

TRANSPORTATION DEPARTMENT[761]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 117
“Outdoor Advertising”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 306B.4, 306B.5, 306C.6, 306C.11, 306C.18, 306C.24, and 306D.4

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 306B, 306C, and 306D; 23 U.S.C. 131; and 23 CFR Part 750

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

April 11, 2024
10 to 10:30 a.m.

[Microsoft Teams link](#)
Or dial: 515.817.6093
Conference ID: 354 741 910

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Transportation no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Purpose and Summary

The Highway Beautification Act, 23 U.S.C. 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 that are similar to Iowa’s regulations, while four states completely ban outdoor advertising signs.

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

Iowa’s advertising control program was reviewed by FHWA in 2018 and found to be providing effective control. In 2021, Iowa’s statutes were amended to pass constitutional muster following review of First Amendment case law, including the U.S. Supreme Court case *Reed v. Town of Gilbert* [2015], and subsequent U.S. Circuit Court decisions. Several states including Iowa were directly affected by lawsuits that were filed claiming that content-based discrimination is inherent in laws that categorize types of signs based on the content of the sign, resulting in varying levels of size, location, and spacing restrictions. Such discrimination, especially if applied to noncommercial speech, failed a strict scrutiny standard of review, resulting in state laws being overturned in Oregon, Texas, Tennessee, and Kentucky. Cases in Iowa, Colorado, and Ohio had not yet progressed to this step when statutes were proactively amended. The federal law itself, even as compromised by

the *Reed* case, remains in effect, meaning states must continue to adhere to its requirements as closely as possible to avoid a penalty on highway funds.

For Iowa, the 2021 amended statutes, as well as the 2021 amended rule chapter, connect regulation to the exchange of remuneration (compensation of any form) between the owner of the sign, the property owner, and the business being advertised on the sign. If remuneration exists, the sign qualifies as an “advertising device” under the amended definitions and is therefore regulated. All such signs are regulated equally without regard to the content of the sign. The Department worked with the industry association in the development of the amendments so that the outcome resembled the traditional approach. In other words, signs displaying on-site messages would be exempt, while signs displaying off-site messages would be regulated. FHWA was provided with the opportunity to review these amendments during development. The other six states, with some variation, also developed control schemes that connect regulation to the exchange of compensation.

In 2022, the U.S. Supreme Court determined in *City of Austin v. Reagan National Outdoor Advertising* that using a strict scrutiny standard of review is not necessary to distinguish between signs displaying messages concerning businesses that are located on the premises of the business, and signs that are located off the premises of the business. While this preserved the ability of state and local authorities to draw this important and primary distinction when constructing laws and ordinances, there remain some minor content-based elements within the federal law that would not pass the test of *Reed*, including an exemption for religious notices provided such notices do not exceed eight square feet in size. Since no solution has yet to be developed for these vulnerabilities, the Department has not taken any interest in further amendments to the statutes at this time, while continuing an open dialogue with FHWA.

This proposed repromulgation of Chapter 117 was undertaken with an effort to follow Executive Order 10 (January 10, 2023) by eliminating redundancies and any unnecessary restrictions that are not contained in federal requirements or that do not directly further the legislative intent of Iowa Code chapter 306B, 306C, or 306D.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The regulated industry and various individual business owners who have advertising permits bear the cost of the proposed rulemaking. The Iowa Legislature’s passage of Iowa Code chapter 306C in the early 1970s resulted in the creation of a special fund for the deposit of permit revenue from the signs regulated. This fund was intended to be self-sustaining and has been sufficient over the years to operate the regulatory program, which includes billboards, logo signs, and tourist-oriented directional signs.

The cost for a billboard permit is \$100, plus an annual renewal fee that ranges between \$15 and \$50 depending upon the size of the sign. These fees, along with revenue from the logo and directional sign programs, cover the salaries, benefits, equipment, vehicle, and fuel expenses for the seven-member section responsible for administering these signing programs.

The fees have not been increased since 1996. In 2020, the chapter was amended so that signs with a size of 32 square feet or less were exempted from all fees. The proposed repromulgation continues that exemption and does not increase permit fees.

- Classes of persons that will benefit from the proposed rulemaking:

All Iowans benefit from the receipt of annual federal aid highway apportionments. These funds help maintain existing highway infrastructure and build new highways where needed. A 10 percent penalty on the apportionment would amount to \$63.6 million, and the penalty would continue each subsequent year until effective control is reinstated.

Iowans also benefit from having primary road systems that have not been compromised in highway safety or by the deterioration of roadside views due to the existence of advertising sign clutter. The statute and this proposed repromulgation limit advertising signs to the commercial or industrial areas in accordance with spacing requirements.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The quantitative impacts include an initial application fee of \$100 to cover the expense of conducting a field review of the location to ensure that it meets federal and state requirements. Signs measuring 32 square feet or less in size are exempt from this fee. Annual renewal fees on a tiered schedule are billed each year, ranging from \$15 to \$50 depending upon the size of the sign, again with the smaller signs being exempted.

Quantitative impacts would also include the cost of constructing an advertising sign on someone else's property without being aware of state laws and regulations. If the sign is in a nonconforming area, it may need to be removed, resulting in wasted material and labor expenses. The Department does not have information on these costs.

- Qualitative description of impact:

Qualitative impacts include a lost-opportunity cost to advertise along a primary highway when the business does not enjoy highway frontage and the location of the sign does not conform to zoning and spacing requirements. The Department attempts to mitigate the effect by providing some flexibility on time frames for compliance, and by providing alternatives for making signs legal. The Department has also expanded the blue directional sign program so that nearly all businesses open to the general public and in rural areas within ten miles of a primary highway can qualify for participation.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The Department attempts to keep the advertising control program operating at a net-neutral revenue level. The operating costs are paid out of the Highway Beautification Fund, which is supported by the advertising permit fees charged through the billboard, logo, and directional sign programs. The advertising control program requires almost \$1 million to operate, and the revenue from permit fees is approximately at that level. Fund levels at the annual low point of April 1 have been as follows:

April 1, 2021: \$2,089,079.41

April 1, 2022: \$2,082,460.54

April 1, 2023: \$2,034,491.69

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues since the program is generally self-sustaining through the permit billing mechanism.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

With the proposed chapter in effect, the Department would receive its full annual federal-aid highway apportionment, and advertising signs would be limited to the commercial or industrial zones along the primary highway system in accordance with state and federal spacing requirements.

With inaction, the Department would receive a warning from FHWA on providing effective control in accordance with 23 CFR Section 750.705. After a specified period of time of inaction, highway funding is reduced by 10 percent. The most recent calculation of this penalty is \$63.6 million, continuing each year in which effective control is not provided. Many cities and counties already have ordinances that contain similar restrictions, so individuals interested in the unrestricted scenario may still be unable to place commercial-type signs in the rural or residential areas. Some local jurisdictions defer to state regulations on primary routes, so there could also be an unintended consequence if state control were to be lifted without adequate notice given to those jurisdictions.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

In accordance with Part IV of Executive Order 10, a rigorous item-by-item review of Chapter 117 has been conducted to ensure that the least restrictive means are used in achieving effective control as described in 23 CFR Part 750 and in implementing Iowa Code chapters 306B, 306C, and 306D. In addition, a review of agreements that have been signed with the U.S. Secretary of Transportation for the purpose of the preservation of highway funds was conducted to ensure that rules sufficiently meet, but do not unnecessarily exceed, what is necessary to meet the Department's agreement obligations. Although it is not uncommon for a state to have more restrictive requirements for outdoor advertising, Iowa has generally been only just as restrictive as the federal requirements.

After review and study, a number of regulations were identified that are not specifically required in any statute or federal law, regulation, or guidance. These regulations only marginally further the intent of the statutes, and the public benefit or protection from public harm is nearly insignificant. These are proposed to be rescinded, as explained in the Red Tape Review Rule Report.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

At least two states, Texas and Pennsylvania, have a certification program that is administered by city governments, as provided for in 23 CFR Section 750.706.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The state is still ultimately responsible for control, and the Texas regulator does not recommend this approach due to the same amount of work being necessary to coordinate satisfactory control at the local level. Notably, the city of Philadelphia was “de-certified” by FHWA for not providing effective control. The state was then left to rectify the problems that developed during the time in which control was deferred to the city. From the public’s viewpoint, the outcomes would not be affected because the federal standards would need to be met regardless of which jurisdiction is enforcing the standards.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

In 2019, the Department reviewed the advertising control program, looking for ways to reduce any impacts on small business. One solution implemented was to exempt all signs measuring 32 square feet or less in size from the permit fee structure. More recently, eligibility for the blue directional sign program was expanded so that more businesses in general could qualify, providing a much-needed option for signing in the rural areas where advertising permits are often not allowed due to the lack of commercial or industrial zoning.

Other than the listed changes in this Regulatory Analysis, the Department is not aware of any other less restrictive means by which effective control can be maintained in accordance with 23 CFR Section 750.705.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 117 and adopt the following **new** chapter in lieu thereof:

CHAPTER 117 OUTDOOR ADVERTISING

761—117.1(306B,306C) Definitions. The definitions in Iowa Code section 306C.10 are adopted. In addition:

“*Abandoned sign*” means an advertising device for which the owner has failed to timely apply for the required outdoor advertising permit(s) or has failed to timely pay the required fee(s).

“*Blank sign*” means an advertising device for which any of the following conditions exist:

1. The face does not display advertising copy.
2. The face has been removed.
3. The entire advertising device has been removed or does not exist at the permitted location.

“*Daylight area*” means a triangular area formed by a line connecting two points each back (50 feet in city, 100 feet in unincorporated area) from the point where the right-of-way lines of the main traveled way and an intersecting street meet or would meet if extended.

“*Destroyed*” means that at least 60 percent of the supports are broken, if wooden, or broken, bent or twisted, if metal, such that normal repair practices would call for the replacement of the damaged supports.

“*Face*” means that part of an advertising device that is devoted to the display of advertising and that is visible to traffic proceeding in any one direction.

“*Interchange*” means the entire area constructed for a junction of two or more public streets or highways by a system of separate levels that permit traffic to pass from one level to another without the crossing of traffic streams. This includes all acceleration and deceleration lanes constructed to accommodate this movement of traffic.

“*LED display*” means a face, as defined herein, displaying a message that is formed by light-emitting diodes and that is changed by an electronic process. An LED display is a single face.

“*Modification*” means any addition to or change in dimensions, lighting, structure or advertising face, except as incidental to the customary maintenance of an advertising device.

1. A change in the number or type of support posts is a modification. A change in dimensions is a modification. However, the addition of extensions or cutouts, including forward projecting, is not a modification if the extensions or cutouts are added for a period of 90 days or less and if they are illuminated only by existing sign lighting and do not contain internal lighting.

2. A lawful change in advertising message is not a modification. The use of a vinyl overlay or wrap on either a poster panel or paint unit is a change in advertising message, not a modification.

3. On an advertising device that conforms to all current requirements, the replacement of one metal-framed face with another metal-framed face of the same size, using dissimilar component parts or assembly methods, or both, is not a modification.

4. The addition of LED display capabilities to an advertising device is a modification.

5. The elimination of trim surrounding the area used for advertising copy is not a modification, provided the advertising copy retains the same dimensions as the original advertising copy.

“*Nonconforming sign*” means an advertising device that was lawfully erected and continues to be lawfully maintained, but that does not comply with current requirements due to changed conditions, such as a change in zoning, establishment of a new highway, or a similar change that affects compliance.

“*Regularly used*” means open for business and staffed by an owner or employee for at least 20 hours per week, on property assessed as commercial or industrial by the jurisdiction having authority, and with the hours of operation visibly posted on the premises. The department may delay action on the permit application for up to 180 days from the date of the application in order to conduct periodic checks on the site as necessary to determine whether the purported commercial or industrial activity meets this definition. A rental storage business is excepted from the staffing requirement if it has 24-hour access for customers and a minimum of 50 units, each occupying at least 50 square feet, individually separated, and enclosed by walls.

“*Scenic area*,” as used in Iowa Code section 306C.13, means any area of particular scenic beauty or historical significance, as determined by the federal, state or local officials having jurisdiction of the area. It includes real property interests that have been acquired for the restoration, preservation and enhancement of scenic beauty.

“*Tri-face device*” means an advertising device with three singular faces attached to one common structure in a triangular configuration.

“*Tri-vision device*” means an advertising device that has an advertising face with a mechanical device that allows three advertising messages to be alternately visible to traffic proceeding in any one direction. Each message is attached to individual vertical or horizontal louvers, which are mechanically rotated to change the message.

“*Widening*,” as used in Iowa Code section 306C.13, means the point at which it is detectable that a deceleration or exit ramp is beginning to form alongside the main traveled way, or an acceleration or merging ramp has tapered to a close alongside the main traveled way. In the case where an entrance ramp becomes an auxiliary lane and the auxiliary lane becomes an exit ramp at the adjacent interchange, the widening shall be the point at which a deceleration ramp completely separates from the main traveled way as evidenced by the inside lane marking of such ramp, or an acceleration ramp joins with the main traveled way as evidenced by the inside lane marking of the ramp intersecting with the outside lane marking of the main traveled way.

761—117.2(306B,306C) General provisions.

117.2(1) Scope. This chapter pertains to all advertising devices which are visible from the main traveled way of any primary highway, except for the following:

- a. Advertising devices within incorporated areas which are beyond 660 feet from the nearest edge of the right-of-way.
- b. Official traffic control devices, logo signing and tourist-oriented directional signing.
- c. Advertising devices erected within the right-of-way of any primary highway; such devices are subject to Iowa Code chapter 318.

117.2(2) Rebuttable presumption. The department may regulate signs as advertising devices except when sufficient documentation from persons reasonably identified as potential payors or receivers of remuneration is available to the department showing or certifying that remuneration does not exist.

117.2(3) Contact information. Inquiries, requests for forms, and applications regarding this chapter may be directed to the Advertising Management Section, Traffic and Safety Bureau, Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010. Similar information is also available at www.iowadot.gov/iowaroadsigns/sign-programs-and-applications/advertising-signs.

117.2(4) Advertising devices permitted under the private directional sign program between May 26, 1983, and July 1, 2021. Any advertising device permitted as a private directional sign by the department between May 26, 1983, and July 1, 2021, may continue to exist, even if nonconforming to this chapter, under the following conditions:

- a. The permit is renewed each year by payment of a \$15 fee on or before July 1.
- b. The permit remains issued to the owner of the permit on record with the department on July 1, 2021.
- c. The advertising device is not modified or destroyed.
- d. The advertising device is properly maintained with legible copy.
- e. The design and display of the advertising device meet federal standards contained in 23 CFR Section 750.154 as amended to October 1, 2023.

761—117.3(306B,306C,306D) General criteria.

117.3(1) Limitations. In addition to the standards contained in Iowa Code section 306C.13, advertising devices shall not be erected or maintained:

- a. Which attempt or appear to attempt to direct the movement of traffic.
- b. Which move or have any animated or moving parts in areas subject to Iowa Code chapter 306B.
- c. Which contain LED displays, unless each advertisement remains in a fixed position on the display screen for at least eight seconds, transitions between advertisements occur within one second, and advertisements are not flashed, rolled, scrolled, or moved in any way on the display screen.
- d. Within the adjacent area of a designated scenic byway, unless the erection occurred prior to the date of designation, in which case subsequent permitting may occur in accordance with Iowa Code section 306C.18.

117.3(2) Measurements of distance. Measurements of distance for general spacing purposes are conducted in a horizontal manner parallel with the highway centerline. However, when determining the limits of the adjacent area defined in Iowa Code section 306C.10, measurements from the edge of the right-of-way are conducted in a horizontal manner perpendicular to the highway centerline.

117.3(3) Measurement of size. The size of an advertising device is determined by measuring the smallest square, rectangle, triangle, circle or combination thereof which will encompass the entire display area including border and trim, but excluding temporary cutouts and extensions, base, apron, support, and other structural members.

117.3(4) Zoning exclusions. The following zoning actions are not commercial or industrial zones for advertising control purposes:

- a. A zone in which limited commercial or industrial activities are permitted incidental to other primary land uses.
- b. Action which is not a part of comprehensive zoning in accordance with Iowa Code chapter 335 or 414.
- c. Action taken primarily to permit advertising devices.

761—117.4 Reserved.

761—117.5(306B,306C) Location, size and spacing requirements.

117.5(1) Advertising devices lawfully in existence prior to July 1, 1972.

a. An advertising device that was lawfully in existence prior to July 1, 1972, including a device located beyond the adjacent area in unincorporated areas, may remain in existence without conforming to the location, size and spacing requirements in this rule provided that a permit is maintained in accordance with rule 761—117.6(306C).

b. If the advertising device is located in an adjacent area which is neither a zoned nor an unzoned commercial or industrial area, the device may remain in existence as described in paragraph 117.5(1)“a” only until such time as the device is acquired by the department. The permit issued for the device will be a provisional permit in accordance with Iowa Code section 306C.18(3) and subject to acquisition in accordance with rule 761—117.9(306B,306C).

117.5(2) Advertising devices erected after July 1, 1972. Except as otherwise provided in subrule 117.2(4), advertising devices shall not be erected after July 1, 1972, or subsequently maintained except for those which comply with Iowa Code chapters 306B and 306C and the following criteria:

- a. *Commercial or industrial area.* Eligible areas for permitting are limited to the following three areas:

(1) Adjacent to interstate highways; areas which are zoned and used for commercial or industrial purposes in accordance with Iowa Code section 306B.2; within 750 feet of the regularly used portion of a commercial or industrial activity visible from the main traveled way; and on the same individual, platted parcel of land as that commercial or industrial activity.

(2) Adjacent to noninterstate primary highways; areas which are zoned commercial or industrial.

(3) Adjacent to noninterstate primary highways; areas which meet the definition of an unzoned commercial or industrial area.

b. Spacing. In addition to the standards contained in Iowa Code sections 306B.2 and 306C.13, the following requirements apply:

(1) Spacing standards apply to advertising devices for all highways from which the devices are visible, when more than one highway is in the vicinity of the advertising device.

(2) Spacing standards default to unincorporated spacing when both incorporated and unincorporated areas exist within the adjacent area on either side of the highway. However, daylight spacing may be determined by whether the subject location itself is within or outside of the incorporated municipality.

(3) Advertising devices subject to the daylight area spacing exemption in Iowa Code section 306C.13(5) are considered in conformity with that Iowa Code section if the catwalk or light ballasts extend out further than the 12 inches specified, provided such parts do not overhang the right-of-way. If the building from which the device is mounted is removed, the permit is revoked.

(4) Applications for advertising devices proposed in a location which meets the spacing requirements for that location, but which create a nonconformity to exist with another permitted advertising device, will be denied or adjusted so that the nonconformity is not created.

c. The following types of advertising devices are eligible for permits:

(1) Single face devices; one permit required.

(2) Back-to-back devices; two permits required.

(3) V-type devices with the inside angle formed by the two faces not exceeding 60 degrees so that both faces are not readable upon approach; two permits required.

(4) Devices commonly referred to as side-by-sides or double-decks are classified as either single face, back-to-back, or v-type, as provided in this paragraph. However, provisions do not exist for panels of copy which may be oriented in the same direction, but which are not lined up on the same vertical and horizontal planes, or which are not physically connected to the same structure with more than two feet of distance between them, or which are owned by different entities.

(5) Tri-face devices are classified as v-type devices for permitted purposes from the primary highway in which the two faces are visible. If visibility of the third face exists due to a turn in the highway or another primary highway exists in the vicinity, a third permit is required.

(6) Tri-vision devices, with a rotation occurring not more rapidly than four seconds for each display, are classified as either single face, back-to-back, or v-type, as provided in this paragraph, depending upon the structure.

761—117.6(306C) Outdoor advertising permits and fees required.

117.6(1) Application. Application for a permit for any advertising device subject to subrule 117.2(1) shall be made in accordance with Iowa Code section 306C.18 within the following time frames:

a. On or before July 31, 1972, for advertising devices in existence on July 1, 1972.

b. Prior to the erection of the advertising device, if erected after July 1, 1972.

c. Within 30 days of receiving notice from the department that a lawfully erected advertising device which was not subject to subrule 117.2(1) has become subject to subrule 117.2(1) for reasons including but not limited to the establishment of a new primary highway or a change in the designation of a roadway to a primary highway.

117.6(2) Fees. Fees are applicable to all advertising devices measuring over 32 square feet in size.

a. The initial fee, payable at the time of application, is \$100 per permit. This fee is not refundable unless the application is withdrawn prior to the department's field review of the proposed location.

b. The annual renewal fee for each permit, due on or before June 30 of each year, is as follows:

<u>Area of Sign</u>	<u>Annual Renewal Fee</u>
33 to 375 square feet	\$15
376 to 999 square feet	\$25
1,000 square feet or more	\$50

c. The payment of an annual renewal fee, if postmarked on or before June 30 of each year or otherwise delivered to the department on or before June 3 of each year, automatically renews the existing permit for the device for which the fee was paid.

d. A permit for which the fee was not paid in a timely manner expires on July 1 of each year. If an advertising device is still in existence, it is considered abandoned. If the owner wishes to reapply for a permit to retain the device, the device and location will be reviewed in the same way that a review is conducted for a newly proposed advertising device.

e. Renewal fees are not refundable and are not prorated.

117.6(3) Highway improvement projects. The department shall not prevent nor unnecessarily delay the issuance of a permit for the reason of a proposed future highway improvement project, except under any of the following conditions:

a. The property upon which the advertising device is proposed has been appraised for the purposes of acquisition.

b. Contact by department staff has been made with the property owner regarding compensation for the affected area.

c. The placement of the advertising device would fail to meet the requirements of an existing corridor preservation plan in effect for the proposed location.

d. A construction contract for the project has been initiated by the department.

117.6(4) Permit plate. Upon approval of the application, the department will issue a numbered metal permit plate for the advertising face. This permit plate shall be securely attached to the advertising device in a manner that the plate is unobstructed from view from the highway. If the plate is not displayed, the department may provide notice to the owner that the plate is to be displayed within 90 days. If after that period of time the plate is not displayed, the department may cancel the permit.

117.6(5) Reconstruction or modification. A new permit is required from the department prior to the reconstruction or modification of a permitted advertising device.

a. Permit applications will be reviewed for compliance with Iowa Code chapter 306C and this chapter; nonconforming signs are not eligible for permit approval for reconstruction or modification.

b. Reconstruction or modification of an advertising device prior to the issuance of the permit needed to conduct such action shall result in revocation of the existing permit that has been issued for the advertising device. This may result in the removal of the advertising device in the manner specified in subrule 117.8(1) if the device is not eligible for permitting in accordance with this chapter or Iowa Code chapter 306B or 306C.

117.6(6) Access. Access to the private property upon which an advertising device is located shall be gained only from legal accessways through private property, local streets, secondary roads, or from the primary highway right-of-way through access points designated or allowed by the department in accordance with 761—Chapter 112. Unauthorized use of the primary highway right-of-way for the purpose of constructing or maintaining an advertising device may be cause for permit revocation and removal of the device. The department will issue a warning letter to the owner of the permit following the first instance of unauthorized use; a second instance will result in the revocation of the permit followed by a 12-month period where no new permits may be issued to that person or entity in the same location, or within 500 feet of the same location. The existing device for which the permit was revoked is subject to removal in accordance with Iowa Code section 306C.19.

117.6(7) Vegetation in the right-of-way. No vegetation in the right-of-way may be removed, trimmed, poisoned, or altered so that the viewing time can be improved for an advertising device, unless written authorization is received from the department and the conditions included in the authorization are followed. Proceeding to remove, trim, poison, or alter vegetation without such authorization may result in the revocation of the permit for the device and the removal of the device in accordance with subrule 117.8(1). In addition, the department may suspend permit approvals for a 12-month period for any location within 500 feet of the location of the former permit.

117.6(8) Use and condition.

a. The maximum period of time in which an advertising device may qualify as a blank sign is six months.

b. The maximum period of time in which an advertising device may have illegible copy or be in a state of disrepair is 90 days.

c. If the department determines that an advertising device has been blank for a period of time exceeding six months, or has illegible copy or is in a state of disrepair for a period of time exceeding 90 days, the department may issue a notice pursuant to rule 761—117.8(306B,306C) in which the owner has 30 days to either cause it to conform or to remove it.

117.6(9) Destroyed sign.

a. The permit for an advertising device which has been destroyed will automatically be revoked.

b. An advertising device which has been destroyed is in a condition which, if repaired, would meet the definition of reconstruction in Iowa Code section 306C.10 and is subject to subrule 117.6(5). Whether the device can be reconstructed will depend upon whether it conforms to this chapter and Iowa Code chapters 306B and 306C.

c. An advertising device which has been damaged, but not destroyed, may be repaired. The repair is not deemed an act of reconstruction.

761—117.7 Reserved.

761—117.8(306B,306C) Removal procedures.

117.8(1) Advertising devices subject to this chapter which have been abandoned, or illegally erected or maintained, may be removed, or caused to be removed, by the department after 30 days' notice in accordance with Iowa Code section 306C.19.

117.8(2) Advertising devices removed by the department may be reused, scrapped or disposed of by the department with no compensation paid to the owner.

117.8(3) Revocation of a permit may be included as part of the 30 days' notice, if served by restricted certified mail or by personal service.

761—117.9(306B,306C) Acquisition of advertising devices that have been issued provisional permits.

117.9(1) The department will acquire an advertising device for which a provisional permit has been issued only if all of the following conditions are met:

- a.* Acquisition is required by federal law.
- b.* All necessary federal and state funding is available for the purpose.
- c.* The permit has not been revoked.

117.9(2) If the advertising device will be acquired, the department will use the following procedure:

a. A written notice of the department's intent to revoke the provisional permit and acquire the device will be mailed or delivered to the owner of the advertising device and to the owner of the land upon which the device is located. The notice will include an offer to purchase the advertising device. If good-faith negotiations with the owner of the device and the owner of the land upon which the device is located do not result in a mutually agreeable sale price, the department may revoke the provisional permit and initiate condemnation proceedings as provided in Iowa Code chapter 6B.

b. In the event of condemnation, possession will be taken of the advertising device as soon as the award has been deposited with the sheriff.

761—117.10(17A,306C) Contested cases.

117.10(1) An applicant who has been denied an outdoor advertising permit by the department may timely contest the decision in accordance with 761—Chapter 13. A request is considered timely if submitted in writing to the director of the traffic and safety bureau at the address in subrule 117.2(3) and delivered or postmarked within 30 days of the department's mailing of the letter denying the application.

117.10(2) The owner of an outdoor advertising permit which has been revoked or canceled by the department may timely contest the decision in accordance with 761—Chapter 13. A request is considered timely if submitted in writing to the director of the traffic and safety bureau at the address in subrule 117.2(3) and delivered or postmarked within 30 days of the owner's receipt of the revocation notice issued by the department.

117.10(3) Failure to timely request a hearing on the denial, revocation, or cancellation of a permit is a waiver of the right to a hearing and a failure to exhaust administrative remedies.

These rules are intended to implement Iowa Code chapters 306B and 306C and section 306D.4, 23 U.S.C. Section 131, and 23 CFR Section 750.705.