

Red Tape Review Rule Report (Due: September 1, 2024)

Department Name:	Department of Transportation	Date:	December 27, 2023	Total Rule Count:	8
IAC #:	761	Chapter/ SubChapter/ Rule(s):	117	Iowa Code Section Authorizing Rule:	306B.4, 306B.5, 306C.11, 306C.18, 306C.24, 306D.4
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What is the intended benefit of the rule?

The intended benefit is to protect the annual Federal Aid Highway Apportionment to the State of Iowa from being reduced by 10 percent (\$63.6 million calculated for FY2023). This chapter implements Iowa Code chapters 306B, 306C, and section 306D.4, and federal law 23 U.S.C. 131 as implemented through 23 CFR 750.

The Highway Beautification Act, Title 23 USC Section 131, was passed in 1965 and was intended to protect the public's investment in the primary highway system, promote the safety and recreational value of public travel, and preserve natural beauty alongside the roadway. The prohibition on outdoor advertising signs in rural, residential, and other areas not considered commercial or industrial, was a key element to this law. To encourage participation by all 50 states, the 10 percent penalty was included as a potential consequence for noncompliance. Forty-six states have laws and regulations which are generally similar to Iowa's laws and regulations, while four states completely ban outdoor advertising signs. Since the Act was passed in 1965, several states have passed or attempted to pass more lenient requirements, but after receiving penalty warnings, they restored the standards that met the minimum federal requirements.

Aside from whether the State of Iowa fully supports the above stated goals of the Act or whether the federal requirements associated with it adequately serve in furtherance of these goals, it cannot be overstated that the Department relies heavily upon receiving its full apportionment of federal highway funds each year. Since the penalty is applied before the funds are earmarked, cities and counties would share in the pain if the penalty was applied.

The Iowa Code and administrative rules intend to establish and maintain "effective control" of outdoor advertising signs adjacent to the primary highway system in Iowa. Federal requirements contained in 23 CFR 750.705 must be met for the Federal Highway Administration to determine that said "effective control" is achieved and maintained. Regulations and enforcement procedures are submitted to the Federal Highway Administration for approval when changes are proposed. Any changes must comport to agreements signed between the Iowa State Highway Commission (Iowa Department of Transportation as of 1974) and the Federal Highway Administration dated 1965, 1972, and 2006, and the 1965 Federal Act, as amended, and with its standards contained in 23 CFR 750.

Is the benefit being achieved? Please provide evidence.

The Federal Highway Administration conducted a review of the Iowa advertising control program in 2018 and determined that effective control was being provided by the state. Although warned with a citation in 1971, Iowa has not ever incurred the 10 percent penalty.

Since the passage of Iowa Code chapter 306C in 1972 and this chapter which implemented the law, the Department has removed or caused to be removed tens of thousands of illegally placed advertising signs. The Iowa Highway Commission reported that in 1966 approximately 100,000 advertising signs were in existence alongside the primary highway system. The current number of permitted devices which are legal along the primary highway system is 2,736. The Department does not take an advocacy role [i.e., pro-scenic or pro-billboard] in the administration of this regulatory program.

Iowa Code chapter 306C restricts the placement of advertising signs to areas that are zoned commercial or industrial and which allow for proper spacing of signs. Highways are surveilled for advertising signs which do not conform to state laws and regulations. When discovered, Department staff work with the owners to make adjustments to the signs or remove them, using a flexible time frame and offering alternative options.

What are the costs incurred by the public to comply with the rule?

There are quantifiable costs and non-quantifiable costs to the public.

Quantifiable costs:

An outdoor advertising permit for a sign measuring over 32 square feet in size costs \$100, with an annual renewal fee between \$15 and \$50 depending upon the size of the sign. As of the date of this document, there are approximately 2,736 active permits in Iowa. Most of these permits are held by large billboard companies which lease out space for area businesses, but some small businesses do seek permits for their own privately erected signs. The permit fees charged by the Department are intended to help make the program self-sustaining; staff associated with the outdoor advertising program are funded entirely by these fees, along with the logo signing program and tourist-oriented directional signing program. This funding mechanism was established by law (Iowa Code chapter 306C) in 1972 so that money would not be diverted from the Primary Road Fund or Road Use Tax Fund in meeting the federal "mandate." Fees have remained consistent since 1996, except for an exemption that was placed into effect in the 2020 rule amendments for signs measuring 32 square feet or less in size.

Non-quantifiable costs:

Businesses sometimes need/want advertising signs in areas which are not eligible for permits [i.e., areas which are not commercial or industrial]. Indeed, some business owners proceed to erect a sign in these areas only to discover that laws and regulations exist, requiring the subsequent removal of the sign. There is an opportunity cost for businesses when customers passing through the area are not marketed by advertising signs, especially if the business does not have highway frontage. The Department has recently attempted to mitigate this problem by expanding the tourist-oriented directional sign program [i.e., blue and white signs erected within the right-of-way by the Department] enabling nearly all businesses that are open to the general public and located in the rural areas to qualify for that signing program.

From a rational perspective, consider that the restrictions on outdoor advertising signs are not unlike local community regional planning and zoning goals designed to categorize land uses and regulate them in the best interests of the public. Indeed, many local jurisdictions have zoning, size, spacing, and lighting

restrictions on advertising signs, and often defer to, or incorporate in, state standards to their ordinances. Most of the state standards are contained in Iowa Code chapter 306C.

What are the costs to the agency or any other agency to implement/enforce the rule?

The manpower and material costs of operating the billboard control and permitting program are paid for with permit fees from the billboards, logo signs, and tourist-oriented directional signs. Iowa Code chapter 306C provides for the deposit of these permit fees into a separate fund known as the “Highway Beautification Fund,” specially created for the administration of these signing programs. Staffing, equipment and associated expenses are drawn from this fund in the program operation; monies from the Primary Road Fund or Road Use Tax Fund are not co-mingled with the Highway Beautification Fund. The cost to administer the section handling the billboard, logo, and TODS programs, along with surveillance for illegal placements is approximately \$1 million annually, and the revenue is currently close but a little short of that level. A cushion does exist in the fund but due to rising expenses and the fact that permit fees have not been raised since 1996 some adjustments may need to be made within the next several years. Current staff count is at a total of seven full-time employees.

Do the costs justify the benefits achieved? Please explain.

To illustrate the significance of the 10 percent penalty, consider South Dakota, a state which relies heavily on tourism dollars. The advertising signs for the Black Hills, Wall Drug, Badlands, and the Corn Palace are one of the keys to bringing in these tourism dollars. In 1977, they chose to operate outside of the parameters of the federal Act and subsequently lost 10 percent of their highway funding. After a failed lawsuit to recoup the funds and realizing that the penalty would apply again the following year, they restored the standards that met the federal requirements.

Although the penalty has been not assessed in recent years, the threat of the penalty has been used on multiple occasions to leverage control. In 2012, the State of Oklahoma was given a warning that it would lose \$61,432,725 of its federal-aid apportionment if it proceeded to pass proposed legislation authorizing church signs exceeding the size allowed by federal law along the primary highway system. To avoid the penalty, an Oklahoma senator successfully lobbied to amend the Federal Highway Reauthorization Act of 2014 [“FAST Act”] so that a workable compromise was available through specific exemptions created for oversized church signs. And in 2017, Michigan Governor Rick Snyder vetoed a revenue-generating provision on a bill that would have allowed commercial billboards on public school property after being advised that the 10-percent reduction in Michigan’s federal-aid apportionment amounted to \$100 million. In his veto letter, he said “[t]he risk of losing federal highway funding far outweighs the policy goals that SB 953 would otherwise achieve.”

Iowa’s calculated penalty, if effective control is not maintained, would be \$63.6 million, which would be applied for each year of noncompliance. If state controls were lifted, local planning and zoning controls would still be in effect in most jurisdictions. For the local jurisdictions that were relying upon the state’s standards and enforcement along the primary routes, this could be seen as an unwelcome move. Thus, it seems difficult to imagine a scenario where lifting state control is worth the \$63.6 million.

The control of outdoor advertising may be viewed as an extension of the general principles of community regional planning; commercial structures and activities are appropriately limited to commercially zoned areas. The Outdoor Advertising Association of Iowa recognizes this, and they have supported reasonable,

common-sense approaches to the regulation of outdoor advertising signs and have worked with the Department in such development.

Are there less restrictive alternatives to accomplish the benefit? YES NO

If YES, please list alternative(s) and provide analysis of less restrictive alternatives from other states, if applicable. If NO, please explain.

In the general sense, less restrictive alternatives are not available without incurring the 10 percent penalty on the Federal-Aid Highway Apportionment. The federal law, 23 U.S.C. 131, requires that the standards must be met; many of these standards are contained in the 1972 Federal-State Agreement, as amended by a 2006 Memorandum of Understanding with the Federal Highway Administration. Other standards are not contained in such agreement but are contained in federal regulations found in 23 CFR 750 or follow guidance from the Federal Highway Administration.

The Department strives to meet, but not necessarily exceed, the federal requirements. There are some states which exceed federal requirements including Missouri. As mentioned, four states (Maine, Alaska, Vermont, Hawaii) have completely banned outdoor advertising signs, except for signs placed on the premises of the business advertised. As also mentioned, some states have attempted to be less restrictive than federal requirements but have found themselves in a position of risk with their highway funding.

In 2019, at the request of a few Iowa legislators, a robust review was conducted which led to several changes, including the exemption of fees for small signs measuring 32 square feet or less, and property right protections for areas affected by highway improvement projects. These were not specifically requested items but items the Department identified in its review.

A rigorous analysis has been further conducted pursuant to EO10 and several more changes have been proposed to meet the requirements of the executive order as explained below.

Does this chapter/rule(s) contain language that is obsolete, outdated, inconsistent, redundant, or unnecessary language, including instances where rule language is duplicative of statutory language? [list chapter/rule number(s) that fall under any of the above categories]

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117.1 Definitions.

“Area zoned and used for commercial or industrial purposes”; This term is sufficiently defined in Iowa Code section 306B.2, so it is removed. To assist the reader, the phrase “in accordance with Iowa Code section 306B.2” was added to the repromulgated subrule 117.5(2).

“Billboard Control Act”; This term is not used in Iowa Code nor this chapter of rules; it is removed.

“Bonus Act”; This term is no longer used. It carried more significance before the signing of the 2006 Memorandum of Understanding [MOU] between the Federal Highway Administration and the Department. Iowa no longer adheres precisely to the requirements of the federal Bonus Act and referring to it may be confusing for the reader. Where needed, the phrase “Iowa Code chapter 306B” is substituted. Iowa Code chapter 306B does not refer to itself as the Bonus Act; it is removed.

“Lease”; With the removal of language in rule 117.6 requiring that a lease be furnished upon application, it is no longer necessary to define the term; it is removed.

“Tri face device”: This definition has been shortened to avoid redundancy. As classified as a v-type, it would already be subject to the stated limitations.

117.2 General provisions (scope of authority)

117.2(4): This subrule regarding the prohibition of signs which violate Iowa Code section 321.259 is rescinded as the stated prohibition is already contained in Iowa Code section 321.259.

117.2(5): This subrule regarding the obstruction of views near intersections and railroads is rescinded as the stated prohibition is already contained in Iowa Code sections 318.11(2) and 657.2(7).

117.2(6): This subrule regarding the prohibition of advertising signs being placed within the right-of-way is rescinded as the stated prohibition is already contained in Iowa Code chapter 318.

117.2(7): Paragraph “b” regarding removal for lack of compliance is rescinded for being redundant. The removal provisions in rule 117.8 include all advertising devices illegally maintained.

117.3 General criteria

117.3(1)“b”: This paragraph concerning advertising devices which interfere with or resemble official traffic control devices is contained in Iowa Code section 306C.13; it is removed for redundancy.

117.3(1)“d”: This paragraph prohibiting advertising devices from being erected upon trees, rocks, or natural features is contained in Iowa Code section 306C.13; it is removed for redundancy.

117.3(1)“e”: This paragraph prohibiting advertising devices from having flashing lights is contained in Iowa Code section 306C.13; it is removed for redundancy. However, language is retained concerning the implied provision for, and the limitations on LED displays. This language is derived from federal guidance issued in September of 2007.

The language concerning the restriction on messages being segmented is not found anywhere in federal guidance. The Federal Highway Administration sponsored a study in 2013 that tracked eye-glances at billboards, including LED displays, which were located along designated routes driven by motorists who had agreed to allow cameras to be mounted in their vehicles. The motorists were not aware that billboards were the subject of the study. The result was that the time spent looking in the forward-view of the roadway was not necessarily reduced by the presence of billboards, LED or otherwise. Motorists did look at the billboards, so accounting for the difference likely involves the sacrifice of other time spent looking away at the speedometer, passengers, instrument controls, etc. Billboards are generally located in the peripheral of the front windshield and are not significantly offset from the forward-view. They may not have the same mental pulling-away effect as a prompt from a personal mobile device. While it is true that some motorists may be interested in waiting or checking back to see the second half of a segmented message, Iowa’s neighboring states do not have this prohibition and have raised no concerns on the issue of traffic safety. The “cost” to the regulated community would be that billboard companies and advertisers need to convey the message in

one presentation on the screen. This cost is rather mild, but on the other hand, the public harm seems almost insignificant. In accordance with the intent of Executive Order 10, it is removed as being unnecessary regulatory language.

117.3(1)“f”: This paragraph regarding advertising devices which have lights that cause traffic safety issues is contained in Iowa Code section 306C.13; it is removed for redundancy.

117.3(1)“i”: This paragraph regarding advertising devices not securely attached to a substantial structure is duplicative of language found in Iowa Code section 306C.13; it is removed for redundancy.

117.3(1)j: This paragraph prohibiting the display of illegal activities on advertising devices in a specified area subject to Iowa Code chapter 306B is not necessary for two reasons. One, by law, the area described is already not eligible for advertising devices as defined by the law. And two, case law [Reed v. Town of Gilbert, 2015] does not support distinguishing content on a sign for the purpose of setting a restriction.

117.3(1)“k”: This paragraph requiring compliance with local regulations is contained in Iowa Code section 306C.13; it is removed for redundancy.

117.3(1)“m”: This paragraph prohibits the erection of advertising devices beyond the adjacent area [to evade the law; a practice which occurred from 1965 until 1972] and is contained in Iowa Code section 306C.12; it is removed for redundancy.

117.5 Location, size, and spacing requirements

117.5(3): This subrule regarding the removal of abandoned signs is rescinded for redundancy with rule 117.8.

117.5(5)“a”: This paragraph requiring permits exists in Iowa Code sections 306C.12 and 306C.18; it is removed for redundancy.

117.5(5)“c”: This paragraph concerning spacing is duplicative of language in Iowa Code section 306C.13; it is removed for redundancy.

117.5(5)“d”: This paragraph concerning spacing is duplicative of language in Iowa Code section 306C.13; it is removed for redundancy.

117.5(5)“e”: This paragraph concerning spacing requirements is mostly duplicative of language in Iowa Code section 306C.13 and therefore is removed, with the exception of language for subparagraph (2).

117.5(5)“f”: This paragraph concerning spacing requirements is mostly duplicative of language in Iowa Code section 306C.13 and therefore is removed, with the exception of language for subparagraph (2).

117.5(5)“g”: This paragraph concerning spacing requirements is duplicative of language in Iowa Code section 306C.3; it is removed for redundancy.

117.5(5)“h”: This paragraph concerning spacing requirements is duplicative of language in Iowa Code section 306C.13; it is removed for redundancy.

117.5(5)"i", subparagraph "1": This subparagraph concerned the creation of a block-out zone near corporation lines. The intent was to create a sign-free space the equivalent of the county spacing requirement, on the more restrictive side of the city limits, the side where county jurisdiction is in effect. This was meant to avoid a situation where two signs are located near the city limits, with one meeting city spacing but the other failing to meet county spacing. The requirement was well-intended and technically followed a logical path, but the application of it became very complicated with corporation lines that didn't neatly cross the highway in perpendicular fashion. A more practical method will be followed by removing this language but adding new language in subparagraph 117.5(2)"b"(4) which prevents the issuance of a permit for a new sign, if that permit issuance creates a spacing problem for an existing sign in the area. This will eliminate the unnecessary creation of block-out zones near corporation lines.

117.5(5)"l": The language contains a restriction concerning the transition from nonfreeway-primary highway spacing to freeway-primary highway spacing (i.e., a block-out zone). This restriction is not found in federal regulations, federal guidance, the Federal-State Agreements, nor Iowa statutes. The language was intended to avoid spacing problems for permits issued in the more restricted area when subsequent permits were issued in the less restricted area. The language proposed in subparagraph 117.5(2)"b"(4) will resolve these concerns. Consequently, this paragraph and appendix "A" is rescinded.

117.6(1) Outdoor advertising permits and fees required

117.6(1)"b": Language concerning the requirement to include a copy of a lease with the submittal of a permit application is not found in Iowa Code chapters 306B or 306C, nor any Federal-State Agreement or federal guidance. To avoid the strategic but disingenuous filing of a permit simply to block out a competitor, or to gain leverage on a property owner which hasn't approved of any such installation yet, it is good policy for the Department to require leases to be submitted with permit applications. However, Iowa Code section 306C.18(1) contains general language that provides the Department with the ability to require lease information. This should be adequate, but if an applicant wanted to appeal the rejection of an incomplete application, the applicant would have to explain to the court why it is objectionable to include lease information. The Department already allows and will continue to allow any sensitive information to be redacted from the submittal. Furthermore, the applicant would need to successfully argue that the inclusion of a lease is outside of the legislative intent of Iowa Code section 306C.18(1). This all seems very unlikely. This language in the paragraph is therefore removed, but the Department can continue to require lease information along with other information (i.e., site plan) to be submitted with permit applications.

117.6(1)"c": Language providing the Department with the ability to revoke a permit due to an applicant's intentional falsification or misrepresentation on the application is not found in Iowa Code chapters 306B or 306C, nor the Federal-State Agreements or any federal documents. The Department has not relied upon this provision for the denial of applications or the revocation of permits, although having the language on the forms could be a factor in that regard. In practice, the essential elements (i.e., zoning) of the application are verified during the review process. Falsifying zoning information wouldn't change the outcome. And if the applicant accidentally or intentionally builds in an incorrect location or constructs a device which does not reflect the type or size indicated on the permit, the Department has options available to reconcile the issue (including re-working the permit with the applicant's consent). Furthermore, the "shall condition" narrows the Department's field of options when another remedy might be more appropriate for the situation. This language is therefore removed for being unnecessary.

117.6(2) Fees.

Language concerning tri-visions in paragraph “b” is removed. This language is not found in Iowa Code chapters 306B or 306C, nor in any Federal-State Agreement, federal requirement, or guidance. There is not good justification to triple the size to derive a higher fee to be paid by the owner of a tri-vision sign, when the Department’s position is that a rotation of the vertical prisms is simply just a change of copy. The fees are not calculated this way for the owners of LED displays which can have many advertisements on their screens, so it appears inconsistent to apply it to the owners of tri-vision signs. The original intent of tripling the size is not known.

117.6(3) Permits to be issued

117.6(3)”a”: This paragraph requires the Department to issue permits, but this language duplicates language found in Iowa Code section 306C.18(3); therefore, this language is removed.

117.6(3)”b”: Language concerning the issuance of provisional permits is duplicative and removed.

117.6(4) Permit Plates

The \$10 replacement fee for the fabrication of a new permit plate is been removed. The replacement fee was intended to cover the cost of a special order to refabricate the same number from Prison Industries but charging a small fee itself takes staffing time to generate an invoice and process the payment. The Department and permit owner come out ahead if the fee is simply removed.

117.6(6): One Year to Erect

This subrule contains an automatic trigger for permit cancellation if a recently permitted advertising device is not constructed within one year. This requirement is not contained in the Iowa Code nor any Federal-State Agreement, federal regulation, or guidance. The intent of the subrule is that upon the issuance of a permit, the device is to be erected within a reasonable amount of time, Department inspection can occur, and the digital inventory with a photo can be updated. This approach is not unlike those used in local building codes. However, in the spirit of an Executive Order 10 review, the question is whether the administrative work in tracking, cancelling, and sometimes re-permitting after a site review is worth the benefit. In addition to the administrative work, there is a risk of a change in zoning occurring in the interim period. The one-year cancellation requirement has forced the Department into a hands-tied decision where a conversation may have been more beneficial. The applicant may have already incurred lease and material investments for the sign and unfortunately experienced a delay with local approval or at the request of a property owner. While downsides can be identified in having this cancellation provision, there doesn’t seem to be much of a downside in not having the provision. If the Department needs to have a way to extinguish the existence of a permit where there is no sign (i.e., the permit holder isn’t interested or able to build but is intentionally tying up spacing to block out a competitor; or the permit holder has fallen out of favor with a landowner but is using the permit as leverage to gain favorable terms or to punish), the Department can still rely upon the blank sign policy that exists in subrule 117.6(9), coupled with the definition of blank sign in rule 117.1, to effect a cancellation, if needed. This subrule is therefore rescinded.

117.8: Removal Procedures

This rule contains removal procedures, for which some of the language is duplicative of Iowa Code sections 306B.5 and 306C.19. Most of the duplication and excessive regulatory verbiage is removed. However, three subrules are constructed to provide the Department with the ability to:

1. Ensure that abandoned signs could be included in the provision to send notice and cause conformity or removal. Abandoned signs are defined in this chapter as those for which applications have not

been made or permit fees have not been paid. Iowa Code sections 306B.5 and 306C.19 seem to include all advertising devices which are erected or maintained in violation, but to avoid a matter of interpretation on devices which conform to zoning, spacing, etc. for which no permit has been submitted or permit fees have lapsed, this subrule adds the clarity needed.

2. Allow the Department to dispose of the removed sign material in the most expedient or efficient manner, without question of ownership of the material. Iowa Code section 306C.19(1) states that the device is “deemed to be forfeited,” but the language retained in this subrule will solidify that material in the removal is not subject to any obligation of return to the former owner.
3. Provide for the Department to give notice of revocation of permit (a type of license) within the same notice being issued to cause to conform or remove, to satisfy Iowa Code section 17A.18 regarding license revocation.

RULES PROPOSED FOR REPEAL (list rule number[s]):

117.1: Four definitions
117.2(4)
117.2(5)
117.2(6)
117.2(7) paragraph “b”
117.3(1) paragraph “b”
117.3(1) paragraph “d”
117.3(1) paragraph “e”, in part
117.3(1) paragraph “f”
117.3(1) paragraph “i”
117.3(1) paragraph “j”
117.3(1) paragraph “k”
117.3(1) paragraph “m”
117.5(3)
117.5(5) paragraph “a”
117.5(5) paragraph “c”
117.5(5) paragraph “d”
117.5(5) paragraph “e”, in part
117.5(5) paragraph “f”, in part
117.5(5) paragraph “g”
117.5(5) paragraph “h”
117.5(5) paragraph “i”, subparagraph (1)
117.5(5) paragraph “l”
117.6(1) paragraph “b’
117.6(1) paragraph “c”
117.6(2) paragraph “b”, in part
117.6(3) paragraph “a”
117.6(3) paragraph “b”
117.6(4) paragraph “b”
117.6(4) paragraph “c”
117.6(4) paragraph “d”
117.6(6)
117.8, in part

***RULES PROPOSED FOR RE-PROMULGATION* (list rule number[s] or include text if available):**

117.1
117.2
117.3
117.5
117.6
117.8
117.9
117.10

We plan to reserve rules 117.4 and 117.7.

See RTF document for full text.

****For rules being re-promulgated with changes, you may attach a document with suggested changes.***

METRICS

Total number of rules repealed:	0
Proposed word count reduction after repeal and/or re-promulgation	2,226
Proposed number of restrictive terms eliminated after repeal and/or re-promulgation	112

ARE THERE ANY STATUTORY CHANGES YOU WOULD RECOMMEND INCLUDING CODIFYING ANY RULES?

No.