**INDOT’S RESPONSE TO PUBLIC COMMENTS**

1. Is there a simplified summary of what the actual legislative changes are?

Unable to get a red-lined version comparing today’s version of the proposed rule with what OAAI had agreed to in February 2016.

**RESPONSE**: *This administrative rulemaking does not address legislative changes, but is a rule. However, the rule changes are reflected in the proposed rule itself, as the language that is being modified is struck and the language being added is in bold. The red-lined version is included in the proposed rule itself. Since 105 IAC 7-1-3 was repealed, redlining the repealed version with the new 105 IAC 4-1-4 would result in the entire section being red-lined, which would defeat the purpose of receiving the redlined version. Moreover, INDOT does not have a red-lined version, marking out all of 105 IAC 7-1-3 that it can provide. If interested persons would conduct a side by side comparison from today’s proposed rule, which contains 105 IAC 7-1-4 and that of OAAI’s agreed upon version from February 2016, it would be noted that minimal changes were in fact made to the proposed rule. INDOT does not have a simplified summary of the proposed rule changes.*

1. Where's the layman's argument?

**RESPONSE**: *Thank you for your comment. INDOT is unsure how to respond to this comment, as INDOT does not know what it is referencing.*

1. I've noticed my nighttime views of the sky obstructed by billboards with uplighting. It is light pollution, and is a public health concern. Please see the following link for more info: <http://www.ncsl.org/research/environment-and-natural-resources/states-shut-out-light-pollution.aspx>. I'd like this bill to outlaw uplighting on billboards. C’mon. Just add it!

**RESPONSE:** *Uplighting on billboards is permissible under existing law. Without the uplighting, billboards would not be visible in the dark. Billboards may be lit pursuant to 23 USC 131 and 23 CFR 750.154(c). Uplighting of billboards is not prohibited under state or federal law. This rule will remain consistent with state and federal law and will not prohibit uplighting on billboards.*

1. I am concerned about the advance notification of these meeting, as not many citizens knew about these hearings. In the future, hearings should be at varied times other than 1 pm so that people who cannot get off work can have a chance to attend/participate.

I also think the public has not been aware enough of the process. I understand all the rules may have been followed, but more could be done. Some meetings should also be scheduled for the end of the workday so that average citizens who cannot take time off work can also participate without losing pay.

Could you please make an effort in the future to ensure that the public is notified about hearings regarding changes to billboard regulations? We do care strongly about this issue.

**RESPONSE**: *Notification of the public hearing was published in the Indianapolis Star and posted on the Indiana Register on November 21, 2018, and notice of the hearing was placed on INDOT’s public website for at least six (6) weeks prior to the public hearing. INDOT complied with I.C. 4-22-2-24, which only requires 21 days’ notice, and INDOT gave 49 days’ notice of the public hearing. The reconvening of the public hearing was announced at the initial public hearing on January 9, 2019 on the record, in accordance with I.C. 4-22-2-26. INDOT will consider changing the time of the public hearing when promulgating rules in the future.*

1. I am supportive of scenic by-ways and would not like the rules governing the by-ways weakened.  I have concerns about billboards detracting from Indiana's scenic roadways.

I am opposed to any weakening of scenic byways, rules and regulations. The fewer billboards in Indiana, the better.

I am very concerned about billboards detracting from our state's scenic roadways. We must admit, our state does not have as much jaw-dropping beauty as some states do. Therefore, we must do everything we can to protect what natural beauty we do have and, most importantly, to not ruin the beauty of our environment along our roadways with rampant billboards…especially digital billboards. I am highly supportive of scenic byways, and would not support seeing that process weakened in any way. I subscribe to e-mail newsletters from Scenic America (<http://scenic.org/>). It gives me optimism to learn that INDOT is involved in protecting scenic roadways in Indiana. Thank you! Please stand strong against the billboard companies! I know from personal experience that they are highly aggressive, to the point of inflicting discomfort. In a recent “Survey Monkey” poll conducted locally (by my aforementioned acquaintances), 70% of 600 respondents declared that they prefer to see **no billboards at all** on our roads.Thank you as well for remaining committed to preserving scenic beauty along Indiana roadways, in particular by protecting them against billboard invasions!

**RESPONSE***: INDOT does not have any current administrative rules governing scenic by-ways, as they pertain to outdoor advertising signs, which is the reason for including it in this rule. INDOT is required to administer the Highway Beautification Act (23 USC 131), which allows for control and placement of outdoor advertising along roadways. INDOT is unable to promulgate a rule, which would eliminate outdoor advertising altogether. However, the Outdoor Advertising Association collaborated with INDOT prior to the promulgation process and agreed that regulations for scenic byways need to be included in the rule.*

1. The billboard industry should not be permitted to write the very rules they must operate under.

The billboard industry should not be given undue influence to write the very rules they must live by. From what I have learned about this issue, the billboard industry representatives have been out in force and have vastly outnumbered regular citizens.

**RESPONSE**: *Members of the billboard industry are permitted and encouraged to collaborate with INDOT when INDOT is promulgating a rule, which will affect the very nature of their business. Any individuals or groups are allowed to engage with the government concerning proposed laws which may affect them, just as any citizen is allowed to attend and engage with INDOT when we seek input from citizens regarding road projects.*

1. I support any efforts to eliminate or reduce outdoor advertising signs in Indiana. Off-premises signs detract much more from any given community or corridor than they could ever contribute to it, and they compromise the beauty of any place where they are erected, without exception.

Ideally, Indiana would follow the lead of Vermont, Maine, Alaska and Hawaii and ban all billboards. But it's unlikely there exists the political will, foresight or plain grit to do so here, even though an outright ban has proven to be widely desired and is the safest legal means of avoiding or defeating the torrent of litigation routinely unleashed by outdoor advertising agencies toward the jurisdictions in which they operate.

So, for the time being, I hope the new Rule will at least tighten restrictions on outdoor advertising signage as much as possible, ideally with an eye toward eventual elimination of these blighting, landscape-marring monstrosities.

**RESPONSE**: *INDOT is required to administer the Highway Beautification Act (23 USC 131), which allows for control and placement of outdoor advertising along roadways. Further, applicable state law does not completely prohibit placement of outdoor advertising structures along most roadways. In the absence of any statutory authority to do so, INDOT is unable to promulgate a rule, eliminating outdoor advertising altogether. Indiana’s laws allow for installation and erection of outdoor advertising signs along its roadways (IC 8-23-20-25). The purpose of the rule is to clarify the laws to assist in more effective control of the billboards.*

1. The distance between signs can be as low as 100 feet.  That can cause a very high density of billboards along our highways that seems excessive.  Not only will the messages be too many for the traveling public to absorb, it could create a visual screen that steals the view from the public in order to show ads of all things.  Especially when talking about the distance between digital signs, which can change message every 8 seconds in an unsynchronized manner, it would be more than obnoxious and should not be allowed to be this close unless the separation is proven safe.  I would suggest 1000 to 1500 feet distance between static signs and a distance between digital signs proportional to the speed limit - such that only one message would tend to be shown as a vehicle passes through the distance whereby the sign’s message can be read.

**RESPONSE***: 23 CFR 750.704 states that INDOT is to work with the federal government on spacing, lighting and size requirements. INDOT and the Federal Highway Administration (“FHWA”) have entered into a Federal and State Stewardship and Oversight Agreement wherein the distance for installation of signs in an incorporated area is 100 feet. The Rule cannot supersede this agreement with FHWA. There is no distinct regulatory distance for digital signs which differs from the 100 feet requirement in incorporated areas.*

1. The distance from a home can be as low as 300 feet.  This distance might be alright for a static sign, as long as the lights are shielded in the direction of the home(s).  This is too small a distance between a home and a digital sign.  These signs are constantly changing at 8 second intervals, night and day, 365 days a year.  Residents deserve the peaceful enjoyment of their property and that includes a night without the intrusion of what amounts to a giant TV, 40 feet above ground level, a couple of feet away from their bedrooms.  This distance should be at least 600 feet, if not more, at a minimum.  There should be strict regulation of the amount of emitted light allowed from digital billboards that are within 2000 feet of a home.  The light standard might even be lower for billboards close to homes than others without nearby residences.

**RESPONSE**: *23 CFR 750.704 states that INDOT is to work with the federal government on spacing, lighting and size requirements. The Federal and State Stewardship and Oversight Agreement establishes the distance from a building used primarily as a residence must be at least 300 feet, and written consent from the resident must be provided for approval of the installation of a digital sign. This is in the current rule already under 105 IAC 7-3-1.5(g).*

1. The rule uses “glare” instead of a measurable level of light emission by digital billboards.  This certainly recognizes the biological response of eyes to bright light emitted from a digital billboard as one passes by.  The eye then takes time to readjust to the darkness of the road ahead at night.  This can cause a dangerous situation if there should be an animal in the road or a person changing a tire by the side of the road during the time it takes for eyes to readjust to darkness.  However, if the rule required that the emitted light be less than 1500 nits during sunny days and no more than 100 nits at night (with onboard equipment to modulate light intensity between those two extremes as ambient light conditions change), then the brightness of a digital billboard could be kept to the same levels as found with floodlit static billboards, which are easy enough to see at night and which do not startle the eye as much.  It also means that INDOT does not have to wait for a complaint to recognize a dangerous situation, but could measure compliance with the rule of randomly chosen billboards in order to preclude a dangerous situation.

      Nits measure emitted light – which is what digital billboards do.  One does not have to turn off the billboard in order to get an accurate measurement. These two facets alone make nit measurement superior to foot candle measurement of reflected light.

105 IAC 7-4-5(e**)** – The Association requests inserting a new (e) at this point and re-lettering subsequent paragraphs. The Association requests the proposed language below which would add objective standards to define the appropriate and acceptable level of brightness allowable for a changeable message sign. The suggested technical criteria are based on standards widely used in other states and municipalities and utilizes an inexpensive device for measuring the level of brightness in foot candles. Foot candles are an appropriate measurement unit since it accurately measures illuminance or light intensity as perceived by the human eye as opposed to luminance, or brightness, measured in nits which is measured at the surface of the sign which requires a “nit gun” which can cost seven to ten times the cost of a foot candle meter. The Association requests the following language:

(e) A changeable message sign shall have brightness levels capable of being measured and such brightness shall be limited to an acceptable, safe level or measurement, as follows: Changeable message signs shall utilize a light sensing device and automatic dimming technology to adjust the brightness of the sign relative to ambient light so that at no time shall a sign exceed a brightness level of three tenths (0.3) foot candles above ambient light, as measured using a foot candle meter and in conformance with the following process: Light measurements shall be taken with the meter aimed directly at the sign face. Measurements shall be taken as follows:

Sign Face Area Distance of Measurement

681-1000 sq. ft. 350 feet

385-680 sq. ft. 250 feet

* + 1. . ft. 200 feet

200-299 sq. ft. 150 feet

**RESPONSE***: INDOT acknowledges that objective criteria should be included in the rule concerning the glare of a sign. INDOT will modify subsection 105 IAC 7-4-5 to read as follows:*

*(e) Changeable message signs must possess and utilize a light sensing device with automatic dimming capabilities to adjust the brightness of the sign, so that the maximum luminescence level is not more than 0.3 foot candles over ambient light levels measured at a distance of:*

*(i) 150 feet for those sign faces less than or equal to 300 square feet;*

*(ii) 200 feet for those sign faces greater than 300 square feet but less than or equal to 378 square feet;*

*(iii) 250 feet for those sign faces greater than 378 square feet and less than 672 square feet; or*

*(iv) 350 feet for those sign faces equal to or greater than 672 square feet, but sign face area cannot exceed 1000 square feet.*

*In addition to the above requirements, signs under this subsection shall be configured to default to a static display or freeze the sign in a dark or blank position in the event of malfunction.*

1. The current rule requires a billboard company to name 2 contacts responsible for responding within 12 hours to an INDOT request to turn off the billboard.  The proposed rule extends that to 48 hours.  Given that INDOT is responding to what might be a dangerous situation along its highway, 12 hours should be the required response time and it should not be extended to 2 days.  The billboard companies are required to provide 2 contacts for the purpose of responding to an INDOT request – so those 2 should be chosen for their availability and ability to respond in a timely fashion.  With the technology today, these billboards can be turned off with a cell phone app, so extending the time is not justifiable.

105 IAC 7-4-5(d)(2)– The Association is requesting the following revision to this section to change the period in which a permittee shall be required to take appropriate corrective action regarding a changeable message sign. The Association requests the following underlined language be inserted into this section so it reads, “(2) otherwise interferes with the operation of a motor vehicle; then upon request from the department the permittee shall inform the department of the corrective action it intends to take within twelve (12) hours of actual receipt of notice from the department and take appropriate corrective action to fix the problem or cause the sign to be frozen in a dark or blank position within forty-eight (48) hours. Failure to take such appropriate corrective action within forty-eight (48) hours after a department request to do so may result in revocation of the permit for this sign.”The change requires the permittee to address the problem and provide a plan for correcting the issue to the department which allows for a reasonable period to perform diagnostic and repair services of the sign.

**RESPONSE***: INDOT concurs with this request that the billboard company should respond within twelve (12) hours and resolve the issue. INDOT will change subsection 105 IAC 7-4-5(d)(2) of the proposed rule to read as follows: “then upon request from the department the permittee shall take appropriate corrective action to fix the problem or cause the sign to be frozen in a dark or blank position within twelve (12) hours. Failure to take such appropriate corrective action within forty-eight (48) hours after a department request to do so may result in revocation of the permit for this sign.”*

1. There is no requirement for an annual registration of billboards.  I think requiring annual registration can provide a number of benefits.
2. The billboard companies know which billboards they own and where they are located.  INDOT is required by Federal Highway to know where every billboard along their highways is located and who owns them.  At one meeting I heard the billboard company representatives complain that the ownership information found in the INDOT electronic database is often outdated, and INDOT representatives point out that it is up to the billboard companies to input the data.  If there was an annual registration, the system would be up to date and accurate.
3. There does not need to be an annual fee, unless the Legislature wishes it to be so, given that the same electronic database could be used for the annual registration.
4. INDOT would know if any billboard was sold and the new owner did not re-register (and pay the fee to do so).
5. INDOT would know if any billboards have been abandoned since 1993, the year of the only registration so far, and need to be removed.  An annual registration would also alert INDOT to any billboard abandoned during the year and no longer claimed by an owner.  The responsibility for removal could be timely assigned to the company that claimed it 12 months previous.
6. The information required of the billboard companies to name 2 contacts would be up to date.

**RESPONSE**: *INDOT has implemented one of these suggestions in the proposed rule by requiring a transfer of ownership be provided to INDOT whenever a billboard is sold. INDOT conducts an annual inventory to identify the legality and/or any issues of any outdoor advertising signs.*

1. The definition of "Customary maintenance or repair on a nonconforming sign" states that "such activity is not intended to prolong the duration of the nonconforming sign's normal life." I believe any maintenance or repair of anything, by definition, will prolong the duration of its normal life.

**RESPONSE**: *INDOT will modify the definition in subsection 105 IAC 7-4-2(10) of the proposed rule to read as follows: “Customary maintenance or repair on a nonconforming sign” means any activity or maintenance of 25% or less of the nonconforming sign performed within twelve (12) months for the purpose of the nonconforming sign remaining in its existing approved physical configuration and size dimensions at the specific location in the records of the department, but only if such activity is not intended to prolong the duration of the nonconforming sign’s normal life.*

1. Under the definition of "Destroyed", item (ii) only allows us to replace up to 30% of any steel support. I'm not sure replacing 30% of a steel pole is possible, and it seems to conflict with item (i) which says we can replace up to 50% of the steel supports.

**RESPONSE***: Item (i) refers to item count, so 50% or more of the number of supports. Item (ii) refers to 30% or more of the total length above ground. If it would require repair or replacement of 30% or more of the above-ground total length of the support, it is considered destroyed.*

1. The definition of "Discontinued" says permittees cannot advertise themselves or advertise the sign for rent for 12 continuous months. I don't believe we should be penalized for not being able to rent an advertising face, and I don't believe doing so falls within the scope of INDOT's control (erection, repair, and maintenance of signs.)

**RESPONSE**: *23 CFR 750.707(d)(6) provides INDOT with authority to establish criteria for a designated period of time to replace advertising content and when new content is not put on a structure within the established period, the use of the structure shall be terminated and considered an abandonment or discontinuance.*

1. The definition of "Obsolete" mentions obsolete or outdated advertising matter. That is a subjective definition. We should be given notice when INDOT considers something obsolete or outdated and have time to rectify the situation.

105 IAC 7-4-2(28) – OAAI requests the phrase “or which has been destroyed” be stricken from the definition of “obsolete” so it would read, “Obsolete” means a sign face of a nonconforming sign containing obsolete or outdated advertising matter for a period of twelve (12) continuous months.” The phrase in the draft rule, “or which has been destroyed,” should be removed since the word “destroyed” is a defined term in the proposed rule and that definition is not consistent when used in the definition of “obsolete.” As proposed, the use of “destroyed” in the definition serves to equate the defined words “obsolete” and “destroyed.” “Destroyed” has a distinct set of criteria (see 105 IAC 7-4-2(13)) which is inapplicable to the definition of “obsolete.”

**RESPONSE**: *The term “obsolete” is not going to specify a timeframe within which INDOT is to provide notice in its definition. INDOT is not attempting to regulate content, but is ensuring the advertisement is not out of date for a period of 12 months. INDOT agrees to remove “or which has been destroyed” from the definition of “obsolete”.*

1. Sec. 11 (b) requires us to provide written notice when a property owner changes. Will there be a way to accomplish this without submitting an addendum and paying $100? That seems excessive for a property owner update.

**RESPONSE**: *I.C. 8-23-20-25(f)(3)(B) provides that a $40 fee per structure be paid for the transfer of the sign and permit and must paid within 180 days after the transfer date. If this is not paid timely, it is subject to a $400 late fee. No addendum is required for this transfer of ownership, but notice and payment of a transfer fee is required by law.*

1. Sec. 13 (1) says a nonconforming sign must remain substantially the same as it was on the date that its status became nonconforming. This phrase appears other places as well. How does INDOT define the date the status becomes nonconforming?

**RESPONSE**: *A sign becomes nonconforming on the date the sign received its nonconforming permit or the date it was downgraded from a legal conforming sign to a nonconforming sign. All information and documentation regarding the condition and status of the sign is available in EPS.*

1. Sec. 13 (3)(b) states we cannot extend the life of the nonconforming sign beyond its normal life. How does INDOT define "normal life"? Wouldn't any repair and maintenance extend the normal life?

**RESPONSE**: *105 IAC 7-4-13(3)(B) does not state that the life of a nonconforming sign cannot be extended beyond its normal life. The items listed in this section of the rule are prohibited and are considered to extend the life of the sign. Not all maintenance will extend the normal life of a sign due to the limited repairs that are permitted to be made. Please see the definition of customary maintenance or repair as defined in 105 IAC 7-4-2(10).*

1. Sec 13 (8)(A) The business that advertises on the sign should not be included in the list of "sign parties." They have no interest in the sign structure, the permit, or the property.

**RESPONSE**: *INDOT disagrees. The business who advertises on the sign does have an interest in the sign structure, as they have an advertisement on the sign itself. Therefore, they should be included as a “sign party”.*

1. Sec 20 (f) We don't receive notice of zoning changes. Also I don't think we should lose a permit "at the discretion of the department" if we don't voluntarily downgrade our own permits.

**RESPONSE**: *This section only applies upon the permittee receiving notice of the zoning change.*

1. Sec. 21 (d)(4) If INDOT decides to designate a Scenic Byway, we will lose any permits along that byway where construction is not complete. We are supposed to have 365 days from the date the permit is issued to complete construction. We stand to lose a substantial amount of money if a project has been started but isn't completed. Erecting a structure takes time and we can't always fast-track a project upon notice that the area has been nominated for Scenic Byway status.

**RESPONSE***: The permittee is notified when an application for a scenic byway designation is pending. If construction has not been completed at the time of the scenic byway designation, in accordance with 23 USC 131(s), the permittee is prohibited from then erecting the sign. If the permittee makes a request for segmentation, the department may under its reasonable discretion allow a particular segment be excluded from the scenic byway, if certain conditions are present.*

1. Lamar agrees with the comments by Mr. Alan Townsend in his letter dated December 28, 2018, regarding the provisions of LSA Document 17-337 (105 IAC 7-4-21) – Scenic By-Ways being contrary to Indiana law.

Scenic byways language – no statute exists that states INDOT can create a Scenic Byway Program.

**RESPONSE**: *INDOT has ample authority under applicable state and federal law to create and administer a Scenic Byway Program. Federal law provides for the creation and administration of the National Scenic Byways Program (the “Program”), pursuant to 23 U.S.C. § 162. In 1998, Section 162 was added as part of the Transportation Equity Act of the 21st Century (“TEA-21”). Section 162 requires the Secretary of Transportation to carry out the Program and to designate roads “in accordance with criteria developed by the Secretary.” The criteria the Secretary of Transportation developed are contained in a Federal Highway Administration (“FHWA”) notice of interim policy at 60 FR 26759 (the “Policy”).*

*The Policy provides that any highway nominated or submitted to the Secretary of Transportation for designation as a National Scenic Byway “will be considered to be a designated State Scenic Byway.” See 60 FR 26759 at 26760, Item 3.a. The Policy also establishes a process for nomination of highways as scenic byways, requiring that a State Scenic Byways Agency submit all nominations to FHWA. Under the Policy, the U.S. Department of Transportation assumes that the State Department of Transportation as recognized in the administration of Title 23 of the United States Code is the State Scenic Byways Agency, unless a state designates another entity. In Indiana, INDOT administers the Title 23 of the United States Code and since there is no other entity designated as the Scenic Byways Agency, INDOT is the authority by FHWA to administer Indiana’s Scenic Byways Program.*

*At the state level, INDOT has broad statutory authority under IC 8-23-2-6 that contemplates participation in federal programs as necessary to secure federal funding. Under IC 8-23-2-6, INDOT may do any of the following through the Commissioner or the Commissioner’s designee:*

1. *Contract with persons outside the department to do those things that in the commissioner's opinion cannot be adequately or efficiently performed by the department. See IC 8-23-2-6(a)(2).*
2. *Make contracts and expenditures, perform acts, enter into agreements, and make rules, orders, and findings that are necessary to comply with all laws, rules, orders, findings, interpretations, and regulations promulgated by the federal government in order to:*

*(A) qualify the department for; and*

*(B) receive;*

*federal government funding on a full or participating basis.*

*See I.C. 8-23-2-6(a)(9).*

1. *Perform all actions necessary to carry out the department's responsibilities. See 8-23-2-6(a)(13).*

*As stated previously, IC 8-23-2-6(a)(9) and 8-23-20-25 allow INDOT to make and adopt rules to qualify for federal funding and to regulate outdoor advertising both of which contain a scenic byways component. INDOT has had a scenic byways program since at least 1997. During this time the Indiana General Assembly (“IGA”) has not passed any statutes providing for the creation and management of a scenic byway program. It is reasonable to infer that the IGA has been satisfied with INDOT’s program for the last 20 years.*

*Additionally, the IGA has explicitly acknowledged INDOT’s authority regarding scenic byways. In several instances, the IGA passed resolutions requesting INDOT designate certain roads to be scenic byways. The 107th Session of the IGA adopted House Resolution No. 47 urging INDOT to re-designate portions of certain highways as the Ohio River Scenic Route. The 112th Session of the IGA adopted a concurrent resolution supporting the designation of Indiana’s Historic Pathways as a state and national scenic byway. This resolution supported the application submitted to INDOT indicating the IGA recognized INDOT’s scenic byway authority. The 119th Session of the IGA adopted House Concurrent Resolution No. 19 requesting INDOT update and re-designate the route described in Resolution No. 47. Resolution No. 19 also references the Indiana State Byways Advisory Committee indicating the IGA recognizes the authority vested in the Committee. By requesting INDOT make these designations, the IGA is demonstrating through its conduct that INDOT has the authority to establish scenic byways. This conduct supports the argument that state statutes are not required to give INDOT authority to create and maintain a scenic byways program.*

*IC 8-23-20-25(e) states that INDOT shall adopt rules to regulate the erection and maintenance of outdoor advertising signs. Rules adopted under this section may be no broader than necessary to implement 23 USC 131 and 23 CFR 750. Further, IC 8-23-20-25(f)(9) states that rules adopted for the control of outdoor advertising must include provisions necessary to avoid sanctions under 23 USC 131. These two sections make it clear that INDOT must adopt rules that account for 23 USC 131, which includes restrictions for scenic byways. INDOT would risk violating the federal outdoor advertising statutes and funding under that statute without a scenic byway program to account for preventing the erection of certain billboards on a road designated as a scenic byway.*

*INDOT is the entity recognized by FHWA to administer Indiana’s Scenic Byways Program. INDOT’s authority to create and manage a scenic byway program is further supported by federal and state law because it could risk funding without a scenic byway program and because a program is contemplated under federal law and policy.*

*During the recent process to update INDOT’s outdoor advertising rules, FHWA reviewed the proposed rules, offered comments and supported the promulgation of the revised rules. Due to the IGA’s acquiescence to and arguably approval of INDOT’s program, FHWA’s approval of the proposed rules (instead of recommending legislative changes for a scenic byways program) and because the regulation of outdoor advertising and scenic byways are closely connected the most appropriate place to promulgate the rules for INDOT’s Scenic Byways Program is 105 IAC 7, the current rules for the regulation of outdoor advertising.*

1. There are many references to revocation throughout the proposed rules, including, but not limited to: 105 IAC 7-4-3(e), 105 IAC 7-4-4(a) (c), 105 IAC 7-4-5(d)(2), 105 IAC 7-4-6(b), 105 IAC 7-4-8(e), 105 IAC 7-4-11 (c), 105 IAC 7-4-12(a), 105 IAC 7-4-13(1), (5)(D), (7), 105 IAC 7-4-15(a) (d), 105 IAC 7-4-19(a) (D) (b), 105 IAC 7-4-20(f), 105 IAC 7-4-21(d)(3). In regards to these subsections, why isn’t there a procedure being proposed by INDOT to provide for notification period and opportunity to provide remedial action to cure any issue prior to revocation? Revocation is a serious matter that could potentially lead to unnecessary litigation by INDOT and/or industry member that can simply be avoided by the opportunity to cure via remedial action.

**RESPONSE***: The rule does provide for notification of revocation under 105 IAC 7-4-12. INDOT does provide an opportunity to the permittee to submit additional documentation prior to the formal revocation. The procedure will be further outlined in the INDOT Outdoor Advertising Permit Manual.*

1. 105 IAC 7-4-6(b) – Delete the sentence No extension time shall be granted by the department. Substitute: A one-time six (6) month extension upon written request to the department following: [sic]

**RESPONSE**: *All types of permits are valid for one year from the issuance date. INDOT has made the decision that no extensions shall be granted for outdoor advertising sign permits.*

1. 105 IAC 7-4-6(c) – Replace the proposed (c) by designating it to (d) and substituting the following as (c) – For any sign constructed and registered on or before December 31, 1993, the department shall make a determination of the registered sign’s eligibility for a legal conforming or nonconforming permit as of the date the registration form was submitted to the department. The department shall issue a legal nonconforming permit or a legal conforming permit based upon the information in the registration form. If the determination for a legal nonconforming permit is made and the sign owner has documentation to demonstrate the sign is eligible for a legal conforming permit, the sign owner shall have ninety (90) days from the date of the department’s notice of the determination to provide documentation to the department. If the sign owner provides said documentation, the department shall have thirty (30) days to make a determination regarding the conforming status of the sign. The sign owner may appeal the department’s determination in accordance with the applicable time period set forth in I.C. 4-21.5.

105 IAC 7-4-6(c)– The Association requests the following language be added as new paragraph (c) and the current paragraph (c) be changed to paragraph (d). The language being proposed is the result of on-going discussions between the Association and the department regarding the issues addressed in new paragraph (c) in this section. The Association and the department believe the compromise language addresses the issue of signs registered in the early period of the program for which a registration was submitted to the department in a comprehensive manner and both the Association and the department agree the following language should be inserted into the proposed rule to address this issue:

“(c) For any sign constructed and registered on or before December 31, 1993, the department will make a determination of the registered sign’s eligibility for a permit as of the date the registration form was submitted to the department. If the department determines the registered sign is eligible for a permit, the department shall issue a legal nonconforming permit or a legal conforming permit based upon the information in the registration form. If the determination for a legal nonconforming permit is made and the sign owner has documentation to demonstrate a legal conforming permit should be issued, the sign owner shall have ninety (90) days from the date of the eligibility determination to provide documentation to the department. If the documentation submitted to the department is found to be inadequate to support a legal conforming permit, the legal nonconforming permit determination shall be final. If the department determines the registered sign is not eligible for a permit, then the registered sign is a public nuisance and is subject to removal.”

**RESPONSE**: *INDOT agrees to modify the language of 105 IAC 7-4-6(c) as proposed by the Association.*

1. 105 IAC 7-4-6: Substitute as (d) - When multiple permit applications are received for proposed signs at the same site or at sites that would conflict with the spacing criteria in this rule, priority shall be given in the order the applications were received by the department. If an application is returned to an applicant because it is not complete or has incorrect information, the application loses its priority position. The department will hold an application, without taking any further action on it, if it is for the same site as, or for a conflicting site with that of an application that the department previously received and that has not been denied. The department’s hold will continue until the department makes a final decision on the previously received application and all appeals relating thereto have been concluded, or until the department returns the previously received application to its applicant. The department will notify the subsequent applicant in writing or through the electronic permitting system that the subsequent application is being held because an application for the same site or for a conflicting site was previously received.

105 IAC 7-4-6(d) – The Association requests the current paragraph (d) be changed to paragraph (e) and the paragraph be changed to read the following: “Whenever a spacing or other conflict exists between an application for a proposed sign and an existing sign constructed on or before December 31, 1993, which was timely registered under state law but for which a valid permit has not been issued, the department shall make a determination of the registered sign’s eligibility for a permit. If the department determines that the registered sign is eligible for a permit, the department shall issue a permit for the registered sign and deny the application for the proposed sign. If the department determines that the registered sign is not eligible for a permit, the registered sign is a public nuisance and subject to removal, and the department shall consider the application for the proposed sign.”The Association and the department agree the language revisions being proposed are necessary to be consistent with the proposed new paragraph (c) in this section and adequately address the issue of signs registered at the onset of this program.

**RESPONSE**: *INDOT agrees to modify the language of subsection 105 IAC 7-4-6(d) as proposed by the Association.*

1. 105 IAC 7-4-6: Substitute as (e) - Whenever a spacing or other conflict exists between an application for a proposed sign and an existing sign constructed on or before December 31, 1993, which was timely registered under state law but for which a valid permit has not been issued, the department shall make a determination of the registered sign’s eligibility for a permit within ninety (90) days. If the department determines that the registered sign is eligible for a permit, the department shall issue a permit for the registered sign and deny the application for the proposed sign. If the department determines that the registered sign is not eligible for a permit, the registered sign is a public nuisance and subject to removal, and the department shall consider the application for the proposed sign.

**RESPONSE**: *INDOT agrees with most of the suggested changes. INDOT will modify the language of subsection 105 IAC 7-4-6(e) to read as follows:*

(e) Whenever a spacing or other conflict exists, an application for a proposed sign and an existing sign constructed on or before December 31, 1993, which was timely registered under state law but for which a valid permit has not been issued, the department shall make a determination of the registered sign’s eligibility for a permit. If the department determines that the registered sign is eligible for a permit, the department shall issue a permit for the registered sign and deny the application for the proposed sign. If the department determines that the registered sign is not eligible for a permit, then the registered sign is a public nuisance and subject to removal, and the department shall consider the application for the proposed sign.

1. 105 IAC 7-4-3: Appears to conflict with Ind. Code 26-2-8-106, which would conflict with Burns Ind. Code. Ann. (BICA) 4-22-2-19.5 stating a proposed rule should avoid duplicating standards found in state or federal laws.

Conflict between Indiana’s statute governing electronic signatures on documents (IC 26-2-8-106), such as permit applications, and these proposed rules, which in some instances require original signature for an application.

**RESPONSE**: *105 IAC 7-4-3 does not conflict with I.C. 26-2-8-106 or 4-22-2-19.5.*

*The complete text of the section reads:*

*“A separate application for a permit shall be made for each sign on a form furnished by the department or through the electronic permitting system. The application must be verified, and include, at a minimum, the following information:*

1. *The original signature of the applicant,* ***unless the applicant using the electronic permitting system****.” (emphasis added).*

*INDOT does not require original signatures if the electronic permitting system is used; however, there are some limited circumstances upon which an original signature may be necessary to comply with Title VI and ADA requirements.*

1. 105 IAC 7-4-3, 7-4-4: Why is a lease not considered sufficient evidence of owner consent?

**RESPONSE***: A lease would be considered sufficient evidence; however, the Association has been reluctant to provide copies of leases. Instead, the industry requested an alternative submission of an Affidavit of the Property Owner be utilized in lieu of a lease. INDOT agreed to this request. INDOT would also accept a lease as sufficient evidence of owner consent.*

1. 105 IAC 7-4-4(c) – This section adds fees, late fees & revocation verbiage – again does this constitute a violation of BICA 4-22-2-19.5 stating “Minimize the expenses to regulated entities.”

**RESPONSE**: *I.C. 8-23-20-25 establishes all fees for outdoor advertising, from where this language is derived. This does not violate I.C. 4-22-2-19.5.*

1. 105 IAC 7-4-2(13) – If the industry is allowed to replace support poles with like materials why is replacing a metal support with a larger or thicker metal support prohibited?

**RESPONSE**: *In accordance with the Highway Beautification Act (23 USC 131), a nonconforming sign must remain substantially the same as it was on the date that its status initially became nonconforming, which includes size, lighting, spacing, specific location, materials, etc. Customary maintenance is not intended to prolong the life of a sign. A larger, thicker metal support would not meet the established requirements listed herein.*

1. 105 IAC 7-4-2(25) – Change the definition of the main traveled way to state: “Main-traveled way” means the traveled way of the highway on which through traffic is carried. For a divided highway, the traveled way of each of the separate roads for traffic in opposite directions is a main-traveled way. This term does not include frontage roads, turning roadways, parking areas, or shoulders. The addition of the word “shoulders” further clarifies the definition and is consistent with the remainder of the description of the “Main-traveled way” and how most people picture the elements of a road which should also be contained in the definition.

**RESPONSE**: *INDOT agrees with adding “shoulders” to this definition.*

1. 105 IAC 7-4-2(41) – OAAI requests the definition of “spot zoning” be stricken and replaced with the following: “Spot zoning” is defined as:
   1. The singling out a parcel of land or portion thereof through a rezoning of the parcel or portion thereof from a non-commercial or non-industrial zoning classification for the expressed reason of making the use different from and less restrictive than the actual use of parcels in the surrounding area; and
   2. The parcel of land or portion thereof was created solely for the erection and permitting of a sign; and
   3. The use of the parcel or portion thereof is not part of plans for commercial and industrial development, as found in the comprehensive zoning plan or similar zoning and planning documents, including any amendments and variances approved by the local unit of government; and
   4. The parcel or portion thereof is not appropriate for commerce, industry or trade to take place.

OAAI’s proposed definition is consistent with the FHWA legal opinion published in 2006 and provided to the state of Minnesota entitled, “Legal Opinion of the FHWA’s Interpretation of 23 CFR 750.708Ib), Acceptance of State Zoning for Purposes of the Highway Beautification Act” Joi Singh 202-493-0350, Office of Planning, Environment & Reality, July 25, 2006. The Opinion states in relevant part, “To determine whether a zoning action is an attempt to circumvent the HBA, the FHWA would look at various factors: the expressed reasons for the zoning change; the zoning for the surrounding area; the actual land uses nearby; the existence of plans for commercial or industrial development; the availability of utilities (such as water, electricity, and sewage) in the newly zoned area; and the existence of access roads, or dedicated access, to the newly zoned area. No one of the above factors alone is determinative. If a combination of them, however, shows that the zoning action is primarily to allow billboards in areas that have none of the attributes of a commercial or industrial area, the FHWA would not be compelled to accept the zoning action as valid under 23 USC 131(d).” The definition the Association is proposing is consistent with FHWA’s opinion, incorporates the criteria stated by FHWA in the legal opinion and provides objective standards utilizing the criteria which clarify the definition of “spot zoning.” Further, the proposed language recognizes that a comprehensive zoning plan is not a static document and is subject to changes through amendment or variances which may occur in the interim between complete rewrites of the comprehensive zoning plan.

**RESPONSE**: *INDOT will delete the current definition and will substitute this definition with the exception of the use of “and” after each item and replace it with “or”, and modifying (c) to read as follows: “The use of the parcel or portion thereof is not part of plans for commercial and industrial development, as found in the comprehensive zoning plan, including any amendments or variances approved by the local unit of government.”*

1. 105 IAC 7-4-2(43) – OAAI requests the definition of “Strip Zoning” be stricken and replaced with the following: “Strip Zoning” means:
2. The process of singling out a narrow of strip of no more than five hundred (500) feet wide, measured perpendicular to the right-of-way, consisting of either a single parcel or contiguous parcels through a rezoning of the parcel or portion thereof from a non-commercial or non-industrial zoning classification for the expressed reason of making the use different from and less restrictive than the actual use of parcels in the surrounding area; and
3. The parcel of land or portion thereof was created solely for the erection and permitting of a sign; and
4. The use of the parcel or portion thereof is not part of plans for commercial and industrial development as found in the comprehensive zoning plan or similar zoning and planning documents including any amendments and variances approved by the local unit of government; and
5. The parcel or portion thereof is not appropriate for commerce, industry or trade to take place.

The OAAI’s proposed definition is consistent with FHWA legal opinion published in 2006 and provided to the state of Minnesota entitled, “Legal Opinion of the FHWA’s Interpretation of 23 CFR 750.708Ib), Acceptance of State Zoning for Purposes of the Highway Beautification Act” Joi Singh 202-493-0350, Office of Planning, Environment & Reality, July 25, 2006. The Opinion states in relevant part, “To determine whether a zoning action is an attempt to circumvent the HBA, the FHWA would look at various factors: the expressed reasons for the zoning change; the zoning for the surrounding area; the actual land uses nearby; the existence of plans for commercial or industrial development; the availability of utilities (such as water, electricity, and sewage) in the newly zoned area; and the existence of access roads, or dedicated access, to the newly zoned area. No one of the above factors alone is determinative. If a combination of them, however, shows that the zoning action is primarily to allow billboards in areas that have none of the attributes of a commercial or industrial area, the FHWA would not be compelled to accept the zoning action as valid under 23 USC 131(d).” The definition the Association is proposing is consistent with FHWA’s opinion, incorporates the criteria stated by FHWA in the legal opinion and provides objective standards utilizing the criteria which clarify the definition of “strip zoning.” Further, the proposed language recognizes that a comprehensive zoning plan is not a static document and is subject to changes through amendment or variances which may occur in the interim between complete rewrites of the comprehensive zoning plan.

**RESPONSE**: *INDOT will delete the current definition and will substitute this definition with the exception of the use of “and” after each item and replace it with “or” and (c) shall be modified to read as follows: “The use of the parcel or portion thereof is not part of plans for commercial and industrial development, as found in the comprehensive zoning plan, including any amendments or variances approved by the local unit of government.”*

1. 105 IAC 7-4-3(a) – OAAI requests the phrase “on a form furnished by the department” be stricken from the first sentence of this section so it reads, “A separate application for a permit shall be made for each sign through the electronic permitting system.” INDOT No longer provides nor accepts hard copy submissions according to a policy change implementation by the department in October of 2018. Permit application may only be submitted through the EPS system which makes the reference to a “form provide by the department” no longer relevant or appropriate because of the department’s procedural change.

**RESPONSE**: *INDOT agrees that its policy changed on October 1, 2018 to require applications to be submitted through its electronic permitting system. However, there may be some limited circumstances upon which a form must be furnished and an original signature may be necessary to comply with Title VI and ADA requirements. Therefore, INDOT will not remove this language.*

1. 105 IAC 7-4-3(b) – OAAI requests the additional underlined clarifying language be added so this section reads, “Otherwise, all documents included with an incomplete application shall be returned to the applicant (but not sooner than fifteen (15) days after the date upon which it was submitted) without being processed, along with a written explanation of the reason for its return, including references to the specific code or rule sections which form the basis for the department’s return of the application, and the application fee shall be returned by the department.

The reasons for the denial need to clearly indicate the specific section the department is relying on so the applicant has a better understanding and can fully assess any appeal or other rights it may have if the applicant disputes the department’s decision.

**RESPONSE**: *Return of an incomplete application is not a final administrative action and therefore is not subject to an appeal. Since this is not a final administrative action, INDOT is not going to reference the specific code or rule sections in the return of an incomplete application, as the deficiencies are made known with the initial notice and opportunity to provide the missing information in the incomplete application.*

1. 105 IAC 7-4-3(c)– The Association requests the underlined clarifying language be added so this section reads, “Any denial of a permit shall be in writing, accompanied by the rationale for the denial including references to the specific code or rule sections which form the basis for the department’s denial, and shall be sent to the applicant by U.S. certified mail.The reasons for the denial need to clearly indicate the specific section the department is relying on so the applicant has a better understanding and can fully assess any appeal or other rights it may have if the applicant disputes the department’s decision.

**RESPONSE:** *INDOT declines to add this language, as the reasons for the denial will be set forth in the denial letter. INDOT will comply with all requirements of IC 4-21.5.*

1. 105 IAC 7-4-3(e)– The Association requests additional language be added to establish a statute of limitations for actions involving claims by the department of false information provided on the permit application. It is important to understand that permits are based upon the date of approval by INDOT which, for older signs, may have been at the onset of the permit program in 1993 – over 25 years ago. As written, this would subject a permittee to potential liability for an unreasonable period of time which is open-ended and not time barred. This is inherently unfair and places an undue burden on the permittee in the event the department makes such a claim based on a permit application submitted many years before. In addition, the Association requests the term, “or misleading” be stricken since it is subjective and has no legal significance. The Association requests the section be rewritten in its entirety to read, “The department shall have authority, thirty (30) days after notice in writing to the permittee, to revoke any permit issued under this rule where the application for the permit contains false information or where the permittee has violated any provision of this rule. A revocation action for an allegation of false information contained in a permit application must be initiated by the department within five (5) years of the date of the permit approval or the department is barred from making this claim.”

**RESPONSE**: *INDOT does not have statutory authority to create a statute of limitations and hereby rejects the additional language creating a statute of limitations. INDOT rejects removing the term “misleading” from this section. I.C. 8-23-20-25(f)(8) allows INDOT to revoke a permit if “the permittee has provided false or misleading information”.*

1. 105 IAC 7-4-3(f)(1) – The Association requests the term, “or misleading” be stricken since it is subjective and has no legal significance.

**RESPONSE:** *INDOT rejects removing the term “misleading” from this section. I.C. 8-23-20-25(f)(8) allows INDOT to revoke a permit if “the permittee has provided false or misleading information”.*

1. 105 IAC 7-4-4(c) **–** The Association is requesting the department to adjust the fees assessed for processing the transfer of ownership of the sign or permit for bulk transfers since they are not rationally related to the service being provided in the case of multiple signs or permits transferred as part of a single transaction. Fees assessed by government agencies are subject to a rational relationship test. While the fee being charged by the department for the transfer of a single permit relative to the cost of the time and effort required by the department to provide that service for the transfer of a single permit or sign may be rationally based, a bulk transfer of multiple permits requires far less time and effort on a per permit basis. The Association requests language recognizing this fact and suggests the following language be inserts, “If a single transaction results in the transfer of more than ten (10) permits, the transferor be assessed a maximum fee of five hundred dollars ($500.00).”

**RESPONSE**: *This request is being rejected by INDOT as the fees are statutorily set as found in I.C. 8-23-20-25(f)(3).*

1. 105 IAC 7-4-5(e) **–** The Association requests the current paragraph (e)be stricken and replaced with the following,“An electronic billboard shall be operated with systems and monitoring in place to either turn the display off or show a full black image in the event of a malfunction that affects at least fifty percent of the sign area.” The proposed language is more comprehensive in its scope, is consistent with the standards adopted by other states and municipalities, and is based upon technical terms commonly used and understood by the outdoor advertising industry.

**RESPONSE**: *INDOT will modify subsection 105 IAC 7-4-5(e) to read as follows: “A changeable message sign shall be operated with systems and monitoring in place to either turn the display off or show a full black image in the event of a malfunction.”*

1. 105 IAC 7-4-9(a) – The Association requests the language at the beginning to this section be changed to account for the situation of changes to the list of control routes. The Association is concerned that each change to the list will require the rule be opened and go through the complete process necessary to amend the rule. The Association suggests the following language be inserted prior to the list: “**T**he department shall maintain a list of control routes designated by the State of Indiana on the Internet at [www.in.gov/indot/xxxx.htm](http://www.in.gov/indot/xxxx.htm)” This will allow the department to maintain a current and complete list available to the outdoor advertising industry and members of the public.

**RESPONSE**: *INDOT will list the current control routes as of 7/1/18 and agrees to add the hyperlink for the most current listing of control routes.*

1. 105 IAC 7-4-10(a)(6) – The Association requests the language be stricken in its entirety and the following language be inserted in order to be consistent with the definition of “spot zoning” proposed by the Association, **“**Where the zoning change is from a non-commercial or non-industrial zoning classification for the expressed reason of making the use different from and less restrictive than the actual use of parcels in the surrounding area solely for the erection and permitting of a sign or constitutes strip or spot zoning.” This reason for denial of a permit needs to be consistent with FHWA guidance and, as currently stated in the draft rule, is overly broad and open to different interpretations regarding the comprehensive zoning plan. The Association’s proposed change addresses the intent of the zoning action and ties it to the comprehensive definitions for spot and strip zoning the Association is proposing which are consistent with the language and intent of the FHWA guidance and legal interpretations regarding spot zoning.

**RESPONSE***: INDOT must leave the language concerning the comprehensive plan in the rule, as it is mandated by both federal law (23 CFR 750.708(b) and state law (IC 23-20-15) and is consistent with FHWA guidance.*

1. 105 IAC 7-4-10(a)(7) – The Associationasserts the proposed language is overly speculative and seeks to deny a permit based upon possible outcomes and occurrences with an undefined time period as evidenced by the underlined terms (“From twelve (12) months prior to the proposed letting of a new construction contract that may affect the spacing or location requirements for an outdoor advertising structure until the project is completed.”)(emphasis added). A denial of a permit based on possible occurrences is, at best, an arbitrary exercise of authority which could be seen as a prior restraint. The Association would request the applicant and the department be allowed to enter into an agreement in which the applicant would agree that they“1.) have been made aware of the possibility of a proposed construction project impacting the location of the sign; and 2.) if the permit is issued and the sign must be removed or removed due to the design of the project that the cost of moving or removing the sign will be wholly the expense of the applicant/permittee”as conditions of the issuance of the permit.The department currently uses these assumption of risk agreements in other instances and the Association requests the department provide a similar agreement which incorporates the terms described above.

**RESPONSE**: *INDOT will modify subsection 105 IAC 7-4-10(a)(7) to read as follows: “A new construction project programmed, which may affect the spacing or location requirements for an outdoor advertising structure, unless the applicant and INDOT enter into an agreement, which will allow for a permit to be issued.”*

1. 105 IAC 7-4-13(1) – The Association requests the following underlined phrases be inserted to clarify the extent of maintenance and repair work which may be done on a nonconforming sign, “However, a nonconforming sign may not be the object of any activity beyond the customary maintenance and repair allowed under this section after which the sign did not remain substantially the same as it was on the date that its status initially became a nonconforming sign, except for the customary maintenance and repair allowed under this section activities performed after the occurrence of an event described in subdivision (7)(A) through (7)(C).”The Association also requests the followingsentence be stricken, “Any such activity prohibited by the immediately preceding sentence shall automatically and permanently transform the nonconforming sign’s status to that of an illegal sign, with the permit for any such sign subject to revocation and which sign is subject to removal by the department.”The Association contends the language, as stated, would violate the due process provisions of state and federal law since the automatic act would be a deprivation and diminution of this Constitutional protection.

**RESPONSE**:  *INDOT believes that the verbiage “the customary maintenance and repair allowed under this section” is redundant. This subsection already states that the permittee may make customary maintenance or repair on a sign.*

1. 105 IAC 7-4-13(3)– The Association requests the following parenthetical language be stricken, “(all of which are considered a substantial change that automatically and permanently transforms the nonconforming sign into an illegal sign).” The Association contends the language, as stated, would violate the due process provisions of state and federal law since the automatic act would be a deprivation and diminution of this Constitutional protection.

**RESPONSE**: *This language was originally approved by the Association in 2016. The parenthetical language does not violate due process or cause a deprivation or diminution of Constitutional protections.*

1. 105 IAC 7-4-13(5) – The Association requests the language in the first sentence in the unnumbered paragraph following (5)(D) be changed to include the following underlined language, “After receiving the modification request, the department will promptly consider the modification request and determine, in accordance with the standards in this section, whether the requested activity should be permitted or prohibited, and within thirty (30) days give a written notice of its decision to the permittee. If the department fails to provide notice to the permittee within thirty (30) days, the request is deemed approved and any work described in the request may not be the subject of a revocation action by the department.” The language contained in the draft rule sets vague timelines using the word “promptly” and does not create any urgency for the department to act and result in lengthy and arbitrary delays in the processing of the modification request.

**RESPONSE:** *This language was originally approved by the Association in 2016. INDOT will modify subsection 105 IAC 7-14-13(5) to read as follows: “After receiving the modification request, the department will promptly consider the modification request and determine, in accordance with the standards in this section, whether the requested activity should be permitted or prohibited, and within sixty (60) days give a written notice of its decision to the permittee.”*

1. 105 IAC 7-4-15(a)(2) – The Association requests the following underlined language be added to clarify the type of event which would trigger a sign to no longer be in compliance, “(2) if the sign has been altered such that it is no longer in compliance with:”.Each of the listed attributes and criteria may be changed by the department in a subsequent rule revision. As written, the permit for an unaltered sign could be revoked if the sign did not comply with the subsequent rule change. According to the proposed rule, a sign which conforms to the current rule becomes a nonconforming sign subsequent to a rule change (“Nonconforming sign” means a sign that was lawfully erected, but does not comply with the provisions of federal law or state law adopted at a later date, or which later does not comply with federal law or state law due to changed conditions.”) A sign which becomes nonconforming because of a subsequent rule change is NOT subject to revocation because it becomes nonconforming. The Association believes the change is necessary to clarify the reasons stated for revocation of an existing sign as stated in this section.

**RESPONSE**: *INDOT agrees to incorporate this change.*

1. 105 IAC 7-4-15(a)(4) and (5) – The Association asks that both of these sections are similarly changed using the following underlined language, “(4) misrepresentation of material facts made by the permit holder or sign owner and on which the issuing authority was found to have relied upon in approving the outdoor advertising permit application; (5) misrepresentation of facts made by the applicant to any regulatory authority with jurisdiction over the sign by the permit holder or sign owner which are subsequently found to be false;” As stated in the proposed rule, revocation could occur by the mere assertion that facts were misrepresented by the permit holder. Revocation is an extraordinary measure which should only be allowed when facts are specifically found to be true. As stated in the proposed rule, the threshold would be a mere assertion. The changes to these two sections are necessary to avoid both confusion and an arbitrary action by the department which would deprive the permit holder of its rights under the law.

**RESPONSE**: *105 IAC 7-4-15(a)(4)* ***–*** *INDOT agreed to add the language “was found to have”. 105 IAC 7-4-15(a)(5) – INDOT agrees to add the language “made by the applicant”, but declines to add the language “which are subsequently found to be false”, as this subsection is referring to misrepresentation of facts and the addition of this language is superfluous.*

1. 105 IAC 7-4-15(a)– TheAssociation wishes to state this entire section has been comprehensively rewritten from the version of the rule the Association agreed to in 2016. Since that time the entire section has been rewritten with sections added. Because this section deals with grounds for an extraordinary event such as revocation, the Association has concerns about the method and language added without input from the stakeholder most affected by these changes. The Association requests that the section be changed to include cross-references to the specific section of the rule which the department is relying upon for authority since several of the added sections have references outside of 105 IAC 7-4.

**RESPONSE:** *This section was added to provide clarity within one section. The Association met with INDOT and collaboratively worked through this section. The authority and code sections affected are already referenced in the rule.*

1. 105 IAC 7-4-15(a)(10) – The Association requests the language in this section be changed to reflect the requirements as stated in other sections of the proposed rule. Specifically, in this section, the language states revocation may occur if a permit holder fails to affix the permit plate to the structure“within thirty (30) days after the erection of the outdoor advertising structure.”However, in 105 IAC 7-4-8(d)(2) the rule states the applicant fasten the permit tag, “within sixty (60) days of receiving such tag from the department.”The Association asks that the language be changed to the sixty (60) day term in order to make these two sections consistent.

**RESPONSE:** *INDOT agrees to change this to 60 days.*

1. 105 IAC 7-4-15(a)(13) and (14)**–** The Association requests the word “dilapidated” be deleted from section (14) and replaced with the word “obsolete” and section (13) be deleted in its entirety since it is redundant. The word “dilapidated” is subjective and is not defined in the proposed rule and should be removed to avoid arbitrary actions being taken to revoke the permit. The Association proposes inserting the word “obsolete” in place of “dilapidated” since it is a defined term under the proposed rule. The statement contained in section (13) is a restatement of a portion of the definition of “obsolete” contained in the rule which, for consistency sake, should be used instead of the restatement of a portion of the definition of obsolete used here. Greater clarity will be gained by incorporating the defined term “obsolete” with the other defined terms in (14) as well as eliminating the partial definition of “obsolete” contained in (13).

**RESPONSE**: *INDOT cannot delete 105-IAC 7-4-15(a)(13) because it is required as part of the Federal and State Stewardship and Oversight Agreement; however, this section is only applicable to nonconforming signs and will modify the section to read as follows:*

*(13) failure to maintain a nonconforming sign such that it remains blank for a period of twelve (12) consecutive months. INDOT agrees to modify the term “dilapidated” to the defined term “damaged” and 105 IAC 7-4-15(a)(14) shall now read as follows:*

*14) maintaining an abandoned, damaged or discontinued nonconforming sign.*

1. 105 IAC 7-4-15(a)(15) **–** The Association requests the language in this section be changed to reflect the requirements as stated in another section of the proposed rule. Specifically, in this section, the language states revocation may occur, “failure to notify the department of transfer of ownership within ninety (90) days from the effective date of transfer.” However,in 105 IAC 7-4-4(c) the rule states the following, “In the event the sign or the permit for the sign is sold by the permittee, the permittee or transferee shall complete and submit to the department information about the transfer and the transferee on a form prescribed by the department. This form shall be accompanied by a transfer fee in the amount of forty dollars ($40) and is due within one hundred eighty (180) days of the effective date of the transfer.” The Association requests this section be changed to one hundred eighty (180) days to be consistent with 105 IAC 7-4-4(c) of the rule.

**RESPONSE:** *INDOT agrees to change the 90 days to 180 days.*

1. 105 IAC 7-4-15(a)(18) – The Association requests this section be stricken in its entirety. The section states grounds for revocation as, “failure to erect, maintain, or alter an outdoor advertising sign structure in accordance with the Indiana Outdoor Advertising Manual.”The Outdoor Advertising Manual is neither adopted rule nor law. It is a guidance and policy document prepared by the department as a tool for clarifying the requirements of the program and may be changed without review or oversight by the legislature or the Attorney General’s office. A reference to this document as grounds for revocation should be stricken because of its lack of legal status as either a legislatively adopted rule or law.

**RESPONSE**: *INDOT will remove the requirement that it must in accordance with the Indiana Outdoor Advertising Manual and change the requirement to be in accordance with the permit. Since the permittee is already required to comply with the terms and provisions of the permit, this only reinforces that compliance requirement.*

1. 105 IAC 7-4-15(a)(19) **–** The Association requests the section be rewritten since it contains a term which is not a legal standard, “is inconsistent with.” The Association requests the language regarding this ground for revocation be rewritten to reflect a defined legal standard to state, “based upon a specific finding of violation of other federal or state laws governing outdoor advertising structures.” Revocation can only occur if the permit holder is found in violation of federal or state laws and rules and that only those laws and rules govern the subject of the permit - the outdoor advertising structures. As written, revocation could occur for a violation of an unrelated state or federal law which could give rise to an arbitrary application of the rule and deprivation of the permit holder’s property rights (the permit) for an unrelated infraction.

**RESPONSE**: *INDOT declines to change this language, as it was originally agreed upon by the Association in 2016.*

1. 105 IAC 7-4-15(b) **–** The Association requests the section be rewritten to include the following underlined clarifying language regarding the contents of the notice of revocation, “If revocation of the permit is appropriate, the department shall issue a written notice of revocation, accompanied by an explanation of the rationale for the revocation which references specific sections of the code or rule upon which the rationale for the revocation is based.” The Association’s proposed language states a requirement which is necessary for providing clarification to the permit holder regarding the basis for the proposed revocation.

**RESPONSE**: *INDOT declines to add this language, as INDOT will comply with the requirements set forth in IC 4-21.5 and will set forth the reasons for revocation in its revocation letter.*

1. 105 IAC 7-4-15(c) – The Association requests language be added which provides for a process under which a permit holder may request the permit be upgraded due to changed circumstances. For example, in the event the underlying zoning on the parcel where an existing sign is located is changed from either unzoned or a noncommercial or nonindustrial zoning class to a commercial or industrial zoning class due to a change in use, the permit holder should be allowed to seek a nonconforming permit changed to a conforming permit.

**RESPONSE**: *The requested change is not permitted under existing law. If the permittee wishes to remove their sign and re-apply for a legal conforming permit, the permittee may do so. However, INDOT will not re-issue a non-conforming permit if the application does not qualify for legal conforming status.*

1. 105 IAC 7-4-15(d) – The Association requests the language in the draft rule be changed to incorporate the following underlined clarifying language, “All signs that are found to have been erected, repaired, maintained, or exist in violation of any provision of federal law or state law (including this rule) which regulate outdoor advertising structures are illegal signs and public nuisances. The permit for any illegal sign may be revoked at any time by the department in accordance with this rule and state law.” These changes are necessary since, as drafted in the proposed rule, a mere assertion that a sign was erected, repaired or maintained in violation of federal and state law would be enough to change the status of the sign and result in the deprivation of the permit holder’s property rights as a holder of a valid permit. The suggested language clarifies that there must be a finding of violation and not a mere assertion. In addition, the draft rule language was overly broad stating that a violation of any state or federal law provided grounds for revocation. The suggested language provides clarity and a linkage between the types of violation – which regulates outdoor advertising structures – and the revocation.

**RESPONSE**: *INDOT disagrees with the interpretation of this section and declines to make the suggested changes.*

1. 105 IAC 7-4-19(a)(5) – The Association requests the language of this section be changed to reflect this section only applies to a sign located in an unzoned commercial or industrial area. The Association’s proposed change would be consistent with the relevant portion of the definition of “Unzoned commercial or industrial area” contained in IC 8-23-1-43 which states, “IC 8-23-1-43 "Unzoned commercial or industrial area" - Sec. 43. (a) "Unzoned commercial or industrial area" means an adjacent area not zoned under state or local statute, rule, or ordinance on which there is located one (1) or more permanent structures for commercial or industrial activities other than a sign or upon which a commercial or an industrial activity is actually conducted, whether or not there is a permanent structure located upon the adjacent area, and the area:
2. extending six hundred (600) feet beyond the edge of the commercial or industrial activity as determined under subsection (c)”

**RESPONSE:** *INDOT agrees this applies to only an unzoned commercial or industrial area. INDOT agrees to modify the language of subsection 105 IAC 7-4-19(a)(5) to read as follows:*

*(5) A sign this is located in an unzoned commercial or industrial area, which extends beyond six hundred feet from the outer edges of regularly used buildings, parking lots, storage or processing areas of commercial or industrial activity as defined in I.C. 8-23-1-43.*

1. 105 IAC 7-4-19(a) **–** The Association requests the unnumbered paragraph at the end of this section be stricken in its entirety as well as all similar references throughout the proposed rule. The draft rule repeatedly asserts the legal status of a sign can go from legal to illegal without any due process protection or recognition of the permit holder’s property rights (“Any permit previously issued for any such ineligible sign shall automatically become an illegal sign and shall be revoked by the department.”)As the Association has stated previously, there cannot be an assertion a sign is “automatically illegal” without a specific finding of facts and determination by the department complete with a statement of the asserted facts as to why the status of the sign has changed from legal to illegal as well as allowing for any appeal actions to run their course both administratively and through the courts.

**RESPONSE**: *The proposed rule does afford due process protection of the permit holder’s property rights throughout the rule. INDOT does make a preliminary determination if a violation has occurred. The Association originally agreed to this language in 2016 and INDOT declines to remove it now.*

1. 105 IAC 7-4-19(b) – The Association requests the following underlined clarifying language be added to this section, “If any sign that has a permit is the subject of a notice and final determination from the United States Department of Transportation, the Federal Highway Administration or other applicable federal agency which renders the permit invalid and sends notice of the final determination to the state of Indiana and the applicable federal agency sends the notice and final determination to the department or to the state of Indiana that the continued existence of that sign may result in the reduction of federal aid highway funds as provided in 23 U.S.C. 131 as effective July 1, 2018\*, the permit for that sign shall be revoked and the permittee shall remove the sign within thirty (30) days after the department notifies the sign owner in writing of the receipt of the federal notice and final determination, subject to the right of the permittee and the property owner to deliver a written notice of an appeal thereof to the department that is received by the department in accordance with the applicable time period set forth in IC 4-21.5. If the appellant’s appeal letter is timely received by the department and complies with the requirements in section 12(c) of this rule, the permittee or the property owner so appealing shall be afforded the opportunity for a hearing under IC 4-21.5 and IC 8-23-20. Neither the department nor the state of Indiana shall have any liability to the permittee or any other person or entity in connection with the cessation of operation or the removal of a sign pursuant to this section.”While the Association recognizes the severity of the threat of withholding funds by the federal government, a mere “notice” from the federal government is not a final determination in the federal process. The language the Association is proposing recognizes any action by the department to revoke a permit while the permit holder is exercising its due process rights of appeal under the federal system would be a violation of the due process rights of the permittee.

**RESPONSE**: *INDOT disagrees with this assertion. The permittee has appellate rights concerning their permit, and these appellate rights are explicitly recognized in this section of the rule. INDOT declines to make any changes to this section. INDOT is required to comply with federal and state law*.

1. 105 IAC 7-4-20(a) – The Association requests this section be changed to remove the phrase, “in such area that also would be the location of the sign.” The Association contends there is no requirement that a sign be located in the area containing a qualifying commercial or industrial activity on a parcel which is zoned commercial or industrial in compliance with state and federal law. By imposing this requirement in the proposed rule, the department is going beyond the scope of its regulatory authority by mandating a location of a sign without any authority under law. This proposed section of the rule is also contrary to the requirements for a sign’s location in unzoned areas under IC 8-23-1-43 which requires the sign be located within 600 feet of the edge of parking lot or buildings used primarily for a qualifying commercial or industrial activity.

**RESPONSE**: *INDOT disagrees with the Association’s interpretation of this language and declines to remove it. A qualified commercial or industrial activity is required on the real estate to prove there is a business in an unzoned area.*

1. 105 IAC 7-4-20(c)(2) – The Association requests this section be rewritten to contain the following underlined clarifying language, “the reason behind any rezoning of a parcel from a nonindustrial or noncommercial use, which must be taken for reasons other than allowing signs or outdoor advertising.” The Association is requesting this clarifying change to make the language consistent with the FHWA interpretation and guidance regarding spot zoning which forms the basis for the Association’s requested changes to the definition of spot zoning in 105 IAC 7-4-2(41). As the proposed rule is written, the term, “any zoning action” is overly broad and could include unrelated activities which may be used incorrectly (for example, a variance request which reclassifies a property form one industrial or commercial classification (C4 for example) to another industrial or commercial classification (C3 for example). Both meet the standard for industrial or commercial zoning required by state and federal regulations yet could be used to deny or revoke a permit as the rule is currently written.

**RESPONSE**: *INDOT understands the concerns of the Association. INDOT will agree to modify the subsection to read as follows: “(2) the reason behind any rezoning of a parcel, which must be taken for reasons other than allowing signs or outdoor advertising.”*

1. 105 IAC 7-4-20(d)(1-13) – The Association is concerned the proposed section relies on standards in subsections (1-4) and (12) which are based upon the practices of the business. Using these requirements would effectively preclude certain commercial facilities (open air outdoor storage yards, sole employee facilities used as dispatch areas) simply because they are not required to be licensed, have a single employee doing repair work at the customer’s facility, and maintain a registration with the secretary of state. These requirements are not related nor dispositive of the use of the parcel, as either industrial or commercial, which is the seminal question under both the state and federal regulatory structures. Subsection (5) and restated again in subsection (8) are even more problematic. In these sections, the department again seeks to define the building based upon the utility of the building by use of the facility by an individual and the construction of the structure. The proposed rule states the structure is required to have plumbing, permanent flooring, located within 660 feet of the control route, or have a permanent foundation. Again, this list fails to recognize commercial uses such as open-air storage facilities, commercial greenhouses and nurseries, and automotive test tracks and facilities although they would all be classified as commercial or industrial if the property was in a zoned area. The Association requests the department strike these subjective operational or structural standards in this section which could easily be considered as arbitrary in their application. The approach used in other states is to define the term “qualifying commercial or industrial activity”in a broad common manner which considers standard local practices and the Association advocates for using the following definition of “qualifying commercial or industrial activity,”“means those activities generally recognized as commercial or industrial activities by zoning authorities of this state” which then creates defined exceptions from the broad definition in a manner similar to (6) of this section which the Association asks should also be stricken and replaced with the following similar language:

The following activities shall not be considered commercial or industrial:

1. Activities relating to advertising structures;
2. Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, activities related to produce stands or other seasonal stands;
3. Activities not visible from the main traveled way;
4. Temporary or transient activities;
5. Activities conducted in a building principally used as a residence;
6. Activities relating to railroad tracks and minor sidings;
7. Activities related to highways, roads or streets.”

The Association requests sections (10-13) be stricken for the following reasons. Section (10) chooses an arbitrary time period, “The commercial or industrial activity must be in active operation a minimum of six (6) months prior to the date of submitting an application for an outdoor advertising permit,”as a litmus test as to whether a businessconstitutes a “qualifying commercial or industrial activity.” This would mean an advertising structure could not be constructed UNTIL buildings or other facilities designed for the business activity have been fully constructed and the business is up and operational for a full six months. This type of requirement will create additional expenses and delays since many times a land developer will ask the permittee to construct the sign prior to the beginning of construction of facilities. The department should not be in the business of assessing the viability of a business in determining if the use is commercial or industrial which is precisely what this requirement does. The requirement also prevents the construction of the advertising structure and any revenue it may generate for both the landlord and the sign owner during this period based on an arbitrary and ill-conceived list. The items in sections (11) and (13) are subjective in nature and, again, utilize arbitrary requirements in reaching a determination on how a business should operate or look in assessing whether the parcel has a “qualifying commercial or industrial use” located on the parcel.

**RESPONSE**:

* 1. *If a business is being conducted on the unzoned property, the business must have a license and be registered to do business in the state of Indiana with the Secretary of State. This would not preclude open storage facilities or nurseries from conducting their businesses, as this would be a requirement to do business in the state of Indiana. There also must be vehicular access from a public road to the business activity and parking must be available. A genuine business would have ingress and egress to its operations and allow for parking on the property.*

*(4) INDOT agrees to remove this subsection.*

*(5) (a) INDOT is trying to ensure that a legitimate business exists on the property.*

*(b) INDOT will re-word to exclude the requirement for indoor restrooms. A nursery or storage facility would require water, or electric and in some cases, adequate heating.*

*(c) INDOT agrees to remove this subsection.*

*(d) INDOT agrees to remove this subsection.*

*(e) This language cannot be stricken as it is a requirement of the Federal and State Stewardship and Oversight Agreement with FHWA.*

*(f) INDOT believes this clarifies the business activity cannot be temporary or transient to an offsite location.*

*(6) INDOT agrees to modify this section to read as follows:*

*The activity not being, in whole or in substantial part, any of the following:*

1. *Signs or other outdoor advertising structures;*
2. *Agricultural, forestry, ranching, grazing, farming, and related activities, including, produce stands or other seasonal stands;*
3. *Visible from the main traveled way;*
4. *Temporary or transient activities, including weekend or seasonal flea markets;*
5. *Railroad tracks, minor sidings, cell towers and other utility facilities;*
6. *Highways, roads or streets.*
   1. *INDOT agrees to remove these subsections.*
7. 105 IAC 7-4-20(f)– The Association requests language be added which provides for a process under which a permit holder may request the permit be upgraded due to changed circumstances which would be like the language for downgrading a permit from conforming to nonconforming. For example, in the event the underlying zoning on the parcel where an existing sign is located is changed from either unzoned or a noncommercial or nonindustrial zoning class to a commercial or industrial zoning class due to a change in use, the permit holder should be allowed to seek a nonconforming permit changed to a conforming permit.

**RESPONSE***: The requested change is not permitted under existing law. If the permittee wishes to remove their sign and re-apply for a legal conforming permit, the permittee may do so. However, INDOT will not re-issue a non-conforming permit if the application does not qualify for legal conforming status.*

1. 105 IAC 7-4-21(b) – The Association asks for clarification regarding the necessity for the language in this section which reads, “The designation of each of the state and national scenic byways set forth in subsection (a)(1) through (a)(8) is hereby ratified and confirmed by the department.”

**RESPONSE**: *INDOT declines to remove this subsection. During the drafting of the proposed rule, the Association agreed to negotiate the substantive language of this section of the rule. INDOT believes this language brings clarity to the rule.*

1. 105 IAC 7-4-21(c)(4)(A-B) – The Association requests this section be stricken as contrary to vested rights legislation as set forth in IC 36-7-4-1109(c) as well as settled case law regarding vested rights and the issuance of a permit in Indiana. The section would punish a permit holder who either has not or has partially constructed a sign in reliance on the department’s issuance of the permit for a site which complied with all the applicable rules and laws at the time the permit was issued. The revocation of the permit impacts the permittee’s property rights and fails to provide just compensation to the permittee for any costs incurred in procuring the permit and location and the lost revenue for both the landlord and the permittee which would result if the sign permit was revoked and the sign was not built.

**RESPONSE**: *IC 36-7-4-1109(c) applies to local units of government. Moreover, the construction and/or erection of an outdoor advertising sign must occur within one year of the date of the issuance of the permit. A permit that is issued prior to the submission of an application to nominate a scenic byway will not be delayed merely because an application has been submitted. However, federal law (23 USC 131(s)) requires that a sign be erected prior to a designation of a scenic byway. INDOT will notify the permittee when a roadway has been nominated for a scenic byway if the permit will be impacted.* *INDOT believes that the Association is actually referring to 105 IAC 7-4-21(d)(4)(A-B). INDOT has modified 105 IAC 7-4-21(d) to read as follows:*

*(d) When any Indiana road or portion thereof has been nominated for designation as a scenic byway:*

*(1) the department shall suspend consideration of all pending applications for permits covering any sign to be erected on any control route, if the sign would be visible from the main-traveled way of that scenic byway, until such time as the nomination for designation has been approved or denied, unless the applicant and the department enter into an agreement, which will allow for a permit to be issued;*

*(2) signs shall not be erected adjacent to that scenic byway, except for signs more particularly described in 23 U.S.C. 131(c)(1) through 23 U.S.C. 131(c)(5)\*, as effective as of July 1, 2018;*

*(3) signs shall not be erected adjacent to any other control route, except for signs more particularly described in 23 U.S.C. 131(c)(1) through 23 U.S.C. 131(c)(5)\*, as effective as of July 1, 2018, if any such sign would be visible from the main-traveled way of that scenic byway; and*

*(4) any sign that would be adjacent to the scenic byway and any other sign that would be visible from the main-traveled way of the scenic byway for which a permit was granted prior to nomination of the road to be designated as a scenic byway, but which sign, in either case, has not been erected and completed as of the date the road is designated as a scenic byway:*

*(A) the permit for such sign shall be automatically revoked;*

*(B) must be removed at the expense of the sign owner and the owner of the real estate upon which the sign is located; and*

*(C) the department shall provide just compensation to the sign owner when a substantial effort has been made in the erection of the structure at the time of the scenic byway designation.*

1. Conflict between the definition of abandoned that’s proposed in this version of the rules and the definition of abandoned in Indiana Code 8-23-1-8.

**RESPONSE**: *The Association originally agreed to this definition of “abandoned” in 2016, and it has not changed in the current proposed rule. The definition in the rule applies specifically to outdoor advertising signs; whereas, the definition in IC 8-23-1-8 discusses abandonment of right of way no longer used for a highway purpose.*

1. Some provisions appear to be vague. The permit approval process instead of setting out objective standards as to what you have to do to have permit applications approved, statutes are referenced and includes a provision that the applicant must comply with federal law. This opens up an avenue for confusion.

**RESPONSE**: *The permit approval process is set forth with particularity. The requirements for a permit is set forth in 105 IAC 7-4-3. The reasons for denying a permit is set forth in 105 IAC 7-4-10, of which the majority of the criteria were contained in the rule originally approved by the Association. INDOT is unclear what is vague about these requirements/criteria.*

1. Reason for revocation is inconsistent with anything in the policy manual (not law or rule).

**RESPONSE**: *There are no provisions in the manual that are not already included in the proposed rule. INDOT disagrees that the reasons for revocation are inconsistent with the policy manual.*

1. Nomination process for designation of Scenic Byway. Current rule allows for a permit application to be put on hold during the nomination process.

**RESPONSE**: *INDOT has agreed to not put an application on hold pending a nomination. OAAI has requested that if an applicant does not want to enter into an agreement with INDOT that INDOT suspend consideration of the pending application until a decision is made regarding the nomination for designation of the scenic byway. The Association does not want to lose its place in line of priority applications should the designation be denied. INDOT has agreed to do this and has modified 105 IAC 7-4-21(d)(1) as follows:*

*(d) When any Indiana road or portion thereof has been nominated for designation as a scenic byway:*

*(1) the department shall suspend consideration of all pending applications for permits covering any sign to be erected on any control route, if the sign would be visible from the main-traveled way of that scenic byway, until such time as the nomination for designation has been approved or denied, unless the applicant and the department enter into an agreement, which will allow for a permit to be issued;*

1. No appellate process for a stakeholder when a scenic byway has been designated.

**RESPONSE**: *INDOT cannot create a rule regarding an appellate procedure for a separate committee, of which other state agencies, are members. Applicable state and federal statutes do not provide for any such “appellate process”.*

1. Fiscal impact statement that accompanied the 2016 version is different than the one accompanying the 2018 version.

**RESPONSE**: *The fiscal impact statement has not changed, nor has the economic impact statement (“EIS”) changed. Upon review of the EIS, the Ombudsman found that there were no new or additional fees on small businesses. The EIS is available on the online rulemaking docket on INDOT’s website.*

1. Has the Cost-Benefit Analysis for the rule been revisited based upon the changes?

**RESPONSE**: *Since there are no substantive changes that have been made to the current proposed rule, there was not a need to revisit or modify the Cost-Benefit Analysis.*

1. OAAI wants opportunity to work with INDOT on propose rule and would like the public hearing recessed for 30 days after the public comment period is closed, see everyone’s comments and then finish the hearing.

**RESPONSE**: *I.C. 4-22-2-26 dictates how a public hearing may be recessed. INDOT agreed to recess the public hearing on January 9, 2019 and reconvene on January 23, 2019, at 1:00 p.m. in the Indiana Government Center South, as announced on the record on January 9th at the original public hearing in accordance with the statute. The purpose of a public hearing is to obtain comments. INDOT agreed to extend the comment period for 30 days, giving the public until February 8th to submit comments. INDOT also met with members of the Association and members of the public on three occasions between January 9th and January 23rd, including an all-day meeting on January 18th.*

1. Major differences in current rule vis-à-vis the one approved in 2016 by OAAI is that it negatively impacts the use and growth of our industry and the people we affect and also I believe they expend the control that INDOT has over our industry and limits our use.

**RESPONSE**: *INDOT disagrees with these assertions. Since this comment is a very general statement and does not note any specific alleged change or impact, INDOT is unable to offer a more specific or detailed response.*

1. The 1000 square foot size for a digital billboard is too large and the 300 feet requirement from a residence is too close.

**RESPONSE**: *23 CFR 750.704 states that INDOT is to work with the federal government on spacing, lighting and size requirements. The 1000 square foot size for a digital billboard and the 300 feet distance requirement was agreed upon in the Federal and State Stewardship & Oversight Agreement. The 300 feet requirement is also contained in the current rule at 105 IAC 7-3-1.5(g). INDOT cannot modify these requirements.*

1. No regulation of the intensity of the light coming off the billboard.

**REPSONSE**: *INDOT is adding a regulation for the brightness for changeable message signs in 105 IAC 7-4-5(e).*

1. Wants privacy settings implemented so billboard companies cannot intercept personal data on phones.

**RESPONSE**: *INDOT does not have statutory authority to regulate privacy settings. The commenter may wish to contact the Federal Communications Commission about these concerns.*

1. Have more subjective standards for the digital faces as far as how we measure foot candles over ambient light. Would like a foot candle standard.

**RESPONSE**: *INDOT is adding objective standards for the digital faces, utilizing foot candles in 105 IAC 7-4-5(e).*

1. Lack of participation of OAAI and its members.

**RESPONSE**: *As all have acknowledged, INDOT met with the Association regularly in 2015 through 2016. INDOT worked to finalize changes with the Office of the Attorney General (“OAG”), wherein Mark Tidd worked closely with OAAI and its counsel regarding some of the changes the OAG had requested in meetings prior to finalizing the proposed rule. Personnel changes occurred within INDOT and Monica Hartke-Tarr became responsible for promulgation of the rule. In July 2017, the proposed rule was submitted to the State Budget Agency (“SBA”). INDOT did not receive approval from the SBA until January 2018. INDOT worked with the OAG’s office concerning the proposed rule in 2018 and a number of changes were requested by the OAG to be incorporated into the proposed rule, most of which were non-substantive changes. Monica Hartke-Tarr continued dialogue with the Association during this process, keeping members abreast of the timeline and notified them upon publication of the proposed rule. Since that time, INDOT has meet with members of the OAAI and collaborated with them during this rule promulgation process, specifically on January 15th, January 18th and January 22nd of this year. INDOT has continued its dialogue with the Association, as INDOT worked through the public comments.*