(same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles distributed by meat packinghouses, and commodities* defined in Section 203(b) (6) of the Act, as amended, from Alamosa, Colo., and points in Denver, Jefferson and Morgan Counties, Colo., to points in Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Texas, Utah, and Washington, for 180 days. Supporting shipper: Sigman Meat Company, 6000 W. 54th Ave., Arvada, Colo. 80002. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 1961 Stout St., 2022 Federal Bldg., Denver, Colo. 80202.

No. MC 138274 (Sub-No. 21TA), filed September 2, 1975. Applicant: SHIPPERS BEST EXPRESS, INC., P.O. Box 15533, Salt Lake City, Utah 84115. Applicant's representative: Christian V. Graff, 407 North Front St., Harrisburg, Pa. 17101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs*, from the shipping facilities of Heinz U.S.A. at Tracy, Calif., to points in Idaho, Montana, Wyoming, and Utah, restricted to traffic originating at the above-named origin and destined to the above-named destination states, for 180 days. Supporting shipper: Heinz U.S.A., Division of H. J. Heinz Company, P.O. Box 57, Pittsburgh, Pa. 15230. Send protests to: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Bldg., 125 South State St., Salt Lake City, Utah 84138.

No. MC 138956 (Sub-No. 3TA), filed August 28, 1975. Applicant: ERGON TRUCKING, INC., 202 East Pearl St., Jackson, Miss. 39201. Applicant's representative: Donald B. Morrison, 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, Miss. 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid caustic soda*, in bulk, in tank vehicles, from Brewton, Ala., to points in Santa Rosa County, Fla., for 180 days. Supporting shipper: The Louisiana Land and Exploration Company, P.O. Box 60350, New Orleans, La. 70160. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, 145 East Amite Bldg., Room 212, Jackson, Miss. 39201.

No. MC 139495 (Sub-No. 87TA), filed September 2, 1975. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, Kans. 67901. Applicant's representative: Herbert Alan Dubin, 1819 H St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Drugs, medicines, and chemicals*, in vehicles equipped with mechanical refrigeration, from the facilities of Miles Laboratories, Inc., located at or near Elkhart, Ind., to points in Arizona, California, Nevada, New Mexico, Oregon, Utah, and Washington, for 180 days. Supporting shipper: Miles Laboratories, Inc., 1127 Myrtle St., Elkhart, Ind. 46514. Send protests to: M. E. Taylor, District Supervisor, 501 Petroleum Bldg., Wichita, Kans. 67202.

No. MC 140968 (Sub-No. 1TA), filed September 3, 1975. Applicant: VALLEY TRANSPORT, INC., Drayton, N. Dak. 58225. Applicant's representative: Charles E. Johnson, 425 Gate City Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Beet pulp pellets*, fom the plantsite of American Crystal Sugar Company, at or near Drayton, N. Dak., to Duluth, Minn., and its commercial zone restricted to transportation services to be performed under a continuing contract or contracts with American Crystal Sugar Company, Moorhead, Minn., for 180 days. Supporting shipper: American Crystal Sugar Company, 101 North Third St., Moorhead, Minn. 56560. Send protests to: J. H. Ambs, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 2340, Fargo, N. Dak. 58102.

No. MC 141264 (Sub-No. 1TA), filed August 29, 1975. Applicant: GATEWAY TRUCKING CO., INC., 2983 Strickland St., Jacksonville, Fla. 32205. Applicant's representative: Sol H. Proctor, 1107 Blackstone Bldg., Jacksonville, Fla. 32202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, in containers and trailers (except in bulk, automobiles and heavy hauling), between points in Jacksonville and its commercial zone, (except Yulee and Fernandina Beach), for 180 days. Supporting shipper: McGiffin & Company, Inc., 1510 Talleyrand Ave., Jacksonville, Fla. 32206. Send protests to: G. H. Fauss, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay St., Jacksonville, Fla. 32202.

No. MC 141266 (Sub-No. 1TA), filed August 27, 1975. Applicant: WILLIAM T. AMERSON, doing business as BILL AMERSON TRUCKING, Route 1, Box 305, Georgetown, S.C. 29602. Applicant's representative: Mitchell King, Jr., P.O. Box 1628, Greenville, S.C. 29602. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Textiles, textile products and supplies*, between the plantsites of Oneita Knitting Mills, at or near Andrews, S.C., on the one hand, and, on the other, the plantsites of Oneita Knitting Mills at or near Salt Lake City, Utah, under a continuing contract with Oneita Knitting Mills, for 180 days. Supporting shipper: Oneita Knitting Mills, P.O. Drawer 24, Andrews, S.C. 29510. Send protests to: E. E. Strotheid, District Supervisor, Interstate Commerce Commission, Room 302, 1400 Pickens St., Columbia, S.C. 29201.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary*.

[FR Doc.75-24658 Filed 9-15-75;8:45 am]

[Notice 104]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

SEPTEMBER 11, 1975.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the I.C.C. Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 5227 (Sub-No. 19TA), filed August 26, 1975. Applicant: ECONOMY MOVERS, INC., P.O. Box 201, Mead, Nebr. 68041. Applicant's representative: Gailyn L. Larsen, P.O. Box 81849, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal buildings, and equipment, materials and supplies* used in the erection of metal buildings, from the plantsite of Behlen Manufacturing Company, at or near Columbus, Nebr., to points in Alaska, for 180 days. Supporting shipper: Behlen Manufacturing Company, James E. Weldon, Traffic Manager, Box 569, Columbus, Nebr. 68601. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Bldg., & U.S. Courthouse, 100 Centennial Mall North, Lincoln, Nebr. 68508.

No. MC 72069 (Sub-No. 6TA), filed September 4, 1975. Applicant: BLUE HEN LINES, INC., Box 565, Milford, Del. 19963. Applicant's representative: Chester A. Zyblut, 1522 K St. NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer ingredients*, in bulk, in dump vehicles, from Hopewell, Va., to points in Kent and Sussex Counties, Del., for 180 days. Supporting shippers: Robert A. Fisher, Jr., Vice President, Milford Fertilizer Co., Inc., P.O. Box 243, Milford, Del. 19963. Charles Wright, Secretary, Valliant Fertilizer Company, 431 N. Poplar St., Laurel, Del. 19956. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 814-B Federal Bldg., Baltimore, Md. 21201.

No. MC 119789 (Sub-No. 263TA), filed September 2, 1975. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 6188, Dallas, Tex. 75222. Applicant's representative: James K. Newbold, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Surface coated paper;* (2) *sensitized blueprint or reproduction paper*, in vehicles equipped with mechanical refrigeration, from Medford, Oreg., to Compton, Calif.; Chicago, Elk Grove Village and Wooddale, Ill.; Denver, Colo.; Secaucus, N.J.; Atlanta, Ga.; Grand Prairie, Tex.; Memphis, Tenn.; and St. Paul, Minn., for 180 days. Supporting shipper: Minnesota Mining and Manufacturing Company, 3M Center, St. Paul, Minn. 55101. Send protests to: Holland, District Supervisor, Interstate Commerce Commission, 1100 Commerce St., Room 13C12, Dallas, Tex. 75202.

No. MC 119789 (Sub-No. 264TA), filed September 3, 1975. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 6188, Dallas, Tex. 75222. Applicant's representative: James K. Newbold, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Insulators, electric wire or wiring, pottery or pottery and iron combines, and parts*, from Sandersville, Ga., to points in Idaho, Iowa, Missouri, Montana, Nebraska, North Dakota and South Dakota, for 180 days. Supporting shipper: Interpace Corporation, Lapp Insulator Division, P.O. Box 776, Sandersville, Ga. 31082. Send protests to: Holland, District Supervisor, Interstate Commerce Commission, 1100 Commerce St., Room 13C12, Dallas, Tex. 75202.

No. MC 123407 (Sub-No. 262TA), filed August 28, 1975. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Highway 6, Valparaiso, Ind. 46383. Applicant's representative: Robert W. Loser, 1009 Chamber of Commerce Bldg., 320 North Meridian St., Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing and roofing materials*, from San Leandro, Calif., to points in Oregon and Washington, for 180 days. Supporting shipper: Lloyd A. Fry Roofing Company, 5818 Archer Road, Summit, Ill. 60501. Send protests to: J. H. Gray, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 345 West Wayne St., Room 204, Fort Wayne, Ind. 46802.

No. MC 123407 (Sub-No. 263TA), filed September 2, 1975. Applicant: SAWYER TRANSPORTAT, INC., South Haven Square, U.S. Highway 6, Valparaiso, Ind. 46383. Applicant's representative: Stephen H. Loeb (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mulch*, in bags, and *equipment, materials, and supplies* used in the application thereof, from the facilities of Therma-Coustics Manufacturing, Inc., at or near Colton, Calif., to points in North Dakota, South Dakota, Minnesota, Wisconsin, Illinois, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, and New Orleans, La., for 180 days. Supporting shipper: Therma-Coustics Manufacturing, Inc., P.O. Box 190, Colton, Calif. 92324. Send protests to: J. H. Gray, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 345 West Wayne St., Room 204, Fort Wayne, Ind. 46802.

No. MC 124320 (Sub-No. 23TA), filed August 29, 1975. Applicant: C. B. JOHNSON, INC., P.O. Box Drawer S, Cortez, Colo. 81321. Applicant's representative: David E. Driggers, 1600 Lincoln Center, 1600 Lincoln Street, Denver, Colo. 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sulphuric acid*, in bulk, from El Paso, Tex., to Uravan, Colo., for 180 days. Supporting shipper: Asarco Incorporated, 405 Montgomery St., Suite 609, San Francisco, Calif. Send protests to: H. C. Ruoff, District Supervisor, Interstate Commerce Commission, 1961 Stout St., 2022 Federal Bldg., Denver, Colo. 80202.

No. MC 136464 (Sub-No. 11TA), filed September 3, 1975. Applicant: CAROLINA WESTERN EXPRESS, INC., P.O. Box 3961, Gastonia, N.C. 28050. Applicant's representative: Eric Meierhoefer, 915 Pennsylvania Bldg., 425 13th St. NW., Washington, D.C. 20004. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Hosiery;* and (2) *materials and supplies* as are used in the manufacture and sale of hosiery when moving in mixed loads with hosiery; (1) between the plantsites and warehouse facilities utilized by Adams-Millis Corporation located at or near Kernersville, and High Point, N.C., on the one hand, and, on the other, Edmond, Okla.; (2) from the plantsites and warehouse facilities utilized by Adams-Millis Corporation, located at or near Edmond, Okla., to Los Angeles, Calif., and points in its commercial zone, restricted to transportation services performed under a continuing contract or contracts with Adams-Millis Corporation, for 180 days. Supporting shipper: Adams-Millis Corporation, P.O. Box 1151, High Point, N.C. 27261. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Road, Suite CC516, Charlotte, N.C. 28205.

No. MC 138465 (Sub-No. 5TA), filed September 3, 1975. Applicant: PHIL TOWNSEND, JR., Route 1, Box 19, Live Oak, Fla. 32060. Applicant's representative: Ronald D. Peterson, 1729 Gulf Life Tower, Jacksonville, Fla. 32207. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural limestone* (high calcium and dolomite), from points in Levy, Morion and Suwannee Counties, Fla., to points in Georgia on and south of U.S. Highway 280, for 180 days. Supporting shipper: Dixie Lime & Stone Co., P.O. Box 910, Ocala, Fla. 32670. Send protests to: G. H. Fauss, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 West Bay St., Jacksonville, Fla. 32202.

No. MC 139404 (Sub-No. 3TA), filed August 28, 1975. Applicant: WILLIAM G. BROWN, 207 North Third St., Bardstown, Ky. 40004. Applicant's representative: Robert H. Kinker, P.O. Box 464, Frankfort, Ky. 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wooden barrels*, set-up, (1) from Memphis, Tenn., to Lawrenceburg and Meadow Lawn, Ky., and points within three miles of Meadow Lawn, Ky., and (2) from Lynchburg, Tenn., and commercial zone thereof, to Louisville, Ky., for 180 days. Supporting shipper: National Distillers Products Company, Wayne S. Franklin, Director of Traffic, 850 Dixie Highway, Louisville, Ky. 40210. Send protests to: Elbert Brown, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, 426 Post Office Bldg., Louisville, Ky. 40202.

No. MC 140484 (Sub-No. 8TA), filed September 2, 1975. Applicant: LESTER COGGINS TRUCKING, INC., 2671 E. Edison St., P.O. Box 69, Fort Myers, Fla. 33901. Applicant's representative: Clayton Geer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Horticultural plants and cuttings and materials and supplies* used in the growing, shipping or marketing of horticultural commodities, in vehicles equipped with mechanical temperature controlled devices, between points in Illinois on the one hand, and, on the other, points in Alabama, Georgia, Kentucky, Mississippi, Ohio, North Carolina, South Carolina, Tennessee, Arkansas, Virginia, West Virginia, Florida, Indiana, Louisiana, Texas, New Mexico, Arizona, California, Pennsylvania, and Michigan, for 180 days. Supporting shippers: George J. Ball, Inc., P.O. Box 335, West Chicago, Ill. Florists Products, Inc., 780 W. Oakton St., Des Plaines, Ill. Send protests to: Joseph B. Teichert, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Monterey Bldg., Suite 101, 8410 N.W. 53rd Terrace, Miami, Fla. 33166.

No. MC 140677 (Sub-No. 6TA), filed September 2, 1975). Applicant: JOHN T. BREWER, JOHN R. BREWER AND LEWIS L. BREWER, doing business as BREWER TRUCKING, 1603 East Tallent, Rapid City, S. Dak. 57701. Applicant's representative: J. Maurice Andren, 1734 Sheridan Lake Road, Rapid City, S. Dak. 57701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prefabricated houses, unassembled,* from Rothschild, Wis., to points in South Dakota, for 180 days. Supporting shipper: Family Homes, Inc., Box 2192, Rapid City, S. Dak. 57701. Send protests to: J. L. Hammond, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 369, Federal Bldg., Pierre, S. Dak. 57501.

No. MC 141274TA, filed August 25, 1975. Applicant: C. C. ANKENEY, INC., P.O. Box 1034, Whittier, Calif. 90609. Applicant's representative: Kenneth Sadler (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *High pressure rubber hose and related articles*, from Trenton, N.J., to points in California, Colorado, Louisiana, Missouri, Texas and Utah; (2) *Plastic, scrap, pellets, flakes, powders*, from Beaumont, Tex., to points in California, Ohio, New York and New Jersey, under continuing contract with Goodall Rubber Company, and Elray, Incorporated, for 180 days. Supporting shipper: Goodall Rubber Company, P.O. Box 631, Whitehead Road, Trenton, N.J. 08604. Elray Incorporated, 905 Euclid Ave., No. 103, Fullerton, Calif. 92632. Send protests to: Mildred I. Price, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Bldg., 300 North Los Angeles St., Los Angeles, Calif. 90012.

No. MC 141275TA, filed August 26, 1975. Applicant: WARREN G. DIAZ, SR., doing business as DIAZ TRUCKING COMPANY, 4835 Rosemont Place, New Orleans, La. 70126. Applicant's representative: Byron M. Unkauf, 1120 Hibernia Bank Bldg., New Orleans, La. 70112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* in the commercial zone of New Orleans, La., for 180 days. Supporting shipper: Sea-Land Service, Inc., Edward C. Keller, Terminal Mgr., 2700 France, New Orleans, La. 70186. Send protests to: Ray C. Armstrong, Jr., District Supervisor, T-9038 U.S. Postal Service Bldg., 701 Loyola Ave., New Orleans, La. 70113.

No. MC 141276TA, filed September 2, 1975. Applicant: DONALD P. AVERILL, doing business as AVERILL & SON HAULING, P.O. Box 191, Tillamook, Oreg. 97141. Applicant's representative: Donald G. Averill (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chips, hog fuel and sawdust*, from Hearin Mfg., Latimer Road, Highway 30, Tillamook, Oreg., to Longview Fiber, Highway 433, Longview, Wash., for 180 days. Supporting shipper: Hearin Manufacturing, P.O. Box 2366, Eugene, Oreg. 97402. Send protests to: A. E. Odoms, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, Oreg. 97204.

No. MC 141277TA, filed August 29, 1975. Applicant: TOTAL TRANSPORT, INC., 308 Whitney Bldg., New Orleans, La. 70130. Applicant's representative: Julius E. Barr (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Containers*, loaded and unloaded, also *general commodities*, between points and places within New Orleans Commercial Zone as defined in New Orleans Commercial Zone, 1973, 117 ICC 816, including New Orleans, for 180 days. Supporting shipper: McCandless, Inc., Noel Lacassin, Vice President, 135 St. Charles Ave., Room 906, New Orleans, La. 70130. Send protests to: Ray C. Armstrong, Jr., District Supervisor, T-9038 U.S. Postal Service Bldg., 701 Loyola Ave., New Orleans, La. 70113.

No. MC 141278TA, filed August 28, 1975. Applicant: CHARLES W. SIRCY CORPORATION, 434 Atlas Drive, Nashville, Tenn. 37211. Applicant's representative: Robert L. Baker, Suite 618, Hamilton Bank Bldg., Nashville, Tenn. 37219. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats and packing house products*, between Nashville and Clarksville, Tenn., and Kinston, N.C., on the one hand, and, on the other, points in Louisiana, Virginia, Pennsylvania, Ohio, Michigan, Maryland, North Carolina, Massachusetts, Missouri, Iowa, and New York, under a continuing contract with Frosty Morn Meats, Inc., for 180 days. Supporting shipper: Frosty Morn Meats, Inc., Clarksville, Tenn. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Courthouse, Nashville, Tenn. 37203.

No. MC 141279TA, filed August 29, 1975. Applicant: SOUTHERN ILLINOIS TRANSPORTATION CORPORATION, 101 West Vienna St., Anna, Ill. 62906. Applicant's representative: John Womick, 609 East College, Carbondale, Ill. 62901. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Poles, posts, woodpilings, crossing panels and other similar wood products, with or without treatment with preservatives*, between Carbondale, Jonesboro, and Galesburg, Ill., on the one hand, and, on the other points in Kentucky, Indiana, Wisconsin, Missouri, Michigan, and Iowa, for 180 days. Supporting shipper: X. P. Laskaris, Plant Manager, Koppers Company, Inc., Carbondale, Ill. 62901. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, P.O. Box 2418, Springfield, Ill. 62705.

No. MC 141280TA, filed August 29, 1975. Applicant: ALAMOGORDO MOVING & STORAGE, INC., 300 Highway 70 West, P.O. Box 275, Alamogordo, N. Mex. 88310. Applicant's representative: Alan F. Wohlstetter, 1700 K St. NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, between points in the Counties of Eddie, Dona Ana, Sierra, Socorro, Lincoln, Chaves, and Otero, N. Mex., restricted to the transportation of traffic having a prior or subsequent movement, in containers, and further restricted to the performance of pickup and delivery service in connection with packing, crating and containerization or unpacking, uncrating and decontainerization of such traffic, for 180 days. Supporting shippers: Columbia Export Packers, Inc., 19032 South Vermont Ave., Torrance, Calif. 90502. Towne International Forwarding, Inc., P.O. Box 17449, San Antonio, Tex. 78217. Furniture Forwarding, Inc., P.O. Box 50800, Indianapolis, Ind. 46250. Send protests to: John H. Kirkemo, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 1106 Federal Office Bldg., 517 Gold Ave., S.W., Albuquerque, N. Mex. 87101.

No. MC 141281TA, filed September 2, 1975. Applicant: MINNESOTA LINES, INC., Route 2, Highway 13 North, Albert Lea, Minn. 56007. Applicant's representative: Earl H. Scudder, Jr., P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Agricultural and industrial insecticides, herbicides, pesticides and chemicals and empty containers* for the commodities described in (2) below (except commodities in bulk, in tank vehicles), from the facilities of Imperial, Inc., at or near Albert Lea, Minn., to points in Colorado, Idaho, Illinois, Iowa, Kansas, Missouri, Montana, Nebraska, South Dakota, Tennessee, Wisconsin, and Wyoming; and (2) *Materials and supplies* used in the packaging, processing, formulating, production, blending and storage of the commodities described in (1) above and points in Georgia, Michigan, Nevada, New Jersey, New York, Ohio, and Pennsylvania, to the facilities of Imperial, Inc., at or near Albert Lea, Minn. Restriction: Restricted to a transportation service to be performed under a continuing contract or contracts with Imperial, Inc., for 180 days. Supporting shipper: Imperial, Inc., P.O. Box 423, Shenandoah, Iowa 51601. Send protests to: A. N. Spath, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., & U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 141282TA, filed September 3, 1975. Applicant: U-CART TRANSPORTATION, INC., P.O. Box 1633, Vancouver, Wash. 98663. Applicant's representative: Philip G. Skofstad, 3076 East Burnside, Portland, Oreg. 97214. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Concrete mixing plants, parts, accessories, attachments, tools, devices and apparatus* used in the manufacture and installation and erection thereof, and *concrete additive* (except in bulk and tank trucks), between Vancouver, Wash., on the one hand, and, on the other, all points in the Continental United States, under a continuing contract with U-Cart Concrete Systems, Inc., P.O. Box 1833, Vancouver, Wash. 98663. Send protests to: W. J. Huetig, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, Oreg. 97204.

No. MC 141283TA, filed August 29, 1975. Applicant: ADAPTO, INC., 680 North Lithfield Road, Goodyear, Ariz. 85338. Applicant's representative: George S. Livermore, The Quadrangle, Suite 100, Phoenix, Ariz. 85016. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Hydraulic actuation systems* for Maverick Missiles, from Kalamazoo, Mich., to Tucson, Ariz., under a continuing contract with National Water Lift Co., for 180 days. Supporting shipper: National Water Lift Co., A Division of Pneumo Corp., 2220 Plamer Ave., Kalamazoo, Mich. 49001. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 3427 Federal Bldg., 230 N. First Ave., Phoenix, Ariz. 85025.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary*.

[FR Doc.75-24659 Filed 9-15-75;8:45 am]

federal register

TUESDAY, SEPTEMBER 16, 1975

PART II:

FEDERAL ELECTION COMMISSION

CONTINUOUS REPORTING OF CAMPAIGN DEBTS FROM 1972

FUNDING LIMITATIONS AND SEPARATE COMMITTEES FOR DUAL CANDIDATES

Advisory Opinions

FEDERAL ELECTION COMMISSION

[Notice 1975-43]

CONTINUOUS REPORTING OF CAMPAIGN DEBTS FROM 1972

Advisory Opinion

The Federal Election Commission announces the publication today of Advisory Opinion 1975-18. The Commission's opinion is in response to questions raised by individuals holding Federal office, candidates for Federal office and political committees, with respect to whether any specific transaction or activity by such individual, candidate, or political committee would constitute a violation of the Federal Election Campaign Act of 1971, as amended, of Chapter 95 or Chapter 96 of Title 26 United States Code, or of sections 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18 United States Code.

The Commission points out that this advisory opinion should be regarded as an interim ruling which is subject to modification by future Commission regulations of general applicability. In the event that a holding in an opinion is altered by the Commission's regulations, the person to whom the opinions were issued will be notified.

ADVISORY OPINION 1975-18

CONTINUOUS REPORTING OF CAMPAIGN DEBTS FROM 1972

This advisory opinion is rendered under 2 U.S.C. 437f in response to requests for advisory opinions submitted by James R. Sneider for the Illinois Muskie Campaign and Frank W. Wurzlow, Jr., for the Senator Ellender Campaign Committee, which were published together as AOR 1975-18 in the July 29, 1975 FEDERAL REGISTER (40 FR 31878). Interested parties were given an opportunity to submit written comments relating to the requests.

The requests generally ask the Commission, under the Federal Election Campaign Act of 1971, as amended (the Act), whether a political committee with outstanding debts from a past campaign may discontinue reporting to the Commission because it has ceased to receive contributions and make expenditures. Specifically, the following requests were made:

(a) James R. Sneider, attorney for the Muskie Illinois Campaign, states that there has been no activity in the Muskie Illinois Committee since 1973. He further states that the political committee has disbanded, that since 1973 the Committee has not received any contributions nor made any expenditures in an aggregate amount totaling more than $1,000 and that the Committee does not expect to make any such expenditures nor receive any contributions. The Committee continues to owe $166,432.75 from its 1972 campaign effort, and it has no funds to extinguish this debt nor does it contemplate the receipt of any contributions in the future. Mr. Sneider asks whether the Committee is still obligated to file reports, and if so, for how many years must reports be filed with the Commission in these circumstances; and

(b) Frank W. Wurzlow, Jr., treasurer for the Senator Ellender Campaign Committee states that the Committee was generally inactive during the immediate past reporting period and is now nonexistent except for a lawsuit pending against the Committee. The lawsuit involves an outstanding claim by Innovative Data Systems of Louisiana for $43,194.68 which is disputed by the Committee. Mr. Wurzlow states that this probably will be a long-drawn-out lawsuit and asks whether the Committee may discontinue reporting until the pending lawsuit is terminated. On the termination of the suit, Mr. Wurzlow states that the Committee will file a final report.

It generally is provided in 2 U.S.C. 434 (b)(12) that the treasurer of a political committee shall file with the Commission a report which shall disclose "the amount and nature of debts and obligations owed by or to the Committee, in such form as the Commission may prescribe and a continuous reporting of their debts and obligations after the election at such periods as the Commission may require until such debts and obligations are extinguished, together with a statement as to the circumstances and conditions under which any such debt or obligation is extinguished and the consideration therefore." Thus, debts and obligations which remain outstanding after an election shall be continuously reported in the manner and at the frequency that the Commission may prescribe.

It is provided in 2 U.S.C. 433(d) that a political committee which disbands or determines that it no longer will receive contributions or make expenditures during the calendar year in an aggregate amount exceeding $1,000 shall notify the Commission. However, this subsection neither expressly nor impliedly provides that on such notification the Commission automatically will permit a political committee to cease reporting. More specifically, neither the express language of the subsection nor the applicable legislative history indicates that Congress intended when enacting this provision to allow a political committee, which has an outstanding campaign debt, the power to decide for itself whether to discontinue reporting either indefinitely or permanently. To allow a political committee such power would be an invitation to commit fraud; since once the committee decided on its own to cease reporting, it would have the opportunity to privately convert some of its creditors to contributors by declining to pay certain debts, even though direct contributions from such creditors might violate Title 18, United States Code. Thus the only reasonable interpretation of this subsection is that it allows a political committee to notify the Commission whenever it desires to disband or indefinitely cease reporting, but reserves to the Commission the discretionary authority to provide for such a termination or discontinuation of reporting. Application of this view may be seen in 2 U.S.C. 436(b) in which it is provided that the Commission may by rule of general applicability, which is published in the FEDERAL REGISTER not less than 30 days before its effective date, relieve: (1) Any category of candidates from the obligation to comply personally with the reporting requirements; and (2) any category of political committees from the reporting requirements if the committees primarily support persons seeking State or local office, and "do not operate in more than on State or do not operate on a statewide basis."

The Commission's power to relieve a political committee from an obligation to continuously report debts and obligations because of special circumstances, is found in 2 U.S.C. 436(c) which provides that "[t]he Commission shall, by published regulations of general applicability, prescribe the manner in which contributions and expenditures in the nature of debts and other contracts, agreements, and promises to make contributions or expenditures shall be reported." It is further provided in 2 U.S.C. 434(b)(12) that outstanding debts shall be reported until extinguished at such periods as may be prescribed by the Commission, thereby allowing the Commission the discretion to develop flexible reporting periods for debts. The Commission thus has been granted by Congress the power to develop regulations to govern reporting by political committees, and also the corresponding power to propose regulations pursuant to 2 U.S.C. 438(c) which will relieve for a definite or indefinite period and sound policy reasons, certain categories of political committees from the obligation to report. However, inasmuch as the Commission only has the power to relieve a category of political committees from the obligation to report through a regulation of general applicability, such relief cannot be afforded a single political committee or even a category of political committees through an advisory opinion since it would be neither generally applicable nor subject to review by the Senate or House of Representatives.

Accordingly, it is the opinion of the Commission that:

(a) A political committee which is indebted from its 1972 campaign effort, has no funds to extinguish the debt, and does not contemplate receiving any contributions in the future, is generally required to file quarterly and yearly reports with the Commission until issuance of regulations of general applicability which would relieve the committee of its reporting obligations;

(b) A political committee which is inactive except for a pending lawsuit is generally required to file quarterly and yearly reports with the Commission until such time as regulations of general applicability have been issued which would relieve the committee of its reporting obligations.

However, if either political committee receives contributions of less than $1,000 or makes expenditures of less than $1,000 in a calendar quarter as provided in 2 U.S.C. 434(a)(1)(C), then the political committee is not required to file a detailed report for that quarter and need only file such explanation for its failure to file as may be prescribed by the Commission.

This advisory opinion is issued only on an interim basis pending promulgation by the Commission of rules and regulations of general applicability.

This advisory opinion is to be construed as limited to the facts of the request and should not be relied on as having any precedential significance except as it relates to those facts at the time of its issuance.

Dated: September 10, 1975.

THOMAS B. CURTIS,
Chairman, for the Federal Election Commission.

[FR Doc.75-24509 Filed 9-15-75;8:45 am]

[Notice 1975-44]

FUNDING LIMITATIONS AND SEPARATE COMMITTEES FOR DUAL CANDIDATES

Advisory Opinion

The Federal Election Commission announces the publication today of Advisory Opinion 1975-11. The Commission's opinion is in response to questions raised by individuals holding Federal office, candidates for Federal office and political committees, with respect to whether any specific transaction or activity by such individual, candidate, or political committee would constitute a violation of the Federal Election Campaign Act of 1971, as amended, of Chapter 95 or Chapter 96 of Title 26 United States Code, or of sections 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18 United States Code.

The Commission points out that this advisory opinion should be regarded as an interim ruling which is subject to modification by future Commission regulations of general applicability. In the event that a holding in an opinion is altered by the Commission's regulations, the person to whom the opinion is issued will be notified.

ADVISORY OPINION 1975-11

FUNDING LIMITATIONS AND SEPARATE COMMITTEES FOR DUAL CANDIDATES

This advisory opinion is rendered under 2 U.S.C. 437f in response to requests submitted by Senator Lloyd Bentsen and Congressman Alan Steelman and published as AOR 1975-11 in the July 9, 1975, FEDERAL REGISTER (40 FR 26660). Interested parties were given an opportunity to submit written comments pertaining to the requests.

A. *Requests of Senator Bentsen by Counsel: Contribution and spending limits applicable to candidate for two Federal offices.* Senator Bentsen expects to simultaneously seek nomination for election to the Presidency and the Office of United States Senator. His specific questions are as follows:

(a) May a candidate seeking nomination for election to the Presidency and the Office of Senator at the same time take advantage of two expenditure limits, so that he may spend the amount designated by 18 U.S.C. 608(c)(1)(C) on behalf of his senatorial primary campaign and twice that amount with respect to his presidential primary campaign in the State in which he seeks the Office of Senator pursuant to 18 U.S.C. 608(1)(A)?

(b) Do the personal and immediate family expenditure limits of 18 U.S.C. 608(a)(10) apply separately to an individual's simultaneous candidacy for nomination or election to the Presidency and for nomination to the Office of Senator, so that the individual may spend $35,000 with respect to his senatorial race and other $50,000 with respect to his presidential race?

(c) Do the contribution limits in 18 U.S.C. 608(b) (1) and (2) apply separately in the case of simultaneous candidacy, so that, for example, an individual may contribute $1,000 to the candidate with respect to his Senate primary election and another $1,000 with respect to his candidacy in the State's presidential primary?

1. The relevant expenditure limitations in 18 U.S.C. 608(c) are as follows:

(1) No candidate shall make expenditures in excess of—

(A) Ten million dollars, in the case of a candidate for nomination for election to the Office of President of the United States, except that the aggregate of expenditures under this subparagraph in any one State shall not exceed twice the expenditure limitation applicable in such State to a candidate for nomination for election to the office of senator * * *;

* * * * *

(C) In the case of campaign for nomination for election by a candidate for the office of Senator * * *,

(i) Eight cents multiplied by the voting age population of the State * * *;

On the basis of the facts asserted by Senator Bentsen, the Commission concludes that this statute must be construed so as to prohibit a candidate who is simultaneously seeking nomination for election to the Presidency and the office of Senator from making, in the State in which he seeks election as Senator, expenditures in an amount which exceed the amount applicable to his senatorial campaign. This conclusion should not be construed as applying to dual candidates for federal offices other than the Presidency; in this part of the Opinion the Commission addresses an entirely distinct situation which in the Commission's view requires a separate ruling. (See Part B of the Opinion.)

On its face, the portions of 18 U.S.C. 608(c) previously enumerated merely set forth expenditure limitations applicable to candidates seeking nomination for the office of President or Senator; there is no indication as to how the statute is to be applied in the case of a proposed dual candidacy such as that of Senator Bentsen. However, despite the lack of specific statutory direction, it is clear that the ruling of Commission, supra, is the only interpretation which effectively harmonizes the statute with applicable principles of constitutional law.

A uniform application of the senatorial nomination expenditure limit to Senator Bentsen and his rivals avoids the unfair advantages which Senator Bentsen would undoubtedly gain by being able to spend more money statewide than opposing candidates who seek only one office. These expenditures, which could run as much as three times greater than Senator Bentsen's senatorial rivals (as well as one half more than opposing presidential candidates), would obviously give him a significant publicity advantage over his opposition. If the law is read to require that such an advantage be conferred or permitted, it runs afoul of the constitutional right of Senator Bentsen's rivals to communicate with the affected constituency on a basis substantially equivalent to that enjoyed by the Senator. In short, the law thus read would so discriminate against these rivals' power to communicate as to deny them the equal protection of the laws, as that concept is embodied in the Due Process Clause of the Fifth Amendment to the United States Constitution. Cf. *Bolling* v. *Sharpe*, 347 U.S. 497 (1954); *Bullock* v. *Washington*, 468 F. 2d 1096, 1104-05 (D.C. Cir. 1972). The Commission finds no rational basis, much less a compelling one, for so limiting a challenger's ability to compete for the electorate's attention. Nor may it be argued that the discriminatory effect which the Commission here perceives can be avoided if Senator Bentsen's rivals for the Senate seat adopt the expedient course of simply declaring themselves to be presidential candidates as well; this would only serve to make a sham of the spending limitations of the Federal Election Campaign Act Amendments of 1974, and would be sure to encourage a multitude of frivolous or spurious candidacies. These obviously unacceptable effects are avoided by the Commission's ruling today. The ruling also preserves the basic spirit of the Federal Election Campaign laws, which seek to foreclose the possibility that one federal candidate will hold an insurmountable financial advantage over another.

It may be argued that the effect of the Commission's ruling is to deny equal protection to Senator Bentsen himself. However, at worst, this is only true with regard to Senator Bentsen's presidential primary spending in Texas; it is certainly not true with regard to any other presidential primary or, for that matter, with regard to the total expenditure limitation on the Senator as a prospective presidential nominee. Moreover, within Texas, the reduced presidential primary expenditure limitations applicable to Senator Bentsen are compensated for by the fact that he is already the Senator from Texas and thus, within Texas, begins with a significant exposure advantage over his rivals. Furthermore, the financial resources which, because of this ruling, may not be used in Texas, are not thereby wasted; they may clearly be applied in other jurisdictions, and may there provide a de facto expenditure advantage over rival presidential candidates. Finally, whatever disadvantages Senator Bentsen may suffer from the Commission's ruling are outweighed by the higher constitutional purpose the ruling serves with regard to his senatorial rivals. See, analogously, *American Party of Texas* v. *White*, 415 U.S. 767 (1974).

Because the express provisions of the Federal Election Campaign Act Amendment of 1974 did not clearly foreordain the foregoing conclusion regarding the applicable expenditure limitations, it is the Commission's view that the limitation set forth above should be applied only prospectively.

Therefore, potential dual candidates for the Presidency and the Senate, if they have already declared their presidential candidacy or are deemed to be a presidential candidate under the candidate definition of 18 U.S.C. 591(b), may, for purposes of the 1976 elections alone, hereafter spend the full amount allowed for a senatorial candidate in the relevant state.

2. The Commission's conclusions stated in Section 1 of Part A of this opinion also apply with respect to the candidate's personal fund expenditure limitations in 18 U.S.C. 608(a). That section states that:

No candidate may make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaigns during any calendar year for nomination for election, or for election, to Federal office in excess of, in the aggregate—

(A) $50,000, in the case of a candidate for the office of President or Vice President of the United States;

(B) $35,000, in the case of a candidate for the office of Senator or for the office of Representative from a State which is entitled to only one Representative; or

(C) $25,000, in the case of a candidate for the office of Representative, or Delegate or Resident Commissioner, in any other State.

The Commission is concerned that candidates for one federal office may frivolously seek another federal office at the same time solely to expend more personal funds. Therefore, the Commission concludes that in the state where an individual simultaneously seeks nomination for election to the Presidency and the office of Senator he or she may spend from personal funds, including those of the "immediate family," no more than $35,000 in connection with both campaigns. Such personal expenditures may be allocated as the candidate sees fit. However, to the extent that any portion of the $35,000 is spent for the presidential campaign within that state, the portion so spent must be deducted from the $50,000 which a candidate may permissibly expend from his personal funds, or those of his immediate family, in the country as a whole.

3. With respect to how contribution limitations under 18 U.S.C. 608(b) apply to persons and potential committees who contribute to a candidate simultaneously seeking nomination for both the offices of President and Senator, the Commission concludes that contributions may be made to the same extent as would be permissible if two individuals rather than one, were seeking the described offices. The Commission is of the view that the concern for equal protection of the law expressed supra in section 1, with regard to expenditure limitations, has minimal relevance with regard to limitations on contributions. Moreover, the Commission emphasizes that such a dual federal candidate must establish and maintain two entirely separate campaign organizations. Contributions made with respect to one campaign may not be expended with respect to the other campaign, unless the contribution is actually returned to the contributor and he or she thereafter contributes to the other campaign. Transfers between the separate campaign committee structures are not permissible. In no event, of course, may a contribtuor give more than $1,000 (or $5,000 in the case of a committee qualified under 18 U.S.C. 608(b)(2)) with respect to each election held in connection with each candidacy.

B. *Request of Congressman Alan Steelman: Creation of separate campaign committees for Congressional and Statewide Office.* Congressman Steelman requested an opinion as to whether a Congressman contemplating running for the office of Senator may form a new campaign committee to accumulate and spend campaign funds for that purpose. The Congressman specifically inquired whether, for example, such a committee may be formed to raise $25,000 to pay for a Statewide poll and for travel around the State over a period of six months to sound out party leaders and to "test the political waters."

The Commission concludes that in the case of a candidate who is seeking the office of Congressman and Senator from the same state the candidate may spend funds up to the expenditure limitation applicable to a senatorial campaign in that state, subject to the further restrictions set forth hereinafter. While the Commission is necessarily sensitive to the equal protection implications of its conclusion, it is of the view that the Constitution permits, within the framework of a complex statute designed to advance a major public interest, a good faith regulatory effort to accommodate competing constitutional considerations to the maximum extent feasible, even though certain limited inequalities inevitably remain despite that effort. This is precisely the Commission's effort in this instance. See, e.g., *San Antonio Independent School District* v. *Rodriquez*, 411 U.S. 1 (1973).

In the case of dual candidates for Congress or Senator, it is clear that a ruling restricting the candidate to the lower of the two applicable spending limitations would affect the candidate's entire campaign for the other office. Such a limitation would have a total, irreversible impact on the candidate's senatorial campaign. The discrimination he would suffer is utterly different from the potential problem in the case of a dual candidate who is running for the Presidency. As already noted in Part A of this Opinion, whatever diminution of equal protection (if any) which a dual Presidential candidate may suffer in his home state is more than counterbalanced by the fact that in all other states the candidate would enjoy at least the same spending power as his rivals. The same simply cannot be said with regard to the Senate candidate restricted to House campaign limits; such limits effectively nullify his or her Senate race.

It also should be noted that a Congressman who is running for Senator would not, in the typical situation, have the same advantage of prior exposure vis-a-vis his rivals as has a favorite son presidential candidate such as Senator Bentsen. Indeed, at least some of Congressman Steelman's potential senatorial rivals might initially be better known than the Congressman himself. This would only serve to exacerbate the invidious effect of a lower spending limitation on Congressman Steelman.

It may be argued that the Commission's ruling herein has the reverse effect of its ruling on Senator Bentsen's request—namely, that it discriminates against Congressman Steelman's rivals in his Congressional race. However, the Commission minimizes, if it does not obviate this difficulty by setting out the following requirements. Each such dual candidate must establish and maintain completely separate campaign committee structures for the senatorial and Congressional races. The Congressional campaign structure may make expenditures only with respect to the Congressional district. Such expenditures may not exceed the applicable House limits for that district, and at the same time each dollar expended in the district will count toward the state-wide senatorial limit. Expenditures within the district by the candidate's senatorial campaign structure will be counted toward the House expenditure limit for that district.

Transfers between the two separate campaign committee structures are impermissible. Contributions made with respect to a campaign may be expended with respect to the other campaign only if the contribution is actually returned to the contributor and he or she thereafter contributes to the other campaign. And, of course, in no event may a contributor give more than $1,000 or $5,000 in the case of a committee qualified under 18 U.S.C. 608(b)(2) with respect to each election held in connection with each candidacy.

This advisory opinion is to be construed as limited to the facts of the request and should not be relied on as having any precedential significance except as it relates to those facts at the time of its issuance.

Dated: September 10, 1975.

THOMAS B. CURTIS,
Chairman, for the Federal Election Commission.

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federal register

TUESDAY, SEPTEMBER 16, 1975

PART III:

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

HIGHWAY BEAUTIFICATION, OUTDOOR ADVERTISING CONTROL

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER H—RIGHT-OF-WAY AND ENVIRONMENT

PART 750—HIGHWAY BEAUTIFICATION

Outdoor Advertising Control

● **Purpose: This document publishes regulations of the Federal Highway Administration (FHWA) prescribing policies and requirements relating to the effective control of outdoor advertising in areas adjacent to Interstate and Federal-aid highways. The regulations will appear as Subpart G of this part. ●**

A notice of proposed rulemaking was issued by the Administrator of the Federal Highway Administration and published in the FEDERAL REGISTER on October 10, 1974, at 39 FR 36490. A correction of this notice of proposed rulemaking was published on December 13, 1974, at 39 FR 43409. Finally, an Amended Notice of proposed rulemaking was published on March 11, 1975, at 40 FR 11361. This amendment was necessitated by changes made in 23 U.S.C. 131 under the Federal-Aid Highway Amendments of 1974, Pub. L. 93-643, January 4, 1975. A substantial number of comments were received on these three notices from the outdoor advertising industry, environmental groups, and other interested parties. In addition, comments were received from the Advisory Commission on Intergovernmental Relations (ACIR) and State members of the American Association of State Highway and Transportation Officials (AASHTO) pursuant to the clearance process required by Office of Management and Budget Circular A-85.

The proposed regulations have been modified as a result of some of the comments received, as a result of additional consultation with the States, and after further consideration of the regulations within the FHWA.

The following is a section-by-section analysis of comments received and modifications resulting from the notices of proposed rulemaking:

§ 750.703 DEFINITIONS

Two comments suggested the addition of a definition of an "abandoned" sign. The suggestion was not adopted because the regulations now provide that each State shall develop criteria defining this term.

A definition of "unzoned commercial or industrial area" has been included as a result of comment.

The definition of "State law" has been revised to omit reference to political subdivision ordinances or regulations pursuant to a comment that the original definition was too broad.

The definition of "lease" has been revised to indicate that it must be a valid contract under State law. This was done pursuant to comment that such an addition would accommodate differences in State law.

The definition of "illegal sign" has been revised to include those which are illegal under local law or ordinance as a result of comment received.

The definition of a double-faced, back-to-back, or "V" type sign has been deleted as a definition. The subject is now addressed in § 750.706, Sign Control in Zoned and Unzoned Commercial and Industrial Areas.

The definition of "visible" has been revised by substituting the word "readable" for "legible." The definition of "legible" has been omitted.

Two comments took exception to the definition of "urban areas." This is defined in 23 U.S.C. 101(a), and was a quote. The regulations now refer the reader to the law.

§ 750.704 STATUTORY REQUIREMENTS

Two comments took exception to the use of the term "visible" in § 750.704(a) relative to those signs within 660 feet of the right-of-way. One stated that "visible" seemed entirely too far-reaching and that something more in accord with their State law should be used. The suggestion was not adopted because 23 U.S.C. 131 uses the term "visible."

One comment objected to directional signs as being discriminatory against certain tourist-oriented businesses, and also stated that the National Standards regulating such signs should be established in this regulation rather than at a later date. These standards were issued in January, 1969, pursuant to policies and provisions expressed in 23 U.S.C. 131, and are currently found in Subpart B, Part 750, Chapter I, 23 CFR.

§ 750.705 EFFECTIVE CONTROL

A comment recommended the inclusion of just compensation requirements in § 750.705. The recommendation was accepted, and § 750.705(e) was revised accordingly.

Section 750.705(g) has been revised. The suggested criteria for determining which signs have been erected with the purpose of their message being read from the main-traveled way has been moved to a nonregulatory part of this regulation. One additional item concerning use of data from an independent audit agency was added pursuant to a comment.

A recommendation was made to include the following statement in § 750.-705(g):

"If the sign was erected prior to construction of the controlled highway, and is adjacent to another highway, it should not be considered as having been erected with the purpose of its message being read from the main-traveled way (of the controlled highway)."

If adopted, this provision would have the effect of creating a class of exempt signs not subject to control or removal simply because they predated the construction of a highway. We believe this is contrary to the intent of 23 U.S.C. 131. Construction of a new Interstate or primary highway may have the effect of creating new nonconforming signs in the same manner as the system reclassification of a highway from secondary to primary.

Section 750.705(i), which concerns the State enforcement procedures relative to illegally erected or maintained signs has been revised by the deletion of certain detailed requirements. However, the basic requirement of prompt discovery and removal has not been changed.

New § 750.705(j) concerning FHWA approval of State operating procedures has been added.

§ 750.706 SIGN CONTROL IN ZONED AND UNZONED COMMERCIAL AND INDUSTRIAL AREAS

Section 750.706(c)(2) would allow local zoning authorities to establish less restrictive regulations than those contained in the State-Federal agreement unless State law prohibits this. Several comments were received which took exception to the provision for less restrictive regulations. This provision was not revised because 23 U.S.C. 131(d) allows bona fide State, county, or local zoning authorities to make a determination of "customary use," which determination will be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographic jurisdiction of such authority. Thus, "customary use" in a particular community may be less restrictive than the agreement criteria and would have to be accepted.

Section 750.706(c)(5) has been revised to make clear that where local controls have been certified within commercial and industrial zones, pursuant to 23 U.S.C. 131(d), the State remains responsible for the control of those areas within the local jurisdiction which are outside of the commercial and industrial zones. This was done pursuant to a comment that the previous language was too broad.

§ 750.707 NONCONFORMING SIGNS

One comment recommended the deletion of this entire section, and revising it to make three distinctions: (1) Nonconforming signs; (2) pre-existing signs; and (3) abandoned signs. This suggestion was not adopted. Pre-existing signs are those covered under a so-called "grandfather clause" in certain State-Federal agreements. Although not required to be removed, they are subject to the same rules as non-conforming signs and should not be singled out for special treatment. Abandonment is only one category in a large number of events which would terminate the right to maintain and continue a nonconforming sign.

One comment strongly objected to the concept that lack of copy should be the clue used by the States to presume a sign is abandoned unless the owner can prove such is not the case. The comment recommended the following be used in determining abandonment:

1. Is the sign owner in compliance with governmental license or permit requirements?

2. Is the sign owner continuing efforts to secure a user for the space?

3. Is the sign owner in default of his current agreement with the site owner?

While it is agreed that the three tests may be used as evidence of abandonment, these regulations relate not only to abandonment but to voluntary discontinuance of a nonconforming use as well. It is well established in land use law that if a nonconforming use is discontinued or abondoned, it may not again be resumed. Further, a discontinuance of a nonconforming use acts as a bar to resumption of such use even though there may be no evidence of intended abandonment.

There has been some controversy as to when and under what circumstances a sign should be treated as abandoned or discontinued. Thus, these regulations provide that each State shall develop criteria to define abandonment and discontinuance, and that such criteria may provide that a sign with obsolete advertising matter or without advertising matter, each for a designated period of time, may constitute abandonment or discontinuance.

Another comment stated that it is severely damaging to sign owners to treat pre-existing signs in legal areas, which subsequently became controlled, as if they were nonconforming signs subject to easy forfeiture for a mere lack of copy, and to provide that such forfeiture deprives the sign owners of the right thereafter to operate such signs and receive compensation. Further, with regard to true nonconforming signs, regulations which provide for a forfeiture of the right to operate as a nonconforming use (and of the right to compensation) on the grounds of a mere lack of copy would be illegal because Congress itself provided to the contrary.

The foregoing assumes that Federal law guarantees compensation upon the removal of every sign that predated the Federal or State law whether or not the sign was lawfully in existence under State law at the time the State acts to remove it. Such is not the case. There is no vested right to future just compensation based on conditions once but no longer existing at the time of acquisition. The conditions which establish a right to payment of just compensation must be in existence at the time of acquisition. Thus, signs which become illegal are no longer required to be acquired under the law of eminent domain. A sign does not lose its nonconforming status by "mere lack of copy" because customary maintenance and change of message is permitted, and does not terminate nonconforming rights. Rather, the lack of copy must endure for a period of time which constitutes a cessation of the nonconforming use or an abandonment of the nonconforming use.

Several comments were made to the effect that § 750.707(d) (2) should be revised because owners of small signs should have the same right to compensation as the owners of larger signs with substantial value. "Substantial value" should have no bearing. This was not intended, and the regulation has been revised to require that there must be existing property rights in the sign without regard to value.

Comments were made with regard to § 750.707(d) (6) that the exceptions allowed should also include acts of God as they too constitute events beyond the sign owner's control. No change has been made. The exceptions made for vandalism and other criminal or tortious acts were due solely to the fact that the Highway Beautification Act of 1965, Pub. L. 89–295, October 22, 1965, created an impetus for unauthorized persons to deliberately chop down or vandalize signs as a part of the environmental movement. Such a practice is not condoned. However, nonconforming uses are terminated by natural attrition in the normal course of events. Thus, a nonconforming sign destroyed or substantially damaged by an act of God is terminated because it would need to be rebuilt or a new sign would have to be erected in its place. New signs, or substantially new signs, must be located in conforming areas. To allow new signs to be erected in a nonconforming area only to be later acquired by the State would unduly burden the taxpayers with an unwarranted cost.

A comment stated that while the provisions of § 750.707(d) closely follow zoning law as it relates to nonconforming uses, and although it might be agreed that zoning law should be applied to nonconforming uses which are allowed to remain indefinitely in commercial or industrial areas, the equity or legality of applying such rules to nonconforming signs scheduled for acquisition is open to serious question. It was urgently requested that the regulations differentiate between nonconforming signs to be acquired, and nonconforming signs allowed to remain under a "grandfather clause." Further, it was suggested that § 750.707 (d) be changed to permit alteration or enlargement of a nonconforming sign to be acquired, as well as its rebuilding or reerection if damaged or destroyed by forces not under the owner's control.

The foregoing recommendations were not accepted. All nonconforming signs must be treated alike under police power rules. 23 U.S.C. 131 calls for the States to exercise their police power in controlling signs, with compensation provided for those signs which will not be allowed to remain, on the premise that the police power should not be applied retroactively to deprive an owner of his nonconforming use. The owner has a vested right, and forced removal in such cases constitutes a taking requiring compensation. Thus, if Federal funds are not made available in connection with this program, nonconforming signs in prohibited areas would be allowed to remain in the same manner as "grandfathered" signs. See 23 U.S.C. 131(m). Federal law does not provide compensation prospectively so as to cover new sign improvements made in the future, nor does it render once existing sign sites forever compensable and exempt from control.

A comment suggested that the regulation be revised to permit enlarging a nonconforming sign if it does not exceed State law or regulation limits. This suggestion was not adopted. State size limits apply only to conforming signs. A nonconforming sign must remain substantially the same as it was on the effective date of State law or regulation, or its nonconforming status is terminated.

A comment stated that the section concerning destruction of a nonconforming sign was ambiguous, and should be clarified. The regulation has been revised to require each State to develop criteria concerning destruction, and that such criteria may provide that a sign damaged in excess of a certain percentage of its replacement cost may be considered destroyed.

Several comments recommended that former § 750.707(d) (7) (i) be revised so that where new content is not put on a structure within an established period of time, such a structure would not be allowed to remain standing indefinitely. The regulation has been revised, and provides that each State shall establish a time period, after expiration of which, such signs are to be considered abandoned or voluntarily discontinued, and subject to removal.

Section 750.707(d) (6) (ii) has been revised pursuant to comment to make it clear that the rule is based on customary State enforcement practice and not industry practice. The actual time limit to be imposed is left to the States' discretion with a condition if it exceeds one year.

§ 750.708 Acceptance of State Zoning

One comment recommended revision of § 750.708(b), because it could be interpreted as requiring constant review of all zoning actions whether they pertain to outdoor advertising control or not. The recommendation was accepted.

A comment recommended deletion of § 750.708(d) because it is covered by § 750.708(b). This recommendation was not accepted. Section 750.708(b) requires that zoning actions must be taken in accordance with basic legislative authority, and that certain actions are not recognized as zoning for outdoor advertising control purposes. However, § 750.708(d) makes the point that zones, such as agricultural or residential, which permit limited commercial or industrial activities incidental to the primary land use, are not considered commercial or industrial zones for outdoor advertising control purposes.

Another comment recommended deletion of § 750.708(d) as being contrary to 23 U.S.C. 131. This recommendation was not accepted. The law provides signs may be allowed in commercial and industrial zones. Sections 750.708 (b) and (d) are essential to assure the recognition of only bona fide commercial and industrial zones, rather than rural or residential zoning classifications or attempts to circumvent the intent of Congress.

§ 750.709 On-Property or On-Premise Advertising

One comment recommended the deletion of this section in its entirety, and amending § 750.705 by adding a new paragraph as follows:

"Assure that signs erected under § 750.704 (a) (3) are in fact legitimate on-property signs and not outside the scope of 23 U.S.C. 131."

The foregoing recommendations were not accepted. The primary purposes of this section are to provide for general uniformity of implementation in the several States and to curb attempts to circumvent the intent of the law.

A comment suggested revision of this section to clarify the point that on-property signs are subject to regulation only if they are located along Interstate highways in those States which have entered into an agreement under the Federal-Aid Highway Act of 1958, adding section 131, Title 23, U.S.C., Pub. L. 85-767, August 27, 1958, as amended, and often referred to as the 1958 Bonus Program. The regulation has been revised in accordance with this suggestion.

In addition to the regulations issued today, the Federal Highway Administration has provided its field personnel nonregulatory guidelines designed to aid them in administering the Subpart G, Part 750, and in advising the States on the outdoor advertising control program.

The first part of these guidelines deals with States which have adopted controls along the Interstate System pursuant to the 1958 Bonus Program. The present law, while permitting no further expansion of the program to other States, preserves the Bonus payments to those States which had adopted such controls before June 30, 1965. The guidelines explain the relationship between the present law and 1958 Bonus Program.

Bonus payments are provided in accordance with an agreement between the State and the United States Secretary of Transportation (or his predecessor, the Secretary of Commerce). The Highway Beautification Act of 1965 (the 1965 Act), as amended, and the regulations issued pursuant to it have substantially changed control requirements. These new requirements supersede the requirement of the Bonus Agreements where the new requirements are stricter. In order to continue to receive bonus payments, however, a "bonus State" must continue to enforce its Bonus Agreement. The most important aspects of the dual control requirements are:

(1) The Bonus Program applies only to the Interstate System.

(2) Bonus Agreements exempted areas adjacent to an Interstate Highway where any part of the right-of-way for the highway was acquired before July 1, 1956. Such areas are often called "Cotton Areas." Cotton areas are no longer exempted and must be effectively controlled.

(3) The Bonus Agreements also exempted areas adjacent to an Interstate Highway traversing a commercial or industrial zone located within the boundaries of incorporated municipalities as such boundaries existed on September 21, 1959, provided such areas are subject to the control or regulation of the municipality, or other commercial or industrial areas where the land use was clearly established by State law as commercial or industrial on September 21, 1959. Such areas are called "Kerr Areas." Under the 1965 Act, signs are permitted in zoned and unzoned commercial or industrial areas subject to a size, lighting and spacing agreement between the State and the Secretary. The Bonus Agreement is controlling with respect to the number and size of commercial or industrial zones or areas recognized, but signs in such zones or areas are subject to provisions of the size, lighting, and spacing agreements made pursuant to the 1965 Act.

(4) The 1958 Bonus Agreement National Standards permitted four classes of signs in protected areas. See Subpart A, Part 750, Chapter I, 23 CFR. These are affected as follows:

(a) *Class 1*—Directional and official signs were subject to regulation, but were not, in fact, regulated under the 1958 National Standards. Signs of this category are subject to National Standards under the 1965 Act (Subpart B, Part 750, Chapter I, 23 CFR) and therefore these provisions are controlling.

(b) *Class 2*—On-premise (on-property) signs are exempt from control under the 1965 Beautification Act, but are subject to control under the 1958 Bonus Agreement National Standards. However, the 1958 National Standards exclude such signs from control if they are located in Cotton or Kerr areas.

(c) *Class 3*—Signs within 12 air-miles of the advertised activity are not permitted unless they are located in commercial or industrial areas or qualify as official or directional signs permitted under 23 U.S.C. 131(c) because the 1965 Act does not permit such a category.

(d) *Class 4*—Signs in the specific interest of the traveling public are not permitted unless they are located in commercial or industrial areas or qualify as official or directional signs permitted under 23 U.S.C. 131(c) because the 1965 Act does not permit such a category.

(5) On-premise signs located more than 50 feet from the advertised activity are subject to control in bonus States in accordance with Subpart A, Part 750, Chapter I, 23 CFR.

The second part of the guidelines deals with the destruction of trees and shrubs in the right-of-way in order to increase or enhance the visibility of outdoor advertising signs. It also deals with instances of the erection or maintenance of signs adjacent to Interstate highways and freeways by unlawful access.

The State highway department is urged to take all legal and administrative action at its disposal to abate these practices, including action to recover damages to landscaping, sodding, fences, and other appurtenances to the highway. Additionally, it is recommended that the States consider the following administrative remedies:

(1) Revocation of permits for any signs so involved;

(2) Denial of permits for signs which can only be erected or maintained as a practical matter from the highway right-of-way or which could not be seen from the highway due to existing landscaping on the right-of-way;

(3) Certification on permits or licenses to the effect that the sign owner will not engage in these practices;

(4) Performance bonds in permit or licensing procedures to guarantee compliance; and

(5) A specific prohibition in State outdoor advertising control regulations.

The third part of the guidelines suggests the type of factors the States might consider in developing the criteria for determining when a sign is erected with the purpose of its message being read from the main-traveled way of an Interstate or primary highway. Such criteria are required by § 750.705(g). These factors are:

(a) Traffic counts, sign angle and size, message content, physical obstructions, and similar factors;

(b) Distance from the controlled highway in relation to the size of the sign;

(c) Exposure time (for example, would signs permitting glance views of a few seconds on highways with speed limits of 55 miles per hour be deemed readable?) and,

(d) The sales value of the sign attributable to advertising circulation on the controlled highway under the criteria of an independent circulation audit agency where such is available.

The fourth, and last, part of the guidelines suggests measuring techniques which the States may wish to adopt.

The regulations here published will become effective on the 9th day of September, 1975.

Issued on: September 9, 1975.

NORBERT T. TIEMANN,
Federal Highway Administrator.

Chapter I of Title 23 is amended by adding Part 750, Subpart G as follows:

Subpart G—Outdoor Advertising Control

AUTHORITY: 23 U.S.C. 131 and 315; 49 CFR 1.48.

Subpart G—Outdoor Advertising Control

§ 750.701 Purpose.

This subpart prescribes the Federal Highway Administration (FHWA) policies and requirements relating to the effective control of outdoor advertising under 23 U.S.C. 131. The purpose of these policies and requirements is to assure that there is effective State control of outdoor advertising in areas adjacent to Interstate and Federal-aid primary highways. Nothing in this subpart shall be construed to prevent a State from establishing more stringent outdoor advertising control requirements along Interstate and Primary Systems than provided herein.

§ 750.702 Applicability.

The provisions of this subpart are applicable to all areas adjacent to the Federal-aid Interstate and Primary Systems, including toll sections thereof, except that within urban areas, these provisions apply only within 660 feet of the nearest edge of the right-of-way. These provisions apply regardless of whether Federal funds participated in the costs of such highways. The provisions of this subpart do not apply to the Federal-Aid Secondary or Urban Highway System.

§ 750.703 Definitions.

The terms as used in this subpart are defined as follows:

(a) Commercial and industrial zones are those districts established by the zoning authorities as being most appropriate for commerce, industry, or trade, regardless of how labeled. They are commonly categorized as commercial, industrial, business, manufacturing, highway service or highway business (when these latter are intended for highway-oriented business), retail, trade, warehouse, and similar classifications.

(b) Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(c) Federal-aid Primary Highway means any highway on the system designated pursuant to 23 U.S.C. 103(b).

(d) Interstate Highway means any highway on the system defined in and designated, pursuant to 23 U.S.C. 103(e).

(e) Illegal sign means one which was erected or maintained in violation of State law or local law or ordinance.

(f) Lease means an agreement, license, permit, or easement, oral or in writing, by which possession or use of land or interests therein is given for a specified purpose, and which is a valid contract under the laws of a State.

(g) Maintain means to allow to exist.

(h) 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 of the separate roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(i) Sign, display or device, hereinafter referred to as "sign," means an outdoor advertising sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of the Interstate or Primary Systems, whether the same be permanent or portable installation.

(j) State law means a State constitutional provision or statute, or an ordinance, rule or regulation enacted or adopted by a State.

(k) Unzoned area means an area where there is no zoning in effect. It does not include areas which have a rural zoning classification or land uses established by zoning variances or special exceptions.

(l) Unzoned commercial or industrial areas are unzoned areas actually used for commercial or industrial purposes as defined in the agreements made between the Secretary, U.S. Department of Transportation (Secretary), and each State pursuant to 23 U.S.C. 131(d).

(m) Urban area is as defined in 23 U.S.C. 101(a).

(n) Visible means capable of being seen, whether or not readable, without visual aid by a person of normal visual acuity.

§ 750.704 Statutory Requirements.

(a) 23 U.S.C. 131 provides that signs adjacent to the Interstate and Federal-aid Primary Systems which are visible from the main-traveled way and within 660 feet of the nearest edge of the right-of-way, and those additional signs beyond 660 feet outside of urban areas which are visible from the main-traveled way and erected with the purpose of their message being read from such main-traveled way, shall be limited to the following:

(1) Directional and official signs and notice which shall conform to national standards promulgated by the Secretary in Subpart B, Part 750, Chapter I, 23 CFR, National Standards for Directional and Official Signs;

(2) Signs advertising the sale or lease of property upon which they are located;

(3) Signs advertising activities conducted on the property on which they are located;

(4) Signs within 660 feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and Federal-aid Primary Systems which are zoned industrial or commercial under the authority of State law;

(5) Signs within 660 feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and Federal-aid Primary Systems which are unzoned commercial or industrial areas, which areas are determined by agreement between the State and the Secretary; and

(6) Signs lawfully in existence on October 22, 1965, which are determined to be landmark signs.

(b) 23 U.S.C. 131(d) provides that signs in § 750.704(a) (4) and (5) must comply with size, lighting, and spacing requirements, to be determined by agreement between the State and the Secretary.

(c) 23 U.S.C. 131 does not permit signs to be located within zoned or unzoned commercial or industrial areas beyond 660 feet of the right-of-way adjacent to the Interstate or Federal-aid Primary System, outside of urban areas.

(d) 23 U.S.C. 131 provides that signs not permitted under § 750.704 of this regulation must be removed by the State.

§ 750.705 Effective Control.

In order to provide effective control of outdoor advertising, the State must:

(a) Prohibit the erection of new signs other than those which fall under § 750.704(a) (1) through (6);

(b) Assure that signs erected under § 750.704(a) (4) and (5) comply, at a minimum, with size, lighting, and spacing criteria contained in the agreement between the Secretary and the State;

(c) Assure that signs erected under § 1750.704(a)(1) comply with the national standards contained in Subpart B, Part 750, Chapter I, 23 CFR;

(d) Remove illegal signs expeditiously;

(e) Remove nonconforming signs with just compensation within the time period set by 23 U.S.C. 131 (Subpart D, Part 750, Chapter I, 23 CFR, sets forth policies for the acquisition and compensation for such signs);

(f) Assure that signs erected under § 750.704(a)(6) comply with § 750.710, Landmark Signs, if landmark signs are allowed;

(g) Establish criteria for determining which signs have been erected with the purpose of their message being read from the main-traveled way of an Interstate or primary highway, except where State law makes such criteria unnecessary. Where a sign is erected with the purpose of its message being read from two or more highways, one or more of which is a controlled highway, the more stringent of applicable control requirements will apply;

(h) Develop laws, regulations, and procedures to accomplish the requirements of this subpart;

(i) Establish enforcement procedures sufficient to discover illegally erected or maintained signs shortly after such occurrence and cause their prompt removal; and

(j) Submit regulations and enforcement procedures to FHWA for approval.

§ 750.706 Sign Control in Zoned and Unzoned Commercial and Industrial Areas.

The following requirements apply to signs located in zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way adjacent to the Interstate and Federal-aid primary highways.

(a) The State by law or regulation shall, in conformity with its agreement with the Secretary, set criteria for size, lighting, and spacing of outdoor advertising signs located in commercial or industrial zoned or unzoned areas, as defined in the agreement, adjacent to Interstate and Federal-aid primary highways. If the agreement between the Secretary and the State includes a grandfather clause, the criteria for size, lighting, and spacing will govern only those signs erected subsequent to the date specified in the agreement. The States may adopt more restrictive criteria than are presently contained in agreements with the Secretary.

(b) Agreement criteria which permit multiple sign structures to be considered as one sign for spacing purposes must limit multiple sign structures to signs which are physically contiguous, or connected by the same structure or cross-bracing, or located not more than 15 feet apart at their nearest point in the case of back-to-back or "V" type signs.

(c) Where the agreement and State law permits control by local zoning authorities, these controls may govern in lieu of the size, lighting, and spacing controls set forth in the agreement, subject to the following:

(1) The local zoning authority's controls must include the regulation of size, of lighting, and of spacing of outdoor advertising signs, in all commercial and industrial zones.

(2) The regulations established by local zoning authority may be either more restrictive or less restrictive than the criteria contained in the agreement, unless State law or regulations require equivalent or more restrictive local controls.

(3) If the zoning authority has been delegated extraterritorial jurisdiction under State law, and exercises control of outdoor advertising in commercial and industrial zones within this extraterritorial jurisdiction, control by the zoning authority may be accepted in lieu of agreement controls in such areas.

(4) The State shall notify the FHWA in writing of those zoning jurisdictions wherein local control applies. It will not be necessary to furnish a copy of the zoning ordinance. The State shall periodically assure itself that the size, lighting, and spacing control provisions of zoning ordinances accepted under this section are actually being enforced by the local authorities.

(5) Nothing contained herein shall relieve the State of the responsibility of limiting signs within controlled areas to commercial and industrial zones.

§ 750.707 Nonconforming Signs.

(a) *General.* The provisions of § 750.-707 apply to nonconforming signs which must be removed under State laws and regulations implementing 23 U.S.C. 131. These provisions also apply to nonconforming signs located in commercial and industrial areas within 660 feet of the nearest edge of the right-of-way which come under the so-called grandfather clause contained in State-Federal agreements. These provisions do not apply to conforming signs regardless of when or where they are erected.

(b) *Nonconforming Signs.* A nonconforming sign is a sign which was lawfully erected but does not comply with the provisions of State law or State regulations passed at a later date or later fails to comply with State law or State regulations due to changed conditions. Changed conditions include, for example, signs lawfully in existence in commercial areas which at a later date become noncommercial, or signs lawfully erected on a secondary highway later classified as a primary highway.

(c) *Grandfather Clause.* At the option of the State, the agreement may contain a grandfather clause under which criteria relative to size, lighting, and spacing of signs in zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way apply only to new signs to be erected after the date specified in the agreement. Any sign lawfully in existence in a commercial or industrial area on such date may remain even though it may not comply with the size, lighting, or spacing criteria. This clause only allows an individual sign at its particular location for the duration of its normal life subject to customary maintenance. Preexisting signs covered by a grandfather clause, which do not comply with the agreement criteria have the status of nonconforming signs.

(d) *Maintenance and Continuance.* In order to maintain and continue a nonconforming sign, the following conditions apply:

(1) The sign must have been actually in existence at the time the applicable State law or regulations became effective as distinguished from a contemplated use such as a lease or agreement with the property owner. There are two exceptions to actual existence as follows:

(i) Where a permit or similar specific State governmental action was granted for the construction of a sign prior to the effective date of the State law or regulations and the sign owner acted in good faith and expended sums in reliance thereon. This exception shall not apply in instances where large numbers of permits were applied for and issued to a single sign owner, obviously in anticipation of the passage of a State control law.

(ii) Where the State outdoor advertising control law or the Federal-State agreement provides that signs in commercial and industrial areas may be erected within six (6) months after the effective date of the law or agreement provided a lease dated prior to such effective date was filed with the State and recorded within thirty (30) days following such effective date.

(2) There must be existing property rights in the sign affected by the State law or regulations. For example, paper signs nailed to trees, abandoned signs and the like are not protected.

(3) The sign may be sold, leased, or otherwise transferred without affecting its status, but its location may not be changed. A nonconforming sign removed as a result of a right-of-way taking or for any other reason may be relocated to a conforming area but cannot be reestablished at a new location as a nonconforming use.

(4) The sign must have been lawful on the effective date of the State law or regulations, and must continue to be lawfully maintained.

(5) The sign must remain substantially the same as it was on the effective date of the State law or regulations. Reasonable repair and maintenance of the sign, including a change of advertising message, is not a change which would terminate nonconforming rights. Each State shall develop its own criteria to determine when customary maintenance ceases and a substantial change has occurred which would terminate nonconforming rights.

(6) The sign may continue as long as it is not destroyed, abandoned, or discontinued. If permitted by State law and reerected in kind, exception may be made for signs destroyed due to vandalism and other criminal or tortious acts.

(i) Each State shall develop criteria to define destruction, abandonment and discontinuance. These criteria may provide that a sign which for a designated period of time has obsolete advertising matter or is without advertising matter or is in need of substantial repair may constitute abandonment or discontinuance. Similarly, a sign damaged in excess of a certain percentage of its replacement cost may be considered destroyed.

(ii) Where an existing nonconforming sign ceases to display advertising matter, a reasonable period of time to replace advertising content must be established by each State. Where new content is not put on a structure within the established period, the use of the structure as a nonconforming outdoor advertising sign is terminated and shall constitute an abandonment or discontinuance. Where a State establishes a period of more than one (1) year as a reasonable period for change of message, it shall justify that period as a customary enforcement practice within the State. This established period may be waived for an involuntary discontinuance such as the closing of a highway for repair in front of the sign.

(e) *Just Compensation.* The States are required to pay just compensation for the removal of nonconforming lawfully existing signs in accordance with the terms of 23 U.S.C. 131 and the provisions of Subpart D, Part 750, Chapter I, 23 CFR. The conditions which establish a right to maintain a nonconforming sign and therefore the right to compensation must pertain at the time it is acquired or removed.

§ 750.708 Acceptance of State Zoning.

(a) 23 U.S.C. 131(d) provides that signs "may be erected and maintained within 660 feet of the nearest edge of the right-of-way within areas . . . which are zoned industrial or commercial under authority of State law." Section 131(d) further provides, "The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act."

(b) State and local zoning actions must be taken pursuant to the State's zoning enabling statute or constitutional authority and in accordance therewith. Action which is not a part of comprehensive zoning and is created primarily to permit outdoor advertising structures, is not recognized as zoning for outdoor advertising control purposes.

(c) Where a unit of government has not zoned in accordance with statutory authority or is not authorized to zone, the definition of an unzoned commercial or industrial area in the State-Federal agreement will apply within that political subdivision or area.

(d) A zone in which limited commercial or industrial activities are permitted as an incident to other primary land uses is not considered to be a commercial or industrial zone for outdoor advertising control purposes.

§ 750.709 On-Property or On-Premise Advertising.

(a) A sign which consists solely of the name of the establishment or which identifies the establishment's principal or accessory products or services offered on the property is an on-property sign.

(b) When a sign consists principally of brand name or trade name advertising and the product or service advertised is only incidental to the principal activity, or if it brings rental income to the property owner, it shall be considered the business of outdoor advertising and not an on-property sign.

(c) A sale or lease sign which also advertises any product or service not conducted upon and unrelated to the business or selling or leasing the land on which the sign is located is not an on-property sign.

(d) Signs are exempt from control under 23 U.S.C. 131 if they solely advertise the sale or lease of property on which they are located or advertise activities conducted on the property on which they are located. These signs are subject to regulation (Subpart A, Part 750, Chapter I, 23 CFR) in those States which have executed a bonus agreement, 23 U.S.C. 131(j). State laws or regulations shall contain criteria for determining exemptions. These criteria may include:

(1) A property test for determining whether a sign is located on the same property as the activity or property advertised; and

(2) A purpose test for determining whether a sign has as its sole purpose the identification of the activity located on the property or its products or services, or the sale or lease of the property on which the sign is located.

(3) The criteria must be sufficiently specific to curb attempts to improperly qualify outdoor advertising as "on-property" signs, such as signs on narrow strips of land contiguous to the advertised activity when the purpose is clearly to circumvent 23 U.S.C. 131.

§ 750.710 Landmark Signs.

(a) 23 U.S.C. 131(c) permits the existence of signs lawfully in existence on October 22, 1965, determined by the State, subject to the approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance, the preservation of which is consistent with the purpose of 23 U.S.C. 131.

(b) States electing to permit landmark signs under 23 U.S.C. 131(c) shall submit a one-time list to the Federal Highway Administration for approval. The list should identify each sign as being in the original 1966 inventory. In the event a sign was omitted in the 1966 inventory, the State may submit other evidence to support a determination that the sign was in existence on October 22, 1965.

(c) Reasonable maintenance, repair, and restoration of a landmark sign is permitted. Substantial change in size, lighting, or message content will terminate its exempt status.

§ 750.711 Structures Which Have Never Displayed Advertising Material.

Structures, including poles, which have never displayed advertising or informative content are subject to control or removal when advertising content visible from the main-traveled way is added or affixed. When this is done, an "outdoor advertising sign" has then been erected which must comply with the State law in effect on that date.

§ 750.712 Reclassification of Signs.

Any sign lawfully erected after the effective date of a State outdoor advertising control law which is reclassified from legal-conforming to nonconforming and subject to removal under revised State statutes or regulations and policy pursuant to this regulation is eligible for Federal participation in just compensation payments and other eligible costs.

§ 750.713 Bonus Provisions.

23 U.S.C. 131(j) specifically provides that any State which had entered into a bonus agreement before June 30, 1965, will be entitled to remain eligible to receive bonus payments provided it continues to carry out its bonus agreement. Bonus States are not exempt from the other provisions of 23 U.S.C. 131. If a State elects to comply with both programs, it must extend controls to the Primary System, and continue to carry out its bonus agreement along the Interstate System except where 23 U.S.C. 131, as amended, imposes more stringent requirements.

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