

ARKANSAS REGISTER

Transmittal Sheet

* Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State
Mark Martin
State Capitol, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-3527
www.sos.arkansas.gov



For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas State Highway Commission

Department _____

Contact Rita S. Looney E-mail Rita.Looney@ahtd.ar.gov Phone 501-569-2276

Statutory Authority for Promulgating Rules ACA 27-64-103 and 27-67-302

Rule Title: Restore Sign Visibility Policy (RSVP)

Intended Effective Date
(Check One)

- Emergency (ACA 25-15-204)
- 30 Days After Filing (ACA 25-15-204)
- Other _____
(Must be more than 30 days after filing date.)

Legal Notice Published	<u>2/6-8/2012</u>
Final Date for Public Comment	<u>3/08/2013</u>
Reviewed by Legislative Council	_____
Adopted by State Agency	<u>June 5, 2013</u>

Electronic Copy of Rule submitted under ACA 25-15-218 by:

Michelle Davenport michelle.davenport@ahtd.ar.gov

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act. (ACA 25-15-201 et. seq.)

Signature

501-569-2276

Rita.Looney@ahtd.ar.gov

Phone Number

E-mail Address

Chief Counsel, AHTD and ASHC

Title

Date

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

VEGETATION MANAGEMENT AT OUTDOOR ADVERTISING SIGNS

RESTORE SIGN VISIBILITY POLICY
(RSVP)

May 13, 2013

1.0. PURPOSE

The purpose of this policy is to establish procedures whereby sign owners may obtain permits from the Arkansas State Highway and Transportation Department (AHTD) to restore the visibility to their signs from adjacent State Highways controlled pursuant to the Regulations for the Control of Outdoor Advertising.

2.0. DEFINITIONS

2.1. Conforming Sign is a lawfully erected sign that complies with all current local and State laws and regulations pertaining to the erection and maintenance of signs, regardless of whether the sign has a Class A or Class B permit. A conforming sign normally has a Class A permit.

2.2. Legal Nonconforming Sign is a lawfully erected sign that no longer complies with all current local or State laws and regulations pertaining to the erection and maintenance of signs, regardless of whether the sign has a Class A or Class B permit. A legal nonconforming sign normally has a Class B permit.

2.3. Class A Permit is a permit for a sign that met all applicable laws and regulations at the time of issuance.

2.4. Class B Permit is a permit for a sign that met all applicable laws and regulations at the time of construction, but no longer complies with all applicable laws and regulations, or a sign that existed prior to the adoption of the Regulations for Control of Outdoor Advertising. These signs were "grandfathered" in.

2.4. Illegal Sign is a sign that was erected, or is being maintained, in violation of local or State law or regulations pertaining to the erection and maintenance of signs, and which does not qualify as a legal nonconforming sign.

2.5. On-premise Sign is a sign advertising those products or services available at the sign site, including “for sale or lease” signs located at the property they advertise.

2.6. Off-premise Sign is a sign advertising those products or services not available at the sign site.

2.7. Vegetation Control is the mowing, “bush hogging”, cutting, trimming, pruning, and/or selective removal of vegetation on State Highway rights of way.

3.0. POLICY

It is the policy of the AHTD to allow, by Restore Sign Visibility Policy (RSVP) permits, the mowing, “bush hogging”, cutting, trimming, pruning, and/or selective removal of vegetation on State Highway rights of way to restore the visibility of signs from State Highways where such visibility has been diminished from the original erection of the signs. This policy applies to the visibility of legal, off-premise signs, both conforming and nonconforming, and not to illegal signs. RSVP permits will not be issued in relation to illegal signs, for signs erected with limited visibility, or to sign owners with other illegal or abandoned signs.

3.1. RSVP permits authorize vegetation control only on that portion of State Highway right of way that abuts the tract of land on which the Permittee’s sign is located and/or abuts tracts where owners agree to such control.

3.2. RSVP permits shall only be considered for legal, currently permitted signs that have had a valid permit for the last five (5) consecutive years.

3.3. RSVP permits authorize vegetation control in compliance with any relevant regulations or ordinances pertaining to vegetation clearance enacted by a city or county with jurisdiction over the sign. Permittees shall be responsible for determining compliance.

3.4. RSVP permits must be obtained for each sign location at which vegetation control will occur and the RSVP permit will be tied to the relevant sign permit, and must be renewed in a two-year cycle in July of even numbered years.

3.5. The vegetation control area shall not exceed more than 500 feet as measured from the viewable face(s) of the advertising device. Permits will be issued based on 100 foot increments. The distance will be measured along the nearest edge of the pavement between the sign and the specified distance. Signs with back to back messages may be issued a permit for vegetation control for a total of 1000 feet (500 feet in each direction), but under no circumstances will the designated area exceed 500 feet in one direction.

3.6. RSVP permits authorize vegetation control only in accordance with accepted landscaping and horticultural principles. All work will be performed in a professional manner, and cuttings and other debris are to be removed at the time the work is performed. Trees that cannot be mowed or “bush hogged” may be trimmed or pruned provided the work will not permanently damage or destroy the trees, or weaken the condition of the trees so that they are susceptible to disease or insect infestation. In these cases, mitigating landscaping may be required to compensate for the tree removal. In no case will historic trees, landmark trees, or trees of significant landscaping or aesthetic value be removed, including trees that were planted as a part of a public or private highway beautification or transportation enhancement project. RSVP permits may authorize the removal of dead or diseased trees.

3.7. If a sign owner desires to restore visibility to a sign in front of an adjacent land owner not associated with the sign, written approval from the adjacent landowner must be obtained before an RSVP permit will be issued.

3.8. Access to sites adjacent to Interstate and other controlled access highways must be gained without using the main travelway of the highway. If access to the site is restricted by a fence, then a gate may be requested to provide access for right of way mowing only. Gates will only be permitted after the AHTD notifies the Federal Highway Administration and receives concurrence. Cutting fences and leaving openings is not allowed, nor is the destruction of Department fences. Any gate installed shall remain locked when the vegetation control activity is not underway. The gate shall not be used for routine billboard maintenance such as changing sign messages. Using gates for sign maintenance or roadway access, leaving the gate unlocked or unattended, or the destruction of AHTD fencing will result in RSVP permit revocation.

3.9. Vegetation control at legal, permitted signs will be allowed only at locations where the advertising sign installation preceded the obscuring growth. Vegetation control shall not be used to provide visibility where none existed at the time the sign was erected or where no visibility exists at a proposed sign location. Only minimum vegetation control necessary to retain visibility will be allowed.

3.10. Vegetation control will not be allowed at any legal signs that are within 500 feet of: National Parks; State Parks; County Parks or City Parks; Wildlife Management Areas; or cemeteries.

3.11. The AHTD will grant an RSVP permit for a legal, nonconforming sign located within the city limits of a municipality when the sign meets all State requirements but has become nonconforming only because of city or county zoning or sign code changes since the erection of the sign.

3.12. The AHTD will only grant an RSVP permit for a legal, nonconforming sign when the sign owner has designated a legal, nonconforming sign of at least 200 square feet, and surrendered its State Billboard Permit to the AHTD for cancellation. AHTD personnel will inspect the designated sign prior to its removal and, if accepted, the sign

owner will be required to remove the designated sign at the sign owner's expense before vegetation control activities may begin at the sign for which the RSVP permit is being granted. If a sign owner only has one legal, nonconforming sign, an RSVP permit will be considered on a case by case basis.

3.13. At locations which have no State-erected barrier between the State Highway right of way and the adjacent property and where mowing has previously been allowed by business owners or sign owners without an RSVP permit, mowing will be allowed to continue without an RSVP permit.

3.14. No vegetation control will be allowed within median areas of divided highways.

3.15. Trees having an outside bark diameter of more than six (6) inches, measured one foot above ground level, shall not be removed, nor shall any limbs with an outside bark diameter of more than six (6) inches be removed. Dead or diseased trees, as noted in Paragraph 3.6, may be removed if specified in the RSVP permit.

3.16. Vegetation control should not leave large, open spaces in the general outline of the tree. The general outline of the tree should not be changed if trimmed in accordance with this policy.

3.17. No topping of trees will be allowed.

3.18. RSVP permits granted for vegetation removal may require mitigation in the form of replacement plantings. The initial cost and maintenance of these plantings shall be the responsibility of the Permittee. Mitigation will mandate the Permittee to plant three (3) trees for each tree removed. These must have a diameter of at least two (2) inches at ground level and planted in an area approved by the AHTD.

3.19. Stumps shall be cut or ground flush with the ground and treated with an EPA-approved herbicide immediately after the stump is cut. Only the stumps are to be treated. The use of herbicides or chemicals on the grass or ground cover is not allowed.

3.20. The permitted vegetation control shall result in a height of the remaining vegetation that is relatively consistent with that of adjacent areas along the highway right of way. All mowing or cutting must be accomplished with hand tools, wheeled machinery, or rubber tracked machines not exceeding three (3) tons. No steel track equipped machines are allowed. Grass and weeds may be mowed, but surface growth of at least four (4) inches must be left for erosion control. Digging, scraping, bulldozing, clear cutting, or "scalping" the ground is not allowed.

3.21. The Permittee shall be required to carry liability insurance with a limit of at least \$1 million per occurrence.

3.22. A performance bond of at least \$1000 per site shall be required to ensure the restoration of highway right of way. In lieu of an individual performance bond for each

site, sign owners may choose to post a standing performance bond in an amount of at least \$1000 per site up to a maximum of \$50,000.

3.23. The Permittee fully agrees to hold harmless the Arkansas State Highway Commission and the AHTD, and their officers, agents, and employees from any and all damages of any nature to any person or property due to any performance or non-performance of any work authorized by the permit.

3.24. The AHTD may, with good cause, deny, revoke, or amend any RSVP permit. If a permit is revoked, the Permittee has a right to request an Administrative Hearing.

3.25. All RSVP permits must be renewed in two-year cycles beginning in July 2014 (see paragraph 3.4). All RSVP permits must be renewed at the same time regardless of the original date of issue. The permits will allow cutting twice per year, with a maximum of four times in a two-year period. The renewal fee is \$80.00 for a two-year renewal. The Permittee must notify the AHTD's Beautification Section a minimum of three (3) working days before beginning work. The AHTD, at its option, may arrange to have an inspector on site while work is being performed.

4.0. VIOLATION OF PERMIT

4.1. If RSVP permit provisions are violated, the first offense shall be a fine of up to a maximum of \$10,000 and/or the surrendering of the State Billboard permit for that sign, subject to the right to an Administrative Hearing. A second violation from the same sign owner shall result in the State Billboard permit for that sign being revoked, subject to the right to an Administrative Hearing, and the denial of any future requests for RSVP permits from that sign owner.

4.2. The sign owner must also provide a statement, signed and dated, agreeing to abide by the terms of the RSVP permit. The sign owner must also agree to remove the sign at no cost to the AHTD if the terms of the RSVP permit are violated by either the sign owner, land owner, or third parties contracted to carry out vegetation control activities.

5.0. PROCEDURES

5.1. RSVP permits are issued by the AHTD's Environmental Division in coordination with the District Engineer for the highway district in which the sign site is located.

5.2. Individual RSVP permits must be requested for each sign site and include:

- a. An application fee (non-refundable) made payable to the Arkansas State Highway and Transportation Department in the amount of \$80 per sign designated for vegetation control.
- b. A performance bond in the amount of at least \$1000 per site issued or counter-signed by a resident Arkansas agent, or in the form of cash or cashier's check. In lieu of a performance bond for each site, a standing performance bond in the amount

- equal to at least \$1000 per site up to a maximum of \$50,000 may be posted.
- c. Proof of liability insurance with a limit of at least \$1 million.
 - d. State Highway number
 - e. A specific written proposal of the vegetation control work to be performed on the right of way to restore the visibility of the sign, including the name, address, telephone number, and signature of the sign owner, and the location of the sign and State Billboard Permit number.
 - f. Type of vegetation control to be performed.
 - g. 8" x 10" photograph(s) of the State Highway right of way vegetation interfering with the view of the sign and which is the subject of the RSVP permit request.
 - h. A drawing of the right of way area where the work is to be performed indicating the vegetation to be mowed, "bush hogged", cut, trimmed, pruned, and/or removed on the right of way. The drawing shall also show the length of frontage along the right of way boundary of the tract of land on which the sign is located.
 - i. A signed statement(s) by the landowner(s) of record of the land at the sign site or the landowners(s) of record of an abutting tract(s) of land where the vegetation cutting will occur, indicating concurrence with the proposed work on that portion of the right of way abutting the landowner's tract(s).
 - j. A signed and dated statement, from the billboard sign owner or agent, agreeing to abide by the terms of the RSVP permit. The sign owner will also agree to remove the sign at no cost to the AHTD if the terms of the RSVP permit are violated by the sign owner, land owner, or third parties contracted to carry out vegetation control activities.

5.3. For requests that meet the terms of this policy, the AHTD's Environmental Division will notify the appropriate AHTD District Engineer to issue an RSVP permit. For requests that do not meet the terms of this policy, the Environmental Division will respond accordingly. A permit application must be issued or denied within 60 days.

5.4. The RSVP Permittee must advise the AHTD's Beautification Section of planned vegetation control activities at least three (3) working days prior to beginning work. The AHTD, at its option, may arrange to have an inspector at the site while work is being performed (see paragraph 3.25).