



COLORADO
Department of Transportation

2829 W. Howard Place
Denver, CO 80204-2305

**DEPARTMENT OF TRANSPORTATION
EXECUTIVE DIRECTOR**

**RULES GOVERNING OUTDOOR ADVERTISING IN COLORADO
2 CCR 601-3**

**NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
October 16, 2020 at 1:00 PM MST**

**Department of Transportation Headquarters
2829 W. Howard Place
Denver, CO 80204**

VIRTUAL RULEMAKING HEARING REGISTRATION LINK:

<https://attendee.gotowebinar.com/register/3450955092056058638>

Pursuant to and in compliance with Title 43, Article 1 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Executive Director of the Colorado Department of Transportation to promulgate rules, or to amend, repeal, or repeal and re-enact the rules governing outdoor advertising in Colorado.

The specific authority under which the Executive Director of the Colorado Department of Transportation shall establish these rules is set forth in §§ 43-1-105(6), 43-1-414(4), and 43-1-415, C.R.S.

The specific purpose of this rulemaking is to modify a portion of the rules governing outdoor advertising in Colorado, 2 CCR 601-3 (Outdoor Advertising Rules). The Department proposes to amend the definition of "Urban Area" and add "Urbanized Area" in order to be consistent with federal regulation. The Department proposes to amend Rule 2.3 to be consistent with state law found in § 43-1-411, C.R.S. and clarify that the Department is prohibited from renewing a permit for an advertising device that is damaged, unsafe, or unsightly by reason of lack of maintenance or repair under § 43-1-411(5), C.R.S. The Department seeks to clarify the distinction between On-Premise and Off-Premise signs by modifying Rule 6.02 while ensuring the underlying purposes of outdoor advertising regulatory control continue to be met. The Department proposes to clarify the restriction against advertising devices being located within 500 feet of an interchange, intersection at-grade, or safety rest area adjacent to interstates and freeways in Rule 7.00(D)(2). The Department proposes to update the materials incorporated by reference in Rule 13.00 in accordance with § 24-4-103(12.5), C.R.S. Finally, the Department seeks to add Rule 14.00 that sets forth the requirements and procedures to petition for a declaratory order in order to increase transparency for the public. A full description of the proposed changes can be found on the Statement of Basis, Authority, and Purpose.



Due to the State's COVID-19 response, this proposed permanent rule-making hearing will only be conducted in a virtual setting. All interested parties are urged to attend this public hearing by registering for the hearing through the link above, and to submit written comments concerning the proposed amended rules in advance if possible for consideration. The webinar registration link is also available on the Colorado Department of Transportation's website at <https://www.codot.gov/business/rules/proposed-rules.html>.

In order to facilitate the review of comments by the Hearing Officer, all interested parties are strongly encouraged to submit their written comments to Natalie Lutz via email at dot_rules@state.co.us, **on or before 5:00 p.m. on October 9, 2020**. Any written comments not received by October 9, 2020, may be submitted via public testimony at the hearing on October 16, 2020.

If you need special accommodations, please contact Natalie Lutz at 303.757.9441 or dot_rules@state.co.us at least one week prior to the hearing.

The proposed amended rules, notice of hearing, and the proposed statement of basis and purpose will be available for review by interested parties on or before close of business September 4, 2020, at the Colorado Department of Transportation's website at <https://www.codot.gov/business/rules/proposed-rules.html>. Please be advised that the proposed amended rules being considered are subject to further changes and modifications after public comment and the formal hearing.





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Statement of Basis, Authority, and Purpose

The rules governing outdoor advertising in Colorado (“Outdoor Advertising Rules”) are found at 2 CCR 601-3.

The specific authority under which the Executive Director of the Colorado Department of Transportation (“the Department”) shall establish these rules is set forth in §§ 43-1-105(6), 43-1-414(4), and 43-1-415, C.R.S.

The statutory basis of the Outdoor Advertising Rules is to control the use of advertising devices in areas adjacent to the state highway system in order to protect and promote the health, safety, and welfare of the traveling public. Additionally, the Outdoor Advertising Rules promote the reasonable, orderly, and effective display of outdoor advertising, while preserving and enhancing the natural and scenic beauty of Colorado.

The specific purpose of this rulemaking is to consider modifications, deletions, and additions to the Outdoor Advertising Rules as follows:

- The Department proposes to amend the definition of “Urban Area” in Rule 1.31 and add “Urbanized Area” as a defined term in Rule 1.31 in order to be consistent with federal regulation. These defined terms are necessary for interpretation and enforcement of the proposed Rule 7.00(D)(2) and (3) that sets forth the spacing requirements for advertising devices in the control areas adjacent to the state highway system.
- The Department proposes to amend Rule 2.3 to be consistent with state law found in § 43-1-411, C.R.S., which sets forth the conditions prohibiting the issuance of permits for outdoor advertising devices. Under the existing rule, it is unclear whether the Department must refuse to renew a permit if any of the conditions as prescribed in § 43-1-411, C.R.S., apply. However, statute only prohibits the Department from renewing a permit if the advertising device becomes decayed, insecure, or in danger of falling, or otherwise is unsafe or unsightly by reason of lack of maintenance or repair. The proposed amendments reconcile the rule with statute and clarify that the Department is prohibited from renewing a permit for an advertising device that is damaged, unsafe, or unsightly by reason of lack of maintenance or repair under § 43-1-411(5), C.R.S. This eliminates the risk of the Department unnecessarily refusing to renew permits for advertising devices which could be renewed under the law. The proposed changes to Rule 2.3 attempt to make the rule reflect, nearly verbatim, § 43-1-411, C.R.S.
- On-Premise signs are excepted from outdoor advertising control in Colorado. The Department seeks to clarify the distinction between On-Premise and Off-Premise signs by modifying Rule 6.02 while ensuring the underlying purposes of outdoor advertising regulatory control continue to be met. The proposed amendments add the terms “Principal Activities”, “Accessory Activities” and “Incidental Activities” to provide clarity in determining what is allowed on On-Premise signs. This terminology is also consistent with federal regulation. Additionally, the proposed amendments provide a content-neutral approach to assess whether an advertising device is On-Premise or Off-Premise. This content-neutral approach determines whether the advertising devices brings in rental income, which amounts to the following factors: (1) the sign is being marketed as an advertising device; (2) the sign owner is receiving value for advertising; (3) the sign owner has contracts for the sign that concern outdoor advertising; and/or (4) the



sign owner has contracts with a supplier that requires advertising. Applying these objective factors aids in determining whether an advertising device is On-Premise, or whether the advertising device is now operating as an Off-Premise commercial sign. Finally, the proposed amendments repeal the size and lighting standards for On-Premise signs. This reduces the administrative burden, simplifies the rules, and avoids the risk of agency overreach.

- In light of developments in highway design principles, developments in outdoor advertising laws and regulations, and stakeholder feedback, the Department proposes to clarify the restriction against advertising devices being located within 500 feet of an interchange, intersection at-grade, or safety rest area adjacent to interstates and freeways in Rule 7.00(D)(2). This rule derives from a 1971 agreement between the Department and the United States Secretary of Transportation and sets forth the State's size, spacing and lighting criteria. The Department proposes a hybrid approach that advertising devices cannot be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety Rest Area if the advertising device is located outside of an Urbanized Area and outside of the boundaries of an incorporated town or city. This hybrid approach contemplates changes in land use zoning and designations, such as unincorporated areas that are adjacent to or near the boundaries of incorporated towns or cities, by using the defined terms of "Urbanized Area". This change is consistent with the Highway Beautification Act's intent to preserve natural and scenic beauty. It also supports the consistent enforcement effort of advertising devices in control areas near interstates and freeway and promotes the reasonable, orderly and effective display of outdoor advertising while preserving and enhancing the natural and scenic beauty of Colorado. The proposed amendments also clarify: (1) the spacing limitation applies to the location of the advertising device and not the location of the interchange, intersection at grade or safety rest area; (2) what the limits of an interchange, intersection at grade, and safety rest area are; (3) how the 500-foot measurement is to be measured; (4) what is included in "pavement widening", and (5) how this rule applies to continuous auxiliary lanes and lanes for which the point of beginning or ending of pavement widening is not clear. Additionally, the Department proposes to clarify the spacing requirements for advertising devices adjacent to other controlled routes.
- The Department proposes to update the materials incorporated by reference in Rule 13.00 in accordance with § 24-4-103(12.5), C.R.S.
- Finally, the Department seeks to add Rule 14.00 that sets forth the requirements and procedures to petition for a declaratory order in order to increase transparency for the public. This is a voluntary process that allows for interested and affected parties to obtain position statements on statutes, rules, or orders relating to the regulation of outdoor advertising in Colorado.

