

TITLE 105 INDIANA DEPARTMENT OF TRANSPORTATION

Economic Impact Statement

LSA Document #17-337

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

The proposed rule is intended to repeal 105 IAC 7-3, which has caused some confusion to INDOT and the billboard industry, and to add 105 IAC 7-4, which will clarify regulatory requirements concerning outdoor advertising. The current rules have caused confusion to both INDOT staff and the billboard industry, thus creating ambiguity in the permitting process and maintenance of existing signs. INDOT's Legal Division and Statewide Permits Section, numerous members of the Outdoor Advertising Association of Indiana (OAAI), and the Federal Highway Administration (FHWA) have collaborated to produce the proposed rule over the last few years.

The proposed rule the rule would eliminate unneeded regulatory requirements and unnecessarily vague provisions in the current version of 105 IAC 7-3, and would add an entire section dedicated to defining terms used in the rules with respect to outdoor advertising structures and related matters, including scenic byways in 105 IAC 7-4-2 (an essential element that is missing from the current rule). Moreover, the lack of definitions in 105 IAC 7-3 creates confusion and vague interpretations of exactly what is meant by certain words used in different sections of the rule. Many of the sections of the current rule that purport to enumerate the responsibilities of sign applicants or current sign owners lack specific explanations as to what those responsibilities are, leaving sign owners uncertain how to stay in compliance with the law. The proposed addition of 105 IAC 7-4 outlines the permit application requirements and procedure, including providing processes for incomplete applications, conflicting permit applications, addendums for nonconforming signs and appeals. The addition of these sections will help clarify the requirements and procedures for approval of permit applications for the outdoor advertising industry.

In an effort to eliminate confusion regarding permitted signs on scenic byways, the proposed rule also clarifies the scenic byway program and creates a procedure to nominate and/or designate scenic byways. Further, the proposed rule allows for segmentation of scenic byways where the necessary aesthetic requirements could not be met for an entire, contiguous route. This clarification is necessary to ensure compliance with federal law.

Additionally, 105 IAC 7-4 requires sign owners to maintain permit tags on the outdoor advertising signs and/or billboards at all times and delineates the necessary requirements to maintain a legal sign. I.C. 8-23-20 requires INDOT to define and elaborate on definitions and criteria needed to adequately control signs and billboards. This proposed rule is intended to fulfill this statutory requirement.

The current rules are particularly confusing to small business owners who own only a few signs and do not frequently process permits for outdoor advertising signs on a regular basis.

Impact on Small Businesses

1. Estimate of the number of small businesses, classified by industry sector, which will be subject to the proposed rule:

INDOT estimates there are approximately 8,625 active signs and billboards under its current control and regulation. Out of those 8,625 signs approximately 6,625 signs are owned by major billboard companies, leaving an estimated 2,000 signs owned by smaller businesses. The outdoor advertising business is very competitive. While there may be occasional additional fees resulting from the recent statutory changes to IC 8-23-20-25(f)(3), there will be no additional fees created by the proposed rule revisions. Even those statutory fee increases will be minimal and it is not anticipated that any significant increase will be passed on to small businesses in order for the outdoor advertising industry to remain competitive with other forms of advertising media available to small businesses.

2. Estimate of the average annual reporting, record keeping, and other administrative costs that small businesses will incur to comply with the proposed rule:

The proposed rule revisions impose minimal additional reporting responsibilities for billboard companies. There are no differences in reporting, record keeping and other administrative costs between small billboard companies and large billboard companies.

3. Estimate of the total annual economic impact that compliance will have on small businesses subject to the rule:

The Indiana General Assembly added certain fees relating to billboards in its 2017 session. These fees are contained in I.C. 8-23-20-25(f)(3). The proposed rule revisions are implementing these new statutory fees, but do not impose any other costs upon the industry.

4. Statement justifying any requirement or cost that is imposed by the rule and not expressly required by law. The statement must reference any data, studies, or analyses relied upon by the agency in determining imposition of the requirement or cost is necessary:

The proposed rule revisions do not impose any additional costs that are not expressly required by current law (as stated in Response No. 3. above).

5. Regulatory flexibility analysis to consider less intrusive or costly methods of achieving the same purpose:

A. Less stringent compliance or reporting requirements:

Federal laws and regulations do not allow for states to require less stringent regulations than those imposed by the federal regulations.

B. Establishment of less stringent schedules or deadlines:

Federal laws and regulations do not allow for states to require less stringent regulations than those imposed by the federal regulations.

C. Consolidation or simplification of compliance or reporting requirements:

The rule revision does not require any additional compliance or reporting than what already exists.

D. Establishment of performance standards for small businesses instead of design or operational standards imposed on other regulated entities by the rule:

The proposed rule revisions are of a regulatory nature and not based on performance or design standards that are not already mandated by federal and state laws.

E. Exemption of small businesses from part or all of the requirements or costs imposed by the rule:

Federal laws and regulations do not allow for states to require less stringent regulations than those imposed by the federal regulations.