

**Tennessee Department of Transportation
Right of Way Division**

**Chapter 1680-06-03
Control of Outdoor Advertising**

Summary of Rulemaking Hearing Rules (Final Rules)

The following is a summary of revisions to the current regulations for the control of outdoor advertising as proposed in this rulemaking. The proposed revisions arise from the “content-neutral” framework for regulating outdoor advertising devices under the Outdoor Advertising Control Act of 2020 (the “2020 Act”), and also from previous amendments to the former Billboard Regulation and Control Act of 1972 (the “1972 Act”), which were incorporated into the 2020 Act. (See Tennessee Code Annotated, Title 54, Chapter 21, for the text of the 2020 Act.) Many other revisions have been made to address specific comments and concerns raised by the outdoor advertising industry and others. The proposed rules are also given a new control number to reflect the fact that the responsibility for the regulation of outdoor advertising will now fall under TDOT’s Right of Way Division. A “redline” version of Chapter 1680-06-03, as amended, is attached to this summary.

Rule 1680-06-03-.01 – Preface.

The preface states that the purpose of these rules is to implement the 2020 Act to provide for the effective control of outdoor advertising as required by the Federal Highway Beautification Act (23 U.S.C. § 131) and FHWA regulations, subject to any limitations under the U.S. Constitution and the Tennessee Constitution.

Rule 1680-06-03-.02 – Definitions.

In general, the proposed rule retains or modifies definitions in the current rule and incorporates new definitions from the 2020 Act. The following revisions are proposed as new or clarified definitions:

“Abandoned outdoor advertising device”

- Clarifies the existing definition to provide objective standards for determining when a device will be considered abandoned.
- Adds a provision for suspending the 12-month period for establishing abandonment during a period of involuntary discontinuance, such as the closing of the highway in front of the sign.

“On-premises device”

- Clarifies that a sign which qualifies as an exempt “on-premises device” based on its location will not be considered a regulated “outdoor advertising device” based on the receipt of compensation merely because the owner/operator of the property pays a sign company to lease the use of the sign.

“Outdoor advertising device”

- Clarifies that any “sign” not exempted from regulation under T.C.A. § 54-21-103 will be defined as an “outdoor advertising device” subject to regulation by TDOT.

“Sign”

- Clarifies that a building, structure, or object that has a primary function other than outdoor advertising where it is located will not be considered an outdoor advertising device merely because words or figures may be incidentally displayed on its exterior surface.

“Sign face”

- Allows advertising embellishments outside the border and trim of the device to be measured only by the actual area occupied by the advertising embellishment, excluding airspace, so as to make the total measurement of the sign face less restrictive.

Rule 1680-06-03-.03 – Criteria for the Erection and Control of Outdoor Advertising Devices.

This rule generally describes the zoning, size, lighting, and spacing criteria for permitting outdoor advertising devices, as established in the agreements between TDOT and the U.S. Department of Transportation, Federal Highway Administration, and described in T.C.A. § 54-21-113 under the 2020 Act (and as previously authorized under the 1972 Act). As revised, the proposed rule:

- Describes the standard for measuring the 660 feet within the “adjacent area” of the highway that is subject to outdoor advertising regulations. At controlled access highway interchanges, where the right-of-way extends outward irregularly beyond the normal width, the measurement of the “adjacent area” will begin at a standard 100 feet from the main traveled way of the highway.
- Establishes criteria for determining whether an outdoor advertising device within the adjacent area of a highway on the interstate or primary system has the purpose or effect of directing advertising messages to the main traveled way of a regulated highway.
- Deletes exemptions for signs advertising activities conducted upon the property, or signs advertising the sale or lease of the property, on which the signs are located, and replaces these with “content-neutral” exemptions, including an exemption for “on-premises devices” based on location next to a “facility” open to the public and an exemption for small signs not exceeding 20 square feet, as provided in T.C.A. § 54-21-103(b).
- Includes updates governing permits for digital signs.
- Details the regulation of “original conforming devices” that were permitted between 1972 and 1984 under the size and spacing criteria established in TDOT’s original agreement with the Federal Highway Administration (see T.C.A. § 54-21-113).
- Allows for advertising embellishments outside the normal border and trim of a sign face by including only the actual area occupied by these embellishments as part of the total area of the sign face.
- Excludes the airspace between double-faced or stacked devices for the purpose of determining the maximum size of the sign.
- Clarifies that for the purpose of applying the minimum spacing exception where two devices are separated by a building or other obstruction the determination will be based on whether the two devices are visible from the “main traveled way” of the highway at the same time.

Rule 1680-06-03-.04 – Permits, Renewals, and Administrative Hearings.

This rule details procedures for obtaining, annually renewing, and transferring permits for outdoor advertising devices. It also details requirements for the construction of permitted devices, criteria for voiding permits, and provisions for administrative hearings to resolve disputes regarding the denial or voiding of permits. In general, these provisions are not new but have been separated from Rule 1680-06-03-.03 into this new, stand-alone rule. The proposed rule includes the following revisions:

- Adds provisions for permitting digital billboards (previously authorized under amendments to the 1972 Act).
- Adds special provisions (based on legislation enacted in 2019) for permitting existing outdoor advertising devices that were not regulated when erected but have subsequently been brought under regulation, either by expansion of the National Highway System or because the devices were erected during the period of suspended enforcement after the Sixth Circuit declared the 1972 Act unconstitutional on September 11, 2019, but before the 2020 Act became effective on June 22, 2020.

- Adds provisions from the 2020 Act for conducting investigations and enforcement actions when TDOT has reason to believe that a sign owner is unlawfully operating the sign as an outdoor advertising device without a permit.
- Makes additional revisions to promote regulatory flexibility or greater clarity, as follows:
 - Provides an opportunity to correct an incomplete application for an outdoor advertising permit before returning the application and application fee without further processing.
 - Provides a process for determining a “reasonable amount of time” to cure a violation that would otherwise be grounds for denying a permit to a previously unregulated device.
 - Allows a permittee to construct an outdoor advertising device smaller than the dimensions of the device described in the permit application so long as the device is at least 20 square feet in total area and both the sign face and tag are visible to the main traveled way of the highway.
 - Updates the provisions for providing notice of a proposed enforcement action to conform to current provisions of T.C.A. § 54-21-105.
 - Revises the process for providing notice and an opportunity to cure a failure to comply with annual permit renewal requirements to conform to the current provisions of T.C.A. § 54-21-104.

Rule 1680-06-03-.05 – Control of Nonconforming Outdoor Advertising Devices.

This rule prescribes the regulations for maintaining devices that were lawful when erected but do not meet either the original or current zoning, spacing, size, or lighting standards. As revised, the proposed rule:

- Deletes the outmoded reference to “grandfathered non-conforming devices”.
- Makes additional revisions to promote regulatory flexibility or greater clarity, as follows:
 - Updates provisions for “customary maintenance” of nonconforming devices to allow for partial replacement of poles or other support structures as authorized in the current statute.
 - Clarifies that replacement or repair of a device destroyed by vandalism or other criminal or tortious act is distinct from and does not limit “customary maintenance” of a nonconforming device.

Former Rule 1680-02-03-.05 – Directional Signs, has been deleted in its entirety because it was based on the former content-based definition of “directional signs” as signs advertising certain tourist-oriented businesses.

Rule 1680-06-03-.06 – On-Premises Devices.

This rule details the location criteria that must be met for signs to be exempted from regulation as on-premises devices. As revised, the rule:

- Incorporates the location criteria for exempted on-premises devices established in the 2020 Act (i.e., within 50 feet of, and on the same property as, a “facility” open to the public), but otherwise the proposed rule substantially preserves the provisions governing the “premises test” (i.e., location requirements) that are in the current rule.
- Deletes all provisions formerly governing the “purpose test” for on-premises devices based on the content of the message on the sign.

- Details provisions to address the requirement that on-premises devices cannot be engaged in the business of outdoor advertising.
- Clarifies that a sign which otherwise qualifies as an exempt on-premises device based on its location will not be considered a regulated “outdoor advertising device” based on the receipt of compensation merely because the owner/operator of the premises pays a sign company to lease the use of the sign.

Rule 1680-06-03-.07 – Removal of Abandoned Signs.

This rule details the process for permit revocation and removal of abandoned outdoor advertising devices. As revised, the rule:

- Revises the criteria for establishing abandonment to make them consistent with the revised definition of “abandoned outdoor advertising device”.
- Provides that the 12-month period for establishing abandonment may be suspended during a period of involuntary discontinuance, such as the closing of the road in front of the sign.
- Details the process by which a permit holder will be given notice of the conditions constituting a potential abandonment before TDOT takes enforcement action to revoke the outdoor advertising permit of an abandoned device.

Rule 1680-06-03-.08 – Vegetation Control.

This rule details the processes for obtaining permits to enter onto state highway right-of-way to cut and remove vegetation impairing the visibility of permitted outdoor advertising devices adjacent to the right-of-way. As revised, the rule:

- Incorporates provisions from T.C.A. § 54-21-116 of the 2020 Act governing vegetation control permits, including a provision authorizing the reinstatement of vegetation control permits issued under the 1972 Act or allowing the owner of the device to apply for a new vegetation control permit under the 2020 Act.
- Incorporates provisions from T.C.A. § 54-21-117 regarding enforcement against the unauthorized removal, cutting, or trimming of vegetation on state highway right-of-way.
- Details the standard minimum conditions required for vegetation control and vegetation maintenance permits, including provision regarding traffic control, parking of equipment on the right-of-way, repair or damage to the right-of-way or access control fences, erosion control, and removal of debris.
- Makes additional revisions to promote regulatory flexibility, as follows:
 - Authorizes a running surety bond for vegetation control and annual vegetation maintenance permits.
 - Gives permittees an opportunity to apply for a temporary opening in access control to obtain access to the vegetation control site on the right-of-way, subject to various conditions, including the obligation to restore access control upon completion of the vegetation control activity.
 - Allows permittees an opportunity to request the use of herbicides for vegetation control in specific circumstances and subject to strict conditions, although normally requiring the use of mechanical methods for vegetation removal or control.

- Allows permittees to apply for and obtain vegetation control permits on a year-round basis, unless replacement vegetation is required, in which case the permits may be issued only between October 1 and April 15, or restricting the use of herbicides, if allowed, to the period between March 1 and October 15.

Rule 1680-06-03-.09 – Appendix.

As revised, the appendix:

- Includes copies of the original 1971 agreement and the 1984 supplemental agreement between TDOT and the Federal Highway Administration, each of which was authorized by the Tennessee General Assembly under the 1972 Act, and which together memorialize the zoning, size, spacing, and lighting requirements for effective control of outdoor advertising in the State of Tennessee.
- Incorporates the brightness standards for digital billboards, as established in T.C.A. § 54-21-119(h).
- Includes new and revised illustrations demonstrating various aspects of outdoor advertising control under these rules, as follows:
 - Adds an illustration of the standard for measuring the “adjacent area” of a controlled access highway at an interchange with another highway.
 - Revises the illustrations of the method for measuring the area of the sign face(s) of a device consistent with the less restrictive method adopted in the definition of “sign face” and the criteria for sign size in Rule 1680-06-03-.03(1)(d), which allow for advertising embellishments outside of the normal sign face.
 - Revises illustrations for measuring the size of stacked devices and double-faced signs to remove measurement of any airspace between multiple sign faces.
 - Revises the illustrations of “abandoned outdoor advertising devices” consistent with the revised definition and criteria set out in Rule 1680-06-03-.07.
 - Adds an illustration of the minimum spacing exception for devices that are not visible from the main traveled way of the highway at the same time.