



U.S. Department  
of Transportation

**Federal Highway  
Administration**

**Montana Division**

June 6, 2016

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In Reply Refer To:  
**HDA-MT**

Michael Tooley, Director  
Montana Department of Transportation  
2701 Prospect Avenue  
Helena, MT 59620-1001

Subject: Advertisement on Transit Shelters

Dear Mr. Tooley:

Over the course of the past six months, my staff worked cooperatively with your staff to advance proposed revisions to the Administrative Rules of Montana (ARM). These proposed revisions clarify procedures and definitions related to Outdoor Advertising Control, as well as create new rules that define provisions for the use of electronic billboards and govern advertisement on transit shelters.

With respect to the latter proposed revision, as you are aware, 23 CFR 1.23(b) requires state Department of Transportations to maintain the state highway right of way (ROW) and ensure all ROW is free and clear of any use that is not considered to be a highway purpose. However, 23 CFR 1.23(c) allows FHWA to approve the use of state highway ROW for non-highway purposes provided the state DOT illustrates a benefit to the public and affirms that such action will not impair the safety and operations of the highway facility. Our cooperative work on the ARM intended to define criteria to conform to 23 CFR 1.23(c) and create a governing process for advertising on transit shelters (which is considered a non-highway use) within the highway ROW.

MDT identified a number of illegal advertisements on existing bus shelters when evaluating the potential revisions to the ARM. Absent the proposed revisions to the ARM, the state of Montana does not have procedures in place to approve the placement of advertising on transit shelters within state highway ROW. In lieu of an approved process, MDT must default to the requirements of 23 CFR 1.23(b) when considering proposals to construct transit shelters with advertising within the state highway ROW - which prohibits the placement of advertising. Therefore, any advertising on existing transit shelters is an illegal use of the highway ROW.

Consequently, the Division Office expects MDT to fulfill their obligations under 23 CFR 1.23(b) through the immediate enforcement and removal of any illegal advertisement on transit shelters within the state highway ROW. Failure to comply with federal regulations may ultimately result in the loss of federal funds. Please provide a response describing MDT's proposed plan to resolve this issue by Monday, June 13. You may contact Brian Hasselbach, of my staff, at (406) 441-3908 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "K. L. McLaury, P.E.", written in a cursive style.

Kevin L. McLaury, P.E.  
Division Administrator