

DEPARTMENT OF TRANSPORTATION

Rules Repealing Rules and Regulations
Relating to Outdoor Advertising Along State
Highways and Federal-aid Secondary County Highways,
and Adopting Chapter 103, Title 19,
Administrative Rules

SUMMARY

1. Rules and Regulations Relating to Outdoor Advertising Along State Highways and Federal-aid Secondary County Highways are repealed.
2. Chapter 103 of title 19, entitled "Outdoor Advertising Along State Highways and Federal Aid Secondary County Highways", is adopted.

TITLE 19 DEPARTMENT OF TRANSPORTATION

SUBTITLE 4 HIGHWAYS DIVISION

CHAPTER 103

OUTDOOR ADVERTISING ALONG STATE HIGHWAYS
AND FEDERAL AID SECONDARY COUNTY HIGHWAYS

- Sec. 19-103-1 Application
- Sec. 19-103-2 Definitions
- Sec. 19-103-3 Exceptions
- Sec. 19-103-4 Limitations along interstate highways
- Sec. 19-103-5 General limitations
- Sec. 19-103-6 Nonconforming signs
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- Sec. 19-103-8 Removal of nonconforming signs
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- Sec. 19-103-10 Determination of premises
- Sec. 19-103-11 On-premise signs
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- Sec. 19-103-13 Purpose test
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- Sec. 19-103-15 Sale or lease signs
- Sec. 19-103-16 Directional signs
- Sec. 19-103-17 Official signs and notices
- Sec. 19-103-18 Approval
- Sec. 19-103-19 Trimming or destruction of trees
- Sec. 19-103-20 Enforcement and penalties
- Sec. 19-103-21 Repeal

Historical note. This chapter is based substantially on the rules and regulations relating to outdoor advertising along State highways and federal-aid secondary county highways. [Eff. 2/21/80;

R MAY 30 1981

Sec. 19-103-1 Application. This chapter applies to signs which are erected and maintained outside of the highway right-of-way of any state or federal-aid highway and which are visible from the main traveled way of the highway. This chapter shall not apply to:

- (1) Directional and other official signs erected on the highway right-of-way; and

- (2) Signs carried by individuals or placed upon vehicles used for the transportation of persons or goods. [Eff. MAY 30 1981 (Auth: HRS Sec. 264-73) (Imp: HRS Secs. 264-72, 264-73)]

Sec. 19-103-2 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

"Abandoned sign" means one in which no one has an interest.

"County" means the county of Hawaii, the city and county of Honolulu, the county of Kauai or the county of Maui, as appropriate.

"Directional signs" means signs deemed to be in the interest of the traveling public that contain directional information about: public places owned or operated by federal, state, or local government, or their agencies; public or privately owned natural phenomena; historic, cultural, scientific, educational and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation.

"Director" means the director of the State department of transportation or his duly authorized representative.

"Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

"Federal-aid secondary county highways" means all highways on the designated federal-aid secondary county system.

"Highway" means all state highways and federal-aid secondary county highways.

"Illegal sign" means one which was erected or maintained in violation of state law.

"Legible" means capable of being read without visual aid by a person of normal visual acuity.

"Maintain" means to allow to exist.

"Main-traveled way" means the portion of roadway designed for the movement of vehicles on which through traffic is carried, exclusive of shoulders. It does not include such facilities as frontage roads, turning roadways, or parking area.

"Nonconforming sign" means a sign which was lawfully erected but does not comply with the provisions of state law or state rules passed at a later date or which later fails to comply with state law or state rules due to changed conditions. Signs that are illegal when first erected or otherwise created are not considered nonconforming signs.

"Official signs and notices" means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning-jurisdiction and pursuant to and in accordance with

direction or authorization contained in federal, state, or local law for the purposes of carrying out an official duty or responsibility. Historical markers erected by state or local government agencies or nonprofit historical societies may be considered official signs.

"Ordinance" means a law, rule or regulation enacted or adopted by a county.

"Person" means any individual, partnership, firm, society, unincorporated association, joint venture, group, hui, corporation, trustee, executor, administrator, trust estate, decedent's estate, trust or other entities, whether these persons are doing business for themselves or in a fiduciary capacity.

"Scenic area" means any area of particular scenic beauty or historical significance as determined by the federal, state, or local officials having jurisdiction thereof, and includes interests in land which have been acquired for the restoration, preservation, and enhancement of scenic beauty.

"Sign" means any outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main traveled way of a highway, whether the same be permanent or portable installation.

"State highways" means all highways designated to comprise the state highway system which consists of the following types of highways:

- (1) Federal-aid highways:
 - (A) Interstate and defense highways;
 - (B) Federal-aid primary state highways;
 - (C) Federal-aid secondary state highways;
 - and
 - (D) Federal-aid urban state highways.
- (2) Nonfederal-aid state highways.

"State law" means the state constitution or a statute, ordinance, rule, or regulation enacted or adopted by the state or a political subdivision of the state or an agency thereof.

"Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity. [Eff. MAY 30 1981 (Auth: HRS Sec 264-73) (Imp: HRS Sec. 264-73)]

Sec. 19-103-3 Exceptions. No person shall erect or maintain any outdoor advertising visible from the main-traveled way of any federal-aid or state highway within the state except the following: -

- (1) Directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historic attractions as authorized or required by law;
- (2) Signs, displays, and devices advertising the sale or lease of property upon which they are located;
- (3) Signs, displays, and devices advertising activities conducted on the property on which they are located; and
- (4) Signs lawfully in existence on October 22, 1965, determined by the director to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance the preservation of which would be consistent with the purpose of this section. [Eff. MAY 30 1981 (Auth: HRS Sec. 264-73) (Imp. HRS Sec. 264-72)]

Sec. 19-103-4 Limitations along interstate highways. The following limitations shall apply to areas adjacent to interstate highways only:

- (1) Not more than one sign, advertising the sale or lease of property upon which the sign is located, may be permitted in such manner as to be visible to traffic proceeding in any one direction on any interstate highway.
- (2) Not more than one sign, visible to traffic proceeding in any one direction on any one interstate highway and advertising activities being conducted upon the real property where the sign is located, may be permitted more than 50 feet from the advertised activity (Figure 1).

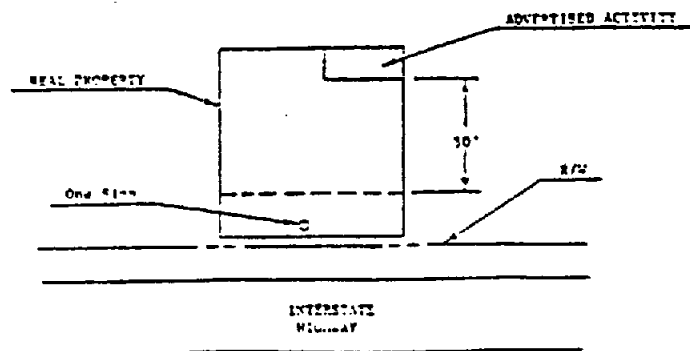


Figure 1

- (3) Signs in the specific interest of the traveling public on interstate highways may be permitted. Only information about public places operated by federal, state or local governments, natural phenomena, historic sites, areas of natural scenic beauty or naturally suited for outdoor recreation is deemed to be in the specific interest of the traveling public. These signs in the specific interest of the traveling public shall be limited as follows:

- (A) In advance of an intersection of the main-traveled way of an interstate highway and an exit roadway, those signs visible to interstate highway traffic approaching the intersection may not exceed the following number:

Distance from Intersection	Number of Signs
0 - 2 miles	0
2 - 5 miles	6
More than 5 miles	Average of 1 sign per mile

The specified distances shall be measured to the nearest point of the intersection of the traveled way of the exit roadway and the main-traveled way of the interstate highway (Figure 2).

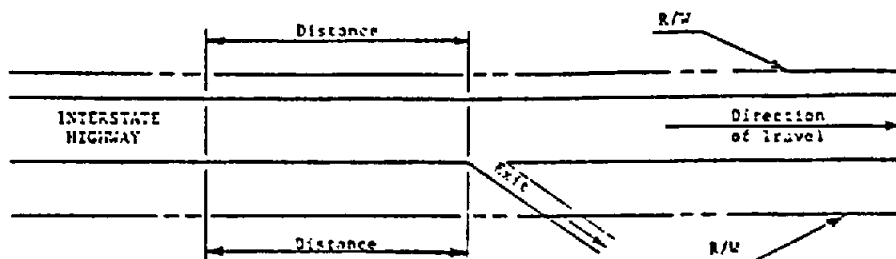


Figure 2

- (B) Those signs visible to interstate highway traffic which is approaching or has passed an entrance roadway may not be permitted for 1,000 feet beyond the furthest point of the intersection between the traveled way of the entrance roadway and the main-traveled way of the interstate highway (Figure 3).

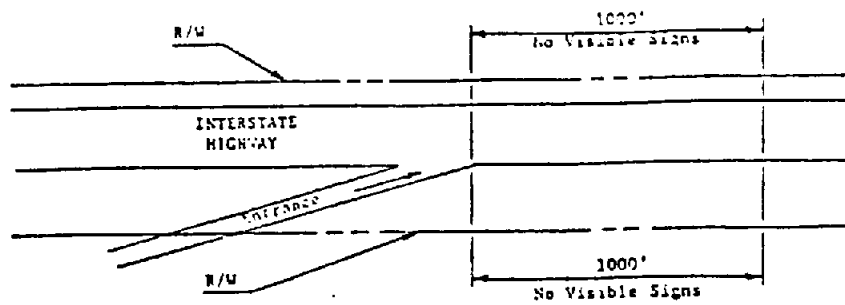


Figure 3

- (C) These signs may not be permitted in areas adjacent to any interstate highway right-of-way upon any part of the width of which is constructed an entrance or exit roadway (Figure 4).

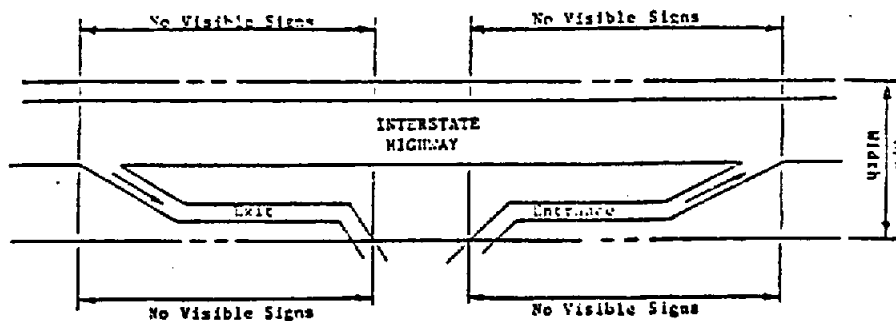


Figure 4

- (D) Subject to the other provisions of this section, not more than two signs may be permitted within any mile distance measured from any point, and no two signs shall be less than 1,000 feet apart.
- (E) No such signs may be permitted in scenic areas.
- (F) Not more than one sign giving information about a single place may be erected and maintained so as to be visible at any one time by any single person on an interstate highway.
- (4) No sign may be erected or maintained which:

- (A) Contains, includes, or is illuminated by any flashing, intermittent, or moving light;
- (B) Moves or has any moving parts;
- (C) Is placed on trees or painted or drawn upon rocks or other natural features; and
- (D) Exceeds 20 feet in length, width or height, or 150 square feet in area including border and trim but excluding supports except on-premise signs not more than 50 feet from the advertised activity. [Eff. MAY 30 1981, (Auth: HRS Sec. 264-73) (Imp: HRS Sec. 264-73)]

Sec. 19-103-5 General limitations. No sign may be erected or maintained which:

- (1) Attempts or appears to attempt to direct the movement of traffic or which interferes with, imitates, or resembles any official traffic sign, signal or device.
- (2) Prevents the driver of a vehicle from having a clear and unobstructed view of official traffic signs, signal, or device and approaching, merging or intersecting traffic.
- (3) Is located on or extend into the highway right-of-way.
- (4) Is illuminated, unless the lighting is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way of the highway or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle. [Eff. MAY 30 1981 (Auth: HRS Sec. 264-73) (Imp: HRS Sec. 264-73)]

Sec. 19-103-6 Nonconforming signs. (a) A nonconforming sign is one which was lawfully erected but which does not comply with the provisions of state law or regulation passed at a later date or which later fails to comply with state law or regulations due to changed conditions. An example of changed conditions would be a sign lawfully erected on a nonfederal-aid county highway that later becomes a federal-aid or state highway. Signs that are illegal when first erected or otherwise brought into existence are not nonconforming signs.

(b) Requirements for maintenance of a nonconforming sign are as follows:

- (1) The sign shall have been in actual existence (as distinguished from contemplated to be used such as a simple lease or agreement with the property owner) and legally so, at the time when the prohibition took effect.
- (2) The property interest in the sign in question shall be substantial. Thus, paper signs nailed to trees, abandoned signs, and the like are not protected.
- (3) The right to maintain a nonconforming sign is not confined to the sign owner or any one individual or corporation so using the land. Thus a nonconforming sign may be sold, leased, or otherwise transferred without affecting its status. However, the location of the nonconforming sign may not be changed. A nonconforming sign removed as a result of right-of-way taking or for any other reason shall be relocated in a conforming area as a nonconforming use cannot be re-established at a new location. Otherwise, just compensation for the rights and interests of the sign and site owner shall be made for the removal of the signs.
- (4) The sign shall have been lawful and shall continue to be lawfully maintained on the effective date of the state law.
- (5) The sign shall be maintained in a safe condition and shall not in any respect be dangerous to the public or to property.
- (6) A nonconforming sign may be maintained up to five years as long as it is not changed after it becomes nonconforming. The sign shall remain substantially the same as it was on the date it became nonconforming. Reasonable maintenance of the sign is not a change. This would include a change of advertising message and normal upkeep and repair of a sign structure.
- (7) A nonconforming sign may be maintained up to five years as long as it is not abandoned, destroyed or discontinued. Exception may be made for signs destroyed due to vandalism or other criminal or tortious acts. Such signs may be re-erected in kind.

(c) Nonconforming signs that do not meet the above requirements or are changed, relocated, discontinued, abandoned or destroyed, except as provided for under section 19-103-6(b)(7) above, shall cease to be classified as nonconforming signs and shall be removed as provided for under section 19-103-8.

[Eff. MAY 30 1984] (Auth: HRS Sec. 264-73) (Imp: HRS Sec. 264-74)

Sec. 19-103-7 Criteria for nonconforming signs.

(a) For the purpose of this section, the following actions to nonconforming signs shall be considered a change which requires removal:

- (1) Extension or enlargement.
- (2) Replacement, rebuilding or re-erecting except when the sign has been damaged by vandalism or other criminal or tortious acts.
- (3) Repairs exceeding 25 per cent of the surface area except when the sign has been damaged by vandalism or other criminal or tortious acts.

(b) Nonconforming signs shall be considered abandoned, destroyed or discontinued and shall require removal under the following conditions:

- (1) Display of obsolete advertising matter and blanked or painted out signs exceeding 30 days after notification.
- (2) Non-use of sign to display advertising matter for more than 30 days. Messages advertising billboard or blank sign space for use, rent or lease are prohibited.
- (3) Nonrepair of sign structure or advertising message damaged 25 per cent or more within 45 days after notification. [Eff. MAY 30 1981
(Auth: HRS Sec. 264-73) (Imp: HRS Sec. 264-74)]

Sec. 19-103-8 Removal of nonconforming signs.

(a) Nonconforming signs shall be removed at the end of the fifth year after they become nonconforming or earlier if they fail to meet the requirements of section 19-103-6.

(b) The director may acquire by purchase, gift or condemnation, and pay just compensation for the rights and interests of the sign and site owner upon the removal of a nonconforming sign. Compensation will be paid only for the following:

- (1) The taking from the owner of the outdoor advertising of all rights, title, leasehold, and interest therein; and
- (2) The taking from the owner of the real property on which the outdoor advertising is located, of the right to erect and maintain the outdoor advertising thereon.

(c) Appraisal or valuation of property interests required for control of outdoor advertising signs will be made in writing with the procedures outlined in the Federal-Aid Highway Program Manual 7-2-12.

(d) Signs which advertise or publicize an activity no longer conducted on the premises upon which these signs are maintained shall be removed by

the owner or lessee of the property within 45 days after the activity being advertised or publicized ceases to exist on the premises. No compensation shall be paid for the removal of these signs.
[Eff. MAY 30 1981 (Auth: HRS Sec. 264-73) (Imp: HRS Secs. 264-74, 264-75)]

Sec. 19-103-9 Requirements for on-premise signs.
A sign, display, or device will be considered to be an on-premise sign if it meets the following requirements and provided that signs erected along interstate highways must also comply with the requirements of section 19-103-4:

- (1) Premises: The sign must be located on the same premises as the activity or property advertised.
 - (2) Purpose: The sign must have as its purpose:
 - (A) The identification of the activity, or its products or services; or
 - (B) The sale or lease of the property on which the sign is located, rather than the purpose of general advertising.
- [Eff. MAY 30 1981 (Auth: HRS Sec. 264-73) (Imp: HRS Sec. 264-73)]

Sec. 19-103-10 Determination of premises. The premises on which an activity is conducted is determined by physical facts rather than property lines. Generally, it is defined as the land occupied by the buildings or other physical uses that are necessary or customarily incident to the activity, including these open spaces that are arranged and designed to be used in connection with those buildings or uses.
[Eff. MAY 30 1981 (Auth: HRS Sec. 264-73) (Imp: HRS Sec. 264-73)]

Sec. 19-103-11 On-premise signs. The following types of signs conforming to the requirements of the respective county in which the signs are erected shall be considered on-premise:

- (1) Signs for various entities located within a common property such as a shopping center, where the building, parking, landscaping, walkways, etc. are shared by the various tenants.
- (2) Signs located within a building site, announcing the names of architects, engineers or contractors of building under construction, alteration or repair and signs announcing the character of the building enterprise or the purpose for which the building is intended.

- (3) Signs announcing the subdivision development and sale of properties when these signs are located within the limits of the development complex.
- (4) Signs containing only the name of a subdivision, tract, or development located within the limits of the area and its logo, if any.
- (5) Signs advertising the sale, rental or lease of the premises on which displayed. These signs may contain the name, address and telephone number of the person or agency responsible for the sale. However, the size of the lettering for the name of the person or agency shall not be larger than the message advertising the sale, lease or rental.
- (6) Signs used for the purpose of announcing the candidacy of any person seeking public elected office displayed at the candidate's headquarters.
- (7) Signs of organization such as Lions, Rotary, Kiwanis, Boy Scout, Girl Scout, displayed on the premises where the organization meets even though the property on which the sign is located neither belongs to nor is leased by the organization.
- (8) Signs announcing meetings or events displayed on the premises where the meetings or events are held or scheduled to be held.
- (9) Signs announcing or promoting fund drives for charitable foundations or institutions located on premises where these funds are solicited or raised.
- (10) Signs identifying ownership of property upon which the signs are located.
- (11) Signs stating rules, warnings, instructions, directions or other matters relative to the property upon which the signs are located such as "No Trespassing", "No Hunting", "Danger", "Beware of Dog".
- (12) Signs located on private access road which is either an integral part of the property upon which the advertised activity is conducted or an exclusive easement serving the property upon which the advertised activity is conducted provided such access road is utilized for purposes associated with the advertised activity other than solely for signing. [Eff. MAY 3 0 1991
(Auth: HRS Sec. 264-73) (Imp: HRS Sec. 264-73)]

Sec. 19-103-12 Unlawful signs. Except as provided for under sections 19-103-3 and 19-103-4 of this chapter, the following signs shall not be considered on-premise and it shall be unlawful to erect or maintain these signs:

- (1) Any sign which advertises or publicizes an activity not conducted on the premises upon which the sign exists.
- (2) Signs located on land which is not used for any purpose related to the activity being advertised other than as a location for the sign although the lands are under the same ownership.
- (3) Signs located on a narrow strip of land of such limited width, configuration and characteristics that it cannot be put to any use related to the advertised activity other than as a location for the sign.
[Eff. MAY 30 1981 (Auth: HRS Sec. 264-73)
(Imp: HRS Sec. 264-73)]

Sec. 19-103-13 Purpose test. The following examples shall be used for determining whether a sign has as its purpose the identification of the activity located on the premises or its products or services, or the sale or lease of the property on which the sign is located, rather than prohibited outdoor advertising.

- (1) Any sign which consists solely of the name of the establishment upon which the sign is located is an on-premise sign.
- (2) A sign which identifies the establishment's principal or accessory products or services offered on the premises is an on-premise sign. An example of an accessory product would be a brand of tires offered for sale at a service station. [Eff. MAY 30 1981
(Auth: HRS Sec. 264-73) (Imp: HRS Sec. 264-73)]

Sec. 19-103-14 Prohibited outdoor advertising.
(a) When a sign brings rental income to the property owner or lessee, consists principally of brand name or trade name advertising, and the product or service advertised is only incidental to the principal activity, it shall be considered prohibited outdoor advertising and not an on-premise sign. An example would be a billboard located on a service station building advertising a brand of cigarettes or chewing gum which is incidentally sold in a vending machine on the property.

(b) A sign which advertises activities conducted on the premises, but which also advertises, in a prominent manner, activities not conducted on the premises, shall be prohibited outdoor advertising and not an on-premise sign. An example would be a sign advertising a hotel or restaurant not located on the premises with a notation or attachment stating "Golf Driving Range Here" or "Horseback Riding Here". The on-premise activity would only be the golf driving range or the horseback riding. [Eff MAY 30 1981] (Auth: HRS Sec. 264-73) (Imp: HRS Sec. 264-73)

Sec. 19-103-15 Sale or lease signs. (a) A sale or lease sign which also advertises any product or service not being sold or rendered upon the premises and unrelated to the selling or leasing of the land on which the sign is located shall be prohibited outdoor advertising and not an on-premise sign.

(b) An example is a billboard which states: "This Property for Sale--Apply at Smith's Hotel; 500 Rooms, Air Conditioned, Swimming Pool, T.V.--Turn Right 3 Blocks at Main Street." In this instance, only the message "This Property for Sale" with the name, or agency responsible for the sale is permissible. [Eff MAY 30 1981] (Auth: HRS Sec. 264-73) (Imp: HRS Sec. 264-73)

Sec. 19-103-16 Directional signs. (a) The following types of directional signs shall be permitted:

- (1) Signs containing directional information about public places owned or operated by federal, state or local governments or their agencies.
- (2) Publicly or privately owned or operated activities or attractions which inform the public of natural phenomena; historical, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty and outdoor recreation. Privately owned or operated directional sign shall not be permitted adjacent to interstate highways.

(b) To be permitted, directional signs that are for privately owned or operated activities or attractions must be:

- (1) For nationally or regionally known activities or attractions.
- (2) For activities or attractions of outstanding interest.

(3) Acceptable to and approved by the state parks, outdoor recreation and historic sites division.

(4) In conformity with state law.

(c) The message on directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction such as mileage, route numbers or exit numbers. Descriptive words or phrases and pictorial or photographic representation of the activity or its environs shall be prohibited. Further, the signs shall be stationary, unlighted and shall contain no animated or moving parts.

(d) Off-premise directional signs for commercial, industrial, agricultural, civic, fraternal, political, religious or other organizations or institutions shall not be permitted, except as provided for in this section. [Eff MAY 30 1980] (Auth: HRS Sec. 264-73) (Imp: HRS Sec. 264-72)

Sec. 19-103-17 Official signs and notices. The display of official notices and signs posted by order of any court or public office, or posted by any public officer within his territorial or zoning jurisdiction in the performance of a public duty, or posted by any person required to do so by any statute or ordinance or regulation having the force of law shall not be considered as outdoor advertising and shall be permitted. A sign for a town approved and authorized by the county may be considered an official sign. The sign shall contain only the name of the town and its logo, if any. Historical markers erected by state, a county or a nonprofit historical society shall be considered official signs. The design of the markers shall be approved by the state department of planning and economic development. [Eff MAY 30 1980] (Auth: HRS Sec. 264-73) (Imp: HRS Sec. 264-72)

Sec. 19-103-18 Approval. (a) No directional and official sign visible from the main-traveled way of any state highway shall be erected without the written approval of the director. Written request to erect the signs shall be made to the director and a sketch indicating the message, dimensions, color, material, and location of the sign shall accompany the request.

(b) The sign shall conform to the requirements of this chapter and the ordinances of the county in which the sign will be erected. [Eff MAY 30 1980] (Auth: HRS Sec. 264-73) (Imp: HRS Sec. 264-72)

Sec. 19-103-19 Trimming or destruction of trees.
Trimming or destruction of trees and shrubs on the
highway right-of-way in order to increase or enhance
the visibility of outdoor advertising is prohibited.
[Eff. MAY 30 1981 (Auth: HRS Sec. 264-73) (Imp: HRS
Sec. 264-73)]

Sec. 19-103-20 Enforcement and penalties. (a)
The director in the case of state highways or the
designated county agency in the case of federal-aid
secondary county highways shall file a complaint with
the proper authorities for the purpose of prosecuting
any violation of this chapter, in accordance with
law.

(b) Any person violating these rules shall be
fined not less than \$25 nor more than \$500, or
imprisoned not more than one month or both. The
person who owns the illegal sign and the person
owning the property upon which the illegal sign is
maintained shall each be subject to the penalties
prescribed herein. [Eff. MAY 30 1981 (Auth: HRS Sec.
264-73) (Imp: HRS Sec. 264-77)]

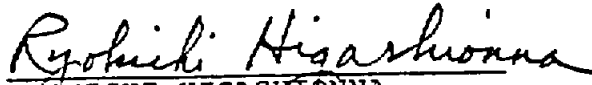
Sec. 19-103-21 Repeal. All rules and regula-
tions relating to outdoor advertising along State
highways and federal aid secondary county highways in
effect prior to the effective date of this chapter
are repealed. [Eff. MAY 30 1981 (Auth: HRS Sec.
264-73) (Imp: HRS Sec. 264-73)]

DEPARTMENT OF TRANSPORTATION

I, RYOKICHI HIGASHIONNA, in my capacity as the Director of Transportation of the State of Hawaii, pursuant to the authority vested in me by law, do hereby adopt the foregoing Chapter 103 of Title 19 which contains rules relating to Outdoor Advertising along State Highways and Federal Aid Secondary County Highways.

The rules in this chapter are being adopted following public hearings held on March 31, April 1, 2, and 3, 1981, notice of which was duly published on March 2, 1981 in the Honolulu Advertiser, Honolulu Star-Bulletin, Hawaii Tribune Herald, Maui News and Garden Island News.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.


RYOKICHI HIGASHIONNA
Director of Transportation

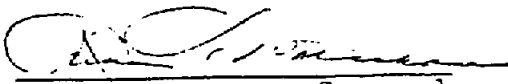
Date: May 13, 81

APPROVED:


GEORGE R. ARIYOSHI
Governor
State of Hawaii

Date: May 18, 1981

APPROVED AS TO FORM:


Deputy Attorney General

REC'D. BY

COMM. FILE