



U.S. Department
of Transportation

**Federal Highway
Administration**

Memorandum

HDA - MT

APR 10 1996

HE IS ~~THE ATTACHMENT TO Mr. LORNEZ'S MEMORANDUM (sorry for the inconvenience)~~

Subject: **INFORMATION:** Outdoor Advertising Control on Scenic
Byways and the National Highway System (NHS)

Date: April 5, 1996

From: Associate Administrator for
Program Development

Reply to
Attn. of: **HRW-20**

To: Regional Administrators
Federal Lands Highway Program Administrator

The purpose of this memorandum is to provide an update on the role of the Federal Highway Administration (FHWA) in assuring that the intent of Congress is met concerning the implementation of 23 U.S.C. 131, Control of Outdoor Advertising.

SCENIC BYWAYS

Title 23, United States Code, Section 131(s) prohibits the erection of new signs which do not conform to Section 131(c) in areas adjacent to Interstate and primary highways which are designated as a scenic byway under a State scenic byway program. A State is considered to have a scenic byway program when one or more public roads or highways under State, Federal, or local ownership have been designated by the State through legislation or some other official declaration as a scenic byway, highway, road, trail, etc., consistent with the State's unique criteria for designating scenic byways.

The actual label, specific identifying characteristics and termini for these designated scenic byways are the responsibility of each State. State law governs the issue of what constitutes a designated scenic byway. By separate Action memo dated April 2, we are requesting each State to update information to be used in compiling a National inventory of State scenic byway programs and their byways.

In June 1993, we advised that these byways do not need to be continuous. That is, a State may exclude those highway sections from designation that lack scenic value and which otherwise would be included only to preserve system continuity. Such exclusion, however, must have a reasonable basis and not done solely to evade Federal requirements.

A few States have attempted to automatically exclude commercial and industrial areas from scenic byway designation without justification. The FHWA has worked with these States to assist them in meeting the requirements of the Federal law.

Section 314, Scenic Byways, of the National Highway System Designation Act of 1995 amended Section 131(s). This section codified FHWA's existing policy on State designated scenic byways as articulated in our June 14, 1993, memorandum. It allows States to exclude from

scenic byways designation, any segment of the highway that is inconsistent with the State's criteria for designation. The Secretary of Transportation has the authority to prevent actions that evade Federal requirements. Trail blazer signs and mapping of excluded segments is not prohibited.

Although the State does not have to obtain prior approval from FHWA, this would not preclude FHWA from examining proposed exclusions to ensure that these exclusions are made on a reasonable basis.

NATIONAL HIGHWAY SYSTEM

With approval of the NHS, there are probably some highways that are included in the NHS that were not formerly on the primary system. These highways would now be subject to outdoor advertising control including the Section 131(s) restrictions if part of a State designated scenic byway. Identification of highways subject to control under the Highway Beautification Act and the NHS are the responsibility of each FHWA Division Office and State highway agency.

Because Section 131(t) of Title 23, United States Code, defined "primary system" and "Federal-aid primary system" for purposes of control under the Highway Beautification Act, it will generally not be necessary to amend Federal/State Agreements or State law to include routes added to the NHS which were not on the Federal-aid primary system. However, agreements and State laws should be examined to assure there is not prohibitive language precluding States from extending outdoor advertising controls to the NHS.

There may be instances where a State, local government, etc., has an ongoing amortization program which would impact a route that is now subject to the control of outdoor advertising under the Highway Beautification Act. In these cases, no lawfully erected outdoor advertising sign located adjacent to a controlled highway on the NHS can be required to be removed without payment of just compensation. For example, if an existing sign on a route added to the NHS is in the middle of an amortization period where the ordinance declared the sign to be removed in 1992, with a 5-year amortization period, the sign cannot be removed without the payment of just compensation.

The States should update their outdoor advertising sign inventories to include highways not previously controlled but which are now included in the NHS. Additionally, each State must continue to make a good effort and reasonable progress in expeditiously removing illegal signs located adjacent to controlled highways.



Thomas J. Ptak