




U.S. Department  
of Transportation

Federal Highway  
Administration

# Memorandum

Subject: **INFORMATION:** Updated Process for  
Amending the Federal/State Agreements  
under the Outdoor Advertising Control  
Program

Date: May 13, 2014

From: Virgil R. Pridemore   
Director, Office of Real Estate Services

In Reply Refer To:  
HEPR-1

To: Division Administrators

## Background

Federal law requires FHWA and the States to execute Federal/State Agreements (FSAs) covering certain outdoor advertising control requirements (23 U.S.C. 131(d)). State and Federal officials signed most FSAs during the late 1960s and early 1970s. On January 2, 2014, FHWA published the attached *Federal Register* notice encouraging, but not requiring, each State to consider amending its FSA to ensure consistency with current outdoor advertising objectives and to address the evolving technology being used or that could be used by the outdoor advertising industry.

In anticipation of these efforts, we are updating the 1980 guidance on the FSA amendment process. This revised procedure does not change any substantive points of the 1980 guidance and is meant to clarify the process. Important objectives of the revised procedures are to increase opportunities for public outreach and to enhance the transparency of the FSA decision making process. Effective public outreach can help the State and FHWA determine the nature, scope, and impact of FSA amendment proposals, and should contribute to the State's development of its draft proposal and documentation.

## Guidance

Each FHWA Division Office will ensure the process outlined below is followed if its State proposes to amend an FSA. We may approve a State-proposed alternative process that achieves the goals of providing opportunities for public outreach and involvement in developing a proposed FSA amendment. The Office of Real Estate Services will be available to assist the Division Offices throughout the process.

The FHWA and States will use the following FSA amendment procedures:

1. *Draft Proposal Development and Submission.* If a State decides to proceed with an FSA amendment after reviewing its FSA, it should submit the draft amended FSA and the following documentation to the Division Office for review:
  - a. A written discussion of each proposed change, the reasons for it, and the effects it will have on control of outdoor advertising; and
  - b. A State public involvement plan which includes a description of how the State will make the proposed amendment available for public review and comment, including statewide dissemination of the proposal in accordance with administrative procedures for public notice and comment under State law. The State public involvement plan also should provide an opportunity for a public hearing if requested.
2. *FHWA Review of Draft.* The Division Office will review and provide feedback to the State on the FSA amendment proposal including any elements of the proposed amendments that may be inconsistent with Federal requirements.
3. *Federal and State Public Notice and Comment.* After the State has provided the Division Office with an amendment proposal that is consistent with Federal requirements, the State and FHWA will concurrently initiate their respective public notice and comment processes. The Division Office will publish a notice of the State's proposal in the *Federal Register* and request comments on it. The FHWA will provide no less than 30 days for public comment.
4. *Development of Amended FSA.* The State and FHWA will consider all comments and work together to prepare responses. If the State wishes to revise its proposal in response to the comments, it should submit the revised provisions to the Division Office with the reasons for the changes, a description of their effect, and a summary of the comments received and the State's responses to those comments, as well as records of any public hearings.
5. *FHWA Approval.* The Division Office and the State will be responsible for developing a final amended FSA. The Division Office will send the final amended FSA to the Office of Real Estate Services which will coordinate the Office of Real Estate Services and Chief Counsel review, comment and concurrence (this process is similar to the NHS designation process).
6. *Execution of Amended FSA.* After FHWA has approved the amended FSA, a duly authorized official of the State should execute the amended FSA. The State should submit the executed FSA amendment to the Division office for FHWA's execution. The Division Office will forward the State executed amended FSA to the Federal Highway Administrator who will execute the FSA for FHWA.
7. *Notice of Availability.* The FHWA Division Office will publish a notice of availability of the executed FSA amendment in the *Federal Register*. The notice will use the same docket number as the first notice and request for comments. The

FHWA will place a copy of the executed amended FSA in the docket, together with the public comments received through the State and Federal proceedings, the State's responses, and any FHWA supplemental responses to the public comments.

The FHWA will post this updated guidance on the FSA amendment process on its website at [http://www.fhwa.dot.gov/real\\_estate/practitioners/oac/policy\\_and\\_guidance](http://www.fhwa.dot.gov/real_estate/practitioners/oac/policy_and_guidance).

If you have any questions about these revised guidelines, please contact Ms. Dawn Horan at 202-366-4842 ([Dawn.Horan@dot.gov](mailto:Dawn.Horan@dot.gov)) or Mr. Cliff Pearson at 202-366-9488 ([Clifford.Pearson@dot.gov](mailto:Clifford.Pearson@dot.gov)).

#### Attachment

cc:

Chief Counsel

Directors of Field Services

Federal Lands Highway Division Engineers

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