

## NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Amendment of Regulations of the  
Nevada Department of Transportation

The Nevada Department of Transportation is proposing the amendment of regulations pertaining to Chapter 410 of the Nevada Administrative Code. A public meeting will be held at the **Nevada Department of Transportation District II Headquarters, Third Floor Conference Room 302, 1263 S. Stewart St. Carson City, NV, commencing at 9:30 a.m. on Monday, February 12, 2018**. The purpose of the hearing is to receive comments from all interested persons regarding the Amendment of regulations that pertain to chapter 410 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The proposed amendment to Regulation NAC 410.350 is needed to amend the requirements for Commercial Electronic Variable Message Signs (CEVMS) including trivision signs and digital billboard signs. This proposed amendment was prompted by the passage of Assembly Bill No. 305 during the 77<sup>th</sup> Legislative Session which amended NRS 410.400 to add a definition for “commercial electronic variable message signs” and to prescribe regulations governing the issuance of permits and to specify the operational requirements for these signs.
2. The proposed amendment includes content, movement, and appearance during static displays, display time and change intervals on trivision signs, operating and monitoring systems to address the displays in the event of a malfunction, and brightness of billboards as ambient light conditions change.
3. Billboard Industry: (a) There is no anticipated immediate negative economic effect to the billboard industry. There could be an immediate positive economic effect, however, when static billboards are converted to digital billboards. (b) There is no anticipated long-term negative economic effect to the billboard industry. There could be a long-term positive economic effect, when static billboards are converted to digital billboards.  
Public: (a) There will be no immediate negative economic effect to the public as a result of the adoption of this regulation. There will be no immediate positive economic effect to the public as a result of the adoption of this regulation. (b) There will be no long-term negative economic effect to the public as a result of the adoption of this regulation.
4. The costs associated with agency enforcement will be approximately \$18,000 per year. Current staff will be utilized to inspect the subject billboards for daytime and nighttime brightness levels of permitted CEVM billboards. There will be equipment costs associated with the purchase and maintenance of light measurement devices. This cost is estimated to be \$4,000 to \$6,000 per unit per district for an estimated cost of \$18,000 per year.
5. There is overlap of this proposed regulation under local governmental agency codes. The follow City and Counties have regulations pertaining to outdoor advertising signs:
  - (a) The City of Reno, Chapter 18.16, Article II of it Land Development codes.
  - (b) Washoe County Code (WCC), Chapter 110 (Development Code) Article 505.30 regulates Electronic Message Display (EMD) signs and 110.505.64 regulates billboards.
  - (c) Clark County Chapter 30.72
  - (d) City of Henderson, Chapter 19.8
6. The State is tasked, by the Federal Highway Administration, to regulate Outdoor Advertising signs under the Federal Highway Beautification Act (23 U.S.C. 131). The federal regulation pertaining to this is 23 Code of Federal Regulation Chapter 1, Subpart G.
7. The State Legislature created NRS Chapter 410 Beautification of Highways, which established a statutory basis for the regulation and control of Off-premise Outdoor Advertising and Junkyards. With

the creation of NRS Chapter 410, Nevada was consistent with the Federal Highway Beautification Act. These statutes provided a basis for NAC Chapter 410.

8. It is proposed that the permit application fee for the conversion of a billboard from a static display to a digital display be raised from \$200 to \$800.

Persons wishing to comment upon the proposed action of the Nevada Department of Transportation may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to Ruth Borrelli, Chief Right-of-Way Agent, Nevada Department of Transportation, 1263 S. Stewart Street, Carson City, NV 89712 or by emailing at [rborrelli@dot.nv.gov](mailto:rborrelli@dot.nv.gov). Written submissions must be received by the Nevada Department of Transportation on or before January 31, 2018. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Nevada Department of Transportation may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be Amended will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be Amended will be available [www.nevadadot.com/doing-business/public-involvement-information](http://www.nevadadot.com/doing-business/public-involvement-information) and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. : A copy of the notice and proposed regulations has also been placed on the Nevada Department of Transportation's website at [www.nevadadot.com](http://www.nevadadot.com). This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us> Copies of this notice and the proposed regulation will also be mailed to members of the public upon request.

A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

Additional copies of this notice and the proposed regulations to be amended will be available at:

Nevada Department of Transportation  
1263 S. Stewart St.  
Carson City, NV 89712

Nevada Department of Transportation  
District III Office  
1951 Idaho St  
Elko, NV 89801

Nevada Department of Transportation  
District I Office  
123 E. Washington Ave.  
Las Vegas, NV 89125

Nevada Department of Transportation  
Winnemucca Maintenance Station  
725 West 4<sup>th</sup> St.  
Winnemucca, NV 89446

Nevada Department of Transportation  
Tonopah Maintenance Station  
805 Erie Main  
Tonopah, NV 89049

Nevada Department of Transportation  
Ely Maintenance Station  
401 Ave. "F"  
Ely, NV 89301

Nevada Department of Transportation  
District II Office  
310 Galletti Way  
Sparks, NV 89431

Clark County Courthouse  
200 S. Third St.  
Las Vegas, NV 89155

Washoe County Courthouse  
75 Court St.  
Reno, NV 89520

Grant Sawyer State Office Building  
555 E. Washington Ave.  
Las Vegas, NV 89101

Public comment may be limited to three minutes per person at the discretion of the Department's spokesperson.

**REVISED PROPOSED REGULATION OF  
THE BOARD OF DIRECTORS OF  
THE DEPARTMENT OF TRANSPORTATION**

**LCB File No. R153-16**

September 28, 2017

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §1, NRS 410.400.

A REGULATION relating to outdoor advertising signs; revising provisions governing certain off-premise outdoor advertising signs; setting forth requirements for certain commercial electronic variable message signs in urban areas; revising the fee for amending a permit to authorize modification of certain signs; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law requires the Board of Directors of the Department of Transportation to prescribe regulations specifying the operational requirements for commercial electronic variable message signs, which include digital billboards and trivision signs. (NRS 410.400) Existing regulations authorize such signs in urban areas if the signs meet certain conditions such as not causing glare on the roadway and not containing flashing, intermittent or moving lights. (NAC 410.350) This regulation also requires such signs to: (1) comply with applicable federal regulations; and (2) not emit odors, smoke or sound. A digital billboard must comply with certain requirements for the operating system and use technology that adjusts the brightness or luminance of the sign to ensure that certain brightness limitations are met during nighttime hours. A trivision sign must comply with certain display times and change intervals. The Department may allow certain existing signs to be converted to or from commercial electronic variable message signs if certain conditions are met and the owner of the sign pays a permit modification fee. Finally, if a commercial electronic variable message sign does not meet the requirements for such a sign, the owner has 60 days from receipt of a notice to remedy the violation or remove the sign. The Department may remove the sign at the owner's expense if the violation is not remedied within 60 days.

Existing law requires the Board to prescribe regulations governing the issuance of permits for commercial electronic variable message signs. The Department is authorized to assess a reasonable annual fee for each permit issued for such signs to recover the administrative costs incurred by the Department in issuing such permits and for the inspection and surveillance of the signs. (NRS 410.400) Existing regulations impose a new permit fee of \$150 for the modification of an existing sign to a commercial electronic variable message sign. (NAC 410.350) This regulation revises the permit modification fee to \$800.

**Section 1.** NAC 410.350 is hereby amended to read as follows:

410.350 1. Signs, *including, without limitation, commercial electronic variable message signs*, must not be ~~placed with~~ *erected or maintained in such a way that* illumination ~~that~~ *of the sign* interferes with the effectiveness of or obscures any official traffic sign, device or signal. ~~Signs~~ *Except as otherwise provided in subsection 9, signs* must not include or be illuminated by flashing, intermittent or moving lights, except any parts necessary to give public service information such as the time, date, temperature, weather or similar information ~~Signs~~, *and* must not cause beams or rays of light to be directed at the traveled way if the light is of such intensity or brilliance ~~or is likely to be mistaken for a warning or danger signal or~~ *as* to cause glare or impair the vision of ~~any~~ *the driver* ~~of any motor vehicle~~ or to interfere with any driver's operation of a motor vehicle. Illumination or lights for signs must not resemble or simulate any lights used to control traffic ~~or other lights used to provide a warning or danger signal~~.

2. A commercial electronic variable message sign ~~, including, without limitation, a trivision sign,~~ may be approved as an off-premise outdoor advertising sign in an urban area if the sign ~~does~~:

**(a) Does not ~~[contain flashing, intermittent or moving lights, does not cause a glare on]~~ interfere with any driver's operation of a motor vehicle in the right-of-way of the roadway .**

~~[and the following conditions are met:~~

~~—(a) An existing sign may be modified or updated if the sign conforms]~~

**(b) Conforms** with established criteria relating to zoning, size, lighting and spacing.

~~[(b) A message on a trivision sign may have a minimum display time of 6 seconds and a maximum change interval of 3 seconds.~~

~~—(c) A trivision sign must contain a mechanism that will stop the sign in one position if a malfunction occurs.~~

~~—(d) If a sign is installed that does not comply with the provisions of this subsection, the owner of the sign shall correct the violation or remove the sign at the owner's expense.~~

~~—(e) Prior approval from the Department is required to modify existing signs to include the commercial electronic variable message sign, and a new permit fee of \$150 will be charged.]~~

**(c) Complies with all applicable provisions of 23 U.S.C. § 131 and any regulations adopted pursuant to those provisions.**

**(d) Does not intentionally emit odors, smoke or sound except those odors or sounds which are by their nature a part of the operation or display of such a sign.**

**(e) Meets the applicable requirements of this section.**

**3. A commercial electronic variable message sign which is a digital billboard must:**

**(a) Contain static messages which do not:**

**(1) Move or create the appearance or illusion of movement during the display of each static message; or**

**(2) Include lights which vary in intensity for each static message or which flash.**

**(b) Be operated with sufficient safeguards and monitoring in place to prevent the sign and its operating system, including, without limitation, software, hardware, networks and infrastructure, from being accessed, used or misused by unauthorized persons.**

**(c) Ensure that each transition from one static message to the next appears instantaneous to the human eye.**

**(d) Have a minimum display time for each static message of:**

**(1) In a county whose population is less than 700,000, not less than 8 seconds.**

**(2) In a county whose population is 700,000 or more, not less than 6 seconds.**

**(e) Except as otherwise provided in subsection 5, use technology that automatically adjusts the brightness or luminance of the lighting of the digital billboard display to ensure that during nighttime such lighting does not exceed a brightness level of 0.3 foot-candle above ambient light, when measured as required pursuant to subsection 4.**

**(f) In the event of a malfunction that violates or may violate the provisions of this section, until the malfunction has been corrected, be:**

**(1) Turned off;**

**(2) Set to display a full black image; or**

**(3) Frozen on an authorized image,**

**↳ by the owner of the digital billboard.**

**4. Except as otherwise provided in subsection 5, compliance with the brightness levels pursuant to paragraph (e) of subsection 3 must be measured:**

**(a) Not less than 30 minutes after sunset and not less than 30 minutes before sunrise; and**

*(b) With a foot-candle meter used within the following distance parameters relative to the size of the face of the digital billboard:*

<u><i>Size of sign face</i></u>	<u><i>Distance of measurement</i></u>
<i>Not more than 300 square feet.....</i>	<i>150 feet</i>
<i>More than 300 but not more than 385 square feet.....</i>	<i>200 feet</i>
<i>More than 385 but not more than 680 square feet.....</i>	<i>250 feet</i>
<i>More than 680 but not more than 1,200 square feet .....</i>	<i>350 feet</i>

*5. A digital billboard which exceeds the nighttime brightness level specified in paragraph (e) of subsection 3 as measured in foot-candles pursuant to subsection 4 must not exceed:*

*(a) In a county whose population is less than 700,000, a nighttime luminance of 250 nits; or*

*(b) In a county whose population is 700,000 or more, a nighttime luminance of 350 nits.*

*↳ Compliance with the maximum luminance levels required by this subsection must be measured not less than 30 minutes after sunset and not less than 30 minutes before sunrise with a luminance meter or a nit gun that can read to the accuracy of 5 nits.*

*6. A commercial electronic variable message sign which is a trivision sign must:*

*(a) Have a change interval of not more than 3 seconds and:*

*(1) In a county whose population is less than 700,000, have a minimum display time for each static message of not less than 8 seconds; or*

*(2) In a county whose population is 700,000 or more, have a minimum display time for each static message of not less than 6 seconds.*



***(b) Contain a mechanism which stops the sign in a stationary position in the case of a malfunction.***

***7. The Department may allow a permit for an existing sign to be modified to authorize the conversion of a sign which is not a commercial electronic variable message sign to a commercial electronic variable message sign or the conversion of a sign which is a commercial electronic variable message sign to a sign which is not a commercial electronic variable message sign if:***

***(a) The sign meets the applicable requirements of NRS and this chapter.***

***(b) A permit modification fee of \$800 is paid to the Department.***

***(c) The sign has been approved by the relevant local government or is a nonconforming sign under local law but has been granted grandfathered conforming status by the relevant local government, and the conversion has been approved by the relevant local government, if applicable.***

***8. If a commercial electronic variable message sign is installed or modified pursuant to this section and the electronic variable message display portion of the sign does not comply with the requirements of this section, the owner of the sign, not more than 60 days after receipt of written notice by the Department, must correct any violations or remove the electronic variable message display portion of the sign at the expense of the owner. After 60 days, if the owner has not corrected the violations or removed the sign, the Department may remove the electronic variable message display portion of the sign at the expense of the owner. The owner of a commercial electronic variable message sign from which the electronic***

*variable message display portion of the sign has been removed pursuant to this subsection may continue to operate all other portions of the sign.*

*9. A digital billboard that meets the requirements of this section shall be deemed not to:*

*(a) Include or be illuminated by flashing, intermittent or moving lights; and*

*(b) Cause glare.*

*10. As used in this section:*

*(a) "Change interval" means the amount of time required for a trivision sign to transition from one static message to the next static message.*

*(b) "Commercial electronic variable message sign" has the meaning ascribed to it in NRS 410.400. The term does not include a sign located within a roadway right-of-way that:*

*(1) Functions as a traffic control device; and*

*(2) Is described or identified in the Manual on Uniform Traffic Control Devices, as adopted by reference in NAC 408.411.*

*(c) "Digital billboard" means a type of off-premise commercial electronic variable message sign which:*

*(1) May be internally or externally illuminated; and*

*(2) Uses digital message technology capable of changing the static message or copy on the sign electronically.*

*(d) "Flashing, intermittent or moving lights" includes, without limitation, any object which simulates or creates the effect of flashing, intermittent or moving lights, including, without limitation, reflective discs or slats, both stationary or moveable, which reflect light.*

**(e) "Foot-candle" means a unit of illuminance or illumination equivalent to the illumination produced by a source of one candela at a distance of one foot and equal to one lumen per square foot.**

**(f) "Glare" means a visual condition in which there is excessive contrast or an inappropriate distribution of light sources which limit the ability of a person to distinguish details and objects.**

**(g) "Luminance" means the quantitative measure of brightness of a light source or an illuminated surface.**

**(h) "Nit" means a unit of measurement of luminance equal to one candela per square meter.**

**(i) "Nit gun" means a device which measures the amount of light emanating from a specific light source in nits.**

**(j) "Trivision sign" means a type of off-premise commercial electronic variable message sign on which the static message or copy on the sign may be changed mechanically or electronically by movement or rotation of panels or slats, including, without limitation, through the use of remote control.**