

# CHAPTER 63

## Department of Transportation

Statutory Authority: 1976 Code §§ 56-3-2410, 56-5-3660 to 56-5-3700, 56-5-5350 to 56-5-5420, 56-5-6180, 56-23-20, 56-23-60, 57-3-610(12), 57-5-1650, 57-25-170, 57-27-10 to 57-27-100, and Chapter 11 of Title 56

### ARTICLE 1 PROJECT PRIORITIZATION

(Statutory Authority: 1976 Code Section 57-3-110(8))

#### **63-10. Transportation Project Prioritization.**

##### A. Definition of Terms.

1. "Commission" means the governing board of the Department of Transportation.
2. "Council of Government ("COG")" means the entity organized pursuant to S.C. Code Section 6-7-110 and designated to carry on the continuing, comprehensive, cooperative transportation planning process for a rural area.
3. "Department" or "SCDOT" means the South Carolina Department of Transportation.
4. "Metropolitan Planning Organization ("MPO")" means the entity designated to carry on the continuing, comprehensive, cooperative transportation planning process for an urbanized area in accordance with 23 USCA 134 and applicable regulations.
5. "Project priority lists" means priority ranking of projects within program categories proposed for inclusion in the State Transportation Improvement Program ("STIP") or State Program. The priority lists shall be established by the Commission based upon engineering recommendations and advice, application of the relevant criteria set out in S.C. Code Section 57-1-370 (B)(8), and any other criteria that supports the purpose and need for the projects in each program category.
6. "Secretary" means the Secretary of Transportation of the Department.
7. "State Highway Engineer" means the deputy director of the division of engineering of the Department.
8. "State Highway System" means the system of roads that the Department is responsible for maintaining pursuant to Section 57-5-10 of the S. C. Code of Laws, 1976, as amended.
9. "Statewide Multimodal Transportation Long Range Plan" ("Multimodal Plan") is a long-range statewide transportation plan with a minimum 20-year forecast period at the time of adoption that provides for the development and implementation of the multimodal transportation system for the State as required by Section 57-1-370(A). It shall be consistent with federal planning requirements. It includes by reference all applicable plans, policies or reports relevant to the development of the plan. Projects from the Multimodal Plan may be ultimately included in the STIP or State Program.
10. "Statewide Transportation Improvement Program ("STIP")" means a prioritized program of federally funded transportation projects or phases of projects and other regionally significant projects. The STIP must cover a period of at least four years and must be updated at least once every four years. The STIP must be consistent with the Multimodal Plan and MPO Transportation Improvement Programs ("TIPs"). All federally funded projects and/or categories of projects are

required to be included in the STIP in order to be eligible for federal funds pursuant to Title 23 and Title 49, Chapter 53 of the United States Code.

11. "State Program" includes the state non-federal aid improvement program and maintenance activities funded wholly by state funds administered by the Department without federal funding participation.

12. Transportation Asset Management Plan ("TAMP") is a performance and risk based decision making tool designed to assist the Department in analyzing long-term system performance and condition to guide investment decisions. The TAMP is based on a 10-year horizon. It includes objectives and performance measures for preservation and improvement of the State Highway System. It is used to establish fiscally constrained performance goals for transportation infrastructure assets such as pavements and bridges.

B. The Statewide Multimodal Transportation Long Range Plan ("Multimodal Plan").

1. The Multimodal Plan will be updated approximately every five years, or more frequently if deemed appropriate by the Commission. The plan will be developed in accordance with all applicable federal guidelines and regulations, including a minimum 20-year forecast period estimating future transportation needs and projected costs. It will include goals and objectives for long-term strategies for addressing transportation needs across the State.

2. The Multimodal Plan will be subdivided into at least the following categories:

- a. bridges;
- b. interstates;
- c. pavements;
- d. mass transit;
- e. statewide significant corridors;
- f. passenger and high speed rail;
- g. rail corridor preservation;
- h. non-motorized transportation modes;
- i. State Strategic Highway Safety Plan;
- j. MPO long-range plans;
- k. COG long-range plans; and
- l. statewide plan for 20-year routine maintenance needs.

3. The Multimodal Plan will include a public involvement plan providing for multiple opportunities for input by an advisory task force or committee, COG or MPO, transportation user groups and the general public. A copy of the draft plan will be made available to the public for review and comment at each engineering district office and COG office.

4. The Secretary of Transportation will present the Multimodal Plan to the Commission for approval along with all comments received. After approval by the Commission, the final Multimodal Plan will be published on the SCDOT website. The Multimodal Plan may be revised from time to time as permitted by federal law or regulation.

C. Project Priority Lists.

1. The Commission shall establish project priority lists for each program category proposed to be included in the STIP and the State non-federal aid program. The Secretary shall present a recommendation for Commission approval using a detailed analysis and evaluation applying the specific criteria applicable to each program category. Local option sales tax projects and projects funded solely by C-Funds are excluded from the project prioritization process established by S.C. Code Section 57-1-370(B)(8).

2. The project priority lists provide information to the Commission and the public. The order in which projects appear in the priority lists is the order in which those projects will be placed in the STIP unless the Commission provides a written justification based upon circumstances that warrant a deviation from the established order on the lists. The circumstances upon which the Commission may deviate from the lists are significant financial or engineering considerations, delayed permitting,

force majeure, pending legal actions directly related to the proposed project that is bypassed, federal law or regulation, or economic growth.

3. The State Highway Engineer shall develop a ranking process for applying uniform and objective criteria applicable to each program category. The ranking processes will be described in engineering directives issued by the State Highway Engineer. The ranking processes shall list the criteria to be considered in each program category, and include a methodology for applying the criteria and the weight to be accorded each criterion where applicable. The criteria shall include any criteria listed in S.C. Code Section 57-1-370 (B)(8) which is relevant to the program category and any other criteria relevant to the program category.

4. In program categories where evaluating environmental impacts is an approved criterion for prioritization, environmental impacts to be evaluated should consider the potential adverse effects of the project on natural resources.

5. Alternative transportation solutions will be considered as a part of the environmental review process rather than during the project prioritization process.

6. Local land use plans will be considered as part of the long range planning process rather than during the project prioritization process.

7. In program categories where evaluating potential for economic development is an approved criterion for prioritization, the evaluation of potential economic development will include a consultation with the Department of Commerce as well as the use of transportation economic development models.

8. Financial viability, including a life cycle analysis of estimated maintenance and repair costs over the expected life of the project, will be considered in the development of the TAMP rather than during the project prioritization process.

#### D. Statewide Transportation Improvement Program.

1. A draft of a new STIP or any revision to the STIP to adjust category or project information relating to cost, schedule, scope, and priority will be prepared under the direction of the Secretary of Transportation and presented to the Commission for consideration and approval. The draft STIP will include fiscally constrained project cost and schedule information for the reporting period and will be based on estimated federal-aid funding levels by program. The draft STIP will be made available to the public for review and comment at each SCDOT district office and at the COG offices.

2. The draft STIP will be presented to the Commission for review along with any relevant project priority rankings, the recommendations of local transportation technical committees, and all public comments received. The Secretary may make recommendations to the Commission regarding any funding changes to the annual allocation plan resulting from federal legislation.

3. The STIP adopted and approved by the Commission will reflect Commission decisions on the overall funding distribution for the federal-aid programs during the years covered by the STIP. After approval by the Commission the STIP will be submitted to the Federal Highway Administration and the Federal Transit Administration for final approval and published in the SCDOT website.

#### E. State Program.

1. A draft of a new State Program or any revision to the State Program to adjust category or project information relating to cost, schedule, scope, and priority will be prepared under the direction of the Secretary and presented to the Commission for consideration and approval. The draft State Program will include fiscally constrained project cost and schedule information for the reporting period and will be based on estimated funding levels by program. The draft State Program will be made available to the public for review and comment at each SCDOT district office and at the COG offices.

2. The draft State Program will be presented to the Commission for review along with any relevant project priority rankings, and all public comments received. The Secretary may make recommendations to the Commission regarding any funding changes to the annual allocation plan. The State Program adopted and approved by the Commission will reflect Commission decisions on the overall funding distribution for the program during the years covered by the State Program.

**63-30.** Repealed.

**HISTORY:** Former Regulation, titled Commission Approval of Actions, had the following history: Added by State Register Volume 32, Issue No. 6, eff June 27, 2008. Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4685, eff May 26, 2017.

**63-100.** Repealed.

**HISTORY:** Former Regulation, titled Secretary of Transportation Approval of Actions, had the following history: Added by State Register Volume 32, Issue No. 6, eff June 27, 2008. Repealed by State Register Volume 41, Issue No. 5, Doc. No. 4684, eff May 26, 2017.

**ARTICLE 4**  
**ENGINEERING**  
**SUBARTICLE 1**  
**PREQUALIFICATION OF BIDDERS**

**63-300. Prequalification of Eligible Contractors.**

Persons, firms or corporations eligible to bid as a prime contractor on construction work for the Department of Transportation shall have prequalified as herein required. No bids for such work will be considered by the Department of Transportation except from persons, firms or corporations that have so prequalified.

**HISTORY:** Added by State Register Volume 24, Issue No. 5, eff May 26, 2000.

**63-301. Basis for Prequalification.**

Prequalification will be based on a verified showing of experience, responsibility record, and available equipment. A prerequisite to prequalification will be a sworn statement furnished to the Department by the applicant. The statement must be made on a form provided by the Department of Transportation and must include all information required by the Department.

Contractors making application for prequalification for the first time must file their statements with the Department at least seven (7) days prior to the date on which they desire to become qualified for bidding.

**HISTORY:** Added by State Register Volume 24, Issue No. 5, eff May 26, 2000.

**63-302. Certificate.**

Each contractor qualifying under these rules and regulations will be furnished a Prime Contractor's Prequalification Certificate showing the contractor is prequalified and the expiration date of the certificate.

**HISTORY:** Added by State Register Volume 24, Issue No. 5, eff May 26, 2000.

**63-303. Contents of Sworn Statement.**

The sworn statement called for in 63-301 shall be made by filling in the Department's standard questionnaire form and shall show:

- (a) The experience of the applicant in handling the character of work for which it desires to become an eligible contractor.
- (b) A description of the equipment owned or leased by the applicant.
- (c) list of references, giving names of responsible persons having knowledge of the applicant's character, experience and capabilities.
- (d) Such other information as may be called for in the Department's form.

**HISTORY:** Added by State Register Volume 24, Issue No. 5, eff May 26, 2000.

**63-304. Failure to Carry Out Contract as Disqualification.**

No applicant who has failed to carry out any contract awarded by the South Carolina Department of Transportation will be qualified as eligible. This requirement, however, shall not serve to bar persons having so failed from serving as employees of otherwise eligible contractors.

**HISTORY:** Added by State Register Volume 24, Issue No. 5, eff May 26, 2000.

### **63–305. Disqualification of Unsatisfactory Contractors.**

A contractor whose progress on work underway is not satisfactory to the Department will not be awarded additional work. Contractors whose conduct of their work shows incompetency or irresponsibility may be disqualified without notice.

**HISTORY:** Added by State Register Volume 24, Issue No. 5, eff May 26, 2000.

### **63–306. Disqualification and Suspension from Participation in Contracts with the South Carolina Department of Transportation.**

A. Policy Statement. Recognizing that preserving the integrity of the public contracting process is vital to the development of a balanced and efficient transportation system and is a matter of interest to all people of the State, it is hereby declared:

1. The procedures for bidding and qualification of bidders on contracts involving the South Carolina Department of Transportation exist to secure the quality of public works.
2. The opportunity to bid on contracts, to participate as subcontractor or to supply goods or services to the Department is a privilege, not a right.
3. In order to preserve the integrity of the public contracting process, the privilege of transacting business with the Department should be denied to persons involved in criminal and/or unethical conduct.
4. Therefore, as a means of maintaining the integrity of the public contracting process and protecting the public at large, persons engaging in criminal and/or unethical conduct will not be allowed to transact business with the Department during the period of any suspension or disqualification.

#### B. Definitions.

1. Affiliate: Any business entity having direct or indirect control over, or which is controlled directly or indirectly, by any person who has been disqualified, suspended or prevented from bidding because of a contractor score. Indicia of control include, but are not limited to: interlocking management or ownership; identity of interest among family members; shared facilities and equipment; common use of employees; or any business entity organized following the suspension or disqualification of a person which has the same or similar management, ownership, or principal employees of the disqualified or suspended person.
2. Business Entity: A corporation, partnership, limited partnership, association or sole proprietorship.
3. Civil Judgment: The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation or otherwise, creating civil liability for the wrongful acts complained of.
4. Commission: The Commission of the South Carolina Department of Transportation.
5. Contractor's Certificate: A Prequalification Certificate issued by the Department to qualified contractors as a necessary condition to bid on contracts with the Department.
6. Conviction: A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of non contendere.
7. Department: South Carolina Department of Transportation.
8. Disqualification: An action taken in accord with these regulations to exclude a person from participating as a contractor, subcontractor, supplier, or in any other role under any contract with the Department during the period of disqualification.
9. Secretary: The Secretary of Transportation of the State of South Carolina.
10. Person: Any individual, corporation, partnership, limited partnership, association, sole proprietorship or any other business entity.
11. Principal: Officer, director, owner, partner, key employee or any other person within a business entity with primary management or supervisory responsibilities; or a person who has critical influence on or substantial control over the actions or conduct at issue, whether or not employed by the business entity.

12. Suspension: An action taken in accord with these regulations that immediately excludes a person from participating in any contracts with the Department for a temporary period.

13. Unlawful payment or gratuity: Transfer of anything of value to a Department employee in violation of state statute or regulatory law or Departmental policy.

C. Disqualification. Any person who violates any of the standards of conduct identified below may be subject to disqualification or suspension. Disqualification may be imposed for:

1. Conviction of any crime reflecting a lack of business integrity or business honesty, including but not limited to, crimes involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statement, receiving stolen property, anti-trust violations, making false claims, making any unlawful payment or gratuity, obstruction of justice, violation of ethical standards or conspiracy to commit any of the above.

2. Civil judgment for any acts or omissions reflecting a lack of business integrity or business honesty, including, but not limited to, acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of ethical standards or conspiracy to commit any of the above.

3. Final administrative decisions by any governmental agency responsible for supervising or regulating public contracts, standards of ethical conduct or licensure for any acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of ethical standards or conspiracy to commit any of the above.

4. Any act or omission reflecting a lack of business integrity or business honesty, including, but not limited to, acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of a debarment agreement, violation of the ethical standards or conspiracy to commit any of the above.

5. Willful violation of any provision of a contract with the Department, or any regulatory or statutory provision relating to such contract, while serving as a contractor, subcontractor or supplier.

6. Persistent failure to perform or incompetent performance on one or more contracts with the Department as a contractor, subcontractor or supplier; or

7. Knowingly allowing any person disqualified or suspended pursuant to this regulation, or by any other governmental or regulatory agency, to serve as a subcontractor or supplier or to play any other role under any contract with the Department without prior written authorization from the Secretary.

8. Failure to cooperate fully and completely with any investigation by the Department or any other appropriate regulatory or law enforcement agency. Such cooperation shall include, but not be limited to, disclosure of all written or computerized records and a full and complete accounting of the person's actions in the matter under investigation. Assertion of Fifth Amendment right against self-incrimination shall not be construed as a failure to cooperate under this regulation.

D. Suspension. In the event the Department finds that the public health, safety or welfare imperatively requires emergency action, a suspension may be implemented immediately pending a hearing, which shall be promptly provided on the issue of suspension. The grounds for a suspension shall be in accord with the standards for disqualification enumerated above.

E. Procedures.

1. Notice of disqualification, suspension, or sanctions may be issued by the Secretary and shall include:

- (a) A reference to the particular sections of the statutes, regulations, and rules involved;
- (b) A short and plain statement of the matters asserted.

2. The SCDOT shall have broad equitable powers in the impositions of civil sanctions, with the goal of preserving the integrity of the public contracting process and protecting the public at large. Any civil sanction imposed shall be remedial in nature and may include, but not limited to:

- (a) disqualification for a specific period of time;
- (b) monetary penalty;
- (c) restitution and reimbursement to the Department for the cost of any investigation or proceedings relating to the circumstances leading to any sanctions; and
- (d) conditions which must be met prior to restoration of a Contractor's Certificate.

3. A person may seek relief from the disqualification or suspension by requesting a contested case hearing before an Administrative Law Judge pursuant to S. C. Code Section 1-23-600 and the rules of procedure for the Administrative Law Judge Division. The request for a hearing must be made within thirty (30) days of receipt of SCDOT's Notice of Disqualification or Suspension.

#### F. Scope of Disqualification.

1. In the event a person is suspended or disqualified under this regulation, such person, and any affiliate of such person, shall be disqualified from serving as a contractor, subcontractor or supplier or performing any other service or role under any contract with the Department during the period of suspension/disqualification.

2. A violation of the terms of any suspension/disqualification may be the basis of further sanction.

3. In the event that a person disqualified under this regulation is performing or providing services or materials on a Department project at the time of said disqualification, the Department may, in its discretion, allow the disqualified person to complete its obligation under the contract when such completion is in the public interest.

4. In the event a person which is a business entity is disqualified or suspended under this regulation, such disqualification or suspension shall be applicable to any principal of said business entity.

G. Duty of Disqualified/Suspended Persons. A disqualified or suspended person shall cooperate fully with any investigation by the Department or any other appropriate regulatory or law enforcement agency. Such cooperation shall include, but not be limited to, disclosure of all written or computerized records and a full and complete accounting of the person's actions in the matter under investigation. In the event a disqualified or suspended person fails to cooperate, as required by this paragraph, further remedial measures may be taken against the person, up to and including permanent disqualification. Assertion of Fifth Amendment right against self-incrimination shall not be construed as a failure to cooperate under this regulation.

H. Reinstatement of Contractor's Certificate. Any person disqualified or suspended under this regulation shall immediately lose its Contractor's Certificate. The disqualified or suspended person may apply for the reinstatement of the Contractor's Certificate upon completion of the period of suspension or disqualification and satisfaction of all conditions imposed by any final order or settlement. Any application for the reinstatement of a Contractor's Certificate shall be subject to the then existing statutory and regulatory provisions and Departmental policies relating to pre-qualification of bidders.

**HISTORY: Added by State Register Volume 24, Issue No. 5, eff May 26, 2000. Amended by State Register Volume 32, Issue No. 6, eff June 27, 2008.**

#### Editor's Note

**2004 Act No. 202, § 3,** provides as follows:

"Wherever the term 'Administrative Law Judge Division' appears in any provision of law, regulation, or other document, it must be construed to mean the Administrative Law Court established by this act."

## **63-307. Contractor Performance Evaluation.**

### A. Contract Performance Evaluation System.

1. The South Carolina Department of Transportation may use a contract performance evaluation system to evaluate the performance of a contractor on highway and bridge construction projects and to assign a contractor performance score. The Department shall use evaluation criteria and quality audits that include, but are not limited to:

- a) Objective evaluation of how well the contractor completed projects on schedule and within the bid amount;
- b) Field audits conducted during construction that evaluate the contractor's performance on active projects;
- c) Objective evaluation of the merit of claims filed by the contractor based on the proportional amount of each claim that was upheld and awarded to the contractor;
- d) Evaluations by the Resident Construction Engineers on the contractor's completed projects, which include rating of the contractor's performance in such areas as safety, environmental issues, the contractor's personnel and equipment, public relations, and compliance with Equal Employment Opportunities statutes, the Davis Bacon Act, and Disadvantaged Business Enterprise goals.

2. The Department may revise the evaluation criteria as it deems necessary to ensure equitable evaluation of all contractors.

#### B. Minimum Required Contractor Performance Score.

The Department may require bidders to have a minimum contractor performance score to bid on a project. The Department shall determine the appropriate minimum score for a project based on an evaluation of criteria that includes, but is not limited to: design complexity, critical time constraints, environmental sensitivity, complex traffic control, location in densely populated areas, need for specialized equipment, high traffic volume, and project cost. All prequalified contractors whose contractor performance score is below the minimum shall not be allowed to bid on projects that require a minimum required contractor performance score. Prequalified contractors who have never had or do not have a current contractor performance score will not be subject to this bidding restriction.

#### C. Definitions.

1. Minimum Required Contractor Performance Score: A minimum contractor performance score set by the Department for a particular project for acceptance of bids. The minimum score shall be set based on criteria established by the Department.

2. State Highway Engineer: The Deputy Secretary of Transportation of SCDOT.

D. Contractor Performance Score. A contractor performance score for each contractor may be determined by the Department using performance evaluations and quality audits of the contractor's performance compiled by the Department. All active contractors shall be periodically notified of their contractor performance score.

E. Contractor's Right to Review of its Performance Score. A contractor may request a conference to review the calculation of its contractor performance score and the information upon which the score is determined by requesting a review conference with the Director of Construction or his or her designee.

F. Contractor's Right to Appeal Its Contractor Performance Score. A contractor may appeal its contractor performance score to the State Highway Engineer. The appeal must be in writing and include the basis for the appeal. The State Highway Engineer may consider evidence submitted by the contractor and any other relevant evidence and consult with SCDOT staff and any other person or entity for recommendations concerning the appeal. The State Highway Engineer shall make a recommendation to the Secretary, who shall issue a final agency decision on the appeal within ninety (90) days of the receipt of the appeal.

**HISTORY: Added by State Register Volume 32, Issue No. 6, eff June 27, 2008.**

## SUBARTICLE 2 RELOCATION OF DISPLACED PERSONS

### **63–322. Review of Applications for Relocation Assistance Payments Under Chapter 11 of Title 28 of the 1976 Code.**

A. An applicant for a relocation assistance payment under Chapter 11 of Title 28 of the 1976 Code shall be notified promptly, in writing, of (1) his eligibility for payment claimed, (2) the amount, if any, to which he may be entitled, and (3) the time and manner in which such payment, if any, will be made. Such notification shall also advise the applicant of his right to review and appeal and the procedures



for review and appeal if he is dissatisfied with the Department's decision with respect to his application for a relocation assistance payment.

B. All petitions or requests for review of a decision by the Department's Right-of-Way Office with respect to an applicant's eligibility, or the amount of a payment, if any, shall be submitted, in writing and must be filed within sixty (60) days of the Department's determination of the displaced person's claim. A form for use in filing requests for review may be requested from the Department's Right-of-Way Office.

C. If a timely request for review is filed, the SCDOT Executive Director or her designee will review the application and all pertinent justification and other material submitted by the applicant as well as other available information. The Executive Director will furnish the applicant with a written decision following the review.

D. An applicant may seek relief from the decision of the Executive Director by requesting a contested case hearing before the Administrative Law Judge pursuant to S. C. Code Section 1-23-600 and the rules of procedure for the Administrative Law Judge Division. The request for a hearing must be made within thirty (30) days of receipt of the Executive Director's decision.

E. A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

**HISTORY: Amended by State Register Volume 24, Issue No. 5, eff May 26, 2000.**

**Editor's Note**

**2004 Act No. 202, § 3,** provides as follows:

"Wherever the term 'Administrative Law Judge Division' appears in any provision of law, regulation, or other document, it must be construed to mean the Administrative Law Court established by this act."

**SUBARTICLE 3  
HIGHWAY ADVERTISING CONTROL ACT**

**63-338. Specific Information Service Signing.**

A. Introduction. The South Carolina Department of Transportation has developed this program for the installation of specific service signs and logo sign panels on fully controlled access highways.

B. Purpose. The purpose of this program is:

(1) To provide motorists with business identification and directional information for essential motorist services and for eligible attractions;

(2) To eliminate illegal outdoor advertising signs as required by the South Carolina Highway Advertising Control Act. 57-25-110, et seq.

C. Definitions

(1) Department is the South Carolina Department of Transportation or its authorized agents.

(2) A Specific Service Sign is an official sign, rectangular in shape, located within the highway right-of-way and carrying legend for up to three (3) of the following services: gas, food, lodging, camping, or attraction along with directional information and space for one (1) to six (6) individual logo sign panels.

(3) A Logo Sign Panel is a separately attached sign, rectangular in shape, mounted on the specific service sign to show the brand or trademark and name, or both, of a qualified motorist service available at or near the next interchange.

(4) A Ramp Sign is an official sign, rectangular in shape, located along an exit ramp and carrying legend for up to three (3) of the following services: gas, food, lodging, camping or attraction together with directional information and space for one (1) to six (6) individual logo sign panels of the same design as logo sign panels, but smaller.

(5) A Trailblazer Sign is an official sign, rectangular in shape, located on the right of way of a highway with directional arrows and space for one (1) to four (4) individual logo sign panels of the same design as logo sign panels, but smaller.

(6) A Business is an individual business that provides gas, food, lodging, camping, or attraction services to motorists.

(7) Continuous Operation is the unremitting availability of motorist services within a prescribed number of hours.

(8) Rest Room Facilities are separate facilities for men and women, to include sink and toilet, and available to all motorists at no charge.

(9) Drinking Water is a water fountain and/or cups of water provide to all motorists at no charge.

(10) Public Telephone is a coin operated telephone available to all motorists. Private or business phones may be allowed if the business is unable to obtain a coin operated telephone so long as its use is provided to motorists.

#### D. Specific Service Signs

(1) A specific service sign bearing one (1) to six (6) separately attached logo sign panels may be erected on fully controlled access highways between the previous interchange and the exit direction sign where space permits.

(2) The specific service sign nearest to the interchange should be erected no closer than 1600 feet to the beginning of exit ramp taper of the approaching interchange with at least 800 foot spacing between the information signs. The specific service sign should be located longitudinally so as to take advantage of natural terrain and have the least impact on the scenic environment.

(3) No more than two (2) specific service signs for gas, food, lodging, camping, or attractions shall be erected in each direction approaching an interchange. Where more than six (6) businesses of a specific service type are eligible for logo signing at the same interchange, additional logo sign panels of the same service may be displayed on the available signs in accordance with the following provisions:

(a) No more than twelve (12) logo sign panels of a specific service type shall be displayed on no more than two (2) specific service signs.

(b) No more than six (6) logo sign panels shall be displayed on a single specific service sign.

(c) The number of specific service signs along an approach to an interchange, shall be limited to a maximum of four (4).

(4) A combination sign is a specific service sign that may display a maximum of three (3) specific services. The total number of logo sign panels on a combination sign shall be limited to six (6). If three (3) types of services are displayed on one (1) sign, then the logo sign panels shall be limited to two (2) for each service type (for a total of six (6) logo sign panels). If only two (2) types of services are displayed on one (1) sign, then the logo sign panel shall be limited to either three (3) for each service type (horizontal divider) or four (4) for one (1) service type and two (2) for the other service type (vertical divider). Combination specific service signs may be used to maximize the number of businesses displayed.

(5) The size of specific service signs should be adequate to accommodate the number of logo sign panels to be erected, using the required legend height and spacing in accordance with the latest Department specifications.

(6) For double exit interchanges the specific service sign shall consist of two sections, one for each exit. The top or left section shall display the logo sign panels for the first exit and the lower or right section shall display the logo sign panels for the second exit. Where participation for one exit is less than three (3) businesses for a service, the specific service sign may be arranged to allow for four (4) to six (6) logo sign panels to be displayed for the other exit. No more than twelve (12) logo sign panels shall be displayed for any service at an interchange.

(7) The background color of a specific service sign shall be blue with white reflectorized border. The words gas, food, lodging, camping or attraction and directional information shall be white reflectorized legend mounted on the blue sign.

(8) Specific service signs shall not be erected at any interchange with another controlled access facility; nor shall they be erected at any interchange where there is no entrance ramp at the interchange or at another reasonably convenient interchange by which the motorist may proceed in the desired direction of travel without undue indirection or use of poor connecting roads.

(9) In the direction of travel, the specific service signs shall be for attractions, camping, lodging, food, and gas services, in that order.

(10) Attraction signing shall not be used for stand-alone or strip-mall facilities that have the primary purpose of retail sales. Malls, shopping complexes or stores located in close proximity to one another having a unified theme may be eligible for participation if the criteria listed in Section I (e) are met.

#### E. Logo Sign Panels- Main Roadway

(1) Logo sign panels, separately attached on a specific service sign shall show the brand or trademark and name, or both, of the gas, food, lodging, camping or attraction facility located at or conveniently accessible from an interchange. Nationally, regionally or locally known commercial symbols or trademarks shall be used when applicable. The brand or trademark identification symbol used shall be reproduced with the colors and general shape consistent with customary use. Any messages, trademarks or brand symbols which interfere with, imitate or resemble an official traffic control device will not be permitted.

(2) Each logo sign panel on a specific service sign shall be contained in a rectangular background area. Any logo sign panel that does not display a nationally, regionally or locally known symbol or trademark shall display the business name in legend that contrasts effectively with the background.

(3) If a food business is only open six (6) days a week, it will be required to incorporate into the design of its logo sign panels a message indicating the day the business is closed. This message shall be legend that says "CLOSED" followed by the day of week the business is closed. The color of the legend shall contrast effectively with the background of the sign logo sign panel.

(4) Only one logo sign panel may be shown in each direction of travel for each service provided by a business, even though the business may be accessible from more than one interchange. Signing will be provided at the interchange closest to the business, as determined by the Department.

(5) Where the number of fully qualifying gas, food, lodging, camping or attraction businesses exceeds the available spaces on the specific service panels, the Department will solicit bids from all of the qualified businesses. Bid solicitation and selection will be governed by the Department's policies and procedures.

#### F. Ramp Signs

(1) When the Department determines that any participating business is not visible from the terminal or decision point of a ramp which permits traffic to proceed in more than one direction on the crossroad, a ramp sign shall be placed on the exit ramp or at its terminus.

(2) Ramp signs shall not be erected for businesses not displaying logo sign panels on a specific service sign.

(3) A ramp combination sign is a ramp sign that may display a maximum of three (3) specific services. The total number of ramp logo sign panels on a ramp combination sign shall be limited to six (6).

(4) Ramp signs will be of an appropriate size to display the required number of ramp logo sign panels.

(5) The background color of a ramp sign shall be blue with white reflectorized border. The words gas, food, lodging, camping or attraction and directional information shall be in white reflectorized legend mounted on the blue sign.

#### G. Trailblazer Signs

(1) When the Department determines that the route to a business requires a direction change, it is questionable as to which roadway to follow, or when additional guidance is needed, a trailblazer panel may be placed along a crossroad up to 500 feet prior to any required turn.

(2) Trailblazer signs will be of an appropriate size to display the required number of trailblazer logo sign panels.

(3) The background color of a trailblazer signs shall be blue with white reflectorized border. White reflectorized directional arrows shall be mounted on the blue sign as needed for proper guidance.

(4) Trailblazer signs shall not be erected for businesses not displaying logo sign panels on a special service sign and a ramp sign.

(5) A trailblazer sign may contain various types of services on a single panel.

(6) When space along the right-of-way limits the number of signs or panels that can be erected, all other Department signing shall take priority over trailblazer signs.

## H. Logo Sign Panels - Ramp and Trailblazer

(1) Ramp and trailblazer logo sign panels shall be of the same design as logo sign panels, but smaller.

(2) Each logo sign panel mounted on a ramp sign and trailblazer sign shall be contained in a rectangular background area. Any logo sign panel which does not display a nationally, regionally or locally known symbol or trademark shall display the business name legend which contrasts effectively with the background.

(3) If a food business is only open six (6) days a week, it will be required to incorporate into the design of its logo sign panel a message indicating what day the business is closed. This message shall say "CLOSED" followed by the day of week the business is closed. The color of the legend shall contrast effectively with the background of the logo sign panel.

## I. Criteria

(1) A business located at or conveniently accessible from an interchange on a fully controlled access highway shall be eligible to have its logo sign panel placed on a specific service sign, a ramp sign, and on a trailblazer sign (but in accordance with Section F(1) and G(1)) if it meets the following conditions:

### (a) Gas:

1. Located within three (3) miles of the interchange;
2. Vehicle services shall include fuel, oil and water;
3. Continuous operation at least sixteen (16) hours per day, seven (7) days a week;
4. Rest room facilities;
5. Drinking water;
6. Public telephone;

### (b) Food:

1. Located within three (3) miles of the interchange;
2. Maintain a "Grade A" rating as defined by the South Carolina Department of Health and Environmental Control;
3. Continuous operation at least twelve (12) hours a day, six (6) days a week;
4. Rest room facilities;
5. Public telephone;
6. Indoor seating capacity for at least twenty (20) persons and/or drive-thru service;

### (c) Lodging:

1. Located within three (3) miles of the interchange;
2. Continuous operation, twelve (12) months per year;
3. At least ten (10) lodging rooms;
4. Public telephone;

### (d) Camping:

1. Located within six (6) miles of the interchange;
2. Permit to operate by the South Carolina Department of Health and Environmental Control;
3. Modern sanitary facilities including restrooms and showers;
4. Drinking water;
5. Overnight accommodations for all types of travel trailers, tents and camping vehicles;
6. Adequate parking accommodations for at least ten (10) camping vehicles;
7. Continuous operation, seven (7) days a week;
8. If operated on a seasonal basis, signs will be removed;
9. Public telephone.

### (e) Attraction:

1. Located within fifteen (15) miles of the interchange;
2. Be an activity or location that is one of the following:
  - (i) Amusement Park: a permanent area, open to the general public, whose principle activities include boating, entertainment rides, swimming, etc.;
  - (ii) Arena: an auditorium, civic or convention center, racetrack, sports complex, or stadium having a minimum seating capacity of 5,000;
  - (iii) College or University Facilities: an institution that is approved by a nationally recognized accreditation agency, has an enrollment of at least 500 fulltime students, and grants degrees;
  - (iv) Commerce Park: a group of commercial manufacturing or research facilities;
  - (v) Cultural Center: a facility for cultural events;
  - (vi) Facility Tour Location: a facility such as a factory, institution, or plant which conducts daily or weekly public tours on regular scheduled basis year-round;
  - (vii) Fairground: a tract of land where fairs or exhibitions are held and which has permanent buildings including, but not limited to, bandstands, exhibition halls, livestock exhibition pens, etc.;
  - (viii) Historical Site or District: a structure or area listed on the national or state historical register and recognized by the Department as a historic attraction or location. Historic districts shall provide the public with a single, central location, such as a self-service kiosk or welcome center, where motorists can obtain information regarding the district;
  - (ix) Recreational Area: a recreational attraction recognized by the Department including, but not limited to, bicycling, boating, fishing, hiking, picnicking, or rafting;
  - (x) Natural Phenomenon: a naturally occurring area which is of outstanding interest to the general public, such as a waterfall or a cavern;
  - (xi) Visitor Information Center: visitor information centers other than those operated by the South Carolina Department of Parks, Recreation and Tourism must meet the criteria outlined by the Department;
  - (xii) Zoological/Botanical Park: a facility in which living animals or plants are kept and exhibited to the public;
  - (xiii) Malls/Shopping Areas: a shopping mall must have a minimum enclosed, climate-controlled shopping area of 400,000 square feet. A shopping area must consist of a group of ten (10) or more enclosed, climate-controlled retail establishments located in close proximity to one another and having a unified theme carried out by individual shops in their architectural design or their merchandise.
3. Maintain regular hours for that type of establishment;
4. Public restrooms;
5. Adequate parking accommodations.

(2) Where space is available on an existing gas, food or lodging specific service sign, distances for participation may be extended to a total of six (6) miles from the interchange. Extension of distances will be at the sole discretion of the Department and will be measured as described in Section I (3). In all instances, businesses meeting all of the provisions of Section I will be given first priority.

(3) In determining distances from the interchange, roadway mileages are to be used, measured from the off-ramp terminal (where the off-ramp intersects the crossing road or frontage road) nearest to the business under consideration. The measurement shall begin where the left edge of the off-ramp pavement intersects the near edge of the crossing road pavement. If the off-ramp terminal is channelized, the measurement shall begin at the intersection portion of the terminal nearest to the business under consideration.

(a) For gas, food, lodging, and attractions the measurement will terminate at the main entrance of the building where payment is received for services rendered.

(b) For camping facilities, the distance will be measured to the registration office on the property of the camping facility.

## J. Installation and Maintenance

(1) The cost to the business for participation in the specific service signing program shall be determined by the Department based on each logo sign panel installed based upon interchange classification. Additional participation fees may be charged for installation, covering maintenance or replacement of logo sign panels. Fees may be charged for each occurrence.

(2) All logo sign panels will be furnished to the Department by the business at no cost to the Department and shall be manufactured to the standard specifications and approved design of the Department. Logo sign panels not meeting the specifications shall not be used.

(3) The Department shall be responsible for all required installation, routine maintenance, removal and placement of logo sign panels upon the specific service and ramp signs.

(4) The Department shall not be responsible for any damage, deterioration or loss of any logo sign panel. The business shall be responsible for furnishing replacement logo sign panels to the Department.

#### K. General Provisions

(1) Upon application to participate in the specific service signing program, a business shall give written assurance of its conformity with all applicable laws concerning the provision of public accommodations without regard to race, religion, color or national origin.

(2) If a business, at any time, fails to comply with applicable laws or these rules and regulations, the Department will take the necessary actions to remove the logo sign panels and disqualify that business from further participation in the program, except when a business closing is due to damages sustained by fire, accident or similar causes and when the Department is notified in writing within ten (10) days of such closing. In such cases the logo sign panel shall be removed or covered until the business is reopened.

(3) Any business that maintains any form of illegal outdoor advertising as determined by the South Carolina Highway Advertising Control Act shall be ineligible to participate in this program until such illegal advertising devices are removed.

(4) The Department reserves the right to cover or remove any or all logo sign panels during maintenance or construction operations or for research studies, or whenever deemed by the Department to be in the best interest of the Department or the traveling public without advance notice. The Department reserves the right to terminate the program or any portion thereof by furnishing the business written notice of such intent not less than thirty (30) calendar days prior to such action.

(5) The Department will prescribe the format and content of standard application and agreement forms to be used in the administration of this program.

(6) After a business has received approval of its application for participation in the program, an agreement, in accordance with these regulations, will be entered into between the Department and the business. Designs for the logo sign panels should be submitted, if required, for approval as soon as possible upon application.

**HISTORY:** Added by State Register Volume 3, Issue No. 7, eff July 23, 1978. Amended by State Register Volume 11, Issue No. 4, eff April 24, 1987; State Register Volume 18, Issue No. 6, eff June 24, 1994; State Register Volume 21, Issue No. 4, eff April 25, 1997; State Register Volume 24, Issue No. 5, eff May 26, 2000; State Register Volume 28, Issue No. 5, eff May 28, 2004; State Register Volume 37, Issue No. 5, eff May 24, 2013.

### **63-339. Agritourism and Tourism-Oriented Directional Signing.**

A. Introduction. The South Carolina Department of Transportation has developed this program for the installation of directional signs on the state highway system for agritourism and tourism-oriented facilities or activities located on rural, conventional highways.

B. Purpose. The purpose of this program is:

(1) To provide motorist with business identification and directional information for agritourism and tourism-oriented facilities or activities for eligible participants;

(2) To eliminate illegal outdoor advertising signs as required by the South Carolina Highway Advertising Control Act. 57-25-110, et seq.

C. Definitions

(1) 'Department' means the South Carolina Department of Transportation or its authorized agents.

(2) 'Highway' means a highway on the state highway system as defined under 57-5-10, constructed to at-grade intersections standards and without control-of-access.

(3) 'Agritourism activity' means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment or educational purposes, to participate in rural activities.

(4) 'Rural activity' means wildlife management, farming and ranching, or associated historic, scientific research, cultural, harvest-your-own and natural activities and attractions.

(5) 'Rural area' means an area outside the limits of an incorporated municipality having a population of 5,000 or more according to the most recent decennial census of the United States Bureau of Census.

(6) 'Agritourism-oriented facility' means a location where an agritourism activity is carried out by an agritourism professional or other agricultural facility meeting the criteria established in these regulations.

(7) 'Agritourism professional' means any person who is engaged in the business of providing one or more agritourism activities, whether or not for compensation.

(8) 'Tourism-oriented facility' means a location where the facility derives greater than 50% of its income or total visitors during a normal business season from road users not residing in the area of the facility and other criteria established in these regulations.

(9) 'Rest room facilities' mean separate facilities for men and women, to include sink and toilet, and available to all motorists at no charge.

(10) 'Drinking water' means a water fountain and/or cups of water provided to all motorists at no charge.

(11) 'Public telephone' means a coin operated telephone available to all motorists. Private or business phones may be allowed if the business is unable to obtain a coin operated telephone so long as its use is provided to motorists.

(12) 'Driveway access' means a vehicle entrance, built in compliance with state and local standards and regulations, for use by the public that provides access to an agritourism or tourism-oriented activity.

(13) 'MUTCD' means the Federal Highway Administration's Manual on Uniform Traffic Control Devices as adopted under 56-5-920.

#### D. Agritourism and Tourism Oriented Directional Sign Design

(1) A sign assembly shall be comprised of one or more individual business panels and the required sign supports. Each business panel shall be limited to information for one eligible business, service, activity or facility.

(2) Business panels shall be rectangular in shape and shall have a white legend and border on a blue background.

(3) Legend on business panels shall be limited to the identification and directional information for an eligible participant. Advertising shall not be allowed as part of the legend. An official program logo developed by the Department of Agriculture may be included and located adjacent to the identification information of agritourism-oriented facilities. An official program logo developed by the Department of Parks, Recreation and Tourism may be included and located adjacent to the identification information for tourism-oriented facilities.

(4) Each business sign panel shall be limited to two lines of legend, the official program logo, the distance, in miles rounded to the nearest mile, to the business from an intersection and a directional arrow.

(5) Directional arrows pointing to the left or straight up should be located at the extreme left of the business panel. Directional arrows pointing to the right should be located to the extreme right of the business panel. The official program logo, if used, shall be to the immediate left of the business name. The mileage to the business shall be located between the directional arrow and the official program logo or business name.

(6) All sign panels shall be fabricated from materials which conform to the Department's latest specifications for sign blanks and sign sheeting.

(7) Business panels shall not contain a corporate trademark, logo, symbol, or slogan.

(8) Sign assemblies shall not be illuminated internally or externally.

#### E. Size and Style of Sign Legend and Elements

(1) All letters and numbers shall be upper case and shall have a height of six (6) inches with the exception of the letters on the official program logo. Letters on the official program logo shall be proportional to the size of the logo.

(2) All letters and numbers shall be standard highway series D or C font.

(3) All letter spacing shall be in accordance with the Federal Highway Administration's Standard Highway Signs and Markings book, latest edition.

(4) The official program logo shall have a maximum size of twelve (12) inches by twelve (12) inches for a square design or twelve (12) inch diameter for a circular design.

(5) The width of the border shall be three quarters (3/4) of an inch.

(6) The radius of the border shall be one and one half (1½) inches.

(7) The size of the arrow shall be nine (9) inches wide by six (6) inches tall where the arrow is measured along the arrow's axis (shaft) in a horizontal orientation.

#### F. Arrangement and Size of Sign Assemblies

(1) Each individual business panel will have a maximum height of eighteen (18) inches. The number of business sign panels comprising a sign assembly shall not exceed four (4), for a maximum sign assembly height of seventy-two (72) inches.

(2) The number of sign assemblies approaching an intersection should not exceed three, one for destinations straight ahead, one for destinations to the right and one for destinations to the left.

(3) At intersections where four or fewer businesses are displayed, the straight ahead, left-turn and right turn business panels may be combined on the same sign assembly. Otherwise, the sign panels for straight ahead, left-turn and right turn destinations should be installed on separate sign assemblies.

(4) The left-turn sign assembly should be located farthest from the intersection, then the right-turn destination sign, with the straight-through destination sign located closest to the intersection.

(5) When straight-through, left-turn and right-turn panels are combined to form a single sign assembly, the order of the panels from top to bottom shall be straight-through, left-turn, right-turn.

(6) When multiple business panels in the same direction comprise a sign assembly, the order of panels from top to bottom shall be based on distance from the intersection, with the closest destination occupying the top position.

(7) Where the number of businesses wishing to participate in the program exceeds the number of spaces available, the closest businesses will qualify to participate with the following exception: if the closest twelve (12) businesses are from one category (agritourism or tourism), the oversight committee will have the discretion to place up to four (4) businesses from the other category in the sequence of sign assemblies to promote program diversity.

(8) The distances used in this determination will be measured from the driveway entrance of the business to the initial intersection where the first directional signs are to be installed.

(9) Pre-notification intersection signs will not be permitted under this program.

#### G. Sign Assembly Locations and Placement at Intersections

(1) Businesses shall be signed from the last point of turn from the nearest rural primary highway on the state highway system.

(2) Sign assemblies shall be installed in a manner so as not to conflict or obscure the view of existing regulatory, warning, or guide signing in place at an intersection.

(3) Sign assemblies shall be located at least 200 feet prior to an intersection. If more than one assembly is to be installed, the assemblies shall be spaced at least 200 feet apart and at least 200 feet from any other traffic control device.

(4) The signs shall be installed in compliance with the requirements of the MUTCD. For rural roadways where no sidewalk is present, the signs should be erected within the public right-of-way,



but no less than six (6) feet horizontally from the edge of pavement. The vertical distance from the edge of pavement to the bottom of the sign assembly (mounting height) should be a minimum of five (5) feet

(5) For roadways having curb and gutter and sidewalk, the signs should be erected no less than two (2) feet horizontally from the face of curb. In this situation, the mounting height should be no less than seven (7) feet.

(6) Sign assemblies shall be installed with a lateral offset from the edge of pavement equal to or greater than existing signs.

#### H. Criteria for Selection of Agritourism-oriented Facility

(1) To be eligible for a business panel, an agritourism-oriented facility shall:

- (a) be located in a rural area;
- (b) be located on or accessible from a paved rural highway on the state highway system;
- (c) offer agricultural activities related to production, harvest, processing, preservation, management, cultural, historical, recreational, educational, entertainment, and commercial activities, services and/or products to the general public;
- (d) be unique and local in nature and not part of a chain of businesses having a common name under common ownership and management or under a franchise arrangement;
- (e) have a permanent location and the agritourism-oriented activity shall be associated with a permanent building:
  1. constructed principally of brick, concrete block, stone, concrete, metal, or wood, or some combination of these materials; or
  2. from a mobile home or trailer which the applicant can prove is considered part of the real estate and taxed accordingly;
- (f) be open to the public on a regular schedule and have at least one employee attendant at the activity site, performing work and available to the public for at least five (5) days per week, for at least six (6) hours per day (holidays excepted), for at least forty-eight (48) weeks per year; provided, however, that an agricultural operation open on a seasonal basis may be eligible for participation in the program provided it is open for business on a regular schedule with at least one employee attendant at the activity site for at least five (5) days per week, for at least six (6) hours per day (holidays excepted), for at least three (3) months out of the year;
- (g) post its hours and days of operation at or near the main entrance so that they are visible to the public during closed as well as open hours;
- (h) have electricity, public telephone or telephone with published phone number and answered at the activity, excluding call forwarding systems, running water, restrooms, drinking water, and adequate heating and cooling; provided, however, that this requirement may not apply to seasonal agricultural activities, services or products where it is not practical;
- (i) if any general admission is charged, the costs of admission shall be clearly displayed to the prospective visitors at the entrance to the business;
- (j) be located within five (5) miles of the intersecting route with a rural state primary highway where the program sign is to be erected;
- (k) be an agritourism business qualified to participate in the SC Department of Agriculture promotional programs;
  - (l) have on-site signage that is visible from the fronting, paved rural highway;
  - (m) have driveway access from a paved public highway;
  - (n) provide off street parking accommodations with an exit having sufficient sight distance for motorists to safely enter the fronting roadway;
  - (o) be open to the general public and not by appointment or reservation only;
  - (p) to qualify a business shall list its location, operating season and hours, contact information with the Department of Agriculture and have one of the following:
    1. a reception structure;

2. a controlled gate;
3. a staffed reception and orientation point; or
4. permanent interpretation panels or displays.

(2) To be eligible for the program, if an agritourism-oriented facility is located on a local paved road and more than one intersection from the nearest state route, the facility shall provide written documentation to ensure that the local government will provide similar directional signs on the right of way of the local system sufficient to guide motorist to the business.

#### I. Criteria for Selection of Qualified Tourism-oriented Facilities

(1) To be eligible for a business panel, a tourism-oriented facility shall:

- (a) be located in a rural area;
- (b) be limited to the following services: gas, food, lodging, camping, educational, cultural, recreational, and entertainment activities, or a unique or unusual commercial or non-profit activity;
- (c) be a business or facility that derives greater than 50% of its income or total visitors during a normal business season from road users not residing in the area of the business or facility;
- (d) meet current compliance with all applicable laws concerning the provision of public accommodation without regard to race, religion, color, age, sex, national origin or lifestyle or laws concerning the licensing and approval of public facilities;
- (e) adhere to the safety standards and procedures that apply to the industry to which the operation belongs;
- (f) be local in nature, and represent the unique cultural, historical, natural or recreational resources of the area and not be part of a chain of businesses having a common name under common ownership and management or under a franchise arrangement;
- (g) be located within five (5) miles of an intersection with a rural primary route on the state highway system where the program sign is to be erected;
- (h) have on-site signage that is visible from the fronting, paved rural highway;
- (i) be ADA compliant;
- (j) have available the following public services: electricity, public restrooms, drinking water, public telephones or telephone with published phone number and answered at the activity, excluding call forwarding systems, permanent flooring other than dirt, gravel, sand, etc., and adequate heating and cooling;
- (k) post hours and days of operation at or near the main entrance so that they are visible to the public during closed as well as open hours;
- (l) be open to the general public and not by appointment or reservation only;
- (m) unless otherwise stated, be open to the public and have at least one employee attendant at the activity site, performing work and available to the public for at least eight (8) hours a day, for at least six (6) days a week, for a minimum of six (6) months a year;
- (n) to qualify a business shall market its location, operating season and hours, contact information and have one of the following:
  1. a reception structure;
  2. a controlled gate;
  3. a staffed reception and orientation point; or
  4. permanent interpretation panels or displays.
- (o) be willing to provide visitor information for surrounding area and region;
- (p) have a driveway access from a paved public highway;
- (q) provide off street parking accommodations with an exit having sufficient sight distance for motorists to safely enter the fronting roadway; and

(r) for bed and breakfast lodging, provide a minimum of four (4) sleeping units complete with private bath facilities for each sleeping unit and offer one or more meals to guest in a dining area separate from the sleeping rooms and provide lodging services for at least five (5) nights per week.

(2) To be eligible for the program, if a tourism-oriented facility is located on a local paved road and more than one intersection from the nearest state route, the facility shall provide written documentation to ensure that the local government will provide similar directional signs on the right of way of the local system sufficient to guide motorist to the business.

#### J. Fees, Installation and Maintenance

(1) The cost to the business for participation in the agritourism and tourism-oriented directional sign program shall be determined by the Department. Fees will include a nonrefundable initial participation fee, manufacture fee, installation fee and annual participation fee for each business panel installed. Additional fees shall be assessed to cover/uncover or remove/reinstall signs based on seasonal availability of the business or facility, to maintain signs, or to replace damaged, deteriorated or missing signs.

(2) The Department shall be responsible for all fabrication, installation, routine maintenance, removal and covering of business panels.

(3) The Department shall not be responsible for any damage, deterioration or loss of any business panel.

(4) The Department reserves the right to cover or remove any or all business signs during maintenance or construction operations or for research studies, or whenever deemed by the Department to be in the best interest of the Department or the traveling public without advance notice.

#### K. Application Procedures

(1) The qualifying business shall submit an application to the Department. By submitting an application, the applicant is certifying that all requirements outlined in these regulations have been met. Applications must be submitted on the form available on the Department's website. The Department will prescribe the format and content of standard application and agreement forms to be used in the administration of this program.

(2) The application shall include the following documents:

(a) Written affidavit by the business of its conformity with all applicable laws concerning the provision of public accommodations without regard to race, religion, color or national origin;

(b) Written certification from the Department of Parks, Recreation and Tourism for tourism-oriented facilities and/or from the Department of Agriculture for agritourism-oriented facilities, that the facilities meet the qualifying criteria set forth above; and

(c) If a business is located on a local paved road and more than one intersection from the nearest state route, the business shall include with its application written documentation from the local government that similar additional signs will be provided on the right of way of the local system sufficient to guide motorist to the business.

If the above information is not included with the application, the application will be returned to the applicant.

(3) The Department will retain the applications until they are reviewed and approved by the oversight committee at its semiannual meetings. The oversight committee shall meet on the second Tuesdays in January and July to review applications received by the Department, or as soon thereafter as possible. The Chairman of the committee will arrange the meeting time and location. The approval for each application will be recorded by a majority vote of the members present at the meeting. The Chairman will cast a vote only in the case to break a tie.

(4) Applicants will be notified in writing of being approved or disapproved from program participation. If disapproved, reasons for disapproval will be clearly stated. In the event the application is disapproved, the applicant may request a contested case hearing pursuant to S.C. Code Section 1-23-600 and the rules of procedure for the Administration Law Court.

(5) Once noted deficiencies have been corrected, disapproved applications may resubmitted for consideration at the next oversight committee meeting.

(6) After a business has received approval of its application for participation in the program, a participation agreement, in accordance with these regulations, will be entered into between the Department and the business. Once the participation agreement has been signed by all parties and required fees paid, the Department will have the signs installed within sixty (60) days of receipt of site plan approval by Department. Failure of any check submitted to the Department to be honored upon presentation shall make the agreement void. The applicant may be required to resubmit the agreement and may thereafter be required to submit cash or a certified check for any participation fee or other fee payment.

(7) The Department reserves the right to terminate the program or any portion thereof by furnishing the business written notice of such intent not less than thirty (30) calendar days prior to such action.

(8) If a business, at any time, fails to comply with applicable laws or these rules and regulations, the Department will take the necessary actions to disqualify that business from further participation in the program, except when a business closing is due to damages sustained by fire, accident or similar causes and when the Department is notified in writing within ten (10) days of such closing. In such cases the business sign shall be removed or covered until the business is re-opened.

(9) A sign for a business may be covered by the Department if it is temporarily closed for a period not exceeding thirty (30) days.

(10) The Department shall remove the business panel if the business:

- (a) ceases to exist;
- (b) fails to pay the annual fee or other specified fees within thirty (30) calendar days of the due date as specified in the participation agreement with the Department;
- (c) is temporarily closed for more than thirty (30) days (seasonal closure);
- (d) does not meet the requirements stated in these regulations and corrections are not made within thirty (30) days of notification; and
- (e) is sold and the new business does not continue as an eligible business.

(11) If the business panel is removed due to the default of the business to perform within the terms of these regulations, the participation agreement between the business and the Department will be terminated. All funds paid to the Department will be forfeited.

(12) Any business that maintains any form of illegal outdoor advertising as determined by the South Carolina Highway Advertising Control Act shall be ineligible to participate in this program until such illegal advertising devices are removed.

(13) Sixty (60) days prior to the annual renewal date for each participating business sign, the Department shall send notification to the Department of Parks, Recreation and Tourism and Department of Agriculture requesting verification of continued eligibility of each business participating in the program. The Department of Parks, Recreation and Tourism and Department of Agriculture shall have twenty (20) days to submit a response to the Department verifying eligibility. Upon Department's receipt of the verification, the Department will send fee renewal notices to those businesses remaining eligible to participate in the program.

**HISTORY:** Added by State Register Volume 37, Issue No. 6, eff June 28, 2013.

## **63-341. Preface.**

(Statutory Authority: Highway Advertising Control Act, South Carolina Code § 57-25-110 et seq.)

The regulations formulated herein have been formulated pursuant to S. C. Code Section 57-25-110, et seq., entitled the Highway Advertising Control Act, which is intended to regulate outdoor advertising along Interstate and federal-aid primary highways.

**HISTORY:** Amended by State Register Volume 13, Issue No. 6, eff June 23, 1989; State Register Volume 31, Issue No. 3, eff March 23, 2007.

## **63-342. Definition of Terms.**

A. "Abandoned Sign," means a sign which is not being maintained as required by the regulations, or which is overgrown by trees or other vegetation not on the highway right-of-way, or which has had

obsolete advertising messages or no advertising messages for a period of six months, or for which a permit has not been obtained or is not current, or for which the fee has not been paid more than thirty (30) days after demand by the Department. An obsolete advertising message does not include public service signing.

B. "Act," means Highway Advertising Control Act or its successors.

C. "Back-to-Back Sign," means any sign constructed on a single set of supports with two sign facings in opposite directions each of which may have up to two sign faces visible.

D. "Control Area," means that area within 660 feet of the nearest edge of the right-of-way of Interstate or Federal-aid primary highways and visible from the main-traveled way of the Interstate or Federal-aid primary highways. The distance is measured from the outer edge of the right-of way on a line which is perpendicular to the edge of the pavement at the points in question.

E. "Cutouts and Extensions," means any addition to a sign in excess of the permitted sign face area which aids in the display of a particular message. These cutouts and extensions should be apparent from the sign face and cannot increase the permitted sign face area by more than 150 square feet.

F. "Department," means South Carolina Department of Transportation.

G. "Destroyed Sign," means a sign no longer in existence due to factors other than vandalism or other criminal tortuous act. A sign damaged by greater than 50 percent of its replacement costs as determined from nationally recognized catalogues of vendors of construction and outdoor advertising materials based on single item purchases, not bulk purchase orders. Salvage parts cannot be used to determine replacement value unless approved by the Department.

H. "Double faced Sign," means any sign with only one set of supports, one sign facing and no more than two sign faces visible.

I. "Erect," means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish. It does not mean changing or repainting an existing sign face.

J. "Highway," means all roads, streets and other ways open, or intended to be opened and for which the alignment has been approved by the Department, to the use of the public for travel by motor vehicles.

K. "Illegal Sign," means any sign which was erected or maintained in violation of any of the provisions of the Act or these regulations, including an abandoned sign.

L. "Interchange," means an intersection or junction of highways, either open or intended to be opened and for which the location has been approved by the Department, whether at grade or involving one or more grade separations, together with that additional area used or needed for connecting roadways from one highway to another.

M. "Lease," means any writing by which possession or use of land or interest therein is given by the owner to another person for a specified period of time.

N. "Legible," means capable of being read or understood without visual aid by a person of normal visual acuity while traveling in an ordinary passenger car on the main-traveled way at the speed limit.

O. "Main-Traveled Way," means the traveled way of a highway on which through traffic is carried.

P. "Nonconforming Sign," means one which was lawfully erected but which does not comply with the provisions of the Act or these regulations passed at a later date or which fails to comply with the Act or these regulations because of changed conditions at the site, such as the inclusion of a new highway in those roads governed by the Act, construction of a new interchange, etc.

Q. "On-Premise Sign," means any sign which is designed, intended or used to advertise or inform of the principal activity taking place, or the product being sold on the property where the sign is located.

R. "Removed," when used in reference to a sign or sign structure, means the dismantling and complete removal from the view of the motoring public of all parts and materials of a sign or sign structure to include but not limited to, faces and beams, poles, braces, stringers, guys, and struts, which are used or intended to be used to support or display a sign.

S. "Residence," means a building or mobile home used as a permanent dwelling place whose occupancy is primarily unrelated to any commercial activity conducted on or adjacent to the premises.

T. "Rest Area," means an area or site established and maintained within or adjacent to the right-of-way for the convenience of the traveling public.

U. "Sham activity," means any activity which

(1) is a commercial or industrial activity but which was created primarily or exclusively to qualify an area as an unzoned commercial or industrial area, or

(2) does not conduct any meaningful business at the activity site, or

(3) is an activity that fails to meet the standards set forth under the definition of transient or temporary at the time of investigation.

V. "Sign" or "outdoor advertising sign," means any sign structure or combination of sign structure and message in the form of outdoor sign, display, device, figure, painting, drawing, message, plaque, poster, billboard, advertising structure, advertisement, logo, symbol or other form which is designed, intended or used to advertise or inform, any part of the message or informative contents of which is visible from the main-traveled way. The term does not include official traffic control signs, official markers, nor specific information panels erected, caused to be erected, or approved by the Department.

W. "Sign Direction," means the direction from which the message or informative contents are most visible to oncoming traffic on the main-traveled way.

X. "Sign Face," means the part of the sign including stringers which contains the message or informative contents and includes borders or decorative trim. It does not include lighting fixtures, aprons and catwalks unless part of the message or informative contents of the sign is displayed thereon.

Y. "Sign Facing," means all sign faces erected on the same sign structure facing the same (or approximately the same) sign direction.

Z. "Sign Structure," means all the interrelated parts and material, such as beams, poles and braces, which are used or designed to be used or are intended to be used to support or display a sign.

AA. "Single Faced Sign," means any sign with only one sign face.

BB. "State System," means that portion of the highways located within this state as designated, or as may hereafter be so designated, by the Department.

CC. "Transient or temporary activities," shall mean activities that fail to maintain:

(1) one year of continuous business operation at the proposed sign location prior to receipt of the application by the Department for those activities that have been established for more than one year at that location, or continuous business operation from the date the activity was established to the date the application is received by the Department for those activities that have been established for less than one year, and

(2) continuous business operation of the activity for one year after receipt of the application, unless determined by the Department to qualify. Continuous business operation, as used in this Chapter, shall be determined by the Department based on adequate documentation to prove meaningful business; and

(3) capable of showing significant commercial activity on the premises; and

(4) at least one employee attendant at the activity site, performing meaningful work and available to the public for at least thirty-six hours per week on at least four days per week for at least forty-eight weeks per year; and

(5) electricity, published telephone number, telephone answered at the activity, excluding cell phones and call forwarding, running water, indoor restroom, permanent flooring other than dirt, gravel, sand, etc; adequate heating; and

(6) the activity, or a major portion of it, conducted from a permanent building constructed principally of brick, concrete block, stone, concrete, metal, or wood or some combination of these materials or from a mobile home or trailer which the applicant can prove is considered part of the real estate and taxed accordingly.

DD. "Traveled Way," means the portion of a roadway over which vehicles move. It does not include such facilities as frontage roads, turning roadways, parking areas, ramps or shoulders. In the

case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way.

EE. "Triangular Sign," means a combination of single faced or double faced signs which are placed facing three sign directions of travel in a triangular formation with the closest edges of two sign facings located not more than 5 feet apart.

FF. "Unzoned commercial or industrial areas," means:

(1) those areas in a political subdivision which are not zoned on which there is located one or more permanent structures devoted to a commercial or industrial activity, a portion of which activity is located within the control area, and that area within 600 feet from the furthest edge of the area within the control area regularly used for such activity and a corresponding zone directly across a primary highway which is not a freeway primary Federal-aid highway and which has not been declared to be a scenic highway; (See Illustration 1)

(2) they do not include recreational facilities such as campgrounds, golf courses (not including driving ranges or par-three courses), tennis courts, baseball or football fields or stadiums, or racetracks, except for any portions of those facilities occupied by offices, clubhouses, etc. which meet the minimum standards to keep the activity from being considered a transient or temporary activity;

(3) they do not include areas occupied by prohibited or illegal activities;

(4) they do not include areas occupied by sham activities;

(5) they do not include areas occupied by apartment houses, condominiums, nursing homes or other long term care facilities;

(6) they do not include junkyards as defined in S. C. Code Section 57-27-20(c) or parking or storage lots;

(7) they do not include areas occupied by schools or other buildings primarily used for educational purposes, whether public or private non-profit;

(8) they do not include quarries, borrow pits, or nurserylands, except for any portions of those facilities which are occupied by a permanent office located at the site which meets the minimum standards to keep the activity from being considered a transient or temporary activity;

(9) they do not include cemeteries or churches, synagogues, mosques, or other places primarily used for worship.

GG. "V-type Sign," means a combination of single faced or double faced signs which are placed facing two sign directions of travel in a V formation with the angle formed by the intersection of each being no more than 90 degrees and with their closest edges located not more than 5 feet apart.

HH. "Visible," means capable of being seen (whether or not legible) and readily recognized as a sign or commercial or industrial activity by a person of normal visual acuity. The presence of a sign, whether attached to the building or free-standing shall not be considered in determining whether or not a commercial or industrial activity is visible.

II. "Zoned," means subject to a complete system of land use, including the regulation of size, lighting, and spacing of signs, for tracts which comprise at least 20 percent of the land within a political subdivision established and actively enforced by duly constituted zoning authorities. The mere labeling of land as zoned commercial or industrial does not mean the area is zoned for purposes of the Act. Rather there must be the establishment and enforcement of a complete set of regulations to govern land use within the portion of the political subdivision which is zoned. Unrestricted land shall be treated as unzoned. Land subject to court ordered zoning or development restrictions shall not be considered zoned.

JJ. "Zoned industrial or commercial areas," means those areas inside the control area within a political subdivision which are zoned for commercial or industrial use. They shall not include any areas in which limited commercial or industrial activities are permitted as an incident to other primary land uses, nor shall they include areas which the Department determines were so designated for the principal purpose of creating locations for outdoor advertising signs adjacent to or near Interstate or federal-aid primary highways. They shall not include areas which are unrestricted. No small parcels or narrow strips of land designated for a use classification different from and less restrictive than that of the surrounding area and which is made without consideration of the neighborhood land use

character shall be considered a zoned industrial or commercial area. Narrow strips shall mean any configuration of land which cannot be put to ordinary commercial or industrial use.

KK. "Off-premise changeable message signs," means an outdoor advertising sign, display, or device which changes the message or copy of the sign by methods which include but are not limited to electronic movement, or rotation of panels or slats. Changeable message signs are considered outdoor advertising signs, and as such must comply with all requirements applicable to outdoor advertising signs. Changeable message signs shall not include animated, continuous or scrolling messages.

**HISTORY:** Amended by State Register Volume 13, Issue No. 6, eff June 23, 1989; State Register Volume 16, Issue No. 7, eff July 24, 1992; State Register Volume 18, Issue No. 6, eff June 24, 1994; State Register Volume 31, Issue No. 3, eff March 23, 2007.

### **63-343. General Standards for Outdoor Advertising Signs.**

A. Criteria for determining if a sign is intended to be read from the main-traveled way:

- (1) The sign is visible and any advertising or message is legible.
- (2) Consideration shall be given to the nature of sign, what it is directing the readers' attention toward, and where the product or service can be obtained in relation to the highway.
- (3) Viewing time of any advertising or message is a primary factor to consider. If the viewing time during which any portion of the advertising or message is legible is five seconds or longer, by an individual traveling in a passenger car at the speed limit, the sign shall be deemed to be intended to be read from the main-traveled way.

B. Where a sign is legible from two or more highways, one or more of which is a highway subject to the provisions of the Act, the more stringent of applicable control requirements will apply.

C. If any commercial or industrial activity which has been used in determining the existence and size of an unzoned commercial or industrial area ceases to operate or reduces its operations to the extent that it would be classified as transient or temporary, the unzoned commercial or industrial area shall be redetermined based on the remaining activities. Any sign located within the former unzoned commercial or industrial area, but which is located outside of the unzoned commercial or industrial area based on the redetermined dimensions, becomes a nonconforming sign.

D. When the Department declares a sign to be illegal, the Department must only give notice once in writing. If the illegal sign is relocated to any site which is illegal under the Act, including an otherwise legal site for which a permit has not been received, or is removed and later erected again at the same site, no additional notice is required before the Department is authorized to remove the sign. If the owner of the sign cannot be identified by information on the sign, notice may be given by prominently posting notice on the sign for a period of thirty days after which time notice shall be complete.

**HISTORY:** Amended by State Register Volume 13, Issue No. 6, eff June 23, 1989; Amended by State Register Volume 16, Issue No. 7, eff July 24, 1992; State Register Volume 31, Issue No. 3, eff March 23, 2007.

### **63-344. General Restrictions on Outdoor Advertising Signs Subject to the Act.**

A. No sign nor any portion of a sign may imitate or resemble any official traffic control device including, but not limited to, Interstate or other route symbols, stop signs, stop lights, or yield signs.

B. No sign may advertise or inform of any activity that is illegal under Federal or state laws or regulations in effect at the location of the activity.

C. No sign may be located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging or intersecting traffic.

D. No sign may be erected or maintained upon trees or painted or drawn upon rocks or other natural features.

E. No permit identification tag may be attached to a sign which is not permanently affixed to the site described in the application. Any tag attached to a sign which is not permanently affixed to the site described in the application is void and may be confiscated by Department personnel.

F. If any portion of a sign is located on highway right-of-way, the sign is illegal and must be completely removed from the right-of-way.



G. Any sign permitted because of an activity subsequently determined to be a sham activity shall be illegal and must be removed at the sign owner's or landowner's expense. Until the sign supported by the sham activity is completely removed from its site, the Department may not approve any application for any sign permit made by the sign owner. Also, the Department may not approve any other application for a sign permit on any site owned or controlled by the landowner of the property on which the sham activity is located.

**HISTORY:** Amended by State Register Volume 13, Issue No. 6, eff June 23, 1989; State Register Volume 31, Issue No. 3, eff March 23, 2007.

### **63-345. Size Limitations of Outdoor Advertising Signs.**

#### A. Measurements.

(1) The dimensions of a sign shall include border, trim, cutouts and extensions, but shall not include aprons, decorative bases and supports, unless those items are used to convey any message, other than the name of the sign owner or permittee, in which case the apron, decorative base or support so used shall be included in its entirety.

(2) Square footage shall be measured by the combination of the areas of the smallest circles, triangles, or rectangles required to cover the sign faces.

#### B. Signs erected under S. C. Code Section 57-25-140(a)(7) and (a)(8).

(1) Signs shall not exceed a maximum of 672 square feet. Cutouts and extensions can be used in addition to this amount but may not increase the size by more than one hundred fifty (150) square feet.

(2) No sign facing shall exceed a length of sixty (60) feet.

(3) No sign facing shall exceed a height of forty eight (48) feet.

(4) Double faced, back-to-back or V-type signs shall be considered as one sign.

(5) In this connection, the larger of facings shall be applicable in computing square foot total for permit purposes.

**HISTORY:** Amended by State Register Volume 13, Issue No. 6, eff June 23, 1989; State Register Volume 16, Issue No. 7, eff July 24, 1992; State Register Volume 18, Issue No. 6, eff June 24, 1994; State Register Volume 31, Issue No. 3, eff March 23, 2007.

### **63-346. Spacing Limitations for Outdoor Advertising Signs.**

#### A. Measurements:

(1) Involving the distance between signs, shall be taken along the edge of the traveled way between lines perpendicular to the edge of the traveled way which intersect the center of the sign supports nearest the traveled way.

(2) Involving unzoned commercial or industrial areas shall be taken within the control area from the outermost edge of the regularly used buildings and areas regularly used and required for parking, storage, and processing, or from the property lines of the tract or tracts owned or leased by the activity on which the activity is being conducted, whichever is the narrower. Only those portions of the activity which are within the control area and which are visible from the main traveled way shall be considered. (See Illustration 1).

(3) Involving interchanges, weigh stations, and rest areas adjacent to the main traveled way of interstates and freeway primary federal-aid highways shall be made from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way. Where there is insufficient space to end an entrance ramp before beginning an exit ramp, the ramp shall be regarded as continuous and no signs will be permitted between the interchanges in areas which are not within the boundaries of an incorporated municipality.

(4) Illustrations for measuring spacing are contained in Illustrations 1 and 2 of these regulations.

#### B. Signs erected under S. C. Code Section 57-25-140(a)(7) and (a)(8).

(1) Adjacent to Interstate or freeway primary federal-aid highways:

a) No signs may be erected less than five hundred (500) feet apart measured from the center of the sign supports nearest the main traveled way along a line parallel with the main traveled way.

b) No sign in a rural, unincorporated area may be erected within five hundred (500) feet of an interchange or rest area.

(2) Adjacent to federal-aid primary highways which do not have controlled access:

a) No signs may be erected less than three hundred (300) feet apart on the same side of the highway in rural, unincorporated areas.

b) No signs may be erected less than one hundred (100) feet apart on the same side of the highway within incorporated municipalities unless the signs are separated by a building or other obstruction (other than another sign) which prevents more than one sign facing from being visible at any one time.

(3) Signs erected under S. C. Code Section 57-25-140(a)(1), (2), (3), (5) and (6) shall not be considered for spacing purposes.

**HISTORY: Amended by State Register Volume 13, Issue No. 6, eff June 23, 1989; State Register Volume 16, Issue No. 7, eff July 24, 1992; State Register Volume 18, Issue No. 6, eff June 24, 1994; State Register Volume 20, Issue No. 5, eff May 24, 1996; State Register Volume 31, Issue No. 3, eff March 23, 2007.**

### **63-347. Lighting of Outdoor Advertising Signs.**

A. Signs which are lighted must be constructed and maintained in order to effectively shield or prevent beams or rays of light from being directed at any portion of the main-traveled way of the Interstate or federal-aid primary highway.

B. Signs with lighting of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interferes with any driver's operation of a motor vehicle are prohibited.

C. No sign may have attached to it or be illuminated by flashing or pulsing lights or lights which change color. This prohibition does not apply to reader signs which have brief messages advertising goods or services offered on the premises where the sign is located and also provide time and temperature readings, provided that such reader signs shall not be unduly distracting and shall not use lights that change color.

**HISTORY: Amended by State Register Volume 13, Issue No. 6, eff June 23, 1989; State Register Volume 31, Issue No. 3, eff March 23, 2007.**

### **63-348. Local Zoning Approval.**

A. Land subject to zoning plans which have been reviewed and approved by the Department shall be considered zoned. Zoning plans must include effective methods of enforcement.

B. Any changes to an approved zoning plan must be submitted to the Department for review and approval before being effective for purposes of the Act.

C. The Department will provide in writing the reasons why the zoning plan is not approved.

**HISTORY: Amended by State Register Volume 13, Issue No. 6, eff June 23, 1989; State Register Volume 31, Issue No. 3, eff March 23, 2007.**

### **63-349. Permits.**

A. All signs lawfully erected under S. C. Code Section 57-25-140(a)(4), (a)(7) and (a)(8) and all nonconforming signs require permits and identification tags. This includes all signs that were legally in place on the effective date of the Act as well as those legally constructed after the effective date of the Act including those signs in place at the time the controlled highway was made a part of the Interstate or federal-aid primary system.

B. No sign subject to the Act for which a permit is required may be erected without first obtaining from the Department a permit authorizing the same.

C. Applications for permits shall be made to the Director of Outdoor Advertising, SCDOT, P.O. Box 191, Columbia, SC 29202.

D. All applications must be submitted on forms provided by the Department. Applications must be typed including the name of the person who signs the application. Applications must provide all applicable information requested. If an application is not typed, or is illegible, incomplete, inaccurate, or not accompanied by the appropriate fee, it must be corrected by applicant prior to processing.

E. No permit may be approved unless the applicant has first obtained the written permission of the owner or other person in lawful possession of the site designated as the location of the sign in the permit application. All applications must be accompanied by a copy of the written lease or other written agreement between the applicant and the landowner or other person in lawful possession or control of the site designated as the location of the sign in the permit application, if the applicant and the landowner of the site are different. All such documents shall be considered trade secrets and therefore not subject to disclosure under the Freedom of Information Act.

F. Where local government regulation exists, no permit shall be issued unless the applicant submits along with the application either:

- (1) A copy of the permit issued for the site by the local government, or
- (2) A statement from the appropriate local government official indicating that:
  - (a) The sign complies with all local government requirements;
  - (b) The local government will issue a permit to that applicant upon issuance of the state permit by the Department, and
  - (c) A certificate of occupancy, occupancy letter, or documentation indicating that the final inspection and building permit requirements for the qualifying activity have been obtained and completed by the local government, where applicable.

G. All applications shall be accompanied by adequate documents capable of showing significant commercial activity and meaningful business operation at the premise pursuant to Regulation 63-342(CC). If adequate documentation is not provided the application may be reviewed up to one (1) year in accordance with provision (L) herein. After one year from the receipt of the application, the application shall be approved or denied by the Department.

H. The proposed location for a new sign shall be clearly identified on the ground by a stake with no less than two feet of the stake clearly visible above the ground line. Staking of the site is considered part of the application. The stake shall not be moved or removed until the application is disapproved, or, if it is approved, until the sign has been erected.

I. Construction of a sign must not, under any circumstances, begin until the permit, having been approved by the Department, has been received by the applicant. Any portion of the sign structure erected prior to the applicant's receipt of the approved permit is illegal and must be completely dismantled before any application from the sign owner for that site or any other site can be considered.

J. Permits will be considered on a first-come, first-served basis. If applications are submitted for the same or conflicting sites, each will be dealt with in turn. Any other applications for the same or conflicting sites, received between the time a disapproved application is returned to the applicant and the time it is resubmitted, must be considered before the resubmitted application may be considered.

K. The submission of an application for a sign permit shall grant to the Department the authority for its employees or agents to enter onto the land where the sign is or is intended to be displayed in order to conduct whatever investigations may be appropriate both at the time of application and at any time thereafter unless such application be withdrawn by the applicant.

L. Upon receipt of the permit application, the District Sign Coordinator will inspect the sign site in order to ascertain if the location legally qualifies. The Department reserves the right to consider any application for a sign permit for up to thirty days from the date the application is submitted. Any application not approved within that time may be deemed by the applicant to have been rejected unless the Department notifies the applicant in writing of the reasons that it requires further time to investigate the application. The review period shall be no longer than one year from the date of receipt of the sign application by the Department.

M. In the event the permit is cancelled, revoked, or disapproved, the applicant may appeal pursuant to the Administrative Law Court procedures. All appeals will be conducted in accordance with the Administrative Procedures Act. The applicant shall bear the burden of showing that the Department should issue the permit. A decision regarding any other applications for the same or conflicting sites submitted subsequent to the initial submission of the disapproved application will be held in abeyance pending the court's resolution of the appeal. If the Department's disapproval is sustained, the other applications will be considered in turn.

N. No new application may be submitted by the same applicant or its assignee or successor for a site which has been disapproved unless there has been a significant change in the site such as a change in the zoning at the site, a change in the geometry or designation of a highway, the removal of an existing, conflicting sign etc. This prohibition extends to any sites which depend for approval on the same facts which led to the disapproval of the first application.

O. Construction of the sign structure and sign face shall be completed within 180 days from the date of the permit's issuance. The Department has the discretion to cancel permits and forfeit fees if construction is not completed. An applicant whose permit is voided for not completing construction may not reapply for the same or a conflicting site for a period of ninety days, unless the applicant can show that the delay was caused by events beyond his control. Examples of events which are not considered beyond the applicant's control include, but are not limited to, delays in ordering necessary materials, delays in obtaining financing, and disputes with local governmental bodies.

P. Each permitted sign structure must have the owner's name prominently displayed on it so that the name is readable from the highway.

Q. Upon issuance of the permit, the identification tag must be placed by the Department or the permittee, as the Department requires, on the support or lower corner of the sign nearest the main-traveled way so as to be readable from the edge of the highway. The tag will be issued for and may be attached only to the sign described in the permit application. Under no circumstances may the tag be moved from one sign to another nor may the sign to which it is attached be relocated to another location. If the tag issued for a sign is not attached as required, the sign is illegal.

R. Owners of signs which become subject to the Act because of the construction of a new highway or the change in designation of a highway must apply to the Department for a permit within thirty days after being notified by the Department that the sign has become subject to the Act. If the owner of the sign cannot be identified by information on the sign, notice may be given by prominently posting notice on the sign for a period of thirty days after which time notice shall be complete. Failure to apply for a permit within thirty days after notice results in the sign being illegal.

S. If a permitted sign is voluntarily removed or dismantled for a period of more than 30 days, the permit will be voided. If a permitted sign is removed, dismantled, or destroyed by an act of God or by vandalism for a period of more than ninety days, the permit will be voided.

T. Replacement tags for those which are lost or vandalized must be obtained from the Department by submitting a new application, an affidavit as to the loss of the tag, and a fee equal to the annual renewal fee.

U. Permits may be transferred from one sign owner to another pursuant to Department procedures.

V. The failure of any check submitted to the Department for a permit fee to be honored upon presentation shall make the permit void. The applicant may be required to submit a new application and may thereafter be required to submit cash or a certified check with any application or renewal.

W. The Department may revoke any permit issued and order the sign removed if it subsequently determines that the information submitted or subsequently discovered by the Department regarding the application, sign, or business location, was false or materially misleading and any fees submitted with the application shall be forfeited.

X. The Department may issue a permit for a sign which could otherwise be permitted even though it is located within the proposed right-of-way for a highway for which the alignment has been approved but which has not yet begun construction or even though it is located within the proposed right-of-way for an interchange for which the location has been approved but which has not yet begun construction provided that in either such case the sign owner and the landowner must agree to remove the sign without cost to the Department and without compensation within thirty (30) days after written notice from the Department to the sign owner and landowner at the addresses provided in the application.

Y. Notice of matters affecting permits, including a sign's being declared illegal, must only be given to the address(es) provided on the sign application. If there is a change in address, the sign owner is responsible for notifying the Department. If notice is forwarded to the landowner or sign owner and is returned undelivered, it shall nevertheless be considered to have been effected if sent to the most current address(es) provided by the sign owner.

Z. No sign shall be erected within 600 feet of areas where vegetation has been illegally removed, as determined by the discretion of the Department, or removed without prior written approval of the Department.

**HISTORY:** Amended by State Register Volume 13, Issue No. 6, eff June 23, 1989; State Register Volume 18, Issue No. 6, eff June 24, 1994; State Register Volume 31, Issue No. 3, eff March 23, 2007.

### **63-350. Maintenance Standards for All Signs Controlled by the Act.**

A. All signs subject to the Act must be structurally safe and maintained in a good state of repair which includes but is not limited to the following:

(1) The sign face must be maintained free of peeling, chipping, rusting, wearing and fading so as to be fully legible at all times.

(2) All parts of the sign, including the cutouts, extensions, border, trim, and sign structure must be maintained in a safe manner, free from rusting, rotting, breaking and other deterioration.

(3) The sign face must not have any vegetation growing upon it or touching or clinging to it.

B. Any sign which does not conform to the maintenance standards in 63-350(A) or which is abandoned is illegal. A notice will be given by certified mail to the sign owner and landowner to repair any sign which does not conform to these standards within thirty days of the date of mailing. A one-time extension of sixty days may be granted if the sign owner can show just cause for the delay because of unusual weather conditions or other reasons beyond the sign owner's control. If the repairs are not completed within the specified time, the sign must be removed at the sign owner or landowner's expense.

C. Nonconforming signs must be maintained subject to the following restrictions:

(1) No maintenance may occur which will lengthen the life of the device.

(2) There must be existing property rights in the sign.

(3) The right to continue a nonconforming sign is confined to the permitted sign owner or his transferee.

(4) In the event a nonconforming device is partially destroyed by wind or other natural forces including tornadoes, hurricanes, or other catastrophic occurrences, the Department must determine whether to allow the sign to be rebuilt. If the Department determines that the damage to the sign was greater than 50 percent of its replacement costs as determined by nationally recognized catalogues of vendors of construction and outdoor advertising materials as of the time of the damage, the sign must be dismantled at no cost to the Department and may not be erected again. A current issue of the catalogue or advertisement indicating materials to be replaced must be submitted with the request to rebuild. Salvage parts cannot be used to determine replacement value unless approved by the Department.

(5) A nonconforming sign which is destroyed by an Act of God or catastrophic act cannot be rebuilt, and the debris from the destroyed sign shall be removed by the sign owner, or by the Department at the sign owner's expense and the permit cancelled.

(6) A nonconforming sign when relocated or moved shall no longer be considered a nonconforming sign and thereafter shall be subject to all the provisions of law and of these regulations relating to outdoor advertising.

(7) The sign must remain substantially the same as it was on the effective date of the State law or regulations which rendered the sign nonconforming. Reasonable repair and maintenance of a nonconforming sign is not a change which would terminate nonconforming use. Extension, enlargement, rebuilding, changing the materials of the sign structure, changing the size of the sign structure materials, adding catwalks, adding guys or struts for stabilization of the sign or structure, adding lights to an unilluminated sign, changing the height of the sign above ground or re-erection of the sign will make the sign illegal. Maintenance will be limited to:

(a) Replacement of nuts and bolts;

(b) Additional nailing, riveting or welding;

(c) Cleaning and painting;

(d) Manipulation to level or plumb the device, but not to the extent of adding guys or struts for stabilization of the sign or structure;

(e) A change of the advertising message, including changing faces, as long as similar materials are used and the sign face is not enlarged. If the sign face or faces are reduced, they may not thereafter ever be increased.

(8) The Department must be notified of any maintenance to a nonconforming sign prior to the work being performed.

(9) Any nonconforming sign suffering damage in excess of normal wear cannot be repaired without:

(a) Notifying the Department in writing of the extent of the damage, the reason the damage is in excess of normal wear, and providing clear, color, on-site photographs of the damaged sign and all salvageable parts thereof, and a description of the repair work to be undertaken including the estimated cost of repair on the approved form; and

(b) Receiving written notice from the Department authorizing the repair work as described above. If said work authorization is granted, it shall be mailed to the applicant within thirty days of receipt of the information described in (a) above. Any such sign which is repaired without Department authorization becomes illegal.

D. No individual, company, corporation, public or private entity may cut, trim, remove or otherwise cause to be removed planted or natural vegetation from within the limits of highway rights-of-way unless specifically provided for by a properly executed agreement between the Department, individual, company, corporation, public or private entity. No such agreement may be granted for sign locations which have been permitted for less than two years. All such agreements shall be entered into at the sole discretion of the Department.

E. Signs may not be serviced from or across the right-of-way of Interstate or freeway primary federal-aid highways or across controlled access lines of federal-aid primary routes. Any sign which is so serviced becomes illegal and must be removed.

**HISTORY:** Amended by State Register Volume 13, Issue No. 6, eff June 23, 1989; State Register Volume 16, Issue No. 7, eff July 24, 1992; State Register Volume 18, Issue No. 6, eff June 24, 1994; State Register Volume 31, Issue No. 3, eff March 23, 2007.

## **63–351. Directional and Other Official Signs.**

A. Definitions for this Section:

(1) “Scenic Area,” means any area of particular scenic beauty or historical significance as determined by the Federal, state or local officials having jurisdiction thereof and includes land which has been acquired for the restoration, preservation, and enhancement of scenic beauty.

(2) “Parkland,” means any publicly owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge, or historical site.

(3) “Federal or State Law,” means a federal or state constitutional provision or statute, or an ordinance, rule, or regulation enacted or adopted by a state or federal agency or a political subdivision pursuant to a federal or state constitution or statute.

(4) “Directional and Other Official Signs and Notices,” means only official signs and notices, public utility signs, service club and religious notices, public service signs, and directional signs.

(5) “Official Signs and Notices,” means signs and notices erected by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in federal, state, or local law for the purposes of carrying out an official duty or responsibility. Historical markers authorized by state law and erected by state or local government agencies or non-profit historical societies may be considered official signs.

(6) “Public Utility Signs,” means warning signs, information signs, notices, or markers which are customarily erected and maintained by publicly or privately owned utilities, as essential to their operations.

(7) “Service Club and Religious Notices,” means signs and notices relating to meetings of non-profit service clubs or charitable associations, or religious services, which do not exceed eight square feet in area.

(8) "Directional Signs," means signs deemed by the Department to be in the interest of the traveling public and containing directional information about public places owned or operated by federal, state or local government 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.

B. The following signs are prohibited:

(1) Signs advertising activities that are illegal under federal or state laws in effect at the location of those signs or at the location of those activities.

(2) Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging or intersecting traffic.

(3) Signs which are erected upon trees or rocks or other natural features.

(4) Obsolete signs.

(5) Signs which are structurally unsafe or in disrepair.

(6) Signs which move or have any animated moving parts.

(7) Signs located in rest areas, parklands or scenic areas.

C. Directional signs shall not exceed the following size limits:

(1) Maximum area - one hundred fifty square feet.

(2) Maximum height -twenty feet.

(3) Maximum length - twenty feet.

All dimensions include border and trim, but exclude supports.

D. Lighting requirements are the same as Regulation 63-347.

E. Spacing of directional signs:

(1) Each location of a directional sign must be approved by the Department.

(2) No directional sign may be located within two thousand feet of an interchange, or intersection at grade along the interstate highways or freeway primary federal-aid highways (measured along the highway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way).

(3) No directional sign may be located within two thousand feet of a rest area, parkland, or scenic area.

(4) No two directional signs facing the same direction of travel may be spaced less than one mile apart;

(a) Not more than three directional signs legible to the same direction of travel may be erected along a single route approaching the activity;

(b) Signs located adjacent to an Interstate highway must be within seventy five air miles of the activity;

(c) Signs located adjacent to a federal-aid primary highway must be within fifty air miles of the activity.

F. Message content—Directional Signs.

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.

G. Persons or firms desiring to construct or qualify signs as directional must first comply with the following procedures:

(1) Submit, in writing, to the Director of Outdoor Advertising, SCDOT, P.O. Box 191, Columbia, SC 29202, a detailed outline of the sign. This shall include overall dimensions and message portion of the sign to include type of construction and lighting.

(2) Application for sign must be submitted on the form provided by the Department and must be accompanied by the appropriate fees.

(3) Specify reasons why the activity being advertised should be approved for directional signing. Submission must document why the activity is regionally or nationally known.

(4) The Department shall consider all requests and shall consult, as necessary, with other state agencies and local organizations possessing cultural or historical expertise in rendering a decision.

(5) If the Department's decision is in the affirmative, a permit and identification tag will be issued. If the permit is denied, the applicant will be notified in writing outlining the specific reasons for refusal. The applicant may appeal the decision of the Department by filing written notice with the Department within thirty days of the Department's mailing of notice to the applicant at the address provided on the application. All appeals will be conducted in accordance with the Administrative Procedures Act. The applicant shall bear the burden of showing that the Department should issue the permit.

(6) All signs authorized by the Department under this section shall be subject to maintenance standards outlined in Regulation Section 63-350.

(7) No sign shall be authorized for a highway if the attraction for which the sign is sought is already identified on official signs and notices visible from that highway.

**HISTORY:** Amended by State Register Volume 13, Issue No. 6, eff June 23, 1989; State Register Volume 16, Issue No. 7, eff July 24, 1992; State Register Volume 18, Issue No. 6, eff June 24, 1994; State Register Volume 31, Issue No. 3, eff March 23, 2007.

### **63-352. On-Premise Signs.**

A. Signs erected pursuant to S. C. Code Section 57-25-140(a)(5) and (6) are not required to be permitted, however, there are certain criteria that must be applied to these signs in order to determine if, in fact, they are on-premise signs.

B. "For Sale" and "For Lease" signs may be considered on-premise if they meet the following requirements:

(1) They must be located only on property which is for sale or lease.

(2) They may contain only information pertinent to sale or lease of the property such as "For Sale," acreage, name of person or firm having such property for sale, and phone number.

(3) They may not have information relating to any activity or product not directly connected with the sale or lease of the property on which they are located.

C. Signs advertising activities, products or services offered or performed on the property upon which they are located shall be considered on-premise provided they meet the following requirements:

(1) Signs must be physically located on the same premise as activity advertised.

(2) The intent of the sign must be the identification of the activity, product or service offered at the location.

(3) In the event a sign site is located on a narrow strip of land contiguous to the advertised activity or on land connected to the advertised activity by a narrow strip of land, the sign site shall not be considered part of the premises on which the activity being advertised is conducted. A narrow strip shall include any configuration of land which cannot be put to any reasonable use related to the activity other than for signing purposes.

(4) Two or more activities which share a common property line may share a single on-premise sign so long as the sign is located on the common property line and meets all other requirements of on-premise signs.

(5) The sale of the land between the main building and the advertising device or the diversion of the land to uses other than commercial or industrial by lease, rental agreement, easement, or license, etc., will be prima facie evidence that the sign is no longer on-premise and shall be subject to appropriate provision of the law. The diversion of land to other uses includes, but is not limited to, cultivation to raise crops or forest even though land may be of a single ownership, or land which is separated from the activity by a public highway, or other obstruction as may be determined by the Department.



(6) Land under cultivation to raise crops or forest may not be considered a part of a given activity even though the land may be in a single ownership, nor may land which is separated from the activity by a public highway, or other obstruction.

D. Upon vacating a premise which is not thereafter occupied by another business within one year, the owner of the property must, without cost to the Department, dismantle and remove any free-standing on-premise sign. Any on-premise sign which is not so removed is illegal.

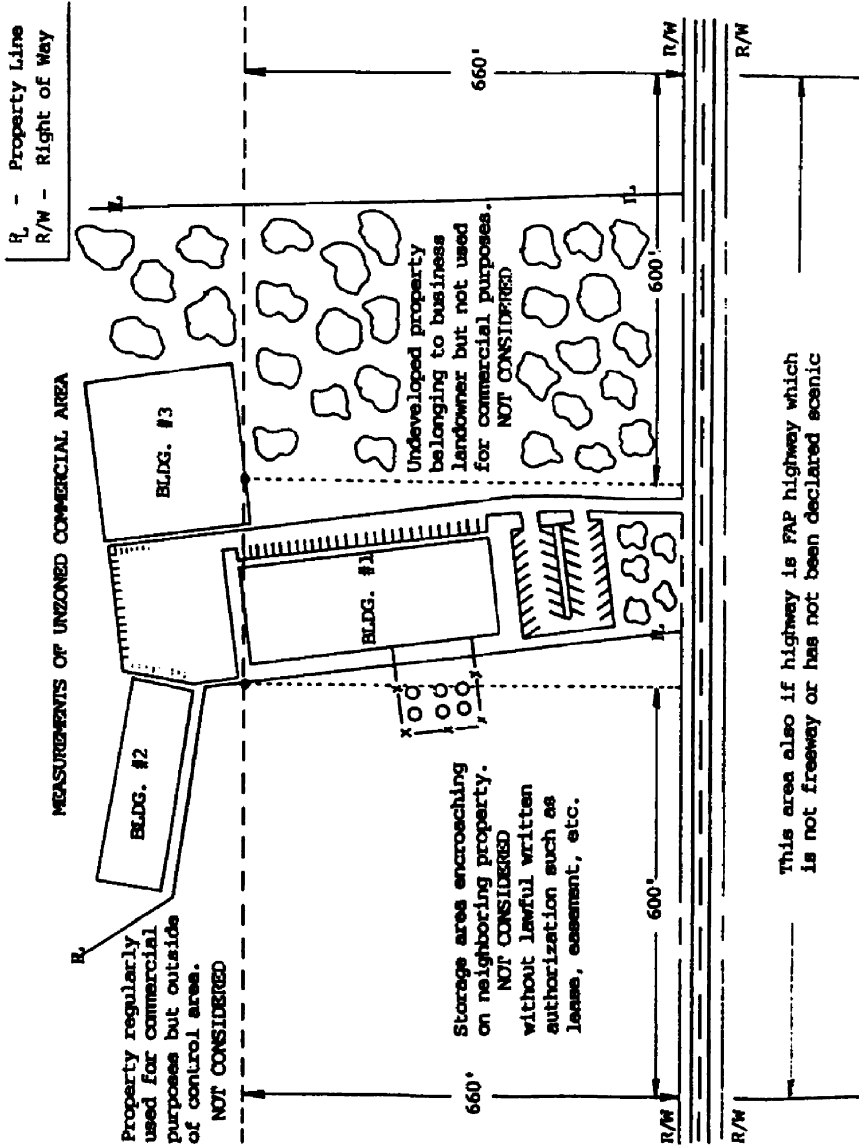
E. The Department shall have sole discretion to determine if the sign is a traffic or safety hazard, including the ability to determine if the sign's lighting or illumination creates a traffic or safety hazard. If the Department determines the sign to be a traffic or safety hazard, the sign shall be removed at the expense of the sign owner.

**HISTORY:** Amended by State Register Volume 13, Issue No. 6, eff June 23, 1989; State Register Volume 16, Issue No. 7, eff July 24, 1992; State Register Volume 31, Issue No. 3, eff March 23, 2007.

### **63-353. Design of Outdoor Advertising Signs.**

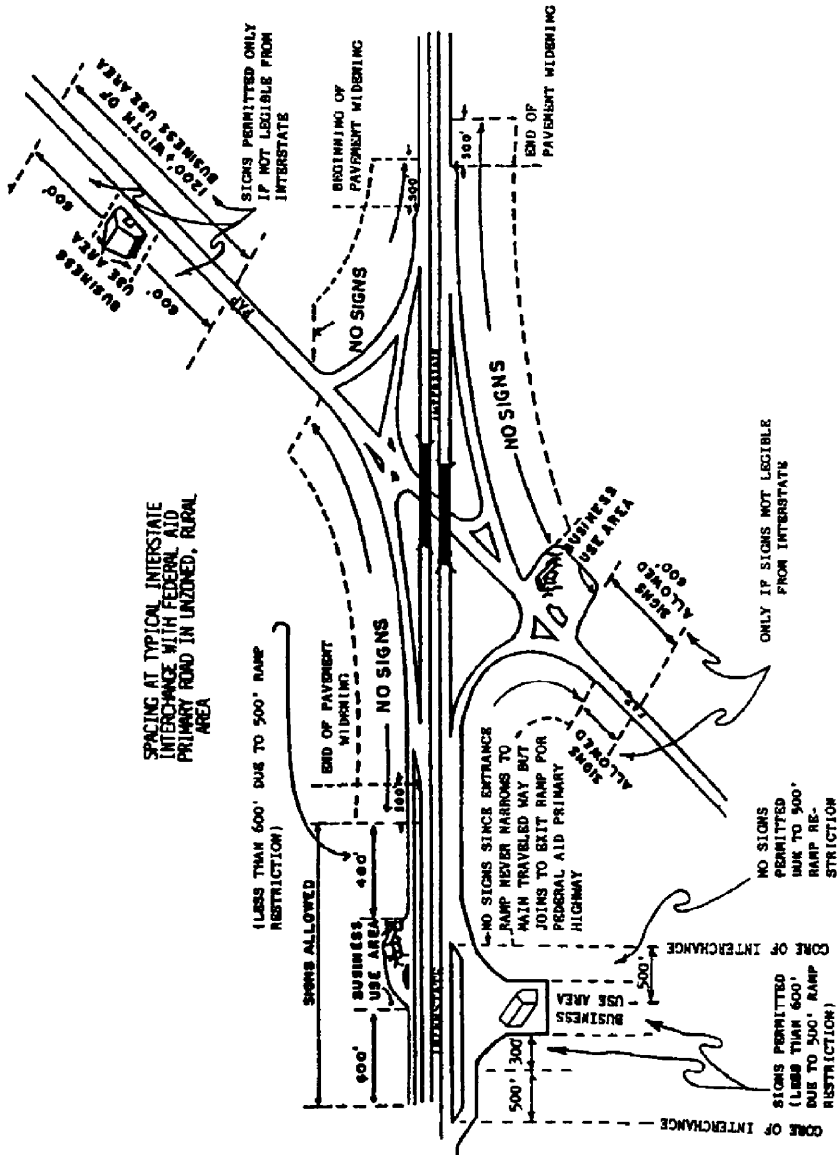
- A. Signs with 350 square feet of facing or more must be constructed with steel supports.
- B. Signs with 672 square feet of facing must be constructed on a steel monopole.
- C. No stacked (double deck) sign faces shall be allowed.

ILLUSTRATION 1



This area also if highway is FAP highway which is not freeway or has not been declared scenic

ILLUSTRATION 2



HISTORY: Amended by State Register Volume 13, Issue No. 6, eff June 23, 1989; State Register Volume 18, Issue No. 6, eff June 24, 1994; State Register Volume 31, Issue No. 3, eff March 23, 2007.

**63-354. Off-premise Changeable Message Signs.**

- A. Changeable message signs shall not contain or display flashing, intermittent or moving lights.
- B. Changeable message signs shall conform with size requirements as described in Regulation Section 63-345.
- C. Changeable message signs shall be spaced 500 feet apart on the same side of the highway.

D. Only conforming sign structures may be modified to changeable message signs upon compliance with changeable message sign standards and approval of the Department. Nonconforming sign structures shall not be modified to changeable message signs.

E. Each message displayed shall remain fixed for at least six seconds.

F. When a message is changed, it shall be accomplished within an interval of two seconds or less.

G. Changeable message signs may only be constructed as a single face and V-shape structures. Changeable message signs shall not be side by side or stacked.

H. If a conforming sign is to be revised to a changeable message sign, an application shall be submitted noting the sign is to become a changeable message signs and requesting approval for this change.

I. Brilliancy and light intensity shall remain the same throughout the display period.

**HISTORY: Amended by State Register Volume 31, Issue No. 3, eff March 23, 2007.**

### **63-355. Penalty for Violation.**

Any person or firm who violates any portion of these regulations shall be held accountable under the appropriate section of the Highway Advertising Control Act and other laws and regulations. A violation shall be just cause for revocation of permit or permits in accordance with specifications contained in the Department's permit form. Each permit shall be considered separately in revoking procedures.

### **63-356. Exhibits and Forms.**

#### Exhibit 1

STATE OF SOUTH CAROLINA APPLICATION FOR OUTDOOR ADVERTISING PERMIT

STATE OF SOUTH CAROLINA  
APPLICATION FOR OUTDOOR ADVERTISING PERMIT  
S. C. STATE HIGHWAY DEPARTMENT

\_\_\_\_\_  
(Permit Number)



Duplicate to District Engineer

Signed \_\_\_\_\_  
District Construction Engineer

Exhibit 3  
OUTDOOR ADVERTISING SITE APPROVAL FORM

Date: \_\_\_\_\_

1. Name of Applicant: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_
  2. Site Location: County \_\_\_\_\_ Route \_\_\_\_\_ Road Section \_\_\_\_\_  
Between \_\_\_\_\_ from \_\_\_\_\_  
Route or Road      Route or Road      Nearest 1/10 mile      Route or Road
  3. Zoning if any \_\_\_\_\_
  4. Distance of Nearest Commercial/Industrial Establishment: \_\_\_\_\_ feet  
A. Type Business \_\_\_\_\_
  5. Distance to Nearest Permitted Sign: \_\_\_\_\_ feet.
  6. Inventory Number, if available: \_\_\_\_\_.
  7. Over-all Dimensions of Sign: \_\_\_\_\_.
  8. Approved/Disapproved: \_\_\_\_\_.
  9. Remarks: \_\_\_\_\_  
\_\_\_\_\_
- SCHD Representative— Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTACH PHOTO OF SIGN OR SITE**

**63-358. Control of Junkyards.**

A. Introduction. Consistent with the requirements of the Junkyard Control Act these regulations are designed to delineate the methods by which a junkyard is constructed and maintained. These regulations pertain to all activities identified as junkyards, and includes automobile graveyards, automobile junkyards and activities that process, sell and or store junk cars, parts, or ferrous and nonferrous material.

B. Definition of Terms.

1. "Interstate System" means that portion of the National System of Interstate and Defense Highways located within this State, as officially designated, or as may hereafter be so designated, by the South Carolina Department of Highways and Public Transportation, and approved by the Secretary of Commerce or other appropriate Federal official, pursuant to the provisions of Title 23 of the United States Code.

2. "Federal Aid Primary System" means that portion of connected main highways, as officially designated, or as may hereafter be so designated by the South Carolina Department of Highways and Public Transportation, and approved by the Secretary of Commerce or other appropriate Federal official, pursuant to the provisions of Title 23 of the United State Code. (1966 (54) 2130.)

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

When used in referring to automobiles, trucks, tractors, etc. the location shall be deemed a junkyard when ten or more or any combination of ten of the above, named vehicles are present at any one time.

4. An “automobile graveyard” shall mean any establishment which is maintained or used for storing, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. Automobile graveyards and Junkyards as relates to motor vehicles shall be synonymous.

5. A “Scrap Processor” shall mean any person, firm or corporation engaged only in the business of buying scrap iron and metals, including, but not limited to, old automobiles, for the specific purpose of processing into raw material for remelting purposes only, and whose principal product is ferrous and nonferrous scrap for shipment to steel mills, foundries, smelters and refineries, and maintaining an established place of business in this State and having facilities and machinery designed for such processing.

6. The term “junk” shall mean old or scrap copper, brass, rope rags, batteries, paper, trash, rubber debris, waste, junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

7. “Department” shall mean the South Carolina Department of Highways and Public Transportation.

8. “Regulations” shall mean public declaration of policy published by the South Carolina Department of Highways and Public Transportation pursuant to the Junkyard Control Act and amendments thereto.

9. “Zoned Industrial areas” those areas that are zoned for industrial purposes under authority of state law by an official zoning authority within the state.

10. “Unzoned industrial area” means those areas, in a political subdivision for which a zoning plan has not been adopted, on which there is located one or more permanent structure devoted to an industrial activity, and that area along the highway extending outward 1,000 feet from and beyond the edge of the used area of said activity in each direction and a corresponding zone directly across a primary highway provided said highway is not a limited or controlled access highway. Measurements for said industrial area shall be taken from the regularly used building, parking lot, storage, and processing area. None of the following areas or activities shall qualify as unzoned industrial areas.

- A. Land on the opposite side of an Interstate or freeway primary Federal-Aid highway.
- B. Land predominately used for residential purposes.
- C. Land zoned by State or local law, regulation, or ordinance.
- D. Land on the opposite side of a non-freeway primary highway which is deemed scenic by the Department of Highways and Public Transportation.
- E. Outdoor Advertising structures.
- F. Agricultural, forestry, ranching, grazing, farming, wayside produce stands.
- G. Activities conducted in a building principally used as a residence.
- H. Transient or temporary activities.
- I. Activities not visible from main traveled way.
- J. Activities more than 1,000 feet from nearest edge of right-of-way.
- K. Railroad tracks and minor sidings.
- L. Land within 300 feet of a residential structure without written consent of the owner of the residence.
- M. Junkyards as defined in Section 136 Title 23 United States Code.

11. “Main Traveled Way” means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, parking areas, or ramps.

12. “Screening” means any material approved by the Department, such as vegetation, fencing, masonry, earth or combination thereof which will effectively obstruct from view any deposits of junk from the main traveled way.

13. "Control Area" means all areas along and within 1,000 feet of edge of the right-of-way of any highway designated for control under the Junkyard Control Act.

14. "Junkyard Placement Distance" means the measurement of the 1000 feet limitation shall be measured from the nearest edge of right-of-way along a horizontal line perpendicular to the center line of the controlled highway.

15. "Abandonment" means any activity construed to be subject to the junkyard law shall be deemed abandoned when one or more of the following criteria has been met:

A. The owner of the activity advises the Department that said activity is no longer open and operating as a junkyard.

B. When the activity is altered or transformed into a type of activity not subject to the Junkyard Law.

C. The activity closes its office and remains closed for a period of one year with normal activity not being readily evident.

D. When activity fails to renew business license or fails to comply with other laws or regulations for a period of one year.

E. When material that distinguishes the activity as such is removed and the area remains vacant for a period of one year.

C. Permits for Junkyard Location, Construction and Operation.

1. No junkyard shall be established, operated or maintained that is visible and within 1,000 feet of the nearest edge of the right-of-way for any highway subject to control under the Junkyard Control Law without first obtaining a permit from the South Carolina Department of Highways and Public Transportation. Forms for this purpose shall be furnished by the Department and all information must be submitted before permits are processed.

2. An initial permit fee in the amount of Twenty five dollars (\$25.00) paid by personal check, certified check or money order, made payable to the South Carolina Department of Highways and Public Transportation, shall accompany each application. Permits must be renewed each year, however, no additional fee is required so long as the yard is maintained in accordance with the law.

3. Permit fees shall not be prorated for any portion of the permit year.

4. All activities such as garbage dumps and sanitary landfills shall be required to obtain permits, with exception of dumps and landfills owned and operated by cities, counties and municipalities.

5. Issuance of a permit by the Department shall constitute authority by the owner to operate the junkyard in accordance with the provisions of these regulations and for the time specified therein. Any alterations such as expansion of size without prior approval by the Department shall constitute a violation of the junkyard control act and these regulations. Penalties for violation shall be in accordance with applicable provisions of the Junkyard Control Act.

6. Procedure for obtaining a permit to operate, alter and or maintain junkyards shall be as follows:

A. Request a permit application from the appropriate Highway District Engineer located in the cities of Columbia, Greenwood, Greenville, Chester, Florence, Charleston, Orangeburg or from the State Highway Engineer, P. O. Box 191, Columbia, S. C. 29202.

B. Complete application in its entirety to include a sketch outlining the limits of the activity. The sketch shall be drawn to scale on reverse side of permit application.

C. Contact the District Sign and Junkyard Supervisor for an inspection of the site to be covered by the permit.

D. Upon completion of the on site inspection the original and three copies of the application together with the permit fee are to be forwarded to the State Highway Engineer for processing.

E. The Department will review the application and upon a favorable review the permit will be issued.

F. Application for renewal permits will be submitted on the same form and will be processed in the same manner as a new application.



G. The Department inspector will obtain a photograph of the junkyard showing two approaches to the site along the main travel way and attach each photograph to the reverse side of the original permit application where shown.

D. Screening Procedures.

1. Junkyards lawfully in existence on March 24, 1966 which are within 1,000 feet of the nearest edge of the right-of-way and visible from the main-traveled way of any highway subject to the Junkyard Control Law shall be screened, if feasible, by the South Carolina Department of Highways and Public Transportation at locations on the highway right-of-way or in areas acquired for such purposes outside the right-of-way so as not to be visible from the main-traveled way of such highways.

2. When the South Carolina Department of Highways and Public Transportation determines that the topography of the land adjoining the highway will not permit adequate screening of a junkyard or the screening of the junkyard would not be economically feasible, the Department shall have the authority to acquire by gift, purchase, exchange, or condemnation, such interests in lands as may be necessary to secure the relocation, removal, or disposal of the junkyards; and to pay for the cost of relocation, removal, or disposal, thereof. When the Department determines that it is in the best interest of the State it may acquire such lands, or interests in lands, as may be necessary to provide adequate screening of such junkyards. The Department may exercise the power of eminent domain in the manner presently provided by law for acquisition of real property needed for construction of highways in Title 23, whenever it is necessary, in the judgment of the Department, to acquire such lands, or interests therein, by condemnation.

3. Junkyards established subsequent to March 24, 1966 which are located in areas subject to Control under the Junkyard law must provide for screening prior to establishment of the junkyard in accordance with Department procedures. Screening of this nature shall be placed off the highway right-of-way, shall be of a type approved by the Department and shall be placed by the owner at his expense. Junkyards established subsequent to the law that cannot be screened are to be relocated at the owners expense.

4. Prior to the establishment of a junkyard the owner shall submit to the Department a comprehensive plan drawn to scale outlining the method by which screening is to be accomplished. The plan shall show the construction details of the screening to be used, to include specifics regarding plant material where same is used. In the event fencing alone is used or in combination with plant material the resulting work must provide for immediate screening. When planting is used alone or in combination with an earthen embankment, the number, type, size and spacing of the plants shall be capable of screening the junk entirely from view within a three year period. The effectiveness of the proposed material shall be judged by the Department. Additional requirements shall be as follows:

A. No junk shall be deposited on the new yard until a permit has been issued and all necessary screening is in place.

B. All screening shall be accomplished on the owners land free and clear of highway right-of-way.

C. Stacking of junk above the screening material and placing junk outside the screened area shall be prohibited.

D. Fences shall be located in such a manner as not to present a hazard to the traveling public.

E. Uniformity shall be stressed in construction of fences with no patchwork allowed.

F. Where fences are required to be painted care shall be taken to select a paint that will blend with surrounding area.

5. Following are examples of the type fencing material that may be used for screening purposes. These are examples only and use of these or other material is subject to approval by the Department.

A. Standard gauge chain link type with approved inserts such as metal or wood.

B. Wooden fences of design such as solid wood slats, basket weave, palisade louver or other suitable design.

C. Masonry walls such as concrete block, brick, stone or combination.

6. Examples of plant material suitable for screening or as follows:

A. Detailed planting plans indicating, spacing and arrangement of plants, botanical names of plant materials, sizes of plant materials at planting, planting and staking details. Specifications shall be submitted to the Highway Department for review and approval.

B. The requirements established by the American Nurseryman's Association as shown in their most current edition of "American Standard For Nursery Stock" shall be in accord and govern grading, ball size, etc., for specific nursery stock used. Certificates of inspection of plant materials required by Federal, or other authority including the South Carolina Plant Pest Regulatory Agency shall be procured prior to planting.

C. Screening plant materials shall be primarily evergreen; minimum sizes at planting shall be as follows:

Trees 6'—4' Height

Large Shrubs—3 ½ 4' Height

Vines—1 gal. container

The above sizes are minimum under no circumstances will plantings be allowed which will take more than three years to achieve effective screening.

D. The owner shall be responsible for all watering, plant replacements, pruning, weeding, mowing of grassed areas, pest and rodent control, and any other establishment or plant maintenance work required to keep the screening in first class attractive and healthy condition.

7. Screening Maintenance. Owners of junkyards established prior to March 24, 1966 shall have the responsibility to maintain screening after the Department has brought the junkyard up to standards required by law. Maintenance of junkyards established after March 24, 1966 shall be the responsibility of the owner for both the initial construction and all maintenance required. All maintenance of screening shall be consistent with requirements of the law and regulations. Deficiencies, such as replacement of damaged fences, dead plants, etc., shall be promptly corrected. Dead plant material will be removed immediately and shall be replaced during the planting season following death of plants. All replacement plants shall be at least as large as the original plantings.

8. Location of Screening. Screening placed adjacent to property used for purposes other than junkyards shall have a minimum of two (2) feet set back from the property line unless the owner of the junkyard submits recorded legal documents showing a right of ingress and egress upon the adjoining property to maintain screening.

9. Advertising Junkyards. Advertising on the junkyard screening is prohibited. The fencing, trees, or shrubs shall not be used for placing of signs, pictures, posters, lettering or other devices which constitute advertising.

E. Inspection and Non Compliance Procedures. The District Sign & Junkyard supervisor shall have the responsibility for inspection to insure that junkyards are being constructed and maintained in accordance with state law and these regulations.

At least one inspection is to be conducted each year on all junkyards within the area of his responsibility. If the inspection discloses a junkyard is being operated in violation of these rules and regulations the owner shall be so advised in the following manner.

1. A personal contract is to be made to the owner and the owner is to be advised what correction measures are to be taken.

2. If the owner fails to respond to the first contact a letter is to be initiated explaining the deficiency and giving thirty (30) days within which to make corrections.

3. If the owner fails to respond within the specified time limit the District Engineer shall submit to the State Highway Engineer the following information marked to the attention of the Outdoor Advertising Administrator.

A. Name and address of junkyard owner.

B. Name and address of landowner if different from junkyard owner.

C. Date approval given to construct junkyard if established after March 24, 1966.

D. Description in detail of the location.

- E. Recommendation as to what action is required to obtain compliance.
- F. Type of material stored at the junkyard.
- G. Copies of all correspondence between district office and junkyard owner.

4. Upon receipt of the above information from the field, the Columbia office will review all pertinent data and render a decision regarding necessary action in order to obtain compliance.

F. Penalty for Violation. Violations of these regulations shall result in the revocation of permit to operate the junkyard in question and no further permit shall be issued to owner and or operator of said junkyard until correction of violation has been completed to the satisfaction of the Department. Additional penalties as set forth in the law and shall likewise be applicable.

**HISTORY:** Added by State Register Volume 2, eff July 23, 1978.

#### **SUBARTICLE 4 MOVEMENT OF ROAD MACHINERY OVER HIGHWAYS**

### **63-361. Routing Permits.**

All road machinery which is temporarily moved over the highways of this State and which exceeds 12' -0" in width or which weighs 90,000 pounds or more (including pulling equipment) shall first obtain from the Department a routing permit for the movement which shall specify the routes to be traveled and conditions to be observed during the trip. This permit, which will be issued without charge, shall be carried in the vehicle and be available for inspection at all times. The Department will determine the minimum spacing of axles and the maximum loads to be permitted on single, double and triple tandem axles.

Loads moved in violation of this regulation will be considered in violation of Chapter 5, Title 56, of the Code of Laws of South Carolina and subject to the penalties provided therefor.

#### **SUBARTICLE 5 DRIVEWAYS**

### **63-370. Private Driveway Entrances to Highways.**

(Statutory Authority:1976 Code §§ 57-3-10 and 57-5-180)

A. Residential Entrances—The department may construct at its expense with its maintenance forces the portion within the right-of-way of private entrances to state highways at such points as may be necessary to render adequate ingress and egress to the abutting property at locations where said driveways will not constitute hazardous conditions. The driveways shall be of access to existing developed property or property that is being developed for the personal use of the owner and not for speculative or resale purposes. An entrance ten feet wide (paved portion) measured at right angles to the centerline of the driveway is the maximum width for one-way traffic. An entrance sixteen feet wide (paved portion) is the maximum width for two-way traffic. If pipe culvert is necessary for drainage the department may install the amount necessary for twelve inch, fifteen inch, eighteen inch, twenty-four inch or thirty inch pipe. Should the driveway installation require pipe larger than thirty inches the department may install same and charge the homeowner for the difference in cost between thirty inch pipe and larger diameter pipe required. Driveways requiring drainage structures other than pipe shall be brought to the attention of the State Maintenance Engineer. The entrances to be constructed as outlined in this section shall include base and surfacing as necessary to provide an all weather driveway entrance. If wider entrances or additional entrances are requested and approved, the construction may be performed by the department at the owner's expense.

B. Commercial Entrances Where No Curb and Gutter Exists and No R. C. Pipe Culvert is Required for Drainage—The department may construct at its expense with maintenance forces one (1) forty foot driveway entrance (measured along the right-of-way line) to the highway facility. The driveway so constructed shall include pavement. Should the owner desire to request additional driveways as permitted under the standards, this additional work may be done at the owner's expense under permit or by maintenance forces.

C. Commercial Entrances Where No Curb and Gutter Exists and R. C. Pipe is Required For Drainage—One (1) driveway up to forty foot in width (measured along the right-of-way line) including the R. C. culvert pipe up to the thirty inch in diameter necessary for drainage may be constructed as in “B” above. Should the driveway installation require pipe larger than thirty inches the department may install same and charge the property owner for the difference in cost between thirty inch pipe and the larger diameter pipe required. Driveways requiring drainage structures other than pipe shall be brought to the attention of the State Maintenance Engineer. Should the owner request additional driveways as permitted under the standards, this additional work may be done at the owner’s expense under permit or by maintenance forces.

D. Commercial Entrances Where Curb and Gutter or Curb, Gutter and Sidewalk Exists—The department may construct with maintenance forces one (1) driveway up to forty feet (measured along the right-of-way line) provided the landowner bears the cost of the necessary concrete. Should the owner desire to request additional driveways as permitted under the standards, all additional work may be done at the owner’s expense under permit or by maintenance forces. In this regard, preliminary plans for shopping malls in urban areas should be brought to the attention of the Traffic and Planning Engineer.

E. Entrances For Agricultural Purposes—Driveways to provide ingress and egress to fields are provided when a road is initially paved. Any revisions, relocations, or new driveways requested as outlined below may be performed by the department at the owner’s expense. If the need for a driveway for agricultural purposes is created due to the change in ownership of farm land, the department may construct at its expense with maintenance forces one unpaved driveway of adequate width to accommodate farm equipment. If pipe culvert is necessary for drainage the department may install the size as outlined in paragraph “A”. If pipe larger than thirty inches is required the department may install same and charge the property owner for the difference in cost between the thirty inch pipe and the larger diameter pipe required. Driveways requiring drainage structures other than pipe shall be brought to the attention of the State Maintenance Engineer.

F. Maintenance—Maintenance within the limits of the right-of-way may be performed by the department on all entrances as shown in “A”, “B”, “C”, “D”, and “E” above.

G. Procedure—District Engineering Administrators or their designees shall determine the necessity for constructing entrances and may approve and authorize the work to be done. The standard encroachment permit (Form 742, Rev. 1078) will continue to be used for work within the right-of-way and which is performed by others. In all cases where property owners are required by provisions of this regulation to pay for a portion of the work performed by department maintenance forces, Form 3025-A shall be submitted to the Columbia office along with the remittance in the usual manner.

H. Exceptions—Driveway entrances as covered under this regulation is limited to roads in the state highway system other than controlled access facilities.

**HISTORY: This regulation was adopted May 27, 1983.**

## **SUBARTICLE 6 EROSION CONTROL**

### **63–380. Standard Plan for Erosion, Sediment and Stormwater Runoff Control.**

(Statutory Authority: 1976 Code § 48-18-70 (4), as amended)

(1) All land disturbing activities under the jurisdiction of the Department must be performed in a manner that erosion is controlled and sediment is retained on the site concerned to the maximum extent feasible and stormwater is managed in a manner such that neither any significant on-site nor off-site damage and/or problem is caused or increased.

(2) All construction plans prepared by or for the Department must include designs to manage stormwater runoff and control erosion and sedimentation using state-of-the-art practices.

(3) Prior to the start of construction the contractor must submit in writing to the Engineer, for approval, his schedule for the accomplishment of temporary and permanent erosion and sediment control and stormwater management for the work to be performed.

(4) During construction, work must be scheduled and conducted in such a manner as to minimize soil erosion and control runoff, with particular attention to prevent contamination and depositing of

sediment in adjacent streams, watercourses, lakes ponds and other water impoundments or onto adjacent properties, and to prevent on-site and off-site damage from stormwater runoff. Temporary and permanent measures to control erosion and sedimentation and manage stormwater runoff must be carried out in conjunction with clearing, grubbing and other earthwork operations and throughout the life of the project. Temporary measures such as berms, dikes, slope drains, terraces, earth rolls, sedimentation basins and temporary seeding must be provided until permanent drainage facilities and erosion control features are completed and operative. Permanent devices or measures such as culvert pipes, terraces gutters, bituminous curbs, permanent slope drains, riprap and permanent vegetation must be used and must be incorporated as soon as feasible.

(5) The Engineer's representative must periodically inspect work performed under the plan to insure that the necessary measures are implemented and are adequate for the needs of the site and affected off-site areas. The Department must require that additional measures be implemented in the event that the measures included in the plan are not sufficient to adequately control erosion and sedimentation and manage stormwater runoff.

(6) After a project has been completed and accepted in its entirety, the Department's Maintenance Forces must maintain the areas with top priority being to take the necessary steps to insure the continuance of proper erosion and sediment control and stormwater management measures as may be needed to prevent on-site and off-site damages or contamination of watercourse or impoundments.

(7) Each Resident Maintenance Engineer must prepare an inventory of existing erosion, sedimentation and stormwater problem areas. This list must be kept current and updated as conditions change. The Resident Maintenance Engineer, in conjunction with the District Office Personnel, must set priorities on the inventory and make the necessary corrections as time and funds permit.

(8) Maintenance must be performed in a manner that erosion is controlled and sediment is retained on the site to the maximum extent feasible and stormwater is managed in a manner such that neither any on-site nor off-site damage and/or problem is caused or increased. Existing vegetation must be retained and protected during maintenance to the maximum extent feasible.

**Editor's Note**

This regulation was adopted February 28, 1986.

**SUBARTICLE 7**

**TANDEM TRAILER COMBINATION AND OTHER LARGER VEHICLE ACCESS CONTROL ACT**

**Editor's Note**

These regulations were adopted April 28, 1989.

**63-390. Purpose, Scope and Policy.**

(1) This article sets forth the regulations governing the operation of tandem trailer combinations and other larger vehicles within the State of South Carolina. These regulations are promulgated pursuant to the authority of Section 56-5-4075 of the South Carolina Code.

(2) Tandem trailer combinations and other larger vehicles in compliance with this article and Sections 56-5-4030 and 56-5-4070 of the South Carolina Code may operate within the State of South Carolina only on those highways identified as the "National Truck Network" and other roads specifically designated by the Department.

**HISTORY:** Added by State Register Volume 13, Issue No. 4, eff April 28, 1989.

**63-391. Definitions.**

For the purpose of this article the following words and phrases shall have the following meanings:

(1) Department: The South Carolina Department of Highways and Public Transportation.

(2) Household Goods Carrier: A commercial vehicle used in transporting home furnishings and other personal property to or from a residence or business.

(3) National Truck Network: The National System of Interstate and Defense Highways and other qualifying federal aid highways designated by the U. S. Secretary of Transportation.

(4) Other Larger Vehicle: Any truck, trailer, or other vehicle in excess of 96 inches wide, but not exceeding 102 inches wide; or any truck tractor-trailer combination greater than 60 feet in length, including auto transporters.

(5) Qualifying Activities: Terminals and facilities for food, fuel, repairs, and rest.

(6) South Carolina Truck Network: That system or roads designated by the Department for the operation of tandem trailer combinations and other larger vehicles, consisting of the following:

(a) The Basic Network: The National Truck Network; and other segments of the State Highway System specifically designated by the Department.

(b) Local Roads: County roads and city streets not part of the State Highway System but specifically designated by the Department.

(7) Tandem Trailer Combination: A truck tractor pulling; a semitrailer and full trailer, or two semitrailers connected by a converter dolly, or two trailers; with neither trailing unit link exceeding 28 ½ feet in length and with no part of the combination exceeding 102 inches in width.

(8) Terminal: A structure and its associated yards, parking areas, driveways and equipment that, by design or usage, are devoted to commercial transportation activities, including: the warehousing, transfer, or temporary storing of cargo or freight enroute to other destinations; or complete loading or unloading; or the manufacture, storing or maintenance of vehicles herein authorized.

**HISTORY:** Added by State Register Volume 13, Issue No. 4, eff April 28, 1989.

### **63-392. Selection of the South Carolina Truck Network.**

(1) The Department's designation of the Network is for the accommodation of needed truck-transportation service and to promote the economic benefits derived therefrom; but is also constrained by an overriding concern for safety, roadway facility capabilities, and public convenience. Accordingly, in selecting, approving, restricting or disapproving roads or portions of roads as part of the Network, the Department may consider, in addition to the need for service, those engineering and safety factors found to be appropriate.

(2) The Department may designate additional routes to the existing Network, pursuant to the standards for selection of the Network contained in subsection (1). Except in the case of access permitted pursuant to R63-395 and R63-396, notice of the Department's intention to add a particular route shall be published in the State Register. Interested persons shall be afforded reasonable opportunities to submit views and a public hearing shall be provided if requested by 25 or more persons. All views and the proceedings of any hearing shall be fully considered.

(3) The Department may review at any time a route designated under this Section and remove or restrict the route or any portion thereof in accordance with R63-392.

**HISTORY:** Added by State Register Volume 13, Issue No. 4, eff April 28, 1989.

### **63-393. Publication of Network Routes.**

(1) The Department will compile and publish in the State Register a list of the routes comprising the South Carolina Truck Network. A copy of this list will be available from the Department's Director of Traffic Engineering, 955 Park Street, Post Office Box 191, Columbia, South Carolina 29202.

(2) Notice of any addition, deletion, or change in the South Carolina Truck Network shall be promptly filed and published in the State Register.

**HISTORY:** Added by State Register Volume 13, Issue No. 4, eff April 28, 1989.

### **63-394. Route Proposals by Local Authorities.**

(1) The local authority responsible for maintenance of a road may nominate a road or a portion of a road for addition to or deletion from the South Carolina Truck Network. The nomination shall be in writing and shall identify the road, its termini, and each point of intersection with the South Carolina Truck Network.

(2) The local authority shall submit the nomination to the Department's Director of Traffic Engineering.

(3) The Department shall review the nomination and may, within thirty (30) days after its receipt, request any needed additional information. Within ninety (90) days after receipt of the nomination or receipt of any requested additional information, the Department shall either:

(a) approve the nomination;

- (b) disapprove the nomination;
- (c) approve the nomination in part and disapprove in part; or,
- (d) approve the nomination with restrictions.

(4) The Department may review at any time a route designated under this Section and remove or restrict the route or any portion thereof in accordance with R63-392.

**HISTORY:** Added by State Register Volume 13, Issue No. 4, eff April 28, 1989.

### **63–395. Reasonable Access to Qualifying Activities.**

(1) Tandem trailer combinations and other larger vehicles shall be afforded access to qualifying activities located within five miles travel distance of the Basic Network unless prohibited or restricted by the Department. The Department's decision to prohibit or restrict access shall be made in accordance with R63-392.

(2) An operator of a terminal located beyond the limits permitted in subsection (1) of this Section may petition the Department for access to that facility. The petition shall be in writing and shall include:

- (a) a statement that the facility fully qualifies as a terminal as prescribed in R63-391 (8);
- (b) a description and map of the proposed route to such facility;
- (c) an estimate of present and anticipated daily truck trips to and from the facility, by direction.

The Department shall review the petition, in accordance with R63-392, and may, within thirty (30) days after receipt of the petition, request any additional information needed. Within ninety (90) days after receipt of the petition or receipt of additional information, the Department shall either approve the petition (with or without restrictions) or disapprove the petition.

(3) The Department may review the access permitted by this Section and prohibit or restrict access to any qualifying activity in accordance with R63-392.

**HISTORY:** Added by State Register Volume 13, Issue No. 4, eff April 28, 1989.

### **63–396. Reasonable Access to Specific Industrial, Commercial, Warehousing Sites.**

(1) An operator of an industrial, commercial, or warehousing site located off the Basic Network may petition the Department for access to that site. The petition shall be in writing and shall include:

- (a) a statement describing the specific activity;
- (b) a description and map of the proposed route to such site;
- (c) an estimate of present and anticipated daily truck traffic to and from the site by direction.

The Department shall review the petition and may within thirty (30) days after receipt of the petition, request any needed additional information in accordance with R63-392. Within ninety (90) days after receipt of the petition, requested additional information, or written approval from local government (where required), the Department shall either approve the petition (with or without restrictions), or disapprove the petition.

(2) The Department may review the access permitted by this section and prohibit or restrict access to any industrial, commercial, warehousing site in accordance with R63-392.

**HISTORY:** Added by State Register Volume 13, Issue No. 4, eff April 28, 1989.

### **63–397. Reasonable Access to Points of Loading and Unloading for Certain Vehicles.**

(1) The following vehicles, whose width does not exceed 102 inches, may have reasonable access to points of loading and unloading for purposes of local delivery:

- (a) Household goods carriers whose length exceeds 60 feet.
- (b) Auto transporters whose length exceeds 60; over routes approved by the Department in accordance with R63-396;
- (c) Any truck tractor-trailer or semitrailer which generally operates as part of a tandem trailer combination in which the trailer length does not exceed 28 ½ feet.

(2) The Department may prohibit or restrict access to certain specific routs by these classes of vehicles.

**HISTORY:** Added by State Register Volume 13, Issue No. 4, eff April 28, 1989.

## ARTICLE 8 DISADVANTAGED BUSINESS ENTERPRISES PROGRAM

### **63–700. Purpose and Scope.**

A. The South Carolina Department of Transportation (hereinafter “Department”) promulgates these regulations to carry out the disadvantaged business enterprises program mandated by Section 12–28–2930 of the Code of Laws (1976), as amended (hereinafter “State DBE Program”) and to comply with the requirements of 49 CFR Part 26 regarding the disadvantaged business enterprises program required by federal law and regulations (hereinafter “Federal DBE Program”).

B. In accordance with Section 12-28-2930(A), the State DBE Program shall be applicable to total state source highway funds expended in a fiscal year on highway, bridge and building construction, and building renovation contracts.

(1) “Total State source highway funds” shall include all revenue generated by State law for use by the South Carolina Department of Transportation (hereinafter the “Department”) for the construction and renovation of highways, bridges and buildings.

(2) “Expended in a fiscal year” shall mean become legally obligated to expend within the fiscal year.

(3) “Contracts” shall mean agreements to perform or furnish labor or materials made between the Department and a contractor, after a solicitation for bids.

C. The Department shall ensure that not less than ten percent (as allocated in Section 12-28-2930(A)(1) and (2)) of the funds subject to the State DBE Program are expended through direct contracts with Disadvantaged Business Enterprises (hereinafter “DBEs”). However, this ten percent requirement is subject to the counting provisions of Section 12-28-2930(K) and (M). “Direct contracts” shall mean contracts between the Department and DBEs acting as prime contractors. Direct contracts with DBEs shall be achieved by limiting consideration of bids and proposals on certain projects to those submitted by DBEs only. These shall be known as “set aside” projects or contracts.

D. The Department, as a recipient of federal-aid highway and federal transit funds, is required to implement a Federal DBE Program in accordance with 49 CFR Part 26. Therefore, the Department incorporates herein by reference the provisions of 49 CFR Part 26 and specifically provides that its Federal DBE Program shall be carried out in compliance therewith.

**HISTORY:** Added by State Register Volume 16, Issue No. 6, eff June 26, 1992. Amended by State Register Volume 24, Issue No. 4, eff April 28, 2000.

### **63–701. Definitions.**

For the purposes of these regulations, the following terms shall have the meanings set forth below unless a different meaning is clearly required by the context in which the term is used.

A. Certified DBE—A business determined by the Department to be a bona fide Disadvantaged Business Enterprise (DBE) pursuant to these regulations and 49 CFR Part 26 and whose certification status is in good standing with the Department.

B. Certification—A certification by the Department that a firm is a bona fide Disadvantaged Business Enterprise (DBE) pursuant to the standards set forth in these regulations and 49 CFR Part 26.

C. Controlled—Having the primary power to direct the management and day to day operations of a business in accordance with the requirements for control set forth in 49 CFR Part 26.

D. Department—The South Carolina Department of Transportation.

E. Disadvantaged Business Enterprise (DBE)—As set forth in 49 CFR Part 26, a for-profit small business concern owned and controlled by one or more individuals who are socially and economically disadvantaged, which may include businesses owned by ethnic minorities (MBE) or disadvantaged females (WBE).



F. Disadvantaged female—A woman who is (1) a citizen of or a lawfully admitted permanent resident of the United States; and, (2) found by the Department to be socially and economically disadvantaged pursuant to the standards set forth in these regulations and 49 CFR Part 26.

G. Economically disadvantaged—A finding by the Department that a socially disadvantaged individual's ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same or similar line of business and competitive market area who are not socially disadvantaged as set forth in 49 CFR Part 26.

H. Ethnic minorities—Persons who are (1) citizens or lawfully admitted permanent residents of the United States; and, (2) Black Americans, Hispanic Americans, Native Americans, or members of other racial or national groups; and, (3) found to be socially and economically disadvantaged by the Department pursuant to the standards set forth in these regulations and 49 CFR Part 26.

I. Firm—A business concern which is organized in any form other than a joint venture (e.g. sole proprietorship, partnership, corporation) and which is engaged in lawful commercial transactions.

J. Minority Business Enterprise (MBE)—A disadvantaged business enterprise owned and controlled by one or more individuals who are socially and economically disadvantaged ethnic minorities.

K. "Non-bonded project or contract"—A set aside project or contract in which the Department has waived bond and is acting as bonding agent pursuant to subsection (E) of Section 12-28-2930 of the Code of Laws of South Carolina (1976), as amended.

L. Office of DBE Program Development—The office within the Department primarily responsible for certification of DBEs and compliance with State and Federal DBE Program requirements.

M. Official Engineer—The State Highway Engineer of the South Carolina Department of Transportation, acting directly or through his duly authorized representative.

N. Owned—Ownership and control of at least fifty-one percent of a business, or if the business is publicly owned, ownership of at least fifty-one percent of the stock of the business.

O. Small business concerns—Those business entities defined pursuant to Section 3 of the Small Business Act (15 U.S.C. 632) and Title 13 C.F.R. Part 121, which regulations are incorporated herein by reference and made a part of these regulations; except that such term shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which have average annual gross receipts over the preceding three fiscal years in excess of \$16.6 million as adjusted by the Secretary of the United States Department of Transportation for inflation.

P. Set aside—A technique which limits consideration of bids for contracts to those submitted by certified DBEs, which technique is only available under the State DBE Program, not the Federal DBE Program.

Q. State DBE Program—The program mandated by Section 12-28-2930 of the Code of Laws of South Carolina (1976), as amended, and implemented by the Department pursuant to these regulations.

R. Socially disadvantaged—A finding by the Department that an individual has been subjected to prejudice or cultural bias because of the individual's race, color, sex or ethnic origin without regard to the individual's individual qualities or capabilities in accordance with 49 CFR Part 26.

S. Woman-Owned Business Enterprise (WBE)—A disadvantage business enterprise owned and controlled by one or more disadvantaged females.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992. Amended by State Register Volume 24, Issue No. 4, eff April 28, 2000.**

### **63-702. Eligibility for Participation in State DBE Program or Federal DBE Program.**

A. To be eligible for the State DBE Program or Federal DBE Program, a firm must be certified by the Department as a bona fide Disadvantaged Business Enterprise (DBE) pursuant to the standards and procedures set forth in Regulations 63-703 and 63-704 and 49 CFR Part 26.

B. After the first year of certification, to continue to be eligible for participation in the State and Federal DBE Programs, the firm must continue to meet the requirements of 49 CFR Part 26 and to

comply with the standards and procedures set forth herein. To continue to be eligible for participation in the State DBE Program, a firm must also meet the following requirements:

(1) A firm must complete twenty hours of continuing education annually as required in Regulation 63-715;

(2) A firm must take the following steps toward business development:

(a) Participate in a needs assessment to determine the management, engineering and financial levels of the firm;

(b) Establish a business development plan;

(c) Annually review with the Department the firm's financial statement, income tax returns and updated business development plan;

(d) Submit an application for bonding to a bonding agent at least by the third year of active participation.

(3) No DBE may participate in the State DBE Program after June 30, 1999, or nine years from the date of the DBE's first contract, whichever is later, if that DBE performed at least three million dollars in highway contracts awarded pursuant to the State DBE Program for four consecutive years while certified as a DBE. DBEs performing less than three million dollars in highway contracts for four consecutive years may be eligible for the State DBE Program for additional five year periods, provided all requirements of the program are met.

C. To bid on set-aside contracts as a prime or general contractor, an eligible firm must meet the bidding requirements of prequalification and licensing as set forth in Regulation 63-710.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992. Amended by State Register Volume 24, Issue No. 4, eff April 28, 2000.**

### **63-703. Certification Standards.**

A. General Standards. The Department will certify a firm as a bona fide DBE under the State or Federal DBE Program if the Department determines that the firm meets the eligibility requirements of 49 CFR Part 26.

B. Minority Business Enterprises. For purposes of the State DBE Program, a DBE owned and controlled by one or more individuals who are socially and economically disadvantaged ethnic minorities is known as a Minority Business Enterprise ("MBE").

C. Women-owned Businesses. For purposes of the State DBE Program, a DBE owned and controlled by one or more disadvantaged females is known as a Women-Owned Business Enterprise ("WBE").

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992. Amended by State Register Volume 24, Issue No. 4, eff April 28, 2000.**

### **63-704. Procedures for Certification.**

A. Application to Department. All firms applying for certification as a DBE under the State or Federal DBE Program must submit a completed application and Certification Affidavit on forms provided by the Department, which shall be signed by the authorized representative of the firm and notarized. The application shall indicate that the applicant is applying for participation in the State DBE Program, the Federal DBE Program, or both.

B. Firms Ineligible to Apply for Certification. The Department shall not accept applications from the following applicants:

(1) Applicants who have been determined by the Department to be ineligible for participation in the State or Federal DBE Programs within one year prior to the date of application.

(2) Applicants who have been determined by the U.S. Department of Transportation to be ineligible for participation as a DBE in U.S. Department of Transportation projects, during the period of ineligibility.

C. Information Required with Application. The completed application shall be submitted to the Department's Office of DBE Program Development along with copies of the requested information.

D. Request for Additional Information. After receipt of the application for certification, the Department will examine the application and notify the applicant in writing of any apparent errors or omissions and request any additional information needed.

E. On Site Reviews. The Department will conduct an on site review to verify and evaluate the information provided by the applicant firm. Failure of an applicant to cooperate in facilitating an on-site review shall be grounds for denial of certification. An on-site review may include, but is not limited to, the following:

- (1) Interviews with owners, key officers and managers; and,
- (2) Visits to job sites or facility sites.

F. Review of Application. The Department will review every completed application along with the results of the on-site review and notify the applicant in writing of its decision.

G. Notice of Certification. Certification shall be effective upon receipt by the applicant of the Notice of Certification.

H. Notice of Denial. If the Department intends to deny the application for certification, the Department shall provide, by Certified Mail, Return Receipt Requested, or by personal delivery to the office of the applicant, a Notice of Denial which will contain:

- (1) The specific facts and grounds upon which the denial is based;
- (2) A statement that the applicant has the right to an administrative hearing pursuant to the State Administrative Procedures Act, Section 1-23-310, et seq., Code of Laws of South Carolina (1976), as amended;
- (3) A statement that the denial shall become conclusive and final agency action if no request for hearing is filed with the Department's Office of DBE Program Development within fifteen days of the applicant's receipt of the Notice of Denial.

I. Request for Hearing. All requests for hearing shall be made in writing and shall be filed with the Department's Office of DBE Program Development within fifteen days of receipt of the Notice of Denial and must include:

- (1) The name and address of the party making the request;
- (2) A statement that the party is requesting a hearing before an Administrative Law Judge pursuant to S. C. Code Section 1-23-600;
- (3) A reference to the date of the Notice of Denial of the application.

J. Failure to Request Hearing. If the applicant fails to request a hearing within fifteen days after receipt of the Notice of Denial, the denial shall become the final agency decision. The final agency decision for an application for participation in the Federal DBE Program may be appealed to the U.S. Department of Transportation in accordance with 49 CFR Section 26.89.

K. Hearings. If a hearing is requested, it shall be conducted by an Administrative Law Judge in accordance with S. C. Code Section 1-23-600 under contested case procedures.

L. Recertification. Once a firm has been certified, it shall remain certified for a period of at least three years unless and until its certification is removed through the decertification procedures set forth in 63-706.

M. Changes in Address, Management or Ownership. A certified firm shall notify the Department's Office of DBE Program Development in writing within 30 days of any change of address, management or ownership of the firm.

N. No Change Affidavit. A certified firm must provide the Department, every year on the anniversary date of its certification, an affidavit sworn to by the firm's owners, before a person who is authorized by state law to administer oaths, affirming that there have been no changes in the firm's circumstances which would affect its eligibility for DBE status. The affidavit shall be in a form acceptable to the Department.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992. Amended by State Register Volume 24, Issue No. 4, eff April 28, 2000.**

### **63–705. Ineligibility Complaints.**

A. Any person may file with the Department a written complaint alleging that a currently certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. Complaints must be sent to the Department in care of the Office of DBE Program Development, P. O. Box 191, Columbia, SC 29202. The Department is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified.

B. The identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the Department will so advise the complainant. Complainants are advised that failure to waive the privilege of confidentiality may result in the closure of the investigation.

C. The Department will review its records concerning the firm, any material provided by the firm and the complainant, and other available information. The Department may request additional information from the challenged firm or conduct any other investigation that it deems necessary.

D. If the Department determines, based on its review, that there is reasonable cause to believe that the firm is ineligible, the Department will provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination, in accordance with Section 63–706 below.

E. If the Department determines that such reasonable cause does not exist, the Department must notify the complainant and the challenged firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992. Amended by State Register Volume 24, Issue No. 4, eff April 28, 2000.**

### **63–706. Procedures for Decertification.**

A. Determination of reasonable cause to decertify. If the Department determines, based on notification by the firm of a change in its circumstances or other information that comes to its attention, that there is reasonable cause to believe that a currently certified firm is ineligible, the Department will provide written notice to the firm that it proposes to find the firm ineligible, in accordance with Paragraph B below. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

B. Notice of Proposed Decertification. The written Notice of Proposed Decertification shall contain the following:

1. The specific facts or conduct relied upon to justify a finding that there is reasonable cause to remove the firm's certification;
2. The statutory or regulatory provisions which are alleged to have been violated;
3. A statement that the firm has the right to request a hearing before the State Administrative Law Judge Division pursuant S.C. Code Section 1–23–600 under contested case procedures;
4. A statement that the Department will make a final finding of decertification unless a request for hearing is filed within fifteen (15) days of the receipt of the Notice.

C. Request for Hearing. A firm making a request for hearing must do so in writing and must file such request with the Department's Office of DBE Program Development within fifteen (15) days of receipt of the Notice of Proposed Decertification. The request shall include:

- (1) The name and address of the firm making the request;
- (2) A statement that the firm is requesting a hearing before the State Administrative Law Judge Division;
- (3) A reference to the Notice of Proposed Decertification, the date thereof, and the specific grounds upon which the action is being challenged.

D. Hearings.

(1) Procedures and burden of proof. All hearings requested shall be conducted by the State Administrative Law Judge Division (“ALJ Division”) in accordance with the Rules of Procedure for that Division and contested case procedures. In such hearings, the Department bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards. Appeals from the decisions of the Administrative Law Judge shall be in accordance with State law.

(2) Request to Submit Written Information and Arguments Only. A firm may elect to present evidence and arguments to the Administrative Law Judge in writing, without the necessity of a hearing. In such a situation, the firm must file a statement with the Administrative Law Judge assigned to the case that the firm wishes to present written evidence and arguments and to waive its right to a contested case hearing.

E. Effect of Failure to Request a Hearing. If the firm fails, within fifteen (15) days after receipt of the Notice of Proposed Decertification, to file a Request for Hearing, the Department may decertify or remove the eligibility of the firm based upon the grounds set forth in the Notice of Proposed Decertification. A Notice of Decertification shall be sent to the firm pursuant to Paragraph G below.

F. Grounds for Decision. A decision to decertify or remove eligibility may not be made based upon a reinterpretation or changed opinion of information available to the Department at the time of its certification of the firm. The decision to decertify or remove eligibility may be made only on one or more of the following grounds:

- (1) Changes in the firm’s circumstances since the certification of the firm that render the firm unable to meet the eligibility standards;
- (2) Information or evidence not available to the Department at the time the firm was certified;
- (3) Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;
- (4) A change in the certification standards or requirements since the firm was certified; or
- (5) A documented finding that the Department’s determination to certify the firm was factually erroneous.

G. Notice of Decertification.

(1) If heard by ALJ Division. If the case is heard by the Administrative Law Judge Division, and the decision is to decertify or remove the eligibility of the firm, the Department shall send a Notice of Decertification to the firm.

(2) Contents of Notice. The Notice of Decertification shall inform the firm of the consequences of the decision on pending contracts and of the availability of an appeal to the United States Department of Transportation under 49 CFR §26.89 or through State procedures pursuant to Title 1, Chapter 23, Article 3 of the South Carolina Code of Laws, 1976, as amended.

(3) Copy to Complainant. When the proceedings to remove the eligibility of the firm were initiated pursuant to Section 63–705 above, the Department will also send a copy of the Notice of Decertification to the complainant.

H. Status of firm during proceeding. A firm remains an eligible DBE during the pendency of the proceeding to remove its eligibility. The firm does not become ineligible unless there is a notice issued as provided for in Paragraph G above.

I. Effects of removal of eligibility. When a firm’s eligibility is removed, the effect on existing or pending contracts shall be as provided in 49 CFR Section 26.87.

J. Availability of appeal. When the Department issues a Notice of Decertification pursuant to this section, the firm, where appropriate, may appeal the decision to the United States Department of Transportation pursuant to 49 CFR §26.89 or through State procedures pursuant to Title 1, Chapter 23, Article 3 of the South Carolina Code of Laws, 1976, as amended.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992. Amended by State Register Volume 24, Issue No. 4, eff April 28, 2000.**

**Editor’s Note**

**2004 Act No. 202, § 3,** provides as follows:

“Wherever the term ‘Administrative Law Judge Division’ appears in any provision of law, regulation, or other document, it must be construed to mean the Administrative Law Court established by this act.”

### **63-707. Guidelines for Selection of Set Aside Projects.**

In selecting and designing contracts suitable for set aside projects, the Department will consider a number of factors including, but not limited to, the following:

- A. Availability of certified DBEs within 100 miles of work to be performed;
- B. Capabilities of the available certified DBEs in relation to the type of work required by the contract;
- C. Limitation of estimated value of contract to \$250,000.00 in most cases;
- D. Limitation of the work of a single contract to a maximum of four roads within a reasonable distance of each other;
- E. Equitable geographic distribution of contracts throughout the State, insofar as is possible with available contracts;
- F. Availability of technical assistance for contract;
- G. The requirement of Section 12-28-2930(c) that the Department shall advertise a number of highway construction projects at each regularly scheduled highway letting to be bid exclusively by DBEs.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992. Amended by State Register Volume 24, Issue No. 4, eff April 28, 2000.**

### **63-708. Waiver of Bonding.**

A. The Department may waive bonding on set aside contracts with estimated construction costs not exceeding Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars.

B. Bonding requirements that may be waived include the following:

(1) On highway construction or bridge construction contracts,

- (a) Proposal guaranty or bid bond;
- (b) Performance and indemnity bond required by Section 57-5-1660(a)(1) of the Code of Laws of South Carolina (1976), as amended;
- (c) Payment bond required by Section 57-5-1660(a)(2) of the Code of Laws of South Carolina (1976), as amended.

(2) On building construction or building renovation contracts,

- (a) Bid security required by Section 11-35-3030 of the Code of Laws of South Carolina (1976), as amended;
- (b) Performance bond required by Section 11-35-3030(2)(i) of the Code of Laws of South Carolina (1976), as amended;
- (c) Payment bond required by Section 11-35-3030(2)(ii) of the Code of Laws of South Carolina (1976), as amended.

C. The Department shall process claims arising on non-bonded set-aside projects pursuant to Regulation 63-717.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992. Amended by State Register Volume 24, Issue No. 4, eff April 28, 2000.**

### **63-709. Advertisement and Notice of Set Aside Projects.**

A. All projects designated as set asides will be advertised for at least two weeks in one or more daily newspapers in this State, at least thirty days prior to the date for receiving bids on such projects. The advertisement shall indicate whether the project is a non-bonded or bonded project.

B. The Department will give written notice by mail of set aside contracts to all certified DBEs who are eligible for bidding on the project.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992. Amended by State Register Volume 24, Issue No. 4, eff April 28, 2000.**

### **63–710. Requirements for Bidding on Set Aside Projects.**

A. All bidders on set aside projects must be eligible for participation in the State DBE Program as provided in Regulation 63–702.

B. Bidders on set aside contracts for highway and bridge construction contracts must be prequalified pursuant to 25 S.C. Code Ann. Regs. 63–300 through 63–308 (1976). Any bidder eligible to participate in the State DBE Program whose prequalification status is not renewed solely because of its lack of net liquid assets may request a review of its prequalified status. A Review Committee shall be appointed by the State Highway Engineer for this purpose. The Department's Executive Assistant for Minority Affairs or a representative from the Office of DBE Program Development will be a member of the Review Committee.

C. Bidders on set aside contracts for building construction or building renovation contracts are subject to the provisions of the State Consolidated Procurement Code, S.C. Code Ann. Section 11–35–10, et seq. (1976), as amended, and all regulations promulgated pursuant thereto. Bidders on building construction and building renovation contracts must have a bidder's and contractor's license from the South Carolina Contractor's Licensing Board, if required by law.

D. All bidders on set aside contracts are subject to the provisions of 25 S.C. Code Ann. Regs. 63–309 and 63–310 (1976) regarding disqualification of bidders for violations of bidding laws or offenses involving business integrity.

E. In the event of any conflict between the above stated statutes and or regulations and these regulations, these regulations shall control.

F. All bidders are subject to the bidding requirements and conditions as set forth in the Department's Standard Specifications for Highway Construction, specifically Section 102.

**HISTORY:** Added by State Register Volume 16, Issue No. 6, eff June 26, 1992. Amended by State Register Volume 24, Issue No. 4, eff April 28, 2000.

### **63–711. Bid Evaluation.**

A. If the lowest responsive bid by a responsible bidder is within ten percent of the Official Engineer's estimate, the Department will award the contract to the bidder making such bid.

B. Preference must be given to an otherwise eligible and responsible South Carolina contractor submitting a responsive bid not exceeding an otherwise eligible out-of-state contractor's low bid by two and one-half percent.

C. If the Department fails to award an advertised set aside contract for reasons unrelated to the total costs of the project, the contract may be readvertised as a set aside contract.

**HISTORY:** Added by State Register Volume 16, Issue No. 6, eff June 26, 1992. Amended by State Register Volume 24, Issue No. 4, eff April 28, 2000.

### **63–712. Negotiation of Low Bid.**

A. If the lowest responsive bid by a responsible bidder exceeds the Official Engineer's estimate by more than ten percent, the Department may afford the bidder the opportunity to show just cause why the bid exceeds the ten percent range or may enter into negotiations with the bidder to make reasonable changes in the plans and specifications to bring the bid within ten percent of the Original Engineer's estimate.

B. The Department will not consider bids which exceed the Official Engineer's estimate by more than thirty percent, unless the difference in price is due to some error or miscalculation on the part of the Department.

C. If the Department determines that the bidder should be given the opportunity to show just cause or to enter into negotiations, written notice shall be given to the low bidder within seven days of the closing of bids. The notice shall specify a time and place that the bidder may meet with appropriate Department representatives to discuss the bid. Such meeting shall be held no later than fourteen days after the closing of bids. If the low bidder fails to appear at the time and place designated in the notice, then the Department may reject the bid. Persons entitled to be present at such meeting shall include the Official Engineer or his designee; the Official Engineer's representative; the Executive Assistant for Minority Affairs; the Director of the Office of DBE Program Development

or his designee; the bidder or the bidder's designee; the bidder's representative. The decision as to whether just cause has been shown or whether the plans and specifications can be reasonably changed is within the sole discretion of the Official Engineer and such decision shall be final.

**HISTORY:** Added by State Register Volume 16, Issue No. 6, eff June 26, 1992. Amended by State Register Volume 24, Issue No. 4, eff April 28, 2000.

### **63-713. Letter to Lending Institutions.**

When a DBE receives a contract, the Department will furnish a letter, upon request, stating the dollar value and duration of, and other information about the contract, which may be used by the DBE in negotiating lines of credit with lending institutions.

(1) For highway and bridge construction contracts, this letter will be in the form of the Statement of Award.

(2) For building construction and renovation contracts, this letter will be in the form of the Notice to Proceed.

**HISTORY:** Added by State Register Volume 16, Issue No. 6, eff June 26, 1992. Amended by State Register Volume 24, Issue No. 4, eff April 28, 2000.

### **63-714. Technical Assistance to DBEs.**

A. Level of Assistance. The Department will make available technical assistance for DBEs in accordance with state law.

B. Supportive and Developmental Services. The Department will provide written and oral instruction on competitive bidding, management techniques and general business operations. These services may be provided through continuing education programs sponsored by the Department, technical and developmental services contractors, and/or direct services.

C. Lead Engineer. The Department will designate a lead engineer to ensure positive communication, provide helpful technical information, encourage quality performance, and assist with on site problems. The Department may designate an engineer in each district to serve as the lead engineer for set aside projects. The lead engineer shall work with the Office of DBE Program Development, the Technical and Developmental Services Contractor and the Department's engineers to provide early technical assistance to DBEs with construction projects in each highway district.

D. Assistance from Established Contractors/Engineers. The Department will utilize the experience of established contractors and/or engineers to provide DBEs professional and technical assistance aimed toward meeting the standards, specifications, timing, quality and other requirements of their set aside contracts. The Department will provide this assistance as follows:

(1) The Department will provide a list of established engineers, architects and/or contractors who are available on a part time basis to work with DBEs on contracts.

(2) A DBE must apply for technical assistance on an application form provided by the Department within thirty days after award of a set aside contract.

(3) The Official Engineer will negotiate with the engineer, architect and/or contractor to provide the specific services requested by the DBE or any other services deemed necessary by the Department based upon the DBE's experience and skills as a contractor.

(4) The Department may provide, through a supplemental agreement to the DBE set aside contract, specific funds for the DBE to hire the engineer, architect and/or contractor. The engineer, architect and/or contractor will be a subcontractor of the DBE and not of the Department.

**HISTORY:** Added by State Register Volume 16, Issue No. 6, eff June 26, 1992. Amended by State Register Volume 24, Issue No. 4, eff April 28, 2000.

### **63-715. Continuing Education Requirements.**

A. All DBEs participating in the State DBE Program must be represented by a company officer in at least twenty hours of continuing education each year.

B. For purposes of this section, company officer shall mean any of the following:

(1) If a corporation, one or more of the elected corporate officers;

(2) If a partnership, one or more of the partners;



(3) If a sole proprietorship, the sole proprietor or owner.

C. The Department will determine how many credit hours can be earned by a DBE for attendance at a continuing education activity. Generally, one hour of instructional time will equal one hour of credit, provided that the instruction relates to highway or building construction or business development in these industries.

D. Hours of credit for continuing education must be earned through attendance at an educational program sponsored, co-sponsored or approved by the Department. Successful completion of a course given by a college, university or technical school may also qualify for credit hours, if approved by the Department.

E. The Department will provide for reasonable notice to be given to all certified DBEs regarding prospective continuing education activities which have been approved by the Department or which will be sponsored by the Department. The notice shall also state the number of credit hours approved for each activity. The Department will publish within the first quarter of each calendar year a list of the continuing education opportunities to be provided by the Department in that calendar year.

F. A sponsor wishing to apply for approval of continuing educational activities shall submit to the Department's Office of DBE Program Development:

(1) An application for status as an approved sponsor on forms provided by the Department;

(2) Copies of written materials described in the application form;

(3) Such further information as the Department may require. Sponsor approval must be renewed every five years; provided, however, that sponsor approval may be withdrawn for cause at any time after sixty days notice to the sponsor.

G. Educational events, courses or activities presented by a sponsor which have not been granted Department approval will be considered for approval on an individual basis. An application for approval of a program may be submitted to the Department's Office of DBE Program Development on forms provided by the Department by the sponsor or the DBE who desires credit for attending the program. The Department will consider applications for the retroactive as well as prospective approval of programs.

H. The Department may provide scholarships to certified DBEs who attend construction-related continuing education activities approved by the Department. Scholarships shall be limited to Two Hundred and No/100 (\$200.00) Dollars per firm annually.

I. At the time a certified firm requests recertification, the firm shall submit to the Department's Office of DBE Program Development a report of all continuing education activities that the firm completed in the preceding year. Any firm that fails to fulfill the annual continuing education requirement shall be ineligible for participation in the State DBE Program.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992. Amended by State Register Volume 24, Issue No. 4, eff April 28, 2000.**

### **63-716. Special Provisions Applicable to Non-bonded Projects.**

A. By submission of a bid on a non-bonded project, the DBE grants permission to the Department to issue joint checks to suppliers, vendors or subcontractors who supply materials, render services or perform work on the contract when joint checks are, in the Department's judgment, necessary or desirable.

B. A bid on a non-bonded project shall include a list of all suppliers, vendors or subcontractors who the DBE proposes to use in performing the contract.

C. A DBE on a non-bonded project shall not permit a subcontractor to perform work on a contract until the subcontractor and the subcontract have been approved by the Department. To obtain such approval after the award of the contract, the Contractor must submit a request for approval and a copy of the executed subcontract to the Department's Official Engineer. The Department will approve or disapprove such subcontractor within a reasonable amount of time after the receipt of such request.

D. A DBE on a non-bonded project shall not incorporate materials or supplies into the work of a contract until the executed invoice or purchase agreement has been submitted to the Department. The DBE must submit the copy of the invoice or purchase agreement to the Official Engineer, as appropriate.

E. Failure to obtain approval for subcontractors or subcontracts, or failure to submit copies of subcontracts, purchase agreements or invoices, shall constitute, at the Department's option, a default of the contract.

F. Termination of any non-bonded contract for default of the contractor renders the contractor ineligible for any further Department non-bonded contracts for a minimum period of two years from the date of the Notice of Default. The Department may also consider defaulting DBE contractors ineligible to bid on other Department contracts pursuant to the provisions of Section 102.03(e) of the Department's Standard Specifications for Highway Construction and ineligible for approval as a DBE subcontractor on any Department contract with a DBE goal.

G. In the event of default, the provisions of Section 108.10 of the Department's Standard Specifications for Highway Construction shall apply, with the Department acting as surety. Any costs or charges incurred by the Department, or for which the Department, acting as such surety, shall become liable as a result of the default, shall be charged against the defaulting DBE contractor. The costs and charges may include, but are not limited to: (1) charges incident to preparing bid proposal and arranging for work to be resumed; and, (2) the excess of the expense of completing the work under the contract deducted from any monies due or which may be due the DBE contractor. The defaulting DBE contractor shall reimburse or indemnify the Department, as surety, for all such costs or charges. The defaulting DBE contractor shall be ineligible to bid as a prime contractor on any Department contracts and shall be ineligible for approval as a DBE subcontractor on any Department contract with a DBE goal until the DBE contractor has reimbursed the Department or made acceptable arrangements to reimburse the Department for such costs or charges.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992. Amended by State Register Volume 24, Issue No. 4, eff April 28, 2000.**

### **63-717. Claims Procedure on Non-bonded Contracts.**

A. Every person who has furnished labor or material under a Department-approved contract in the prosecution of the work of a non-bonded contract and who has not been paid in full therefor before the expiration of sixty days after either (1) the day on which the last of the labor was done or performed by the claimant, or material was furnished or supplied by the claimant, for which such claim is made; or, (2) the day on which payment was made by the Department to the DBE contractor for the work or materials for which such claim was made, shall have the right to make a claim to the Department, acting as Surety, for the amount, or the balance thereof, unpaid at the time the claim is made; provided, however, that any person having a direct contractual relationship with a subcontractor but no contractual relationship expressed or implied with the DBE prime contractor shall have the right to make a claim upon giving written notice to the DBE prime contractor within sixty days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom material was furnished or supplied or for whom labor was done or performed. In no event shall any claim be made after the expiration of ninety days from the date of final payment by the Department.

B. No claim shall be considered legitimate unless it is supported by a written agreement or invoice.

C. Within thirty days after receiving a claim, the official engineer shall refer the claim to the Department's Official Engineer, to gather the information necessary for an analysis of the claim. The Official Engineer shall forward the claim along with any additional information to a Claims Committee. The Claims Committee shall be appointed by the State Highway Engineer. The Department's Executive Assistant for Minority Affairs shall serve as an Ex-Officio member of each Claims Committee.

D. The Claims Committee shall give ten days written notice to the claimant and DBE contractor of the time and place for an informal hearing on the claim. At such hearing the claimant and DBE contractor shall have the right to appear and present evidence concerning the validity of the claim. The DBE contractor, or an employee of the DBE contractor having knowledge of the claim, must appear at the hearing if requested by the Claims Committee. Failure of the DBE contractor, or employee of the DBE contractor, to appear when requested may, in the Department's discretion, constitute grounds for immediate termination of the contract.

E. The Claims Committee shall take into account circumstances such as unsettled payments and disputes with the Department or other circumstances that are beyond the DBE's control.

F. The Claims Committee shall make a written recommendation to the State Highway Engineer as to the resolution of the claim within ten days of the hearing. The State Highway Engineer shall consider the recommendation and make the final decision as to the resolution of the claim. The State Highway Engineer will notify the claimant and DBE contractor of the decision within ten days after receipt of the Claims Committee's recommendation.

G. If the Department's decision requires the payment of money to the claimant by the DBE contractor, the Department shall pay such money to the claimant on behalf of the DBE contractor. Payment shall be made to the claimant within twenty-one days of the Department's final decision. Payment shall be made from contract funds or retainage. In the event contract funds or retainage are insufficient to make full payment of claim, the payment amount shall be charged to the same funding source as was used for the project out of which the claim arose.

H. The DBE contractor shall reimburse or indemnify the Department for all amounts paid to a claimant on behalf of the DBE contractor. The DBE contractor shall be ineligible for further Department non-bonded contracts until the DBE contractor has reimbursed the Department or made acceptable arrangements to reimburse the Department. The DBE contractor may also be disqualified from bidding on any and all Department contracts pursuant to the provisions of Section 102.3 of the Department's Standard Specifications for Highway Construction and be ineligible for approval as a DBE subcontractor on any Department contract with a DBE goal.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992. Amended by State Register Volume 24, Issue No. 4, eff April 28, 2000.**

### **63-718. Reporting Requirements.**

A. The Department shall issue an annual report, thirty days after the close of the fiscal year, listing all contracts awarded under the State DBE Program as specifically set forth in Section 12-28-2930(1).

B. The Department shall record each time there are no certified DBEs available to perform a set aside contract. The unavailability of certified DBEs shall be verified by written documentation.

C. The Department may count toward the yearly set aside goal the following amounts:

(1) The total amount of all set aside contracts where the DBE performs at least thirty percent of the work with its own forces;

(2) Only the portion of the contract performed by the DBE's own forces, when the DBE performs less than thirty percent of the work of a set aside contract;

(3) The total amount of any contract awarded to a certified DBE for technical assistance or other consultant services, if the DBE is South Carolina based and experienced in assisting with the development of minority firms;

(4) The total amount of all non-set aside state-funded contracts awarded to certified DBEs;

(5) Subcontracts entered into between prime contractors and certified DBEs, to the extent such contracts are funded by state source highway funds, if these subcontracts are verified by the Department records.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992. Amended by State Register Volume 24, Issue No. 4, eff April 28, 2000.**

## **ARTICLE 9 BUS SHELTERS**

### **63-800. Purpose.**

The regulations promulgated herein have been formulated pursuant to Code Section 57-3-110 and 57-25-30, which are intended to regulate bus shelters, including those with commercial advertisements, within the rights-of-way of public roads.

**HISTORY: Added by State Register Volume 20, Issue No. 5, eff May 24, 1996.**

### **63-801. Definitions.**

A. "Bus Shelter" means a shelter located at designated bus stops for the convenience of passengers of public transportation systems owned and operated by governmental units or public authorities.

B. "Commercial Advertisement" means a printed or painted sign encouraging or promoting the purchase or use of goods or services but does not include signs or advertisements prohibited by Code Section 57-25-20.

C. "Public Road" as used in this article, shall mean all those roads, street and highways within the State Highway System.

**HISTORY: Added by State Register Volume 20, Issue No. 5, eff May 24, 1996.**

### **63-802. General Standards for Bus Shelters.**

A. Bus shelters, including those on which commercial advertisements are placed, may be erected and maintained on the rights-of-way of public roads subject to the following conditions and requirements:

(1) Any person wishing to erect and maintain a bus shelter on the right-of-way of a public road shall apply to the Department for a permit, and as a condition of the issuance of the permit, the Department must approve the bus shelter building plans and the location of the bus shelter on the right-of-way; provided, however, that such approval is subject to any and all restrictions imposed by Title 23 of the United States Code, and Title 23, Code of Federal Regulations relating to the federal aid system, traffic standard rules and regulations of the Department, and State and Local laws.

(2) If the bus shelter is to be located on the right-of-way of a public road within a county or municipality, the respective county or municipality must also approve the erection and maintenance of the bus shelter, and for that purpose, a copy of the application to the department shall be sent to the respective county or municipality by the applicant; and

(3) As a condition of issuing a permit for the erection of a bus shelter on the right-of-way of a public road, the department shall require that the bus shelter be properly maintained and that its location shall meet minimum setback requirements as follows:

(a) Where a curb and gutter are present, there shall be a minimum of four feet clearance from the face of the curb to any portion of the bus shelter or the bus shelter shall be placed at the back of the existing concrete sidewalk; or

(b) Where no curb or gutter is present, the front of the bus shelter shall be at least ten feet from the edge of the main traveled roadway; or

(c) As otherwise directed by the SCDOT Resident Maintenance Engineer.

B. Any bus shelter erected and maintained on the right-of-way of a public road in violation of paragraph (A) of this subsection or in violation of the conditions of the permit issued by the Department is declared to be a public nuisance and its removal may be ordered by the Department. If such a bus shelter is not removed by its owner within 30 days after its owner has been issued a written order of removal by the Department, the Department may cause the bus shelter to be removed and submit a statement of expenses incurred in the removal to the owner of the bus shelter. If payment or arrangement to make payment is not made within 60 days after the receipt of such statement, no further permits will be issued until the debt is paid in full.

C. The person to whom a permit has been issued for the erection and maintenance of a bus shelter on the right-of-way of a public road shall at all times assume all risks for the bus shelter and shall indemnify and hold harmless the State of South Carolina, the Department, and any county or municipality against all losses or damages resulting solely from the existence of the bus shelter.

D. The erection of bus shelters under this subsection shall be allowed only by competitive bid invitation. For that purpose, an applicant for a bus shelter permit must attach documentation of competitive bid determination.

E. Bus shelters shall be maintained in good repair and persons erecting bus shelters under this subsection shall be responsible for the cleaning, repairing or replacement of any part thereof, including advertising materials, sidewalks, walkways, curbs or foundations encompassed by the bus shelter. Such work as is necessary to relocate, alter or maintain the bus shelter will be done in such a manner that it will not in any way interfere with or endanger the safety of the general public in their use of the roads.

**HISTORY: Added by State Register Volume 20, Issue No. 5, eff May 24, 1996.**

## **63–803. Permits.**

A. Those wishing to erect and maintain a bus shelter on the rights-of-way of a public road must apply to the Department for the issuance of a Permit.

B. Each bus shelter location must be assessed a nonrefundable \$25.00 permit fee. On August 1st, the Department will send notices, to the last known address of the permittee, advising that the permit fee is due. Payment is due upon receipt of the notice, but in not event later than September 1st. Each permit shall be renewed annually upon payment of the fee on or before the expiration of the fiscal year commencing September 1st. Fee will not be prorated a portion of the year. Failure to pay the renewal fee by the permit expiration date will cancel the permit and the bus shelter will be declared a public nuisance and its removal may be ordered by the Department.

C. The applicant must have written documentation from the municipality or county government where the bus shelter(s) are to be located, approving the erection and maintenance of each bus shelter in their jurisdiction.

D. The applicant must provide written documentation of competitive bid determination, to include a copy of the contract between the applicant and the county, municipality or transit authority.

E. The applicant must provide written documentation from the public transit authority serving the area certifying that all locations identified in the permit application are at designated bus stop locations presently being served by the transit authority.

F. If more than one applicant desires to install a bus shelter at the same location, the municipality or county government in coordination with the local transit authority will be responsible for deciding which applicant will be authorized to install a bus shelter at a designated location.

G. The applicant must agree to maintain the bus shelter as well as the area immediately around the shelter. This will include cleaning up litter, cutting and trimming of the grass around the shelter. The shelter and surrounding area must be kept clean at all times.

H. The location of the proposed bus shelter must be approved by the Department. The Department will work with the local governments in conjunction with the transit authority in selecting the safest location to install the bus shelters on public road rights-of-way. The Department will make the final decision for those locations on State right-of way. The application must comply with the following:

(1) Only one bus shelter will be allowed per bus stop location and a maximum of two bus shelters per street intersection. The bus shelters should be located as close to the official bus stop location when possible.

(2) Each bus shelter must be positioned parallel to the street and cannot be located in the radius of any street intersection or conflict with Department sight distance standards.

(3) Each bus shelter shall meet the minimum setback criteria as set forth in subsection 63-802A above.

(4) A map of the municipality and/or county showing the proposed bus shelter locations must accompany the application.

(5) A numerical number must be assigned to each bus stop location where a bus shelter is to be located. A listing of all bus shelter locations must accompany the city/county location map. This listing must give the numerical number assigned to the bus shelter plus a written description of the location and information regarding the proximity of sidewalks to the shelter. There should be a notation identifying whether the location has a bus shelter.

(6) The numerical number assigned to each bus shelter location must be physically attached to the shelter at that location. The number must be a minimum of two inches and positioned on the bus shelter in a location that is visible from a vehicle on the roadway.

(7) The telephone number of the applicant and/or person to contact regarding the shelter and the area immediately around the shelter shall be appropriately displayed on the shelter.

(8) A sketch of each bus shelter location must be prepared. The sketch shall include all pertinent existing features such as roadways, sidewalks, utility poles, trees, signs, buildings, the bus shelter and the existing rights-of-way line. These sketches should be to approximate scale with dimensions shown for distance of bus shelter from the roadway.

(9) Applicants desiring to permit bus shelters located partly on private property must submit a written release from the private property owner allowing the bus shelter at that location.

I. Each permit applicant must sign an Indemnity Agreement and agree to indemnify and save harmless the Department.

J. Each permit applicant must submit a certificate of insurance verifying public liability, product, and completed operations liability insurance with limits of liability of not less than \$1,000,000.00 each occurrence, \$1,000,000.00 aggregate for bodily injury, and \$1,000,000.00 each occurrence, \$1,000,000.00 aggregate for property damage. The applicant shall name the Department as an additional named insured. The applicant shall provide no less than thirty (30) days advanced notice of cancellation or nonrenewal of the policies. A copy of the additional named insured endorsement must accompany the certificate of insurance.

K. When a bus shelter is located on a county road system or on a municipal street system, the Department may delegate its powers to the respective county or municipality, and the respective county or municipality shall cooperate with and assist the Department in enforcing the conditions of the permit issued by the Department pursuant to this code section. The respective D.O.T. District Offices are responsible for delegating this authority when appropriate.

L. In the event the permit is disapproved, the applicant may appeal to the Director for review.

(1) Notice of the appeal must be in writing, submitted with appropriate facts to substantiate the basis for appeal, and received by the Department within thirty (30) days of the date disapproval is mailed to the applicant at the address provided on the application. All appeals will be conducted in accordance with the Administrative Procedures Act. Failure of an applicant to appear at a hearing for which a date has been set shall be deemed a waiver of any right that he may have to a hearing.

(2) Hearings shall be held at the offices of the South Carolina Department of Transportation in Columbia, South Carolina, at a time and date fixed by the Director, or by such other Department official as he may designate. Hearings shall be held by the Department's administrative hearings officer, who shall submit recommended findings and a proposed decision to the Director for a final decision.

(3) The applicant shall bear the burden of showing that the Department should issue the permit.

(4) A decision regarding any other application for the same or conflicting sites submitted subsequent to the initial submission of the disapproved application will be held in abeyance pending the Department's resolution of the appeal. If the Department's disapproval is sustained, the other applications will be considered in turn.

M. Applicant will ensure that each bus shelter is constructed within a reasonable time, as indicated by the Department. Failure to complete the bus shelter construction within the designated time frame will result in the cancellation of the permit. Upon cancellation of the permit, applicant will be required to restore the Department's right-of-way to its original condition. Failure to properly restore the right-of-way, will result in the assessment of costs associated with the Department restoring the right-of-way. No further permits will be issued until the Department is fully reimbursed its restoration costs.

**HISTORY: Added by State Register Volume 20, Issue No. 5, eff May 24, 1996.**

### **63-804. Building Plans General Specifications.**

A. Bus shelter must be designed to meet the current building requirements associated with the Southern Building Code or local building code, whichever is more restrictive, including the ability to withstand sustained winds of up to 120 MPH.

B. The shelters are to be designed so that they will present an attractive appearance and not detract from the adjacent surroundings. They shall be illuminated and provide protection from weather elements.

C. The shelter design shall include the following:

(1) Each shelter shall consist of an aluminum or steel framework suitable for supporting transparent wall panels and opaque roof panels. The shelter must have, as a minimum, a rear wall section. The transparent wall section must be of tempered glass.

(2) As a minimum, each shelter must have a 4 foot bench, a bus route and schedule holder and be illuminated during hours of darkness. The shelter must be installed on and attached to a concrete foundation.

(3) Each bus shelter must be erected in accordance with ADA specifications and requirements. The permittee is responsible to meet the ADA standards and any complaints of nonconformance must be rectified by permittee at his expense within thirty (30) days of notification by the Department. Under this subsection, ADA compliance includes, but is not limited to, sidewalk on ramps, tactile warnings and signage or directional arrows indicating handicap accessibility.

(4) The shelter may be equipped for displaying advertising, incorporating an enclosed standard size advertising panel with poster dimensions. The panel may provide for two advertising faces back-to-back with a lighting source contained within the panel cabinet. Only two advertisements will be allowed in each shelter. Advertisements will be limited to a poster dimension of 4' wide by 6' high.

(5) The general dimensions of a typical shelter will be at a maximum 9' long by 6' wide by 8' high, unless larger shelters are approved by the SCDOT. Advertising displays on larger shelters shall not exceed the dimensions set forth in subsection (4) above.

**HISTORY: Added by State Register Volume 20, Issue No. 5, eff May 24, 1996.**

### **63-805. Additional Bus Shelters.**

All future bus shelter additions must be permitted separately. The same data and information will be required for each separate bus shelter permit application.

**HISTORY: Added by State Register Volume 20, Issue No. 5, eff May 24, 1996.**

### **63-806. Existing Bus Shelters.**

A. Any existing bus shelter located on the rights-of-way of a public road in violation of the general standards above or in violation of the conditions of the permit issued by the Department is declared to be a public nuisance and its removal may be ordered by the Department.

B. The following actions should be taken regarding existing bus shelters.

(1) Those City or Counties with public transportation systems must include existing bus shelters in the required permitting process with the Department. This will include those locations on all public roads.

(2) Those City or Counties without public transportation systems but with existing bus shelters should be contacted and informed of the code requirements. The Department will take action as per Code Section 57-25-30(B) regarding those bus shelters on the Department's right-of-way. It will be the City's or County's responsibility to enforce the code requirements for those bus shelter locations on City and County road right-of-way.

**HISTORY: Added by State Register Volume 20, Issue No. 5, eff May 24, 1996.**

### **63-807. Removal from Permit.**

A. Should it be necessary to discontinue or remove a particular bus shelter location temporarily or permanently from the permit, the Department reserves the right to do so. Bus shelters temporarily discontinued or removed from the permit may be restored to the permit without additional charge. Bus shelters permanently discontinued or removed from the permit must be removed from the Department right of way in accordance with 63-802B above. No further permits will be issued until the removal of the bus shelter has been effected.

B. If, and when, the bus shelter shall be moved or removed, either on the demand of the Department or at the option of the permittee, the rights-of-way shall be immediately restored to their original condition at the expense of the permittee. Removal or relocation of bus shelters will be at the expense of the permittee.

**HISTORY: Added by State Register Volume 20, Issue No. 5, eff May 24, 1996.**

**ARTICLE 10**  
**SCENIC BYWAYS**

**63-900. Purpose.**

The regulations promulgated herein have been formulated pursuant to Code Sections 57-3-110 and 57-23-60, which are intended to designate scenic byways, including the requirements for protection of the scenic, cultural, historic, natural, recreational, commercial and economic significance of the highway and the area, and the process for removal of the scenic highway designation.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

**63-901. Definitions.**

A. "Committee" means the South Carolina Scenic Highways Committee pursuant to Section 57-23-50.

B. "Community" means one or more towns within the length and breadth of the scenic corridor; thus, a community may be as small as one village or as large as a region.

C. "Corridor" means the highway right-of-way and the adjacent area that is visible from and extending along the highway. The distance the corridor extends from the highway could vary with the various intrinsic qualities.

D. "De-designation" means the removal of the scenic designation.

E. "Department" means the South Carolina Department of Transportation.

F. "Intrinsic Qualities" means those tangible and intangible resources found within a scenic corridor. "Intrinsic qualities" include:

(1) Scenic: the composition of features that are regionally representative, associative or inspirational. These features are measured by their memorableness and distinctiveness of visual impression, their intactness and their unity.

(2) Historic: landscapes and structures that represent the legacy of the past.

(3) Cultural: activities or objects that represent unique and distinctive expressions of community life, customs or traditional ways and identify a place, region or culture.

(4) Recreational: passive and active leisure activities usually associated with outdoor recreation that we seek to refresh and renew our spirits.

(5) Natural: pleasing visual experience of natural areas and/or ecologically-sensitive landscapes representing natural occurrences including landforms, water, vegetation and wildlife characteristics.

(6) Archaeological: sites, artifacts or structures representing past human life and activities.

G. "Outdoor Advertising Sign" means any sign structure or combination of sign structures and message in the form of an outdoor sign, display, device, figure, painting, drawing, message, plaque, poster, billboard, advertising structure, advertisement, logo, symbol or other form which is designed, intended or used to advertise or inform, any part of the message or informative contents of which is visible from the main-traveled way. The term does not include on-premise signs or official traffic control signs, official markers, nor specific information panels erected, caused to be erected or approved by the Department.

H. "Public Road" means all those roads, streets and highways within the State Highway system.

I. "Scenic Byway Corridor Management Plan" means a document composed of maps and written material articulating a community's vision for a scenic corridor and outlining a process of specific strategies and actions to manage the route over time. The plan is a manifestation of the value a community places upon a particular resource. Created by members of the community, it represents a commitment to the corridor through strategies to conserve and enhance its intrinsic qualities.

J. "Segmentation" means to omit from scenic status any portion of a route which is heavily commercial and/or industrial and deemed by the Committee to be inconsistent with the criteria set forth in this Section.



K. "South Carolina Local Byways" means routes designated by the Committee which are characterized as such based on their scenic quality. They are not promoted for tourism development, shall not be bound by a mileage criteria.

L. "South Carolina Scenic Byways" means routes designated by the General Assembly which are intended to be promoted for tourism development, and as such they must be capable of handling increased numbers of visitors of the type sought by the corridor communities.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **63-905. Criteria for Scenic Byways.**

A. The Scenic Highways Committee will separately rate all requests for scenic designation using a pre-established weighted criteria based on the required intrinsic qualities. The Committee will adopt a rating form consistent with these criteria. The completed rating forms will become a public document following the Committee's evaluation process. A route being considered for designation as a scenic byway will be rated on weighted criteria to include but not limited to:

- (1) Positive Features
  - (a) Scenic
  - (b) Historic
  - (c) Cultural
  - (d) Recreational
  - (e) Natural
- (2) Negative Features
  - (a) Junkyards/Litter
  - (b) Unattractive Housing
  - (c) Excessive Advertising
  - (d) Heavy traffic uses
  - (e) Mining/Lumbering scars
  - (f) Heavy Industry
  - (g) Parallel Utilities along roadway
  - (h) Landfills/other pollutants visible from route
- (3) Other Amenities and Support
  - (a) Hospitality features
  - (b) Length of route
  - (c) General support for proposed route
  - (d) Financial commitment
  - (e) Role in regional/statewide strategy
  - (f) Corridor Management Plan
  - (g) Protective easements or zoning overlays

B. Routes considered for scenic byway designation may qualify in one of two categories of scenic routes which will be determined by the Committee's evaluation:

(1) "South Carolina Scenic Byway" to be recommended by the Committee and approved by the General Assembly.

(2) "Local Byway" will not require an Act by the General Assembly for designation and at some future time may be eligible for "South Carolina Scenic Byway" status.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **63-910. Scenic Route Segmentation.**

A. The Committee will determine if a route requires segmentation. In making this determination, the Committee will consider the volume of commercial and/or industrial activity; restrictions imposed

by local zoning or ordinances; and provisions in the route's corridor management plan which would require standards to protect and enhance the route's intrinsic qualities.

B. If a commercial and/or industrial area is deemed inconsistent with the criteria set forth in this Section, the area will be segmented from scenic designation and will not be required to comply with the standards herein.

C. Upon request by the Community or Department, the Committee will reconsider the segmentation of a route, if significant changes have been made to protect and enhance the route's intrinsic qualities.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **63-915. Application Process.**

A. Application for the designation of a South Carolina Scenic Byway must be made with the Director of the Department. Application and Committee rating forms may be obtained by writing the Director at SCDOT, Post Office Box 191, Columbia, South Carolina 29202. This application along with the Department's inventory and analysis will be forwarded to the Committee for review and recommendation based on the criteria established in 63-902. Recommendations for Scenic Byway designation will be forwarded to the General Assembly.

B. Application may be made by a civic club, chamber of commerce, convention and visitor bureau, business, industry, municipal government or county government.

C. The applicant, if other than a local government, should have a letter of support from the local government in which the highway is located.

D. The application should include:

(1) The Department's Scenic Byway Application Title Sheet. This title sheet is provided by the Department and serves as the cover page for the application.

(2) A detailed description of the section of highway to be designated including one or more of the intrinsic qualities as defined in Section 63-901.

(3) A marked map clearly indicating the section of highway the applicant is proposing for designation.

(4) Photographic slides of areas which the applicant considers to be of intrinsic value or significance (slides must be in a protective 8 1/2" x 11" 3 hole punch plastic slide sheet).

(5) Letters of support from citizens, businesses, civic groups and other organizations.

(6) A corridor management plan.

E. The Department, in cooperation with other state and local governments, will perform an inventory and analysis of the proposed byway to include:

(1) A physical inventory of the highway.

(2) The natural and man-made features of the corridor.

(3) An assessment of future development which may impact the corridor.

(4) An evaluation of the application using the designation criteria enumerated in Section 63-902.

F. The Department will submit its inventory and analysis on the proposed byway to the Committee.

G. At least three (3) members of the Committee will tour the proposed byway and complete the rating form outlined in Section 63-902.

H. The Committee will review the rating forms, the application and the report submitted by the Department.

I. A public hearing may be scheduled pursuant to Section 57-23-70. The public hearing will be held in close proximity to the highway. The applicant for the proposed byway will be notified of the public hearing and given an opportunity to comment.

J. The Committee will submit a recommendation designating a road as a "South Carolina Scenic Byway" to the Speaker of the House of Representatives and the President of the Senate. The recommendation will be based on the information gathered, including but not limited to the application, the Department's report and the public comments.

K. The Committee will notify the applicant of the Committee's decision.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **63-920. Scenic Byway Corridor Management Plan.**

A. The purpose of the local government's Scenic Byway Corridor Management Plan is to provide for the conservation and enhancement of the route's intrinsic qualities as well as the promotion of tourism and economic development.

B. The local government's Scenic Byway Corridor Management Plan should include at a minimum the following:

- (1) A strategy for maintaining and enhancing those identified intrinsic qualities within the corridor.
- (2) A list of all agencies and organizations responsible for the implementation of the corridor management plan. This list should include the powers, duties and responsibilities of those agencies and organizations as related to the conservation and enhancement of the route's intrinsic qualities.
- (3) A schedule of when the strategies will be implemented.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **63-925. Existing Scenic Highways.**

A. Any existing Scenic Highway as designated in Chapter 23 of Title 57 is declared a "South Carolina Scenic Byway".

B. The following actions should be taken regarding existing scenic highways.

- (1) The Committee must include existing scenic highways in the scenic inventory kept by the Department.
- (2) The Committee should contact the local governmental authority regarding the development of a Scenic Byway Corridor Management Plan.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **63-930. Removal of "Scenic" Designation.**

A. The Department shall every two years review all designated scenic routes to determine if each route is in compliance with the criteria established in 63-902.

B. If significant changes have occurred that negatively impact the intrinsic qualities of a route, the Department shall recommend to the Committee that the designation be reviewed.

C. The Committee will notify the responsible local government and request that action be taken to protect the scenic route.

D. If deemed, by the Committee, that intrinsic qualities have been irreparably damaged, a recommendation will be made for de-designation to the General Assembly.

E. No existing Scenic Highway, as designated in Chapter 23 of Title 57 shall be de-designated until June 30, 1999.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **63-935. Prohibition of Outdoor Advertising.**

No outdoor advertising sign will be allowed to be erected along any route designated as a "Scenic Byway" or "Local Byway". Communities must show in their corridor management plan how this prohibition will be enforced prior to designation.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **63-1000. Sign Requirements for Petitions to Close Road.**

A. Costs. Signs required by parties petitioning to abandon or close any street, road or highway pursuant to Section 57-9-10 must be fabricated and posted by the petitioning party. All costs for the fabrication and placement of the signs shall be the responsibility of the petitioner.

B. Minimum Size. The sign shall have a minimum width of 30 inches, a minimum height of 36 inches and shall comply with the general requirements for sign materials set forth in the Federal Highway Administration’s Manual on Uniform Traffic Control Devices (MUTCD).

C. Design and Content. The sign shall be in substantial compliance with the illustration and table shown below. A detailed layout is available from the South Carolina Department of Transportation by contacting the Director of Traffic Engineering.



SIGN ELEMENT	LEGEND COLOR	BACKGROUND COLOR	LEGEND SIZE	LEGEND FONT	BORDER INSET
BORDER	BLACK	YELLOW/WHITE	0.625"	N/A	.5/1.875"
NOTICE	BLACK	YELLOW	4"	HWY D	N/A
PENDING RD CLOSURE	BLACK	WHITE	3"	HWY D	N/A
DIVIDER LINE	BLACK	WHITE	0.625"	N/A	4"
§ 57-9-10	BLACK	WHITE	2"	HWY D	N/A
DIVIDER LINE	BLACK	WHITE	0.625"	N/A	4"
FOR INFORMATION	BLACK	WHITE	2"	HWY D	N/A
CALL (000) 000-0000	BLACK	WHITE	2.25"	HWY D	N/A

D. Contact number. The petitioning party shall provide a phone number, shown on the sign layout as (000) 000-0000, for the public to call for the purpose of obtaining additional information about the proposed road closure. The phone number shall be either the petitioning party’s local or toll free number, or that of their legal counsel. A representative shall be available during normal weekday business hours, 9:00 am to 5:00 pm, to provide information and answers to inquiries, or a mechanism shall be in place to allow a person to leave a message which will be returned at a convenient time for both parties.

E. Installation. Each sign shall be installed on a single u-channel or square tube breakaway post. The signs shall be installed in compliance with the requirements of MUTCD. For rural roadways where no sidewalk is present, the signs shall be erected within the public right-of-way, but no less than

6 feet horizontally from the edge of pavement. The vertical distance from the edge of pavement to the bottom of the sign (mounting height) shall be a minimum of 5 feet. For roadways having curb and gutter and sidewalk, the signs shall be erected no less than 2 feet horizontally from the face of the curb. In this situation, the mounting height shall be no less than 7 feet.

F. Positioning. If the entire road is to be closed, one sign shall be erected within 100 feet of each terminal end on the right shoulder of the road in the direction of traffic and facing traffic entering the portion the petitioner proposes to close. If only a portion of the road is proposed to be closed, signs shall be erected at the beginning and ending points to be described in the petition and shall be oriented as detailed previously. Additional signs shall also be erected along the roadway where any public road intersects the affected portion. Such additional signs shall be erected within 100 feet of the intersection in both directions on the right shoulder of the road in the direction of traffic and facing traffic departing from the intersection.

G. Permission. Prior to installation of any signs, the petitioning party must submit a request for approval to encroach upon the public right-of-way to the governmental entity having authority over the road. Such request shall include a detailed description or diagram of the proposed sign locations. The petitioner shall also be responsible for locating any existing utilities prior to driving any sign posts.

H. Removal. Upon the court ruling on the road closure petition, the petitioner shall remove all signs erected under these regulations at its expense.

**HISTORY: Added by State Register Volume 37, Issue No. 5, eff May 24, 2013.**