limited time.~~
- ~~3. "Official Sign" is a Sign erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction pursuant to federal, state or local law and for the purposes of carrying out an official duty or responsibility. Historical markers authorized by State law and erected by CDOT or local government agencies or nonprofit historical societies may be considered Official Signs. [23 C.F.R. 750.153 (n)] Official Signs shall not include Signs advertising any private business. [§43-1-403(13), C.R.S.]~~
- ~~4. "Public Service Sign" located on school bus stop shelters:~~

Executive Director

- a. Identifies the donor, sponsor, or contributor of said shelters;
 - b. Contains public service messages, which shall occupy not less than 50% of the area of the Sign;
 - c. Contains no other message;
 - d. Is located on school bus shelters which are authorized or approved by city, county, or state law, regulation, or ordinance, and at places approved by the city, county, or the Department; and
 - e. May not exceed 32 square feet in area. Not more than one Sign on each shelter shall face in any one direction. [23 C.F.R. 750.153(q)]
5. "Public Utility Sign" means a warning sign, informational sign, notice, or marker that is customarily erected and maintained by publicly or privately owned public utilities, as essential to their operations. [23 C.F.R. 750.153(o)]
6. "Service club" or "Religious" signs or notices mean a sign or notice whose erection is authorized by law, relating to meetings of nonprofit service clubs or charitable associations, or religious services, which signs or notices do not exceed 8 square feet in area. [23 C.F.R. 750.153(p)]
- C. Criteria for Directional Signs [23 C.F.R. 170.154(f)]
- 1. Prohibited Signs. The following Directional Sign conditions are prohibited:
 - a. Directional Signs advertising activities that are illegal under federal or state laws or regulations in effect at the location of those Signs or at the location of those activities.
 - b. Directional Signs that obscure or otherwise interfere with the effectiveness of any official traffic sign, signal or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.
 - c. Directional Signs erected or maintained upon trees or painted or drawn upon rocks or other natural features.
 - d. Directional Signs that are:
 - (1) Obsolete;
 - (2) Structurally unsafe or in disrepair;
 - (3) Move or have any animated or moving parts;
 - (4) Located in Rest Areas, Parklands or Scenic Areas.
 - 2. Size of Directional Signs

a. ~~No Directional Sign shall exceed the following limits, including border and trim, but exclude supports:~~

~~Maximum area—150 square feet;~~

~~Maximum height—20 feet;~~

~~Maximum length—20 feet.~~

3. ~~Lighting of Directional Signs~~

a. ~~The following lighting conditions are prohibited:~~

(1) ~~Signs that contain, include, or are illuminated by any flashing, intermittent, or moving light or lights.~~

(2) ~~Signs that are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle.~~

(3) ~~Signs that are illuminated so as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal.~~

4. ~~Spacing of Directional Signs~~

a. ~~Each location of a Directional Sign must be approved by the Department.~~

b. ~~No Directional Sign may be located within 2,000 feet of an interchange, or intersection at grade along the interstate system or other freeways (measured along the Interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the Main Traveled Way).~~

c. ~~No Directional Sign may be located within 2,000 feet of a Rest Area, Parkland, or Scenic Area. A scenic area means any public park or area of particular scenic beauty or historical significance designated by or pursuant to state law as a scenic area.~~

d. ~~No two Directional Signs facing the same direction of travel shall be spaced less than one (1) mile apart;~~

e. ~~Not more than three Directional Signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity;~~

~~f. Directional Signs located adjacent to the interstate system shall be within 75 air miles of the activity; and~~

~~g. Directional Signs located on other than the interstate system, including adjacent to the primary system, shall be within 50 air miles of the activity.~~

~~5. Message Content~~

~~a. The message on Directional Signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit numbers.~~

~~Descriptive words or phrases, and pictorial or photographic representations of the activity or its environs are prohibited.~~

~~D. Directional Signs Pertaining to Privately Owned Activities [23 C.F.R. 750.154]~~

~~1. Privately owned activities or attractions eligible for Directional Signing must meet the requirements of these Rules and state and federal law, and must be nationally or regionally known, and of outstanding interest to the traveling public. "Outstanding interest to the travelling public" for purposes of these Rules means for edification and enjoyment of the travelling public and not specifically to generate income for the activity. [23 C.F.R. 750.154 (f)(1) and (2)]~~

~~2. Privately owned activities or attractions eligible for Directional Signing are limited to the following: natural phenomena; scenic attractions; historic, educational, cultural, scientific, and religious sites, and outdoor recreational areas.~~

~~3. To be eligible, privately owned attractions or activities must be nationally or regionally known, and of outstanding interest to the traveling public.~~

9.00 Advertising Devices on Scenic Byways

[§ 43-1-419, C.R.S.; 23 U.S.C. § 131(s)]

•••

B. No new Advertising Device shall be erected along a Scenic Byway that is visible from the Controlled Route, ~~with the exception of:~~

~~1. Official Signs;~~

~~2. On-Premise Signs; and~~

~~3. Directional Signs.~~

...

10.00 ~~Landmark Signs~~ Repealed.

A. ~~No Landmark Signs have been established in Colorado pursuant to 23 C.F.R. 750.710 (a) and (b).~~

11.00 ~~Free Coffee Signs~~ Repealed.

~~[23 U.S.C. 131(c)]~~

A. ~~Signs, displays, and devices advertising the distribution by nonprofit organizations of free coffee to individuals traveling on an interstate or primary system may be located within the Control Area. Free coffee shall include coffee for which a donation may be made but is not required.~~

12.00 ~~Off-Premise~~ CEVMS Advertising Devices

A. Authority. The Department has authority to control the brightness, intervals, spacing and location of ~~Off-Premise~~ CEVMS Advertising Devices along Controlled Routes for the purpose of ensuring safety to the travelling public. [23 USC 131 (c) (3) and (j); 23 C.F.R. § 750.705; § 43-1-404(1)(f), and § 43-1-415(1), C.R.S.]

B. Definitions

...

9. ~~“Public Service Information” means a message on an electronic Sign which provides the time, date, temperature, weather, or information concerning civic or charitable activities~~ Repealed.

...

C. General Requirements

...

2. Location

a. No CEVMS may be placed within 1,000 feet of another CEVMS on the same side of a highway and facing the same direction of travel. ~~On-Premise Signs inside 50 feet of the advertised activity are not counted for purposes of this spacing requirement.~~ [§ 43-1-404(1)(f)(I), C.R.S.]

- b. A CEVMS shall not prevent the driver of a vehicle from having a clear and unobstructed view of ~~Official Signs~~official signs and approaching or merging traffic.

•••

5. Operational Requirements Specific to ~~Off-Premise~~CEVMS Advertising Devices

•••

- D. Conversion from a Static Advertising Device to a CEVMS

•••

4. Site Review. The Department may conduct a site review and inspection prior to permitting a conversion to CEVMS to ensure that the description, location and other information contained in the application for conversion is in compliance with these Rules. [43-1-421(1)(f)(I), C.R.S.]

•••

13.00 Materials Incorporated by Reference

- A. These Rules are intended to be consistent with and not be a replacement for 23 United States Code (U.S.C.) § 131 dated October 1, 2012~~December 4, 2015~~, and its implementing regulations contained in 23 Code of Federal Regulations (C.F.R.) Part 750 in effect as of June 20, 1973, 750.705(h) (Sept. 16, 1975)~~August 23, 1985~~ which are hereby incorporated into the Rules by this reference pursuant to § 24-4-103(12.5), C.R.S., and do not include any later amendments.

1. Copies of the referenced United State Code may be obtained from the following address:

Office of the Law Revision Counsel

U.S. House of Representatives

H2-308 Ford House Office Building

Washington, DC 20515

(202) 226-2411

<https://uscode.house.gov/browse.xhtml>

2. Copies of the referenced Code of Federal Regulations may be obtained from the following address:

U.S. Government Publishing Office

732 North Capitol Street, N.W.

[Washington, DC 20401](https://www.govinfo.gov/)
[\(866\) 512-1800](https://www.govinfo.gov/)
<https://www.govinfo.gov/>

B. Also incorporated by reference are the following documents and do not include any later amendments:

1. Federal Highway Administration (FHWA) Non-Regulatory Supplement Federal-Aid Policy Guide, Transmittal 35 Attachment: Sign and Site Valuation Formula and Schedule Guide for Controlling Outdoor Advertising Pursuant to 23 U.S.C. § 131 dated February 16, 2006, NS 23 C.F.R. 750D, Parts I, II, III.

Copies of the referenced FHWA Transmittal 35 Attachment may be obtained from the following address:

Federal Highway Administration
Office of Chief Counsel
1200 New Jersey Avenue, SE.
E82-101
Washington, DC 20509
(202) 366-1376
https://www.fhwa.dot.gov

2. Uniform Standards of Professional Appraisal Practice (USPAP), 2014-2015-2020-2021 Edition.

Copies of the referenced USPAP may be obtained from the following address:

The Appraisal Foundation
1155 15th Street, NW, Suite 1111
Washington, DC 20005
(202) 347-7722
https://www.appraisalfoundation.org/

C. All referenced laws and regulations shall be available for copying or public inspection during regular business hours from the Office of Policy and Government Relations, Colorado Department of Transportation, 4201 E. Arkansas Avenue 2829 W. Howard Place, Denver, Colorado 8022280204.

14.00 Declaratory Orders

A. Any person may petition the Executive Director for a declaratory order pursuant to § 24-4-105(11), C.R.S.

B. Contents of the Petition

1. The name of address of the petitioner.

Executive Director

2. Whether the petitioner is a Permittee and what interest, if any, they have or would have in the applicable Advertising Device or proposed Advertising Device.
3. Whether the petitioner is involved in any pending administrative hearings or lawsuits with the Department or the relevant local jurisdiction.
4. The statute, rule, or order to which the petition relates.
5. A concise statement of all of the facts necessary to show the nature of the controversy or the uncertainty as to the applicability to the petitioner of the statute, rule, or order to which the petition relates.
6. A concise statement of the legal authorities, if any, and such other reasons upon which the petitioner relies.

C. The Executive Director Retains Discretion Whether to Entertain Petition.

The Executive Director or designee will determine, in their sole discretion without prior notice to the petitioner, whether to entertain any petition. If the Executive Director or designee decides not to entertain a petition, the Department will notify the petitioner in writing of its decision and the reasons for that decision. Any of the following grounds may be sufficient reason to refuse to entertain a petition:

1. A ruling on the petition will not terminate the controversy nor remove uncertainties concerning the applicability to petitioner of the statute, rule, or order in question.
2. The petition involves a subject, question, or issue that is relevant to a pending hearing before the state or any local licensing authority, an on-going proceeding conducted by the Department, or relates to an issue or case which is currently the subject of litigation.
3. The petition seeks a ruling on a moot or hypothetical question.
4. Petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Colo. R. Civ. Pro. 57, which will terminate the controversy or remove any uncertainty concerning applicability of the statute, rule, or order.

D. Executive Director Entertains the Petition.

If the Executive Director or designee determines to entertain the petition for declaratory order, the Department will notify the petitioner, and any of the following procedures may apply:

1. The Executive Director or designee may expedite the matter by ruling on the basis of the facts and legal authority presented in the petition, or by requesting the parties to submit additional evidence and legal argument in writing.
2. In the event the Executive Director or designee determines that an evidentiary hearing is necessary to a ruling on the petition, a hearing will be conducted in

accordance with the State Administrative Procedure Act, § 24-4-101, C.R.S. et seq . The petitioner will be identified as Respondent.

3. The parties to any proceeding pursuant to this Rule will be the petitioner/Respondent and the Department. Any other interested person(s) may seek leave of the Department to intervene in the proceeding and such leave may be granted if the Department determines that such intervention will make a separate petition by the interested person(s) for a separate declaratory order unnecessary.
 4. The declaratory order will constitute a Final Agency Order subject to judicial review pursuant to § 24-4-106, C.R.S.
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Colorado Register

Official Publication of the State Administrative Rules (24-4-103(11) C.R.S.)

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Notices of proposed rulemaking

Department	Agency	Proposed rules	Hearing
Department of Revenue	Division of Motor Vehicles	VEHICLE SERVICES SECTION	09/30/2021 02:00 PM
Department of Revenue	Division of Motor Vehicles	DRIVER'S LICENSE-DRIVER CONTROL	09/30/2021 11:00 AM
Department of Education	Colorado State Board of Education	RULES FOR THE ADMINISTRATION OF THE PUBLIC SCHOOL TRANSPORTATION FUND	10/13/2021 09:00 AM
Department of Education	Colorado State Board of Education	COLORADO RULES FOR THE OPERATION, MAINTENANCE AND INSPECTION OF SCHOOL TRANSPORTATION VEHICLES	10/13/2021 09:00 AM
Department of Education	Colorado State Board of Education	RULES FOR INDIVIDUALIZED MEDICAL SEIZURE ACTION PLANS	10/13/2021 09:00 AM
Department of Transportation	Transportation Commission and Office of Transportation Safety	RULES GOVERNING OUTDOOR ADVERTISING IN COLORADO	10/01/2021 10:00 AM
Department of Regulatory Agencies	Division of Insurance	LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General)	10/05/2021 11:00 AM
Department of Regulatory Agencies	Division of Insurance	LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General)	10/05/2021 11:00 AM
Department of Regulatory Agencies	Division of Insurance	LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General)	10/05/2021 11:00 AM
Department of Regulatory Agencies	Division of Professions and Occupations - State Board of Pharmacy	STATE BOARD OF PHARMACY RULES AND REGULATIONS	09/30/2021 08:45 AM
Department of Regulatory Agencies	Division of Professions and Occupations - Board of Psychologists Examiners	PSYCHOLOGIST EXAMINERS RULES AND REGULATIONS	10/01/2021 09:30 AM
Department of Regulatory Agencies	Public Utilities Commission	RULES REGULATING TELECOMMUNICATIONS SERVICES AND PROVIDERS OF TELECOMMUNICATIONS SERVICES	10/05/2021 09:00 AM
Department of Regulatory Agencies	Division of Real Estate	RULES REGARDING REAL ESTATE BROKERS	10/05/2021 09:00 AM
Department of Regulatory Agencies	Division of Real Estate	SUBDIVISIONS AND TIMESHARES	10/05/2021 09:00 AM
Department of Regulatory Agencies	Division of Professions and Occupations - Board of Veterinary Medicine	VETERINARY MEDICINE RULES AND REGULATIONS	10/14/2021 09:00 AM
Department of Regulatory Agencies	Division of Professions and Occupations - Colorado Office of Combative Sports	COMBATIVE SPORTS RULES AND REGULATIONS	10/12/2021 10:15 AM
Department of Regulatory Agencies	Division of Professions and Occupations - Board of Addiction Counselor Examiners	BOARD OF ADDICTION COUNSELOR EXAMINERS RULES	10/05/2021 09:30 AM

Department of Public Health and Environment	Air Quality Control Commission	<u>REGULATION NUMBER 19 THE CONTROL OF LEAD HAZARDS</u>	11/18/2021 09:00 AM
Department of Public Health and Environment	Air Quality Control Commission	<u>REGULATION NUMBER 23 REGIONAL HAZE LIMITS</u>	11/17/2021 04:30 PM
Department of Public Health and Environment	Health Facilities and Emergency Medical Services Division (1011, 1015 Series)	<u>CHAPTER 2 - GENERAL LICENSURE STANDARDS</u>	10/21/2021 12:00 PM
Department of Public Health and Environment	Prevention Services Division (1009, 1015, 1016 Series)	<u>PREVENTION, INTERVENTION, AND TREATMENT PROGRAMS FOR CHILDREN AND YOUTH</u>	10/21/2021 12:00 PM
Department of Local Affairs	Division of Housing	<u>MOBILE HOME PARK ACT DISPUTE RESOLUTION & ENFORCEMENT PROGRAM</u>	10/05/2021 01:00 PM
Department of Human Services	Income Maintenance (Volume 3)	<u>COLORADO CHILD CARE ASSISTANCE PROGRAM</u>	10/08/2021 08:30 AM
Department of Human Services	Child Support Services (Volume 6)	<u>RULE MANUAL VOLUME 6, CHILD SUPPORT SERVICES RULES</u>	10/08/2021 08:30 AM
Department of Health Care Policy and Financing	Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	<u>MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY</u>	10/08/2021 09:00 AM
Department of Human Services	Food Assistance Program (Volume 4B)	<u>RULE MANUAL VOLUME 4B, FOOD ASSISTANCE</u>	10/08/2021 08:30 AM
Department of Human Services	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	<u>OVERVIEW OF CHILD WELFARE SERVICES</u>	10/08/2021 08:30 AM
Department of Human Services	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	<u>REFERRAL AND ASSESSMENT</u>	10/08/2021 08:30 AM
Department of Human Services	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	<u>REFERRAL AND ASSESSMENT</u>	10/08/2021 08:30 AM
Department of Human Services	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	<u>PROGRAM AREAS, CASE CONTACTS, AND ONGOING CASE REQUIREMENTS</u>	10/08/2021 08:30 AM
Department of Human Services	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	<u>CHILD WELFARE SERVICES</u>	10/08/2021 08:30 AM
Department of Human Services	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	<u>RESOURCES, REIMBURSEMENT, REPORTING, AND PROVIDER REQUIREMENTS</u>	10/08/2021 08:30 AM
Department of Human Services	Adult Protective Services	<u>ADULT PROTECTIVE SERVICES</u>	10/08/2021 08:30 AM
Department of Human Services	Adult Protective Services	<u>ADULT PROTECTIVE SERVICES</u>	10/08/2021 08:30 AM

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Department	Agency	Rules adopted	AG opinion	Effective date
Department of Education	Colorado State Board of Education	<u>1 CCR 301-1 ADMINISTRATION OF STATEWIDE ACCOUNTABILITY MEASURES FOR THE COLORADO PUBLIC SCHOOL SYSTEM, CHARTER SCHOOL INSTITUTE, PUBLIC SCHOOL DISTRICTS AND PUBLIC SCHOOLS (DOC)</u>	<u>08/30/2021</u>	09/30/2021
Department of Public Health and Environment	Water Quality Control Commission (1002 Series)	<u>5 CCR 1002-31 REGULATION NO. 31 - THE BASIC STANDARDS AND METHODOLOGIES FOR SURFACE WATER (DOC)</u>	<u>08/27/2021</u>	12/31/2021
Department of Public Health and Environment	Water Quality Control Commission (1002 Series)	<u>5 CCR 1002-32 REGULATION NO. 32 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR ARKANSAS RIVER BASIN 1 (DOC)</u> <u>5 CCR 1002-32 REGULATION NO. 32 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR ARKANSAS RIVER BASIN 2 (PDF)</u>	<u>08/27/2021</u>	12/31/2021
Department of Public Health and Environment	Water Quality Control Commission (1002 Series)	<u>5 CCR 1002-33 REGULATION NO. 33 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR UPPER COLORADO</u>	<u>08/27/2021</u>	12/31/2021

Register Details

		<u>RIVER BASIN AND NORTH PLATTE RIVER (PLANNING REGION 12) 1 (DOC)</u> <u>5 CCR 1002-33 REGULATION NO. 33 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR UPPER COLORADO RIVER BASIN AND NORTH PLATTE RIVER (PLANNING REGION 12) 2 (PDF)</u>		
Department of Public Health and Environment	Water Quality Control Commission (1002 Series)	<u>5 CCR 1002-34 REGULATION NO. 34 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR SAN JUAN AND DOLORES RIVER BASINS 1 (DOC)</u> <u>5 CCR 1002-34 REGULATION NO. 34 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR SAN JUAN AND DOLORES RIVER BASINS 2 (PDF)</u>	<u>08/27/2021</u>	12/31/2021
Department of Public Health and Environment	Water Quality Control Commission (1002 Series)	<u>5 CCR 1002-35 REGULATION NO. 35 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR GUNNISON AND LOWER DOLORES RIVER BASINS 1 (DOC)</u> <u>5 CCR 1002-35 REGULATION NO. 35 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR GUNNISON AND LOWER DOLORES RIVER BASINS 2 (PDF)</u>	<u>08/27/2021</u>	12/31/2021
Department of Public Health and Environment	Water Quality Control Commission (1002 Series)	<u>5 CCR 1002-36 REGULATION NO. 36 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR RIO GRANDE BASIN 1 (DOC)</u> <u>5 CCR 1002-36 REGULATION NO. 36 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR RIO GRANDE BASIN 2 (PDF)</u>	<u>08/27/2021</u>	12/31/2021
Department of Public Health and Environment	Water Quality Control Commission (1002 Series)	<u>5 CCR 1002-37 REGULATION NO. 37 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR LOWER COLORADO RIVER BASIN 1 (DOC)</u> <u>5 CCR 1002-37 REGULATION NO. 37 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR LOWER COLORADO RIVER BASIN 2 (PDF)</u>	<u>08/27/2021</u>	12/31/2021
Department of Public Health and Environment	Water Quality Control Commission (1002 Series)	<u>5 CCR 1002-38 REGULATION NO. 38 - CLASSIFICATIONS AND NUMERIC STANDARDS SOUTH PLATTE RIVER BASIN LARAMIE RIVER BASIN REPUBLICAN RIVER BASIN SMOKY HILL RIVER BASIN 1 (DOC)</u> <u>5 CCR 1002-38 REGULATION NO. 38 - CLASSIFICATIONS AND NUMERIC STANDARDS SOUTH PLATTE RIVER BASIN LARAMIE RIVER BASIN REPUBLICAN RIVER BASIN SMOKY HILL RIVER BASIN 2 (PDF)</u>	<u>08/27/2021</u>	12/31/2021
Department of Public Health and Environment	Water Quality Control Commission (1002 Series)	<u>5 CCR 1002-64 REGULATION NO. 64 - BIOSOLIDS REGULATION (DOC)</u>	<u>08/27/2021</u>	09/30/2021
Department of Human Services	Income Maintenance (Volume 3)	<u>9 CCR 2503-9 COLORADO CHILD CARE ASSISTANCE PROGRAM (DOCX)</u>	<u>08/25/2021</u>	09/30/2021
Department of Health Care Policy and Financing	Executive Director of Health Care Policy and Financing	<u>10 CCR 2505-5 EXECUTIVE DIRECTOR OF HEALTH CARE POLICY AND FINANCING RULES (DOC)</u>	<u>08/25/2021</u>	09/30/2021
Department of Human Services	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	<u>12 CCR 2509-8 CHILD CARE FACILITY LICENSING (DOCX)</u>	<u>08/25/2021</u>	10/01/2021
Department of Human Services	Commission for the Deaf, Hard of Hearing, and DeafBlind (Volume 27)	<u>12 CCR 2516-1 RULE MANUAL 27, COMMISSION FOR THE DEAF, HARD OF HEARING, AND DEAFBLIND (DOC)</u>	<u>08/25/2021</u>	09/30/2021

Emergency Rules Adopted

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Department	Agency	Rules adopted	Justification	AG opinion	Effective date	Expiration date
Department of	Behavioral	<u>2 CCR 502-1</u>	<u>EmergencyJustificationPathAttach2021-</u>	<u>08/25/2021</u>	08/06/2021	12/04/2021

Human Services	Health	<u>BEHAVIORAL HEALTH (DOCX)</u>	<u>00497.docx</u>			
Department of Transportation	Transportation Commission and Office of Transportation Safety	<u>2 CCR 601-3 RULES GOVERNING OUTDOOR ADVERTISING IN COLORADO (DOC)</u>	<u>EmergencyJustificationPathAttach2021-00488.pdf</u>	<u>08/23/2021</u>	08/04/2021	12/02/2021
Department of Regulatory Agencies	Public Utilities Commission	<u>4 CCR 723-2 RULES REGULATING TELECOMMUNICATIONS SERVICES AND PROVIDERS OF TELECOMMUNICATIONS SERVICES (DOC)</u>	<u>EmergencyJustificationPathAttach2021-00447.pdf</u>	<u>08/18/2021</u>	07/29/2021	11/26/2021
Department of Regulatory Agencies	Public Utilities Commission	<u>4 CCR 723-2 RULES REGULATING TELECOMMUNICATIONS SERVICES AND PROVIDERS OF TELECOMMUNICATIONS SERVICES (DOC)</u>	<u>EmergencyJustificationPathAttach2021-00498.pdf</u>	<u>08/30/2021</u>	08/11/2021	12/09/2021
Department of Agriculture	Plant Industry Division	<u>8 CCR 1203-23 RULES PERTAINING TO THE ADMINISTRATION AND ENFORCEMENT OF THE INDUSTRIAL HEMP REGULATORY PROGRAM ACT (DOC)</u>	<u>EmergencyJustificationPathAttach2021-00492.doc</u>	<u>08/30/2021</u>	08/10/2021	12/08/2021
Department of Health Care Policy and Financing	Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	<u>10 CCR 2505-3 FINANCIAL MANAGEMENT OF THE CHILDREN'S BASIC HEALTH PLAN (DOC)</u>	<u>EmergencyJustificationPathAttach2021-00456.pdf</u>	<u>08/19/2021</u>	08/09/2021	11/27/2021
Department of Health Care Policy and Financing	Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	<u>10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY (DOC)</u>	<u>EmergencyJustificationPathAttach2021-00455.pdf</u>	<u>08/19/2021</u>	07/30/2021	11/27/2021
Department of Health Care Policy and Financing	Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	<u>10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 1 (DOC)</u> <u>10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 2 (DOC)</u> <u>10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 3 (DOC)</u> <u>10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 4 (DOC)</u> <u>10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 5 (DOC)</u> <u>10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 6 (DOC)</u> <u>10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 7 (DOC)</u> <u>10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 8 (DOC)</u> <u>10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 9 (DOC)</u> <u>10 CCR 2505-10 MEDICAL ASSISTANCE -</u>	<u>EmergencyJustificationPathAttach2021-00454.pdf</u>	<u>08/19/2021</u>	08/09/2021	11/27/2021

		STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 10 (DOC)			
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Terminated rulemaking[Top](#)

Department	Agency	CCR #	Tracking #	Termination date	Reason for termination
Department of Revenue	Taxation Division	1 CCR 201-13	2021-00165	08/19/2021	After consideration of questions raised at the hearing, we determined it was necessary to make further revisions to the proposed rule and recommence the rulemaking process.

Non-Rulemaking Public Notices and Other Miscellaneous Rulemaking Notices[Top](#)

Department / Agency	Filed date	Notice
Department of Transportation	08/31/2021	Transportation Commission of Colorado- Rescheduled Permanent Rulemaking Hearing.(eDocket No. 2021-00508)

Calendar of Hearings[Top](#)

Agency	Rule	Hearing
Division of Motor Vehicles	VEHICLE SERVICES SECTION	09/30/2021 02:00 PM
Division of Motor Vehicles	DRIVER'S LICENSE-DRIVER CONTROL	09/30/2021 11:00 AM
Colorado State Board of Education	RULES FOR THE ADMINISTRATION OF THE PUBLIC SCHOOL TRANSPORTATION FUND	10/13/2021 09:00 AM
Colorado State Board of Education	COLORADO RULES FOR THE OPERATION, MAINTENANCE AND INSPECTION OF SCHOOL TRANSPORTATION VEHICLES	10/13/2021 09:00 AM
Colorado State Board of Education	RULES FOR INDIVIDUALIZED MEDICAL SEIZURE ACTION PLANS	10/13/2021 09:00 AM
Transportation Commission and Office of Transportation Safety	RULES GOVERNING OUTDOOR ADVERTISING IN COLORADO	10/01/2021 10:00 AM
Division of Insurance	LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General)	10/05/2021 11:00 AM
Division of Insurance	LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General)	10/05/2021 11:00 AM
Division of Insurance	LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General)	10/05/2021 11:00 AM
Division of Professions and Occupations - State Board of Pharmacy	STATE BOARD OF PHARMACY RULES AND REGULATIONS	09/30/2021 08:45 AM
Division of Professions and Occupations - Board of Psychologists Examiners	PSYCHOLOGIST EXAMINERS RULES AND REGULATIONS	10/01/2021 09:30 AM
Public Utilities Commission	RULES REGULATING TELECOMMUNICATIONS SERVICES AND PROVIDERS OF TELECOMMUNICATIONS SERVICES	10/05/2021 09:00 AM
Division of Real Estate	RULES REGARDING REAL ESTATE BROKERS	10/05/2021 09:00 AM
Division of Real Estate	SUBDIVISIONS AND TIMESHARES	10/05/2021 09:00 AM
Division of Professions and Occupations - Board of Veterinary Medicine	VETERINARY MEDICINE RULES AND REGULATIONS	10/14/2021 09:00 AM
Division of Professions and Occupations - Colorado Office of Combative Sports	COMBATIVE SPORTS RULES AND REGULATIONS	10/12/2021 10:15 AM
Division of Professions and Occupations - Board of Addiction Counselor Examiners	BOARD OF ADDICTION COUNSELOR EXAMINERS RULES	10/05/2021 09:30 AM
Air Quality Control Commission	REGULATION NUMBER 19 THE CONTROL OF LEAD HAZARDS	11/18/2021 09:00 AM
Air Quality Control Commission	REGULATION NUMBER 23 REGIONAL HAZE LIMITS	11/17/2021 04:30 PM
Health Facilities and Emergency Medical Services Division (1011, 1015 Series)	CHAPTER 2 - GENERAL LICENSURE STANDARDS	10/21/2021 12:00 PM
Prevention Services Division (1009, 1015, 1016 Series)	PREVENTION, INTERVENTION, AND TREATMENT PROGRAMS FOR CHILDREN AND YOUTH	10/21/2021 12:00 PM
Division of Housing	MOBILE HOME PARK ACT DISPUTE RESOLUTION & ENFORCEMENT PROGRAM	10/05/2021 01:00 PM

Register Details

Income Maintenance (Volume 3)	COLORADO CHILD CARE ASSISTANCE PROGRAM	10/08/2021 08:30 AM
Child Support Services (Volume 6)	RULE MANUAL VOLUME 6, CHILD SUPPORT SERVICES RULES	10/08/2021 08:30 AM
Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY	10/08/2021 09:00 AM
Food Assistance Program (Volume 4B)	RULE MANUAL VOLUME 4B, FOOD ASSISTANCE	10/08/2021 08:30 AM
Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	OVERVIEW OF CHILD WELFARE SERVICES	10/08/2021 08:30 AM
Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	REFERRAL AND ASSESSMENT	10/08/2021 08:30 AM
Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	REFERRAL AND ASSESSMENT	10/08/2021 08:30 AM
Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	PROGRAM AREAS, CASE CONTACTS, AND ONGOING CASE REQUIREMENTS	10/08/2021 08:30 AM
Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	CHILD WELFARE SERVICES	10/08/2021 08:30 AM
Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	RESOURCES, REIMBURSEMENT, REPORTING, AND PROVIDER REQUIREMENTS	10/08/2021 08:30 AM
Adult Protective Services	ADULT PROTECTIVE SERVICES	10/08/2021 08:30 AM
Adult Protective Services	ADULT PROTECTIVE SERVICES	10/08/2021 08:30 AM

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COLORADO
Department of Transportation

2829 W. Howard Place
Denver, CO 80204-2305

Notice of Proposed Rulemaking

**Executive Director
Rules Governing Outdoor Advertising in Colorado
2 CCR 601-3**

Date & Time of Public Hearing: Friday, October 1, 2021, at 10 a.m.

I. Notice

As required by the State Administrative Procedure Act found at section 24-4-103, C.R.S., the Executive Director of the Colorado Department of Transportation (“CDOT”) gives notice of proposed rulemaking.

This proposed permanent rulemaking hearing is scheduled for **October 1, 2021, at 10 a.m.** and will only be conducted in a virtual setting. All interested and affected parties must register to attend the public hearing through the registration link provided in the table below.

Date	Location	Time	Registration Links
10/01/2021	Webinar Only	10 a.m.	Registration Link

How to Register for Hearing

You must click on the registration link from the above table to register for the hearing. When you register, you must provide your full name and email address. You may also provide your telephone number and the organization that you are representing. Finally, please indicate whether you plan to testify during the hearing and/or submit written comments. When you submit your registration, you should receive a confirmation email including details about how to join the webinar.

The registration link for the hearing is also available on the Colorado Department of Transportation’s website at <https://www.codot.gov/business/rules/proposed-rules>.

II. Subject

Senate Bill 21-263 took effect in Colorado on June 30, 2021, changing the permitting and enforcement processes for the control of advertising devices in areas near interstates and state highways and visible to the traveling public from the roadway to a compensation-based approach.

The specific purpose of this rulemaking is to consider changes to align CDOT’s processes for permitting and enforcement of outdoor advertising devices with Senate Bill 21-263. CDOT proposes the following rule changes:

- Establish a new compensation-based approach within the rules for permitting and enforcement of outdoor advertising devices in areas near interstates and state highways and visible to the traveling public from the roadway.
- Remove the previous categories of outdoor advertising devices (i.e., On-Premise Sign, Off-Premise Sign, Official Sign, and Directional Sign) from the rules.



- Redefined the definition of “Advertising Device” to reference the definition in statute.
- Add the new definition of “Compensation” to reference the definition in statute.
- Modify the noncompliance requirements to give a property owner or sign owner the option to execute an affidavit under the penalty of perjury in the event the property owner or sign owner does not believe their sign is an advertising device requiring a CDOT permit.
- Streamline the hearing procedures and also modify the procedures to allow an applicant who was denied a permit to request an expedited hearing within 30 days of the notice of denial.
- Clarify that Changeable Electronic Variable Message Signs may not be within 1000 feet of each other that are facing the same direction.
- Update the materials incorporated by reference within the rules.
- Add procedures for interested and affected parties to petition for a declaratory order to increase transparency for the public and be in compliance with the Colorado Administrative Procedure Act.
- Finally, make other non-substantive changes to align the rules with Senate Bill 21-263 and fix typographical or grammatical errors.

A detailed Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

III. Statutory Authority

The specific authority under which the Executive Director of CDOT shall establish these rules is set forth in §§ 43-1-105(6), 43-1-414(4), and 43-1-415, C.R.S.

IV. Copies of the Notice, Proposed Rule Revisions, and the Statement of Basis, Purpose & Authority

The notice of hearing, the proposed rule revisions, and the proposed statement of basis, purpose and authority are available for review at CDOT’s website at <https://www.codot.gov/business/rules/proposed-rules>.

If there are changes made to the proposed rule revisions prior to the hearing, the updated proposed rule revisions will be available to the public and posted on CDOT’s website by September 24, 2021.

Please note that the proposed rule revisions being considered are subject to further changes and modifications after the public hearing and the deadline for the submission of written comments.

V. Opportunity to testify and submit written comments

CDOT strives to make the rulemaking process inclusive to all. Everyone will have the opportunity to testify and provide written comments concerning the proposed rule revisions. Interested and affected parties are welcome to testify and submit written comments.

The format of the hearing will proceed as follows:



- The Hearing Officer opens the hearing and provides a brief introduction of the hearing procedures.
- CDOT staff will review exhibits to establish that the CDOT met all the procedural requirements of the Administrative Procedure Act.
- A summary of the proposed rule revisions will be presented by CDOT staff.
- Participants will then have the opportunity to give testimony regarding the proposed rule revisions.
- The Hearing Officer will make certain finding and conclude the hearing.

Testimony

The testimony phase of each hearing will proceed as follows:

- The Hearing Officer will identify the participants who indicated that they plan to testify during the hearing based on the registration records.
- When Hearing Officer exhausts the list, we will ask whether any additional participants wish to testify.

To ensure that the hearing is prompt and efficient, oral testimony may be time-limited.

Written Comments

All interested and affected parties are strongly encouraged to submit their written comments to dot_rules@state.co.us. All written comments must be received on or before Tuesday, October 05, 2021, at 5 pm.

Additionally, we will post all written comments to CDOT's website at <https://www.codot.gov/business/rules/proposed-rules>. However, please note that we will redact the following information for data privacy from the submissions prior to posting online: first and last names, contact information, including business and home addresses, email addresses, and telephone numbers.

All written comments will be added to the official rulemaking record.

VI. Recording of the Hearings

The hearing will be recorded. After the hearing concludes, the recording will be available on CDOT's website at <https://www.codot.gov/business/rules/proposed-rules>.

VII. Special Accommodations

If you need special accommodations, please contact CDOT's Rules Administrator at 303.757.9441 or dot_rules@state.co.us at least one (1) week prior to the scheduled hearing date.

VIII. Contact Information

Please contact CDOT's Rules Administrator, at 303.757.9441 or dot_rules@state.co.us if you have any questions.



Exhibit 3

STATE OF
COLORADO

Lutz - CDOT, Natalie <natalie.lutz@state.co.us>

Proposed Rule Submitted - Outdoor Advertising in Colorado -

1 message

DORA_OPR_Website@state.co.us <DORA_OPR_Website@state.co.us>

Tue, Aug 31, 2021 at 7:58 PM

To: natalie.lutz@state.co.us





The following Proposed Rule has been submitted to the Colorado Office of Policy, Research and Regulatory Reform:

Department: Department of Transportation**Rulemaking Agency:** Executive Director**Agency:****Rule ID:** 9016**Title or Subject:** Revisions to Rules Governing Outdoor Advertising in Colorado**Submitted by:** Natalie E Lutz**Date:** 08/31/2021**Submitted:**

After your submission has been checked for completeness, it will be made available to the general public on DORA's website and email notifications will be sent to interested stakeholders.

In accordance with SB13-158, the public will have until Wednesday, September 15th, 2021 at midnight to request that the Department of Regulatory Agencies require your agency to prepare a cost-benefit analysis of these rules or amendments. You will be copied on all stakeholder requests for a cost-benefit analysis and DORA staff will contact you to discuss the requests. A second email notification will be sent if you are required to submit a cost-benefit analysis as a result of a public request.

Please contact us at DORA_OPR_Website@state.co.us if you have further questions regarding this e-mail message.

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Draft Proposed Rule**Detailed Rule Information****Department/Agency**

Department: Department of Transportation
Rulemaking Agency: Executive Director

Proposed Rule Changes

Rule Type: New, Amended and Repealed Rules
Title or Subject: Revisions to Rules Governing Outdoor Advertising in Colorado
Short Description: Outdoor Advertising in Colorado
CCR Number: 2 CCR 601-3
Statutory Authority: §§ 43-1-105(6), 43-1-414(4), and 43-1-415, C.R.S.
Website for Current Agency Rules: <https://www.codot.gov/business/rules/proposed-rules>
Subject Matter/Purpose: The specific purpose of this rulemaking is to consider changes to align CDOT's processes for permitting and enforcement of outdoor advertising devices with Senate Bill 21-263. CDOT proposes to establish a new compensation-based approach within the rules for permitting and enforcement of outdoor advertising devices in areas near interstates and state highways and visible to the traveling public from the roadway. The previous categories of outdoor advertising devices (i.e., On-Premise Sign, Off-Premise Sign, Official Sign, and Directional Sign) will be removed from the rules. The noncompliance requirements will be modified to give a property owner or sign owner the option to execute an affidavit in the event the property owner or sign owner does not believe their sign is an advertising device requiring a CDOT permit. The hearing procedures will be modified to allow an applicant who was denied a permit to request an expedited hearing within 30 days of the notice of denial. The proposed rules also clarify that Changeable Electronic Variable Message Signs may not be within 1000 feet of each other that are facing the same direction. The materials incorporated by reference will be updated. A new proposed rule will be added to allow interested and affected parties to petition for a declaratory order to increase transparency and be in compliance with the Colorado Administrative Procedure Act. Finally, other non-substantive changes will be made.

Colorado Register Publish Date: 09/10/2021
Text of Proposed Changes: [Notice Statement Proposed Rules.pdf](#) (727K, Adobe Acrobat)
Submitted for Review: 08/31/2021

Rulemaking Hearing

Hearing Date: Friday, October 1, 2021 10:00 am
Hearing Covers: Multiple Rules
Hearing Location: CDOT Headquarters, 2829 W. Howard Pl.
 Virtual Rulemaking Hearing Only
 Denver, CO 80204

Hearing Notes: You must click on the registration link in the table within the attachment to register for the hearing. When you register, you must provide your full name and email address. You may also provide your telephone number and the organization that you are representing. Finally, please indicate whether you plan to testify during the hearing and/or submit written comments. When you submit your registration, you should receive a confirmation email including details about how to join the webinar. You can also find the registration link on CDOT's website at <https://www.codot.gov/business/rules/proposed-rules>.

Contact Information

Public Contact Name: Natalie Lutz
Title: Rules, Policies and Procedures Administrator
Email: Natalie.Lutz@state.co.us
Phone: 303-757-9441

Private Contact Name: Natalie E Lutz
Title: Rules, Policies, and Procedures Administrator
Email: natalie.lutz@state.co.us
Phone: 303-757-9441

Subject Information

Related Subject Area(s): Transportation

Review

**Deadline for Public Cost-Benefit
Analysis Request:**

Wednesday, September 15th, 2021
The deadline for public cost-benefit analysis requests has passed.

Rule Status

Current Status: Rule Approved for Public Release
Submitted: 08/31/2021 07:58 pm by: Natalie E Lutz
DORA Regulatory Notice Sent: 09/01/2021 02:20 pm count: 295
Public CBA Request: Closed to public requests
Public CBA Requests: [0](#)

Colorado Department of Regulatory Agencies

September 18, 2021 06:09 pm
Calling Procedure:
SB121_Submit_Rule.
Main_Form_Page
Version: 1.0

STATE OF
COLORADO

Lutz - CDOT, Natalie <natalie.lutz@state.co.us>

DORA Regulatory Notice: Executive Director - Outdoor Advertising in Colorado -

1 message

DORA_OPR_Website@state.co.us <DORA_OPR_Website@state.co.us>

Wed, Sep 1, 2021 at 2:20 PM

To: natalie.lutz@state.co.us

Dear Stakeholder:

The Department of Transportation - Executive Director will be holding a rulemaking hearing on Friday, October 1st, 2021, 10:00 am on rules regarding [Outdoor Advertising in Colorado](#). The hearing will be held at: CDOT Headquarters, [2829 W. Howard Pl.](#), Virtual Rulemaking Hearing Only, Denver CO 80204.

The purpose of this rulemaking is:

The specific purpose of this rulemaking is to consider changes to align CDOT's processes for permitting and enforcement of outdoor advertising devices with Senate Bill 21-263. CDOT proposes to establish a new compensation-based approach within the rules for permitting and enforcement of outdoor advertising devices in areas near interstates and state highways and visible to the traveling public from the roadway. The previous categories of outdoor advertising devices (i.e., On-Premise Sign, Off-Premise Sign, Official Sign, and Directional Sign) will be removed from the rules. The noncompliance requirements will be modified to give a property owner or sign owner the option to execute an affidavit in the event the property owner or sign owner does not believe their sign is an advertising device requiring a CDOT permit. The hearing procedures will be modified to allow an applicant who was denied a permit to request an expedited hearing within 30 days of the notice of denial. The proposed rules also clarify that Changeable Electronic Variable Message Signs may not be within 1000 feet of each other that are facing the same direction. The materials incorporated by reference will be updated. A new proposed rule will be added to allow interested and affected parties to petition for a declaratory order to increase transparency and be in compliance with the Colorado Administrative Procedure Act. Finally, other non-substantive changes will be made.

If you believe there will be a significant negative impact on small business, job creation or economic competitiveness, you may [request that the Department of Regulatory Agencies require the rulemaking agency to prepare a cost-benefit analysis](#) of a proposed rule or amendment. This request must be made to the Department of Regulatory Agencies by Wednesday, September 15th, 2021.

You may also [submit comments directly to the rulemaking agency](#) for the agency's consideration during the upcoming rulemaking hearing.

We hope this information is helpful to you. Thank you for taking the time to participate in the rulemaking process.

Brian Tobias
Director
Colorado Office of Policy, Research and Regulatory Reform

You have received this e-mail bulletin because you previously signed up for this service provided by the Department of Regulatory Agencies. If you do not want to receive further e-mails regarding the review of proposed rules, please visit https://www.dora.state.co.us/pls/real/SB121_Web.SignIn_Form and update your personal profile.



STATE OF
COLORADO

3D

Lutz - CDOT, Natalie <natalie.lutz@state.co.us>

No Public Cost-Benefit Analysis Request for Rule - Outdoor Advertising in Colorado

-
1 message

DORA_OPR_Website@state.co.us <DORA_OPR_Website@state.co.us>
To: natalie.lutz@state.co.us

Sun, Sep 19, 2021 at 7:45 PM

The deadline for public Cost-Benefit Analysis requests has passed for the following Proposed Rule:

Department: Department of Transportation
Rulemaking Agency: Executive Director
Rule ID: 9016
Title or Subject: Revisions to Rules Governing Outdoor Advertising in Colorado
Submitted by: Natalie E Lutz
Date Submitted: 08/31/2021
Deadline for Public Cost-Benefit Analysis Request: September 15, 2021 11:59 pm

No public requests were received by the deadline. A Cost-Benefit Analysis is not required for this submission.

Please contact us at DORA_OPR_Website@state.co.us if you have further questions regarding this e-mail message.

Exhibit 4

20581 Highway 160
Durango, CO 81301

[Oct. 7 Virtual Registration Form](#)
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Rules Governing Outdoor Advertising in Colorado

Number	2 CCR 601-3
Contact	Anthony Lovato and Natalie Lutz
Hearing Notice	Notice
Statement of Basis & Purpose	Statement
Proposed Rule	Redline
Supplemental Documents	Questions and Answers
Please submit written comments or questions to:	dot_rules@state.co.us
Written Comments Due October 5, 2021	N/A

Virtual Public Hearing

Date	Time	Place	Virtual Registration
10/01/2021	10 a.m.	Webinar Only	Oct. 1 Virtual Registration Form

Tags: [rules](#)



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Exhibit 5



COLORADO

Department of Transportation

2829 W. Howard Place
Denver, CO 80204-2305

Notice of Proposed Rulemaking

Executive Director
Rules Governing Outdoor Advertising in Colorado
2 CCR 601-3

Proposed Statement of Basis and Purpose and Statutory Authority

I. Rules

The rules governing outdoor advertising in Colorado are found at 2 CCR 601-3.

II. Statement of Basis & Purpose

The purpose of these rules is to carry out the provisions of Colorado's Outdoor Advertising Act found at § 43-1-401, *et seq.*, C.R.S., and the Highway Beautification Act of 1965 found at 23 U.S.C. § 131 by establishing a statewide uniform program controlling the use of advertising devices in areas adjacent to the State Highway System. The intent of these rules is to protect and promote the health, safety, and welfare of the traveling public and the people of Colorado, and to promote the reasonable, orderly and effective display of outdoor advertising, while preserving and enhancing the natural and scenic beauty of Colorado.

Senate Bill 21-263 took effect in Colorado on June 30, 2021, changing the permitting and enforcement processes for the control of advertising devices in areas near interstates and state highways and visible to the traveling public from the roadway to a compensation-based approach.

The specific purpose of this rulemaking is to consider changes to align CDOT's processes for permitting and enforcement of outdoor advertising devices with Senate Bill 21-263. Proposed changes include:

- Add, modify, or delete defined terms to aid in the interpretation and implementation of these Rules as follows:
 - Modify the definitions of "Advertising Device" and "Comprehensive Development" to reference the definitions in statute for consistency.
 - Delete the definitions of "Directional Sign", "Off-Premise Sign", "Official Sign", and "On-Premise Sign" to align with Senate 21-263.
 - Add the new definition of "Compensation" to reference the definition in statute for consistency.
 - Delete the definitions of "Commercial Advertising" and "Premises" since they are no longer necessary as a result of Senate Bill 21-263.
 - Modify the definition of "Permit Number Identifier" to align with Senate Bill 21-263.
- Establish a new compensation-based approach within the rules for permitting and enforcement of outdoor advertising devices in areas near interstates and state highways and visible to the traveling public from the roadway.



- Delete the requirements for the previous categories of outdoor advertising devices (i.e., On-Premise Sign, Off-Premise Sign, Official Sign, and Directional Sign) from the rules.
- Clarify CDOT is prohibited from issuing or renewing a permit if the advertising device becomes decay, insecure, or in danger of falling, or unsafe due to lack of maintenance or repair, which mirrors § 43-1-411(5), C.R.S.
- Clarify CDOT will provide the reasons for the denial of the application, the denial of the renewal of the permit, or the revocation of the Permit in writing.
- Modify the noncompliance requirements to give a property owner or sign owner the option to execute an affidavit under the penalty of perjury in the event the property owner or sign owner does not believe their sign is an advertising device requiring a CDOT permit.
- Streamline the hearing procedures and also modify the procedures to allow an applicant who was denied a permit to request an expedited hearing within 30 days of the notice of denial.
- Delete the requirements for signs erected after 1970 advertising necessary goods and services to align with Senate Bill 21-263.
- Delete the requirements for “Landmark Signs” and “Free Coffee Signs”. Landmark signs have not been established Colorado. Free Coffee Signs are set forth in federal law.
- Clarify that Changeable Electronic Variable Message Signs may not be within 1000 feet of each other that are facing the same direction.
- Update the materials incorporated by reference within the rules in accordance with § 24-4-103(12.5), C.R.S.
- Add procedures for interested and affected parties to petition for a declaratory order to increase transparency for the public and be in compliance with the Colorado Administrative Procedure Act. This is a voluntary process that allows for interested and affected parties to obtain a declaratory order on statutes, rules, or orders relating to the control of outdoor advertising in Colorado.
- Make other non-substantive changes to align the rules with Senate Bill 21-263 or fix typographical or grammatical errors.

III. Statutory Authority

The statutory authority is as follows:

- Senate Bill 21-263 enacted into law on June 30, 2021.
- § 43-1-105(6), C.R.S., which authorizes the Executive Director or designee to preside over a hearing whenever CDOT is required by law to hold a hearing.
- § 43-1-414(4), C.R.S., which authorizes CDOT to promulgate rules governing the acquisition procedures for the advertising devices, the appraisal of advertising devices, and the administration and enforcement of outdoor advertising.
- § 43-1-415, C.R.S., which authorizes CDOT to promulgate rules necessary to carry out the provisions of the Outdoor Advertising Act.



Exhibit 6

An Act

SENATE BILL 21-263

BY SENATOR(S) Zenzinger and Smallwood, Moreno;
also REPRESENTATIVE(S) Bird and Van Winkle, Bennett, Lontine, Ortiz,
Ricks.

CONCERNING THE REGULATION OF OUTDOOR ADVERTISING.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 43-1-403, **amend** (1) and (1.5)(b); **repeal** (4), (13), and (14); and **add** (1.3) as follows:

43-1-403. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Advertising device" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or any other contrivance designed, intended, or used to advertise or ~~to give information in the nature of advertising~~ **INFORM, FOR WHICH COMPENSATION IS DIRECTLY OR INDIRECTLY PAID OR EARNED IN EXCHANGE FOR ITS ERECTION OR EXISTENCE BY ANY PERSON OR ENTITY, and having the capacity of being visible from the travel way of any state highway, except any advertising device on a vehicle using the highway OR ANY ADVERTISING DEVICE THAT**

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

IS PART OF A COMPREHENSIVE DEVELOPMENT. The term "vehicle using the highway" does not include any vehicle parked near said highway for advertising purposes.

(1.3) "COMPENSATION" MEANS THE EXCHANGE OF ANYTHING OF VALUE, INCLUDING MONEY, SECURITIES, REAL PROPERTY INTERESTS, PERSONAL PROPERTY INTERESTS, GOODS OR SERVICES, PROMISE OF FUTURE DEVELOPMENT, EXCHANGE OF FAVOR, OR FORBEARANCE OF DEBT.

(1.5) (b) "Comprehensive development" includes all land used or to be used or occupied for the activities of the development, including buildings, parking, storage and service areas, streets, driveways, and reasonably necessary landscaped areas. A comprehensive development includes only land that is used for a purpose reasonably related to the activities of the development. ~~other than an attempt to qualify the land for on-premise advertising.~~

(4) ~~"Directional advertising device" includes, but is not limited to: Advertising devices containing directional information to facilitate emergency vehicle access to remote locations or about public places owned or operated by federal, state, or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites, and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public. Such devices shall conform to standards promulgated by the department pursuant to section 43-1-415, which standards shall conform to the national policy.~~

(13) ~~"Official advertising device" means any advertising device erected for a public purpose authorized by law, but the term shall not include devices advertising any private business.~~

(14) ~~"On-premise advertising device" means:~~

~~(a) An advertising device advertising the sale or lease of the property on which it is located or advertising activities conducted on the property on which it is located; or~~

~~(b) An advertising device located within a comprehensive development that advertises any activity conducted in the comprehensive~~

~~development, so long as the placement of the advertising device does not cause a reduction of federal aid highway moneys pursuant to 23 U.S.C. sec. 131.~~

SECTION 2. In Colorado Revised Statutes, 43-1-404, **amend** (1)(e)(I)(B) and (1)(f)(I); and **repeal** (1)(a), (1)(b), (1)(c), (1)(e)(I)(C), (1)(e)(I)(D), and (1)(e)(I)(E) as follows:

43-1-404. Advertising devices allowed - exception. (1) The following advertising devices as defined in section 43-1-403 may be erected and maintained when in compliance with all provisions of this part 4 and the rules adopted by the department:

- ~~(a) Official advertising devices;~~
- ~~(b) On-premise advertising devices;~~
- ~~(c) Directional advertising devices;~~

(e) (I) Advertising devices located along primary and secondary highways in areas which were zoned for industrial or commercial uses under authority of state law on and after January 1, 1970, provided:

(B) The advertising device ~~shall~~ **MUST** be located within one thousand feet of an industrial or commercial building. ~~in place. and~~

~~(C) The advertising device shall only inform the traveling public of necessary goods or services available within a five-mile radius of the advertising device; necessary goods and services shall be limited to lodging, camping, food, gas, vehicle repair, health-related goods or services, recreational facilities or services, and places of cultural importance; and~~

~~(D) No person providing necessary goods or services shall be eligible for more than two advertising devices pursuant to this paragraph (c); and~~

~~(E) The advertising device shall predominately display the name and location of the necessary goods or services advertised.~~

(f) (I) Notwithstanding any other provision of law, with the

exception of section 43-1-416, any advertising device, except for a nonconforming advertising device, may contain a message center display with movable parts and a changeable message that is changed by electronic processes or by remote control. The illumination of an advertising device containing a message center display is not the use of a flashing, intermittent, or moving light for the purposes of any rule, regulation, and standard promulgated by the department or any agreement between the department and the secretary of transportation of the United States. No message center display may include any illumination that is in motion or appears to be in motion, that changes in intensity or exposes its message for less than four seconds, or that has an interval between messages of less than one second. No advertising device with a message center display may be placed within one thousand feet of another advertising device with a message center display on the same side of a highway AND FACING THE SAME DIRECTION OF TRAVEL. No message center display may be placed in violation of section 131 of title 23 of the United States code.

SECTION 3. In Colorado Revised Statutes, 43-1-406, **amend** (5) as follows:

43-1-406. Bonus areas. (5) The following ~~shall be~~ ARE exempt from the provisions of this section but ~~shall~~ MUST in all respects comply with applicable rules ~~and regulations~~ issued by the department:

- (a) ~~On-premise advertising devices;~~
- (b) Advertising devices located in a Kerr area; AND
- (c) Advertising devices located in a Cotton area.
- (d) ~~Directional or official advertising devices.~~

SECTION 4. In Colorado Revised Statutes, 43-1-407, **amend** (1) introductory portion and (1)(a); and **repeal** (1)(b) as follows:

43-1-407. Permits. (1) A permit from the department ~~shall be~~ IS required for the erection or maintenance of the following advertising devices:

- (a) Each nonconforming advertising device as defined in section

43-1-403 (12); AND

~~(b) Each directional advertising device as defined in section 43-1-403 (4), except that the following advertising devices shall not require permits:~~

~~(i) Advertising devices which are no larger than eight square feet and which advertise farms, ranches, or nonprofit educational, veterans', religious, charitable, or civic organizations; or~~

~~(ii) Directory signs no larger than thirty-two square feet, the sole purpose of which is to provide direction to individual farms or ranches by way of individual signs, each of which is no larger than eight square feet.~~

SECTION 5. In Colorado Revised Statutes, 43-1-408, **amend** (1) introductory portion and (1)(e); **repeal** (1)(d); and **add** (2) and (3) as follows:

43-1-408. Application for permit - contents - rules.

(1) Application for a permit for each advertising device ~~shall~~ **MUST** be made on a form provided by the department, ~~shall be~~ signed by the applicant or ~~his~~ **THE APPLICANT'S** duly authorized officer or agent, and ~~shall show~~ **INCLUDE:**

~~(d) The year in which the advertising device was erected;~~

(e) An agreement by the applicant to erect and maintain the advertising device in a safe, sound, and good condition; **AND**

(2) **UPON THE DEPARTMENT'S RECEIPT OF A COMPLETE APPLICATION FOR A PERMIT WHICH SATISFIES EACH OF THE REQUIREMENTS IN SUBSECTION (1) OF THIS SECTION AND OTHERWISE MEETS THE DEPARTMENT'S CONDITIONS, THE DEPARTMENT HAS THIRTY DAYS TO ISSUE, BY FIRST CLASS MAIL TO THE ADDRESS PROVIDED BY THE APPLICANT, EITHER A PERMIT OR A PRELIMINARY DECISION DENYING THE APPLICATION FOR PERMIT.**

(3) **THE APPLICANT MAY APPEAL ANY PRELIMINARY DECISION DENYING THE APPLICATION FOR A PERMIT BY REQUESTING A HEARING IN WRITING WITHIN THIRTY DAYS OF THE DEPARTMENT MAILING THE NOTICE OF THE DENIAL OF THE APPLICATION FOR A PERMIT TO THE APPLICANT. IF THE**

APPLICANT TIMELY APPEALS, THE MATTER MUST PROCEED IN ACCORDANCE WITH THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24, THOUGH THE DEPARTMENT MAY, BY RULE, CREATE PROCEDURES FOR EXPEDITED REVIEW OF DENIALS AND ISSUANCE OF FINAL AGENCY DECISIONS IF THE APPLICANT CONSENTS TO THE EXPEDITED REVIEW.

SECTION 6. In Colorado Revised Statutes, 43-1-412, **amend (2)(a)** as follows:

43-1-412. Notice of noncompliance - removal authorized.
(2) (a) If no permit has been obtained for the advertising device as required by this part 4, the department shall give written notice by certified mail to the owner of the property on which the advertising device is located informing ~~said~~ THE LANDOWNER that the device is illegal and requiring ~~him~~ THE LANDOWNER within sixty days of receipt of the notice to remove the device, ~~or have a permit obtained if such permit may be issued and advising him~~ EXECUTE AN AFFIDAVIT UNDER THE PENALTY OF PERJURY AS EVIDENCE THAT SAID DEVICE IS NOT AN ADVERTISING DEVICE AS DEFINED IN SECTION 43-1-403 (1), OR OBTAIN A PROPER PERMIT. THE WRITTEN NOTICE MUST ADVISE THE OWNER of the right to request the department to conduct a hearing.

SECTION 7. In Colorado Revised Statutes, 43-1-415, **amend (1)** and (4) as follows:

43-1-415. Administration and enforcement - authority for agreements - rules. (1) The department shall administer and enforce the provisions of this part 4 and shall promulgate and enforce rules ~~regulations~~, and standards necessary to carry out the provisions of this part 4 including, but not limited to:

(a) ~~Regulations~~ RULES necessary to qualify the state for payments made available by congress to those states that meet federal standards of roadside advertising control;

(b) ~~Regulations~~ RULES relating to the maintenance of nonconforming advertising devices;

(c) ~~Regulations~~ RULES to control the erection and maintenance on all state highways of ~~official advertising devices, directional advertising~~

~~devices, on-premise advertising devices, and advertising devices located in areas zoned for industrial or commercial uses;~~

(d) ~~Regulations~~ RULES governing the removal and acquisition of nonconforming advertising devices;

(e) ~~Regulations~~ RULES necessary to permit the exemption of tourist-related advertising devices by the secretary of transportation under 23 U.S.C. sec. 131 (o);

(f) ~~Regulations~~ RULES governing specific information signs under section 43-1-420.

(4) The rules ~~and regulations~~ of the department ~~shall~~ MUST not impose any additional requirements or more strict requirements than those imposed by this part 4.

SECTION 8. In Colorado Revised Statutes, **amend** 43-1-417 as follows:

43-1-417. Violation and penalty. (1) The erection OF ANY ADVERTISING DEVICE WITHOUT A PERMIT FROM THE DEPARTMENT WHERE ONE IS REQUIRED BY THIS PART 4, OR THE use or maintenance of any advertising device in violation of any provision of this part 4 is declared to be illegal. ~~and~~; In addition to other remedies provided by law, INCLUDING THE DEPARTMENT'S ABILITY TO SEEK A COURT ORDER ENJOINING VIOLATIONS, the department is authorized to institute AN appropriate action or proceeding to prevent or remove such violation in any district court of competent jurisdiction. The removal of any advertising device unlawfully erected, USED, OR MAINTAINED shall be at the expense of the person who erects and maintains such A device.

(2) Any person who violates any ~~provisions~~ PROVISION of this part 4, ~~is guilty of a misdemeanor and upon conviction~~ BEING FOUND LIABLE thereof, ~~shall be punished by~~ SHALL BE SUBJECT TO a fine of not less than one hundred dollars nor more than one thousand dollars for each ~~offense~~ VIOLATION, AS ORDERED BY A COURT OF COMPETENT JURISDICTION. Each day of violation of ~~the provisions~~ A PROVISION of this part 4 shall constitute a separate ~~offense~~ VIOLATION. THE DEPARTMENT SHALL ENFORCE THE PROVISIONS OF THIS PART 4 THROUGH A CIVIL ACTION.

~~(3) (a) Except as provided in section 43-1-421, no person other than the department without written approval of the department shall erect or maintain~~ ONLY THE DEPARTMENT, OR A PERSON WITH THE WRITTEN APPROVAL OF THE DEPARTMENT, MAY ERECT OR MAINTAIN any advertising device located either wholly or partly within the right-of-way of any state highway that is a part of the state highway system, including streets within cities, cities and counties, and incorporated towns. All advertising devices so located WITHOUT APPROVAL BY THE DEPARTMENT are hereby declared to be public nuisances, and any law enforcement officer or peace officer in the state of Colorado or employee of the department is hereby authorized and directed to remove ~~the same~~ THESE DEVICES without notice.

~~(b) The department may grant written permission to erect official advertising devices within the right-of-way of any state highway.~~

SECTION 9. In Colorado Revised Statutes, 43-1-419, amend (1)(a) as follows:

43-1-419. Scenic byways - Independence pass scenic area highway. (1) (a) State highways designated as scenic byways by the transportation commission shall MUST have no new advertising devices erected which are visible from the highway. ~~except the following:~~

~~(I) Official advertising devices, as defined in section 43-1-403 (13);~~

~~(II) On-premise advertising devices, as defined in section 43-1-403 (14); or~~

~~(III) Directional advertising devices, as defined in section 43-1-403 (4).~~

SECTION 10. In Colorado Revised Statutes, repeal 43-1-421 as follows:

43-1-421. On-premise advertising device - extension authorized. ~~(1) Notwithstanding any other provision of law and except as otherwise provided in subsection (2) of this section, on-premise advertising devices shall be allowed to extend over existing rights-of-way and future rights-of-way as described in section 43-1-210 (3) of any state highway if all of the following requirements are met:~~

~~(a) The on-premise advertising device is attached to and extended from a building and only advertises activities or services offered in that building;~~

~~(b) The building and attached on-premise advertising device is adjacent to the state highway within a city, city and county, or incorporated town having authority over the state highway pursuant to section 43-2-135;~~

~~(c) The on-premise advertising device does not restrict pedestrian traffic and is not a safety hazard to the motoring public; and~~

~~(d) Before erecting the on-premise advertising device, the owner of the on-premise advertising device obtains written permission from the city, city and county, or incorporated town:~~

~~(2) This section shall not apply if the department determines that compliance with this section will cause denial of federal moneys that would otherwise be available or would otherwise be inconsistent with federal law, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with federal law. The department shall pursue every lawful remedy available to obtain permission or authority, if required by federal law, to apply this section in any such case.~~

SECTION 11. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.



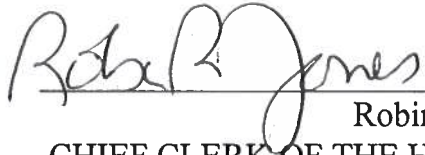
Leroy M. Garcia
PRESIDENT OF
THE SENATE



Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

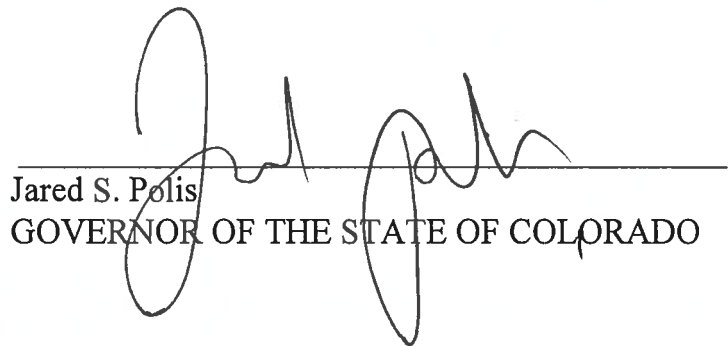


Cindi L. Markwell
SECRETARY OF
THE SENATE



Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED June 30, 2021 at 3:17 pm
(Date and Time)



Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

Exhibit 7



COLORADO

Department of Transportation

Office of the Executive Director

2829 W. Howard Place
Denver, CO 80204-2305

Adoption of Emergency Rules Governing Outdoor Advertising in Colorado, 2 CCR 601-3

Senate Bill 21-263 took effect in Colorado on June 30, 2021, changing the permitting and enforcement process for the control of outdoor advertising devices in areas near interstates and state highways and visible to the traveling public from the roadway to a compensation-based approach.

Colorado requires owners of outdoor advertising devices (i.e., billboards and signs) to obtain a permit from Colorado Department of Transportation (“CDOT”), including additional requirements on size, lighting, spacing and zoning for these devices.

Prior to Senate Bill 21-263, state law previously classified outdoor advertising devices into four categories to determine whether a CDOT permit was required. These four categories previously included:

- **On-Premise Sign:** A device that advertises services or products conducted on the premises upon which the sign is located (i.e., a fast-food restaurant sign visible from I-25).
- **Off-Premise Sign:** A device that advertises services or products not conducted on the premises upon which the sign is located (i.e., a billboard that advertises the Colorado Lottery).
- **Official Sign:** A device erected for a public purpose (i.e., the “Welcome to Colorful Colorado” sign).
- **Directional Sign:** A device that directs the traveling public to publicly or privately owned natural phenomena or to historic, cultural, scientific, educational and religious sites and areas of natural scenic beauty or outdoor recreation.

Previously, only Off-Premise and Directional Signs required a CDOT permit. However, On-Premise and Official Signs were allowed without a CDOT permit with certain restrictions.

For enforcement purposes, CDOT monitors interstates and state highways for outdoor advertising devices that needed permits. Under the old state law, to determine whether a sign needed a permit, CDOT arguably had to review the words and pictures of the device to figure out the type of sign it was. Recently, federal courts across the country have said this arguably content-based distinction may be a violation of free speech.

As a result, Senate Bill 21-263 removes the arguably content-based distinction from state law and establishes a new compensation-based approach for permitting and enforcement. Now, under the new state law only outdoor advertising devices visible from the roadway that generate compensation require a CDOT permit. Compensation means the exchange of



anything of value, including but not limited to money, as further defined in the new state law.

The immediate adoption of emergency rules is necessary to align CDOT's processes for permitting and enforcement of outdoor advertising devices with the new state law under Senate Bill 21-263. The emergency rules support CDOT's control of the use of outdoor advertising devices in areas near interstates and state highways to protect and promote the health, safety, and welfare of the traveling public by reducing driver distractions and preserving the natural and scenic beauty of Colorado.

Pursuant to the authority granted by § 43-1-105(6), § 43-1-107, § 24-4-103(6)(a), § 43-1-414(4), and § 43-1-415, C.R.S., the CDOT Executive Director adopts emergency rules governing outdoor advertising in Colorado, 2 CCR 601-3.

Herman F. Stockinger A.A.

Herman Stockinger
Acting on behalf of the Executive Director
Colorado Department of Transportation

8/4/2021

DATE





COLORADO
Department of Transportation

2829 W. Howard Place
Denver, CO 80204-2305

**DEPARTMENT OF TRANSPORTATION
EXECUTIVE DIRECTOR**

RULES GOVERNING OUTDOOR ADVERTISING IN COLORADO

2 CCR 601-3

NOTICE OF ADOPTION OF EMERGENCY RULES

Pursuant to and in compliance with Title 43, Article 1 and Title 24, Article 4, C.R.S. as amended, notice is given of the adoption on an emergency basis for the rules governing outdoor advertising in Colorado.

- Section 1. Statement of Basis and Authority
- Section 2. Statement of Purpose
- Section 3. Applicability
- Section 4. Rules Governing Outdoor Advertising in Colorado
- Section 5. Effective Date

Section 1. Statement of Basis and Authority

The purpose of the rules is to carry out the provisions of § 43-1-401, C.R.S. *et seq.*, and the Highway Beautification Act of 1965, 23 U.S.C. 131, 23 C.F.R. 750.705(h) by establishing a statewide uniform program controlling the use of outdoor advertising devices (i.e., billboards and signs) in areas adjacent to the State Highway System. The intent of the rules is to protect and promote the health, safety, and welfare of the traveling public and the people of Colorado, and to promote the reasonable, orderly and effective display of outdoor advertising, while preserving and enhancing the natural and scenic beauty of Colorado.

Senate Bill 21-263 took effect in Colorado on June 30, 2021, changing the permitting and enforcement processes for the control of advertising devices in areas near interstates and state highways and visible to the traveling public from the roadway to a compensation-based approach.

The statutory basis and authority for the emergency rules is granted under § 43-1-105(6), § 24-4-103(6)(a), § 43-1-414(4), and § 43-1-415, C.R.S.

Section 2. Statement of Purpose

Colorado requires owners of advertising devices to obtain a permit from the Colorado Department of Transportation (“CDOT”), and there are requirements on size, lighting, spacing and zoning for these devices.

Prior to Senate Bill 21-263, state law previously classified outdoor advertising devices into four categories to determine whether a CDOT permit was required. These four categories previously included:

- **On-Premise Sign:** A device that advertises services or products conducted on the premises upon which the sign is located (i.e., a fast-food restaurant sign visible from I-25).
- **Off-Premise Sign:** A device that advertises services or products not conducted on the premises upon which the sign is located (i.e., a billboard that advertises the Colorado Lottery).
- **Official Sign:** A device erected for a public purpose (i.e., the "Welcome to Colorful Colorado" sign).
- **Directional Sign:** A device that directs the traveling public to publicly or privately owned natural phenomena or to historic, cultural, scientific, educational and religious sites and areas of natural scenic beauty or outdoor recreation.

Previously, only Off-Premise and Directional Signs required a CDOT permit. However, On-Premise and Official Signs were allowed without a CDOT permit with certain restrictions.

For enforcement purposes, CDOT monitors interstates and state highways for outdoor advertising devices that needed permits. Under the old state law, to determine whether a sign needed a permit, CDOT arguably had to review the words and pictures of the sign to figure out the type of device it was. Recently, federal courts across the country have said this arguably content-based distinction may be a violation of free speech.

As a result, Senate Bill 21-263 removes the arguably content-based distinction from state law and establishes a new compensation-based approach for permitting and enforcement. Now, under the new state law only advertising devices visible from the roadway that generate compensation require a CDOT permit. Compensation means the exchange of anything of value, including but not limited to money, as further defined in the new state law.

The immediate adoption of emergency rules is necessary to align CDOT's processes for permitting and enforcement of advertising devices with the new state law under Senate Bill 21-263. The emergency rules support CDOT's control of advertising devices in areas near the interstate system and state highway system to protect and promote the health, safety, and welfare of the traveling public by reducing driver distractions and preserving the natural and scenic beauty of Colorado.

The specific purpose of the emergency rulemaking is to align CDOT's processes for permitting and enforcement of outdoor advertising devices with the new state law under Senate Bill 21-263. These emergency rules establish a new compensation-based approach for permitting and enforcement of outdoor advertising devices in areas near interstates and state highways and visible to the traveling public from the roadway. These emergency rules remove the previous categories of outdoor advertising devices (i.e., On-Premise Sign, Off-Premise Sign, Official Sign, and Directional Sign) from the rules, and they also redefine the definition of "Advertising Device" and add the definition of "Compensation." These emergency rules also modify the noncompliance requirements to give a property owner or sign

owner the option to execute an affidavit under the penalty of perjury in the event the property owner or sign owner does not believe their sign is an advertising device requiring a CDOT permit. These emergency rules streamline the hearing procedures and allow an Applicant who was denied a permit to request an expedited hearing within thirty days of the notice of denial. Additionally, these emergency rules clarify that Changeable Electronic Variable Message advertising devices may not be within 1000 feet of each other that are facing the same direction. Finally, these emergency rules make technical revisions to align the rules with the new state law under Senate Bill 21-263.

Section 3. Applicability

The emergency rules apply to all outdoor advertising devices in areas near the interstate system and state highway system that are visible to the traveling public from the roadway. These emergency rules do not apply to outdoor advertising devices on land in Colorado held by the federal government in trust for Indian tribes.

Section 4. RULES GOVERNING OUTDOOR ADVERTISING IN COLORADO

Please note the following formatting key:

Font Effect	Meaning
<u>Underline</u>	New Language
Strikethrough	Deletions
...	Omission of Unaffected Rules
[Blue Font Text]	Annotation

...

1.00 Definitions

1.1 All definitions set forth in 23 C.F.R. 750.102, 23 C.F.R. 750.703, and § 43-1-403, C.R.S. shall apply to these Rules. If there is a conflict between the definitions in state and federal law and regulations and these Rules, the state and federal law definitions shall govern. Definitions are not listed in alphabetical order.

1.2 “Advertising Device” ~~means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, structure, or any other contrivance designed, intended, or used to advertise or to give information in the nature of advertising and having the capacity of being visible from the main traveled way of any state highway, except any advertising device on a vehicle using the highway. The term “vehicle using the highway” does not include any~~

~~vehicle parked near said highway for advertising purposes. has the same meaning pursuant to {§ 43-1-403(1), C.R.S.}~~

...

1.6 ~~“Commercial Advertising” means advertising of commercial interests which promotes or identifies goods and/or services as a result of the exposure of the business name rather than advocating a social or political cause. Repealed.~~

...

1.8 ~~“Comprehensive Development” shall include all land used or to be used or occupied for the activities of the development, including buildings, parking, storage and service areas, streets, driveways, and reasonably necessary landscaped areas. A Comprehensive Development includes only land that is used for a purpose reasonably related to the activities of the development other than an attempt to qualify the land for On-Premise advertising. has the same meaning pursuant to {§ 43-1-403 (1.5)(a), C.R.S.}~~

...

1.12 ~~“Directional Sign” shall have the same meaning as § 43-1-403(4), C.R.S. (i.e., shall include but not be limited to: Advertising devices containing directional information to facilitate emergency vehicle access to remote locations or about public places owned or operated by federal, state, or local governments or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public). Repealed.~~

...

1.18 ~~“Off Premise Sign” means an Advertising Device which advertises an activity, service or product not conducted on the Property upon which the Sign is located. Repealed.~~

1.19 ~~“Official Sign” shall have the same meaning as § 43-1-403(13), C.R.S. (Any advertising device erected for a public purpose authorized by law, but the term shall not include devices advertising any private business). Repealed.~~

1.20 ~~“On-Premise Sign” means an Advertising Device: (1) advertising the sale or lease of a Property on which it is located; (2) or advertising activities on the Property on which it is located; or (3) located within a Comprehensive Development that advertises any activity conducted within the Comprehensive Development. Repealed.~~

...

1.23 “Permit Number Identifier” means a series of numbers assigned by the Department that is unique to the Advertising Device ~~and identifies it for purposes of oversight. The Permit Number Identifier for Advertising Devices is different from the number identifier used for Official Signs (that do not require a Permit).~~

•••

1.25 ~~“Premises” means the central, actual physical location where an activity is routinely conducted. Premises include the primary structures, parking facilities and private roadway if they are necessary to the principal activity.~~Repealed.

•••

1.34 “Compensation” has the same meaning pursuant to § 43-1-403 (1.3), C.R.S.

2.00 Permitting

2.1 Signs Requiring a CDOT Permit

- A. A permit from the Department shall be required for all Signs within the Control Area as provided for in § 43-1-407 and 408, C.R.S. A permit is required for all ~~Off-Premise~~ Signs, including:
1. Nonconforming Advertising Devices [§ 43-1-403(12), C.R.S.];
 2. Advertising Devices located in areas Zoned for Commercial or Industrial Uses by law- [§ 43-1-404(1)(d) and (e), and § 43-1-407(1)(~~II~~)(c), C.R.S.]; and
 3. Advertising on Bus Benches and Shelters. [§ 43-1-407(2)(a)(I) through (III), C.R.S.]
 4. ~~Directional Signs not excepted under § 43-1-407(1)(b)(I) through (II), C.R.S.~~Repealed.

2.2 ~~Signs Not Requiring a Permit from CDOT~~Repealed.

~~A. A Sign Permit is not required for:~~

- ~~1. On-Premise Signs;~~
- ~~2. Directional Signs that are:~~
 - ~~a. No larger than 8 square feet and that advertises farms, ranches, nonprofit educational, veterans’, religious, charitable, or civic organizations. §43-1-407(1)(b)(II), C.R.S.;~~

~~b. No larger than 32 square feet, the sole purpose of which is to provide direction to individual farms or ranches by way of individual Signs that are no larger than 8 square feet. [§43-1-407(1)(b)(II), C.R.S.];~~

~~c. A Sign indicating a public utility and not advertising a product, including informational Signs, notices, or markers, erected and maintained by a public or private public utility company. [23 C.F.R. 750.153(o)]~~

~~3. Official Signs. [§ 43-1-404(1)(a) and § 43-1-407, C.R.S.]~~

2.3 Conditions that Prohibit CDOT from Issuing or Renewing a Permit [§ 43-1-411, and § 43-1-417(3)(a), C.R.S. and 23 C.F.R. 750.108]

- A. The Department is prohibited from issuing ~~or renewing~~ a Permit for any Advertising Device pursuant to § 43-1-411, C.R.S. and 23 C.F.R. 750.108 if the Sign:
1. Does not conform to size, lighting, and spacing standards as prescribed by these Rules where the Rules were adopted prior to the erection of the Advertising Device;
 2. Would encroach upon the right-of-way of a public highway absent prior written approval from the Department;
 3. Is within 500 feet of the center point of an intersection of a Controlled Route at grade with another highway or with a railroad so as to materially obstruct or reduce the existing view of traffic on the other highway or railway trains approaching the intersection;
 4. Is along a Controlled Route where it would reduce the existing view of traffic in either direction or of traffic control or official highway ~~Signs-signs~~ to less than 500 feet;
 5. Includes more than two advertising panels on an Advertising Device facing the same direction;
 6. Required a permit prior to July 1, 1981, and no permit was obtained;
 7. Simulates any official, directional, or warning ~~Sign-sign~~ erected or maintained by the federal or state government or local governing body which involves light that simulates or resembles traffic signals or traffic control ~~Signssigns~~;
 8. Is nailed, tacked, posted, or attached in any manner on trees, plants, fence posts, public utility poles, rocks or other natural objects; or
 9. The Department is prohibited from issuing or renewing a Permit if the Sign becomes ~~Becomes~~ decayed, insecure, or in danger of falling or otherwise is unsafe or unsightly due to lack of maintenance or repair, or from any other cause.

•••

[Note: Rule 2.11 will be repealed in its entirety and re-enacted as listed below.]

~~2.11 Permit Denial, Revocation or Denial of Renewal [23 C.F.R. 750.104; § 43-1-410, C.R.S.]~~

- ~~A. The Department may deny, revoke, or deny the renewal of a Permit for any violation of state or federal law or these Rules, including but not limited to:~~
- ~~1. False or misleading information in the Permit application or Renewal;~~
 - ~~2. Advertisement of illegal activities;~~
 - ~~3. Failure to maintain the Sign in good repair;~~
 - ~~4. Failure to comply with all Permit provisions;~~
 - ~~5. Increasing the permitted size of an Advertising Device; or~~
 - ~~6. Any violation of federal law referenced herein, § 43-1-401, et seq., C.R.S. or these Rules.~~
- ~~B. Pursuant to § 43-1-412(4), C.R.S., the applicant or permit holder shall have 60 days within which to provide CDOT with proof of compliance.~~

2.11 Permit Denial, Revocation, or Denial of Renewal [23 C.F.R. 750.104; § 43-1-410, C.R.S.]

- A. The Department may deny, revoke, or deny the renewal of a Permit for any violation of state or federal law or these Rules, including but not limited to:
1. False or misleading information in the Permit application or renewal;
 2. Failure to maintain the Sign in good repair;
 3. Failure to comply with all Permit provisions;
 4. Increasing the permitted size of an Advertising Device; or
 5. Any violation of federal law referenced herein, § 43-1-401, et seq., C.R.S. or these Rules.
- B. The Department will notify the Applicant or Permittee in writing stating the reasons for the denial of the application, the denial of the renewal of the Permit, or the revocation of the Permit along with the opportunity to request a hearing as set forth in Rule 5.00.

3.00 Notice of Noncompliance Pursuant to § 43-1-412, C.R.S.

3.1 ~~Issuance of Written Notice~~Repealed.

- ~~A. If the Department determines that an application for renewal should be denied, or that an existing Permit should be revoked, the Department shall give written notice by certified mail to the Applicant or Permittee.~~

- ~~B. If the Department revokes a Permit, the Department shall send a Notice of Noncompliance pursuant to Rule 3.00 to the Permittee.~~
- ~~C. In either case, the notice shall specify in what respect the Sign does not comply with relevant federal or state law and/or these Rules.~~
- ~~D. Pursuant to § 43-1-412(4), C.R.S., the applicant or permit holder shall have 60 within which to provide CDOT with proof of compliance.~~

3.2 Grounds for Noncompliance

- A. Sign ~~Lacking~~lacking a CDOT Permit [§ 43-1-412(2)(a), C.R.S.]
 - 1. If a Permit has not been obtained for the Advertising Device, the Department shall give written Notice of Noncompliance by certified mail to the owner of the Property on which the Sign is located. Such notice will:
 - a. Inform the Property owner that the Advertising Device is illegal;
 - b. Require the owner to remove the Sign within 60 days of receipt of the notice, execute an affidavit under the penalty of perjury as evidence that the device is not an Advertising Device, or obtain a permit; and
 - c. Advise the Property owner of the right to request a hearing.

•••

- C. Permit ~~Application~~Revoked or Renewal Denied. § 43-1-412(2)(c), C.R.S.

•••

[Note: Rule 5.00 will be repealed in its entirety and re-enacted as listed below.]

~~5.00 Request for Hearing~~

- ~~A. A request for a hearing must be received by the Department no later than 60 days after receipt of the notice. [§ 43-1-412(3), C.R.S.]~~
- ~~B. The request for hearing must be made in writing, by certified mail, addressed to and received by:

Outdoor Advertising Program

Colorado Dept. of Transportation

4201 East Arkansas Ave.

Denver, Colorado, 80222~~
- ~~C. Upon receipt of a request for a hearing, the Department shall arrange for and give written notice of the hearing.~~

- ~~D. At least 30 days prior to the hearing, the Department shall provide notice of the hearing either by personal service or certified mail to the last address furnished by the person requesting the hearing. The notice shall meet the requirements of § 24-4-105(2)(a), C.R.S.~~
- ~~E. Any person(s) given such notice shall file a written answer within 30 days after the service or mailing of such notice.~~
- ~~F. If such person fails to answer, the Department, upon motion, may enter a default. For good cause shown, the entry of default may be set aside within 10 days after the date of such entry. [§ 24-4-105(2)(b), C.R.S.]~~
- ~~G. A person who may be affected or aggrieved by the Department action shall be admitted as a party to the proceeding upon the person's filing with the Department a written request to be included, setting forth a brief statement of the facts which entitle the person to be admitted and the matters which should be decided. The Department may admit any person or agency as a party to the proceeding for limited purposes. [§ 24-4-105(2)(c), C.R.S.]~~
- ~~H. The hearing shall be presided over by an Administrative Law Judge pursuant to § 24-4-105(3), C.R.S.~~

5.00 Hearings

5.1 Request for Hearing

- ~~A. A request for a hearing must be received by the Department no later than sixty (60) days after receipt of the notice. An Applicant who was denied a Permit may request an expedited hearing within thirty (30) days of the notice of denial pursuant to § 43-1-408(3), C.R.S.~~
- ~~B. The request for hearing must be made in writing, by certified mail, addressed to and received by:

Colorado Department of Transportation
Outdoor Advertising Program
2829 W. Howard Place
Denver, Colorado, 80204~~
- ~~C. All hearings and appeals will be conducted pursuant to §§ 24-4-105 and 106, C.R.S.~~

6.00 Signs Allowed in Control Areas

[§ 43-1-404, C.R.S., 23 USC 131, 23 C.F.R. 750.105; 23 C.F.R. 750.108]

6.01 Advertising Devices Allowed

- A. The following Signs may be allowed within the Control Area adjacent to the Controlled Route:
 - 1. ~~On-Premise Signs~~~~Repealed~~;

2. ~~Off-Premise Signs~~Advertising Devices, which include:
 - a. Signs in Areas Zoned for Commercial or Industrial Uses²;
 - b. Nonconforming Signs;
 - c. ~~Directional and Official Signs~~Repealed;
 - d. Advertising Devices on Scenic Byways (See Rule 9.00);
 - e. ~~Landmark Signs~~Repealed;
 - f. ~~Free Coffee Signs~~Repealed;
 - g. ~~Tourist-Oriented Directional Signs (TODS) and Specific Information Signs (LOGO). Rules Governing TODS and LOGO Signs are addressed in a separate set of rules, 2 CCR 601-7~~Repealed; and
 - h. Changeable Electronic Variable Message Signs (“CEVMS”)₂.

6.02 ~~On-Premise Signs~~Repealed.

~~[23 U.S.C. 131(c) and (j); 23 C.F.R. 750.704(a); 23 C.F.R. 750.105, 23 C.F.R. 750.108, and 23 C.F.R. 750.709(d)]~~

~~A. Authority. This section of the Rules pertains to On-Premise Signs located outside of 50 feet from the advertised or principal activity and Visible from the Main Travelled Way of the State Highway System.~~

~~1. Size~~

- ~~a. On-Premise Signs which are located outside of 50 feet from the advertised or principal activity shall not exceed 20 feet in length, width or height, or 150 square feet in area, including border and trim, but excluding supports. [23 C.F.R. 750.108(g)].~~
- ~~b. No Sign may attempt or appear to attempt to direct the movement of traffic or interfere with, imitate or resemble any official traffic sign, signal or device.~~
- ~~c. No Sign may prevent the driver of a vehicle from having a clear and unobstructed view of Official Signs and approaching or merging traffic.~~
- ~~d. No Sign may be erected or maintained upon trees or painted or drawn upon rocks or other natural features.~~
- ~~e. No On-Premise Sign may be erected in an area across a public or private roadway from the Property where the business is conducted unless the purpose of the public or private roadway is for the exclusive use of a Comprehensive Development.~~

~~2. Lighting~~

- a. ~~On-Premise Signs shall comply with the lighting requirements of § 43-1-404(1)(f)(i), C.R.S.; however, for purposes of spacing, On-Premise Signs shall not be counted within the 1,000-foot limitation for Off-Premise Signs.~~
 - b. ~~No Sign may contain, include, or be illuminated by any flashing, intermittent or moving light or lights.~~
 - c. ~~No lighting may be used in any way in connection with any Sign unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the Main-Traveled-Way of the State Highway System or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.~~
 - d. ~~No On-Premise Sign may move or have any animated or moving parts.~~
- ~~B. An On-Premise Sign must be located upon the same Property as the activity advertised. An On-Premise Sign may:~~
- 1. ~~Advertise the principal or primary activities, goods or services available upon the premises;~~
 - 2. ~~Identify the property upon which the Sign is located;~~
 - 3. ~~Advertise the property upon which the Sign is located for sale or lease;~~
 - 4. ~~When located within a Comprehensive Development, advertise activities conducted within the Comprehensive Development;~~
 - 5. ~~Direct the traveling public to the closest entrance to the premises located upon the property;~~
 - 6. ~~Include non-Commercial Advertising devices (ex. religious, social or political commentaries) erected by the owner or lessee of property.~~
- ~~C. Where the Sign site is located at or near the end of a narrow strip contiguous to the advertised activity, the Sign site shall not be considered part of the Premises on which the activity being advertised is conducted when the purpose is clearly to circumvent 23 U.S.C. 131(j). See 23 C.F.R. 750.709(3).~~
- ~~D. An On-Premise Sign does not include:~~
- 1. ~~A Sign that advertises activities, goods, or services not available upon the property.~~
 - 2. ~~A Sign that consists principally of brand name or trade name advertising of a product or service which is only incidental to the principal activity conducted upon the premises.~~

3. ~~A Sign which brings in rental income to the premise/property and /or Sign owner. [23 C.F.R. 750.709]~~

~~E. On-Premise Signs that Identify the Property upon which They Are Located.~~

1. ~~An On-Premise Sign identifying the property upon which it is located shall contain only the:~~

a. ~~Name of the property,~~

b. ~~Type of property,~~

c. ~~Logo, and/or~~

d. ~~Name of the owner of the property.~~

2. ~~Such Signs may also direct the traveling public to the closest entrance to the premises.~~

3. ~~On-Premise Signs directing the travelling public to the closest entrance to the premises are limited to two Signs Visible to traffic proceeding in any one direction if the highway frontage of the property is less than one mile in length.~~

4. ~~If the highway frontage of the property is more than one mile in length, one Sign Visible to traffic proceeding in any one direction per mile is allowed.~~

5. ~~The purpose of such Signs shall not be to advertise specific goods or services available upon the premises.~~

~~F. On-Premise Signs that Advertise the Primary Activities, Goods or Services Conducted on the Premises which are located outside of 50 feet from the activity shall not exceed 20 feet in length, width or height, or 150 square feet in area, including border and trim, but excluding supports. [23 C.F.R. 750.108(g)]~~

~~G. On-Premise Signs that Advertise the Sale or Lease of the Property upon which the Sign is Located:~~

1. ~~An On-Premise Sign that advertises the sale or lease of the property may not contain any product or service other than the logo and/or name, type of real property, address, and contact information of the party offering the property for sale or lease.~~

2. ~~Real property offered for sale or lease must only be for the uses of record for zoned or platted areas.~~

3. ~~On-Premise Signs advertising the sale or lease of the property are limited to one Sign Visible to traffic proceeding in any one direction less than one mile apart.~~

4. ~~On-Premise Signs advertising the sale or lease of the property may be no larger than 96 square feet including border and trim, but excluding supports.~~

~~5. Not more than one such Sign advertising the sale or lease of the same property may be allowed in such manner as to be visible to traffic proceeding in any one direction on any one Interstate Highway. [23 C.F.R. 750.105(a)].~~

~~H. On-Premise Signs – Non-Commercial.~~

~~1. Non-commercial Signs are limited to two Signs visible to traffic proceeding in any one direction if the highway frontage of the property upon which the premises is located is less than one mile in length.~~

~~2. If the highway frontage of the property upon which the premises is located is more than one mile in length, one non-commercial Sign visible to traffic proceeding in any one direction per mile is allowable.~~

~~I. A property owner who has an On-Premise Sign that was in existence upon the property on the effective date of these Rules and who could have reasonably believed such advertising device was on premise under prior rules shall be allowed one year from the effective date of the Rules to bring such advertising device into compliance with these Rules.~~

~~J. Measurement of On-Premise Signs~~

~~1. These Rules do not apply to On-Premise Signs located within 50 feet of the principal activity.~~

~~2. When the advertised activity is a business, is commercial, or concerns industrial land use, the 50-foot distance shall be measured from the regularly used buildings, parking lots, storage or processing areas, or other structures which are essential and customary to the conduct of the business. The distance shall not be measured from driveways, fences, or similar facilities.~~

~~3. When the advertised activity is a non-commercial or non-industrial land use such as a residence, farm, or orchard, the 50-foot distance shall be measured from the major structures on the Property.~~

~~4. A Sign that is located within 50 feet of the premises and advertises the primary activities, goods and services available upon the premises is an On-Premise Sign unless the land upon which the Sign is located is used for, or devoted to, a separate purpose unrelated to the principal activity advertised. For example, land adjacent to or adjoining a service station, but devoted to raising of crops, residence, or farmstead uses or other commercial or industrial uses having no direct relationship to the service station activity is a separate purpose unrelated to the principal activity advertised.~~

~~K. Obsolescence of On-Premise Signs~~

~~1. Upon the termination or cessation for one consecutive year of the activities, services or products advertised by an On-Premise Sign, the Sign advertising the~~

~~activity shall no longer qualify as an On-Premise Sign and shall be deemed illegal and subject to removal by the Department at the expense of the Sign owner.~~

~~L. On-Premise Signs – Right-of-Way Encroachment~~

- ~~1. On-Premise Signs shall be allowed to extend over existing right-of-way and future rights-of-way of any State Highway if:
 - ~~a. The Sign is attached to and extends from a building and only advertises activities or services offered in that building;~~
 - ~~b. The building and attached Sign is adjacent to the State Highway within a city, city and county, or incorporated town having authority over the State Highway pursuant to § 43-2-135, C.R.S.;~~
 - ~~c. The Sign does not restrict pedestrian traffic and is not a safety hazard to the motoring public; and~~
 - ~~d. Before erecting the Sign, the owner has obtained written permission from the city, city and county or incorporated town. [§ 43-1-421, C.R.S.]~~~~
- ~~2. No On-Premise Sign may encroach over an Interstate right-of-way nor any portion of a roadway.~~

~~M. Comprehensive Development On-Premise Signs~~

- ~~1. On-Premise Signs for Comprehensive Developments shall adhere to the requirements of On-Premise Signs in Rule 6.02.~~
- ~~2. A Comprehensive Development includes all land used or to be used or occupied for the activities of the development, including buildings, parking, storage and service areas, streets, driveways, and reasonably necessary landscaped areas.~~
- ~~3. A Comprehensive Development includes only land that is used for a purpose reasonably related to the activities of the development other than an attempt to qualify the land for On-Premise advertising.~~
- ~~4. A Comprehensive Development is a group of two or more lots or parcels of land used primarily for multiple separate commercial or industrial activities and must meet all of the following requirements pursuant to § 43-1-403 (1.5)(a) and (b), C.R.S.:
 - ~~a. Is located entirely on one side of a highway;~~
 - ~~b. Consists of lots or parcels that are contiguous except for public or private roadways or driveways that provide access to the development;~~
 - ~~c. Has been approved by the relevant local government as a development with a common identity and plan for public and private improvements;~~
 - ~~d. Has common areas such as parking, amenities, and landscaping; and~~~~

- e. ~~Has an approved plan of common ownership in which the owners have recorded irrevocable rights to use common areas and that provides for the management and maintenance of common areas.~~

6.03 ~~Off-Premise Signs~~ Advertising Devices

6.03.1 General Requirements

- A. ~~Off-Premise~~ Signs include:
 - 1. Signs in Areas Zoned for Commercial or Industrial Uses;
 - 2. Nonconforming Signs;
 - 3. ~~Directional and Official Signs~~ Repealed; and
 - 4. Advertising Devices on Scenic Byways;
 - 5. ~~Landmark Signs, and~~ Repealed.
 - 6. ~~Free Coffee Signs~~ Repealed.
- B. An ~~Off-Premise Sign~~ Advertising Device shall comply with the requirements set forth in these Rules and 23 C.F.R. 750.108. All Signs shall not:

...

- 2. Interfere with a driver's clear and unobstructed view of ~~Official Signs~~ official signs and approaching, intersecting or merging traffic; [23 C.F.R. 750.108(b)]

...

- C. No ~~Off-Premise Sign~~ new Advertising Device shall be erected adjacent to a Scenic Byway, ~~except for Directional and Official Signs~~. [§ 43-1-419, C.R.S.]
- D. ~~An Off-Premise~~ A Sign shall be considered abandoned if it meets the requirements of Rule 6.03.3-~~(B)~~.
- E. Measuring Distances between ~~Off-Premise~~ Signs [23 C.F.R. 750.103]

...

6.03.3 Sign Repairs [23 C.F.R. 750.707; § 43-1-413, C.R.S.]

...

B. Abandoned, Discontinued or Obsolete Nonconforming Signs. [23 U.S.C. 131; 23 C.F.R. 750.707; § 43-1-413(2)(f), C.R.S.]

1. Abandoned or Discontinued Signs

- a. An abandoned or discontinued Sign is one that for one year or more ~~years displays out-of-date advertising matter, or~~ is without advertising matter, or is in need of substantial repair. Such Signs determined by the Department as abandoned or discontinued are subject to removal as Illegal Signs under § 43-1-412, C.R.S.

•••

C. Damage or Destruction of Nonconforming Signs. [23 C.F.R. 750.707(d)(6); § 43-1-413(2)(e), C.R.S.]

•••

4. The Department shall determine whether a Sign has been damaged or destroyed to a degree that terminates the Nonconforming Sign's nonconforming status based on the schedule of compensation referenced in § 43-1-413(2)(e), C.R.S., as follows:

•••

- d. The procedure under (1) through (5) below shall determine whether the damaged or destroyed Nonconforming Sign may be repaired or restored:

•••

- (5) The Department shall make a determination whether the ~~sign~~ Sign may be repaired or restored based on (3) and

•••

7.00 Signs in Areas Zoned by Law for Industrial or Commercial Uses

[23 C.F.R. 750.708; § 43-1-404(1)(e)(I); § 43-1-406(2)(b)(I) and (II), C.R.S.]

•••

B. Size Requirements [§ 43-1-404(1), C.R.S.]

•••

5. ~~Requirements for Signs Erected After 1970 Advertising Necessary Goods and Services Repealed.~~

a. ~~Advertising Devices located along non-interstate Controlled Routes shall be subject to the following requirements:~~

~~(1) Only inform the traveling public of necessary goods or services available within a five-mile radius of the Advertising Device. Necessary goods and services shall be limited to those set forth in § 43-1-404(1)(e)(i)(c), C.R.S.~~

~~(2) No person providing necessary goods or services shall be eligible for more than two Advertising Devices.~~

~~(3) The Advertising Device shall predominately display the name and location of the necessary goods or services advertised.~~

~~(4) If the necessary goods and services are not available 12 months out of the year, the Sign must clearly display the dates such goods and services are available.~~

C. Lighting

1. Advertising Devices that contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, ~~except those giving public service information, such as time, date, temperature, weather, or similar information.~~

•••

D. Spacing of Signs

•••

6. Signs that are not lawfully maintained, ~~and Official and On-Premise Signs as defined in 23 U.S.C. 131(c) and these Rules,~~ shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.

8.00 Directional and Official Signs Repealed.

~~{§ 43-1-403(4), C.R.S.; 23 U.S.C 131(c)(1); 23 C.F.R. 750.105; 23 C.F.R. 750.153}~~

~~A. CDOT's Jurisdiction over Directional and Official Signs.~~

- ~~1. Directional and Official Signs under CDOT control are located within 660 feet of the right-of-way and Directional and Official Signs located beyond 660 feet of the right-of-way outside of Urban Areas, Visible from the Main Traveled Way of the system, and erected with the purpose of their message being read from such Main Traveled Way.~~
- ~~2. Urban Area means an area as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by CDOT and local officials, subject to approval by the Secretary of Transportation. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of the Census. [23 C.F.R. 750.153(t)]~~

~~B. Definitions. The Definitions listed below are specific to this Rule on Directional and Official Signs.~~

- ~~1. "Directional Sign" includes, but is not limited to:~~
 - ~~a. Signs containing directional information to facilitate emergency vehicle access to remote locations;~~
 - ~~b. Signs referring to public places owned or operated by federal, state, or local governments or their agencies;~~
 - ~~c. Publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites;~~
 - ~~d. Areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public. 23 C.F.R. 750.153(r); § 43-1-403 (4) C.R.S.; or~~
 - ~~e. Public utility signs, service club and religious notices, and public service signs. [23 C.F.R. 750.153(m)]~~
- ~~2. A "Notice" for purposes of this section of the Rules is a temporary sign providing the content as stated in the "Official Sign" or "Public Utility Sign" definitions but which is posted for a limited time.~~
- ~~3. "Official Sign" is a Sign erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction pursuant to federal, state~~

or local law and for the purposes of carrying out an official duty or responsibility. Historical markers authorized by State law and erected by CDOT or local government agencies or nonprofit historical societies may be considered Official Signs. [23 C.F.R. 750.153 (n)] Official Signs shall not include Signs advertising any private business. [§43-1-403(13), C.R.S.]

4. ~~“Public Service Sign” located on school bus stop shelters:~~

- a. ~~Identifies the donor, sponsor, or contributor of said shelters;~~
- b. ~~Contains public service messages, which shall occupy not less than 50% of the area of the Sign;~~
- c. ~~Contains no other message;~~
- d. ~~Is located on school bus shelters which are authorized or approved by city, county, or state law, regulation, or ordinance, and at places approved by the city, county, or the Department; and~~
- e. ~~May not exceed 32 square feet in area. Not more than one Sign on each shelter shall face in any one direction. [23 C.F.R. 750.153(q)]~~

5. ~~“Public Utility Sign” means a warning sign, informational sign, notice, or marker that is customarily erected and maintained by publicly or privately owned public utilities, as essential to their operations. [23 C.F.R. 750.153(o)]~~

6. ~~“Service club” or “Religious” signs or notices mean a sign or notice whose erection is authorized by law, relating to meetings of nonprofit service clubs or charitable associations, or religious services, which signs or notices do not exceed 8 square feet in area. [23 C.F.R. 750.153(p)]~~

C. ~~Criteria for Directional Signs [23 C.F.R. 170.154(f)]~~

1. ~~Prohibited Signs. The following Directional Sign conditions are prohibited:~~

- a. ~~Directional Signs advertising activities that are illegal under federal or state laws or regulations in effect at the location of those Signs or at the location of those activities.~~
- b. ~~Directional Signs that obscure or otherwise interfere with the effectiveness of any official traffic sign, signal or device, or obstruct or interfere with the driver’s view of approaching, merging, or intersecting traffic.~~
- c. ~~Directional Signs erected or maintained upon trees or painted or drawn upon rocks or other natural features.~~
- d. ~~Directional Signs that are:~~

- (1) ~~Obsolete;~~

- ~~(2) Structurally unsafe or in disrepair;~~
- ~~(3) Move or have any animated or moving parts;~~
- ~~(4) Located in Rest Areas, Parklands or Scenic Areas.~~

~~2. Size of Directional Signs~~

- ~~a. No Directional Sign shall exceed the following limits, including border and trim, but exclude supports:~~

~~Maximum area—150 square feet;~~

~~Maximum height—20 feet;~~

~~Maximum length—20 feet.~~

~~3. Lighting of Directional Signs~~

- ~~a. The following lighting conditions are prohibited:~~

~~(1) Signs that contain, include, or are illuminated by any flashing, intermittent, or moving light or lights.~~

~~(2) Signs that are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle.~~

~~(3) Signs that are illuminated so as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal.~~

~~4. Spacing of Directional Signs~~

- ~~a. Each location of a Directional Sign must be approved by the Department.~~

~~b. No Directional Sign may be located within 2,000 feet of an interchange, or intersection at grade along the interstate system or other freeways (measured along the Interstate or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the Main Traveled Way).~~

~~c. No Directional Sign may be located within 2,000 feet of a Rest Area, Parkland, or Scenic Area. A scenic area means any public park or area of particular scenic beauty or historical significance designated by or pursuant to state law as a scenic area.~~

- d. ~~No two Directional Signs facing the same direction of travel shall be spaced less than one (1) mile apart;~~
- e. ~~Not more than three Directional Signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity;~~
- f. ~~Directional Signs located adjacent to the interstate system shall be within 75 air miles of the activity; and~~
- g. ~~Directional Signs located on other than the interstate system, including adjacent to the primary system, shall be within 50 air miles of the activity.~~

~~5. Message Content~~

- a. ~~The message on Directional Signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit numbers.~~

~~Descriptive words or phrases, and pictorial or photographic representations of the activity or its environs are prohibited.~~

~~D. Directional Signs Pertaining to Privately-Owned Activities [23 C.F.R. 750.154]~~

- 1. ~~Privately owned activities or attractions eligible for Directional Signing must meet the requirements of these Rules and state and federal law, and must be nationally or regionally known, and of outstanding interest to the traveling public. "Outstanding interest to the travelling public" for purposes of these Rules means for edification and enjoyment of the travelling public and not specifically to generate income for the activity. [23 C.F.R. 750.154 (f)(1) and (2)]~~
- 2. ~~Privately owned activities or attractions eligible for Directional Signing are limited to the following: natural phenomena; scenic attractions; historic, educational, cultural, scientific, and religious sites, and outdoor recreational areas.~~
- 3. ~~To be eligible, privately owned attractions or activities must be nationally or regionally known, and of outstanding interest to the traveling public.~~

9.00 Advertising Devices on Scenic Byways

[§ 43-1-419, C.R.S.; 23 U.S.C. 131(s)]

...

B. No new Advertising Device shall be erected along a Scenic Byway that is visible from the Controlled Route, ~~with the exception of:~~

- ~~1. Official Signs;~~
- ~~2. On-Premise Signs; and~~
- ~~3. Directional Signs.~~

...

10.00 ~~Landmark Signs~~ Repealed.

~~A. No Landmark Signs have been established in Colorado pursuant to 23 C.F.R. 750.710 (a) and (b).~~

11.00 ~~Free Coffee Signs~~ Repealed.

~~{23 U.S.C. 131(c)}~~

~~A. Signs, displays, and devices advertising the distribution by nonprofit organizations of free coffee to individuals traveling on an interstate or primary system may be located within the Control Area. Free coffee shall include coffee for which a donation may be made but is not required.~~

12.00 ~~Off-Premise~~ CEVMS Advertising Devices

A. Authority. The Department has authority to control the brightness, intervals, spacing and location of ~~Off-Premise~~ CEVMS Advertising Devices along Controlled Routes for the purpose of ensuring safety to the travelling public. [23 USC 131 (c) (3) and (j); 23 C.F.R. 750.705; § 43-1-404(1)(f), and § 43-1-415(1), C.R.S.]

B. Definitions

...

9. ~~“Public Service Information” means a message on an electronic Sign which provides the time, date, temperature, weather, or information concerning civic or charitable activities~~ Repealed.

...

C. General Requirements

...

2. Location

- a. No CEVMS may be placed within 1,000 feet of another CEVMS on the same side of a highway and facing the same direction of travel. ~~On-Premise Signs inside 50 feet of the advertised activity are not counted for purposes of this spacing requirement.~~ [§ 43-1-404(1)(f)(I), C.R.S.]
- b. A CEVMS shall not prevent the driver of a vehicle from having a clear and unobstructed view of ~~Official Signs~~ official signs and approaching or merging traffic.

...

5. Operational Requirements Specific to ~~Off-Premise~~ CEVMS Advertising Devices

...

Section 5. Effective Date

The emergency rules are effective August 04, 2021.



COLORADO
Department of Transportation
 Division of Project Support

2829 W. Howard Place
 Denver, CO 80204-2305

Questions and Answers from the Stakeholder Workshop

CDOT Responses to Stakeholder Comments/Inquiries

The following discussion is intended to assist stakeholders who in good faith seek to better understand the new language within the emergency rules. The following discussion should not be construed as a complete and final treatment of the topic and/or a complete position of CDOT as it applies to a specific factual scenario. CDOT reserves the right to clarify, modify, or expand upon these responses.

Purpose and Intent

The purpose of the rules, 2 CCR 601-3 *et seq.*, including these emergency rules, is to carry out the provisions of the Outdoor Advertising Act, § 43-1-401, *et seq.*, C.R.S., and the Highway Beautification Act of 1965, 23 U.S.C. 131, 23 C.F.R. 750.705(h) by establishing a statewide uniform program controlling the use of Advertising Devices in areas adjacent to the State Highway System. The intent of the rules, including these emergency rules, is to protect and promote the health, safety, and welfare of the traveling public and the people of Colorado, and to promote the reasonable, orderly and effective display of outdoor advertising, while preserving and enhancing the natural and scenic beauty of Colorado.

The purpose of the Outdoor Advertising Act can be found at § 43-1-402, C.R.S. The legislative intent behind SB21-263 can be found in the bill texts (<https://leg.colorado.gov/bills/sb21-263>) and in the legislative hearings on the bill.

The changes in the emergency rules are to update the rules with the changes made to the Outdoor Advertising Act.

What is an “Advertising Device” and what is “Compensation”?

Under the emergency rules, CDOT will not be looking at the content of a sign in order to determine whether a CDOT permit is required, rather, CDOT will only regulate those signs for which Compensation is paid or earned in exchange for its erection or existence. The new definitions of “Advertising Device” and “Compensation” further a compensation-based approach to regulation.

Hypothetical sign sites or scenarios cannot be uniformly commented on by CDOT. The public should operate on a presumption that if the exchange of anything of value is directly or indirectly paid or earned in exchange for the erection or existence of a sign designed, intended, or used to advertise or inform by any person or entity, that is considered Compensation. In the event Compensation is paid or earned, the sign is considered an Advertising Device regulated by CDOT. In that event, a permit must be obtained. If Compensation is being exchanged, the applicant will need to apply for a CDOT permit. If there is any uncertainty as to whether a sign is



an Advertising Device or not, the property owner or sign owner can feel free to submit a permit application to CDOT. During this transitional time, and to accommodate good faith questions there is no fee charged for processing a permit application.

It is also important to note that these are emergency rules and are temporary. CDOT may provide additional interpretations or initiate rulemaking related to this topic in the future.

Why is Rule 6.03.5 (Tourist-Related Nonconforming Advertising Devices – Exemption) being repealed?

There were concerns about ramifications should Rule 6.03.5 be repealed. This rule provides an exemption for Tourist-Related Nonconforming Advertising Devices that were in existence on May 5, 1976.

Because § 43-1-414(5), C.R.S., was not repealed, which provides the exemption, this Rule 6.03.5 can remain in effect.

Do any of the emergency rules changes affect signs that are currently permitted?

No.

What will CDOT's regulation look like going forward?

CDOT monitors interstates and highways to inventory signs that are permitted. Within the course of this monitoring, if CDOT comes upon a sign that is not permitted, CDOT will make contact with the property owner to determine if their sign is an Advertising Device. At that time, the property owner will have options. If their sign is an Advertising device, then they would be required to obtain a permit or remove the sign. When reviewing the Outdoor Advertising Permit Application, CDOT will take into consideration currently permitted Advertising Devices for spacing requirements. If the property owner does not believe their sign is an Advertising Device, the property owner will execute an affidavit stating that their sign is not an Advertising Device under penalty of perjury. The grounds for noncompliance can be found in Rule 3.2. The property owner may face additional consequences pursuant to law, including but not limited to sign removal. See § 43-1-412, C.R.S.; and § 43-1-417, C.R.S.

Why are Comprehensive Developments exempted?

Comprehensive Developments are exempted per state statute. See § 43-1- 403(1.5), C.R.S.

Why is CDOT removing "or renewing" from Rule 2.3(A)?

The changes were made to Rule 2.3 to align with § 43-1-411, C.R.S., from which it stems.

Can CDOT require the landowner to remove an illegal Advertising Device sooner than 60 days?

Not at this time. The changes in the emergency rules are to update the rules with the changes made to the Outdoor Advertising Act. The language of § 43-1-412(2)(a), C.R.S requires that the landowner be given 60 days to remove the device, execute an affidavit as evidence that the device is not an Advertising device, or obtain a permit.

Can CDOT add more language to the rules to discourage individuals/companies from breaking the law, such as disgorgement?

This language is not contemplated at this time. The changes in the emergency rules are to update the rules with the changes made to the Outdoor Advertising Act. In addition to having a sign removed, the penalties for noncompliance are set forth in § 43-1-417, C.R.S.

Why is CDOT not proposing changes to Rule 7.00(D)(2)(b) and other changes it proposed in stakeholder workshops held last year?

Not at this time. The changes in the emergency rules are to update the rules with the changes made to the Outdoor Advertising Act. Changes related to Rule 7.00(D)(2)(b) may be proposed in the future.

Can CDOT add language to the rules that would require shielding to protect the night sky?

Not at this time. New legislation would likely need to be passed and signed into law for this type of regulation.

Can CDOT regulate the carbon footprint of Changeable Electronic Variable Message Signs ("CEVMS") a.k.a. digital signs?

Not at this time. New legislation would likely need to be passed and signed into law for this type of regulation.



COLORADO

Department of Transportation

2829 W. Howard Place
Denver, CO 80204-2305

Adoption of Emergency Rules Governing Outdoor Advertising in Colorado

A new law took effect in Colorado on June 30, 2021, that will change the permitting and enforcement process for the control of outdoor advertising – that is, billboards and signs – along our highways. That also means the rules for the Colorado Department of Transportation’s Outdoor Advertising Program have to be updated.

Under federal law, all states must regulate billboards and signs adjacent to the interstate system and state highways and visible to the traveling public from the roadway. These rules are meant to reduce driving distractions and preserve natural beauty.

Colorado requires owners of certain types of outdoor advertising signs to obtain a permit from CDOT, and there are requirements on size, lighting, spacing and zoning for these billboards and signs.

Before the new law took effect this year, state law had previously classified signs into four categories to determine whether a CDOT permit was required. These four categories previously included:

- **On-Premise Sign:** A sign that advertises services or products conducted on the premises upon which the sign is located (i.e., a fast food restaurant sign visible from I-25).
- **Off-Premise Sign:** A sign that advertises services or products not conducted on the premises upon which the sign is located (i.e., a billboard that advertises the Colorado Lottery).
- **Official Sign:** A sign erected for a public purpose (i.e., the "Welcome to Colorful Colorado" sign).
- **Directional Sign:** A sign that directs the traveling public to publicly or privately owned natural phenomena or to historic, cultural, scientific, educational and religious sites and areas of natural scenic beauty or outdoor recreation.

Previously, only Off-Premise and Directional Signs required a CDOT permit. However, On-Premise and Official Signs were allowed without a CDOT permit with certain restrictions.

For enforcement purposes, CDOT monitored the interstate system and state highways for signs that needed permits. Under the old law, to determine whether a sign needed a permit, CDOT arguably had to review the words and pictures of the sign to figure out the type of sign it was. Recently, federal courts across the country have said this approach may be a violation of free speech.



As a result, the new state law removes the arguably content-based distinction from Colorado's Outdoor Advertising Act and establishes a compensation-based approach. Now, under the new law only signs visible from the roadway that generate compensation require a CDOT permit. Compensation means the exchange of anything of value, including but not limited to money, as further defined in the new state law.

The new law also establishes a 30-day time frame for CDOT to make a decision on a permit application. This change ensures CDOT will quickly process permit applications.

CDOT has to adopt emergency rules to align its process with the new state law. These emergency rules will remove the four types of outdoor advertising signs from rules, and they also will redefine "advertising device" and add the definition of "compensation."

The new compensation-based approach makes it easier for landowners and sign owners to understand whether they need a CDOT permit. It also eases their regulatory burden by reducing the number of requirements.





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Tracking number: 2021-00488

Department 600 - Department of Transportation
Agency 601 - Transportation Commission and Office of Transportation Safety

CCR details

Tracking # 2021-00488
Type of filing Emergency Rule
CCR number 2 CCR 601-3
CCR title RULES GOVERNING OUTDOOR ADVERTISING IN COLORADO

Adopted rule

Details

Adopting agency Executive Director

Adopted date 08/04/2021

Purpose or objective

The specific purpose of the emergency rulemaking is to align CDOT's processes for permitting and enforcement of outdoor advertising devices with the new state law under Senate Bill 21-263. These emergency rules establish a new compensation-based approach for permitting and enforcement of outdoor advertising devices in areas near interstates and state highways and visible to the traveling public from the roadway. These emergency rules remove the previous categories of outdoor advertising devices (i.e., On-Premise Sign, Off-Premise Sign, Official Sign, and Directional Sign) from the rules, and they also redefine the definition of "Advertising Device" and add the definition of "Compensation." These emergency rules also modify the noncompliance requirements to give a property owner or sign owner the option to execute an affidavit under the penalty of perjury in the event the property owner or sign owner does not believe their sign is an advertising device requiring a CDOT permit. These emergency rules streamline the hearing procedures and allow an Applicant who was denied a permit to request an expedited hearing within thirty days of the notice of denial. Additionally, these emergency rules clarify that Changeable Electronic Variable Message advertising devices may not be within 1000 feet of each other that are facing the same direction. Finally, these emergency rules make technical revisions to align the rules with the new state law under Senate Bill 21-263. (See attachment)

Is this rule being submitted in response to issues raised by the Committee on Legal Services or by the Office of Legislative Legal Services Staff?

No

Is this rule adopted in response to recent legislation?

Yes. SB21-263

Statutory and other authority

Colorado

By reference to the C.R.S. section (including subsection, paragraph, subparagraph, and subsubparagraph where appropriate), state both the general statutory authority for promulgating the rules, and the specific statutory provisions, if any, the rule interprets or refines.

The statutory authority for the emergency rules is granted under § 43-1-105(6), § 24-4-103(6)(a), § 43-1-414(4), and § 43-1-415, C.R.S.

Federal

If the rule is required or allowed by federal law, rule, or order, cite the applicable federal provisions and provide a link to the publication, if possible.

n/a

Comments

Contact information

for the public

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for SOS, AG and OLLS (if different)

Name
Title
Telephone
Email

Uploaded files

Adopted rules

[AdoptedRules02021-00488.doc](#)

Justification of emergency status

[EmergencyJustificationPathAttach2021-00488.pdf](#)

Statement of basis and purpose

[BasisAndPurposeAttachment2021-00488.pdf](#)

Regulatory analysis

Redline

[Redline2021-00488.doc](#)

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Office of the Attorney General

Tracking Number: **2021-00488**

**OPINION OF THE ATTORNEY GENERAL RENDERED IN
CONNECTION WITH THE RULES ADOPTED BY THE
Executive Director
ON 08/04/2021**

**2 CCR 601-3
RULES GOVERNING OUTDOOR ADVERTISING IN COLORADO**

The above-referenced rules were submitted to this office on 08/04/2021 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

August 23, 2021 14:23:06 MST

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General



Colorado
Secretary of State
Jena Griswold



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Your rules have been filed with the Secretary of State and the Office of Legislative Legal Services.

Tracking Number	2021-00488
Filing Type	Emergency or Temporary Rule
Department	600 - Department of Transportation
Agency	601 - Transportation Commission and Office of Transportation Safety
CCR Number	2 CCR 601-3
CCR Title	RULES GOVERNING OUTDOOR ADVERTISING IN COLORADO
Adopting Agency	Executive Director
Adopted rules	AdoptedRules02021-00488.doc
Redline	Redline2021-00488.doc
Attorney General Opinion	08/23/2021
Is this rule being submitted in response to issues raised by the committee on legal services or by the office of legislative legal services staff?	N
Adopted date	08/04/2021
Effective date	08/04/2021
Comments	
Contact for the Public	
Name	Natalie Lutz
Title	Rules, Policies and Procedures Administrator
Telephone	303-757-9441
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Contact for SOS, AG and OLLS (if different)	
Emergency Justification	EmergencyJustificationPathAttach2021-00488.pdf The specific purpose of the emergency rulemaking is to align CDOT's processes for permitting and enforcement of outdoor advertising devices with the new state law under Senate Bill 21-263. These emergency rules establish a new compensation-based approach for permitting and enforcement of outdoor advertising devices in areas near interstates and state highways and visible to the traveling public from the roadway. These emergency rules remove the previous categories of outdoor advertising devices (i.e., On-Premise Sign, Off-Premise Sign, Official Sign, and Directional Sign) from the rules, and they also redefine the definition of "Advertising Device" and add the definition of "Compensation." These emergency rules also modify the noncompliance requirements to give a property owner or sign owner the option to execute an affidavit under the penalty of perjury in the event the property owner or sign owner does not believe their sign is an advertising device requiring a CDOT permit. These emergency rules streamline the hearing procedures and allow an Applicant who was denied a permit to request an expedited hearing within thirty days of the notice of denial. Additionally, these emergency rules clarify that Changeable Electronic Variable Message advertising devices may not be within 1000 feet of each other that are facing the same direction. Finally, these emergency rules make technical revisions to align the rules with the new state law under Senate Bill 21-263. (See attachment)
Purpose or objective of the Rule	
Basis and Purpose	BasisAndPurposeAttachment2021-00488.pdf
Was regulatory analysis or fiscal statement prepared?	N
Statutory Authority	The statutory authority for the emergency rules is granted under § 43-1-105(6), § 24-4-103(6)(a), § 43-1-414(4), and § 43-1-415, C.R.S.

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Notices of proposed rulemaking

Department	Agency	Proposed rules	Hearing
Department of Revenue	Division of Motor Vehicles	VEHICLE SERVICES SECTION	09/30/2021 02:00 PM
Department of Revenue	Division of Motor Vehicles	DRIVER'S LICENSE-DRIVER CONTROL	09/30/2021 11:00 AM
Department of Education	Colorado State Board of Education	RULES FOR THE ADMINISTRATION OF THE PUBLIC SCHOOL TRANSPORTATION FUND	10/13/2021 09:00 AM
Department of Education	Colorado State Board of Education	COLORADO RULES FOR THE OPERATION, MAINTENANCE AND INSPECTION OF SCHOOL TRANSPORTATION VEHICLES	10/13/2021 09:00 AM
Department of Education	Colorado State Board of Education	RULES FOR INDIVIDUALIZED MEDICAL SEIZURE ACTION PLANS	10/13/2021 09:00 AM
Department of Transportation	Transportation Commission and Office of Transportation Safety	RULES GOVERNING OUTDOOR ADVERTISING IN COLORADO	10/01/2021 10:00 AM
Department of Regulatory Agencies	Division of Insurance	LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General)	10/05/2021 11:00 AM
Department of Regulatory Agencies	Division of Insurance	LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General)	10/05/2021 11:00 AM
Department of Regulatory Agencies	Division of Insurance	LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General)	10/05/2021 11:00 AM
Department of Regulatory Agencies	Division of Professions and Occupations - State Board of Pharmacy	STATE BOARD OF PHARMACY RULES AND REGULATIONS	09/30/2021 08:45 AM
Department of Regulatory Agencies	Division of Professions and Occupations - Board of Psychologists Examiners	PSYCHOLOGIST EXAMINERS RULES AND REGULATIONS	10/01/2021 09:30 AM
Department of Regulatory Agencies	Public Utilities Commission	RULES REGULATING TELECOMMUNICATIONS SERVICES AND PROVIDERS OF TELECOMMUNICATIONS SERVICES	10/05/2021 09:00 AM
Department of Regulatory Agencies	Division of Real Estate	RULES REGARDING REAL ESTATE BROKERS	10/05/2021 09:00 AM
Department of Regulatory Agencies	Division of Real Estate	SUBDIVISIONS AND TIMESHARES	10/05/2021 09:00 AM
Department of Regulatory Agencies	Division of Professions and Occupations - Board of Veterinary Medicine	VETERINARY MEDICINE RULES AND REGULATIONS	10/14/2021 09:00 AM
Department of Regulatory Agencies	Division of Professions and Occupations - Colorado Office of Combative Sports	COMBATIVE SPORTS RULES AND REGULATIONS	10/12/2021 10:15 AM
Department of Regulatory Agencies	Division of Professions and Occupations - Board of Addiction Counselor Examiners	BOARD OF ADDICTION COUNSELOR EXAMINERS RULES	10/05/2021 09:30 AM

Department of Public Health and Environment	Air Quality Control Commission	REGULATION NUMBER 19 THE CONTROL OF LEAD HAZARDS	11/18/2021 09:00 AM
Department of Public Health and Environment	Air Quality Control Commission	REGULATION NUMBER 23 REGIONAL HAZE LIMITS	11/17/2021 04:30 PM
Department of Public Health and Environment	Health Facilities and Emergency Medical Services Division (1011, 1015 Series)	CHAPTER 2 - GENERAL LICENSURE STANDARDS	10/21/2021 12:00 PM
Department of Public Health and Environment	Prevention Services Division (1009, 1015, 1016 Series)	PREVENTION, INTERVENTION, AND TREATMENT PROGRAMS FOR CHILDREN AND YOUTH	10/21/2021 12:00 PM
Department of Local Affairs	Division of Housing	MOBILE HOME PARK ACT DISPUTE RESOLUTION & ENFORCEMENT PROGRAM	10/05/2021 01:00 PM
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Department of Health Care Policy and Financing	Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY	10/08/2021 09:00 AM
Department of Human Services	Food Assistance Program (Volume 4B)	RULE MANUAL VOLUME 4B, FOOD ASSISTANCE	10/08/2021 08:30 AM
Department of Human Services	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	OVERVIEW OF CHILD WELFARE SERVICES	10/08/2021 08:30 AM
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Department of Human Services	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	REFERRAL AND ASSESSMENT	10/08/2021 08:30 AM
Department of Human Services	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	PROGRAM AREAS, CASE CONTACTS, AND ONGOING CASE REQUIREMENTS	10/08/2021 08:30 AM
Department of Human Services	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	CHILD WELFARE SERVICES	10/08/2021 08:30 AM
Department of Human Services	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	RESOURCES, REIMBURSEMENT, REPORTING, AND PROVIDER REQUIREMENTS	10/08/2021 08:30 AM
Department of Human Services	Adult Protective Services	ADULT PROTECTIVE SERVICES	10/08/2021 08:30 AM
Department of Human Services	Adult Protective Services	ADULT PROTECTIVE SERVICES	10/08/2021 08:30 AM

Permanent Rules Adopted[Top](#)

Department	Agency	Rules adopted	AG opinion	Effective date
Department of Education	Colorado State Board of Education	1 CCR 301-1 ADMINISTRATION OF STATEWIDE ACCOUNTABILITY MEASURES FOR THE COLORADO PUBLIC SCHOOL SYSTEM, CHARTER SCHOOL INSTITUTE, PUBLIC SCHOOL DISTRICTS AND PUBLIC SCHOOLS (DOC)	08/30/2021	09/30/2021
Department of Public Health and Environment	Water Quality Control Commission (1002 Series)	5 CCR 1002-31 REGULATION NO. 31 - THE BASIC STANDARDS AND METHODOLOGIES FOR SURFACE WATER (DOC)	08/27/2021	12/31/2021
Department of Public Health and Environment	Water Quality Control Commission (1002 Series)	5 CCR 1002-32 REGULATION NO. 32 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR ARKANSAS RIVER BASIN 1 (DOC) 5 CCR 1002-32 REGULATION NO. 32 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR ARKANSAS RIVER BASIN 2 (PDF)	08/27/2021	12/31/2021
Department of Public Health and Environment	Water Quality Control Commission (1002 Series)	5 CCR 1002-33 REGULATION NO. 33 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR UPPER COLORADO	08/27/2021	12/31/2021

		RIVER BASIN AND NORTH PLATTE RIVER (PLANNING REGION 12) 1 (DOC) 5 CCR 1002-33 REGULATION NO. 33 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR UPPER COLORADO RIVER BASIN AND NORTH PLATTE RIVER (PLANNING REGION 12) 2 (PDF)		
Department of Public Health and Environment	Water Quality Control Commission (1002 Series)	5 CCR 1002-34 REGULATION NO. 34 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR SAN JUAN AND DOLORES RIVER BASINS 1 (DOC) 5 CCR 1002-34 REGULATION NO. 34 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR SAN JUAN AND DOLORES RIVER BASINS 2 (PDF)	08/27/2021	12/31/2021
Department of Public Health and Environment	Water Quality Control Commission (1002 Series)	5 CCR 1002-35 REGULATION NO. 35 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR GUNNISON AND LOWER DOLORES RIVER BASINS 1 (DOC) 5 CCR 1002-35 REGULATION NO. 35 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR GUNNISON AND LOWER DOLORES RIVER BASINS 2 (PDF)	08/27/2021	12/31/2021
Department of Public Health and Environment	Water Quality Control Commission (1002 Series)	5 CCR 1002-36 REGULATION NO. 36 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR RIO GRANDE BASIN 1 (DOC) 5 CCR 1002-36 REGULATION NO. 36 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR RIO GRANDE BASIN 2 (PDF)	08/27/2021	12/31/2021
Department of Public Health and Environment	Water Quality Control Commission (1002 Series)	5 CCR 1002-37 REGULATION NO. 37 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR LOWER COLORADO RIVER BASIN 1 (DOC) 5 CCR 1002-37 REGULATION NO. 37 - CLASSIFICATIONS AND NUMERIC STANDARDS FOR LOWER COLORADO RIVER BASIN 2 (PDF)	08/27/2021	12/31/2021
Department of Public Health and Environment	Water Quality Control Commission (1002 Series)	5 CCR 1002-38 REGULATION NO. 38 - CLASSIFICATIONS AND NUMERIC STANDARDS SOUTH PLATTE RIVER BASIN LARAMIE RIVER BASIN REPUBLICAN RIVER BASIN SMOKY HILL RIVER BASIN 1 (DOC) 5 CCR 1002-38 REGULATION NO. 38 - CLASSIFICATIONS AND NUMERIC STANDARDS SOUTH PLATTE RIVER BASIN LARAMIE RIVER BASIN REPUBLICAN RIVER BASIN SMOKY HILL RIVER BASIN 2 (PDF)	08/27/2021	12/31/2021
Department of Public Health and Environment	Water Quality Control Commission (1002 Series)	5 CCR 1002-64 REGULATION NO. 64 - BIOSOLIDS REGULATION (DOC)	08/27/2021	09/30/2021
Department of Human Services	Income Maintenance (Volume 3)	9 CCR 2503-9 COLORADO CHILD CARE ASSISTANCE PROGRAM (DOCX)	08/25/2021	09/30/2021
Department of Health Care Policy and Financing	Executive Director of Health Care Policy and Financing	10 CCR 2505-5 EXECUTIVE DIRECTOR OF HEALTH CARE POLICY AND FINANCING RULES (DOC)	08/25/2021	09/30/2021
Department of Human Services	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	12 CCR 2509-8 CHILD CARE FACILITY LICENSING (DOCX)	08/25/2021	10/01/2021
Department of Human Services	Commission for the Deaf, Hard of Hearing, and DeafBlind (Volume 27)	12 CCR 2516-1 RULE MANUAL 27. COMMISSION FOR THE DEAF, HARD OF HEARING, AND DEAFBLIND (DOC)	08/25/2021	09/30/2021

Emergency Rules Adopted

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Department	Agency	Rules adopted	Justification	AG opinion	Effective date	Expiration date
Department of	Behavioral	2 CCR 502-1	EmergencyJustificationPathAttach2021-	08/25/2021	08/06/2021	12/04/2021

Human Services	Health	BEHAVIORAL HEALTH (DOCX)	00497.docx			
Department of Transportation	Transportation Commission and Office of Transportation Safety	2 CCR 601-3 RULES GOVERNING OUTDOOR ADVERTISING IN COLORADO (DOC)	EmergencyJustificationPathAttach2021-00488.pdf	08/23/2021	08/04/2021	12/02/2021
Department of Regulatory Agencies	Public Utilities Commission	4 CCR 723-2 RULES REGULATING TELECOMMUNICATIONS SERVICES AND PROVIDERS OF TELECOMMUNICATIONS SERVICES (DOC)	EmergencyJustificationPathAttach2021-00447.pdf	08/18/2021	07/29/2021	11/26/2021
Department of Regulatory Agencies	Public Utilities Commission	4 CCR 723-2 RULES REGULATING TELECOMMUNICATIONS SERVICES AND PROVIDERS OF TELECOMMUNICATIONS SERVICES (DOC)	EmergencyJustificationPathAttach2021-00498.pdf	08/30/2021	08/11/2021	12/09/2021
Department of Agriculture	Plant Industry Division	8 CCR 1203-23 RULES PERTAINING TO THE ADMINISTRATION AND ENFORCEMENT OF THE INDUSTRIAL HEMP REGULATORY PROGRAM ACT (DOC)	EmergencyJustificationPathAttach2021-00492.doc	08/30/2021	08/10/2021	12/08/2021
Department of Health Care Policy and Financing	Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	10 CCR 2505-3 FINANCIAL MANAGEMENT OF THE CHILDREN'S BASIC HEALTH PLAN (DOC)	EmergencyJustificationPathAttach2021-00456.pdf	08/19/2021	08/09/2021	11/27/2021
Department of Health Care Policy and Financing	Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY (DOC)	EmergencyJustificationPathAttach2021-00455.pdf	08/19/2021	07/30/2021	11/27/2021
Department of Health Care Policy and Financing	Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 1 (DOC) 10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 2 (DOC) 10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 3 (DOC) 10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 4 (DOC) 10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 5 (DOC) 10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 6 (DOC) 10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 7 (DOC) 10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 8 (DOC) 10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 9 (DOC) 10 CCR 2505-10 MEDICAL ASSISTANCE -	EmergencyJustificationPathAttach2021-00454.pdf	08/19/2021	08/09/2021	11/27/2021

		STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 10 (DOC)			
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Terminated rulemaking[Top](#)

Department	Agency	CCR #	Tracking #	Termination date	Reason for termination
Department of Revenue	Taxation Division	1 CCR 201-13	2021-00165	08/19/2021	After consideration of questions raised at the hearing, we determined it was necessary to make further revisions to the proposed rule and recommence the rulemaking process.

Non-Rulemaking Public Notices and Other Miscellaneous Rulemaking Notices[Top](#)

Department / Agency	Filed date	Notice
Department of Transportation	08/31/2021	Transportation Commission of Colorado- Rescheduled Permanent Rulemaking Hearing.(eDocket No. 2021-00508)

Calendar of Hearings[Top](#)

Agency	Rule	Hearing
Division of Motor Vehicles	VEHICLE SERVICES SECTION	09/30/2021 02:00 PM
Division of Motor Vehicles	DRIVER'S LICENSE-DRIVER CONTROL	09/30/2021 11:00 AM
Colorado State Board of Education	RULES FOR THE ADMINISTRATION OF THE PUBLIC SCHOOL TRANSPORTATION FUND	10/13/2021 09:00 AM
Colorado State Board of Education	COLORADO RULES FOR THE OPERATION, MAINTENANCE AND INSPECTION OF SCHOOL TRANSPORTATION VEHICLES	10/13/2021 09:00 AM
Colorado State Board of Education	RULES FOR INDIVIDUALIZED MEDICAL SEIZURE ACTION PLANS	10/13/2021 09:00 AM
Transportation Commission and Office of Transportation Safety	RULES GOVERNING OUTDOOR ADVERTISING IN COLORADO	10/01/2021 10:00 AM
Division of Insurance	LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General)	10/05/2021 11:00 AM
Division of Insurance	LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General)	10/05/2021 11:00 AM
Division of Insurance	LIFE, ACCIDENT AND HEALTH, Series 4-2 Accident and Health (General)	10/05/2021 11:00 AM
Division of Professions and Occupations - State Board of Pharmacy	STATE BOARD OF PHARMACY RULES AND REGULATIONS	09/30/2021 08:45 AM
Division of Professions and Occupations - Board of Psychologists Examiners	PSYCHOLOGIST EXAMINERS RULES AND REGULATIONS	10/01/2021 09:30 AM
Public Utilities Commission	RULES REGULATING TELECOMMUNICATIONS SERVICES AND PROVIDERS OF TELECOMMUNICATIONS SERVICES	10/05/2021 09:00 AM
Division of Real Estate	RULES REGARDING REAL ESTATE BROKERS	10/05/2021 09:00 AM
Division of Real Estate	SUBDIVISIONS AND TIMESHARES	10/05/2021 09:00 AM
Division of Professions and Occupations - Board of Veterinary Medicine	VETERINARY MEDICINE RULES AND REGULATIONS	10/14/2021 09:00 AM
Division of Professions and Occupations - Colorado Office of Combative Sports	COMBATIVE SPORTS RULES AND REGULATIONS	10/12/2021 10:15 AM
Division of Professions and Occupations - Board of Addiction Counselor Examiners	BOARD OF ADDICTION COUNSELOR EXAMINERS RULES	10/05/2021 09:30 AM
Air Quality Control Commission	REGULATION NUMBER 19 THE CONTROL OF LEAD HAZARDS	11/18/2021 09:00 AM
Air Quality Control Commission	REGULATION NUMBER 23 REGIONAL HAZE LIMITS	11/17/2021 04:30 PM
Health Facilities and Emergency Medical Services Division (1011, 1015 Series)	CHAPTER 2 - GENERAL LICENSURE STANDARDS	10/21/2021 12:00 PM
Prevention Services Division (1009, 1015, 1016 Series)	PREVENTION, INTERVENTION, AND TREATMENT PROGRAMS FOR CHILDREN AND YOUTH	10/21/2021 12:00 PM
Division of Housing	MOBILE HOME PARK ACT DISPUTE RESOLUTION & ENFORCEMENT PROGRAM	10/05/2021 01:00 PM

Register Details

Income Maintenance (Volume 3)	COLORADO CHILD CARE ASSISTANCE PROGRAM	10/08/2021 08:30 AM
Child Support Services (Volume 6)	RULE MANUAL VOLUME 6, CHILD SUPPORT SERVICES RULES	10/08/2021 08:30 AM
Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY	10/08/2021 09:00 AM
Food Assistance Program (Volume 4B)	RULE MANUAL VOLUME 4B, FOOD ASSISTANCE	10/08/2021 08:30 AM
Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	OVERVIEW OF CHILD WELFARE SERVICES	10/08/2021 08:30 AM
Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	REFERRAL AND ASSESSMENT	10/08/2021 08:30 AM
Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	REFERRAL AND ASSESSMENT	10/08/2021 08:30 AM
Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	PROGRAM AREAS, CASE CONTACTS, AND ONGOING CASE REQUIREMENTS	10/08/2021 08:30 AM
Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	CHILD WELFARE SERVICES	10/08/2021 08:30 AM
Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	RESOURCES, REIMBURSEMENT, REPORTING, AND PROVIDER REQUIREMENTS	10/08/2021 08:30 AM
Adult Protective Services	ADULT PROTECTIVE SERVICES	10/08/2021 08:30 AM
Adult Protective Services	ADULT PROTECTIVE SERVICES	10/08/2021 08:30 AM

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July 20, 2021

Re: 2 CCR 601-3 Rules Governing Outdoor Advertising in Colorado

To Colorado Department of Transportation at dot_rules@state.co.us

Please accept this memo on behalf of Scenic Colorado regarding Rules Governing Outdoor Advertising in Colorado 2 CCR 601-3. We appreciate the opportunity to join a conference call on the proposed emergency rule and to submit these comments.

By way of introduction, Scenic Colorado is a not-for-profit 501(c)3 organization dedicated to the preservation and enhancement of Colorado's scenic environment and view-scapes. Specifically, our members support the elimination of all outdoor advertising that inhibits the view of the natural environment including billboards and other structures used for such advertising. Our members have been instrumental in opposing the construction of new billboards, especially electronic billboards throughout the state.

In general, Scenic Colorado finds the proposed emergency rule acceptable. Scenic Colorado recognizes that the distinction between on-premise and off-premise signs, especially as it relates to billboards, requires careful consideration. The proposed changes adopting a new definition of advertising device which involves compensation appears to accomplish the need for clarification.

In particular, Scenic Colorado supports the following revisions currently contained in the proposed rule:

- 6.03.1.C: No new advertising device shall be erected adjacent to a Scenic Byway
- 12.00.C.2.a.: No CEVMS may be placed within 1,000 feet of another CEVMS on the same side of the highway and facing the same direction of travel.

Subject to these considerations, Scenic Colorado supports the proposed rule.

Very truly yours,

[REDACTED]
 [REDACTED] President of Scenic Colorado
 On Behalf of the Board of Directors

MAILING AND CONTACT INFORMATION
 Scenic Colorado

[REDACTED]

www.scenic-colorado.org



STATE OF COLORADO

Rules - CDOT, DOT_ <dot_rules@state.co.us>

Outdoor Advertising Stakeholder Workshop comment

1 message

Thu, Jul 22, 2021 at 9:47 AM

To: "dot_rules@state.co.us" <dot_rules@state.co.us>

Cc: [Redacted]

Hello –

We have been in the tourism business for 70 years locally. We are concerned about the deletion of existing 6.03.5 Tourist Related Nonconforming Advertising Devices – Exemption.

Our signage and our large beetle sculpture (all on our own property) are iconic and internationally known, and on display at DIA – see attachment. We don't want our items jeopardized by this loss of exemption.

Please explain how we are protected under the new legislation and emergency rules.

Sincerely,

[Redacted]

Golden Eagle Campground, Inc.

May Museum of Natural History

John May Museum Center



2014-06-08_22-41-37_287.jpg
2134K

STATE OF
COLORADO

Rules - CDOT, DOT_ <dot_rules@state.co.us>

Re: Link to the Video of CDOT's Outdoor Advertising Stakeholder Workshop on 7.19.21

1 message

Thu, Jul 22, 2021 at 6:52 PM

To: CDOT Rules <dot_rules@state.co.us>

Cc: [REDACTED]

Hello Natalie,

[REDACTED]. We have permitted billboards and would like in plain English how this is going to effect our Company.

Also the comments made by a Todd, I didn't get his Last Name. Could you clarify that person.

Jeannie Gafford Signs

[REDACTED]

[REDACTED]

On Jul 22, 2021, at 11:08 AM, CDOT Rules <dot_rules@state.co.us> wrote:

Hello Stakeholder,

Thank you for attending our Outdoor Advertising Stakeholder Workshop! We appreciated the feedback that we heard during the workshop. We are taking the comments into consideration and will update the proposed emergency rules as appropriate.

We wanted to share the video from Monday's workshop with you because we realize that some stakeholders were not able to join us on July 19, 2021. Since the workshop video is a large file, it will be shared through Google Drive in the link below. Please note that we did not have a court reporter in attendance at the workshop to transcribe the workshop.

[Outdoor Advertising Stakeholder Workshop](#)

To ensure that we have adequate time to consider the public statements heard during the workshop and any written comments received, we may update our rulemaking schedule and seek adoption of the proposed emergency rules on a date later than July 30, 2021. We intend to keep you posted on changes to the rulemaking schedule and any updates during the rulemaking process as they occur.

As a friendly reminder, please submit written comments on or before July 23, 2021, to dot_rules@state.co.us. Written comments will be redacted for data privacy and posted on [CDOT's Rules Website](#). I have also attached a high-level summary of the outdoor advertising rule changes.

Please let me know if you have any questions.

Thank you,
Natalie

--

Natalie Lutz
Rules, Policies, and Procedures Administrator



P: 303.757.9441

[2829 W. Howard Place, Denver, CO 80204](https://www.cdot.gov)

dot_rules@state.co.us | www.codot.gov | www.cotrip.org

<Outdoor Advertising Rule Change Summary.pdf>

COMMENTS ON NEW CDOT REGULATIONS

I want to thank everyone for this opportunity to provide comments on CDOT's new proposed rules. Having listened to CDOT and stakeholder comments at Monday's meeting it was quite apparent that CDOT has a tough task of how to draft new rules that are content neutral and still satisfy its obligations entered into with the Federal Government. It is also quite apparent that what CDOT has proposed to satisfy both these requirements will turn into a regulatory nightmare for CDOT. This is said as CDOT didn't seem to have answers at Monday's meeting to the most basic questions posed by stakeholders on how CDOT plans on enforcing these new rules.

A stakeholder, who is associated with a History Museum, relayed his concerns at this meeting concerning if their existing signs associated with the museum would now be regulated by CDOT under these new proposed rules (under current rules they are not regulated by CDOT). CDOT really didn't have an answer to their concerns on what will now be considered an "advertising device" that CDOT will now be regulating. This concern will probably be shared by every person/entity who currently have signs that are not regulated by CDOT under current rules (on-premise signs/official signs/directional signs/political signs/logo signs, etc.).

This concern will be directly derived from CDOT's definition of what now constitutes an "advertising device". CDOT is now proposing that signs that derive "compensation", whether or not that compensation is directly or indirectly paid or earned in exchange for the signs erection or existence by any person or entity, will now fall under CDOT's regulatory authority and have to meet all of CDOT's rules if that "advertising device" is visible from the travel way of any state highway. CDOT is also proposing that "compensation" means the exchange of anything of value...". This definition, exchange of anything of value (whether directly or indirectly), is going to create a regulatory nightmare for CDOT if CDOT is going to administer these new rules in a fair and impartial manner.

It is hard to imagine any sign that doesn't create "value" for some person or entity. Why else do people/entities pay to have signs created, installed, and maintained if they don't create "value". This is true for any currently defined on-premise sign, off-premise sign, directional sign, political sign, logo sign, etc. Only fools would spend their resources on signage if they didn't expect that signage to create "value".

With this in mind I feel it is imperative to discuss some of the current, and potential new signs, that CDOT will be required to regulate. To start with, CDOT needs to consider all the current on-premise signs within CDOT's jurisdiction that are not currently required to obtain a permit from CDOT to advertise their business. Each sign will now have to meet CDOT's new rules and CDOT will be required to regulate them. There are probably thousands of these signs located adjacent to, and visible from, the traveled way of the State's highways. CDOT must now regulate these signs and apply all the size, spacing, lighting, and zoning requirements to these signs if they are

not a “vehicle using the highway” or “part of a comprehensive development” as defined by the new rules. The far majority of these existing signs will not be able to satisfy these new rules bestowed upon them and will have to be given a non-conforming status. Which means they will not be allowed to be altered, changed, moved, etc. from their current configuration/location to remain compliant with these new rules. How will CDOT insure all these signs remain the same as they are to be able to maintain their non-conforming status? What happens when two current signs are now required to meet CDOT’s new rules and only one sign can be conforming due to spacing issues (for example, two signs visible and adjacent to an Interstate). On an Interstate, these signs are required to be spaced 500’ apart. What happens if two signs owned by different entities are spaced under 500’. How will CDOT decide who gets the conforming status and who gets the non-conforming status? Any new business won’t be able to erect a new sign if the sign will be within 500’ of any other “on-premise” sign that is now regulated by CDOT. How will CDOT handle new “advertising devices” that are wanted to be erected for businesses located adjacent to an Interstate if the property the “advertising devices” are located upon wasn’t zoned for commercial or industrial uses prior to 1970 and not part of a “comprehensive development”. Are they out of luck? CDOT should consider that many Counties and Cities in this State did not have zoning prior to 1970. Does this mean that any new business is excluded from advertising to the Interstate in these areas if they are not part of a comprehensive development as defined by these new rules? As an example, suppose a truck stop located adjacent to the Interstate is located on one parcel (doesn’t meet the proposed definition of a comprehensive development) and wants to modify their current sign to include a digital sign. Are they precluded from doing that if the location/sign doesn’t meet all the size, spacing, lighting, and zoning requirements? How about the same sign being located adjacent to a state highway and the land wasn’t zoned for commercial and industrial purposes until after 1970. These signs can only be up to 150 square feet. What if the existing sign is over 150 square and the owner wants to modify it, is CDOT going to make them downsize their sign before they modify it. How about when CDOT undertakes a highway widening project and takes the land where a sign is located that has been given a non-conforming status by CDOT under these new rules (and weren’t regulated by the “old” rules). Does this mean that the business can no longer have a sign at that location if the location can no longer meet the new rules? Will the State be on the “hook” for the loss of revenue any business will suffer through the condemning of the businesses sign through a highway widening project? How about the State’s Logo signs located near Interstate interchanges. If CDOT undertakes a highway widening project and these signs are required to be removed, can they be re-erected at a new location if the new location doesn’t meet the size, lighting, spacing or zoning requirements? Any business that advertises on these Logo “advertising devices” does so because it wants the traveling public to solicit their business, thereby, increasing their sales. Why do “advertising devices” located in a comprehensive development (located in an area with two or more parcels) escape enforcement and a development under the exact same conditions but only located on one parcel have to comply with the new rules? In light of the legislative declaration at 43-1-402 how does the comprehensive developed area differ from the single parcel designation. An “advertising device” is an “advertising device” no matter how many parcels the sign serves. Each one could, for arguments sake, contain 10 different business panels on the “advertising device”. What is the difference in terms of satisfying the legislative interests stated in 43-1-402? Why should the

“advertising device” in the “comprehensive development” be treated differently than the “advertising device” located on a single lot. The sign in the “comprehensive development” gets to escape enforcement and the sign located on the single lot doesn’t, even though they both advertise 10 different businesses. How about a business located in a “Bonus area” of the Interstate, are they now precluded from erecting an “advertising device”. How about political “advertising devices” advertising a candidate? In its narrowest definition of “compensation” does that mean that any person associated with the campaign can not put up a campaign sign for the candidate they work for if it is visible to a highway? In a broader sense, can any person now put a political sign on their property if it is visible to a highway? The candidate will gain “value” through this exposure and some person/entity had to pay for its creation and distribute it out to people who “support” that candidate. Exposure creates “value”! Ask anyone who has worked in Outdoor Advertising and they will tell you that one of the main determinations in the rent they charge a client is the amount of traffic that “advertising device” is exposed to (traffic counts).

What happens when a “sign owner” executes an affidavit stating that their sign is not an “advertising device”. How will CDOT verify this and monitor it going forward. I thoroughly understand the history museums concerns. If they, like any other business, charges a fee or sells a product, are they not gaining “value” from the increased amount of people entering their business due to the “advertising devices” existence? Once again, why would anyone spend money erecting and maintaining an “advertising device” if it wasn’t giving “value” to that business/entity?

At the next stakeholders meeting I hope CDOT will be able to tell us what “advertising devices” do not create “value” to the business/entity responsible for its erection or existence! I do plan on speaking at the next stakeholder meeting and I am going to ask CDOT this question. This question isn’t “speculative” in nature and I hope CDOT will have a comprehensive answer to this complicated question before it creates a regulatory nightmare for itself. Afterall, how can CDOT enforce something if it doesn’t even know what it should be enforcing!

These are just some of the scenarios that CDOT should consider prior to changing its rules. There are plenty of others! That’s why it was so discouraging at Monday’s meeting when CDOT didn’t have answers to the basic questions that arose. I believe it was stated that CDOT didn’t want to speculate on how they would treat a potential problem in answering those questions. Shouldn’t CDOT speculate on all these potential problems PRIOR to them arising under these new rules to try and stem the regulatory nightmare they are creating and potential litigation these new rules will create. It became quite apparent to me at this meeting that CDOT hadn’t thought through these new rules and are just “shooting from the hip” trying to cure one problem (content neutrality) and that the “cure” is actually going to be worse than the “disease” it is trying to rid itself of.

Should CDOT enact these new rules in their present form I am sure CDOT will be receiving complaints on hundreds, if not thousands, of “advertising devices” that will now be required to be regulated by CDOT. I am also sure that CDOT will find itself “drowning” in litigation with all

these new “advertising devices” it will now need to regulate. I know CDOT has a tough task in figuring out how to enact “content neutral” rules while still fulfilling its agreements with the Federal Government concerning Highway Beautification. But these new proposed rules will only make your situation worse. As someone who has been doing outdoor advertising in this state for 27 years, I assure you these rules will only be a nightmare for the regulatory people at CDOT. Please rethink what you are about to enact!

Lastly, I would like to comment on CDOT’s desire to remove the words “or renewing” from Rule 2.3. Since it is the desire of this State, and CDOT, to comply with the Highway Beautification Act, CDOT must cause the prompt removal of any illegal “advertising device”, whether a permit has been issued or not (see 23 CFR 750.705 (i)). By removing these two words it appears that CDOT wants to have more discretion on what permits it must revoke if the “advertising device” was permitted in error and does not, nor ever has, complied with the size, lighting and spacing requirements. To not revoke an illegally obtained permit, and cause the prompt removal of that “advertising device”, would potentially subject the State of Colorado to a 10% loss of its federal highway dollars. This should be avoided at all costs. I would suggest even adding a new Rule whereby CDOT keeps a “log” of all the “advertising devices” it receives complaints/questions on and this log contain the resolution derived for this “advertising device” and publish it on its website. This would definitely benefit anyone who has a question about how CDOT will enforce its Rules on that particular problem. It will also benefit any future CDOT employees to ensure they will be enforcing the Rules in a consistent manner and no illegal “advertising devices” are allowed to continue to exist. Afterall, I think everyone familiar with this program knows that the inconsistent and discretionary enforcement actions from CDOT personnel is why CDOT is now having to update its Rules! Transparency and consistency should far outweigh discretion!

Thank you once again for allowing my comments and I look forward to more discussions on this very important matter. Should anyone wish to speak to me on these matters feel free to call me at [REDACTED].

[REDACTED]

Mountain States Media, LLC.



7-23-2021

To Whom It May Concern,

Mile High Outdoor is providing written comments in response to the recent Virtual Workshop put together by CDOT on July 19th, 2021. All comments are in reference to CDOT's effort to modify a portion of the rules governing outdoor advertising in Colorado, 2 CCR 601-3 (Outdoor Advertising Rules) in an Emergency Rules Making Process. These edits are to align the language in 2CCR 601-3 with Senate Bill 21-263, which was enacted into law on June 30th, 2021.

In summary, Mile High Outdoor is in full support of the drafted language discussed in detail on July 19th. We feel it will bring the Outdoor Advertising Rules 2 CCR 601-3 into alignment with the new Statute.

Rule 3.2 Grounds for Noncompliance

- A. 1. (b)** Mile High Outdoor would like to see a shorter timeframe given to the property owner to conform. We believe that 60 days is far too long of a period since many advertising campaigns only run for 28 days. This would allow property owners the ability to take short term advertising programs on illegal signs (meaning they needed to follow the Outdoor Advertising Rules), collect their money, and then correct the issue after receiving notice on non-compliance all within 60 days. This might even end up being a business model for some of the typical offenders within the market. We would encourage CDOT a cure period of 10 days, and believe that is plenty of time to remove the advertisement in order to bring the sign into conformance.

Mile High Outdoor would also suggest CDOT look at language that further discourages individuals and/or companies from breaking the law of the newly approved Outdoor Advertising Act. Below is an example of California's disgorgement language that would be recommended.

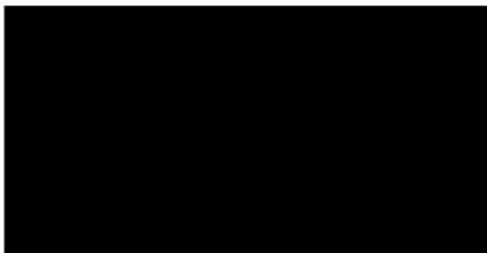
California Business Code § 5485

Annual permit fee for advertising displays; penalties for displays without valid permits; enforcement costs (a)(1) The annual permit fee for each advertising display shall be set by the director. (2) The fee shall not exceed the amount reasonably necessary to recover the cost of providing the service or enforcing the regulations for which the fee is charged, but in no event shall the fee exceed one hundred dollars (\$100). This maximum fee shall be increased in the 2007-08 fiscal year and in the 2012-13 fiscal year by an amount equal to the increase in the California Consumer Price Index. (3) The fee may reflect the department's average cost, including the indirect costs, of providing the service or enforcing the regulations. (b) If a display is placed or maintained without a valid, unrevoked, and



unexpired permit, the following penalties shall be assessed: (1) If the advertising display is placed or maintained in a location that conforms to the provisions of this chapter, a penalty of one hundred dollars (\$100) shall be assessed. (2) If the advertising display is placed or maintained in a location that does not conform to the provisions of this chapter or local ordinances, and is not removed within thirty days of written notice from the department or the city or the county with land use jurisdiction over the property upon which the advertising display is located, a penalty of ten thousand dollars (\$10,000) plus one hundred dollars (\$100) for each day the advertising display is placed or maintained after the department sends written notice shall be assessed. (c) In addition to the penalties set forth in subdivision (b), the gross revenues from the unauthorized advertising display that are received by, or owed to, the applicant and a person working in concert with the applicant shall be disgorged. (d) The department or a city or a county within the location upon which the advertising is located may enforce the provisions of this section. (e) Notwithstanding any other provision of law, if an action results in the successful enforcement of this section, the department may request the court to award the department its enforcement costs, including, but not limited to, its reasonable attorneys' fees for pursuing the action. (f) It is the intent of the Legislature in enacting this section to strengthen the ability of local governments to enforce zoning ordinances governing advertising displays.

Sincerely,



— Mile High Outdoor



7-23-2021

To Whom It May Concern,

The Colorado Outdoor Advertising Association (COAA) is providing written comments in response to the recent Virtual Workshop put together by CDOT on July 19th, 2021. All comments are in reference to CDOT's effort to modify a portion of the rules governing outdoor advertising in Colorado, 2 CCR 601-3 (Outdoor Advertising Rules) in an Emergency Rules Making Process. These edits are to align the language in 2CCR 601-3 with Senate Bill 21-263, which was enacted into law on June 30th, 2021.

In summary, the COAA is in full support of the drafted language discussed in detail on July 19th. We feel it will bring the Outdoor Advertising Rules 2 CCR 601-3 into alignment with the new Statute.

Rule 3.2 Grounds for Noncompliance

- A. 1. (b)** The COAA would like to see a shorter timeframe given to the property owner to conform. We believe that 60 days is far too long of a period since many advertising campaigns only run for 28 days. This would allow property owners the ability to take short term advertising programs on illegal signs (meaning they needed to follow the Outdoor Advertising Rules), collect their money, and then correct the issue after receiving notice on non-compliance all within 60 days. This might even end up being a business model for some of the typical offenders within the market. We would encourage CDOT a cure period of 10 days, and believe that is plenty of time to remove the advertisement in order to bring the sign into conformance.

The COAA would also suggest CDOT look at language that further discourages individuals and/or companies from breaking the law of the newly approved Outdoor Advertising Act. Below is an example of California's disgorgement language that would be recommended.

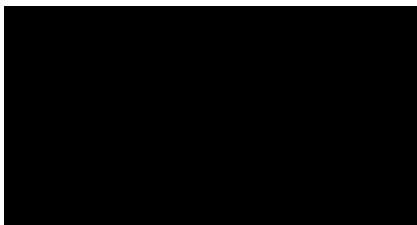
California Business Code § 5485

Annual permit fee for advertising displays; penalties for displays without valid permits; enforcement costs (a)(1) The annual permit fee for each advertising display shall be set by the director. (2) The fee shall not exceed the amount reasonably necessary to recover the cost of providing the service or enforcing the regulations for which the fee is charged, but in no event shall the fee exceed one hundred dollars (\$100). This maximum fee shall be increased in the 2007-08 fiscal year and in the 2012-13 fiscal year by an amount equal to the increase in the California Consumer Price Index. (3) The fee may reflect the



department's average cost, including the indirect costs, of providing the service or enforcing the regulations. (b) If a display is placed or maintained without a valid, unrevoked, and unexpired permit, the following penalties shall be assessed: (1) If the advertising display is placed or maintained in a location that conforms to the provisions of this chapter, a penalty of one hundred dollars (\$100) shall be assessed. (2) If the advertising display is placed or maintained in a location that does not conform to the provisions of this chapter or local ordinances, and is not removed within thirty days of written notice from the department or the city or the county with land use jurisdiction over the property upon which the advertising display is located, a penalty of ten thousand dollars (\$10,000) plus one hundred dollars (\$100) for each day the advertising display is placed or maintained after the department sends written notice shall be assessed. (c) In addition to the penalties set forth in subdivision (b), the gross revenues from the unauthorized advertising display that are received by, or owed to, the applicant and a person working in concert with the applicant shall be disgorged. (d) The department or a city or a county within the location upon which the advertising is located may enforce the provisions of this section. (e) Notwithstanding any other provision of law, if an action results in the successful enforcement of this section, the department may request the court to award the department its enforcement costs, including, but not limited to, its reasonable attorneys' fees for pursuing the action. (f) It is the intent of the Legislature in enacting this section to strengthen the ability of local governments to enforce zoning ordinances governing advertising displays.

Sincerely,



COAA



July 23, 2021

Sent via E-Mail

Natalie Lutz,
Rules, Policies, and Procedures Administrator
Colorado Department of Transportation
2829 West Howard Place
Denver, Colorado 80204

Re: Proposed Rulemaking - 2 CCR § 601-3

Dear Ms. Lutz:

Thank you for the opportunity to provide comments on the proposed rulemaking to update 2 CCR § 601-3 in response to the recent passage of SB21-263. The purpose of this letter is to provide general comments about the proposed rules, and then to specifically address 2 CCR § 601-3:7.00.D. These comments are submitted on behalf of our client, StreetMediaGroup, LLC.

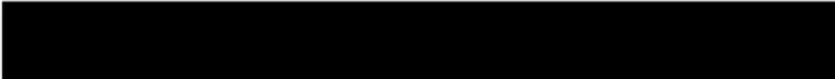
In General

Our comments on SB21-263 are of record and apply with equal force to the proposed rulemaking. In addition, we stand by our comments at the rulemaking workshop on July 19, 2021. CDOT's written summary says "[t]he new compensation-based approach makes it easier for landowners and sign owners to understand whether they need a CDOT permit." Yet, at the rulemaking workshop CDOT personnel were unable to answer basic questions about everyday scenarios in this regard, including:

- Whether a commercial landlord who charges tenants for placement on an existing sign would need a CDOT permit, or
- Whether a commercial landlord who charges a tenant for the erection of a new sign on that tenant's behalf would need a CDOT permit.

Mr. Lovato said that no permit would be required for the scenario in which a landowner pays a contractor to erect a sign, but there is nothing in the actual text of the law that supports that conclusion. CDOT has a history of interpreting and applying its laws with uneven results, as evidenced by the records of the protracted conflicts between CDOT and our clients.

CDOT and COAA cooperated to draft SB21-263 and push it through the legislature, yet CDOT personnel are not able to articulate the purpose of the law in public. The First Amendment requires clarity with respect to the purposes of the law, the standards that apply to the issuance of permits, and the standards that apply to the determination of who will be subject to a permitting requirement



Natalie Lutz,
July 23, 2021
Page 2

in the first place. The public is entitled to know clearly which signs are subject to permitting requirements and which signs are not subject to permitting requirements. It is CDOT's legal obligation to provide that information in a manner that ordinary people can feel confident that they understand. We hope that CDOT can and will articulate that information in a manner that is useful and practical for the many thousands of sign owners along regulated highways in the State of Colorado who may be affected by this new regulation.

As we advised at the workshop, until CDOT articulates the purpose and specific objectives of the new law, it is very challenging to offer meaningful, substantive input regarding specific provisions of 2 CCR § 601-3 beyond what is included in the next part of this letter. Before promulgating any new rule, we think CDOT has an obligation to the people of Colorado to state very clearly on the record what it is actually trying to accomplish, as well as how the proposed rule advances or fulfills those objectives. CDOT did a much better job in this regard last year when it considered amendments to 2 CCR § 601-3. *See Exhibit A.*

The Interchange Rule

In October 2020, CDOT almost promulgated a change to 2 CCR § 601-3.D.2., along with updates to the definitions of "urbanized area" and "urban area" in 2 CCR § 601-3:1.31. We think the rationale for those amendments has not changed (*see Exhibit A*), and if anything it is even more urgent today. Modifications to the interchange rule would alleviate many existing and potential conflicts under the new law, would harmonize future practice with past practice, and would also thereby eliminate controversy surrounding a number of "illegal" permits held by three large COAA member companies.

One COAA member previously suggested that the 1971 Agreement does not allow changes to the interchange rule. We disagree for reasons we have previously articulated. Moreover, we believe that whatever individual participants in this rulemaking process may think about the procedural requirements, this issue could simply be resolved by stipulation in federal court.

We urge CDOT to make the following changes, which it supported less than a year ago--

1.31 ~~"Urban Area" and "Urbanized Area" "Urban Area" pursuant to 23 U.S.C. 101 (33) means an urbanized area designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area (as defined by 23 U.S.C. 101 (34)), within boundaries to be fixed by responsible State and local officials.~~

A. "Urban Area" means an urbanized area or, in the case of an urbanized area encompassing more than one state, that part of the urbanized area in each state, or urban place as designated by the U.S. Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by responsible state and

Natalie Lutz,
July 23, 2021
Page 3

local officials in cooperation with each other, subject to approval by the U.S. Secretary of Transportation. Such boundaries shall encompass, at a minimum, the entire urban place designated by the U.S. Bureau of the Census.

B. “Urbanized Area” means an area with a population of 50,000 or more designated by the U.S. Bureau of the Census, within boundaries to be fixed by responsible state and local officials in cooperation with each other, subject to approval by the U.S. Secretary of Transportation. Such boundaries shall encompass, at a minimum, the entire urbanized area within a state as designated by the U.S. Bureau of the Census. Urbanized Area designations may be viewed on the TIGERweb Decennial map provided on the U.S. Census Bureau’s website at <https://tigerweb.geo.census.gov/>.

* * *

D. Spacing of Signs

1. Advertising Devices on Control Routes may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness of any official traffic sign, signal, or device, obstruct or physically interfere with the driver’s view of approaching, merging or intersecting traffic.

2. In the Control Area near Interstates ~~Highways~~ and Freeways:

a. No two Signs shall be spaced less than 500 feet apart.

b. ~~Outside of incorporated villages and cities, no~~ Advertising Devices may ~~shall not~~ be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety Rest Area if the Advertising Device is located outside of an Urbanized Area and outside of the boundaries of an incorporated town or city. The 500 feet is to be measured along the Interstate or Freeway from the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

i. This spacing limitation applies where the proposed location of the Sign is located outside of an Urbanized Area and outside of the boundaries of an incorporated town or city regardless of the location of the interchange, intersection at grade, or safety Rest Area.

ii. The limits of an interchange, intersection at grade, or safety Rest Area span from the beginning of pavement widening for an exit lane or ramp and continues through the interchange, intersection at grade, or safety Rest Area, to the point where pavement widening ends for an entrance lane or ramp.

Natalie Lutz,
July 23, 2021
Page 4

iii. The 500-foot measurement is to be measured parallel to the highway. This prohibition applies to the entire 660-foot Control Area adjacent to the interchange, intersection at grade, or safety Rest Area along with the 500-foot measurement adjacent thereto.

iv. "Pavement widening" includes exit and entrance lanes and ramps, auxiliary lanes, and other lanes which terminate while allowing traffic to weave on or off the main-travelled way.

v. For those locations where a continuous auxiliary lane extends from the entrance ramp/lane of one interchange/intersection at grade/safety Rest Area and connects to the exit ramp/lane of another interchange/intersection at grade/safety Rest Area, such that there is no clear "beginning or ending of pavement widening at the exit from or entrance to the main-traveled way." this rule prohibits signs located within 2,250 feet from the physical gore of entrance ramps/lanes and within 1,600 feet from the physical gore of exit ramps/lanes.

3. All other Controlled Routes except Interstate and Freeways
 - a. Outside of Urbanized Areas and incorporated townsvillages and cities, no two ~~structures~~-Signs shall be spaced less than 300 feet apart.
 - b. Within Urbanized Areas and incorporated townsvillages and cities, no two ~~structures~~-Signs shall be spaced less than 100 feet apart.

* * *

Thank you again for the opportunity to provide comments.

Sincerely,


Fairfield and Woods, P.C.


cc: Anthony Lovato
Pawan Nelson, Esq.
Patrick Sayas, Esq.



COLORADO

Department of Transportation

Office of Policy and Government Relations

2829 W. Howard Place
Denver, CO 80204-2305

Summary of Rule 7.00(D)(2) in 2 CCR 601-3, Rules Governing Outdoor Advertising

- The purpose of the Outdoor Advertising Rules found in 2 CCR 601-3 is to control the use of billboards or other outdoor advertising signs in areas near the state highway system to protect and promote the health, safety, and welfare of the traveling public.
- The Outdoor Advertising Rules also promote the reasonable, orderly, and effective display of billboards while preserving and enhancing the natural and scenic beauty of Colorado in compliance with the Colorado Outdoor Advertising Act and the federal Highway Beautification Act.
- The Colorado Department of Transportation (“CDOT”) proposes to clarify the restriction against billboards being located within 500 feet of an interchange, intersection at-grade, or safety rest area near interstates and freeways in Rule 7.00(D)(2).
- This administrative rule derives from a 1971 agreement between CDOT and the United States Secretary of Transportation and sets forth the State’s size, spacing, and lighting criteria for billboards.
- CDOT proposes that signs cannot be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety Rest Area if the billboard is located outside of an urbanized area and outside of the boundaries of an incorporated town or city.
- This proposed revision contemplates modern highway design principles, recent developments in outdoor advertising laws and regulations, and changes in land use zoning and designations, such as unincorporated areas that are near the boundaries of incorporated towns or cities.
- This proposed rule change is consistent with the Highway Beautification Act’s intent to preserve natural and scenic beauty in rural and unincorporated areas.
- Local jurisdictions have the authority to regulate billboards and other outdoor advertising signs within their boundaries. This proposed rule change supports decision-making at the local or community level. Local jurisdictions are in a better position to determine whether or not billboards should be allowed in their communities rather than CDOT making that determination.
- This proposed revision will help to preserve public funds, as many of the CDOT’s recent active and historical litigation has involved this rule.





STATE OF
COLORADO

Rules - CDOT, DOT_ <dot_rules@state.co.us>

Written Comments

1 message

Fri, Jul 23, 2021 at 12:20 PM

[REDACTED]
to: dot_rules@state.co.us

Greetings CDOT,

Attached are written comments for the proposed rule changes to the Outdoor Advertising Rules: 2 CCR 601-3. Thank you,



Colorado IDA Western Colorado Regional Coordinator



Recommended revisions to Outdoor Advertising Rules.docx
38K

Recommended revisions to **RULES GOVERNING OUTDOOR ADVERTISING IN COLORADO 2 CCR 601-3** :

Introduction: Artificial light at night is a powerful environmental stimulant, and as the use of light at night continues to increase across the globe, public and environmental health issues due to these lights are becoming more of a problem(1). The International Dark-sky Association (IDA) was formed in 1988 in response to the growing threat of light pollution, and has become the world-leader in protecting the nighttime environment through education, outreach, and promotion of its Dark-Sky Places certification program for communities and public places who show an exceptional dedication to preserving the night sky (2).

Colorado is currently emerging as a leader in dark-sky awareness and conservation with a growing list of dark-sky communities and places, and with towns, counties, public land managers, and state agencies all working in concert on dark-sky friendly policies and legislation. The International Dark-sky Association Colorado chapter requests that the Colorado Department of Transportation look at ways to reduce light pollution wherever possible.

The following comments outline recommended revisions to **RULES GOVERNING OUTDOOR ADVERTISING IN COLORADO 2 CCR 601-3** in order to preserve and protect Colorado's dark-sky resource.

Shielding:

Section 7.00 Signs in Areas Zoned Industrial or Commercial Uses C. Lighting 2:

Add to existing shielding requirements. "Light shall be pointed down and shielded so that no light is directed up towards the sky, and..."

Also, add specific limits to prevent light trespass and light pollution. As such, "the illumination projected from any use shall at no time exceed 0.1 footcandle onto a residential use, and 1.0 footcandle onto a non-residential use. This should apply to light emitted from any form of signage." (5)(6)

(Light trespass from CEVMS can be mitigated through technology such as Sitaline (3))

Dark-sky places:

Section 9.00:

Add International Dark-sky places restrictions similar to scenic byway restrictions. Provisions must be added so that lighted signs do not impact Colorado's light-sensitive dark-sky areas:

"No new CEVMS shall be erected within 25 (To Be Reviewed (TBR)) miles of a certified International Dark-sky place, park, sanctuary, reserve, or community." (7)

"All lighted Signs (externally or internally lit) within 25 (TBR) miles of a certified dark-sky location are encouraged to be turned off at night to preserve the dark-sky quality of the location, otherwise these signs must have lighting that is pointed down and fully shielded so that no light is cast upwards into the sky or onto adjacent lands. Also, lighted signs within 25 (TBR) miles of a certified dark-sky location must be dimmed to total luminance levels less than 100 nits, and color temperature reduced to 2200 Kelvin or less between dusk and dawn."

CEVMS Brightness:

12. CEVMS C. General Requirements 5. Operational Requirements b. Brightness 4:

Replace "300 nits" with "specific luminance limits of 100 nits for nighttime conditions, applicable to all CEVMS."(4)(5)(6)

CEVMS Color Temperature (CCT):

Also add provision to reduce the amount of blue (CCT > 2200 Kelvin) light at night.

12. CEVMS C. General Requirements 5. Operational Requirements c. Color Temperature (CCT).

"A CEVMS shall use automatic technology to adjust the color temperature of the Sign relative to ambient light so that blue light (ie light with CCT > 2200 Kelvin) is eliminated at night between dusk and dawn." (1) (8)

CEVMS Curfew:

12. CEVMS Advertising Devices C. General Requirements: 4. Operations b. CEVMS must:

"To further control light pollution, CEVMS shall be extinguished automatically no later than 10:00pm local standard time or 11:00pm daylight savings time each evening until dawn. Signs for establishments that operate or remain open past 10:00 pm MST / 11:00 pm DST may remain on no later than one half hour past the close of the establishment." (5)

This curfew is especially important during spring and autumn bird migration seasons (9).

Carbon Footprint:

Digital signs generally use significantly more electricity than static signs. Normal static displays are illuminated by 2 or 3 inefficient flood lights - usually only at night. Digital displays use efficient LED bulbs, however there are hundreds to thousands of these bulbs on each sign, oftentimes displayed for 24 hours per day, and this energy adds up. Also, CEVMS are operated by a controller unit that adds to the power draw. In summertime, excess heat from the CEVMS controller is managed with air conditioning devices that draw even more power. These factors cause CEVMS to have a significantly higher power draw than the more traditional, static billboard lighting (5).

Where new digital signage construction or digital conversions are permitted, there should be a "trade-off" policy, based on power consumption. For every square footage of digital signage an outdoor advertising company installs, via new construction or conversion, they must remove a specified amount of square footage of their existing static signage, in order to maintain or reduce their carbon footprint. (5)

Sources:

(1) American Medical Association on health risks due to light pollution:

<https://www.ama-assn.org/press-center/press-releases/ama-adopts-guidance-reduce-harm-high-intensity-street-lights>

(2) Link to the International Dark-sky Association (IDA) website:

<https://www.darksky.org/>

(3) New technology for electronic billboards: Sitrine - Light Blocking Technology.

<https://www.mediaresources.com/sitrine/>

(4) The Illuminating Engineering Society of North America (IESNA) has conflicting recommendations for electronic billboard lighting.

Here is a paper on outdoor signage luminance levels including IESNA recommendations:

Digital LED Billboard Luminance Recommendations: How Bright Is Bright Enough?

http://www.illinoislighting.org/resources/DigitalBillboardLuminanceRecommendation_ver7.pdf

(5) This article compares electronic/digital signs to externally lit static signs:

Illuminating the Issues: Digital Signage and Philadelphia's Green Future:

https://www.scenic.org/wp-content/uploads/2019/09/Digital_Signage_Final_Dec_14_20101.pdf

(6) Another article on digital displays:

Illinois Coalition for Responsible Outdoor Lighting - Digital Billboards.

<http://www.illinoislighting.org/billboards.html>

(7) IDA statement on Electronic Billboards in Arizona:

https://www.darksky.org/wp-content/uploads/2016/02/IDA_HB2507_statement.pdf

"Such a move would endanger other IDA-designated Dark Sky Places in Arizona, indicated on the map in yellow, and directly imperils the state's burgeoning "astrotourism" industry."

(8) Information on health impacts of blue light at night:

<https://www.healthline.com/nutrition/block-blue-light-to-sleep-better#other-methods>

(9) Link to Lights Out Colorado with information on the effects of light pollution on bird migration.

<https://idacolorado.xyz/lights-out-colorado/>

Drafted by [REDACTED]

7.22.21

[REDACTED]

[Colorado IDA](#) Western Colorado Regional Coordinator





STATE OF
COLORADO

7J

Rules - CDOT, DOT_ <dot_rules@state.co.us>

Attend Virtual Workshop and Submit Comments on Proposed Outdoor Advertising Emergency Rules

1 message

CDOT Rules <cdot_rules@state.co.us>

Tue, Jul 13, 2021 at 2:55 PM

To: Natalie Lutz - CDOT <natalie.lutz@state.co.us>

Cc: Anthony Lovato - CDOT <anthony.lovato@state.co.us>, Scott Hoftiezer - CDOT <scott.hoftiezer@state.co.us>

Bcc [REDACTED]



Dear Stakeholder

You have been identified as a stakeholder with interests and experience relevant to outdoor advertising in Colorado. Senate Bill 21-263 was enacted into law on June 30, 2021, revising Colorado’s Outdoor Advertising Act. The rules governing outdoor advertising in Colorado, 2 CCR 601-3 (Outdoor Advertising Rules) are out-of-date with the newly revised Outdoor Advertising Act. Therefore, the Colorado Department of Transportation (CDOT) desire to modify a portion of the Outdoor Advertising Rules through emergency rulemaking. CDOT finds that immediate adoption of proposed rule revisions is necessary to comply with the newly revised Outdoor Advertising Act.

CDOT invites you to share your expertise with us regarding the attached proposed emergency changes to the Outdoor Advertising Rule by participating in a virtual work hop and submitting written comment. Your involvement and participation are voluntary and appreciated.

Attend Virtual Workshop

At the workshop, CDOT staff will provide a brief overview of Senate Bill 21-263 and explain the emergency and permanent rulemaking timeline and the proposed emergency rule change. The work hop will then be open for public comment on the proposed rule changes.

Event: Outdoor Advertising Rulemaking Workshop
Date: Monday, July 19, 2021
Time: 1- 3 pm MDT
Details: Offer feedback on the proposed rule changes
Registration: [GotoWebinar Registration Link](#)

After clicking the registration link, you will be directed to the GotoWebinar registration page. You can also find the webinar registration link from [CDOT's Rules webpage](#). If you are unable to attend the virtual workshop, we plan to send out the recording to everyone afterward.

Submit Written Comments:

CDOT requests written comments to the attached proposed rule changes by July 23, 2021. Please submit all written comments to dot_rules@state.co.us.

Please feel free to contact Natalie Lutz at 303 757 9441 or dot_rule@state.co.us if you have any question or need assistance registering for the virtual workshop. We have attached the proposed emergency rules, the existing Outdoor Advertising Rules, and Senate Bill 21-263. Additional information will be forthcoming prior to the workshop.

Thank you for your participation in the rulemaking process and for providing feedback on the proposed rule changes.

Thank you,

Natalie

—
Natalie Lutz
Rules, Policies, and Procedures Administrator



P: 303.757.9441

2829 W. Howard Place, Denver, CO 80204

[dot rule @ tate co u](mailto:dot_rule@tate.co.u) | [www codot gov](http://www.codot.gov) | [www cotrip org](http://www.cotrip.org)

3 attachments



2021a_263_signed.pdf

435K



2 CCR 6013_Proposed ER Rules.71321.pdf

313K



2 CCR 601-3_Current Rules.pdf

582K



STATE OF COLORADO

Rules - CDOT, DOT_ <dot_rules@state.co.us>

Link to the Video of CDOT's Outdoor Advertising Stakeholder Workshop on 7.19.21

1 message

CDOT Rules <dot_rules@state.co.us>

Thu, Jul 22, 2021 at 11:08 AM

To: Natalie Lutz - CDOT <natalie.lutz@state.co.us>

Cc: Anthony Lovato - CDOT <anthony.lovato@state.co.us>, Scott Hoftiezer - CDOT <scott.hoftiezer@state.co.us>

Bcc:

[Redacted content]



Hello Stakeholder,

Thank you for attending our Outdoor Advertising Stakeholder Workshop! We appreciated the feedback that we heard during the workshop. We are taking the comments into consideration and will update the proposed emergency rules as appropriate.

We wanted to share the video from Monday's workshop with you because we realize that some stakeholders were not able to join us on July 19, 2021. Since the workshop video is a large file, it will be shared through Google Drive in the link below. Please note that we did not have a court reporter in attendance at the workshop to transcribe the workshop.

[Outdoor Advertising Stakeholder Workshop](#)

To ensure that we have adequate time to consider the public statements heard during the workshop and any written comment received, we may update our rulemaking schedule and seek adoption of the proposed emergency rule on a date later than July 30, 2021. We intend to keep you posted on changes to the rulemaking schedule and any updates during the rulemaking process as they occur.

As a friendly reminder, please submit written comment on or before July 23, 2021, to dot_rule@state.co.us. Written comments will be redacted for data privacy and posted on [CDOT's Rules Website](#). I have also attached a high-level summary of the outdoor advertising rule changes.

Please let me know if you have any question

Thank you,
Natalie

—
Natalie Lutz
Rules, Policies, and Procedures Administrator



P: 303.757.9441
2829 W. Howard Place, Denver, CO 80204
dot_rules@state.co.us | www.codot.gov | www.cotrip.org

 **Outdoor Advertising Rule Change Summary.pdf**
100K

STATE OF
COLORADO

Lutz - CDOT, Natalie <natalie.lutz@state.co.us>

NOTICE - SOS Tracking No. 2021-00488

1 message

Jason Gelender <jason.gelender@state.co.us>

Sun, Sep 19, 2021 at 1:43 PM

To: natalie.lutz@state.co.us

Cc: olls.ga@state.co.us

The rule that you submitted to the Office of Legislative Legal Services on 08/24/2021 concerning "Align CDOT's processes for permitting and enforcement of outdoor advertising devices with the new state law under Senate Bill 21-263.," OLLS Docket Number 210475, has been reviewed by staff and no objections have been made.

Please note, however, that this review does not constitute approval or preclude later review by the Committee on Legal Services.

If you have any questions, please do not hesitate to contact this office.

Office of Legislative Legal Services
Colorado General Assembly
303-866-2045 | olls.ga@state.co.us

By:

Jason A. Gelender, Managing Senior Attorney
Office of Legislative Legal Services
(303) 866-4330

Exhibit 8

Name	Title	Organization	Email
	General Manager	OUTFRONT	
	Owner	CWDA Inc.	
	Regional Managing Partner for Hogan and Lovells	Colorado Outdoor Advertising Assn.	
		Colorado Sign Association	
		Colorado Sign Association	
	President	Colorado Sign Association	
	Executive Director	Colorado Sign Association	
		Colorado Sign Association	
	Owner	Cyclone Ventures	
	State and Local Regulatory Affairs	Daktronics	
	Daktronics	Daktronics	
		Daktronics	
	Astronomy	University of Denver Astronomy Dept.	
	Owner, Gafford Signs	Joannie Gafford Signs	
	State & Local Govt. Affairs Mgr.	International Sign Association	
	State & Local Govt. Affairs Mgr.	International Sign Association	
	V.P. / G.M.	Lamar Advertising Denver	
	V.P. / G.M.	Lamar Advertising	
	TODS/LOGO program	Lamar Advertising	
	President	Milo High Outdoor	
	General Manager	Milo High Outdoor	
	YESCO, Inc.	YESCO Electronics	
	OAAA	OAAA	
	Broker	Mastro Real Estate	
	Attorney	Sponcor Fano Britt & Brown LLP	
	Attorney	Fairwood and Woods	
	Attorney	Payno & Powell, PLLC	
	CO-FOUNDER & PRINCIPAL	Sowald Hanfling	
	ASSOCIATE FOR STATE AFFAIRS	Sowald Hanfling	
	VICE PRESIDENT OF STATE AFFAIRS	Sowald Hanfling	
	Co-Founder and Principal	Sowald Hanfling	
	Lease Manager	Lamar	
	General Manager	Out Front Media	
	VP/Gm	Lamar	
	Real Estate Manager	Lamar	
		Out Front Media	
	President	United Advertising Corporation and Giordano Media, LLC	
	President, Dark Sky Association	Dark Sky Association	
	Professor, Astronomy DU		
	Lighting Education Expert	University of Colorado, Boulder	
		Scenic Colorado	
	President	Scenic Colorado	
	Board Member	Scenic Colorado	
	Board Member	Scenic Colorado	

	Scenic Colorado
Permittee	Out Front Media
Permittee	Elevation Outdoor Advertising
Permittee	F M Light Signs
Permittee	High Country Signs
Permittee	Ivan Curley Signs & Designs
Permittee	Jeannie Gafford
Permittee	Santa's Workshop
Permittee	South Park Museum
Permittee	Colorado West Outdoor Advertising
Permittee	Mountain States Media
Permittee	Outdoor Promotions, LLC
Permittee	Amato Lumber
Permittee	Anchor Motel Walsenburg, LLC
Permittee	A & M Company
Permittee	Aneth Lodge
Permittee	American Sign & Advertising
Permittee	Buffalo Lodge, Inc.
Permittee	Cottonwood Cellars
Permittee	Susan DiAngelo
Permittee	Choice Property
Permittee	Embry Enterprises, Inc.
Permittee	Cascade Falls Lodge, Inc.
Permittee	Daumco, Inc.
Permittee	Circle the Wagons
Permittee	KFC OF Alamosa, Inc.
Permittee	Museum of Western Colorado
Permittee	Echo Basin Ranch
Permittee	Golden Eagle
Permittee	
Permittee	Days Inn
Permittee	Lemmon Lodge
Permittee	Harvest Midstream
Permittee	Indian Hot Springs
Permittee	
Permittee	Scotty Investments, LLP
Permittee	Skaff's Supermarket
Permittee	Woods & River RV Park
Permittee	New Generation Homes
Permittee	Cyclone Ventures LLC
Permittee	
Permittee	Reisbeck Subdivision, LLC
Permittee	
Permittee	
Permittee	City of Manitou Springs
Permittee	Wheeler Blank Enterprises, LLC
Permittee	

Permittee	JAG Media Holdings, LLC
Permittee	
Permittee	LASS Investments, LLC
Permittee	Colorado Outfitters, LLC
Permittee	Red Rock Radio Group LLC
Permittee	FAE Holdings LLC
SIGN SPECIALIST / SIGN ENFORCEMENT Development Review Enterprise	City of Colorado Springs
Deputy Director, El Paso County Development Services	City of Colorado Springs
Director of Public Works	City of Cortez
	City of Cortez
Planner III	City of Greeley
Principal Planner	City of Loveland
Dir of Planning & Development	City of Northglenn
Code Enforcement Officer	City of Sterling
Larimer County Planner	Larimer County
Larimer County Planner	Larimer County
Chief Planner	Town of Windsor
Associate Planner	Town of Windsor
	City and County of Denver
Planning Director	Town of Frederick Planning Department
	Fort Lupton
Arapahoe County Assistant County Attorney	Arapahoe County
	Colorado Springs
	Colorado Springs
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	El Paso County
	El Paso County
	Pueblo West
	Pueblo West
	Pueblo West
	Fountain
	Fountain
	Woodland Park

	Canon City
	Canon City
	Palmer Lake
	Manitou Springs
	Cripple Creek
	Cripple Creek
	Park County
County Planner II	Arapahoe County
Long Range Planner II	Adams County
Traffic Engineer	City of Broomfield
Public Works Director	City of Black Hawk
Community Planning & Development Director	City of Black Hawk
Senior Traffic Engineer	Douglas County
Public Works Manager	City of Greenwood Village
	Federal Heights
	City of Lakewood
Transportation Engineering Manager	City of Littleton
	City of Littleton
Town Administrator	Town of Morrison
Director of Public Works	Town of Superior
Traffic Engineer	Town of Parker
Division Manager	Arapahoe County
	Aurora
Town Administrator	Bennett
	Bennett
Director of Community Development	Castle Pines
PW Director	Centennial
	Cherry Hills Village
PW Director	Clear Creek County
Town Planner	Columbine Valley
	Federal Heights
Director of Public Works	City of Commerce City
Planning Manager	City of Commerce City
	Deer Trail
Senior Planner	Foxfield
Town Engineer	Foxfield
City Manager	Glendale
Community Development Director	Gilpin County
Director of PW	Golden
Planning Manager	Golden
	Golden
Community Development Planner	City of Idaho Springs
	Larkspur
Director of Public Works	Mountain View
Senior Planner	City of Sheridan
	Silver Plume
City Engineer	Westminster

	FHWA
	Sewald Hanfling
	Out Front Media
	Street Media Group
resident	Elevation Outdoor
ity Manager	Greenwood Village
	City of Loveland
ttorney	Fairwood and Woods
pecial Ops	Vantage LED
wner	Personal Graphics
	Street Media Group
ermittee	
	Freeman Signs
ermittee	
ontrose County	Montrose County Commissioner Dist 3
	Scenic America
	Mile High Outdoor
xecutive Director	Colorado Sign Association
ommunity Development Director	City of Dacano
lanning Technician	City of Loveland
ssociate Planner	City of Cortez
usiness Development Director, Digital OOH	Media Resources Inc
enior Transportation and Mobility Planner	City of Westminster
lanning Manager	El Paso County
ttorney	Otten Johnson
ttorney	Hogan Lovells US LLP
ttorney	Brownstein Hyatt Farber Schreck LLP
wner	High Country Signs & Outdoor Advertising
resident	Outdoor Promotions of Colorado
resident	CAPITOL SOLUTIONS
ttorney	Hogan Lovells US LLP
	Dark Sky
	AKA Energy
	Dark Sky
	Spectacular Media
	TGS Global
	Colorado Counties Inc.
	Colorado Municipal League

[Redacted content]

Hello Stakeholder:

You have been identified as a stakeholder with interests and experience relevant to outdoor advertising in Colorado.

Senate Bill 21-263 took effect in Colorado on June 30, 2021, changing the permitting and enforcement process for the control of outdoor advertising devices in areas near interstates and state highways and visible to the traveling public from the roadway to a new compensation-based approach.

The attached emergency rules were adopted today to align the Colorado Department of Transportation's ("CDOT") processes for permitting and enforcement of outdoor advertising devices with the new state law under Senate Bill 21-263. The emergency rules will expire on December 02, 2021. Based on the feedback from the Stakeholder Workshop held on July 19, 2021, CDOT has prepared the attached Questions and Answers for your reference.

Additionally, CDOT invites you to submit written comments on the attached proposed permanent rules by August 18, 2021. The proposed permanent rules will make the emergency rules permanent, update the materials incorporated by reference in the rules, and add a new rule for declaratory orders. We tentatively plan to notice the proposed permanent rules with the Secretary of State on August 27, 2021, after consideration of any comments received. You will receive another update at that time with the date for the rulemaking hearing or any changes to the rulemaking schedule.

Please submit all written comments to dot_rules@state.co.us. All comments received from stakeholders will be posted on CDOT's [Rulemaking Web Page](#) and will be available for review during the public comment period. We will redact the following information for data privacy from the submissions prior to posting online: first and last names, contact information, including business and home addresses, email addresses, and telephone numbers.

Please feel free to contact Natalie Lutz at dot_rules@state.co.us if you have any questions or would like to be removed from our stakeholder list.

Thank you for your participation in the rulemaking process and for providing feedback on the proposed rules.




Thanks,
Natalie

—
Natalie Lutz
Rules, Policies, and Procedures Administrator



P: 303.757.9441
2829 W. Howard Place, Denver, CO 80204
dot_rules@state.co.us | www.codot.gov | www.cotrip.org

3 attachments

-  **Notice of Adoption_Emergency Rules_2CCR6013.08.04.21.pdf**
322K
-  **Q&As from 7.19.21 Workshop.pdf**
197K
-  **2 CCR 6013_Redline_Proposed Permanent Rules.8.4.21.pdf**
342K

[Redacted]

Hello Stakeholder:

This email serves as notification that the Colorado Department of Transportation (CDOT) filed a Notice of Proposed Rulemaking with the Colorado Secretary of State to consider changes to the rules governing outdoor advertising in Colorado, 2 CCR 601-3.

A proposed permanent rulemaking hearing will be held on **October 1, 2021, at 10 am**. CDOT proposes to align the processes for permitting and enforcement of outdoor advertising devices with Senate Bill 21-263. I have attached the notice of the hearing, the statement of basis, and the redline version of the proposed rule revisions for your reference in a single PDF document. A full description of the proposed changes can be found on the statement of basis. CDOT has also prepared the attached Questions and Answers for your reference.

The rulemaking hearing will only be conducted in a virtual setting. All interested and affected parties are urged to attend this public hearing by registering for the webinar at: <https://attendee.gotowebinar.com/register/1710526049888126736>

After registering, you will receive a confirmation email containing information about joining the webinar. You may also find the registration link for the virtual rulemaking hearing on [CDOT's website](#).


Please submit all written comments to dot_rules@state.co.us on or before 5:00 p.m. on October 5, 2021. All comments received from stakeholders will be posted on [CDOT's Proposed Rules and Hearing Dates Webpage](#) and will be available for review during the public comment period. We will redact the following information for data privacy from the submissions prior to posting online: first and last names, contact information, including business and home addresses, email addresses, and telephone numbers.

Please feel free to contact me at dot_rules@state.co.us if you have any questions or would like to be removed from our stakeholder list.

Thank you for participating in the rulemaking process.

Thanks,
Natalie

2 attachments

 **Notice_Statement_Proposed Rules.pdf**
727K

 **CDOT Responses to Stakeholder Comments on Outdoor Advertising Rules.9.1.21.pdf**
201K



COLORADO
Department of Transportation
Division of Project Support

2829 W. Howard Place
Denver, CO 80204-2305

Questions and Answers from Stakeholder Written Comments/Inquiries

CDOT Responses to Stakeholder Written Comments/Inquiries

The following discussion is intended to assist stakeholders who in good faith seek to better understand the new language within the rules. The following discussion should not be construed as a complete and final treatment of the topic and/or a complete position of CDOT as it applies to a specific factual scenario. CDOT reserves the right to clarify, modify, or expand upon these responses

Purpose and Intent

The purpose of the rules, 2 CCR 601-3 *et seq.*, including these rules, is to carry out the provisions of the Outdoor Advertising Act, § 43-1-401, *et seq.*, C.R.S., and the Highway Beautification Act of 1965, 23 U.S.C. 131, 23 C.F.R. 750.705(h) by establishing a statewide uniform program controlling the use of Advertising Devices in areas adjacent to the State Highway System. The intent of the rules, including these rules, is to protect and promote the health, safety, and welfare of the traveling public and the people of Colorado, and to promote the reasonable, orderly and effective display of outdoor advertising, while preserving and enhancing the natural and scenic beauty of Colorado.

Additional information on the purpose of the Outdoor Advertising Act can be found at § 43-1-402, C.R.S. The legislative intent behind SB21-263 can be found in the bill texts (<https://leg.colorado.gov/bills/sb21-263>) and in the legislative hearings on the bill.

The changes in the rules are to update the rules with the changes made to the Outdoor Advertising Act. The rules further update materials incorporated by reference and provide a section for declaratory orders.

Questions related to the terms “Advertising Device” and “Compensation”:

- 1. “When a payment of a fee is made to a local government (that is required) prior to erection of any sign/advertising device, will that be considered “compensation” by CDOT?”**

The payment of a permit fee required by either a relevant local government or CDOT is not considered “Compensation.”



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- 2. “When a person or an entity pays a monetary sum to physically purchase a sign/advertising device to be erected, does that constitute an exchange of anything of value (compensation) for that sign’s existence?”**

CDOT’s answer responds to the question to the extent the question is believed to ask about the actual act of the purchase of materials used in the erection of a sign or Advertising Device. No - the actual act of the purchase of materials used in the erection of a sign or Advertising Device is not considered “Compensation.” The actual act of the purchase of materials is not regulated by CDOT.”

- 3. “When a sign/advertising device owner pays a monetary fee to have the sign/advertising device installed (responsible for the sign/advertising device’s erection), does that create an advertising device under CDOT’s regulatory authority?”**

CDOT’s answer responds to the question to the extent the question is believed to ask about the cost of labor and materials used to erect a sign or Advertising Device structure. No - the cost of labor and materials used to erect a sign or Advertising Device structure are not considered “Compensation.” The act of installation is not regulated by CDOT, though the sign structure must comply with other laws and rules (e.g., size).

- 4. “Since memorandum of agreements must be legal (such as the ones issued for permit numbers 10685 and 10686 that have been operating for over 10 years under one) can [Mountain States Media, LLC] get CDOT to issue me one for the location [Mountain States Media, LLC] have in dispute with CDOT (I-25/highway 119 location).”**

This question is unrelated to the changes to the rules.

- 5. “Whether a franchisee needs a CDOT permit for the display of its franchisor’s signage along a state highway, where the franchisee pays compensation to the franchisor for the erection of such signage;”**

CDOT’s answer responds to the question to the extent the question is believed to ask about the cost of labor and materials used to erect a sign or Advertising Device structure. No - the cost of labor and materials used to erect a sign or Advertising Device structure are not considered “Compensation.” The act of installation is not



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regulated by CDOT, though the sign structure must comply with other laws and rules (e.g., size).

- 6. “Whether a sign company that owns a client’s sign and leases it to the client (as a financing mechanism) must obtain a CDOT permit as a result of the lease arrangement.”**

This question suggests the sign is being used as a “financing mechanism”, which indicates an exchange of value is being made for the sign. Therefore, in this question, the sign would be subject to CDOT’s outdoor advertising permitting requirements, among other regulatory control.

- 7. “Whether a commercial real estate broker needs a CDOT permit for the display of a sign on a client’s property along a state highway, where the landowner pays compensation to the broker to market the property; []”**

This question suggests that with respect to the sign that compensation is not being paid or earned in exchange for the erection or existence of the sign, rather, earned as a result of the sale of the property. The sale of property is not regulated by CDOT.

- 8. “If a property owner leases out their building/sign to another entity (landlord/tenant relationship) and part/all of the rent paid includes the use of a structure to advertise on, does that constitute the exchange of anything of value (compensation) thereby, creating an advertising device?”**
- 9. “Whether a commercial landlord who charges tenants for placement on an existing sign would need a CDOT permit; []”**
- 10. “Whether a commercial landlord who charges a tenant for the erection of a new sign on that tenant’s behalf would need a CDOT permit.”**
- 11. Could “any retail or office tenant paying its lease to the owner of a building [] be considered as “indirectly paid” compensation for the display of the tenant’s name or message on a wall sign or freestanding sign structure[?]”**



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In response to Questions 8 - 11 above, hypothetical sign sites and sign scenarios cannot be uniformly commented on by CDOT.

Because there are factual circumstances unique to a hypothetical sign site and sign scenario, this would be a case-by-case determination that CDOT cannot uniformly answer. Additionally, a hypothetical sign site and sign scenario may be impacted by relevant local government determinations.

The public should continue to operate on a presumption that if the exchange of anything of value is directly or indirectly paid or earned in exchange for the erection or existence of a sign designed, intended, or used to advertise or inform by any person or entity, that is considered “Compensation.” In the event “Compensation” is paid or earned and other definitional elements are met, the sign would be considered an “Advertising Device” regulated by CDOT. In that event, a permit must be obtained. If “Compensation” is being exchanged, the applicant will need to apply for a CDOT permit. If there is any uncertainty as to whether a sign is an “Advertising Device” or not, the property owner or sign owner can access CDOT guidance online or submit a permit application to CDOT. During this transitional time, and to accommodate good faith questions there is no fee charged for processing a permit application.

Questions related to spacing:

- 12. “Sign owners, businesses, governmental, civic, and religious organizations also need to know how CDOT will deal with spacing requirements as the number of signs subject to CDOT permit requirements mushrooms—that is, who will get to display (or continue to display) their signs and who will not, and who will get to build new signs and who will not.”**

This question is unrelated to the changes to the rules. The rules do not contemplate changes to spacing rules.

Questions related to protecting the night sky:

- 13. Can CDOT add language to the rules that would require shielding to protect the night sky?**

This question is unrelated to changes to the rules. The rules do not contemplate changes related to the topic of shielding the night sky.



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Questions related to “Advertising Devices” on Scenic Byways:

14. Will signage for businesses be impacted along scenic byways?

Pursuant to § 43-1-419, C.R.S, no newly erected “Advertising Devices” will be permitted by CDOT along scenic byways. Only those signs for which “Compensation” is not being exchanged may remain in existence or be newly erected along scenic byways.

Questions related to Rule 12.00 Changeable Electronic Variable Message Sign (“CEVMS”):

15. What will become of CEVMS that were previously classified as “On-Premise” with respect to spacing and remote monitoring requirements?

The changes to the rules relating to CEVMS spacing (Rule 12.C.2.a) and remote monitoring (Rule 12.C.5(3)) apply only to “Advertising Devices”. If “Compensation” is not being exchanged the sign is not considered an “Advertising Device” under the rules and, therefore, those CEVMS spacing and remote monitoring rules do not apply.

August 18, 2021

COMMENTS ON CDOT'S EMERGENCY RULES

I want to thank CDOT for the opportunity to comment on its new emergency rules related to outdoor advertising, and in good faith, better understand how the new language will affect all sign/advertising device owners and to comply with the intent of the Highway Beautification Act of 1965. I am including 5 questions in this letter that I hope CDOT will provide comprehensive answers to so everyone will have a better understanding of how CDOT will interpret these new rules.

One area of concern that needs clarification for all sign/advertising device owners is how CDOT will now apply the term "compensation" as it relates to what now qualifies as an advertising device. In CDOT's "Responses to Stakeholder Comments/Inquiries" CDOT has stated that "The public should operate on a presumption that if the exchange of anything of value is directly or indirectly paid or earned in exchange for the erection or existence of a sign designed, intended, or used to advertise or inform by any person or entity, that is considered Compensation." CDOT needs to further clarify this position for all sign owners.

"Marrying" the two defined terms, "Advertising Device" and "Compensation" can be read in this manner:

"Advertising device means any outdoor sign intended, or used to advertise or inform for which the exchange of anything of value is directly or indirectly paid or earned in exchange for its erection or existence by any person or entity".

This language is very broad and could impact every sign/advertising device in existence or any new one that will be built in the future. The plain language would seem to suggest that if any "compensation" is paid by any person or entity for a sign's existence that the sign becomes an advertising device, which thus requires a permit from CDOT if that sign/advertising device can meet all of CDOT's rules, including size, spacing, lighting, and zoning requirements. Whenever any person or entity applies to a local government to erect a sign on their property a permit fee/plan review fee is almost always required to be paid to the local government for that privilege. This is a process almost universal to every local government and is required before a person or entity can erect a sign. This isn't hypothetical, but a fact. With this in mind, can CDOT clarify this question:

- 1. "When a payment of a fee is made to a local government (that is required) prior to erection of any sign/advertising device, will that be considered "compensation" by CDOT"?**

From CDOT's answer in the "Responses to Stakeholder Comments/Inquiries" the public should presume it does. If it does, then probably almost all existing, and new signs will now be

required to obtain a permit from CDOT. This question is even more critical now that a sign owner can sign an affidavit stating their sign is not an advertising device under penalty of perjury. CDOT should be able to clarify up front what would constitute “perjury” and assure the sign owner that today, tomorrow, and every day in the future that CDOT will remain consistent with its determinations made today.

Another question that needs an answer today from CDOT is this:

- 2. “When a person or an entity pays a monetary sum to physically purchase a sign/advertising device to be erected, does that constitute an exchange of anything of value (compensation) for that sign’s existence?”**

Both the above questions concern a person or entity that is DIRECTLY exchanging something of value (money) for that sign’s erection and/or existence. According to the plain language of the new rules, and CDOT’s answer in its “Responses to Stakeholder Comments/Inquiries” on this subject, any person or entity that signs an affidavit will probably be committing perjury if they paid a sign/permit review fee and/or physically was responsible for the purchase of that sign/advertising device.

Two other questions to answer:

- 3. When a sign/advertising device owner pays a monetary fee to have the sign/advertising device installed (responsible for the sign/advertising device’s erection), does that create an advertising device under CDOT’s regulatory authority?**
- 4. If a property owner leases out their building/sign to another entity (landlord/tenant relationship) and part/all of the rent paid includes the use of a structure to advertise on, does that constitute the exchange of anything of value (compensation) thereby, creating an advertising device?**

These aren’t hypothetical questions but are real life instances that happen regularly in this State. CDOT needs to better define what conduct they regulate and what conduct they don’t regulate within their “control zone” adjacent to State Highways. This will aid all sign owners, and will help ensure that CDOT will remain consistent on what constitutes “compensation” for each and every administration going forward. Everyone benefits!

Anyone who has been in the sign business any length of time knows that it is CDOT’s lack of consistency in enforcing its rules in a non-biased manner is why CDOT has found itself having to change its rules. Specifically, it’s all over CDOT’s wavering on the 500’ from an Interstate interchange rule (Rule 7.00 (D) (2)) that has led everyone to this point (CDOT ended up in a federal court). Sometimes CDOT will enforce the Federal Government’s restrictions on this rule and sometimes they enforce their own more restrictive interpretation of this rule.

A question was raised by a Stakeholder if CDOT was going to include the urban area exemption from this rule. CDOT stated that it wasn’t at this time. If CDOT would follow the words of The

Colorado Supreme Court there would be NO need to change this language, just adopt the Federal Government's restrictions on this rule as The Supreme Court of Colorado has stated that is what the State should be doing.

The Supreme Court of Colorado, in *Pigg v. State Department of Highways (CDOT)* (746 P.2d 961), stated:

“The Act, as it was originally enacted, followed the formal requirements and utilized the language of the Beautification Act. As the Act was amended over the years, the legislature ensured the statute’s conformity with the Beautification Act by adopting those definitions and restrictions set out in federal regulations. The practice of the legislature in conforming the Act to the federal law with few substantial changes suggests both that the legislature’s primary concern has remained the preservation of the state’s share of federal highway funds, and that the legislature intended to prohibit only those signs that would conflict with federal law”.

They go on to state:

“The Act was modeled on the Beautification Act and designed to permit the erection and maintenance of any sign consistent with the restrictions imposed by the federal law”.

and continue with:

“We noted above that the scant legislative history available suggests only that the legislature intended to permit the maintenance of any sign not inconsistent with the Beautification Act”.

An important point to what they said is that the state of Colorado has adopted the Federal Government’s definitions and RESTRICTIONS! CDOT already knows that the Federal Government will allow signs within 500’ of an Interstate interchange if the land where the sign sits is incorporated or in an URBAN AREA. CDOT proposed last year to amend its language in that Rule to include urban areas. One would like to think that CDOT had cleared this with the Federal Government before proposing this new language in order to make sure that the State would remain compliant with the HBA. They have also permitted many signs through the urban area exemption in the past but refuse to do it on a consistent basis. If you aren’t one of their “favored” companies you don’t get the urban area exemption. This inconsistent interpretation has directly led to this revision of rules!

CDOT is forbidden to permit any signs inconsistent with the Beautification Act and the terms agreed to in its July 9, 1971 HBA agreement with the federal government (including CDOT’s rule 7.00 (D) (2), the 500’ from an Interstate interchange rule). Both parties, State of Colorado and the Federal Government, agreed to the language contained in Rule 7.00(D) (2) in this agreement. The Supreme Court, in the *Pigg* case, had it right when they stated that The State of Colorado had adopted the Federal Government’s definitions and restrictions. What better way to comply with this forced agreement than to adopt the Federal Government’s definitions and restrictions to ensure Colorado isn’t jeopardizing 10% of their rightful highway dollars from the

Federal Government. But CDOT doesn't always do that. Sometimes they will apply the Federal Government's restrictions on Rule 7.00(D) (2) and sometimes they apply a more restrictive interpretation. CDOT has received numerous complaints about signs that aren't located in an incorporated area (they are located within an urban area though) but are within 500' of an Interstate interchange (they were being asked to apply the same terms and restrictions as they were applying to other applicants that weren't allowed to use the urban area exemption). CDOT has continually refused to revoke these permits, and instead, continually reissues these permits year after year. Using the federal governments restrictions, they are all legal. Using CDOT's restrictions (no urban area exemption) they are all illegal.

Since CDOT refuses to revoke these permits, and it is forbidden by law from permitting or renewing any illegal signs, CDOT's continual renewing of these permits must mean they meet the restrictions imposed by law. Otherwise, CDOT is permitting illegal signs and allows them to proliferate throughout the State.

From the above discussion it is imperative that CDOT better define what constitutes "compensation". If it doesn't, one can safely assume that more inconsistent "rulings" will be made by CDOT. With this in mind, a solution that might be acceptable to any sign owner is that CDOT just issue "memorandums of agreements" to all sign/advertising device owners, whereby, CDOT allows any sign to continue to operate in this State until the federal government threatens to withhold any highway funds due to that sign (like what is stated in the already issued memorandum of agreements). This has been done in the past with CDOT's blessing and some signs have operated legally in this State for over 10 years under a memorandum of agreement (as an example, see permit files for permit numbers 10685, and 10686). This must be a legal option for signs to legally operate in this State or, once again, CDOT is willingly allowing signs to operate illegally in this State which is strictly against statute and the terms agreed to in the State's HBA agreement with the Federal Government.

For my fifth and final question I ask this:

- 5. "Since memorandum of agreements must be legal (such as the ones issued for permit numbers 10685 and 10686 that have been operating for over 10 years under one) can I get CDOT to issue me one for the location I have in dispute with CDOT (I-25/highway 119 location)".**

I will take it and take my chances, as I know the location is legal under the Federal Government's restrictions on this issue. But so does CDOT or they wouldn't have proposed amending the language on this rule last year! Hopefully CDOT will show some consistency on this matter and issue memorandum of agreements for any, and all, sign/advertising device owners who desire to operate this way.

Lastly, I just want to reiterate, that the only reason these rules are having to be changed is because of CDOT's inconsistent enforcement of its rules (specifically, Rule 7.00 (D) (2)). All this time and effort is because CDOT fails to follow the words of the Supreme Court of Colorado and consistently apply the Federal Government's definitions and restrictions on that Rule.

Thanks for allowing me to opine in this matter and I look forward to getting answers to these very important questions so all sign/advertising device owners can be assured that moving forward CDOT will apply its Rules in a consistent manner and everyone will be treated equally under the law! Thanks!



Mountain States Media, LLC.



Colorado Department of Transportation
Rules, Policies, and Procedures Administrator
2829 West Howard Place
Denver, Colorado 80204

18 August 2021

Administrator Natalie Lutz,

On behalf of the International Sign Association and the Colorado Sign Association, I would like to submit our organizations' comments on the August 2021 Outdoor Advertising Permanent Rule Rulemaking. The International Sign Association (ISA) is a 2000-member trade association, the members of which are manufacturers, users and suppliers of on-premises signs and other visual communications products from the 50 United States and 60 countries around the world. ISA's in-state affiliate, the Colorado Sign Association includes 71 member sign companies and suppliers headquartered or with significant operational facilities in Colorado. On behalf of our 71 Colorado member companies, ISA and CSA support, promote and improve the visual communications industry, which sustains the nation's retail, distribution, service and manufacturing industries.

Thank you to the Colorado Department of Transportation (TDOT) for engaging in an open process with significant stakeholder participation. As difficult as it has been to keep up with the changing direction of the rulemaking process through its interruption in 2020 and restart in 2021, the Department has done an admirable job of notification of stakeholders and invitation to participate in public forums.

ISA and CSA generally support the rulemaking, both in its intent and in the specific language of the provisions being added to Colorado Administrative Code (2 CCR 601-3). ISA and CSA recognize that CDOT's rulemaking is a result of the recent changes in Colorado law (Senate Bill 21-263). As such, the Department is obligated to defer to the language and policy aims contained within that legislation. However, we have some limited concerns about the definition language that was adopted in SB 21-263 and how CDOT may enforce these new rules.

Definitions of "Advertising Device" and "Compensation"

Under SB 21-263, the amended definition of "Advertising device" is:

any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or any other contrivance designed, intended, or used to advertise or **INFORM, FOR WHICH COMPENSATION IS DIRECTLY OR INDIRECTLY PAID OR EARNED IN EXCHANGE FOR ITS ERECTION OR EXISTENCE BY ANY PERSON OR ENTITY**, and having the capacity of being visible from the travel way of any state highway, except any advertising device on a vehicle using the highway **OR ANY ADVERTISING DEVICE THAT IS PART OF A COMPREHENSIVE DEVELOPMENT**. The term "vehicle using the highway" does not include any vehicle parked near said highway for advertising purposes.

And the definition of "Compensation" is:

THE EXCHANGE OF ANYTHING OF VALUE, INCLUDING MONEY, SECURITIES, REAL PROPERTY INTERESTS, PERSONAL PROPERTY INTERESTS, GOODS OR SERVICES, PROMISE OF FUTURE DEVELOPMENT, EXCHANGE OF FAVOR, OR FORBEARANCE OF DEBT.

Under these definitions, ISA and CSA are concerned that any retail or office tenant paying its lease to the owner of a building could be considered as "indirectly paid" compensation for the display of the tenant's name or message on a wall sign or freestanding sign structure.

We recognize that CDOT's answers during the July 9, 2021 workshop describe the process under 3.2.A.1.b for a property owner to execute an affidavit as evidence that a sign is not an Advertising Device. Perhaps the Department's intent is not to require permits or enforce spacing requirements against what CDOT currently calls "on-premises signs"; however, the new process for Declaratory Orders (14.00) allows for any person to petition CDOT concerning an Advertising Device.

A search of current commercial office space shows a Denver building marketed with "*Opportunity for spec suites, full floors, collaborative work space, exceptional views, and building signage*". Another current listing in Greenwood Village notes "*The property is immediately adjacent to I-25 with building parapet signage available on each tower.*" When a tenant signs a lease for one of those spaces (or the hundreds of others that are or will be marketed in a similar manner) and pays extra for that signage at the roofline or on the large top panel on a multitenant pylon, any person can petition CDOT to have the sign declared an Advertising Device. Perhaps an individual dislikes all illuminated signs or has a direct view of a sign that disturbs their view-shed. In those scenarios, "the exchange of anything of value" for that signage could lead to (on-premises) building or freestanding signs being determined to be Advertising Devices by the language enacted through SB 21-263.

While CDOT is unlikely to return to the draft regulations from 2020, that earlier language contained a means test that would make the on-premises sign industry more comfortable that signs containing messages related to the activities conducted on the property would not be regulated in the same manner as a billboard. From the 2020 draft rulemaking:

- i) The Property or Sign owner, or their lessee or agent, markets the Sign to third parties as a device that can be used to advertise products or services;
- ii) The Property or Sign owner, or their lessee or agent, receives money or Value that derives from the act of advertising on the Sign, and not merely from increased profits derived from displaying the availability of the activity, good or service on the Property;
- iii) The Property or Sign owner, or their or agent, has one or more contracts concerning the Sign with third parties who are engaged in the business of outdoor advertising and such contracts concern outdoor advertising; or
- iv) The Property or Sign owner, or their lessee or agent, have one or more contracts which contain provisions that suggests a substantial portion of the Value exchanged in the contract is for advertising, rather than profits from sales on the Property.

These provisions would avoid the concerns that on-premises signs could be challenged and regulated as if they were Advertising Devices.

Advertising Devices on Scenic Byways

Colorado law long has prohibited Advertising Devices on Scenic Byways. ISA and CSA agree with this prohibition. However, the current proposal eliminates the exceptions (9.00.B.2) that allow for new on-premises signs. Under the Declaratory Orders process (14.00) discussed above, we are concerned that on-premises signs located along the route of several Colorado scenic byways could be subject to challenge from individuals who don't want ANY signs along a scenic byway, even one for a business located there.

In particular, we are concerned about the potential impacts to businesses located on these scenic byways:

Frontier Pathways (Pueblo city center)

Top of the Rockies (Leadville, new extension to Aspen)

Colorado River Headwaters (Kremmling, Hot Sulphur Springs, Green Ridge, Grand Lake)

South Platte River Trail (Julesberg)

Pawnee Pioneer Trails (Fort Morgan, Sterling, Briggsdale, Ault)

CEVMS Advertising Devices

As discussed above, the Declaratory Orders process could be used by individuals to challenge the presence of any new sign. As it pertains to CEVMS, our concerns are with the provisions of 12.C.2.a and 12.C.5(3). While it may be appropriate for 1000' spacing between digital billboards, applying this type of spacing requirement to on-premises signs would be very harmful to retail businesses that own on-premises electronic message centers.

In addition, the threat of an on-premises CEVMS being classified as an Advertising Device (through the Declaratory Orders process) necessitates a mention of an existing Colorado regulation that could take on new degree of significance. Existing 12.C.5(3) requires that a CEVMS "shall be capable of being remotely monitored to ensure

conformance with these Rules and state and federal laws". While this monitoring capability is common for digital billboards, in part because the billboard operator needs to ensure that advertisers' messages are being displayed properly and on schedule, it is rare to nonexistent for on-premises message centers. If an on-premises message center is reclassified as an CEVMS advertising device, it almost certainly will be in violation of 12.C.5(3) without any easy way to bring the sign into conformance.

ISA and CSA believe that CDOT's draft regulations will be beneficial to the state by better protecting the rules from a challenge on the basis of content neutrality. However, we are concerned that the definitions contained within the former Senate Bill 21-263 could be problematic as interpreted by CDOT staff or within the court system. And we are concerned that the Declaratory Orders process could be used to threaten the exemption that most on-premises signs (or "signs other than Advertising Devices") receive from CDOT permitting requirements.

Sincerely,



Director, Industry Programs





August 18, 2021

Sent via E-Mail

Natalie Lutz
Rules, Policies, and Procedures Administrator
Colorado Department of Transportation
2829 West Howard Place
Denver, Colorado 80204

Re: Comments on Proposed Permanent Rulemaking - 2 CCR § 601-3

Dear Ms. Lutz:

Thank you for the opportunity to provide comments on the proposed permanent rulemaking with regard to 2 CCR § 601-3. The proposed permanent rulemaking is in response to a new law, SB21-263, that potentially affects all signs along Colorado's extensive state highways. As the Colorado Department of Transportation ("CDOT") puts it, "Under the old law, to determine whether a sign needed a permit, CDOT arguably had to review the words and pictures of the sign to figure out the type of sign it was." According to CDOT, "under the new law only signs visible from the roadway that generate compensation require a CDOT permit."

Specifically, CDOT will require permits for *all signs* (not just pole signs, monument signs, or billboard signs) that are "advertising devices" as defined in SB21-263, and will not require permits for signs that are not "advertising devices." Simply obtaining a permit is not necessarily an easy solution for many sign owners (or would-be sign owners) because permits will not be issued for advertising devices in certain locations (including but not limited to locations within 500 feet of other signs, or within 500 feet of highway intersections that are not in municipalities),¹ or for advertising devices that have more than two panels facing in the same direction (as most shopping center signs have).²

Under the new law and the proposed regulations, "advertising device" is defined as:

any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or any other contrivance designed, intended, or used to advertise

¹ See 2 CCR § 601-3:7.00.D.2.

² See C.R.S. § 43-1-411(1)(d).



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or inform, for which compensation³ is directly or indirectly paid or earned in exchange for its erection or existence by any person or entity, and having the capacity of being visible from the travel way of any state highway, except any advertising device on a vehicle using the highway or any advertising device that is part of a comprehensive development.⁴ The term "vehicle using the highway" does not include any vehicle parked near said highway for advertising purposes.⁵

Based on the plain language of the new law, it would appear that CDOT is expanding its reach to *all signs* along Colorado's highway corridors—imposing new annual permit requirements and onerous investigation and enforcement mechanisms on property owners and businesses that have never previously had to deal with CDOT at all, or at least not in this capacity.⁶ In short, CDOT and its Colorado Outdoor Advertising Association (“COAA”) lobbying partners (more on this *infra*, at page 6) took a constitutionally infirm outdoor advertising law and made it *much worse*.

The comments in this letter are respectfully submitted on behalf of our clients, StreetMediaGroup, LLC (“STREETMEDIA”) and Turnpike Media, LLC (“TURNPIKE”).^{7,8} StreetMedia and Turnpike submit that SB21-263 (like its predecessor) is unconstitutional. CDOT is proposing permanent rules that do not remedy that situation. SB21-263 and the proposed rules put sign owners up and

³ “Compensation” is defined as “the exchange of anything of value, including money, securities, real property interests, personal property interests, goods or services, promise of future development, exchange of favor, or forbearance of debt.” C.R.S. 43-1-403(1.3), after enactment of SB21-263 on June 30, 2021.

⁴ “Comprehensive Development” is defined as “a group of two or more lots or parcels of land used primarily for multiple separate commercial or industrial activities that: (I) Is located entirely on one side of a highway; (II) Consists of lots or parcels that are contiguous except for public or private roadways or driveways that provide access to the development; (III) Has been approved by the relevant local government as a development with a common identity and plan for public and private improvements; (IV) Has common areas such as parking, amenities, and landscaping; and (V) Has an approved plan of common ownership in which the owners have recorded irrevocable rights to use common areas and that provides for the management and maintenance of common areas.” A “‘Comprehensive development’ includes all land used or to be used or occupied for the activities of the development, including buildings, parking, storage and service areas, streets, driveways, and reasonably necessary landscaped areas. A comprehensive development includes only land that is used for a purpose reasonably related to the activities of the development.” C.R.S. 43-1-401(1.5), after enactment of SB21-263 on June 30, 2021.

⁵ C.R.S. 43-1-401(1), after enactment of SB21-263 on June 30, 2021.

⁶ For example, enforcement may include forfeiture of the sign. *See* C.R.S. § 43-1-412(1).

⁷ StreetMedia is an outdoor advertising company that displays commercial and noncommercial content on signs, sometimes for compensation and sometimes without charge. StreetMedia is also a licensed contractor that erects signs on its own behalf and on behalf of others (for compensation). Turnpike Media is an outdoor advertising company that displays commercial and noncommercial content on signs, sometimes for compensation and sometimes without charge.

⁸ Our comments regarding SB21-263 are of record and apply with equal force to the proposed rulemaking. In addition, we stand by our statements, comments, and outstanding questions presented at the rulemaking workshop on July 19, 2021, as well as our prior written comments on the emergency rules, submitted by letter dated July 23, 2021.

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down thousands of miles of Colorado’s interstate and state highways at risk of invasive enforcement tactics (including thorough examinations of their books and records) if CDOT does not like what they say on their signs.

The “Compensation-Based Approach” Puts Unfettered Discretion in the CDOT Enforcement Official.

CDOT announced publicly that “[t]he new compensation-based approach makes it easier for landowners and sign owners to understand whether they need a CDOT permit.”⁹ But in recent sworn testimony, Jared Esquibel (a high-ranking CDOT employee who oversees the outdoor advertising program)¹⁰ (“ESQUIBEL”) could not explain “what it means to have compensation directly or indirectly paid or earned in exchange for its erection or existence by any person or entity.”¹¹ During his deposition, Esquibel was asked, “Do you think it requires expertise to find out whether the sign is an advertising device under the statute?” He answered, “Yes.”¹² Then he essentially admitted that even he—the person who oversees the Outdoor Advertising Program—does not have that expertise.

In his sworn deposition, Esquibel concluded that the definition of “advertising device” is “vague.” That should be scary to both CDOT and the general public because the determination of whether any given sign is an “advertising device” (and therefore subject to CDOT standards, permit requirements, and enforcement procedures) is delegated to low-level CDOT enforcement officials who are apparently not carefully supervised. Since no one (including the person who oversees the Outdoor Advertising Program) knows what the definition of “advertising device” actually includes, SB21-263 and the proposed changes to 2 CCR § 601-3 give unfettered discretion to CDOT employees to harass and prosecute people for exercising their First Amendment rights.

Indeed, under the proposed 2 CCR § 601-3:3.2.A.1.b., a sign owner who CDOT accuses of violating the proposed rules may be forced to choose between the harsh (and in many cases, terribly expensive) penalty of removing its sign or taking a big risk and executing “an affidavit under penalty of perjury as evidence that the device is not an advertising device” (and then potentially facing a *perjury charge* if CDOT sees things differently).¹³ Remarkably often, just applying for a CDOT permit will not be an available option. Indeed, a huge number of signs along Colorado’s

⁹ CDOT. “Adoption of Emergency Rules Governing Outdoor Advertising in Colorado” (distributed by CDOT on June 22, 2021) at 2.

¹⁰ Deposition of Jerad Esquibel, CDOT’s Director of Project Support (“ESQUIBEL DEPO.”), *StreetMedia et al. v. Stockinger*, D. Colo. Case No. 20-cv-3602-RBJ, July 13, 2021, at 78:23-25, 79:1.

¹¹ *Id.* at 73:10-16

¹² *Id.* at 75:4-7

¹³ *See also* C.R.S. § 43-1-412(2)(a), after enactment of SB21-263 on June 30, 2021.

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state highways will not comply with the spacing standards and design limitations (*e.g.*, not more than two panels per side) set out in SB21-263 and the proposed rules.

“The Best of Intentions, But Bad Judgment”¹⁴

In its notice of adoption of emergency rules, CDOT stated, “Under the old state law, to determine whether a sign needed a permit, CDOT arguably had to review the words and pictures of the sign to figure out the type of device it was.” It then admitted that this could result in a “violation of free speech.” CDOT continues, “Now, under the new state law only advertising devices visible from the roadway that generate compensation require a CDOT permit.”¹⁵

Time and again, CDOT has proclaimed that SB21-263 and the proposed new regulations apply to signs that generate compensation to their owners. According to CDOT representatives, such signs require CDOT permits because they are “advertising devices.” But the law does not say that an “advertising device” means a sign that generates compensation for its owner for the display of messages.¹⁶ When pressed, Esquibel admitted that under oath.¹⁷ Consequently, CDOT’s public proclamations in this regard create far more confusion than clarity.

CDOT’s refuses to institutionally acknowledge that the plain language of a law that it pushed through the legislature does not actually say what CDOT publicly claims it says, despite Esquibel’s remarkably candid and cogent admission in the regard (see the second bullet point on the next page for details).

Notably, through the end of January of this year, CDOT strenuously argued to an administrative law judge that 2 CCR § 601-3 must be applied according to its “plain language.”¹⁸ CDOT even

¹⁴ This quote is attributed to a CDOT employee who admitted that he lied to tech companies about road closures on state highways. According to multiple recent reports based on Colorado Open Records Act requests, CDOT employees lied to the tech companies so that roads that were actually open would show up in GPS applications as closed. According to reports, CDOT employees did not want to come clean because they were concerned that telling the truth would “damage the agency’s reputation,” such that tech companies would not trust CDOT anymore. The bottom line, according to one of those responsible, was that the employees had “the best of intentions, but bad judgment.” See <https://www.thedenverchannel.com/news/local-news/did-cdot-lie-internal-cdot-emails-show-why-employees-decided-to-misinform-drivers>.

¹⁵ Department of Transportation Executive Director, Rules Governing Outdoor Advertising in Colorado 2 CCR 601-3. Notice of Adoption of Emergency Rules, Effective August 4, 2021 (“EMERGENCY RULE NOTICE”) at 2.

¹⁶ The full definition from the statute (and related definitions) is set out on pages 1 and 2 of this letter. It includes no language about payments for the display of messages.

¹⁷ Esquibel Depo. at 99:8-12.

¹⁸ See Response to Motion for Summary Judgment (“ADMINISTRATIVE CASE MSJ RESPONSE”), *Street Media Group, LLC v. Department of Transportation, State of Colorado*, Office of Administrative Courts Case No. HW-2019-1 through 4, at 8 (arguing, “a plain language application of the Interchange Rule precludes issuance of a permit.”); Reporter’s Transcript Remote Hearing Day 1 (January 25, 2021), *Street Media Group, LLC v. Department of*

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suggested that such application was necessary because the agency has a history of interpreting and applying its laws in ways that do not comport with how they are written, creating uneven results.¹⁹ Now, CDOT declares on multiple fronts that the plain language of the law does not mean what it says, and CDOT will apply and enforce its own construct—a construct that is unrelated to the actual text. By way of example and not limitation—

- Anthony Lovato, who is CDOT’s “subject matter expert” as to the outdoor advertising program (“LOVATO”), stated at the recent rulemaking workshop that signs that exist because compensation was paid to a contractor to erect them, are exempt from the law—even though those signs are, in fact, “advertising devices” under the plain language of SB21-263 (which is incorporated into the proposed rules by reference).
- Similarly, Esquibel said in his sworn deposition that he did not interpret CDOT’s new compensation model to require a permit for “the fabrication of a sign or the construction (sic) erection of the sign.”²⁰ Instead, he said, “I interpret it on a first read as compensation for the actual message on the sign.”²¹ When asked whether the law said that, he responded, “no.”²² When pressed further, he confessed, “I would say this definition is vague.”²³
- Less than a month after Esquibel’s deposition, and even though he admitted that the law did not actually say that a sign is an “advertising device” (subject to CDOT permitting requirements) if compensation was exchanged for displaying messages, CDOT adopted emergency rules and announced, “Now, under the new state law only advertising devices visible from the roadway that generate compensation require a CDOT permit.”²⁴

In sum, the proposed amendments to 2 CCR § 601-3 double-down on an unconstitutional approach that will ultimately hurt every sign owner and sign user along tens of thousands of miles of state and interstate highways in Colorado.

Transportation, State of Colorado, Office of Administrative Courts Case No. HW-2019-1 through 4 (“DAY 1 TRANSCRIPT”), at 43:4-5 (“CDOT staff firmly believe they’re applying the plain language of the rule.”); 224:7-10 (“Q. . . . is CDOT trying to apply the plain language in the rules in this instance? A. Yes, I believe so.”)

¹⁹ Administrative Case MSJ Response at 18 (“Current Department staff recognize that the Outdoor Advertising Program may have acted inconsistently in the past. This is unfortunate.”). Examples of illegal signs that CDOT has never taken meaningful action against include, but are not limited to, permits numbered 8584, 10291, 10321, 10595, 10594, 10582, 10623, 10614/9754, 09690, 09786, 09826, 10581, 10580, 10643, 10686, 10685, 10852, and 10626.

²⁰ Esquibel Depo. at 97:22-23.

²¹ *Id.* at 97:23-25.

²² *Id.* at 98:1-3.

²³ *Id.* at 99:21.

²⁴ Emergency Rule Notice at 2.

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The Company CDOT Keeps Matters.

CDOT's about-face on the issue of interpreting its rules according to their "plain language" is troubling, particularly given the larger context of this rulemaking process. Public records show that CDOT and its lobbying partner, the COAA, worked in close coordination to rush SB21-263 through the Colorado legislature.²⁵ CDOT's legislative liaison, Andrew Karsian, sold the COAA-endorsed bill to one of its ultimate sponsors, Senator Smallwood, as follows:

The bill we would like to introduce is in partnership with the outdoor advertising industry [COAA] and will simplify the existing regulations we have, and it will protect the regulations needed to ensure bad actors do not install billboards that will be out of compliance with federal and state law.²⁶

For context, according to CDOT's 2021 roadside advertising permit list, the three largest members of COAA (Lamar, Outfront, and Mile High), collectively hold well over half of the CDOT-issued outdoor advertising permits. Not less than 18 of those permits are for long-standing illegal signs. CDOT confessed to the administrative law judge that it is "wary" of reviewing or revoking the wrongfully issued permits for those illegal signs, but declined to offer any details as to why.²⁷ The company that CDOT keeps matters. CDOT should not ignore the optics. Its credibility is at stake.

SB21-263 and the proposed rules chill free speech—not by limiting the total number of signs along highways, but instead by preventing sign owners from using their signs in the way that COAA's members do (that is, for what was historically called "off-premises" advertising). This is a big deal because agency rules are not supposed to chill free speech (under the First Amendment) or stifle free markets (under C.R.S. § 24-4-101.5).

The Colorado Administrative Procedures Act provides:

The general assembly finds that an agency should not regulate or restrict the freedom of any person to conduct his or her affairs, use his or her property, or deal with others on mutually agreeable terms unless it finds, after a full consideration of

²⁵ The bill was introduced on May 5, 2021, passed through both houses of the legislature on June 11, 2021, and was signed into law on June 30, 2021. See <https://leg.colorado.gov/bills/sb21-263>. Correspondence showing the partnership between CDOT and COAA includes, among other things, an email from Andrew Karsian (CDOT's legislative liaison) to Representatives Bird and Van Winkle, cc to [REDACTED] (lobbyist for COAA), dated May 19, 2021 at 2:12 PM that touts the coordination between CDOT and COAA.

²⁶ Email from Andrew Karsian to Senator Smallwood, cc to [REDACTED] [lobbyist for COAA], dated March 30, 2021 at 10:39 AM.

²⁷ Administrative Case MSJ Response at 20. ("CDOT has historically been wary of attempting to revoke permits for signs which should not have been granted. For a variety of reasons – including legal reasons – the Department continues to be wary of doing so.")

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the effects of the agency action, that the action would benefit the public interest and encourage the benefits of a free enterprise system for the citizens of this state.²⁸

Under the Proposed Regulations, CDOT Will Still Be “Looking at the Content,” Chilling Speech, and Violating Constitutional Rights.

In the “Questions and Answers from the Stakeholder Workshop” document (“Q&A”) related to the proposed permanent rules, CDOT claims, without support, that “CDOT will not be looking at the content of a sign in order to determine whether a CDOT permit is required, rather, CDOT will only regulate those signs for which Compensation is paid or earned in exchange for its erection or existence.”²⁹ Since CDOT cannot look at the physical structure of a sign and determine whether “compensation is paid or earned in exchange for its erection or existence,”³⁰ CDOT enforcement officials will still be “looking at the content” of signs as they “monitor[] interstates and highways to inventory signs that are permitted.”³¹

CDOT says that “Within the course of this monitoring, if CDOT comes upon a sign that is not permitted, CDOT will make contact with the property owner to determine if their sign is an Advertising Device.”³² Yet CDOT specifically will not answer the question of how it will conduct its monitoring and make the determination as to whether it believes a sign is subject to permitting requirements, nor will it give the public any idea what types of transactions implicate the “compensation model,” turning a run-of-the-mill sign into a regulated “advertising device” for which a CDOT permit is required. Instead, it just amplifies the confusion by doubling-down on language that is unrelated to its other representations—

Hypothetical sign sites or scenarios cannot be uniformly commented on by CDOT. The public should operate on a presumption that if the exchange of anything of value is directly or indirectly paid or earned in exchange for the erection or existence of a sign designed, intended, or used to advertise or inform by any person or entity, that is considered Compensation. In the event Compensation is paid or earned, the sign is considered an Advertising Device regulated by CDOT.³³

²⁸ C.R.S. § 24-4-101.5

²⁹ Q&A at 2.

³⁰ See Esquibel Depo. at 130:7-10.

³¹ Q&A at 2.

³² *Id.*

³³ Q&A at 1.

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CDOT does not want to admit that the threshold enforcement question will arise only when a CDOT employee reads a sign³⁴ or a third party complains about a sign.³⁵ Yet ultimately CDOT will find that there is no other way to implement this law. CDOT does not have a statutory mandate to require all sign owners to periodically submit their books and records to CDOT for examination, and such a requirement, if enacted, would also be unconstitutional in its own right.

CDOT Still Needs to Answer the Fundamental Questions.

StreetMedia and Turnpike are not the only companies that are nervous about CDOT's lack of candor during this rulemaking process. A representative of Jeannie Gafford Signs (who is not a Fairfield and Woods client) pleaded with CDOT, "We have permitted signs and would like [to know] in plain English how this is going to effect (sic) our Company."³⁶ StreetMedia and Turnpike echo that sentiment. In fact, the "plain English" approach is required by the Colorado Administrative Procedures Act.

CDOT should also be troubled by the predicament that SB21-263 creates. CDOT's employees do not seem to know what the law is intended to do, or how the law will actually be administered and enforced. As to the latter point, Esquibel offered up some candor in his sworn testimony:

Q: How would CDOT consistently enforce this 21-263 along 22,000 miles of highway corridor?

A: I don't know.

To date, CDOT refuses to comment on how the proposed amendments to 2 CCR § 601-3 may apply in ubiquitous situations like:

- Whether a commercial landlord who charges tenants for placement on an existing sign would need a CDOT permit; or

³⁴ In his sworn deposition, Esquibel viewed a picture of a sign for Nature's Herbs in Garden City, Colorado, which is located "on-premises." He was advised, "That billboard advertises a marijuana facility, and that marijuana facility is on the same site that the billboard is located," and then asked, "is that an advertising device?" His response was "I would say no," and continued, "You said it was advertising for the company on the existing site. So nobody's compensating them for that sign, right?" That question was met with, "how to you know that?" to which Mr. Esquibel answered, "I don't know." *Id.* at 90-91.

³⁵ For example, see email from [REDACTED] (Lamar Advertising Colorado) to Anthony Lovato, dated May 12, 2020 at 11:18 AM, complaining about a message from Coca Cola on a sign located at 7300 Broadway (owned by Turnpike Media), and response from Anthony Lovato, which was cc'd to [REDACTED] (COAA lobbyist), [REDACTED] [Mile High], [REDACTED] [Outfront], and others, dated May 14, 2020 at 9:18 AM.

³⁶ Comments on emergency rulemaking provided by Jeannie Gafford Signs via email to Ms. Lutz on July 22, 2021.

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- Whether a commercial landlord who charges a tenant for the erection of a new sign on that tenant's behalf would need a CDOT permit.

Of course, there are a number of other common arrangements CDOT's regulations should address (or at least CDOT should offer some guidance on when it promulgates its new rules), including but not limited to:

- Whether a commercial real estate broker needs a CDOT permit for the display of a sign on a client's property along a state highway, where the landowner pays compensation to the broker to market the property; or
- Whether a franchisee needs a CDOT permit for the display of its franchisor's signage along a state highway, where the franchisee pays compensation to the franchisor for the erection of such signage; or
- Whether a sign company that owns a client's sign and leases it to the client (as a financing mechanism) must obtain a CDOT permit as a result of the lease arrangement.

Sign owners, businesses, governmental, civic, and religious organizations also need to know how CDOT will deal with spacing requirements as the number of signs subject to CDOT permit requirements mushrooms—that is, who will get to display (or continue to display) their signs and who will not, and who will get to build new signs and who will not.

Some Pressure Relief is Warranted as CDOT Sorts Out These Problems.

CDOT is not supposed to adopt rules that “negatively impact the state’s business climate by impeding the ability of local businesses to compete with out-of-state businesses, by discouraging new or existing businesses from moving to this state, and by hindering economic competitiveness and job creation.”³⁷ On this record, we question whether CDOT has committed appropriate resources to study the impact of its proposed rules in this regard, even though it has a “continuing responsibility” to do so.³⁸ We believe the record shows that implementation of SB21-263 using the proposed rules will inevitably inflict significant collateral damage statewide.³⁹ To help mitigate that collateral damage, we offer the following suggestions—

³⁷ C.R.S. § 24-4-101.5.

³⁸ *Id.*

³⁹ This is just what the legislature warns agencies not to do: “The general assembly further recognizes that agency action taken without evaluation of its economic impact may have unintended effects, which may include barriers to competition, reduced economic efficiency, reduced consumer choice, increased producer and consumer costs, and restrictions on employment.” *Id.*

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First, CDOT should expansively interpret the definition of “comprehensive development” to include as many properties (and signs) as possible, instantly relieving at least those owners from unexpected and onerous new regulatory burdens. That is because signs within “comprehensive developments” are not “advertising devices” and are therefore not subject to CDOT permit requirements.

Second, CDOT should promptly provide clarity as to what signs are subject to permit requirements and what signs are not, answering the questions set out on page 9 of this letter, preferably in rule form in order to provide stability over time.

Third, CDOT should delete or modify 2 CCR § 601-3:7.00.D.2., commonly known as the “interchange rule.” The interchange rule is not mandated by the statute. Property owners should not be silenced just because their land is located by an interchange in an urbanized yet unincorporated county.

The “interchange rule” did not make sense even before SB21-263. It makes even less sense now that the reach of CDOT’s permitting requirement is, on its face, much different and much more extensive than it used to be. That is, billboards (formerly known as “off-premise signs”) are no longer the stated target of the regulations, and based on the plain language of the phrase “advertising device” it would appear that many billboards may no longer be subject to CDOT permit requirements. Many other signs, which are commonly found (and indeed, necessary) around developed and developing interchanges, now appear to be in the regulatory crosshairs.

CDOT knows that Rule 7.00.D.2. does not work. In fact, CDOT has provided cogent analysis as to why it should be changed. In October 2020, CDOT was just days away from promulgating a change to 2 CCR § 601-3.D.2., along with updates to the definitions of “urbanized area” and “urban area” in 2 CCR § 601-3:1.31. The rationale for those amendments (which CDOT also acknowledged in administrative court)⁴⁰ has not materially changed, and if anything it is even more urgent today, given the total confusion about what CDOT intends to regulate and how CDOT will administer and enforce its new regulatory program.⁴¹

⁴⁰ Administrative Case MSJ Response at 13 (acknowledging that a 1966 memo from the U.S. Department of Commerce regarding federal-state agreements regarding outdoor advertising acknowledged that by “maintaining strict spacing criteria in essentially rural areas, and permitting more signs in built-up or urban areas, we feel on[e] of the purposes of the Act has been served, i.e., the preservation of areas of natural beauty, and reflecting customary use.”)

⁴¹ One COAA member previously suggested that the 1971 Agreement does not allow changes to the interchange rule. We disagree for reasons we have articulated in our prior correspondence with CDOT. Moreover, we believe that whatever individual participants in this rulemaking process may think about the procedural requirements, this issue could simply be resolved by stipulation in federal court.

Natalie Lutz,
August 18, 2021
Page 11

StreetMedia and Turnpike urge CDOT to either delete the interchange rule or make the following changes to 2 CCR § 601-3—changes that the agency supported less than a year ago—

1.31 ~~“Urban Area” and “Urbanized Area” “Urban Area” pursuant to 23 U.S.C. 101 (33) means an urbanized area designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area (as defined by 23 U.S.C. 101 (34)), within boundaries to be fixed by responsible State and local officials.~~

~~A. “Urban Area” means an urbanized area or, in the case of an urbanized area encompassing more than one state, that part of the urbanized area in each state, or urban place as designated by the U.S. Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by responsible state and local officials in cooperation with each other, subject to approval by the U.S. Secretary of Transportation. Such boundaries shall encompass, at a minimum, the entire urban place designated by the U.S. Bureau of the Census.~~

~~B. “Urbanized Area” means an area with a population of 50,000 or more designated by the U.S. Bureau of the Census, within boundaries to be fixed by responsible state and local officials in cooperation with each other, subject to approval by the U.S. Secretary of Transportation. Such boundaries shall encompass, at a minimum, the entire urbanized area within a state as designated by the U.S. Bureau of the Census. Urbanized Area designations may be viewed on the TIGERweb Decennial map provided on the U.S. Census Bureau’s website at <https://tigerweb.geo.census.gov/>.~~

* * *

D. Spacing of Signs

1. Advertising Devices on Control Routes may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness of any official traffic sign, signal, or device, obstruct or physically interfere with the driver’s view of approaching, merging or intersecting traffic.

2. ~~In the Control Area~~ near Interstates ~~Highways~~ and Freeways:

a. No two Signs shall be spaced less than 500 feet apart.

b. ~~Outside of incorporated villages and cities, no~~ Advertising Devices may ~~shall not~~ be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety Rest Area ~~if the Advertising Device is located outside of an Urbanized Area and outside of the boundaries of an incorporated town or city~~. The 500 feet is to be measured along the Interstate or Freeway from the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

Natalie Lutz,
August 18, 2021
Page 12

- i. This spacing limitation applies where the proposed location of the Sign is located outside of an Urbanized Area and outside of the boundaries of an incorporated town or city regardless of the location of the interchange, intersection at grade, or safety Rest Area.
 - ii. The limits of an interchange, intersection at grade, or safety Rest Area span from the beginning of pavement widening for an exit lane or ramp and continues through the interchange, intersection at grade, or safety Rest Area, to the point where pavement widening ends for an entrance lane or ramp.
 - iii. The 500-foot measurement is to be measured parallel to the highway. This prohibition applies to the entire 660-foot Control Area adjacent to the interchange, intersection at grade, or safety Rest Area along with the 500-foot measurement adjacent thereto.
 - iv. “Pavement widening” includes exit and entrance lanes and ramps, auxiliary lanes, and other lanes which terminate while allowing traffic to weave on or off the main-travelled way.
 - v. For those locations where a continuous auxiliary lane extends from the entrance ramp/lane of one interchange/intersection at grade/safety Rest Area and connects to the exit ramp/lane of another interchange/intersection at grade/safety Rest Area, such that there is no clear “beginning or ending of pavement widening at the exit from or entrance to the main-traveled way,” this rule prohibits signs located within 2,250 feet from the physical gore of entrance ramps/lanes and within 1,600 feet from the physical gore of exit ramps/lanes.
3. All other Controlled Routes except Interstate and Freeways
 - a. Outside of Urbanized Areas and incorporated ~~townsvillages~~ and cities, no two ~~structures~~-Signs shall be spaced less than 300 feet apart.
 - b. Within Urbanized Areas and incorporated ~~towns~~villages and cities, no two ~~structures~~-Signs shall be spaced less than 100 feet apart.

* * *



Natalie Lutz,
August 18, 2021
Page 13

Conclusion.

The First Amendment requires clarity with respect to the purposes of the law, the standards that apply to the issuance of permits, and the standards that apply to the determination of who will be subject to a permitting requirement in the first place. Colorado statutes set out comparable requirements. Moreover, as a matter of public policy, everyone benefits when the law is clear.

It is CDOT's obligation to write rules in a manner that ordinary people can feel confident that they understand. Esquibel testified that he does not understand the most essential parts of the proposed rules. He oversees the Outdoor Advertising Program. CDOT has so far refused to provide clarity regarding how its proposed rules would be applied in commonplace scenarios. C.R.S. 24-4-103(4)(b) provides:

No rule shall be adopted unless: . . . To the extent practicable, the regulation is clearly and simply stated so that its meaning will be understood by any party required to comply with the regulation.

CDOT will require compliance with these regulations. As such, CDOT is obligated to explain them. We hope that CDOT chooses to do so.

Thank you again for the opportunity to provide comments.

Sincerely,



Attachments

cc: Anthony Lovato
Pawan Nelson, Esq.
Patrick Sayas, Esq.

Exhibit 9



STATE OF COLORADO

Rules - CDOT, DOT_ <dot_rules@state.co.us>

Adoption of Emergency Rules Governing Outdoor Advertising in Colorado and Opportunity to Comment on Proposed Permanent Rules

1 message

CDOT Rules <dot_rules@state.co.us> Wed, Aug 4, 2021 at 12:10 PM
To: Natalie Lutz - CDOT <natalie.lutz@state.co.us>
Cc: Anthony Lovato - CDOT <anthony.lovato@state.co.us>, Scott Hoftiezer - CDOT <scott.hoftiezer@state.co.us>
Bc [REDACTED]

[REDACTED]

Hello Stakeholder:

Since you requested notification of the Colorado Department of Transportation's rulemakings, this email serves to notify you as an interested party regarding emergency rulemaking for outdoor advertising in Colorado.

Senate Bill 21-263 took effect in Colorado on June 30, 2021, changing the permitting and enforcement process for the control of outdoor advertising devices in areas near interstates and state highways and visible to the traveling public from the roadway to a new compensation-based approach.

The attached emergency rules were adopted today to align the Colorado Department of Transportation's ("CDOT") processes for permitting and enforcement of outdoor advertising devices with the new state law under Senate Bill 21-263. The emergency rules will expire on December 02, 2021.

Additionally, CDOT invites you to submit written comments on the attached proposed permanent rules by August 18, 2021. The proposed permanent rules will make the emergency rules permanent, update the materials incorporated by reference in the rules, and add a new rule for declaratory orders. We tentatively plan to notice the proposed permanent rules with the Secretary of State on August 27, 2021, after consideration of any comments received. You will receive another update at that time with the date for the rulemaking hearing.

Please submit all written comments to dot_rules@state.co.us. All comments received from stakeholders will be posted on CDOT's [Rulemaking Web Page](#) and will be available for review during the public comment period. We will redact the following information for data privacy from the submissions prior to posting online: first and last names, contact information, including business and home addresses, email addresses, and telephone numbers.

Please feel free to contact Natalie Lutz at dot_rules@state.co.us if you have any questions or would like to be removed from our stakeholder list.

Thank you for your participation in the rulemaking process and for providing feedback on the proposed rules.

Thanks,

Natalie



—
Natalie Lutz
Rules, Policies, and Procedures Administrator



COLORADO
Department of Transportation
Office of Policy and Government Relations

P: 303.757.9441
2829 W. Howard Place, Denver, CO 80204
dot_rules@state.co.us | www.codot.gov | www.cotrip.org

2 attachments

-  **Notice of Adoption_Emergency Rules_2CCR6013.08.04.21.pdf**
322K
-  **2 CCR 6013_Redline_Proposed Permanent Rules.8.4.21.pdf**
342K

Please submit all written comments to dot_rules@state.co.us on or before 5:00 p.m. on October 5, 2021. All comments received from stakeholders will be posted on [CDOT's Proposed Rules and Hearing Dates Webpage](#) and will be available for review during the public comment period. We will redact the following information for data privacy from the submissions prior to posting online: first and last names, contact information, including business and home addresses, email addresses, and telephone numbers.

Please feel free to contact me at dot_rules@state.co.us if you have any questions or would like to be removed from our stakeholder list.

Thank you for participating in the rulemaking process.

Thanks,
Natalie


 **Notice_Statement_Proposed Rules.pdf**
727K

Exhibit 10



COLORADO
Department of Transportation

2829 W. Howard Place
Denver, CO 80204-2305

MEMORANDUM

To: Office of Policy and Government Relations

From: Natalie Lutz, Rules Administrator

Date: September 18, 2021

RE: Permanent Records Retention of Rule File for 2 CCR 601-3

Please establish an official rulemaking file for the Rulemaking Process and Hearing pursuant to § 24-4-103(8.1), C.R.S. which requires that “an agency shall maintain an official rule-making record for each proposed rule for which a notice of proposed rulemaking has been published in the Colorado register. Such rulemaking record shall be maintained by the agency until all administrative and judicial review procedures have been completed pursuant to the provisions of this article. The rulemaking record shall be available for public inspection.”

For retention purposes, this file should be considered permanent.

Please contact me if you need additional information.

Natalie Lutz
303.757.9441
Natalie.Lutz@state.co.us



Exhibit 11

Registration Report

Generated
10/01/2021 08:28 AM MDT

General Information

Webinar Name
Proposed Permanent Rulemaking Hearing for the Rules
Governing Outdoor Advertising in Colorado, 2 CCR 601-3

GoToWebinar

Webinar ID
515-134-419

Scheduled Start Date

10/01/2021

Scheduled Start Time

10:00:00 AM MDT

Scheduled Duration (minutes)

120

Registered

19

Opened Invitation

0

Clicked Registration Link

40

Registrants

First Name	Last Name	Email	Registration Date	Phone	Organization	Registrant's Status	Do you wish to speak at the hearing regarding the proposed rule revisions?	Are you planning on submitting written comments regarding the proposed rule revisions?	Do you wish to receive notice of all CDOT rulemaking hearings?	Unsubscribed
Alan	Clubb	alan.clubb@state.co.us	09/30/2021 03:59 PM MDT	9703140627	CDOT	Approved	No	No	No	No
[REDACTED]	[REDACTED]	[REDACTED]	09/30/2021 02:31 PM MDT	[REDACTED]	International Sign Association	Approved	I have not decided yet.	I have not decided yet.	No	No
Neil	Lacey	neil.lacey@state.co.us	09/29/2021 05:38 PM MDT	[REDACTED]	[REDACTED]	Approved	No	No	No	No
Brent	Hoag	brent.hoag@state.co.us	09/29/2021 04:43 PM MDT	3037579830	CDOT Region 1 ROW	Approved	No	No	Yes	No
[REDACTED]	[REDACTED]	[REDACTED]	09/27/2021 08:44 AM MDT	[REDACTED]	Outfront Media	Approved	I have not decided yet.	I have not decided yet.	Yes	No
[REDACTED]	[REDACTED]	[REDACTED]	09/23/2021 01:42 PM MDT	[REDACTED]	[REDACTED]	Approved	Yes	I have not decided yet.	Yes	No
[REDACTED]	[REDACTED]	[REDACTED]	09/17/2021 09:04 AM MDT	[REDACTED]	Fairfield and Woods, P.C.	Approved	Yes	Yes	Yes	No
[REDACTED]	[REDACTED]	[REDACTED]	09/14/2021 04:23 PM MDT	[REDACTED]	Mile High Outdoor	Approved	Yes	Yes	Yes	No
[REDACTED]	[REDACTED]	[REDACTED]	09/14/2021 03:58 PM MDT	[REDACTED]	SCOTTY INVESTMENT	Approved	I have not decided yet.	I have not decided yet.	Yes	No
[REDACTED]	[REDACTED]	[REDACTED]	09/08/2021 11:05 AM MDT	[REDACTED]	Sewald Hanf ing Public Affairs	Approved	No	No	Yes	No
[REDACTED]	[REDACTED]	[REDACTED]	09/07/2021 03:25 PM MDT	[REDACTED]	Sewald Hanf ing Public Affairs	Approved	I have not decided yet.	I have not decided yet.	Yes	No
[REDACTED]	[REDACTED]	[REDACTED]	09/07/2021 11:34 AM MDT	[REDACTED]	Outdoor Promotions of Colorado, LLC	Approved	No	No	Yes	No
[REDACTED]	[REDACTED]	[REDACTED]	09/02/2021 04:24 PM MDT	[REDACTED]	QuikTrip Corp.	Approved	No	No	Yes	No
[REDACTED]	[REDACTED]	[REDACTED]	09/02/2021 12:51 PM MDT	[REDACTED]	[REDACTED]	Approved	No	No	Yes	No
[REDACTED]	[REDACTED]	[REDACTED]	09/02/2021 09:20 AM MDT	[REDACTED]	Mile High Outdoor	Approved	I have not decided yet.	I have not decided yet.	Yes	No
[REDACTED]	[REDACTED]	[REDACTED]	09/02/2021 07:26 AM MDT	[REDACTED]	Lamar Advertising	Approved	I have not decided yet.	I have not decided yet.	Yes	No
[REDACTED]	[REDACTED]	[REDACTED]	09/02/2021 07:18 AM MDT	[REDACTED]	Colorado Department of Transportation	Approved	No	No	Yes	No
Jacquelyn	Jobe	jacquelyn.jobe@state.co.us	09/02/2021 07:13 AM MDT	303-512-4272	Vantage LED	Approved	No	I have not decided yet.	Yes	No
[REDACTED]	[REDACTED]	[REDACTED]	09/01/2021 05:33 PM MDT	[REDACTED]	Myself	Approved	No	No	Yes	No

Attendee Report Proposed Permanent Rulemaking Hearing for the Rules Governing Outdoor Advertising in Colorado CCR

Report Generated 10/07/2021 06:47 AM PDT
 Webinar ID 515-134-419

Actual Start Date Time 10/01/2021 09:48 AM MDT
 Duration 1 hour 15 minutes
 Registered 22
 Attended 17
 Clicked Registration Link 46
 Opened Invitation 0

Attendee Details

Attended	Interest Rating	Last Name	First Name	Email Address	Registration Date Time	Join Time (Time in Session)	Leave Time	Time in Session	Phone	Organization	Unsubscribed	Do you wish to speak at the hearing regarding the proposed rule revisions?	Are you planning on submitting written comments regarding the proposed rule revisions?	Do you wish to receive notice of all CDOT rulemaking hearings?	Webinar Question	Webinar Response
Yes	44				09/08/2021 11 05 AM MDT	10/01/2021 09 59 AM MDT - 10/01/2021 11 02 AM MDT (1 hour 4 minutes)		1 hour 4 minutes		Seward Hanf ing Public Affairs	No	No	No			Yes
Yes	70				09/14/2021 04 23 PM MDT	10/01/2021 09 54 AM MDT - 10/01/2021 11 02 AM MDT (1 hour 9 minutes)		1 hour 9 minutes		Mile High Outdoor	No	Yes	Yes			Yes
Yes	84				09/01/2021 05 33 PM MDT	10/01/2021 09 57 AM MDT - 10/01/2021 10 51 AM MDT (55 minutes)		55 minutes		Myself	No	No	No			Yes
Yes	48				09/02/2021 12 51 PM MDT	10/01/2021 09 59 AM MDT - 10/01/2021 10 57 AM MDT (60 minutes)		58 minutes			No	No	No			Yes
Yes	83				10/01/2021 08 35 AM MDT	10/01/2021 10 01 AM MDT - 10/01/2021 11 02 AM MDT (1 hour 2 minutes)		1 hour 2 minutes		StreetMediaGroup	No	I have not decided yet.	No			Yes
Yes	74	Jobe	Jacquelyn	jacquelyn.job@state.co.us	09/02/2021 07 18 AM MDT	10/01/2021 11 02 AM MDT (60 minutes)		60 minutes	303-512-4272	Colorado Department of Transportation	No	No	No			Yes
Yes	41	Kil ian	Brian	brian.kil ian@state.co.us	10/01/2021 09 59 AM MDT	10/01/2021 09 59 AM MDT - 10/01/2021 11 00 AM MDT (1 hour 1 minute)		1 hour 1 minute	9706836284	CDOT	No	No	No			Yes
Yes	39	Lacey	Neil	neil.lacey@state.co.us	09/29/2021 05 38 PM MDT	10/01/2021 10 01 AM MDT - 10/01/2021 11 02 AM MDT (60 minutes)		1 hour 2 minutes			No	No	No			No
Yes	52	Loeffler	Steve	steven.loeffler@state.co.us	10/01/2021 09 22 AM MDT	10/01/2021 10 08 AM MDT - 10/01/2021 10 57 AM MDT (50 minutes)		50 minutes	303-757-9891	CDOT	No	No	No			Yes
Yes	62				09/17/2021 09 04 AM MDT	10/01/2021 09 57 AM MDT - 10/01/2021 11 02 AM MDT (1 hour 6 minutes)		1 hour 6 minutes		Fairfield and Woods, P.C.	No	Yes	Yes			Yes
Yes	73				09/30/2021 02 31 PM MDT	10/01/2021 10 17 AM MDT - 10/01/2021 11 02 AM MDT (46 minutes)		46 minutes		International Sign Association	No	I have not decided yet.	I have not decided yet.			No
Yes	97				09/14/2021 03 58 PM MDT	10/01/2021 09 55 AM MDT - 10/01/2021 09 59 AM MDT (5 minutes)		1 hour 7 minutes		SCOTTY INVESTMENT	No	I have not decided yet.	I have not decided yet.			Yes
Yes	40				09/02/2021 09 20 AM MDT	10/01/2021 09 59 AM MDT - 10/01/2021 11 02 AM MDT (1 hour 4 minutes)		1 hour 4 minutes		Mile High Outdoor	No	I have not decided yet.	I have not decided yet.			Yes
Yes	92				09/27/2021 08 44 AM MDT	10/01/2021 10 45 AM MDT - 10/01/2021 11 02 AM MDT (17 minutes)		17 minutes		Outfront Media	No	I have not decided yet.	I have not decided yet.			Yes
Yes	85				09/02/2021 04 24 PM MDT	10/01/2021 09 57 AM MDT - 10/01/2021 11 02 AM MDT (1 hour 6 minutes)		1 hour 6 minutes		QuikTrip Corp.	No	No	No			Yes
Yes	60				09/02/2021 07 13 AM MDT	10/01/2021 09 52 AM MDT - 10/01/2021 09 55 AM MDT (3 minutes),10/01/2021 09 54 AM MDT - 10/01/2021 10 29 AM MDT (36 minutes)		37 minutes		Vantage LED	No	No	I have not decided yet.			Yes
Yes	94				09/23/2021 01 42 PM MDT	10/01/2021 10 00 AM MDT - 10/01/2021 10 03 AM MDT (4 minutes),10/01/2021 10 03 AM MDT - 10/01/2021 11 02 AM MDT (60 minutes)		1 hour 3 minutes			No	Yes	I have not decided yet.			Yes
No	0				09/02/2021 07 26 AM MDT	--	--	--		Lamar Advertising	No	I have not decided yet.	I have not decided yet.			Yes
No	0	Clubb	Alan	alan.clubb@state.co.us	09/30/2021 03 59 PM MDT	--	--	--	9703140627	CDOT	No	No	No			No
No	0				09/07/2021 11 34 AM MDT	--	--	--		Outdoor Promotions of Colorado, LLC	No	No	No			Yes
No	0	Hoag	Brent	brent.hoag@state.co.us	09/29/2021 04 43 PM MDT	--	--	--	303/757/9830	CDOT Region 1 ROW	No	No	No			Yes
No	0				09/07/2021 03 25 PM MDT	--	--	--		Seward Hanf ing Public Affairs	No	I have not decided yet.	I have not decided yet.			Yes

Will video of this be available afterwards

Exhibit 12



10-5-2021

To Whom It May Concern,

The Colorado Outdoor Advertising Association is providing written comments in response to the recent Rule Making Hearing on October 1st, 2021. All comments are in reference to CDOT's effort to align its processes for permitting and enforcement of outdoor advertising devices with Senate Bill 21-263.

In summary, the Colorado Outdoor Advertising Association is in full support of the language discussed in detail on October 1st. We feel it will bring the Outdoor Advertising Rules 2 CCR 601-3 into alignment with the new Statute, and provide clarity for the industry moving forward.

Rule 3.2 Grounds for Noncompliance

- A. 1. (b)** The Colorado Outdoor Advertising Association would like to see a shorter timeframe given to the property owner to conform. We believe that 60 days is far too long of a period since many advertising campaigns only run for 28 days. This would allow property owners the ability to take short term advertising programs on signs without an advertising device permit. We would encourage CDOT a cure period of 10 days, and believe that is plenty of time to remove the advertisement in order to bring the sign into conformance.

The Colorado Outdoor Advertising Association would also suggest CDOT look at language that further discourages individuals and/or companies from violating the regulations of the newly approved Outdoor Advertising Act. Below is an example of California's disgorgement language that would be recommended.

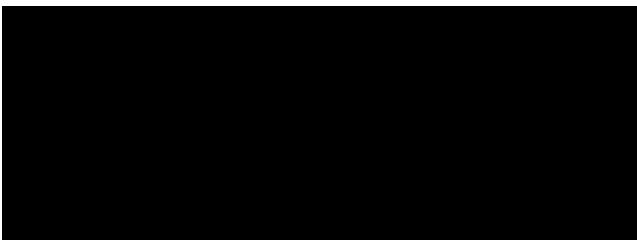
California Business Code § 5485

Annual permit fee for advertising displays; penalties for displays without valid permits; enforcement costs (a)(1) The annual permit fee for each advertising display shall be set by the director. (2) The fee shall not exceed the amount reasonably necessary to recover the cost of providing the service or enforcing the regulations for which the fee is charged, but in no event shall the fee exceed one hundred dollars (\$100). This maximum fee shall be increased in the 2007-08 fiscal year and in the 2012-13 fiscal year by an amount equal to the increase in the California Consumer Price Index. (3) The fee may reflect the department's average cost, including the indirect costs, of providing the service or enforcing the regulations. (b) If a display is placed or maintained without a valid, unrevoked, and



unexpired permit, the following penalties shall be assessed: (1) If the advertising display is placed or maintained in a location that conforms to the provisions of this chapter, a penalty of one hundred dollars (\$100) shall be assessed. (2) If the advertising display is placed or maintained in a location that does not conform to the provisions of this chapter or local ordinances, and is not removed within thirty days of written notice from the department or the city or the county with land use jurisdiction over the property upon which the advertising display is located, a penalty of ten thousand dollars (\$10,000) plus one hundred dollars (\$100) for each day the advertising display is placed or maintained after the department sends written notice shall be assessed. (c) In addition to the penalties set forth in subdivision (b), the gross revenues from the unauthorized advertising display that are received by, or owed to, the applicant and a person working in concert with the applicant shall be disgorged. (d) The department or a city or a county within the location upon which the advertising is located may enforce the provisions of this section. (e) Notwithstanding any other provision of law, if an action results in the successful enforcement of this section, the department may request the court to award the department its enforcement costs, including, but not limited to, its reasonable attorneys' fees for pursuing the action. (f) It is the intent of the Legislature in enacting this section to strengthen the ability of local governments to enforce zoning ordinances governing advertising displays.

Sincerely,



President – Colorado Outdoor Advertising Association



10-5-2021

To Whom It May Concern,

Mile High Outdoor is providing written comments in response to the recent Rule Making Hearing on October 1st, 2021. All comments are in reference to CDOT's effort to align its processes for permitting and enforcement of outdoor advertising devices with Senate Bill 21-263.

In summary, Mile High Outdoor is in full support of the language discussed in detail on October 1st. We feel it will bring the Outdoor Advertising Rules 2 CCR 601-3 into alignment with the new Statute, and provide clarity for the industry moving forward.

Rule 3.2 Grounds for Noncompliance

- A. 1. (b)** Mile High Outdoor would like to see a shorter timeframe given to the property owner to conform. We believe that 60 days is far too long of a period since many advertising campaigns only run for 28 days. This would allow property owners the ability to take short term advertising programs on signs without an advertising device permit. We would encourage CDOT a cure period of 10 days, and believe that is plenty of time to remove the advertisement in order to bring the sign into conformance.

Mile High Outdoor would also suggest CDOT look at language that further discourages individuals and/or companies from violating the regulations of the newly approved Outdoor Advertising Act. Below is an example of California's disgorgement language that would be recommended.

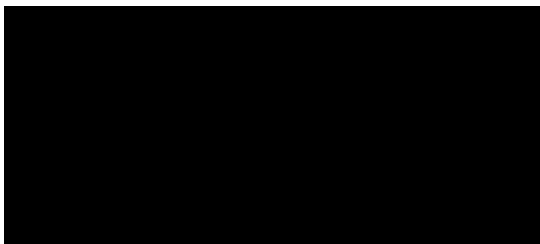
California Business Code § 5485

Annual permit fee for advertising displays; penalties for displays without valid permits; enforcement costs (a)(1) The annual permit fee for each advertising display shall be set by the director. (2) The fee shall not exceed the amount reasonably necessary to recover the cost of providing the service or enforcing the regulations for which the fee is charged, but in no event shall the fee exceed one hundred dollars (\$100). This maximum fee shall be increased in the 2007-08 fiscal year and in the 2012-13 fiscal year by an amount equal to the increase in the California Consumer Price Index. (3) The fee may reflect the department's average cost, including the indirect costs, of providing the service or enforcing the regulations. (b) If a display is placed or maintained without a valid, unrevoked, and



unexpired permit, the following penalties shall be assessed: (1) If the advertising display is placed or maintained in a location that conforms to the provisions of this chapter, a penalty of one hundred dollars (\$100) shall be assessed. (2) If the advertising display is placed or maintained in a location that does not conform to the provisions of this chapter or local ordinances, and is not removed within thirty days of written notice from the department or the city or the county with land use jurisdiction over the property upon which the advertising display is located, a penalty of ten thousand dollars (\$10,000) plus one hundred dollars (\$100) for each day the advertising display is placed or maintained after the department sends written notice shall be assessed. (c) In addition to the penalties set forth in subdivision (b), the gross revenues from the unauthorized advertising display that are received by, or owed to, the applicant and a person working in concert with the applicant shall be disgorged. (d) The department or a city or a county within the location upon which the advertising is located may enforce the provisions of this section. (e) Notwithstanding any other provision of law, if an action results in the successful enforcement of this section, the department may request the court to award the department its enforcement costs, including, but not limited to, its reasonable attorneys' fees for pursuing the action. (f) It is the intent of the Legislature in enacting this section to strengthen the ability of local governments to enforce zoning ordinances governing advertising displays.

Sincerely,



Vice President/General Manager – Mile High Outdoor



October 5, 2021

Sent via E-Mail

Natalie Lutz, Rules Administrator
Colorado Department of Transportation
2829 West Howard Place
Denver, Colorado 80204-2305

Re: Comments on Proposed Rulemaking (2 CCR § 601-3)

Dear Ms. Lutz:

Thank you for the opportunity to provide post-hearing follow-up comments regarding the proposed permanent rulemaking to amend 2 CCR § 601-3 (“PROPOSED RULES”). Our firm represents StreetMediaGroup, LLC and Turnpike Media, LLC, both of which are Colorado limited liability companies. This letter incorporates and supplements all of our prior comments on the topic, which we entered into the record by letter (and email submittal) dated September 30, 2021.

At the hearing on October 1, 2021 and on the rulemaking record, Mr. Lovato stated that signs that are “advertising devices” require CDOT permits, and signs that are not “advertising devices” do not. As such, the administration and enforcement of the Proposed Rules in any given circumstance will turn on the critical definition of “advertising device.” CDOT’s guidance to-date on what constitutes an “advertising device” is alarmingly scant, and under these circumstances we are struck that CDOT does not use the opportunity created by the rulemaking process to address common circumstances and provide needed clarity.

Colorado residents cannot even look to other states to see how the new regulatory program may operate. That is because Colorado’s definition of “advertising device” is entirely unique.¹ In its

¹ CDOT seems to suggest that its proposed definition follows the “compensation based” approach that was recently adopted in Tennessee and Kentucky. It does not. Yet even if it did, it is unlikely that Tennessee’s and Kentucky’s new definitions would survive a second round of constitutional scrutiny either, because their aims are also content-based.

By way of background, in 2020, after the Sixth Circuit Court of Appeals affirmed a District Court decision striking down Tennessee’s Billboard Act as unconstitutional (*see Thomas v. Bright*, 937 F.3d 721 (6th Cir. 2019), *cert. den.*, *Bright v. Thomas*, 141 S. Ct. 194 (Mem) (2020)) due to its content-based distinctions between on-premise and off-premise signs, Kentucky amended its definition of “outdoor advertising device.” Likewise, after the Western District of Kentucky struck down Kentucky’s Billboard Act as unconstitutionally content-based in *L.D. Management Company v. Thomas*, 456 F. Supp. 3d 873 (W.D. Ky. 2020), *aff’d L.D. Management Company v. Gray*, 988 F. 3d 836 (6th Cir. 2021), Kentucky also amended its definition of “advertising device.” Kentucky and Tennessee, for the time being, regulate signs for which compensation is exchanged “for the placement of a message on the sign.” They do not address whether compensation is given in exchange for a sign’s “erection or existence.” *Compare* TN ST § 54-21-102 and KRS § 177.830 to 2 CCR 601-3:1.00.1.2 (as proposed).



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own right, uniqueness is not necessarily bad. However, the Proposed Rules are bad, because they are still content-based under *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155 (2015),² and because they are incapable of consistent application. In addition to being presumptively unconstitutional, the Proposed Rules are without any basis in experience, fact, or law.

The Proposed Rules put Coloradans at risk of invasive investigations when they say things that the state does not like, and also put 10 percent of Colorado's federal highway funding at risk (because on their face, they are incapable of providing the "effective controls" required by the Federal Highway Beautification Act). That is an extremely high cost for Proposed Rules that this rulemaking record shows will not provide any perceptible public benefit at all.

The Proposed Rules are Unwise, Unprecedented, and Unconstitutional.

There is no basis on this rulemaking record or anywhere in the law to suggest that Colorado's definition of "advertising device" will ensure that the Roadside Advertising Permit program provides the "effective controls" that are required under 23 U.S.C. 131 and 23 CFR 750.705 if Colorado's full share of federal highway funding is to be preserved.³ With no analysis whatsoever on this record to make that essential connection, CDOT increases the risk that Colorado will lose 10 percent of its federal highway funding allocation (other CDOT activities that place Colorado's

CDOT has also called out Oregon as an example. Oregon changed its definition of "outdoor advertising sign" in 2007. Like Tennessee and Kentucky, Oregon regulates signs based on whether compensation is given "for the display of the sign" (and, like Tennessee and Kentucky, Oregon's approach is infected with a content-based purpose and will likely ultimately be struck down). The definition of outdoor advertising sign in Oregon also includes signs for which compensation is given "for the right to place the sign on another's property." OR ST § 377.710(21). Despite the tortured interpretations that CDOT has provided thus far, the Proposed Rules are not at all like Oregon's law, because they speak to neither the message on a sign nor the real property rights required to construct a sign.

² "Because strict scrutiny applies either when a law is content based on its face or *when the purpose and justification for the law are content based*, a court must evaluate each question before it concludes that the law is content neutral and thus subject to a lower level of scrutiny." *Reed*, 576 U.S. at 166. A stated justification of the Proposed Rules is to implement the requirements for "effective controls" over advertising *content* that are set out in the Federal Highway Beautification Act and its implementing regulations.

³ The Proposed Rules define advertising device as follows:

"Advertising device" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or any other contrivance designed, intended, or used to advertise or inform, for which compensation is directly or indirectly paid or earned in exchange for its erection or existence by any person or entity, and having the capacity of being visible from the travel way of any state highway, except any advertising device on a vehicle using the highway or any advertising device that is part of a comprehensive development. The term "vehicle using the highway" does not include any vehicle parked near said highway for advertising purposes.

2 CCR § 601-3:1.00.1.2 (as proposed, substituting cross-reference for referenced text, emphasis added).

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highway funding at risk, are documented in our prior correspondence in the record of this rulemaking). As such, promulgation of the Proposed Rules in their current form is unwise.

The Proposed Rules are also without precedent. We are aware of no other state that decides whether a permit is required for a sign based on whether compensation is exchanged for the sign's "erection or existence." Under the definition referenced in the Proposed Rules, the decision whether any individual sign is an "advertising device" or not can (and will) be made on an arbitrary basis.⁴

The Proposed Rules encourage the arbitrary application of Draconian enforcement procedures against people who say things that the state does not like. It is downright chilling to consider that, on mere suspicion (based on the message displayed on a sign), CDOT enforcement officials will be empowered to demand books and records from a sign owner, landowner, and business owner, pore over those books and records (and thereby open them to the public)⁵—*effectively punishing the sign owner using the investigation itself, making it irrelevant whether the sign at issue actually turns out to be an "advertising device."* Worse, history (and the rulemaking record) shows that members of the Colorado Outdoor Advertising Association ("COAA")—CDOT's co-author and lobbying partner with regard to SB21-263—are standing by, ready to use CDOT's complaint-driven process under the Proposed Rules to chill the free speech rights of all other sign owners in order to stop them from displaying content that used to be described as "off-premises."⁶

As detailed in our prior correspondence on this record, the Proposed Rules are unconstitutional because they are content-based by design (CDOT asserts that they are intended to implement the Federal Highway Beautification Act, which is a facially content-based law), cannot be consistently implemented (no one knows how to identify an "advertising device," so CDOT will likely do so on a case-by-case basis, where the whim of the enforcement official will control the outcome), and cannot be fairly enforced.

⁴ In its "Questions and Answer from Stakeholder Written Comments/Inquiries / CDOT Responses to Stakeholder Written Comments/Inquiries," dated September 1, 2021 (attached), CDOT represented that the most obvious case of compensation for the "erection or existence" of a sign, that is, a payments for the cost of materials and labor for the actual erection of a sign are not "compensation" for the purposes of determining whether a sign is an "advertising device." CDOT has represented that if a sign is financed through a lease from the sign maker to the business owner, then the sign is an "advertising device" because the lease "indicates an exchange of value is being made for the sign." CDOT will not answer the question "whether a commercial landlord who charges tenants for placement on an existing sign would need a CDOT permit," nor will CDOT answer the question of "whether a commercial landlord who charges a tenant for the erection of a new sign on that tenant's behalf would need a CDOT permit."

⁵ There is nothing in the law to keep them private, so they will become public records under the Colorado Open Records Act.

⁶ See comments in the rulemaking record by [REDACTED], of COAA and Mile High Outdoor Advertising during October 1, 2021 rulemaking hearing and in letters dated July 23, 2021 (seeking increased penalties for noncompliance).

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The Proposed Rules, As Written, Exceed Statutory Authority.

Even if SB21-263 itself were constitutional (it is not), the Proposed Rules exceed statutory authority. Nothing in the statute authorizes the continued existence of 2 CCR 601-3:7.00.D.2. (“RAMP RULE”). Since the Ramp Rule is more restrictive than the provisions of the statute (which was amended this year), it cannot be allowed to remain in the implementing rules. *See* C.R.S. 43-1-415(4) (“The rules of the department must not impose any additional requirements or more strict requirements than those imposed by this part 4.”). Consequently, the Proposed Rules should repeal the Ramp Rule. Short of that, as suggested in our prior correspondence, the Ramp Rule should be modified to reduce the arbitrary and irrational harm it inflicts upon property owners, thereby at least reducing the likelihood of legal challenge.

The Proposed Rules, As Written, Cannot Be Legally Adopted.

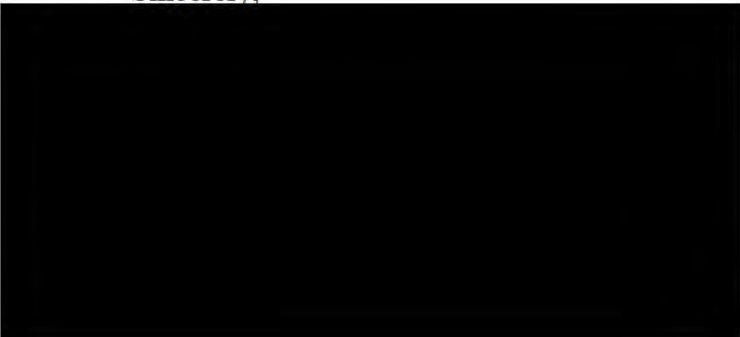
C.R.S. § 24-4-103(4)(b) sets out five different standards that must be satisfied prior to adoption of a new administrative rule. All of the standards must be met. None can be waived or ignored. As detailed in our prior correspondence, testimony on October 1, 2021, and in this letter—on this record, CDOT has not met each and every one of the applicable standards. As such, the Proposed Rules cannot be adopted in their current form as a matter of law.

The Proposed Rules, As Written, Would Not Survive Judicial Review.

C.R.S. § 24-4-106(7) sets out the standards a court must apply to administrative rules that are subjected to judicial review. The Proposed Rules, as written, cannot survive judicial scrutiny under C.R.S. § 24-4-106(7)(b).

As such, we respectfully submit that CDOT should either rewrite the Proposed Rules entirely (and in that process: (1) detail how the phrase “advertising device” will be applied in common circumstances, (2) create a written record showing how the rules will provide “effective control,” and (3) detail how CDOT will determine that there is cause to investigate whether a sign is in violation of the rules, and what CDOT will thereafter do to investigate the matter and enforce the rules), or reduce the potential for legal conflict by repealing or modifying the Ramp Rule.

Sincerely,





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Questions and Answers from Stakeholder Written Comments/Inquiries

CDOT Responses to Stakeholder Written Comments/Inquiries

The following discussion is intended to assist stakeholders who in good faith seek to better understand the new language within the rules. The following discussion should not be construed as a complete and final treatment of the topic and/or a complete position of CDOT as it applies to a specific factual scenario. CDOT reserves the right to clarify, modify, or expand upon these responses

Purpose and Intent

The purpose of the rules, 2 CCR 601-3 *et seq.*, including these rules, is to carry out the provisions of the Outdoor Advertising Act, § 43-1-401, *et seq.*, C.R.S., and the Highway Beautification Act of 1965, 23 U.S.C. 131, 23 C.F.R. 750.705(h) by establishing a statewide uniform program controlling the use of Advertising Devices in areas adjacent to the State Highway System. The intent of the rules, including these rules, is to protect and promote the health, safety, and welfare of the traveling public and the people of Colorado, and to promote the reasonable, orderly and effective display of outdoor advertising, while preserving and enhancing the natural and scenic beauty of Colorado.

Additional information on the purpose of the Outdoor Advertising Act can be found at § 43-1-402, C.R.S. The legislative intent behind SB21-263 can be found in the bill texts (<https://leg.colorado.gov/bills/sb21-263>) and in the legislative hearings on the bill.

The changes in the rules are to update the rules with the changes made to the Outdoor Advertising Act. The rules further update materials incorporated by reference and provide a section for declaratory orders.

Questions related to the terms “Advertising Device” and “Compensation”:

- 1. “When a payment of a fee is made to a local government (that is required) prior to erection of any sign/advertising device, will that be considered “compensation” by CDOT?”**

The payment of a permit fee required by either a relevant local government or CDOT is not considered “Compensation.”



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- 2. “When a person or an entity pays a monetary sum to physically purchase a sign/advertising device to be erected, does that constitute an exchange of anything of value (compensation) for that sign’s existence?”**

CDOT’s answer responds to the question to the extent the question is believed to ask about the actual act of the purchase of materials used in the erection of a sign or Advertising Device. No - the actual act of the purchase of materials used in the erection of a sign or Advertising Device is not considered “Compensation.” The actual act of the purchase of materials is not regulated by CDOT.”

- 3. “When a sign/advertising device owner pays a monetary fee to have the sign/advertising device installed (responsible for the sign/advertising device’s erection), does that create an advertising device under CDOT’s regulatory authority?”**

CDOT’s answer responds to the question to the extent the question is believed to ask about the cost of labor and materials used to erect a sign or Advertising Device structure. No - the cost of labor and materials used to erect a sign or Advertising Device structure are not considered “Compensation.” The act of installation is not regulated by CDOT, though the sign structure must comply with other laws and rules (e.g., size).

- 4. “Since memorandum of agreements must be legal (such as the ones issued for permit numbers 10685 and 10686 that have been operating for over 10 years under one) can [Mountain States Media, LLC] get CDOT to issue me one for the location [Mountain States Media, LLC] have in dispute with CDOT (I-25/highway 119 location).”**

This question is unrelated to the changes to the rules.

- 5. “Whether a franchisee needs a CDOT permit for the display of its franchisor’s signage along a state highway, where the franchisee pays compensation to the franchisor for the erection of such signage;”**

CDOT’s answer responds to the question to the extent the question is believed to ask about the cost of labor and materials used to erect a sign or Advertising Device structure. No - the cost of labor and materials used to erect a sign or Advertising Device structure are not considered “Compensation.” The act of installation is not



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regulated by CDOT, though the sign structure must comply with other laws and rules (e.g., size).

- 6. “Whether a sign company that owns a client’s sign and leases it to the client (as a financing mechanism) must obtain a CDOT permit as a result of the lease arrangement.”**

This question suggests the sign is being used as a “financing mechanism”, which indicates an exchange of value is being made for the sign. Therefore, in this question, the sign would be subject to CDOT’s outdoor advertising permitting requirements, among other regulatory control.

- 7. “Whether a commercial real estate broker needs a CDOT permit for the display of a sign on a client’s property along a state highway, where the landowner pays compensation to the broker to market the property; []”**

This question suggests that with respect to the sign that compensation is not being paid or earned in exchange for the erection or existence of the sign, rather, earned as a result of the sale of the property. The sale of property is not regulated by CDOT.

- 8. “If a property owner leases out their building/sign to another entity (landlord/tenant relationship) and part/all of the rent paid includes the use of a structure to advertise on, does that constitute the exchange of anything of value (compensation) thereby, creating an advertising device?”**
- 9. “Whether a commercial landlord who charges tenants for placement on an existing sign would need a CDOT permit; []”**
- 10. “Whether a commercial landlord who charges a tenant for the erection of a new sign on that tenant’s behalf would need a CDOT permit.”**
- 11. Could “any retail or office tenant paying its lease to the owner of a building [] be considered as “indirectly paid” compensation for the display of the tenant’s name or message on a wall sign or freestanding sign structure[?]”**



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In response to Questions 8 - 11 above, hypothetical sign sites and sign scenarios cannot be uniformly commented on by CDOT.

Because there are factual circumstances unique to a hypothetical sign site and sign scenario, this would be a case-by-case determination that CDOT cannot uniformly answer. Additionally, a hypothetical sign site and sign scenario may be impacted by relevant local government determinations.

The public should continue to operate on a presumption that if the exchange of anything of value is directly or indirectly paid or earned in exchange for the erection or existence of a sign designed, intended, or used to advertise or inform by any person or entity, that is considered “Compensation.” In the event “Compensation” is paid or earned and other definitional elements are met, the sign would be considered an “Advertising Device” regulated by CDOT. In that event, a permit must be obtained. If “Compensation” is being exchanged, the applicant will need to apply for a CDOT permit. If there is any uncertainty as to whether a sign is an “Advertising Device” or not, the property owner or sign owner can access CDOT guidance online or submit a permit application to CDOT. During this transitional time, and to accommodate good faith questions there is no fee charged for processing a permit application.

Questions related to spacing:

- 12. “Sign owners, businesses, governmental, civic, and religious organizations also need to know how CDOT will deal with spacing requirements as the number of signs subject to CDOT permit requirements mushrooms—that is, who will get to display (or continue to display) their signs and who will not, and who will get to build new signs and who will not.”**

This question is unrelated to the changes to the rules. The rules do not contemplate changes to spacing rules.

Questions related to protecting the night sky:

- 13. Can CDOT add language to the rules that would require shielding to protect the night sky?**

This question is unrelated to changes to the rules. The rules do not contemplate changes related to the topic of shielding the night sky.



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Questions related to “Advertising Devices” on Scenic Byways:

14. Will signage for businesses be impacted along scenic byways?

Pursuant to § 43-1-419, C.R.S, no newly erected “Advertising Devices” will be permitted by CDOT along scenic byways. Only those signs for which “Compensation” is not being exchanged may remain in existence or be newly erected along scenic byways.

Questions related to Rule 12.00 Changeable Electronic Variable Message Sign (“CEVMS”):

15. What will become of CEVMS that were previously classified as “On-Premise” with respect to spacing and remote monitoring requirements?

The changes to the rules relating to CEVMS spacing (Rule 12.C.2.a) and remote monitoring (Rule 12.C.5(3)) apply only to “Advertising Devices”. If “Compensation” is not being exchanged the sign is not considered an “Advertising Device” under the rules and, therefore, those CEVMS spacing and remote monitoring rules do not apply.

September 30, 2021

Sent via E-Mail to dot_rules@state.co.us

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Re: Comments on Proposed Permanent Rulemaking (2 CCR § 601-3)

Dear Ms. Lutz:

Thank you for the opportunity to provide comments on the proposed amendments to the Rules Governing Outdoor Advertising in Colorado (2 CCR § 601-3) (“PROPOSED RULES”).¹ Our firm represents StreetMediaGroup, LLC and Turnpike Media, LLC, both of which are Colorado limited liability companies. On behalf of StreetMedia and Turnpike, we provided comments on SB21-263, on the proposed emergency rules, and on the Proposed Rules. Most of those comments have not been addressed, and they are incorporated by reference for inclusion on this record.

I. The Proposed Rules Neither Solve the Underlying Constitutional Problems Nor Provide “Effective Control.”

SB21-263 and the Proposed Rules are intended to carry out the federal Highway Beautification Act (“HBA”). The HBA creates a penalty for states that do not provide “effective control” of outdoor advertising in certain areas.² That penalty is 10 percent of the amounts that would otherwise be apportioned to the state under 23 USC § 104. There is no evidence to suggest that SB21-263 and the Proposed Rules actually advance their other stated purposes of highway safety and aesthetics in any perceptible way.³

The HBA and its implementing rules (23 CFR § 750, subpart G) require the states to regulate signs based on their content. That is presumptively unconstitutional. Implementing the HBA by providing “effective controls” is a stated objective. It necessarily follows that the purpose of the Proposed Rules is content-based. As such, the Proposed Rules are presumptively unconstitutional. *See Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 166 (2015) (“strict scrutiny applies either when

¹ The Colorado Department of Transportation (“CDOT”) published four documents related to the rulemaking: (1) a redline of the Rules that shows the proposed changes (“REDLINE”); (2) a Notice of Proposed Rulemaking (“NOTICE”); (3) a Proposed Statement of Basis and Purpose and Statutory Authority (“STATEMENT”); and (4) Questions and Answers from Stakeholder Written Comments / Inquiries (“Q&A”).

² 23 U.S.C. § 131(b)

³ *See* Exhibits A and B. There are no studies in this record that suggest that “advertising devices” as defined by the Proposed Rules, pose any greater threat to public safety or aesthetics than signs that are not “advertising devices.”

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a law is content based on its face or when the purpose and justification for the law are content based . . .”).

StreetMedia and Turnpike respectfully submit that creating a constitutional regulatory framework to implement the HBA is, at best, profoundly difficult (and may be impossible). Rather than expending additional energy chasing an approach that will obviously not work, CDOT ought to create some breathing room and start over.⁴

II. CDOT Should Modify the Ramp Rule and Ask for Relief from the Secretary of Transportation.

The HBA provides in part, “Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of [the 10 percent funding penalty] to a State.” StreetMedia and Turnpike submit that CDOT should ask the Secretary of Transportation for relief until it can develop and pass a constitutional regulatory system for signs in Colorado.⁵

In the meantime, CDOT should create some breathing room by modifying the Ramp Rule (a proposed amendment is provided in **Exhibit C**). As we have previously stated, modification of the Ramp Rule may alleviate some of the challenges CDOT will immediately face if it promulgates the Proposed Rules and tries to implement them.

By way of background for this record, in 2020, based on an extensive record and cogent analysis, CDOT noticed a hearing on modifications to 2 CCR § 601-3, including the changes to the Ramp Rule set out in Exhibit C. In CDOT’s words:

In light of developments in highway design principles, developments in outdoor advertising laws and regulations, and stakeholder feedback, the Department proposes to clarify the restriction against advertising devices being located within 500 feet of an interchange, intersection at-grade, or safety rest area adjacent to interstates and freeways in Rule 7.00(D)(2). This rule derives from a 1971 agreement between the Department and the United States Secretary of Transportation and sets forth the State’s size, spacing and lighting criteria. The

⁴ To provide “effective control,” the state must also “[e]stablish enforcement procedures sufficient to discover illegally erected or maintained signs shortly after such occurrence and cause their prompt removal.” 23 CFR 750.705(i). CDOT has not proposed enforcement procedures “sufficient to discover illegally erected or maintained signs.” In fact, CDOT has refused to disclose *how* it will (as it said in its Q&A document from the July 19, 2021 workshop on the emergency rules amending 2 CCR § 601-3) “monitor interstates and highways to inventory signs that are permitted” (or not permitted); that is, what CDOT enforcement officials will be looking for in making that critical enforcement determination.

⁵ CDOT could also ask a court for this relief.

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Department proposes a hybrid approach that advertising devices cannot be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety Rest Area if the advertising device is located outside of an Urbanized Area and outside of the boundaries of an incorporated town or city. This hybrid approach contemplates changes in land use zoning and designations, such as unincorporated areas that are adjacent to or near the boundaries of incorporated towns or cities, by using the defined terms of “Urbanized Area”. This change is consistent with the Highway Beautification Act’s intent to preserve natural and scenic beauty. It also supports the consistent enforcement effort of advertising devices in control areas near interstates and freeway and promotes the reasonable, orderly and effective display of outdoor advertising while preserving and enhancing the natural and scenic beauty of Colorado. * * *⁶

As CDOT said, a change to the Ramp Rule would improve CDOT’s performance with regard to “effective controls” under the HBA. It is notable that in order to provide “effective control,” 23 CFR 750.705 requires the State to “remove illegal signs expeditiously.” Examples of illegal signs that CDOT has never taken meaningful action against include, but are not limited to, permits numbered 8584, 10291, 10321, 10595, 10594, 10582, 10623, 10614/9754, 09690, 09786, 09826, 10581, 10580, 10643, 10686, 10685, 10852, and 10626. The changes to the Ramp Rule that CDOT considered back in 2020 would make many of these signs “legal.” Otherwise, for so long as these signs remain standing, CDOT has not maintained, and is not maintaining, “effective control.”

The proposed modification of the Ramp Rule will make a large number of currently illegal signs legal, while only opening up a handful of new locations near ramps for signs that require Roadside Advertising Permits.

III. The Proposed Rules, As Written, Create More Problems Than They Solve, and Will Invite Litigation.

StreetMedia and Turnpike submit that, as written, the Proposed Rules are: (1) contrary to constitutional right; (2) in excess of statutory jurisdiction, authority, purposes, or limitations; and (3) a clearly unwarranted exercise of discretion. Consequently, if promulgated as-is, they invite litigation under the authority of C.R.S. § 24-4-106.

With regard to constitutional rights, the Proposed Rules perpetuate irreparable injuries by chilling speech based on its content. Moreover, the Proposed Rules do not advance a legitimate governmental purpose, and they are in direct conflict with the State’s intent with regard to

⁶ Colorado Department of Transportation. STATEMENT OF BASIS, AUTHORITY, AND PURPOSE (regarding proposed permanent amendments to 2 CCR § 601-3 (Sept. 16, 2020), at 2 (emphasis added).

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rulemaking as expressed in C.R.S. 24-4-101.5. The constitutional issues are well-known to CDOT and are outlined in Section I of these comments.

The Proposed Rules are also in excess of statutory jurisdiction because:

1. The Ramp Rule (2 CCR § 601-3:7.00.D.) is not authorized by Part 4 of Title 43, Colorado Revised Statutes (the Outdoor Advertising Act), which was recently amended by the legislature, and C.R.S. § 43-1-415(4) specifically states, “The rules of the department must not impose any additional requirements or more strict requirements than those imposed by this part 4”; and
2. C.R.S. § 24-4-103(4)(b) limits the authority of CDOT to promulgate rules as follows:
No rule shall be adopted unless:
 - (I) The record of the rule-making proceeding demonstrates the need for the regulation;
 - (II) The proper statutory authority exists for the regulation;
 - (III) To the extent practicable, the regulation is clearly and simply stated so that its meaning will be understood by any party required to comply with the regulation;
[and]
 - (IV) The regulation does not conflict with other provisions of law

The Proposed Rules cannot satisfy the requirement of C.R.S. § 24-4-103(4)(b)(I) because there is no record evidence that they are actually needed. As far as we are aware, the record of this rulemaking contains: (1) no evidence that the Proposed Rules will provide “effective control” over outdoor advertising as defined and required by the HBA, as there is no analysis that shows a link between the Proposed Rules and each of the required elements of “effective control”⁷; (2) no evidence that the Proposed Rules will actually advance highway safety by requiring permits for signs that the Proposed Rules define as “advertising devices,” but not for other signs (this Letter provides record evidence that the Proposed Rules have nothing to do with highway safety); and (3) no evidence that the Proposed Rules will actually advance public aesthetic interests by requiring permits for signs that the Proposed Rules define as “advertising devices,” but not for other signs (this Letter provides record evidence that the Proposed Rules have essentially no impact on aesthetics).

The Proposed Rules cannot satisfy the requirement of C.R.S. § 24-4-103(4)(b)(II) because, as described above, they exceed statutory authority by, among other things, not repealing (and by implication, including and affirming) the Ramp Rule.

⁷ StreetMedia and Turnpike submit that CDOT is in a tough situation because “effective control” under the HBA is a presumptively unconstitutional standard anyway, as the HBA mandates that states regulate signs based on their content.

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The Proposed Rules cannot satisfy the requirement of C.R.S. § 24-4-103(4)(b)(III) because even Jared Esquibel admits that the definition of “advertising device” is (in his words) “vague,” and CDOT will not clarify how the definition of “advertising device” will be applied.⁸ This is critical because the determination of whether 2 CCR § 601-3’s permit requirements, substantive standards, and enforcement procedures will be applied turns on whether the particular sign at issue is or is not an “advertising device.”

The Proposed Rules cannot satisfy the requirement of C.R.S. § 24-4-103(4)(b)(IV) because they conflict with C.R.S. § 43-1-415(4) (by not repealing the Ramp Rule) and they do not provide “effective control” as required by the HBA and C.R.S. § 43-1-402(1)(b).

Consequently, on this record, the Proposed Rules cannot be adopted as written as a matter of law.

Finally, the Proposed Rules are a “clearly unwarranted exercise of discretion” in that they vest virtually limitless discretion in the enforcement official to demand the books and records of a sign owner, just because (based upon standards CDOT will not disclose) the enforcement officer suspects the owner exchanged compensation for the erection or existence of the sign.

IV. The Proposed Rules Are Counter to Colorado’s Stated Legislative Directions.

C.R.S. 24-4-101.5 sets out the “legislative declaration” with regard to rulemaking. It begins, “[A]n agency should not regulate or restrict the freedom of any person to conduct his or her affairs, use his or her property, or deal with others on mutually agreeable terms unless it finds, after a full consideration of the effects of the agency action, that the action would benefit the public interest and encourage the benefits of a free enterprise system for the citizens of this state.”

There is no evidence on this rulemaking record that the Proposed Rules will benefit the public interest. The evidence is to the contrary—

- According to public records, CDOT’s 2021 inventory of Roadside Advertising Permits consists of 1,664 permits. According to the U.S. Department of Transportation Bureau of Transportation Statistics, there were 88,975 miles of public road in Colorado. CDOT does not know how many signs there are along Colorado’s public roads and there is no record evidence that it has even made a cursory attempt to find out.
- It is obvious that the 1,664 signs that have Roadside Advertising Permits constitute less than a “drop in the bucket” in terms of the impact of signs on Colorado’s public roads (see **Exhibit B**). CDOT does not know how the Proposed Rules will impact the number of

⁸ See Q&A, responses to questions 8 through 11, in which CDOT did not clarify whether, for example: (1) a commercial landlord that specifically includes sign usage as part of the rent charged in a lease is subject to permitting requirements; (2) whether a commercial landlord who charges a premium for sign usage is subject to permitting requirements; (3) whether a commercial landlord who charges a tenant for the erection of a new sign for the tenant is subject to permitting requirements.

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Roadside Advertising Permits in Colorado. However, assuming that CDOT does not anticipate that the number of Roadside Advertising Permits will increase *geometrically* under the Proposed Rules, the actual “health and safety” benefits of the program to the public will not be perceptible.

The Proposed Rules undermine the free enterprise system in a number of ways—

- Based on public statements by CDOT, it appears that CDOT will only enforce the Proposed Rules against signs that display what was formerly known as “off-premise” content. Four companies (Lamar Outdoor Advertising Company, Outfront Media, Mile High Outdoor Advertising, and Elevation Outdoor Advertising) collectively control 55.4 percent of Colorado’s Roadside Advertising Permits.
- Under the Proposed Rules, those four companies will continue to enjoy market hegemony. The Proposed Rules will not limit the overall number of signs in Colorado, but will continue to chill the speech of sign owners with regard to the display of certain content. Indeed, those who would dare display messages that may trigger a complaint by one of the four outdoor advertising companies listed above will risk invasive investigation by CDOT.

The legislative declaration continues, “[M]any government programs may be adopted without stating the direct and indirect costs to consumers and businesses and without consideration of such costs in relation to the benefits to be derived from the programs. . . . [A]gency action taken without evaluation of its economic impact may have unintended effects, which may include barriers to competition, reduced economic efficiency, reduced consumer choice, increased producer and consumer costs, and restrictions on employment.”

- There is no evidence that CDOT has actually considered the impacts of the Proposed Rules on consumers and businesses.
- The Proposed Rules create barriers to competition in the outdoor advertising market, reducing economic efficiency.
- The barriers to competition reduce consumer choice in terms of those consumers who would choose to speak using a billboard, and those consumers who would be educated by messages (commercial and non-commercial) on billboards.
- The barriers to competition increase costs by reducing competition, and therefore stifle economic growth (not to mention public discourse on noncommercial issues).

The legislative declaration concludes, “[A]gency rules can negatively impact the state's business climate by impeding the ability of local businesses to compete with out-of-state businesses, by discouraging new or existing businesses from moving to this state, and by hindering economic competitiveness and job creation. Accordingly, it is the continuing responsibility of agencies to analyze the economic impact of agency actions and reevaluate the economic impact of continuing agency actions to determine whether the actions promote the public interest.”

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- Though the definitions in SB21-263 and the Proposed Rules with regard to what is an “advertising device” and what is not lack clarity, CDOT has repeatedly asserted that the Proposed Rules are intended to regulate outdoor advertising companies.
- As such, the Proposed Rules serve only to restrict competition against two giant national and international media companies⁹ and two Colorado companies that are related to each other¹⁰ at the expense of Colorado’s small business community and their small business clients.
- The Proposed Rules do not limit the number of signs in Colorado. They simply prohibit certain speech on signs, under the cover of whether “compensation” was exchanged for the erection or existence of the sign.
- The only interests that the Proposed Rules advance are those of giant national and international companies and large statewide companies that seek to stifle the speech of Colorado’s small outdoor advertising companies so that they do not interfere with their own hegemony—in terms of both the “marketplace of ideas” that is protected by the First Amendment and the marketplace for customers who want to display those ideas that is protected by Colorado law and public policy.

We urge CDOT to pause to consider the consequences of the Proposed Rules (whether those consequences are intended or not), to adopt changes to the Ramp Rule that are set out in **Exhibit C**, and to start over in its attempts to implement the HBA.

Sincerely,
Fairfield and Woods P.C.



⁹ Together, these companies hold 46.6 percent of all current Roadside Advertising Permits in Colorado

¹⁰ Together, these companies hold 8.8 percent of all current Roadside Advertising Permits in Colorado.

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EXHIBIT A

CDOT posts traffic safety messages on its own signs within Interstate rights-of-way, and on privately-owned billboards next to those right-of-way. This message, advising motorists not to drink and drive, is posted on an Outfront Media billboard at Wheatridge Industrial Park (the South side of I-70 at the Wadsworth interchange).

Under 2 CCR 601-3:7.00.D.2.b., if this billboard were outside of an “incorporated village or city,” it would not be allowed. It is not serious to suggest that the safety impacts of billboards is affected by whether they are located in a city or not. City boundaries are not physically perceptible in their own right. CDOT understands this, and its regular use of signs to convey messages to motorists that are unrelated to traffic control or wayfinding (e.g., safety, job fairs, etc.) underscores the fact that neither the existing rules nor the Proposed Rules actually serve to advance highway safety.



Billboard Sign at Wheatridge Industrial Park displaying CDOT logo and CDOT-sponsored message

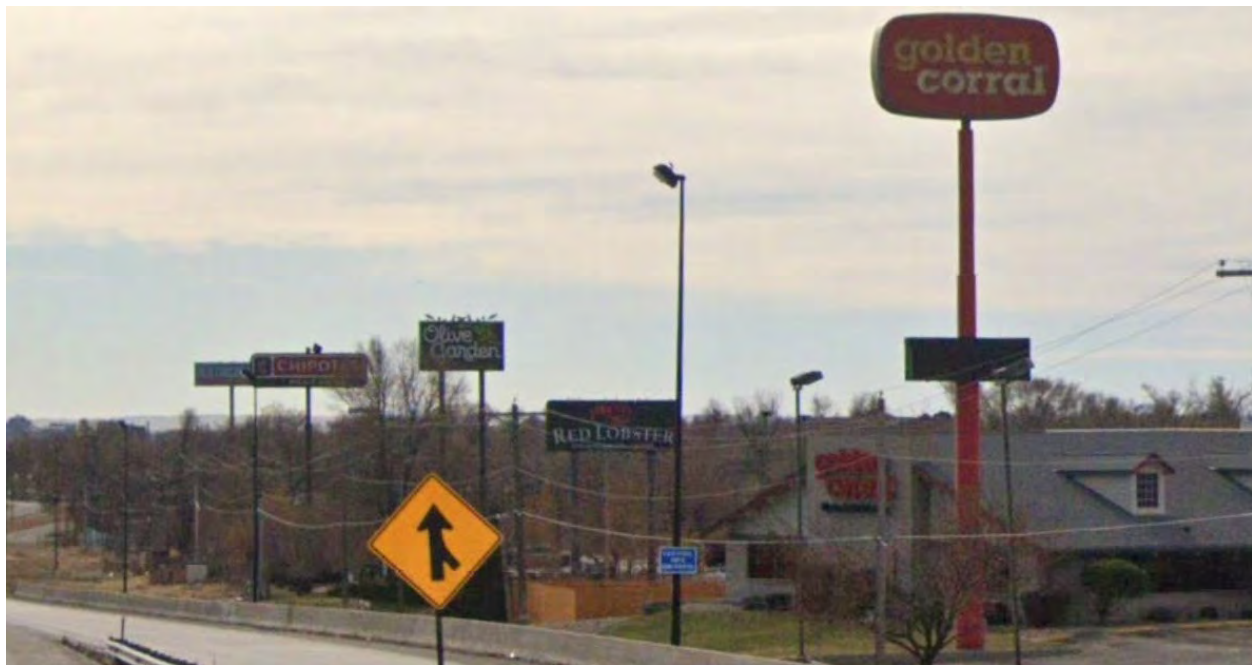
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Location of Outfront Sign in Wheatridge Industrial Park.

I-25 at Exit 101, Pueblo, is another example of the Ramp Rule does not make any sense. There are at least six large pole signs at this location. Based on CDOT representations, it does not appear that any of them would be subject to the Proposed Rules.



Source: <https://goo.gl/maps/88cxpbauUWeHLEGs9>

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EXHIBIT B

In 2021, there were 1,664 Roadside Advertising Permits in CDOT's inventory. That is a miniscule number of signs compared to the total number of signs along the approximately 9,100 centerline miles of state highways that traverse the State of Colorado. As StreetMedia and Turnpike understand it, CDOT has no plans to study, or to estimate, how many signs there are within its jurisdiction under the Outdoor Advertising Act.

To illustrate the imperceptible impact of the CDOT permitting program, *on just one property*, 5200 to 5270 Broadway, Denver, there are at least 20 signs that are visible from Interstate 25 (the Krav Maga wall sign on the south end of the building is cropped). Only one of them has a Roadside Advertising Permit. The density of signs on the 5200 to 5270 Broadway property is quite typical. Given the size of the State and the number of miles of state highways, it is not unreasonable to suggest that the number of signs could be in the tens of thousands to well over one hundred thousand on any given day.



Source: <https://goo.gl/maps/CLntvV9J4vYgBzxM9>

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EXHIBIT C

Proposed changes to the Ramp Rule (set out in redline format):

1.31 ~~“Urban Area” and “Urbanized Area”~~ “Urban Area” pursuant to 23 U.S.C. 101 (33) means an urbanized area designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area (as defined by 23 U.S.C. 101 (34)), within boundaries to be fixed by responsible State and local officials.

A. “Urban Area” means an urbanized area or, in the case of an urbanized area encompassing more than one state, that part of the urbanized area in each state, or urban place as designated by the U.S. Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by responsible state and local officials in cooperation with each other, subject to approval by the U.S. Secretary of Transportation. Such boundaries shall encompass, at a minimum, the entire urban place designated by the U.S. Bureau of the Census.

B. “Urbanized Area” means an area with a population of 50,000 or more designated by the U.S. Bureau of the Census, within boundaries to be fixed by responsible state and local officials in cooperation with each other, subject to approval by the U.S. Secretary of Transportation. Such boundaries shall encompass, at a minimum, the entire urbanized area within a state as designated by the U.S. Bureau of the Census. Urbanized Area designations may be viewed on the TIGERweb Decennial map provided on the U.S. Census Bureau’s website at <https://tigerweb.geo.census.gov/>.

* * *

D. Spacing of Signs

1. Advertising Devices on Control Routes may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness of any official traffic sign, signal, or device, obstruct or physically interfere with the driver’s view of approaching, merging or intersecting traffic.

2. In the Control Area near Interstates ~~Highways~~ and Freeways:

a. No two Signs shall be spaced less than 500 feet apart.

b. ~~Outside of incorporated villages and cities, no~~ Advertising Devices may shall not be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety Rest Area if the Advertising Device is located outside of an Urbanized Area and outside of the boundaries of an incorporated town or city. The 500 feet is to be measured along the

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Interstate or Freeway from the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

i. This spacing limitation applies where the proposed location of the Sign is located outside of an Urbanized Area and outside of the boundaries of an incorporated town or city regardless of the location of the interchange, intersection at grade, or safety Rest Area.

ii. The limits of an interchange, intersection at grade, or safety Rest Area span from the beginning of pavement widening for an exit lane or ramp and continues through the interchange, intersection at grade, or safety Rest Area, to the point where pavement widening ends for an entrance lane or ramp.

iii. The 500-foot measurement is to be measured parallel to the highway. This prohibition applies to the entire 660-foot Control Area adjacent to the interchange, intersection at grade, or safety Rest Area along with the 500-foot measurement adjacent thereto.

iv. "Pavement widening" includes exit and entrance lanes and ramps, auxiliary lanes, and other lanes which terminate while allowing traffic to weave on or off the main-travelled way.

v. For those locations where a continuous auxiliary lane extends from the entrance ramp/lane of one interchange/intersection at grade/safety Rest Area and connects to the exit ramp/lane of another interchange/intersection at grade/safety Rest Area, such that there is no clear "beginning or ending of pavement widening at the exit from or entrance to the main-traveled way," this rule prohibits signs located within 2,250 feet from the physical gore of entrance ramps/lanes and within 1,600 feet from the physical gore of exit ramps/lanes.

3. All other Controlled Routes except Interstate and Freeways
 - a. Outside of Urbanized Areas and incorporated townsvillages and cities, no two ~~structures~~-Signs shall be spaced less than 300 feet apart.
 - b. Within Urbanized Areas and incorporated townsvillages and cities, no two ~~structures~~-Signs shall be spaced less than 100 feet apart.

* * *



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Sent via E-Mail

Natalie Lutz
Rules, Policies, and Procedures Administrator
Colorado Department of Transportation
2829 West Howard Place
Denver, Colorado 80204

Re: Comments on Proposed Permanent Rulemaking - 2 CCR § 601-3

Dear Ms. Lutz:

Thank you for the opportunity to provide comments on the proposed permanent rulemaking with regard to 2 CCR § 601-3. The proposed permanent rulemaking is in response to a new law, SB21-263, that potentially affects all signs along Colorado's extensive state highways. As the Colorado Department of Transportation ("CDOT") puts it, "Under the old law, to determine whether a sign needed a permit, CDOT arguably had to review the words and pictures of the sign to figure out the type of sign it was." According to CDOT, "under the new law only signs visible from the roadway that generate compensation require a CDOT permit."

Specifically, CDOT will require permits for *all signs* (not just pole signs, monument signs, or billboard signs) that are "advertising devices" as defined in SB21-263, and will not require permits for signs that are not "advertising devices." Simply obtaining a permit is not necessarily an easy solution for many sign owners (or would-be sign owners) because permits will not be issued for advertising devices in certain locations (including but not limited to locations within 500 feet of other signs, or within 500 feet of highway intersections that are not in municipalities),¹ or for advertising devices that have more than two panels facing in the same direction (as most shopping center signs have).²

Under the new law and the proposed regulations, "advertising device" is defined as:

any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or any other contrivance designed, intended, or used to advertise

¹ See 2 CCR § 601-3:7.00.D.2.

² See C.R.S. § 43-1-411(1)(d).



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or inform, for which compensation³ is directly or indirectly paid or earned in exchange for its erection or existence by any person or entity, and having the capacity of being visible from the travel way of any state highway, except any advertising device on a vehicle using the highway or any advertising device that is part of a comprehensive development.⁴ The term "vehicle using the highway" does not include any vehicle parked near said highway for advertising purposes.⁵

Based on the plain language of the new law, it would appear that CDOT is expanding its reach to *all signs* along Colorado's highway corridors—imposing new annual permit requirements and onerous investigation and enforcement mechanisms on property owners and businesses that have never previously had to deal with CDOT at all, or at least not in this capacity.⁶ In short, CDOT and its Colorado Outdoor Advertising Association (“COAA”) lobbying partners (more on this *infra*, at page 6) took a constitutionally infirm outdoor advertising law and made it *much worse*.

The comments in this letter are respectfully submitted on behalf of our clients, StreetMediaGroup, LLC (“STREETMEDIA”) and Turnpike Media, LLC (“TURNPIKE”).^{7,8} StreetMedia and Turnpike submit that SB21-263 (like its predecessor) is unconstitutional. CDOT is proposing permanent rules that do not remedy that situation. SB21-263 and the proposed rules put sign owners up and

³ “Compensation” is defined as “the exchange of anything of value, including money, securities, real property interests, personal property interests, goods or services, promise of future development, exchange of favor, or forbearance of debt.” C.R.S. 43-1-403(1.3), after enactment of SB21-263 on June 30, 2021.

⁴ “Comprehensive Development” is defined as “a group of two or more lots or parcels of land used primarily for multiple separate commercial or industrial activities that: (I) Is located entirely on one side of a highway; (II) Consists of lots or parcels that are contiguous except for public or private roadways or driveways that provide access to the development; (III) Has been approved by the relevant local government as a development with a common identity and plan for public and private improvements; (IV) Has common areas such as parking, amenities, and landscaping; and (V) Has an approved plan of common ownership in which the owners have recorded irrevocable rights to use common areas and that provides for the management and maintenance of common areas.” A “‘Comprehensive development’ includes all land used or to be used or occupied for the activities of the development, including buildings, parking, storage and service areas, streets, driveways, and reasonably necessary landscaped areas. A comprehensive development includes only land that is used for a purpose reasonably related to the activities of the development.” C.R.S. 43-1-401(1.5), after enactment of SB21-263 on June 30, 2021.

⁵ C.R.S. 43-1-401(1), after enactment of SB21-263 on June 30, 2021.

⁶ For example, enforcement may include forfeiture of the sign. *See* C.R.S. § 43-1-412(1).

⁷ StreetMedia is an outdoor advertising company that displays commercial and noncommercial content on signs, sometimes for compensation and sometimes without charge. StreetMedia is also a licensed contractor that erects signs on its own behalf and on behalf of others (for compensation). Turnpike Media is an outdoor advertising company that displays commercial and noncommercial content on signs, sometimes for compensation and sometimes without charge.

⁸ Our comments regarding SB21-263 are of record and apply with equal force to the proposed rulemaking. In addition, we stand by our statements, comments, and outstanding questions presented at the rulemaking workshop on July 19, 2021, as well as our prior written comments on the emergency rules, submitted by letter dated July 23, 2021.

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down thousands of miles of Colorado’s interstate and state highways at risk of invasive enforcement tactics (including thorough examinations of their books and records) if CDOT does not like what they say on their signs.

The “Compensation-Based Approach” Puts Unfettered Discretion in the CDOT Enforcement Official.

CDOT announced publicly that “[t]he new compensation-based approach makes it easier for landowners and sign owners to understand whether they need a CDOT permit.”⁹ But in recent sworn testimony, Jared Esquibel (a high-ranking CDOT employee who oversees the outdoor advertising program)¹⁰ (“ESQUIBEL”) could not explain “what it means to have compensation directly or indirectly paid or earned in exchange for its erection or existence by any person or entity.”¹¹ During his deposition, Esquibel was asked, “Do you think it requires expertise to find out whether the sign is an advertising device under the statute?” He answered, “Yes.”¹² Then he essentially admitted that even he—the person who oversees the Outdoor Advertising Program—does not have that expertise.

In his sworn deposition, Esquibel concluded that the definition of “advertising device” is “vague.” That should be scary to both CDOT and the general public because the determination of whether any given sign is an “advertising device” (and therefore subject to CDOT standards, permit requirements, and enforcement procedures) is delegated to low-level CDOT enforcement officials who are apparently not carefully supervised. Since no one (including the person who oversees the Outdoor Advertising Program) knows what the definition of “advertising device” actually includes, SB21-263 and the proposed changes to 2 CCR § 601-3 give unfettered discretion to CDOT employees to harass and prosecute people for exercising their First Amendment rights.

Indeed, under the proposed 2 CCR § 601-3:3.2.A.1.b., a sign owner who CDOT accuses of violating the proposed rules may be forced to choose between the harsh (and in many cases, terribly expensive) penalty of removing its sign or taking a big risk and executing “an affidavit under penalty of perjury as evidence that the device is not an advertising device” (and then potentially facing a *perjury charge* if CDOT sees things differently).¹³ Remarkably often, just applying for a CDOT permit will not be an available option. Indeed, a huge number of signs along Colorado’s

⁹ CDOT. “Adoption of Emergency Rules Governing Outdoor Advertising in Colorado” (distributed by CDOT on June 22, 2021) at 2.

¹⁰ Deposition of Jerad Esquibel, CDOT’s Director of Project Support (“ESQUIBEL DEPO.”), *StreetMedia et al. v. Stockinger*, D. Colo. Case No. 20-cv-3602-RBJ, July 13, 2021, at 78:23-25, 79:1.

¹¹ *Id.* at 73:10-16

¹² *Id.* at 75:4-7

¹³ *See also* C.R.S. § 43-1-412(2)(a), after enactment of SB21-263 on June 30, 2021.

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state highways will not comply with the spacing standards and design limitations (*e.g.*, not more than two panels per side) set out in SB21-263 and the proposed rules.

“The Best of Intentions, But Bad Judgment”¹⁴

In its notice of adoption of emergency rules, CDOT stated, “Under the old state law, to determine whether a sign needed a permit, CDOT arguably had to review the words and pictures of the sign to figure out the type of device it was.” It then admitted that this could result in a “violation of free speech.” CDOT continues, “Now, under the new state law only advertising devices visible from the roadway that generate compensation require a CDOT permit.”¹⁵

Time and again, CDOT has proclaimed that SB21-263 and the proposed new regulations apply to signs that generate compensation to their owners. According to CDOT representatives, such signs require CDOT permits because they are “advertising devices.” But the law does not say that an “advertising device” means a sign that generates compensation for its owner for the display of messages.¹⁶ When pressed, Esquibel admitted that under oath.¹⁷ Consequently, CDOT’s public proclamations in this regard create far more confusion than clarity.

CDOT’s refuses to institutionally acknowledge that the plain language of a law that it pushed through the legislature does not actually say what CDOT publicly claims it says, despite Esquibel’s remarkably candid and cogent admission in the regard (see the second bullet point on the next page for details).

Notably, through the end of January of this year, CDOT strenuously argued to an administrative law judge that 2 CCR § 601-3 must be applied according to its “plain language.”¹⁸ CDOT even

¹⁴ This quote is attributed to a CDOT employee who admitted that he lied to tech companies about road closures on state highways. According to multiple recent reports based on Colorado Open Records Act requests, CDOT employees lied to the tech companies so that roads that were actually open would show up in GPS applications as closed. According to reports, CDOT employees did not want to come clean because they were concerned that telling the truth would “damage the agency’s reputation,” such that tech companies would not trust CDOT anymore. The bottom line, according to one of those responsible, was that the employees had “the best of intentions, but bad judgment.” See <https://www.thedenverchannel.com/news/local-news/did-cdot-lie-internal-cdot-emails-show-why-employees-decided-to-misinform-drivers>.

¹⁵ Department of Transportation Executive Director, Rules Governing Outdoor Advertising in Colorado 2 CCR 601-3. Notice of Adoption of Emergency Rules, Effective August 4, 2021 (“EMERGENCY RULE NOTICE”) at 2.

¹⁶ The full definition from the statute (and related definitions) is set out on pages 1 and 2 of this letter. It includes no language about payments for the display of messages.

¹⁷ Esquibel Depo. at 99:8-12.

¹⁸ See Response to Motion for Summary Judgment (“ADMINISTRATIVE CASE MSJ RESPONSE”), *Street Media Group, LLC v. Department of Transportation, State of Colorado*, Office of Administrative Courts Case No. HW-2019-1 through 4, at 8 (arguing, “a plain language application of the Interchange Rule precludes issuance of a permit.”); Reporter’s Transcript Remote Hearing Day 1 (January 25, 2021), *Street Media Group, LLC v. Department of*

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suggested that such application was necessary because the agency has a history of interpreting and applying its laws in ways that do not comport with how they are written, creating uneven results.¹⁹ Now, CDOT declares on multiple fronts that the plain language of the law does not mean what it says, and CDOT will apply and enforce its own construct—a construct that is unrelated to the actual text. By way of example and not limitation—

- Anthony Lovato, who is CDOT’s “subject matter expert” as to the outdoor advertising program (“LOVATO”), stated at the recent rulemaking workshop that signs that exist because compensation was paid to a contractor to erect them, are exempt from the law—even though those signs are, in fact, “advertising devices” under the plain language of SB21-263 (which is incorporated into the proposed rules by reference).
- Similarly, Esquibel said in his sworn deposition that he did not interpret CDOT’s new compensation model to require a permit for “the fabrication of a sign or the construction (sic) erection of the sign.”²⁰ Instead, he said, “I interpret it on a first read as compensation for the actual message on the sign.”²¹ When asked whether the law said that, he responded, “no.”²² When pressed further, he confessed, “I would say this definition is vague.”²³
- Less than a month after Esquibel’s deposition, and even though he admitted that the law did not actually say that a sign is an “advertising device” (subject to CDOT permitting requirements) if compensation was exchanged for displaying messages, CDOT adopted emergency rules and announced, “Now, under the new state law only advertising devices visible from the roadway that generate compensation require a CDOT permit.”²⁴

In sum, the proposed amendments to 2 CCR § 601-3 double-down on an unconstitutional approach that will ultimately hurt every sign owner and sign user along tens of thousands of miles of state and interstate highways in Colorado.

Transportation, State of Colorado, Office of Administrative Courts Case No. HW-2019-1 through 4 (“DAY 1 TRANSCRIPT”), at 43:4-5 (“CDOT staff firmly believe they’re applying the plain language of the rule.”); 224:7-10 (“Q. . . . is CDOT trying to apply the plain language in the rules in this instance? A. Yes, I believe so.”)

¹⁹ Administrative Case MSJ Response at 18 (“Current Department staff recognize that the Outdoor Advertising Program may have acted inconsistently in the past. This is unfortunate.”). Examples of illegal signs that CDOT has never taken meaningful action against include, but are not limited to, permits numbered 8584, 10291, 10321, 10595, 10594, 10582, 10623, 10614/9754, 09690, 09786, 09826, 10581, 10580, 10643, 10686, 10685, 10852, and 10626.

²⁰ Esquibel Depo. at 97:22-23.

²¹ *Id.* at 97:23-25.

²² *Id.* at 98:1-3.

²³ *Id.* at 99:21.

²⁴ Emergency Rule Notice at 2.

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The Company CDOT Keeps Matters.

CDOT's about-face on the issue of interpreting its rules according to their "plain language" is troubling, particularly given the larger context of this rulemaking process. Public records show that CDOT and its lobbying partner, the COAA, worked in close coordination to rush SB21-263 through the Colorado legislature.²⁵ CDOT's legislative liaison, Andrew Karsian, sold the COAA-endorsed bill to one of its ultimate sponsors, Senator Smallwood, as follows:

The bill we would like to introduce is in partnership with the outdoor advertising industry [COAA] and will simplify the existing regulations we have, and it will protect the regulations needed to ensure bad actors do not install billboards that will be out of compliance with federal and state law.²⁶

For context, according to CDOT's 2021 roadside advertising permit list, the three largest members of COAA (Lamar, Outfront, and Mile High), collectively hold well over half of the CDOT-issued outdoor advertising permits. Not less than 18 of those permits are for long-standing illegal signs. CDOT confessed to the administrative law judge that it is "wary" of reviewing or revoking the wrongfully issued permits for those illegal signs, but declined to offer any details as to why.²⁷ The company that CDOT keeps matters. CDOT should not ignore the optics. Its credibility is at stake.

SB21-263 and the proposed rules chill free speech—not by limiting the total number of signs along highways, but instead by preventing sign owners from using their signs in the way that COAA's members do (that is, for what was historically called "off-premises" advertising). This is a big deal because agency rules are not supposed to chill free speech (under the First Amendment) or stifle free markets (under C.R.S. § 24-4-101.5).

The Colorado Administrative Procedures Act provides:

The general assembly finds that an agency should not regulate or restrict the freedom of any person to conduct his or her affairs, use his or her property, or deal with others on mutually agreeable terms unless it finds, after a full consideration of

²⁵ The bill was introduced on May 5, 2021, passed through both houses of the legislature on June 11, 2021, and was signed into law on June 30, 2021. See <https://leg.colorado.gov/bills/sb21-263>. Correspondence showing the partnership between CDOT and COAA includes, among other things, an email from Andrew Karsian (CDOT's legislative liaison) to Representatives Bird and Van Winkle, cc to [REDACTED] (lobbyist for COAA), dated May 19, 2021 at 2:12 PM that touts the coordination between CDOT and COAA.

²⁶ Email from Andrew Karsian to Senator Smallwood, cc to [REDACTED] [lobbyist for COAA], dated March 30, 2021 at 10:39 AM.

²⁷ Administrative Case MSJ Response at 20. ("CDOT has historically been wary of attempting to revoke permits for signs which should not have been granted. For a variety of reasons – including legal reasons – the Department continues to be wary of doing so.")

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the effects of the agency action, that the action would benefit the public interest and encourage the benefits of a free enterprise system for the citizens of this state.²⁸

Under the Proposed Regulations, CDOT Will Still Be “Looking at the Content,” Chilling Speech, and Violating Constitutional Rights.

In the “Questions and Answers from the Stakeholder Workshop” document (“Q&A”) related to the proposed permanent rules, CDOT claims, without support, that “CDOT will not be looking at the content of a sign in order to determine whether a CDOT permit is required, rather, CDOT will only regulate those signs for which Compensation is paid or earned in exchange for its erection or existence.”²⁹ Since CDOT cannot look at the physical structure of a sign and determine whether “compensation is paid or earned in exchange for its erection or existence,”³⁰ CDOT enforcement officials will still be “looking at the content” of signs as they “monitor[] interstates and highways to inventory signs that are permitted.”³¹

CDOT says that “Within the course of this monitoring, if CDOT comes upon a sign that is not permitted, CDOT will make contact with the property owner to determine if their sign is an Advertising Device.”³² Yet CDOT specifically will not answer the question of how it will conduct its monitoring and make the determination as to whether it believes a sign is subject to permitting requirements, nor will it give the public any idea what types of transactions implicate the “compensation model,” turning a run-of-the-mill sign into a regulated “advertising device” for which a CDOT permit is required. Instead, it just amplifies the confusion by doubling-down on language that is unrelated to its other representations—

Hypothetical sign sites or scenarios cannot be uniformly commented on by CDOT. The public should operate on a presumption that if the exchange of anything of value is directly or indirectly paid or earned in exchange for the erection or existence of a sign designed, intended, or used to advertise or inform by any person or entity, that is considered Compensation. In the event Compensation is paid or earned, the sign is considered an Advertising Device regulated by CDOT.³³

²⁸ C.R.S. § 24-4-101.5

²⁹ Q&A at 2.

³⁰ See Esquibel Depo. at 130:7-10.

³¹ Q&A at 2.

³² *Id.*

³³ Q&A at 1.

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CDOT does not want to admit that the threshold enforcement question will arise only when a CDOT employee reads a sign³⁴ or a third party complains about a sign.³⁵ Yet ultimately CDOT will find that there is no other way to implement this law. CDOT does not have a statutory mandate to require all sign owners to periodically submit their books and records to CDOT for examination, and such a requirement, if enacted, would also be unconstitutional in its own right.

CDOT Still Needs to Answer the Fundamental Questions.

StreetMedia and Turnpike are not the only companies that are nervous about CDOT's lack of candor during this rulemaking process. A representative of Jeannie Gafford Signs (who is not a Fairfield and Woods client) pleaded with CDOT, "We have permitted signs and would like [to know] in plain English how this is going to effect (sic) our Company."³⁶ StreetMedia and Turnpike echo that sentiment. In fact, the "plain English" approach is required by the Colorado Administrative Procedures Act.

CDOT should also be troubled by the predicament that SB21-263 creates. CDOT's employees do not seem to know what the law is intended to do, or how the law will actually be administered and enforced. As to the latter point, Esquibel offered up some candor in his sworn testimony:

Q: How would CDOT consistently enforce this 21-263 along 22,000 miles of highway corridor?

A: I don't know.

To date, CDOT refuses to comment on how the proposed amendments to 2 CCR § 601-3 may apply in ubiquitous situations like:

- Whether a commercial landlord who charges tenants for placement on an existing sign would need a CDOT permit; or

³⁴ In his sworn deposition, Esquibel viewed a picture of a sign for Nature's Herbs in Garden City, Colorado, which is located "on-premises." He was advised, "That billboard advertises a marijuana facility, and that marijuana facility is on the same site that the billboard is located," and then asked, "is that an advertising device?" His response was "I would say no," and continued, "You said it was advertising for the company on the existing site. So nobody's compensating them for that sign, right?" That question was met with, "how to you know that?" to which Mr. Esquibel answered, "I don't know." *Id.* at 90-91.

³⁵ For example, see email from [REDACTED] (Lamar Advertising Colorado) to Anthony Lovato, dated May 12, 2020 at 11:18 AM, complaining about a message from Coca Cola on a sign located at 7300 Broadway (owned by Turnpike Media), and response from Anthony Lovato, which was cc'd to [REDACTED] (COAA lobbyist), [REDACTED] [Mile High], [REDACTED] [Outfront], and others, dated May 14, 2020 at 9:18 AM.

³⁶ Comments on emergency rulemaking provided by Jeannie Gafford Signs via email to Ms. Lutz on July 22, 2021.

Natalie Lutz,
August 18, 2021
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- Whether a commercial landlord who charges a tenant for the erection of a new sign on that tenant's behalf would need a CDOT permit.

Of course, there are a number of other common arrangements CDOT's regulations should address (or at least CDOT should offer some guidance on when it promulgates its new rules), including but not limited to:

- Whether a commercial real estate broker needs a CDOT permit for the display of a sign on a client's property along a state highway, where the landowner pays compensation to the broker to market the property; or
- Whether a franchisee needs a CDOT permit for the display of its franchisor's signage along a state highway, where the franchisee pays compensation to the franchisor for the erection of such signage; or
- Whether a sign company that owns a client's sign and leases it to the client (as a financing mechanism) must obtain a CDOT permit as a result of the lease arrangement.

Sign owners, businesses, governmental, civic, and religious organizations also need to know how CDOT will deal with spacing requirements as the number of signs subject to CDOT permit requirements mushrooms—that is, who will get to display (or continue to display) their signs and who will not, and who will get to build new signs and who will not.

Some Pressure Relief is Warranted as CDOT Sorts Out These Problems.

CDOT is not supposed to adopt rules that “negatively impact the state's business climate by impeding the ability of local businesses to compete with out-of-state businesses, by discouraging new or existing businesses from moving to this state, and by hindering economic competitiveness and job creation.”³⁷ On this record, we question whether CDOT has committed appropriate resources to study the impact of its proposed rules in this regard, even though it has a “continuing responsibility” to do so.³⁸ We believe the record shows that implementation of SB21-263 using the proposed rules will inevitably inflict significant collateral damage statewide.³⁹ To help mitigate that collateral damage, we offer the following suggestions—

³⁷ C.R.S. § 24-4-101.5.

³⁸ *Id.*

³⁹ This is just what the legislature warns agencies not to do: “The general assembly further recognizes that agency action taken without evaluation of its economic impact may have unintended effects, which may include barriers to competition, reduced economic efficiency, reduced consumer choice, increased producer and consumer costs, and restrictions on employment.” *Id.*

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First, CDOT should expansively interpret the definition of “comprehensive development” to include as many properties (and signs) as possible, instantly relieving at least those owners from unexpected and onerous new regulatory burdens. That is because signs within “comprehensive developments” are not “advertising devices” and are therefore not subject to CDOT permit requirements.

Second, CDOT should promptly provide clarity as to what signs are subject to permit requirements and what signs are not, answering the questions set out on page 9 of this letter, preferably in rule form in order to provide stability over time.

Third, CDOT should delete or modify 2 CCR § 601-3:7.00.D.2., commonly known as the “interchange rule.” The interchange rule is not mandated by the statute. Property owners should not be silenced just because their land is located by an interchange in an urbanized yet unincorporated county.

The “interchange rule” did not make sense even before SB21-263. It makes even less sense now that the reach of CDOT’s permitting requirement is, on its face, much different and much more extensive than it used to be. That is, billboards (formerly known as “off-premise signs”) are no longer the stated target of the regulations, and based on the plain language of the phrase “advertising device” it would appear that many billboards may no longer be subject to CDOT permit requirements. Many other signs, which are commonly found (and indeed, necessary) around developed and developing interchanges, now appear to be in the regulatory crosshairs.

CDOT knows that Rule 7.00.D.2. does not work. In fact, CDOT has provided cogent analysis as to why it should be changed. In October 2020, CDOT was just days away from promulgating a change to 2 CCR § 601-3.D.2., along with updates to the definitions of “urbanized area” and “urban area” in 2 CCR § 601-3:1.31. The rationale for those amendments (which CDOT also acknowledged in administrative court)⁴⁰ has not materially changed, and if anything it is even more urgent today, given the total confusion about what CDOT intends to regulate and how CDOT will administer and enforce its new regulatory program.⁴¹

⁴⁰ Administrative Case MSJ Response at 13 (acknowledging that a 1966 memo from the U.S. Department of Commerce regarding federal-state agreements regarding outdoor advertising acknowledged that by “maintaining strict spacing criteria in essentially rural areas, and permitting more signs in built-up or urban areas, we feel on[e] of the purposes of the Act has been served, i.e., the preservation of areas of natural beauty, and reflecting customary use.”)

⁴¹ One COAA member previously suggested that the 1971 Agreement does not allow changes to the interchange rule. We disagree for reasons we have articulated in our prior correspondence with CDOT. Moreover, we believe that whatever individual participants in this rulemaking process may think about the procedural requirements, this issue could simply be resolved by stipulation in federal court.

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StreetMedia and Turnpike urge CDOT to either delete the interchange rule or make the following changes to 2 CCR § 601-3—changes that the agency supported less than a year ago—

1.31 ~~“Urban Area” and “Urbanized Area” “Urban Area” pursuant to 23 U.S.C. 101 (33) means an urbanized area designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area (as defined by 23 U.S.C. 101 (34)), within boundaries to be fixed by responsible State and local officials.~~

~~A. “Urban Area” means an urbanized area or, in the case of an urbanized area encompassing more than one state, that part of the urbanized area in each state, or urban place as designated by the U.S. Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by responsible state and local officials in cooperation with each other, subject to approval by the U.S. Secretary of Transportation. Such boundaries shall encompass, at a minimum, the entire urban place designated by the U.S. Bureau of the Census.~~

~~B. “Urbanized Area” means an area with a population of 50,000 or more designated by the U.S. Bureau of the Census, within boundaries to be fixed by responsible state and local officials in cooperation with each other, subject to approval by the U.S. Secretary of Transportation. Such boundaries shall encompass, at a minimum, the entire urbanized area within a state as designated by the U.S. Bureau of the Census. Urbanized Area designations may be viewed on the TIGERweb Decennial map provided on the U.S. Census Bureau’s website at <https://tigerweb.geo.census.gov/>.~~

* * *

D. Spacing of Signs

1. Advertising Devices on Control Routes may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness of any official traffic sign, signal, or device, obstruct or physically interfere with the driver’s view of approaching, merging or intersecting traffic.

2. ~~In the Control Area~~ near Interstates ~~Highways~~ and Freeways:

a. No two Signs shall be spaced less than 500 feet apart.

b. ~~Outside of incorporated villages and cities, no~~ Advertising Devices may ~~shall not~~ be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety Rest Area ~~if the Advertising Device is located outside of an Urbanized Area and outside of the boundaries of an incorporated town or city~~. The 500 feet is to be measured along the Interstate or Freeway from the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

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- i. This spacing limitation applies where the proposed location of the Sign is located outside of an Urbanized Area and outside of the boundaries of an incorporated town or city regardless of the location of the interchange, intersection at grade, or safety Rest Area.
 - ii. The limits of an interchange, intersection at grade, or safety Rest Area span from the beginning of pavement widening for an exit lane or ramp and continues through the interchange, intersection at grade, or safety Rest Area, to the point where pavement widening ends for an entrance lane or ramp.
 - iii. The 500-foot measurement is to be measured parallel to the highway. This prohibition applies to the entire 660-foot Control Area adjacent to the interchange, intersection at grade, or safety Rest Area along with the 500-foot measurement adjacent thereto.
 - iv. “Pavement widening” includes exit and entrance lanes and ramps, auxiliary lanes, and other lanes which terminate while allowing traffic to weave on or off the main-travelled way.
 - v. For those locations where a continuous auxiliary lane extends from the entrance ramp/lane of one interchange/intersection at grade/safety Rest Area and connects to the exit ramp/lane of another interchange/intersection at grade/safety Rest Area, such that there is no clear “beginning or ending of pavement widening at the exit from or entrance to the main-traveled way,” this rule prohibits signs located within 2,250 feet from the physical gore of entrance ramps/lanes and within 1,600 feet from the physical gore of exit ramps/lanes.
3. All other Controlled Routes except Interstate and Freeways
 - a. Outside of Urbanized Areas and incorporated ~~townsvillages~~ and cities, no two ~~structures~~-Signs shall be spaced less than 300 feet apart.
 - b. Within Urbanized Areas and incorporated ~~towns~~villages and cities, no two ~~structures~~-Signs shall be spaced less than 100 feet apart.

* * *



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August 18, 2021
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Conclusion.

The First Amendment requires clarity with respect to the purposes of the law, the standards that apply to the issuance of permits, and the standards that apply to the determination of who will be subject to a permitting requirement in the first place. Colorado statutes set out comparable requirements. Moreover, as a matter of public policy, everyone benefits when the law is clear.

It is CDOT's obligation to write rules in a manner that ordinary people can feel confident that they understand. Esquibel testified that he does not understand the most essential parts of the proposed rules. He oversees the Outdoor Advertising Program. CDOT has so far refused to provide clarity regarding how its proposed rules would be applied in commonplace scenarios. C.R.S. 24-4-103(4)(b) provides:

No rule shall be adopted unless: . . . To the extent practicable, the regulation is clearly and simply stated so that its meaning will be understood by any party required to comply with the regulation.

CDOT will require compliance with these regulations. As such, CDOT is obligated to explain them. We hope that CDOT chooses to do so.

Thank you again for the opportunity to provide comments.

Sincerely,

A large black rectangular redaction box covers the signature and name of the sender. Below it, two smaller black rectangular redaction boxes cover additional information, likely a title and contact details.

Attachments

cc: Anthony Lovato
Pawan Nelson, Esq.
Patrick Sayas, Esq.

July 23, 2021

Sent via E-Mail

Natalie Lutz,
Rules, Policies, and Procedures Administrator
Colorado Department of Transportation
2829 West Howard Place
Denver, Colorado 80204

Re: Proposed Rulemaking - 2 CCR § 601-3

Dear Ms. Lutz:

Thank you for the opportunity to provide comments on the proposed rulemaking to update 2 CCR § 601-3 in response to the recent passage of SB21-263. The purpose of this letter is to provide general comments about the proposed rules, and then to specifically address 2 CCR § 601-3:7.00.D. These comments are submitted on behalf of our client, StreetMediaGroup, LLC.

In General

Our comments on SB21-263 are of record and apply with equal force to the proposed rulemaking. In addition, we stand by our comments at the rulemaking workshop on July 19, 2021. CDOT's written summary says "[t]he new compensation-based approach makes it easier for landowners and sign owners to understand whether they need a CDOT permit." Yet, at the rulemaking workshop CDOT personnel were unable to answer basic questions about everyday scenarios in this regard, including:

- Whether a commercial landlord who charges tenants for placement on an existing sign would need a CDOT permit, or
- Whether a commercial landlord who charges a tenant for the erection of a new sign on that tenant's behalf would need a CDOT permit.

Mr. Lovato said that no permit would be required for the scenario in which a landowner pays a contractor to erect a sign, but there is nothing in the actual text of the law that supports that conclusion. CDOT has a history of interpreting and applying its laws with uneven results, as evidenced by the records of the protracted conflicts between CDOT and our clients.

CDOT and COAA cooperated to draft SB21-263 and push it through the legislature, yet CDOT personnel are not able to articulate the purpose of the law in public. The First Amendment requires clarity with respect to the purposes of the law, the standards that apply to the issuance of permits, and the standards that apply to the determination of who will be subject to a permitting requirement

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in the first place. The public is entitled to know clearly which signs are subject to permitting requirements and which signs are not subject to permitting requirements. It is CDOT's legal obligation to provide that information in a manner that ordinary people can feel confident that they understand. We hope that CDOT can and will articulate that information in a manner that is useful and practical for the many thousands of sign owners along regulated highways in the State of Colorado who may be affected by this new regulation.

As we advised at the workshop, until CDOT articulates the purpose and specific objectives of the new law, it is very challenging to offer meaningful, substantive input regarding specific provisions of 2 CCR § 601-3 beyond what is included in the next part of this letter. Before promulgating any new rule, we think CDOT has an obligation to the people of Colorado to state very clearly on the record what it is actually trying to accomplish, as well as how the proposed rule advances or fulfills those objectives. CDOT did a much better job in this regard last year when it considered amendments to 2 CCR § 601-3. *See Exhibit A.*

The Interchange Rule

In October 2020, CDOT almost promulgated a change to 2 CCR § 601-3.D.2., along with updates to the definitions of "urbanized area" and "urban area" in 2 CCR § 601-3:1.31. We think the rationale for those amendments has not changed (*see Exhibit A*), and if anything it is even more urgent today. Modifications to the interchange rule would alleviate many existing and potential conflicts under the new law, would harmonize future practice with past practice, and would also thereby eliminate controversy surrounding a number of "illegal" permits held by three large COAA member companies.

One COAA member previously suggested that the 1971 Agreement does not allow changes to the interchange rule. We disagree for reasons we have previously articulated. Moreover, we believe that whatever individual participants in this rulemaking process may think about the procedural requirements, this issue could simply be resolved by stipulation in federal court.

We urge CDOT to make the following changes, which it supported less than a year ago--

1.31 ~~"Urban Area" and "Urbanized Area" "Urban Area" pursuant to 23 U.S.C. 101 (33) means an urbanized area designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area (as defined by 23 U.S.C. 101 (34)), within boundaries to be fixed by responsible State and local officials.~~

A. "Urban Area" means an urbanized area or, in the case of an urbanized area encompassing more than one state, that part of the urbanized area in each state, or urban place as designated by the U.S. Bureau of the Census having a population of 5,000 or more and not within any urbanized area, within boundaries to be fixed by responsible state and

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local officials in cooperation with each other, subject to approval by the U.S. Secretary of Transportation. Such boundaries shall encompass, at a minimum, the entire urban place designated by the U.S. Bureau of the Census.

B. “Urbanized Area” means an area with a population of 50,000 or more designated by the U.S. Bureau of the Census, within boundaries to be fixed by responsible state and local officials in cooperation with each other, subject to approval by the U.S. Secretary of Transportation. Such boundaries shall encompass, at a minimum, the entire urbanized area within a state as designated by the U.S. Bureau of the Census. Urbanized Area designations may be viewed on the TIGERweb Decennial map provided on the U.S. Census Bureau’s website at <https://tigerweb.geo.census.gov/>.

* * *

D. Spacing of Signs

1. Advertising Devices on Control Routes may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness of any official traffic sign, signal, or device, obstruct or physically interfere with the driver’s view of approaching, merging or intersecting traffic.

2. In the Control Area near Interstates ~~Highways~~ and Freeways:

a. No two Signs shall be spaced less than 500 feet apart.

b. ~~Outside of incorporated villages and cities, no~~ Advertising Devices may ~~shall not~~ be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety Rest Area if the Advertising Device is located outside of an Urbanized Area and outside of the boundaries of an incorporated town or city. The 500 feet is to be measured along the Interstate or Freeway from the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way.

i. This spacing limitation applies where the proposed location of the Sign is located outside of an Urbanized Area and outside of the boundaries of an incorporated town or city regardless of the location of the interchange, intersection at grade, or safety Rest Area.

ii. The limits of an interchange, intersection at grade, or safety Rest Area span from the beginning of pavement widening for an exit lane or ramp and continues through the interchange, intersection at grade, or safety Rest Area, to the point where pavement widening ends for an entrance lane or ramp.

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iii. The 500-foot measurement is to be measured parallel to the highway. This prohibition applies to the entire 660-foot Control Area adjacent to the interchange, intersection at grade, or safety Rest Area along with the 500-foot measurement adjacent thereto.

iv. "Pavement widening" includes exit and entrance lanes and ramps, auxiliary lanes, and other lanes which terminate while allowing traffic to weave on or off the main-travelled way.

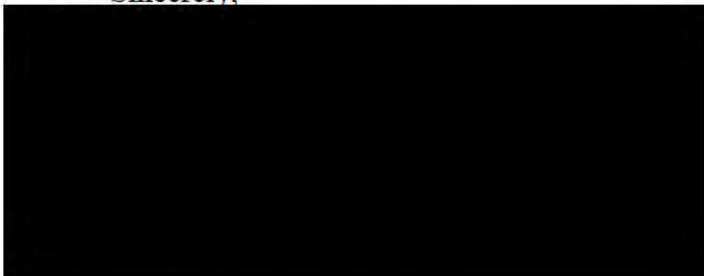
v. For those locations where a continuous auxiliary lane extends from the entrance ramp/lane of one interchange/intersection at grade/safety Rest Area and connects to the exit ramp/lane of another interchange/intersection at grade/safety Rest Area, such that there is no clear "beginning or ending of pavement widening at the exit from or entrance to the main-traveled way." this rule prohibits signs located within 2,250 feet from the physical gore of entrance ramps/lanes and within 1,600 feet from the physical gore of exit ramps/lanes.

3. All other Controlled Routes except Interstate and Freeways
 - a. Outside of Urbanized Areas and incorporated ~~townsvillages~~ and cities, no two ~~structures~~-Signs shall be spaced less than 300 feet apart.
 - b. Within Urbanized Areas and incorporated ~~townsvillages~~ and cities, no two ~~structures~~-Signs shall be spaced less than 100 feet apart.

* * *

Thank you again for the opportunity to provide comments.

Sincerely,



cc: Anthony Lovato
Pawan Nelson, Esq.
Patrick Sayas, Esq.



COLORADO

Department of Transportation

Office of Policy and Government Relations

2829 W. Howard Place
Denver, CO 80204-2305

Summary of Rule 7.00(D)(2) in 2 CCR 601-3, Rules Governing Outdoor Advertising

- The purpose of the Outdoor Advertising Rules found in 2 CCR 601-3 is to control the use of billboards or other outdoor advertising signs in areas near the state highway system to protect and promote the health, safety, and welfare of the traveling public.
- The Outdoor Advertising Rules also promote the reasonable, orderly, and effective display of billboards while preserving and enhancing the natural and scenic beauty of Colorado in compliance with the Colorado Outdoor Advertising Act and the federal Highway Beautification Act.
- The Colorado Department of Transportation (“CDOT”) proposes to clarify the restriction against billboards being located within 500 feet of an interchange, intersection at-grade, or safety rest area near interstates and freeways in Rule 7.00(D)(2).
- This administrative rule derives from a 1971 agreement between CDOT and the United States Secretary of Transportation and sets forth the State’s size, spacing, and lighting criteria for billboards.
- CDOT proposes that signs cannot be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety Rest Area if the billboard is located outside of an urbanized area and outside of the boundaries of an incorporated town or city.
- This proposed revision contemplates modern highway design principles, recent developments in outdoor advertising laws and regulations, and changes in land use zoning and designations, such as unincorporated areas that are near the boundaries of incorporated towns or cities.
- This proposed rule change is consistent with the Highway Beautification Act’s intent to preserve natural and scenic beauty in rural and unincorporated areas.
- Local jurisdictions have the authority to regulate billboards and other outdoor advertising signs within their boundaries. This proposed rule change supports decision-making at the local or community level. Local jurisdictions are in a better position to determine whether or not billboards should be allowed in their communities rather than CDOT making that determination.
- This proposed revision will help to preserve public funds, as many of the CDOT’s recent active and historical litigation has involved this rule.





April 29, 2021

Sent via E-Mail

Andy Karsian
State Legislative Liaison
2829 West Howard Place, Suite 562
Denver, Colorado 80204

Re: Proposed CDOT Amendments to the Colorado Outdoor Advertising Act

Dear Mr. Karsian:

Thank you for the opportunity to provide comments on the draft language that CDOT proposing (“CDOT PROPOSAL”) to amend the Colorado Outdoor Advertising Act (“ACT”). Our firm represents StreetMediaGroup and Turnpike Media, both of which are currently in litigation against CDOT. At the core of that litigation are allegations that the Act and its implementing rules are an unconstitutional prior restraint and a content-based restriction on free speech that cannot survive strict scrutiny review.

The CDOT Proposal does not change the underlying constitutional defects. As a practical (and legal) matter, the CDOT Proposal would actually make the problem much worse. As such, StreetMedia opposes this bill on both constitutional and practical grounds. We urge CDOT not to introduce this proposal, and if it is introduced and ultimately becomes law, we will challenge it on constitutional grounds. Our reasoning follows.

I. The Act Springs from a Federal Law That Essentially Bribes States to Violate the First Amendment Rights of their People, and It Cannot Easily Shake that Heritage.

The Act is a relic of the 20th Century, conceived at a time when free speech rights were not given the degree of protection that they now enjoy. Over the years, the Act has transmogrified into a law that does little more than protect the market hegemony of an oligarchy of publicly-traded outdoor advertising companies (“FAVORED COMPANIES”). It operates by violating the First Amendment rights of every other sign owner, deploying the enforcement power of CDOT to intimidate other sign owners so that they do not compete with the Favored Companies.

II. The Proposed Legislation Is Also Unconstitutional, and If It Is Adopted, StreetMedia Will Oppose Its Application in Federal Court.

StreetMedia respects CDOT’s authority to regulate, but state legislation and CDOT regulations must operate within constitutional bounds. Legislation and regulations should also actually advance legitimate governmental interests. We hope that the following comments are helpful to CDOT as it evaluates whether proceeding with the CDOT Proposal is a good use of its resources.



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A. *As a Constitutional Matter, Putting a “Content-Neutral” Mask on a “Content-Based” Law Does Not Help.*

On its face, the CDOT Proposal does nothing to correct any of the constitutionally fatal flaws of the Act. Instead, it appears to be a rushed attempt to cover up the fundamental content-based structure in a dressing of “content neutrality.” It seems like the underlying notion is that if CDOT can fix the face of the law and then apply it in essentially the same way that it did before, then it can continue to protect the economic interests of the Favored Companies who benefit most from keeping others out of the outdoor advertising industry.

Of course, it is plain that the effort to regulate based on whether compensation is received for the use of the sign is a hasty effort to change the language so that it looks “content neutral” while achieving exactly the same content based result. In *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155 (2015), the U.S. Supreme Court held that determining whether a law is facially content-neutral is only the first step. The second step is to determine whether the government could justify the law without reference to the content of the sign. If not, the law is content based anyway:

Because strict scrutiny applies either when a law is content based on its face or when the purpose and justification for the law are content based, a court must evaluate each question before it concludes that the law is content neutral and thus subject to a lower level of scrutiny.

Reed, 576 U.S. at 166. StreetMedia submits that if enacted and then challenged, the CDOT Proposal would be struck down as a violation of the First Amendment because CDOT cannot seriously claim that its motives are content-neutral, and the CDOT Proposal cannot survive strict scrutiny.

Take, for example, the proposed change to the definition of “Advertising Device.” CDOT would propose to regulate only signs for “which compensation is directly or indirectly paid or earned in exchange for its erection or existence by any person or entity.” Traditional billboards are the clear target of the law, and it would appear to us to follow that this attempt to regulate essentially only billboards means that the “purpose and justification for the law are content based.”

As such, we predict that, if enacted, this proposed law would be subject to strict scrutiny under the second prong of the *Reed* analysis. Our depositions of CDOT personnel to date suggest that there is no way that the law would survive strict scrutiny review.

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B. *The Changes Will Create an Unbearable Enforcement Mess Because They Will Sweep in Unsuspecting Sign Owners Who Are Currently Not Regulated, and Subject Them to Forfeitures and a Perjury Trap*

On the face of it, the CDOT Proposal takes a bad law and makes it much worse. Even if the purpose of the law were simply to reach all signs for which compensation is paid to the owner of the sign (without the intention of only affecting billboards), the proposal would still be unconstitutional. In order to put a thin “content-neutral” veneer over a program that is obviously intended to regulate billboards based on their off-premises content, CDOT would oppress vast numbers of commercial landowners in control areas—people and entities whose (currently “on-premises”) signage has never previously been regulated.

1. **CDOT Cannot Possibly Enforce Regulations that Require CDOT Personnel to Discover and Evaluate the Business Contracts of Every Sign Owner in the Control Area in a Fair and Consistent Manner**

First, the enforcement of the law would involve the exercise of unconstitutionally high degrees of discretion. The person who is charged with enforcing the law on any given day will have to be given the power to demand and examine private business contracts, and then evaluate whether “compensation” has been given for the use of a sign. All up and down every corridor in the Control Area. That is a lot of power.

CDOT may claim (as it has when its officers were deposed) that its process is “complaint driven,” so its enforcement officers would not simply walk into business establishments and demand to see their leases and examine their emails and checkbooks. However, StreetMedia knows from experience that the complaint-driven system is driven by complaints by the Favored Companies. So again, the law becomes a sword for the Favored Companies to defend their market hegemony, and not a carefully crafted tool to protect asserted governmental interests in safety and aesthetics.

2. **The CDOT Proposal Will Have Massive Unintended Consequences Far Beyond the Plethora of Problems Created by the Current Law**

The CDOT Proposal would clearly sweep in the signs at Empower Field,¹ as well as the signs at essentially every shopping center and multi-tenant office building that is within a Control Area in the State of Colorado. As to Empower Field, according to news reports Empower pays about \$5 million annually to display its name at the home of the Denver Broncos, which is well within a Control Area. As to everyone else, signage is nearly universally addressed in commercial leases, so even if compensation is not “directly paid” for a place on a sign as a line item, it is certainly a

¹ StreetMedia has argued, we believe correctly, that they are already swept into the current “off-premise” definition.

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consideration in the establishment of a rental rate, and therefore would be, *per force*, “indirectly paid.”

StreetMedia submits that shopping center and office complex owners would be justifiably outraged by the application of the proposed C.R.S. § 43-1-411(1)(d) to their signs, as well as the Draconian measures set out in C.R.S. § 43-1-412(1)(a), either in its original form or, worse, as amended. We say “worse” because the amended version of C.R.S. § 43-1-412(1)(a) means that a shopping center owner, in order to save its valuable sign (which may represent a considerable investment, and which is obviously very important to the tenants) from a CDOT demand for forfeiture, will be put in the position of having to either sacrifice its sign or swear under oath that no “compensation” is paid by its tenants to use the sign. Consequently, the shopping center owner’s price for saving its sign may well be a perjury trial.

Of course, CDOT may claim that the law is not intended to reach commercial property owners—only billboard owners. If that is the case, then we are back to square one. CDOT will be regulating billboards, based on their content, no matter what the law says. That is an unavoidable violation of the principles of First Amendment law set out in *Reed*.

C. *Sign Owners Have a First Amendment Right to Sell Space on Their Signs*

Under the proposed C.R.S. 43-1-417, a sign owner is subject to potential fines of up to \$1,000.00 per day, just for taking money from someone else to display a message. Most sign owners will voluntarily chill their speech if threatened with such penalties (our clients have certainly experienced that), and most will not have the fortitude to sue the State of Colorado. While StreetMedia does not believe a court would impose such a fine (because it is so clearly unconstitutional), StreetMedia submits that it would be a huge problem for legislators who have sworn an oath to protect and defend the constitution to codify such a penalty into the law in 2021, six years after *Reed* was decided. It is well-established that the constitutional protections afforded to speech are not forfeited simply because it takes the form of a paid advertisement. *See New York Times v. Sullivan*, 376 U.S. 254, 266 (1964).

D. *The Proposed Law Does Nothing for Highway Safety or Aesthetics*

CDOT officers have confessed in sworn depositions that there is no difference between “on-premises” and “off-premises” signs with regard to impacts on highway safety and aesthetics. The CDOT Proposal suggests that maybe CDOT will take the position (in the future) that there is a safety or aesthetic difference between signs for which “compensation” is paid to the owner and signs for which no compensation is paid to the owner. Of course, that proposition is ridiculous and cannot be empirically supported.

No one who looks at a sign could possibly know (unless a transaction is announced on the sign itself, or as in the case of Empower Field, the transaction is publicly announced with fanfare)

Andy Karsian

April 29, 2021

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whether money changed hands for any particular message to be displayed. As such, the CDOT Proposal does absolutely nothing to promote either highway safety or aesthetics. It simply punishes people for taking money to speak on behalf of others. That is a violation of the First Amendment.

E. The Problem of Prior Restraint

Finally, the First Amendment requires that the time between application and decision be “brief,” and “stated.” StreetMedia supports quick turnarounds for permits, having had to wait for prolonged periods simply to have permits denied. The proposed amendments would specify a time period, but a period of 60 to 90 days from application to decision is not a “brief” time period and StreetMedia submits it would still constitute an impermissible prior restraint.

III. Conclusion

In closing, thank you for the opportunity to comment on this proposed legislation. StreetMedia’s bottom line is that highway beautification should not be (and does not have to be) at odds with First Amendment rights. StreetMedia urges CDOT not to proceed with this hasty proposal, but instead to start again and provide something for the next legislative session that the State can be proud of.

StreetMedia has retained a leading sign code expert, and, as we have advised CDOT on multiple occasions, is happy to consult with CDOT on the formulation of such legislation.

If you have any questions about the enclosed materials, or the responses in this letter, please do not hesitate to contact me.

Sincerely





October 9, 2020

Sent via E-Mail to DOT_Rules@state.co.us

Natalie Lutz and Anthony Lovato
Colorado Department of Transportation
2829 W. Howard Pl.
Denver, CO 80204

**Re: Proposed Changes to 2 CCR 601-3
Second Round Comments**

Dear Ms. Lutz and Mr. Lovato:

Our firm represents StreetMediaGroup, LLC (“STREETMEDIA”), a stakeholder in the rulemaking process that the Colorado Department of Transportation (“CDOT”) has initiated with regard to proposed amendments to 2 CCR § 601-3 (“RULE”). This second round comments letter provides additional comments, suggestions, and perspective regarding the changes that were made after the first round of comments regarding the proposed Rule change. We are authorized to represent that another stakeholder, Turnpike Media, LLC, joins in this letter.

I. Introduction

This letter addresses mostly technical issues with regard to the second round draft of the proposed Rule. StreetMedia’s prior letter, dated June 19, 2020 (“JUNE LETTER”), advised CDOT regarding the constitutional dimension of the proposed rule change. The proposed rules still include content-based and speaker-based provisions. A number of cases were decided since June 19, 2020 that further support the analysis of these issues that was set out in the June Letter.¹

II. Rule 1.31

StreetMedia appreciates the proposed changes to Rule 1.31, which make the Rule consistent with its federal counterparts in 23 U.S.C. § 101(a)(33) and (34). However, the federal law is not consistent with 2020 Census Bureau vocabulary.

The federal rule refers to “Urban Place.” “Urban Place” is a designation that is no longer used by the Census Bureau. Current terminology for the same concept appears to be “Urban Cluster” (TIGERweb maps show “Urbanized Areas” and “Urban Clusters”). StreetMedia recommends updating Rule 1.31 to replace the phrase “Urban Place” with “Urban Cluster” in order to facilitate accurate interpretation by end-users (or, at a minimum, to include the phrase “Urban Cluster” after the phrase “Urban Place”).

¹ These cases include, by way of example, *Reagan Nat’l Advert. of Austin, Inc. v. City of Austin*, 2020 U.S. App. LEXIS 27276 (5th Cir. 2020); *Int’l Outdoor, Inc. v. City of Troy*, 2020 U.S. App. LEXIS 28244 (6th Cir. 2020); and *Outdoor v. City of Westfield*, 2020 U.S. Dist. LEXIS 180515 (S.D. Ind. 2020).



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III. Rule 2.3

StreetMedia opposes the removal of the phrase “or renewing a” from Rule 2.3.A. StreetMedia acknowledges that Rule 2.3, as proposed, closely maps C.R.S. § 43-1-411. However, C.R.S. §§ 43-1-409 and 43-1-410 prohibit permit renewals for illegal signs, and the proposed Rule does not address those provisions at all. As such, the proposed Rule would appear to be in conflict with the statute (and therefore outside of CDOT’s authority). StreetMedia submits that leaving the phrase “or renewing a” in Rule 2.3.A. makes the rule more reflective of all of the applicable statutes. A more detailed analysis of this provision is provided in the June Letter.

Nonconforming Signs² are controlled by C.R.S. § 43-1-404(2) and Rules 6.03.2 through 6.03.5, inclusive. If CDOT’s intention regarding Rule 2.3 is to clarify that it may issue permit renewals for *Nonconforming Signs* (this is CDOT’s stated intention), then a more direct approach is to add a subsection B. to Rule 2.3 that says, “Nonconforming Advertising Devices may be maintained, and permits therefor renewed, according to the standards set out in Sections 6.03.2 through 6.03.5, inclusive.”

IV. Rule 6.02

StreetMedia relies on the June Letter for comments regarding Rule 6.02. Additional case law since June has reinforced the rationale provided in the June Letter.

The proposed Rule 6.02.D. and G. create a number of “content-based” and “speaker-based” exceptions and regulations that, on their face, appear to be carefully crafted to benefit and burden a relatively small group of identifiable parties. These provisions are constitutionally suspect.

V. Rule 7.00(D)(2) and (3)

StreetMedia appreciates the general direction CDOT has taken on this Rule. However, the proposed rule appears to misapply the phrase “Urbanized Area.” In all instances in Rule 7.00(D)(2) and (3), the phrase “Urbanized Area” should be replaced with the phrase “Urban Area.”

The proposed Rule 7.00(D)(2) currently provides, in part:

Advertising Devices shall not be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety Rest Area if the Advertising Device is located outside of an Urbanized Area and outside of the boundaries of an incorporated town or city.

² Rule 1.16 defines “Nonconforming Advertising Device” or “Nonconforming Sign” as:

a Sign which was lawfully erected but which fails to conform to the sizing, lighting, spacing or location requirements of law enacted at a later date or because of changed conditions, except those advertising devices allowed by § 43-1-404(1), C.R.S.

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The phrase “Urbanized Area” is also used in the proposed Rules 7.00(D)(2)(b)(i) and 7.00(D)(3)(a) and (b).

Figure 1, below, illustrates the impact. In this TIGERweb excerpt, the “interchange rule” in the form currently proposed (in proposed Rule 7.00(D)(2)(b)) would apply in the white and purple areas, because the phrase “Urbanized Area” does not include the phrase “Urban Cluster.” If the phrase “Urbanized Area” is replaced with “Urban Area” in the rule (as StreetMedia suggests), then the interchange rule would apply only within areas of the map that are not shaded in blue or purple.³

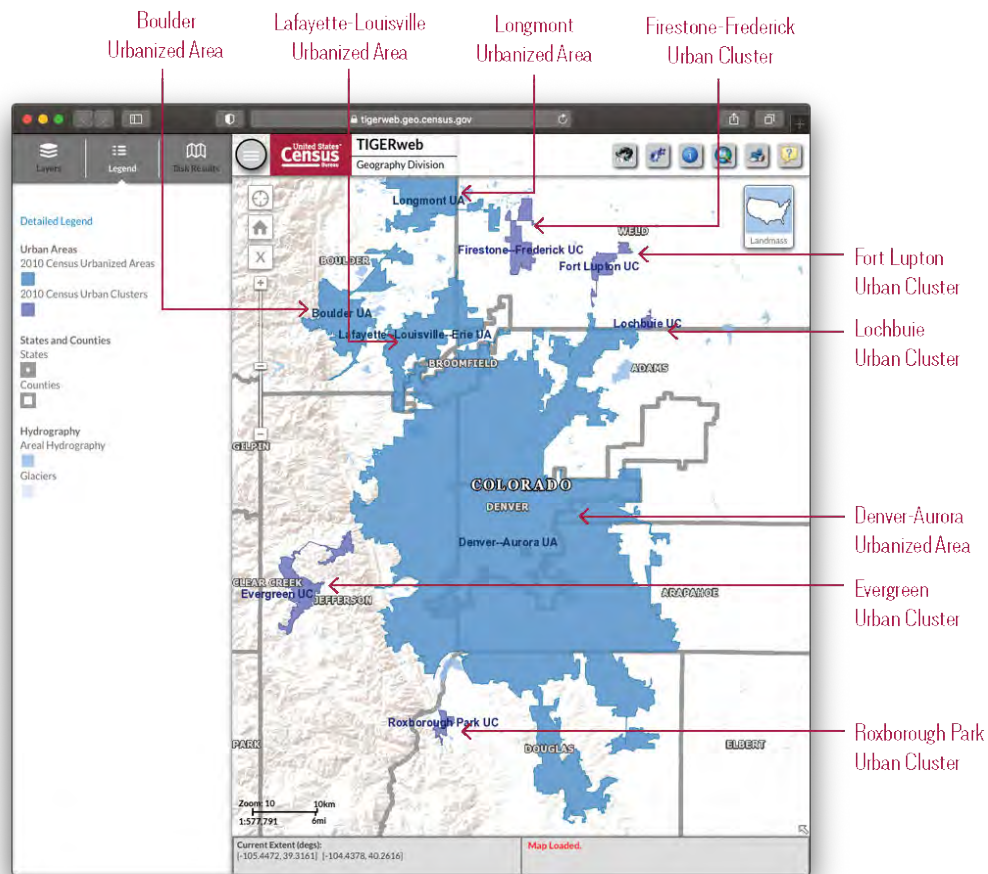


Figure 1: TIGERweb Map Showing Urbanized Areas and Urban Clusters in the vicinity of Denver, Colorado

³ The Lochbuie Urban Cluster had a population of less than 5,000 in 2010, so it is possible that the Lochbuie Urban Cluster would be subject to the interchange rule, to the extent that the boundaries of the Lochbuie Urban Cluster extend beyond the corporate boundaries of the Town of Lochbuie. All of the other Urban Clusters that are shown in Figure 1 had 2010 populations greater than 5,000.



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StreetMedia believes that the interchange rule is intended to apply only: (1) outside of “Urbanized Areas”; (2) outside of “Urban Clusters” that have a population of 5,000 people or more; and (3) outside of the boundaries of incorporated towns and cities. The use of the phrase “Urban Areas” instead of “Urbanized Areas” in Rule 7.00 would reflect that intent.

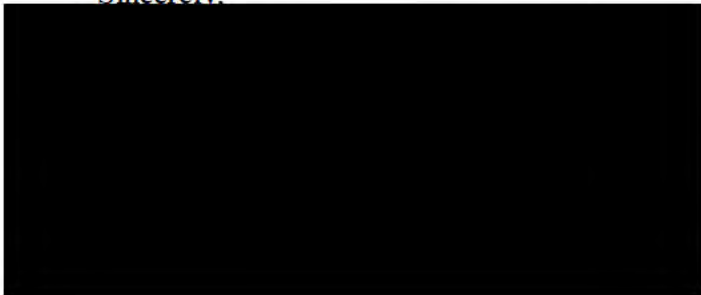
Unincorporated Urban Clusters are comparable to incorporated towns and cities in terms of their development patterns, and it follows that they should be treated like cities and towns for the purposes of the Rule. For example, the Evergreen Urban Cluster is not incorporated, but it has a population that exceeds approximately 225 of Colorado’s incorporated towns and cities.

VI. Rule 13.00 and 14.00

StreetMedia does not have further comment on the proposed Rules 13.00 and 14.00.

Thank you for the opportunity to provide comments on the proposed Rules.

Sincerely,





June 19, 2020

Sent via E-Mail to DOT_Rules@state.co.us

Natalie Lutz and Anthony Lovato
Colorado Department of Transportation
2829 W. Howard Pl.
Denver, CO 80204

Re: Proposed Changes to 2 CCR 601-3

Dear Ms. Lutz and Mr. Lovato:

Our firm represents StreetMediaGroup (“STREETMEDIA”), a stakeholder in the rulemaking process that the Colorado Department of Transportation (“CDOT”) has initiated with regard to proposed amendments to 2 CCR § 601-3. On behalf of StreetMedia, we submit the following comments. We are authorized to represent that another stakeholder, Turnpike Media, LLC, joins in this letter.

I. Introduction

The introduction to 2 CCR § 601-3 (“RULES”) provides an intent statement. It is:

. . . to protect and promote the health, safety, and welfare of the traveling public and the people of Colorado, and to promote the reasonable, orderly and effective display of outdoor advertising, while preserving and enhancing the natural and scenic beauty of Colorado.

The stated intent of the Rules “provide[s] a reference point against which the validity of the rule can be measured.”¹ When CDOT engages in rulemaking, it is obligated to stay within its constitutional and statutory limits.² Moreover, because the Rules implicate the First Amendment, the amended Rules that CDOT ultimately promulgates after these proceedings must—at a minimum—directly and materially advance permissible, stated purposes.³

It is obvious on the already established record (including testimony and comments received by CDOT) that the stakeholders include favored outdoor advertising companies that derive economic benefits from excluding others from the competitive outdoor advertising field.⁴ The stakeholders also include political subdivisions that do not appear to understand or appreciate constitutional

¹ *Citizens for Free Enterprise v. Department of Revenue*, 649 P.2d 1054, 1062 (Colo. 1982).

² See C.R.S. § 24-4-103(8)(a) and C.R.S. §§ 24-4-106(7)(b)(III) and (IV).

³ See *Aptive Envtl., LLC v. Town of Castle Rock*, 2020 U.S. App. LEXIS 15660, *50 (10th Cir. 2020).

⁴ Indeed, the comments from the favored outdoor advertising companies are strikingly similar, and appear to be singularly focused on maintaining their current competitive advantages, including the continuation of their Illegal Signs.



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boundaries or the legal and financial risks that they are asking CDOT to assume on their behalf.⁵ Both groups of stakeholders seek to push the rulemaking process in directions that significantly increase CDOT’s litigation risks—and which likely will expose CDOT to significant damage awards, including awards of plaintiffs’ attorneys fees.

StreetMedia offers the comments and analysis below in the interest of resolving existing and potential conflicts arising under the Rules, and in the interest of advancing the stated purposes of the Rules. StreetMedia urges CDOT to take care, and to recognize that protecting and advancing the anti-competitive interests of a select group of favored outdoor advertising companies and/or channeling the censorial instincts of other political subdivisions are objectives that are far beyond the stated intent of the Rules or the Outdoor Advertising Act (“ACT”)⁶ and CDOT’s constitutional and statutory authority.

II. Rule 2.3

A. SUGGESTIONS

StreetMedia offers two suggestions for the proposed amendments to Rule 2.3. The rationale for these suggestions is presented in subsections B. and C. of this Part II:

1. Remove the proposed substantive changes to Rule 2.3. The capitalization of the word “Permit” and the deletion of the references to 23 C.F.R. § 750.108 are not “substantive changes.”
2. Add a Subsection B., stating, “Nonconforming advertising devices may be maintained, and permits therefor renewed, according to the standards set out in Sections 6.03.2 through 6.03.5, inclusive.”

B. STREETMEDIA OPPOSES THE PROPOSED SUBSTANTIVE CHANGES TO RULE 2.3 AS PRESENTED BECAUSE THEY DO NOT ADVANCE CDOT’S STATED PURPOSE AND THEY INCREASE THE RISK THAT THE RULE WILL BE MISINTERPRETED.

⁵ Greenwood Village states, “There are no off-premises advertising signs along the I-25 corridor from Hampden South. We want to keep it this way.” (Greenwood Village comments at 6). Its record objections are related only to the content of the signs and the fact that they are operated for a profit. Neither of those attributes directly relate to highway beautification in any way.

⁶ C.R.S. § 43-1-401, *et seq.*

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StreetMedia opposes the proposed substantive changes to Section 2.3.A.⁷ CDOT’s proposal states that the “Rational (sic) for Proposed Changes” is, in pertinent part, “to ensure CDOT is not prohibited from renewing permits for nonconforming signs, but still prohibits CDOT from renewing permits for signs that are damaged, unsafe, or unsightly by reason of lack of maintenance or repair.”⁸

Rule 1.16 defines “Nonconforming Advertising Device” or “Nonconforming Sign” as:

a Sign which was lawfully erected but which fails to conform to the sizing, lighting, spacing or location requirements of law enacted at a later date or because of changed conditions, except those advertising devices allowed by § 43-1-404(1), C.R.S.

Nonconforming Signs are controlled by C.R.S. § 43-1-404(2) and Rules 6.03.2 through 6.03.5, inclusive. If CDOT’s intention regarding Section 2.3 is to clarify that it may issue permit renewals for Nonconforming Signs, then it should simply add a subsection B. to Rule 2.3 that says, “Nonconforming Advertising Devices may be maintained, and permits therefor renewed, according to the standards set out in Sections 6.03.2 through 6.03.5, inclusive.”

No other changes are necessary to accomplish CDOT’s stated objective.

- C. THE PROPOSED CHANGES TO RULE 2.3 APPEAR TO ADVANCE AN UNSTATED PURPOSE; THAT IS, TO UNLAWFULLY COVER OVER PRIOR CDOT “MISTAKES” THAT CDOT IS “WARY” OF ADDRESSING DIRECTLY

Under Rule 1.13, an Illegal Sign is defined as “a Sign erected or maintained in violation of state or federal law, these Rules or local law or ordinance.” This definition includes not only signs that violate the Rules, but also signs like the one owned by a favored outdoor advertising company on Colorado Boulevard / Hwy 2 (between Arizona Avenue and Mississippi Avenue, pictured at right), which (at least) between June 10, 2020 and the date of this letter, was



⁷ StreetMedia does not object to the proposed capitalization of the word “Permit” in Rule 2.3.A.6., or the deletion of cross references to 23 C.F.R. 750.108, and does not consider these changes to be substantive.

⁸ StreetMedia acknowledges that CDOT’s proposed substantive changes conform the Rule 2.3, more or less, to C.R.S. § 43-1-411. However, the current text of Rule 2.3 better reflects the overall statutory framework (beyond C.R.S. § 43-1-411) surrounding both permits and permit renewals.

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egregiously in violation of 1 CCR § 212-2 Rule 1111.B.'s prohibition on off-site advertising of marijuana establishments, as well as in violation of 21 U.S.C. § 843, which criminalizes advertising of Schedule I Controlled Substances (which still include marijuana).

CDOT has been known to ignore Illegal Signs that are owned by favored outdoor advertising companies, or to purport to reclassify them to Nonconforming Signs by executing agreements ("SIDE AGREEMENTS"), in order to issue and renew permits for them. Examples of Illegal Signs that CDOT has ignored or reclassified include, but are not limited to:

Lamar Advertising Company:

- Permit 8584
- Permit 10291
- Permit 10321

Outfront Media:

- Permit 10595
- Permit 10594
- Permit 10582
- Permit 10623
- Permit 10614/9754
- Permit 09690
- Permit 09786
- Permit 09826
- Permit 10581
- Permit 10580

Mile High Outdoor Advertising:

- Permit 10643
- Permit 10686
- Permit 10685
- Permit 10852
- Permit 10626

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Over the course of administrative litigation with StreetMedia, CDOT has cast these Permits (and by implication, related Side Agreements) as “mistakes” that it is “wary” of correcting.⁹ The proposed changes to Rule 2.3 appear to be an attempt to legitimize those “mistakes” by creating an argument that the Rules allow CDOT to continue to (unlawfully) renew permits for Illegal Signs owned by favored outdoor advertising companies that CDOT is wary of crossing.

By purporting to limit the range of permits that cannot be renewed to those that are specifically identified in Rule 2.3.A.9., the proposed changes tend to muddy what is a clear statutory command that prohibits the issuance—or renewal—of permits for unlawfully constructed signs. Specifically, under the Act, if an advertising device is constructed that “does not conform to size, lighting, and spacing standards” that “were adopted prior to the erection of said device,” then CDOT cannot lawfully issue a permit for it.¹⁰

Illegal Signs cannot be transformed into “legal signs,” “grandfathered signs,” or Nonconforming Signs by Side Agreement, willful blindness, or mistake. There is only one path for Illegal Signs:

- If a permit cannot lawfully be issued, then the permit cannot be issued at all.
- In the absence of a lawfully issued permit, there is no permit to renew.
- A sign that cannot be lawfully permitted cannot be lawfully constructed.
- If a sign that cannot lawfully be constructed is constructed anyway, it is an Illegal Sign (by definition).
- The Act mandates that Illegal Signs be removed at the sign owner’s expense.¹¹

Further, no matter what it does with Rule 2.3, CDOT cannot bootstrap the legal authority to enter into agreements with favored outdoor advertising companies to issue or renew permits for Illegal Signs:

- First, the introduction to the Rules states, “[i]f these rules conflict with relevant federal or state law, the federal or state law shall govern.”¹²

⁹ RESPONSE TO MOTION FOR SUMMARY JUDGMENT, *Street Media Group, LLC v. Department of Transportation, State of Colorado*, Case No. HW-2019-1 THROUGH 4 (March 27, 2020) at 18, 20 (“CDOT has historically been wary of attempting to revoke permits for signs which should not have been granted. For a variety of reasons—including legal reasons—the Department continues to be wary of doing so.”)

¹⁰ C.R.S. § 43-1-411.

¹¹ C.R.S. §§ 43-1-412 and 43-1-417.

¹² 2 CCR § 601-3 at p.1.

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- Second, such side agreements are illegal—and therefore void and unenforceable.¹³
- Third, CDOT’s Side Agreements are also against public policy, because they are designed to dodge applicable statutes and rules and place unbridled discretion in the hands of program officials to further unconstitutional, speaker-based preferences.¹⁴

The solution for CDOT with regard to most of these “mistakes” is not to simply pretend they do not exist and attempt to change the Rule to contravene the Act. Instead, it is to promulgate simple changes to Rule 7.00(D)(2)(b), as suggested in Section IV of these comments.

III. Rule 6.02

A. SUGGESTIONS

StreetMedia offers six suggestions for the proposed amendments to Rule 6.02. The rationale for these suggestions is presented in subsections B. and C. of this Part III:

1. Definitions and substantive regulatory provisions should not be mixed. If CDOT wants to redefine or clarify what types of signs are “off-premise” versus “on-premise” it should do so in Sections 1.18 (definition of “Off-Premise Sign”) and 1.20 (definition of “On-Premise Sign”).
2. If On-Premise Signs are excepted from regulation, then the Rules do not need to provide requirements to “Remain an Excepted On-Premise Sign.” An “On-Premise” sign would no longer be excepted if and when it fails to meet the definition for “On-Premise Sign.”
3. The On-Premise / Off-Premise distinction (however formulated) is not likely to be legally sustainable in the future, as emerging First Amendment case law calls into question prior cases that allowed for this distinction.¹⁵
4. If CDOT wants to maintain regulations that distinguish between On-Premise Signs and Off-Premise Signs, then CDOT should be much more careful about how it defines these

¹³ See *Amedeus Corp. v. McAllister*, 232 P.3d 107, 109 (Colo. App. 2009) (“Contracts in violation of statutory provisions are void”); *Ridgeview Classical Sch. v. Poudre Sch. Dist. R-1*, 214 P.3d 476, 482-83 (Colo. App. 2008).

¹⁴ See *Norton Frickey, P.C. v. James B. Turner, P.C.*, 94 P.3d 1266, 1267 (Colo. App. 2004) (“Courts will not enforce contracts or contract terms that are void as contrary to public policy. A contract provision is void if the interest in enforcing the provision is clearly outweighed by a contrary public policy.”).

¹⁵ See, e.g., *Reed v. Town of Gilbert*, 576 U.S. 155 (2015); *Thomas v. Bright*, 937 F.3d 721 (6th Cir. 2019); *L.D. Mgmt. Co. v. Thomas*, 2020 U.S. Dist. LEXIS 72593 (W.D. Ky. 2020).

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categories. For even the most carefully drafted distinction, CDOT must be prepared to carry its evidentiary burden that, at a minimum:¹⁶

- a. There is a meaningful “fit” between CDOT’s regulatory objectives and the distinctions it makes based on content.¹⁷
 - b. The regulations affecting commercial speech address “real” harms *and* “will in fact alleviate them to a material degree.”¹⁸
 - c. CDOT’s interests cannot be served “as well by a more limited restriction on commercial speech.”¹⁹
5. Appropriate changes to Rule 7.00(D)(2)(b) may reduce the risk of litigation regarding the On-Premise Sign / Off-Premise Sign distinction by reducing the number of potential plaintiffs.

B. STREETMEDIA OPPOSES THE PROPOSED CHANGES TO RULE 6.02 BECAUSE THEY DO NOT ADVANCE CDOT’S STATED PURPOSE AND THEREFORE CANNOT MEET MINIMUM CONSTITUTIONAL REQUIREMENTS

CDOT’s rationale for the proposed changes to Rule 6.02 is:

On-Premise signs are largely excepted from outdoor advertising control. However, state and federal law do not clearly define when a sign is considered an On-Premise sign. CDOT recommends revising Rule 6.02 in an effort to provide more clarity concerning when a sign is On-Premise rather than Off-Premise.²⁰

During rulemaking workshops, CDOT claimed that the proposed changes to Rule 6.02 help to advance the “spirit” of the rules. Due to the format of the workshop, CDOT declined the invitation

¹⁶ The “minimum” requirements that follow assume that CDOT is able to create a distinction that is ultimately is evaluated under a “commercial speech” test.

¹⁷ See *Cincinnati v. Discovery Network*, 507 U.S. 410, 428 (1993).

¹⁸ See *Aptive*, 2020 U.S. App. LEXIS 15660 at *50.

¹⁹ *Id.* at *54.

²⁰ Anthony Lovato put it this way: “On-Premise Signs are largely excepted from outdoor advertising control. However, although state and federal law define when a Sign is considered an On-Premise sign, the definitions leave room for ambiguity in certain instances. This ambiguity allows persons to violate the spirit of the regulations while insisting that their conduct is not prohibited by law or regulation. CDOT recommends revising Rule 6.02 in an effort to provide more clarity concerning when a Sign is On-Premise rather than Off-Premise. This will promote certainty among On-Premise Sign owners who want to make sure that they are complying with law and will help ensure the spirit of the law is maintained.” A. Lovato, Recording of June 1, 2020 Local Government Stakeholder Webinar at 5:05 to 5:59.

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to articulate what that “spirit” is. If it amounts to censorship, then CDOT will not be able to defend this work against inevitable litigation rooted in the First Amendment.

If the “spirit” of the rules relates at all to their stated purpose, then the proposed changes must be reviewed in light of that purpose:

. . . to protect and promote the health, safety, and welfare of the traveling public and the people of Colorado, and to promote the reasonable, orderly and effective display of outdoor advertising, while preserving and enhancing the natural and scenic beauty of Colorado.

The proposed changes, as currently drafted, do not materially advance any of these stated purposes. The proposed distinctions have nothing to do with the physical nature of the regulated signs, but are instead based on message content and on business arrangements that are not visible to the public. As such, they do not materially advance the health, safety, and welfare of the traveling public, they do not materially advance the reasonable, orderly and effective display of outdoor advertising, and they do not materially advance the preservation or enhancement of the natural and scenic beauty of Colorado.

C. IF CDOT CHOOSES TO DISTINGUISH BETWEEN “ON-PREMISES” AND “OFF-PREMISES” SIGNS, IT SHOULD PROVIDE CLEAR AND CONCISE DEFINITIONS AND BE PREPARED TO SHOW THAT SUCH A DISTINCTION ADDRESSES “REAL HARMS” AND THAT THOSE HARMS ARE ALLEVIATED TO A MATERIAL DEGREE BY THE PROPOSED REGULATIONS.

The vast majority of the proposed changes to Rule 6.02 set out an internally inconsistent, and confusing definition of what an “On-Premise Sign” is. Instead of providing clarity, they create a rather stark illustration of the reason why the On-Premise / Off-Premise distinction is increasingly recognized by courts nationwide as an obsolete and useless proxy for the physicality of signs.

The Federal District Court for the Western District of Kentucky recently struck down the Kentucky Billboard Act, based on the state’s failure to meet its burden of proving that its on-premise / off-premise distinction advanced its interests. The Kentucky Court’s discussion in this regard is illustrative (and instructive) as to increasing judicial skepticism of content-based restrictions and the resulting trajectory of First Amendment law:

Here, to justify the on-premises/off-premises distinction, Kentucky asserts public aesthetics, traffic safety, and protection of property owners’ rights. Sound familiar?

To be sure, the speech in *Thomas* was not commercial. But the First Amendment still subjects regulations of commercial speech to “heightened judicial scrutiny.” That has sometimes looked a lot like intermediate scrutiny. Recently, it has arguably inched closer to strict scrutiny.

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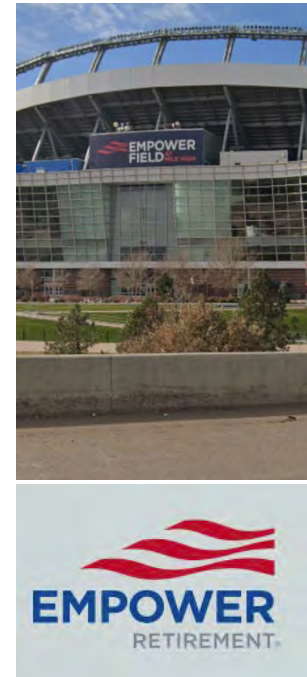
In this case, the label doesn't matter. To survive either inquiry, Kentucky must provide proof in support of its asserted interests. Here, it has offered none. Instead, Kentucky admitted that it has no evidence that Lion's Den's billboard interfered with aesthetics along I-65 in a different manner than if it referred to on-premises activities. Kentucky also admitted it has no evidence that Lion's Den's billboard has distracted any driver. And rather than vindicating property owners' rights, Kentucky has undermined them by denying a landowner the right to continue leasing his property to Lion's Den.

* * *

The billboard for Lion's Den may remain where it stands. The Kentucky Billboard Act is unconstitutional in its entirety.²¹

If CDOT retains the distinction between "On-Premise" and "Off-Premise" Signs for the purposes of regulation, then CDOT should be very careful to support its decision with record evidence. CDOT should also be aware that the protections of the First Amendment extend with equal force to a sign owner who displays its own message and to a sign owner who would rent space or time on the sign to display messages on behalf of others.²²

It is unlikely that a prior enforcement case at Unser Racing will be sufficient evidence to support the proposed Rule 6.02, particularly since: (a) the size and location of the Unser sign structures were permitted by Adams County; (b) the context of those signs is not scenic; and (c) the content of those signs can be modified electronically. Moreover, the prior use of the Unser sign is not meaningfully different from the use of the three giant "Empower Field" signs at the Broncos stadium that are visible from I-25.



²¹ *L.D. Mgmt. Co.*, 2020 U.S. Dist. LEXIS 72593 at *4-5, *7 (citations omitted).

²² *Compare Smith v. Cal.*, 361 U.S. 147, 150 (1959) (“[I]t also requires no elaboration that the free publication and dissemination of books and other forms of the printed word furnish very familiar applications of these constitutionally protected freedoms. It is of course no matter that the dissemination takes place under commercial auspices.”); *Joseph Burstyn v. Wilson*, 343 U.S. 495, 501-02 (1952) (“It is urged that motion pictures do not fall within the First Amendment’s aegis because their production, distribution, and exhibition is a large-scale business conducted for private profit. We cannot agree. That books, newspapers, and magazines are published and sold for profit does not prevent them from being a form of expression whose liberty is safeguarded by the First Amendment. We fail to see why operation for profit should have any different effect in the case of motion pictures.”).

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According to BroncosWire, Empower Retirement pays approximately \$5 million per year for the “naming rights” of the Denver Broncos Stadium.²³ As such, the signs are not exempt On-Premises Signs under the current Rules or the proposed Rule 6.02.C.3. To be clear, under the proposed changes to Rule 6.02, the Denver Broncos would have to obtain permits for (at least) three Off-Premise Signs for their “Empower Field at Mile High” signs at the stadium. Further, if CDOT modifies its proposed Rules for the benefit of Empower Retirement (or for that matter, the Denver Broncos), it will have to do so in a way that does not create an unconstitutional “speaker-based” preference that provides further fodder for constitutional litigation.

IV. Rule 7.00(D)(2)(b)

A. SUGGESTIONS

CDOT presents three options for reform to Rule 7.00(D)(2)(b). StreetMedia offers four suggestions for the proposed amendments to Rule 7.00(D)(2)(b). The rationale for these suggestions is presented in subsections B., C., and D. of this Part IV:

1. In all options, the spacing rules must be clarified. The phrase “No two Signs shall be spaced less than 500 feet apart” relies upon a broad definition of “Sign” (which cross-references “Advertising Device”) that is unworkable because it does not distinguish between:
 - a. On-Premise and Off-Premise (assuming CDOT retains this distinction, spacing should be required only between Off-Premise Signs);
 - b. Free-standing signs (*e.g.*, pole signs and monument signs) and signs that are attached to buildings (*e.g.*, projecting signs, wall signs, etc.);
 - c. Big signs and little signs; or
 - d. Temporary signs and permanent signs.
2. If the spacing rule is clarified, Option 3 makes the most sense in terms of serving CDOT’s objective of avoiding unnecessary litigation.
3. If the spacing rule is clarified, Option 2 is a close second to Option 3, but only if the definition of “Urban Area” is revised for consistency with Federal Law, and to include incorporated municipalities (regardless of population), in recognition of the way the Rule has been interpreted in the past.

²³ See <https://broncoswire.usatoday.com/2019/09/06/how-much-is-denver-broncos-empower-field-at-mile-high-naming-rights-worth-per-year/>. In fact, it would appear that, as Greenwood Village put it in its comments, the Empower Field sign is in place “for no other reason than making money” (Greenwood Village comments at 2).

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4. Option 1 does not solve any of CDOT's current litigation problems. Moreover, under Option 1, the Illegal Signs that are discussed in Part II.D., above, will continue to be unlawful, and must be removed at their owners' expense.

B. STREETMEDIA OPPOSES "OPTION 1" BECAUSE IT DOES NOT ADVANCE CDOT'S STATED OBJECTIVES AND IS UNLIKELY TO WITHSTAND CONSTITUTIONAL SCRUTINY.

StreetMedia opposes Option 1 because it does not provide clarification and does not advance the stated objectives of either the Act or the Rules. The classification of local political jurisdiction is not a proxy for physical character, scenic character, or differences in traffic safety due to driver distraction. Indeed, some incorporated areas are rural in character, and many unincorporated areas are urban in character (particularly within the Denver "Urbanized Area").

If CDOT adopts Rule 2.3 and 6.02 as proposed, and also adopts "Option 1" for Rule 7.00(D)(2)(b), it will worsen a legal situation that it has admitted on this record is already a problem. Put bluntly, if CDOT accepts the invitation to protect favored outdoor advertising companies and political subdivisions who simply do not like billboards, then on their behalf (but without their assistance, financial or otherwise), CDOT will provoke litigation during which it will be called upon to carry the burden and expense to defend the indefensible:

1. That its distinctions between "On-Premise" and "Off-Premise" signs actually advance its stated interests to a material degree, given the backdrop of existing local regulations and many thousands of signs (both on-premise and off-premise in terms of content) in the environment;
2. That its exceptions to the ramp rule within "incorporated villages and cities" actually advance its stated interests to a material degree, given that municipal incorporation is a useless proxy for physical character and that Colorado law has never provided for an "incorporated village"; and
3. That the safety interests CDOT has at times asserted are advanced by the ramp rule are more significant in unincorporated areas (where the rule applies) than in incorporated areas (where the rule does not apply).

StreetMedia submits that the odds are high that CDOT will not be able to carry its burden. Indeed, in this context, the *L.D. Mgmt. Co. v. Thomas* case from Kentucky may be irresistibly persuasive. Since such a case would be brought under 42 U.S.C. § 1983, CDOT could be put on the hook for the plaintiff's attorneys fees under 42 U.S.C. § 1988. StreetMedia submits that Option 1 is so flawed that it is simply not worth the risk.

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C. STREETMEDIA SUPPORTS “OPTION 3” WITH MODIFICATIONS TO CLARIFY THE SPACING RULES.

“Option 3” is the simplest solution that could resolve not only StreetMedia’s administrative litigation against CDOT, but also provide a legitimate path to legalize a number of Illegal Signs that are owned by favored outdoor advertising companies. Adoption of Option 3, with minor modifications, would avoid provoking a future litigation about the removal of Illegal Signs.

However, “Option 3” only works if clarifications as to the spacing rules are incorporated. That is, if CDOT retains the On-Premise / Off-Premise distinction, the spacing rule text could read, “No two Off-Premise Signs shall be spaced less than 500 feet apart.” If CDOT creates another distinction, the text should reflect the distinction that requires spacing between billboards, and not between billboards and other types of signs.

StreetMedia supports “Option 3” (with the proposed modifications above) as a practical solution, but does not waive its constitutional rights if CDOT promulgates or enforces rules that put those rights at risk.

D. STREETMEDIA ALSO SUPPORTS “OPTION 2” WITH MODIFICATIONS TO CLARIFY THE SPACING RULES, AND TO UPDATE THE DEFINITION OF “URBAN AREA” TO BE CONSISTENT WITH ITS FEDERAL COUNTERPART (AS REQUIRED BY 2 CCR § 601-3²⁴).

“Option 2” is not as good as “Option 3,” but like Option 3 it could, with minor modifications, resolve not only StreetMedia’s administrative litigation against CDOT, but also provide a path to legalize a number of Illegal Signs that are owned by favored outdoor advertising companies. Adoption of Option 2, with minor modifications described below, would similarly avoid provoking future litigation regarding removal of Illegal Signs.

The first modification is to the spacing rules. Like “Option 3,” “Option 2” only works if proposed clarifications as to the spacing rules that are set out in the second paragraph of Part IV.C., above, are incorporated.

The second modification is to the definition of “Urban Area.” Rule 1.31 defines “Urban Area” as follows:

“Urban Area” pursuant to 23 U.S.C. 101 (33) means an urbanized area designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area (as defined by 23 U.S.C. 101 (34)), within boundaries to be fixed by responsible State and local officials.

²⁴ The introductory text to 2 CCR § 601-3 states, “If these Rules conflict with relevant federal or state law, the federal or state law shall govern.” The current definition of “Urban Area” in Rule 1.31 is in conflict with federal law.

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Rule 1.31 is internally inconsistent and currently in conflict with federal law.²⁵ Under Rule 1.31, an “Urban Area” is an “urbanized area” that is not within an “urbanized area (as defined by 23 U.S.C. 101 (34).” The referenced Federal law, 23 U.S.C. § 101(a)(34), defines “Urbanized Area” as an area “with a population of 50,000 or more designated by the Bureau of the Census, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary,” including, “at a minimum, the entire urbanized area within a State as designated by the Bureau of the Census.”

In sum, the Federal law includes two types of places in the definition of “Urban Area”:

- “Urban Places” of 5,000 or more population (outside of “urbanized areas”); and
- “Urbanized Areas” of 50,000 or more population.

By contrast, by specifically excluding federally-defined “urbanized areas” from its reach, CDOT’s current definition of “Urban Areas” includes only areas with a population of 5,000 to 49,999. As such, Rule 1.31 is in conflict with Federal law and does not make sense in terms of advancing CDOT’s regulatory program. If “Option 2” is implemented without the suggested change to Rule 1.31, then Rule 7.00(D)(2)(b) would extend into incorporated municipalities with populations over 50,000, transforming a huge number of existing lawfully permitted signs into Nonconforming Signs.

To correct this potential glitch, the definition in Rule 1.31 should be updated as follows (underline text is added):

“Urban Area”, pursuant to 23 U.S.C. 101(a)(33), means an urbanized area as defined in 23 U.S.C. 101(a)(34) or, in the case of an urbanized area encompassing more than one State, that part of the urbanized area in each such State, or urban place as designated by the Bureau of the Census having a population of 5,000 or more and not within any Urbanized Area, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary. Such boundaries shall encompass, at a minimum, the entire urban place designated by the Bureau of the Census.

Additionally, in order to minimize unintended consequences of a transition from existing regulations to proposed regulations based on “Option 2,” CDOT should append the following to the end of the definition of “Urban Area”:

²⁵ StreetMedia submits that upon close examination, Greenwood Village’s comments reflect a misunderstanding on the City’s part as to how the definitions of “Urban Area” and “Urbanized Area” interrelate under federal law and CDOT’s current Rules (Greenwood Village comments at 5). Moreover, the intersection of Belleview and I-25 illustrates why this should be addressed, in that it is highly “urban” in character—in Denver, Arapahoe County, and Greenwood Village.

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The phrase “Urban Area” also includes land within the corporate boundaries of an incorporated municipality, regardless of its population.

That way, existing lawful signs in smaller municipalities will not inadvertently become nonconforming. The proposed changes would not change the amount of signage in the region in any material way, as signs are still subject to local regulation—within appropriate constitutional boundaries.

IV. Enforcement

At the stakeholder meeting on June 2, 2020, a representative from Mile High Outdoor Advertising supported the proposed changes to Rule 6.02 and further, urged CDOT to adopt amendments that would put “teeth” in the enforcement of the On-Premises / Off-Premises distinction that is set out therein. Several others joined this idea in their written comments. While a transcript of that meeting will not be available until after these comments are due, the gist of the comments were that CDOT should explore fines and disgorgement of profits from any who would dare to display an “Off-Premise” message without a lawful Permit.

Perhaps more chilling than the “chilling effect” that Mile High Outdoor Advertising would like CDOT to put on its competitors’ speech is the increased litigation exposure that such strict enforcement of such questionable standards would create (not to mention the fact that CDOT versus the Denver Broncos would be quite a spectacle). StreetMedia submits that it would appear that Mile High Outdoor Advertising’s representative may be so blinded by his desire to maintain the anti-competitive protections his company enjoys under CDOT’s current interpretation of the Rules that he would throw the home team (Denver Broncos) under the bus. Here it is worth noting (again) for the record that Mile High Outdoor Advertising has unclean hands due to the (at least) five Illegal Signs that are currently in its inventory.

In closing, CDOT has a critical transportation mission. Promulgating amended Rules to protect favored outdoor advertising companies and censorial political subdivisions at the expense of individual First Amendment rights and free markets will undoubtedly prove to be a costly diversion for CDOT. StreetMedia respectfully suggests that CDOT should avoid becoming the patsy of those stakeholders who would urge CDOT to break legal and constitutional limits (and risk difficult litigation) in order to protect their interests over the public interest.



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Thank you for the opportunity to provide comments on the proposed Rules.

Sincerely,



Exhibit 13



**Rulemaking Hearing Concerning the Rules Governing Outdoor Advertising in Colorado, 2 CCR 601-3.
October 1, 2021, at 10 am
Video**

<https://www.youtube.com/watch?v=nh9dxoSN7Ns>



**Rulemaking Hearing Concerning the Rules Governing Outdoor Advertising in Colorado, 2 CCR 601-3.
October 1, 2021, at 10 am
Transcript**

0:19

OK, thank you for attending today's Rulemaking Hearing Concerning the Rules Governing Outdoor Advertising in Colorado, 2CCR 601-3.

0:33

My name is Scott Hoftiezer, and I oversee the Outdoor Advertising, Railroad and Utility programs at the Colorado Department of Transportation.

0:42

I want to provide a brief overview of the GoTo Webinar control feature, Control Panel Features.

0:49

We have muted everyone's microphones. You should see a control panel on your screen.

0:55

The microphone icon allows you to mute or unmute your microphone. A green microphone icon indicates your microphone is unmuted, where a red microphone icon indicates your microphone is muted.

1:12

To eliminate audio feedback, we have muted everyone's microphones.

1:16

During the testimony period, please unmute your microphone when your name is announced to provide your testimony.

1:25

The hand icon allows you to raise or lower your virtual hand.

1:30

Please use this feature during the testimony period, if you wish to make a public statement regarding the proposed rule changes.

1:39

You can access the handouts by clicking on the drop down arrow.

1:45

We're recording this hearing, and it'll be posted on CDOT's Proposed Rules and Public Hearing Dates website next week.

1:54

Let's commence the rulemaking hearing.

2:00



Hearing Officer if you want to just give a few minutes it looks like we have some attendees that are still trying to access GoTo Webinar, so if we can just give everyone a few moments to deal with technology. And yes, we are recording this hearing and it will be available on CDOT's website next week.

2:32

That's fine. We can wait a couple of minutes.

2:34

And, Scott, I may ask you to give the explanation again in a couple of minutes on how to use the technology, for those of us who are joining late. Hold on just a moment.

2:56

OK let's

4:05

OK, it looks like everyone is on, so looks like, no, I can't see anyone that's still struggling.

4:19

So let's go ahead and begin.

4:21

So, Scott, if you want to just give the brief kind of overview of the GoTo Webinar control panel features?

4:34

Again?

4:36

Yes.

4:38

Good morning. Again, my name is Scott Hoftiezer.

4:40

Um.

4:43

So I'll provide a brief overview of the GoTo Webinar control panel features. We have muted everybody's microphones. You should see a control panel on your screen.

4:54

The microphone icon allows you to mute or unmute your microphone.

4:59

A green microphone icon indicates your microphone is unmuted, or a red

5:05

microphone icon indicates your microphone is muted.

5:09

To eliminate any audio feedback, we have muted everyone's microphones.



5:14

During the testimony period, please unmute your microphone when your name is announced to provide your testimony.

5:22

The hand icon allows you to raise or lower your virtual hand.

5:27

Please use this feature during the testimony period if you wish to make a public statement,

5:32

regarding the proposed rule changes. you can access the handouts by clicking the drop-down arrow. We're recording this hearing, and it will be posted on CDOT's Proposed Rules and Public Hearing Dates website next week.

5:49

Let's commence the rulemaking hearing.

5:59

Good morning.

6:00

My name is Andrew Hogle. I'm an Administrative Hearing Officer for the Colorado Department of Transportation, which we will refer to as the Department or CDOT.

6:10

Today is October 1, 2021. It is now 10:07 AM.

6:15

And this is a permanent rulemaking hearing pursuant to the Administrative Procedure Act, found at Section 24-4-03 of the Colorado Revised Statutes, to hear oral testimony and accept written submissions concerning the Rules Governing Outdoor Advertising in Colorado.

6:32

During this rulemaking hearing, we refer to these administrative rules as the outdoor advertising rules.

6:38

This hearing is being conducted virtually through GoTo Webinar. The hearing will be recorded and the recording will be available online on CDOT's Proposed Rules and Public Hearing Dates website.

6:53

Sections 43-1-105(6), 43-1-414(4) and 43-1-415 of the Colorado Revised Statutes authorize the Executive Director of CDOT to promulgate and amend the outdoor advertising rules.

7:11

Here with me today are Natalie Lutz, Anthony Lovato, Scott Hoftiezer, and Andy Karsian from the Department, and Leanne Carberry

7:20



from the Attorney General's Office.

7:24

I'm now going to walk through the hearing agenda so you know what to expect.

7:27

First, staff will review and submit exhibits to establish that CDOT has met all the procedural requirements of the Administrative Procedure Act. Next, staff will give a presentation on the proposed rule changes.

7:41

After that, is the testimony phase of the hearing.

7:44

Participants will have the opportunity to give testimony.

7:46

Testimony will be time limited to ensure this hearing is prompt and efficient, and to ensure that everyone who wishes to speak concerning the proposed rule changes has the opportunity to do so.

7:57

And finally, I will make a finding as to whether the rulemaking procedure, including this hearing, was conducted in compliance with the Administrative Procedure Act.

8:05

I will prepare a complete record of the hearing and for the record and proposed rules to the executive director or her designee for final consideration and approval.

8:14

The public record will consist of any written information submitted within the allowable time frame.

8:21

Additionally, the public record will include all the exhibits and all the testimony, both written and oral, that were provided today.

8:29

The record will close at 5:00 PM on Tuesday, October 5, 2021.

8:35

And will be available for inspection by the public and kept on file with the permanent rulemaking records.

8:41

The executive director or her designee will consider all information when making the final decision on whether to adopt the proposed rule changes.

8:52

Alright. Now, staff will provide a brief presentation that the Department has met the procedural requirements of the Administrative Procedure Act. Thank you, Hearing Officer, I'm Natalie Lutz,



and I would now like to review the exhibits to establish that the Department met all the procedural requirements of the Administrative Procedure Act. If members of the audience would like to review the exhibits, a copy is available as Handout 2. The exhibits have been redacted to protect the data privacy of participants. I will now review ten exhibits. Exhibit 1 establishes the proper delegated authority to commence

9:41

rulemaking and to conduct a rulemaking hearing. Exhibit 1 contains documents numbered 1A through 1B.

9:53

Exhibit 2 contains the documents demonstrating compliance with the Administrative Procedure Act regarding the noticing of the proposed rule changes with the Colorado Secretary of State, and the publication in the Colorado Register.

10:12

Exhibit 2 contains documents numbered 2A through 2D.

10:19

Exhibit 3 contains the documents demonstrating compliance with the Administrative Procedure Act regarding the filing of the proposed rule changes with the Department of Regulatory Agencies.

10:36

Exhibit 3 also includes the requirements for the cost benefit analysis. Exhibit 3 contains documents numbered 3A through 3D.

10:50

Exhibit 4 consists of a screenshot from the Department's website, establishing that the Department complied with the requirement to have the proposed rule changes, the proposed statement of basis and purpose and statutory authority, and information regarding the public hearings such as the location, date, and time, available for inspection five days prior to the hearing.

11:20

Exhibit 5 is the proposed statement of basis, and purpose and statutory authority required to be a part of the rulemaking record pursuant to section 24-4-103(4)(a)

11:36

of the Colorado Revised Statutes. Exhibit 6 is Senate Bill 21-263 that provides context for the proposed rule changes.

11:53

Exhibit 7 contains the documents related to the adoption of the emergency rules. Exhibit 7

12:01

contains the documents numbered 7A through 7K.

12:10



Exhibit 8 contains the outreach that the Department conducted to solicit input from the representatives of various stakeholder interests that may be affected positively or negatively by the proposed changes.

12:29

Exhibit 8 contains the documents numbered 8A and 8D.

12:37

Exhibit 9 contains the outreach to members of the public who have requested to receive notification and updates on all of the rulemakings by the Department. Exhibit 9

12:49

contains documents numbered 9A through 9B.

12:58

Exhibit 10 is a memorandum to maintain a permanent rulemaking record.

13:06

I would like to enter Exhibits 1 through 10 into the record for consideration. I would also like to ask that if the department finds any scrivener's errors that it may correct them. Thank you.

13:24

Exhibits 1 through 10 have been entered into the Record. Thank you. I

13:30

would also ask that you find that all of the statutory requirements of the Administrative Procedure Act have been met at the end of this public hearing. Thank you.

13:47

Let's now have CDOT staff explain the proposed rules.

13:52

Thank you, hearing officer.

13:54

On June 30th, 2021, Senate Bill 21-263 was signed into law, and became effective.

14:03

On August 4, 2021, emergency rules were adopted to align CDOT's

14:08

processes for permitting and enforcement of outdoor advertising devices

14:14

with the new state law under Senate Bill 21-263. The emergency rules will expire on December 2, 2021.

14:25

The previous rules classified signs into four categories to determine whether a CDOT permit was required.

14:32



The four types of outdoor advertising signs were On-Premise sign: a sign that advertises services or products conducted on the premises upon which the sign is located, for example, a fast food restaurant sign that's visible from I-25.

14:52

An Off-Premise sign: a sign that advertises services or products not conducted on the premises upon which the sign is located, for example, a billboard that advertises the Colorado Lottery.

15:05

An Official sign: a sign erected for a public purpose.

15:10

For example, the Welcome to Colorful Colorado Sign. And Directional sign: a sign that directs the traveling public to publicly or privately owned natural phenomena, historic, cultural, scientific, educational, and religious sites, and areas of natural scenic beauty, or outdoor recreation.

15:32

For enforcement purposes, CDOT

15:34

monitored the interstate system, and State Highways for signs not permitted. To determine whether a sign needed to be permitted,

15:44

CDOT was arguably required to assess the purpose and content of the sign.

15:49

In other words, CDOT reviewed the words and pictures of the sign to figure out the type of sign it was.

15:56

Recently, federal courts across the country have determined a permitting and enforcement approach that applies a content based distinction, violates the First Amendment protection of free speech.

16:10

As a result of the recent federal court decisions, Senate Bill 21-263 removed the arguably content based distinction from Colorado's Outdoor Advertising Act, and established a new compensation based approach to determine if a CDOT permit is required.

16:31

Now only signs that are visible from the roadway and generate compensation require a CDOT permit.

16:40

The purpose of the rulemaking permanent rulemaking is to make the emergency rules permanent,

16:46

to update the materials incorporated by reference in the rules,



16:50

and add a new rule for declaratory orders.

16:55

Existing permits will not be affected

16:58

by the proposed permanent rules.

17:01

The proposed permanent rules are found in Handout 1.

17:07

Due to time constraints, non-substantive, or minor technical changes to the Outdoor Advertising Rules will be discussed, will not be discussed, excuse me. Section 1.0 Definitions. We will start with key defined terms that were amended, repealed, or added.

17:29

Rule 1.2 was modified to reference the statutory definition of advertising device

17:37

found at 43-1-403(1) CRS.

17:44

Senate Bill 21-263 amended the statutory definition of Advertising Device to say any outdoor sign, display, device, figure, drawing, message, placard, poster, billboard, or any other contrivance designed contrivance designed, intended, or used to advertise or inform

18:08

for which compensation is directly or indirectly paid or earned in exchange for its erection, or existence by any person or entity.

18:19

And having the capacity of being visible from the traveled way of any state highway, except any advertising device on a vehicle using the highway, or any advertising device that is part of a comprehensive development.

18:34

Rule 1.6 was repealed because the definition of Commercial advertising is no longer necessary.

18:43

Rule 1.8 was modified to reference the statutory definition of comprehensive development, found at 43-1-403(1.5) CRS.

18:59

The definitions of Directional sign in Rule 1.12, Off-Premise sign in Rule 1.18, Official sign in Rule 1.19, and On-Premise sign in Rule 1.20, were deleted to reconcile with the recently amended Outdoor Advertising Act.

19:20

Act, excuse me, and are no longer necessary as types of outdoor advertising signs.



19:27

Rule 1.23 was modified to define permit number identifier to mean a series of numbers assigned by CDOT

19:37

that is unique to the advertising device.

19:41

Rule 1.25 was repealed

19:44

because the definition of premises is no longer necessary.

19:48

Rule 1.34 was added to define Compensation and to reconcile with the recently amended Outdoor Advertising Act.

19:58

The definition of Compensation references the statutory definition found at Section 43-1-403(1.3), CRS. Compensation means the exchange of anything of value including money, securities, real property interests, personal property interests, goods or services,

20:25

promise of future development, exchange of favor or forbearance of debt.

20:31

Section 2.0 Permitting. Section 2.0 sets forth the general requirements for permitting an advertising device.

20:41

Rule 2.1 was modified to delete off premise and directional signs,

20:48

since classifying outdoor advertising signs into four categories is no longer necessary to determine whether a permanent is required.

20:59

Rule 2.2 was repealed because the rule referenced on premise, directional and official signs, which are no longer necessary.

21:09

Now only signs that are visible from the roadway and generate compensation require a CDOT permit.

21:17

Rule 2.3 was modified to better align Section 43-1-411, CRS.

21:26

CDOT is prohibited from issuing or renewing a permit if the advertising device becomes decayed, insecure, or in danger of falling or otherwise is unsafe or unsightly, due to lack of maintenance or repair or from any other cause.



21:44

Rule 2.11 was repealed in its entirety and re-enacted to update the reasons that CDOT may deny, revoke, or deny the renewal of a permit.

21:56

The reasons include providing false or misleading information in applications, failing to maintain the advertising device in good repair, failing to comply with all permit provisions, increasing the size of the advertising devices or violating Federal law or these rules.

22:16

CDOT will notify the applicant or permittee in writing, stating the reason for the denial or revocation of a permit.

22:26

Section 3.0, Notice of Noncompliance Pursuant to 43-1-412, CRS.

22:36

Section 3.0 establishes the requirements for issuing a notice for noncompliance.

22:42

Rule 3.1 was repealed because the written notice requirements are already stated in Rule 2.11(B) and Rule 3.2.

22:55

Rule 3.2 was modified to give a property owner the option to execute an affidavit under the penalty of perjury as evidence that the device is not an advertising device under Rule 3.2(A)(1)(B).

23:15

Section 5.0 Request for Hearing.

23:20

Section 5.0 sets forth the procedures for requesting a hearing.

23:25

Rule 5.0 was repealed in its entirety and re-enacted to align the hearing and appeal requirements with the Administrative Procedure Act.

23:38

A new requirement was added to allow an applicant who was denied a permit to request an expedited hearing within 30 days of the Notice of Denial pursuant to Section 43-1-408(3), CRS.

23:57

Section 6.0 Signs Allowed in Control Areas.

24:02

Section 6.0 specifies the requirements to allow signs in control areas.

24:09



Rule 6.01 was modified to repeal on premise, directional, official, landmark, free coffee, and tourist oriented directional signs, because outdoor advertising signs do not need to be classified into four categories to determine whether a permit is required.

24:30

Rule 6.01 was also modified to replace the term, off premise signs, with the redefined term advertising devices.

24:41

Rule 6.02 was repealed because the requirements for on premise signs are no longer necessary.

24:48

Now only signs that are visible from the roadway and generate compensation require a CDOT permit.

24:56

Rule 6.03 now applies to advertising devices, and not off premise signs,

25:03

since off premise is no longer being used.

25:07

References to directional, official, Landmark, free coffee signs, and tourist oriented directional signs were deleted.

25:17

Section 7.00 Signs in Areas Zoned by Law for Industrial or Commercial Uses.

25:25

Section 7.00 establishes the requirements that allow signs in areas zoned by law, for industrial or commercial uses.

25:36

Rule 7.00(B)(5) was repealed because the requirements to advertise necessary goods and services

25:45

within a five mile radius of the sign

25:48

within areas zoned commercial or industrial after January 1, 1970, is no longer necessary.

25:57

Any references to official and on premise signs were removed from this rule.

26:03

Rule 8.00. This was repealed because requirements for directional and official signs are no longer necessary.

26:15

Rule 9.00 Advertising Devices On Scenic Byways. Rule 9.00 sets forth the requirements that no advertising devices will be erected along a scenic byway.



26:31

Any references to official, on premise and directional signs were removed from this rule.

26:38

Signs that are not.

26:40

Excuse me.

26:44

Excuse me.

26:52

Pardon me.

26:57

Signs that are not advertising devices will not be regulated by CDOT.

27:04

Rule 10.00 and Rule 11.00 were repealed because the requirements for landmark and free coffee signs are no longer necessary.

27:17

Rule 12.00 CEVMS Advertising Devices.

27:24

Rule 12.00 establishes the authority to control the brightness, intervals, spacing, and location of Changeable Electronic Variable Message Signs, also known as CEVMS

27:40

advertising devices.

27:44

Any references to off premise were replaced with advertising device.

27:49

Rule 12.00(C)(2)(a) was modified to clarify that CEVMS that are facing the same direction of travel and on the same side of the highway may not be placed within a thousand feet of the other.

28:07

This rule also removed the requirement that on premise signs inside 50 feet of the advertised activity not be counted for spacing purposes, because on premise signs are no longer used in the regulation of outdoor advertising.

28:27

Rule 13.00 Materials Incorporated by Reference.

28:33

We are updating the materials incorporated by reference in Rule 13.00.

28:40

Rule 14.00 Declaratory Orders.



28:45

Rule 14.00 establishes the requirements for petitioning the Executive Director or her designee for declaratory order, to terminate controversies or to remove uncertainties pertaining to a statute, rule, or order with respect to outdoor advertising in Colorado.

29:07

This rule outlines the required contents of a petition, the grounds by which a petition will be refused, and the procedures that will apply if the Executive Director or a designee determines to entertain a petition for declaratory order.

29:26

This concludes our presentation on the proposed permanent rules. Thank you.

29:36

OK, at this time, we will start with the testimony phase of the Rulemaking hearing. Each speaker will have five minutes to speak.

29:43

We will provide visual cues regarding the time limit for your testimony.

29:47

A yellow card will signal one minute remaining for your testimony, and a red card will notify you that your time is up.

29:54

Please limit your testimony to only the proposed rule revisions.

29:58

Please speak clearly and slowly for the recording, state your full name, and spell your name for the record.

30:05

Additionally, please identify the name of the organization that you're representing, if applicable.

30:11

This hearing is to receive your public testimony, as such, I've requested that CDOT staff not respond to all comments.

30:19

However, if they see an opportunity to clarify something that was misunderstood in the proposed rule revisions, or ask a clarifying question to be certain they understand the public comment, they are free to do so.

30:32

First, I will refer to the registration sheet and call on those individuals who indicated that they desire to provide testimony.

30:38

For the second round, I will call on any individuals who have now decided that they wish to speak.



30:43

I'll ask you to please raise your virtual hand so we know who to call on.

30:47

So we will go ahead and start this morning with Marcus Dannel. Marcus, are you there?

31:01

Can you hear me?

31:03

Yes, we can. Please go ahead.

31:05

Thank you. Yeah.

31:06

My name is Marcus Dannel, M A R C U S D A N N E I L, I represent Mile High Outdoor, as well as the Colorado Outdoor Advertising Association, C O A A.

31:25

I would like to, for the record, state that Mile High Outdoor as well as the COAA, do support the changes that we just went through.

31:37

However, that being said, I do think that in the grounds for noncompliance Rule 3.2, I would, as we have previously suggested, the 60 day time to cure is far, far, far too long

32:00

to give a sign owner

32:05

basically, that, that is, that is breaking the rules.

32:07

It's far too long a time to cure. I'm not sure where that number came from.

32:13

I had previously suggested something in the vicinity of 10 to 15 days and I would suggest that again, that is plenty of time to make adjustments to a sign that is breaking the law, so to speak.

32:28

60 days allows rule breakers time, plenty of time to, to sell illegal advertising

32:38

and allow a full campaign to run. Then to take it down and get in compliance, and then do it all over again.

32:46

And I believe that that is the intent of this rule, or this section, is, is to, is to essentially stop people from, from breaking the law, and having them take the sign down. But, but realistically, that 60 days, is, doesn't do anything. So, with that, I'll end my testimony, and thank you so much for the time. Thank you.



33:18

Alright, next, we have Todd Messenger.

33:21

Todd, are you there?

33:36

Thank you.

33:38

Hearing Officer Hogle, can you hear me OK?

33:40

Yes, we can. Please go ahead.

33:42

Thank you, sir. We appreciate the opportunity to address this proposed rulemaking this morning.

33:47

I'm Todd Messenger, an attorney at Fairfield and Woods PC, 1801 California Street, Denver.

33:53

Our firm represents Street Media Group, LLC, and Turnpike Media, LLC, both local Colorado companies. Both are involved in out of home advertising.

34:03

And in addition to that, the Street Media company is also a sign contractor involved in the construction of signs.

34:09

Mister Lovato advised that signs that are not advertising devices will not be regulated by CDOT.

34:16

The definition of advertising device under the Rules is not about compensation for the display of messages.

34:22

And so, we don't understand why Mister Danneil believes that the intent of the sections to prohibit certain content based on whether the owner of the sign gets paid to display that content.

34:33

Very specifically, and we ask, ask the hearing officer to look at this carefully.

34:38

The definition of advertising device under the statute and the rule means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or any other contrivance designed intended or used to advertise or inform.

34:51

And here's the critical part: for which compensation is directly or indirectly paid or earned in exchange for its erection or existence by any person or entity and having the capacity of being



visible from the travel way of any state highway except any advertising device on a vehicle using the highway or any advertising device that is part of a comprehensive development.

35:14

Comprehensive development and compensation are also defined in the statute and the rules.

35:19

The term vehicle using the highway does not include any vehicle parked near said highway for advertising purposes.

35:25

So if a sign is an advertising device, it is regulated under these rules.

35:28

And if a sign is not, it is not regulated under these rules, and CDOT is advising that

35:35

somehow it's going to know difference.

35:38

I drove in this morning to the office.

35:40

I drove Colfax from Colorado to to Broadway essentially. And there were thousands of signs along that state highway.

35:51

I don't know how CDOT's going to tell which one of those are erected or exist,

35:57

you know, through direct or indirect payment of compensation.

36:00

And CDOT's analysis of this so far has been lacking.

36:04

The proposed rules do not solve the underlying constitutional issues that CDOT set out to solve. And as such, they can't be adopted under Colorado Law.

36:13

The 1971 agreement and the Highway Beautification Act, which are based on the content of messages displayed on signs, are what these rules are intended to be implementing.

36:23

It's at least incredibly difficult, but probably impossible to implement a patently content based law in a content neutral manner,

36:31

so CDOT's in a conundrum. The proposed rules are irrevocably tainted and presumptively unconstitutional under Reed versus Gilbert.

36:39



And simply put, if the aims are unconstitutional, the means are also unconstitutional.

36:44

So in order to regulate signs on a constitutional matter, both CDOT and the federal government must change their way of thinking.

36:51

And that is not evident here, particularly after Mister Danneil's comments in the record.

36:57

CDOT should ask the Secretary of Transportation or a court for relief from the Highway Beautification Act's defunding provisions, and create room to solve this problem for real.

37:06

The US Supreme Court will decide Reagan versus Austin next year, which will more than likely provide the basis for invalidating the Highway Beautification Act, anyway. So this is a great time to contact Secretary Buttigieg and start over.

37:19

In the meantime, changing the Ramp Rule, 2 CCR 601-3 7.00(D)(2)(b), would go a long way towards reducing the conflicts that are already out in the environment and reducing future conflicts that are inevitably going to spring up.

37:35

More importantly, if CDOT is sincere about its commitment to effective controls under the Highway Beautification before that Act is likely struck down,

37:43

the proposed changes to the Ramp Rule will also fix CDOT's problem with a number of illegal signs that continue to stand today and have permits that CDOT renews year after year.

37:52

Those signs are specifically identified in our correspondence, dated September 1st, I'm sorry, dated October 1st, that should be in this record, September 30th, that should be in this record.

38:02

To be clear, 23 CFR 750.705, the implementing rules for the Highway Beautification Act requires that effective controls, which CDOT is trying to provide here, include a requirement for States to remove illegal signs expeditiously.

38:18

The provision in the proposed rules that would allow for permit renewals for illegal signs are an ever present risk to Colorado's Highway funding.

38:25

Moreover, there are at least 18 permits identified in our letter that were issued and repeatedly renewed for illegal signs.

38:32

CDOT knows these are a risk, too.



38:34

Over the years, CDOT has entered into a number of agreements with outdoor advertising companies, including companies within Mister Danneil's organization in which CDOT allows their signs to continue to exist even though they're illegal provided that the Federal Highway Administration doesn't successfully challenge them with an unappealable order.

38:53

It flies in the face of effective controls.

38:56

We urge CDOT to amend the proposed rules, to include modifications to the Ramp Rule that were abandoned in 2020. Adoption of those provisions in 2020 would have avoided a sharp legal conflict. And adoption of those rules today would go a long way toward solving both CDOT's litigation problems, and reducing CDOT's existing high risks of losing 10% of its Federal Highway Funds

39:16

by making a large number of illegal signs and the environment legal by adoption of the new rule, with a Ramp Rule change in it. We provided a copy of what that Ramp Rule ought to look like

39:27

and CDOT's narrative in support of it from 2020, into this record via our letter, dated yesterday.

39:33

We appreciate the time of this tribunal. And we're here to answer any questions if there are any. Thank you.

39:55

Next on our list to testify is Wayne Osterloo. Wayne are you there?

40:03

Yeah I'm here. Can you hear me?

40:04

Yes, we can. Go ahead, please.

40:06

OK, thank you, Hearing Officer Hogle, and first, I'd like to thank everyone for the opportunity to speak, and thank CDOT for providing some answers to some stakeholder questions.

40:19

A lot of them were mine. Been doing this for 27 years in the State of Colorado and I need clarification of how these rules would be enforced going forward.

40:31

I'm really dumbfounded, tell you the truth,

40:34

why, permitting aside, buying a structure and paying to have it installed isn't considered compensation being indirectly, or directly paid for the sign's erection or existence.



40:47

But I do understand why you said it because if you wouldn't have said this, and you would have included this,

40:56

you would have drawn in all the thousands of on premise signs,

41:01

political signs and ideological signs in this state that are along the state highway.

41:08

So I understand why you said it. Now,

41:14

as you're going forward here,

41:17

I think this interpretation creates way too many loopholes. Myself personally? Like I said, I've been doing this 27 years,

41:25

my family's been in this business for 59 years,

41:29

I've come up with two methods already to skirt this compensatory mechanism and actually erect signs that I know would not comply with the Highway Beautification Act.

41:42

But then, again, it's not my responsibility to comply with that Highway Beautification Act.

41:48

As Mister Messenger stated, the State of Colorado has entered into an agreement with the Federal government.

41:56

I think it was signed on July 9, 1971 to comply with the Federal Government Highway Beautification Act, the terms and conditions listed in there.

42:07

And one of them in there is to provide for effective control.

42:11

And that means not allowing any signs that don't comply with the terms and conditions the State of Colorado agreed to back in 1971.

42:22

There's a great example, not even one of the two ways I am going to go out and do this, and to me right now,

42:28

this provision here on compensatory language,



42:32

I view this as CDOT driving down our State Highways and throwing

42:36

bags of money out of the damn window, excuse my language, landing on private property, and I'm going to go out and pick them up.

42:44

And I'll give you a great example.

42:47

I'll use Mister Lovato, myself, Miss Carberry, as an example.

42:52

Mister Lovato, you have your position, CDOT regulatory authority on outdoor advertising, that's yours.

43:00

Miss Carberry, let's pretend you are an owner of a business at an interstate interchange, let's say a hotel, you own a hotel.

43:09

Myself, I'm a landowner, I own a half a mile of frontage

43:14

maybe 2 to 3 miles away from the interchange adjacent to the interstate.

43:19

It is not zoned for commercial or industrial purposes.

43:24

What we have now today, I could not allow any what we consider off premise signs on my property because it's not zoned for commercial or industrial purposes.

43:36

Now, if you pass this language, you're only considering advertising devices to be ones that are being compensated for, Ms. Carberry can come to me

43:47

fact I could be best of friends might be cousins I don't know

43:51

for this example. Say, Wayne I would like to erect some signs on your property.

43:59

I don't care you're a good friend. Yeah. Go ahead, put up all the signs you want.

44:03

You can go to the local government, they can say, yes, we'd be happy to let you do it.

44:08



We'd love to have more traffic come to your hotel, more tax revenue coming in for us. And she can get all the local permits. She can buy the structures. She can install them, put her own ad copy up there.

44:23

Today, that would be illegal.

44:25

Fact she could space them 300 feet apart, violate the 500 feet, violate the zoning provisions.

44:31

Where does the compensatory provision come in?

44:35

I don't understand that part of it.

44:37

That just allows this big loophole.

44:40

Any business owner individual can now go out, and erect signs, on private property.

44:47

There's no compensation exchanged between them.

44:53

CDOT has no regulatory authority over them. They're not advertising devices.

44:57

This violates the intent of the Highway Beautification Act in the agreement the State of Colorado signed with the Federal Government.

45:08

And for that reason, I don't see how you can get around that. Any way you tried to get around it,

45:13

I've been trying to think of, you're going to be dragging in thousands of on premise signs, political signs, ideological signs,

45:25

and I know it's a nightmare CDOT does not want.

45:27

And I'll just say, in conclusion, I've always been a firm believer in the Colorado Supreme Court's decision.

45:34

in *Pigg v. Department of Transportation*.

45:38

And you can find that at 746P2D961,

45:46



where they flat out, as stated in there,

45:48

they had four cases in three years, from 1986 to 1988, and they got it right.

45:55

They pretty much said the way the law was set up in Colorado, state of Colorado's adopted the federal government's definitions and restrictions.

46:03

The Feds allow it, we allow.

46:08

And I've always been a believer of that. Now the other interesting thing about that case?

46:13

Is this guy, if this was gonna go on today with these new rules and regulations, you would not be able to go after him.

46:23

He lost at the Supreme Court over 50 ideological signs, that CDOT stated they had to regulate.

46:33

Mister Osterloo, Mister Osterloo your time is up. You pass this, today, you would not have any regulatory authority over him.

46:41

But I do thank you for your time. I hope you reconsider this.

46:44

This is going to create a mess an absolute mess in this state if you pass this.

46:51

Thank you.

46:54

Thank you.

47:03

That is all the names that signed up in advance before the hearing started to wish to testify. At this time, I will open it up to

47:12

those who have perhaps changed their mind and are now inspired to give comments.

47:16

If you have not already spoken and you would like to put time on the record, please raise your virtual hand.

47:24

Click on the little hand icon there, as was explained at the beginning. Raise your virtual hand so we can call on you and you can give your testimony.



47:32

There's anyone that has not yet spoken this morning and would like to now is your chance.

48:08

Mister Messenger, do you have follow-up comments that you would like to make, is that why your hand is up? I'll unmute you for.

48:25

It looks like you're self muted.

48:49

There we go.

48:53

(inaudible)

48:54

Thank you, Ms. Lutz. I guess my question was a procedural one. If there are no other comments

49:04

scheduled that was allotted for this hearing, is there a follow up? Todd, you're kind of breaking up I don't know if it's just on my end.

49:18

Can you try again? Can you hear me better now? Yeah, that's a little better, yeah, thank you.

49:30

Sure, my question was a procedural one. I want to make sure that we fully respect this process and how it's supposed to be carried out, although it's unfamiliar to me.

49:36

So I just ask given that the amount of time that was allotted for this hearing, and the fact that there aren't, other participants that would like to speak at this time, Is there opportunity for a little bit of follow-up?

49:52

Hearing Officer Hogle I think we can allow for

49:58

additional follow up within the five minute time limit.

50:05

There appears to be an echo.

50:11

I would agree, if you'd like to go ahead and add to your previous comment, Mister Messenger, go ahead, just please be mindful of the five minute limitation.

50:22

We don't want to just have folks going off endlessly.

50:28



Not that you would, but you understand, but if you'd like to go ahead and add additional comments right now, please go ahead.

50:36

Thank you Hearing Officer Hogle, I do tend to go on and on so I will try to keep this brief and I appreciate the generosity in terms of that time. Just to remind the participants in this proceeding CRS, 24-4-103, which controls this hearing and the promulgation of rules,

50:57

Section 4B sets out all proposed rules shall be reviewed by the agency. And no rules shall be adopted unless one, the record of the rulemaking proceeding demonstrates the need for the regulation.

51:10

There's nothing on this record that suggests that signs for which compensation is exchanged for their erection or existence are any different from any other sign in terms of their impact on health safety and aesthetics.

51:25

Or in terms of their fit with the Federal Highway Beautification Act in terms of the types of signs that are supposed to be regulated as such, since the record is devoid of evidence to support the rule,

51:35

the rule can't be adopted under B1. Under B2 the statutory authority existing for the regulation, these rules would allow the Ramp Rule to continue.

51:45

And the Ramp Rule is not authorized by the statute.

51:48

This statute actually says that the rules can't be more restrictive than the statute, and, as such, the Ramp Rule can't be implemented. And it should be a part of this rulemaking process to get rid of it.

51:59

Now, the Colorado Outdoor Advertising Association will tell you that they believe that the 1971 agreement needs to be modified to get rid of the Ramp Rule. I strongly disagree. I don't think that the 1971 Agreement is codified, and I don't think it's constitutional, so CDOT should go to the Secretary of Transportation. And they should work that out. This is a pretty big deal and the Federal Highway Beautification Act will be attacked probably here shortly given the Reagan versus Austin case pending before the US. Supreme Court.

52:27

Third, to the extent practical, where the regulation is clearly and simply stated so that it's meaning will be understood by any party required to comply with the regulation.

52:35



I think that Mister Danneil is a, probably, a reasonably smart guy. And I made it through law school, so I must be OK. And CDOT is full of Engineering professionals with advanced degrees.

52:46

And we can't agree about what the definition of advertising device means. And, in fact, a CDOT employee whose (inaudible) Mister Hoftiezer's boss

52:55

described this provision as vague.

52:57

He didn't understand how to apply it either. So this number three can't be met.

53:01

The regulation does not conflict with other provisions of law. It's in total conflict with the Federal Highway Beautification Act

53:07

even though we maintain that the Federal Highway Beautification Act is unconstitutional and it conflicts with the CDOT

53:13

the Federal or the, I'm sorry, the State mandate that the rule be no more restrictive than the enacting legislation, and then with regard to the duplication or overlapping of regulations, that's OK. We don't have any beef there.

53:26

So, still, four out of five of the criteria that are required prior to the adoption of a rule are not met.

53:33

There is literally zero evidence on this record or anywhere in the CDOT shop that would suggest that a safety or aesthetic hazard results from a sign for which compensation is paid for the erection or existence of the sign, zero record evidence. We have provided evidence in our September 30th letter

53:52

that shows to the contrary, that there is no way that a permitting system that I think the current inventory is 1664 permits, can control safety and aesthetics in an environment where there are at least 50,000 signs, maybe hundreds of thousands of signs along Colorado's Federal and State Highways.

54:13

So these rules can't be adopted. CDOT needs to go back to the drawing board.

54:18

And we will oppose these rules if they are promulgated because they don't make any sense. And we can't make heads or tails, and whether our clients work is affected by these or not.

54:27



And if the ramp rule is taken out, and we just apply for permits on things we don't think need permits, we would get those permits, and we'd be good to go.

54:35

So, we urge CDOT to fix the Ramp Rule, get some breathing room, and do something that's constitutional by changing the agency's way of thinking about signs, and by working with the Secretary of Transportation, who is himself a Rhodes Scholar, a genius, to figure this problem out.

54:54

These are important free speech rights that are being violated on a daily basis by rules that are unconstitutional for the last six years under Reed versus Gilbert.

55:03

Respectfully disagree with Mister Osterloo about the applicable law Reed versus Gilbert controls

55:08

and these regulations have a content based purpose, therefore fail the second prong of Reed.

55:14

They are a violation of First Amendment rights, and therefore, under the law, can't be adopted. And if they are adopted, they can't stand.

55:21

We appreciate your time. Thank you for the additional five minutes. Have a wonderful day.

55:27

Thank you.

55:28

Mister Osterloo, I see that you have also raised your hand, would you have additional comments?

55:32

If so, please unmute and go ahead and again, be mindful of the time limitation. Thank you.

55:41

Well, one additional comment I really have on this is, really, if you enact this, there's no way you can enforce it.

55:49

And not bring in the on premise political ideological signs.

55:54

I beg you to go read the Pigg case, and ask yourselves, what would've CDOT done? What would CDOT do today if that case was presented to you under these rules and regulations?

56:07

The whole problem we have on this is like Mister Messenger said, I think, is an inconsistency on CDOT's

56:14



interpretation of the Rule 7(D)(2)(b) the 500 feet from interstate interchange.

56:21

This is the nexus of why we're here today.

56:24

Cause CDOT flip flops, back and forth.

56:28

The language from that rule is adopted straight out of the 1971 agreement with the federal government, two sides to the party, federal government, State of Colorado.

56:38

Supreme Court stated in the Pigg case,

56:41

We've adopted the federal government's definitions and restrictions. If they would apply that on a consistent basis,

56:50

then all the signs, like Mister Messenger said that they cited as being illegal, would all be legal again, but CDOT waffles back and forth.

57:00

Sometimes they'll use the federal government's definition on that, and allow them in urban areas. That's how that's why we got all these permits out there, that he contends are illegal.

57:11

And I would agree they would be illegal if you go by CDOT's more restrictive view of it, that urban areas aren't allowed. Only incorporated areas are allowed.

57:23

So with that, in conclusion, I'd just like to say if you pass this,

57:28

I guarantee you, come Monday morning, I'm coming out of retirement, I'm gonna go out on these private properties.

57:35

I've got two ways to bypass this compensatory language.

57:40

To start putting signs in

57:41

areas that I know do not comply with the Highway Beautification Act. I know they won't.

57:47

But as a citizen, and as a business owner, it is not my responsibility to comply with any part of the Highway Beautification Act.

57:58



I don't have any responsibility.

58:01

It's the state of Colorado's responsibility under the Federal Highway Beautification Act to enact what they call

58:10

effective control.

58:12

It's the state's responsibility.

58:14

I only have to meet state law. And if you pass this, I guarantee you, I'm going to take advantage of it and go harvest these bags of money

58:24

you guys are throwing out onto private property along adjacent to all the highways.

58:29

The same thing, and I hope, Mister Lovato and Miss Carberry discuss the scenario I give them with her being the hotel owner him being the head of CDOT me being the property owner and she comes to me, I don't charge her a dime. She goes out and does it.

58:46

Today, that's illegal, you pass this, it will be legal, because there's no advertising device created.

58:53

And I'll leave it at that. Thank you so much for your time. Thank you.

59:02

Once again, I'm going to offer up an opportunity, for anyone else who has not yet testified.

59:07

If you are interested in doing so, at this time, please raise your virtual hand, so that we can call on you.

59:27

Alright, seeing no hands raised.

59:29

That concludes the testimony portion of this hearing.

59:33

I'm going to admit the registration form as Exhibit 11.

59:39

And you can submit any written comments you have electronically, to dot_rules@state.co.us by the close of business on Tuesday, October 5, 2021, to have them included in the record for consideration. Exhibit 12 will include all the written comments received electronically by October 5th at 5:00 PM.



1:00:02

I will also be including the recording of this hearing, as Exhibit 13.

1:00:12

At this time, I make my findings that the executive director's designee properly delegated authority to a hearing officer to conduct this hearing.

1:00:19

The department met the requirements of the Administrative Procedure Act and that this rulemaking hearing has been conducted in conformance with the Administrative Procedure Act.

1:00:28

I will take all written comments and oral testimony found in the record regarding the proposed rule revision under advisement when making my recommendation to the executive director or her designee on whether to adopt the proposed rule revisions or to further amend them based on the record.

1:00:44

I will grant the department's request to correct any scrivener's errors prior to submitting the rules to the executive director or her designee for final consideration. And finally, find that the public had an opportunity to comment through oral testimony and through written comments at this hearing.

1:01:02

Oral testimony is now closed for this hearing. You can submit any written comments electronically dot_rules@state.co.us by 5:00 PM on Tuesday, October 5, 2021, to have them included as part of the record for consideration.

1:01:18

The written comment phase will close at 5:00 PM on Tuesday, October 5th.

1:01:25

This hearing is adjourned. Thank you.

Exhibit 14



COLORADO

Department of Transportation

Office of the Executive Director

2829 W. Howard Place
Denver, CO 80204-2305

Delegation of Rulemaking Authority
Rules Governing Outdoor Advertising in Colorado, 2 CCR 601-3, *et seq.*

I, Shoshanna Lew, Executive Director of the Colorado Department of Transportation hereby delegate and/or assign all duties relating to the adoption of permanent rules governing outdoor advertising in Colorado, 2 CCR 601-3, *et seq.* to Herman Stockinger, Deputy Executive Director of the Colorado Department of Transportation pursuant to § 43-1-105, § 43-1-107, C.R.S. and other relevant authority.

This delegation and/or assignment is necessary and reasonable to comport with my previous delegation and/or assignment, entered into on or around August 3, 2021, of all duties relating to the adoption of emergency rules governing outdoor advertising in Colorado, 2 CCR 601-3, *et seq.* to Herman Stockinger, Deputy Executive Director of the Colorado Department of Transportation pursuant to § 43-1-105, § 43-1-107, C.R.S. and other relevant authority.

Shoshanna Lew
Executive Director
Colorado Department of Transportation

9/20/2021

Date

