

Title 27. Transportation

Chapter V. Arkansas Department of Transportation, State Highway Commission

Subchapter D. Beautification

Part 131. Vegetation Management on Highway Rights-of-Way — Restore Property Visibility Policy

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "October 23, 2019"

Subpart 1. Generally

27 CAR § 131-101. Purpose.

(a) The purpose of this part is to establish procedures whereby property owners may obtain permits from the Arkansas Department of Transportation to restore the visibility to their property from adjacent state highways controlled pursuant to the federal regulations and state rules for the effective control of outdoor advertising and state rules for landscaping on state highway rights-of-way.

(b) The procedures contained in this part comply with 23 U.S.C. § 131, implemented through 23 C.F.R. pt. 750 and Arkansas Code Title 27, Chapters 64 and 74 with the intent for the department to:

- (1) Protect the public investment in the state highway system;
- (2) Promote the safety and recreational value of public travel;
- (3) Support Arkansas's economy; and
- (4) Preserve the state's natural beauty.

Authority. Arkansas Code § 27-65-107.

27 CAR § 131-102. Definitions.

As used in this part:

(1) "Barrier" means a fence, parapet wall, guardrail, wire rope safety fence, or other device intended to prohibit entry between the state highway right-of-way and the adjacent property;

(2) "Certified arborist" means a specialist in the care and maintenance of trees who possesses an active Arborist Certificate from the International Society of Arboriculture;

(3) "Illegal sign" means a sign that was erected, or is being maintained, in violation of local or state law, rules, or regulations, and which is not permitted as a conforming or nonconforming sign;

(4)(A) "Landowner" means any persons, corporation, agency, or body that is the owner of record of a parcel of land that adjoins the state highway right-of-way.

(B) The county tax assessor's records will be accepted as verification of the owner of record;

(5)(A) "Landscaping mitigation" means the planting of new vegetation to offset damage resulting from removal of existing vegetation, as it relates to erosion control or aesthetics.

(B) For example, removal of brush, honeysuckle, or thickets may result in slopes that will erode.

(C) The Arkansas Department of Transportation may require the planting of grass or other ground cover to minimize damage;

(6) "Legal sign" means a sign that was erected, or is being maintained, in accordance with local or state laws, rules, and regulations, and which is permitted as a conforming or nonconforming sign;

(7) "Off-premise sign" means a sign advertising products or services not available at the sign site;

(8) "On-premise sign" means a sign advertising those products or services available at the sign site, including "for sale" or "for lease" signs located at the property they advertise;

(9) "Owner" means the landowner or sign owner as it relates to the Restore Property Visibility Policy (RPVP) permit;

(10) "Permittee" means the owner that is requesting the RPVP permit;

(11) "Selective cutting" means the removal of trees that are defective, of inferior kinds, or obstructing visibility to adjacent property and if removed have minimal impact to the aesthetic value of state highway rights-of-way;

(12) "Sign" means an outdoor advertising sign, 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 which is visible from any place on the main-traveled way of the portions of the Federal-Aid Highway System regulated by 23 U.S.C. § 131;

(13) "Sign owner" means any persons, corporation, agency, or body that has the legal or rightful title of a sign; and

(14) "Vegetation control" is the mowing, bush hogging, trimming, pruning, and/or selective cutting and removal of vegetation on state highway rights-of-way.

Authority. Arkansas Code § 27-65-107.

27 CAR § 131-103. Policy.

(a)(1) It is the policy of the Arkansas Department of Transportation to allow, by Restore Property Visibility Policy (RPVP) permits, the mowing, bush hogging, cutting, trimming, pruning, and/or selective removal of vegetation on state highway rights-of-way to restore the visibility of property and signs from state highways.

(2) This policy permits landowners to return the vegetation height of highway right-of-way to that of the landscape of the adjoining property.

(3) This policy also permits sign owners to restore visibility which has diminished since the original erection of the signs.

(b)(1) This policy for signs applies to the visibility of legal, off-premise signs, both conforming and nonconforming, and not to illegal signs.

(2) RPVP permits will not be issued in relation to illegal signs or to sign owners with other illegal or abandoned signs.

(c) RPVP permits authorize vegetation control only on that portion of state highway right-of-way that abuts the tract of land on which the permittee owns or on which the permittee's sign or property is located and/or abuts tracts where landowners agree to such control.

(d) RPVP permits for signs shall only be considered for legal, currently permitted signs that have had a valid permit for the last two (2) consecutive years.

(e)(1) RPVP permits must be obtained for each location at which vegetation control will occur and must be renewed in a four-year cycle in July of even numbered years.

(2) Where applicable, the RPVP permit will be associated to the relevant sign permit.

(f) RPVP permits must be obtained for vegetation control involving major clearing and the installation, use, and maintenance of sprinkler systems.

(g) RPVP permits must be obtained for vegetation control that could:

(1) Impact public safety;

(2) Cause drainage damage; or

(3) Create erosion problems.

(h) The department may require a National Pollutant Discharge Elimination System (NPDES) permit in conjunction with issuance of the RPVP permit.

(i) Unless notified otherwise by the department, RPVP permits for mowing, minor clearing, and maintenance of frontage under certain circumstances are not required on noncontrolled access facilities at locations that are free from barriers intended to prohibit entry onto the state highway right-of-way from the adjacent property.

(j)(1) Vegetation control within median areas of divided highways will be considered on a case-by-case basis.

(2) If approved, the permittee will be required to submit a Highway Access Safety Plan.

(k) Permittees may perform vegetation control for the area in front of the property or sign within the limits of the department's right-of-way, unless otherwise specified in the permit.

(l)(1) RPVP permits authorize vegetation control only in accordance with accepted landscaping and horticultural principles.

(2) All work will be performed in a professional manner, and cuttings and other debris are to be removed at the time the work is performed.

(3) Vegetation may be chipped or mulched and spread uniformly on the site if approved in the permit.

(4) Trees that cannot be mowed or bush hogged may be trimmed or pruned provided the work will not permanently damage or destroy the trees or weaken the condition of the trees so that they are susceptible to disease or insect infestation.

(5) Mitigating landscaping may be required to compensate for the tree removal.

(m)(1) RPVP permits may authorize the removal of dead or diseased trees or the selective cutting of any other trees requested by the permittee and approved by the department.

(2) Only those trees as specified in the RPVP permit and approved by the department may be removed.

(3) Mitigating landscaping may be required to compensate for the tree removal.

(n) In no case will historic trees, landmark trees, or trees of significant landscaping or aesthetic value be removed, including trees that were planted as a part of a public or private highway beautification or enhancement project.

(o) If a sign owner desires to restore visibility to a sign in front of an adjacent landowner not associated with the sign, written approval from the adjacent landowner must be obtained before an RPVP permit will be issued.

(p)(1) Access to sites adjacent to interstate and other controlled access highways must be gained without using the main travel way of the highway.

(2) If the department determines access from the travel way is the only feasible alternative, the department may approve a Highway Access Safety Plan submitted by the permittee as part of the RPVP permit.

(q)(1) The Highway Access Safety Plan shall comply with all work zone safety requirements in accordance with the:

(A) Manual for Uniform Traffic Control Devices;

(B) Department Standard Roadway Drawings for Standard Traffic Control for Highway Construction; and

(C) The current edition of the department's Standard Specifications for Highway Construction, 27 CAR pt. 90.

(2) Traffic control devices shall be supplied, installed, and maintained by the permittee.

(r)(1) The Highway Access Safety Plan will require a department inspector on-site for the duration that the permittee or its representatives are adjacent to the interstate or controlled access highway for work zone and vegetation control activities.

(2) The permittee will be charged two hundred fifty dollars (\$250) per day for each day the inspector will be required on-site.

(3) Any partial days will be counted as full days when assessing this charge.

(s) The department inspector has the right to immediately terminate any activities by the permittee or its representatives upon notice of any violation of the Highway Access Safety Plan or RPVP permit.

(t)(1) For access to a site adjacent to interstate and other controlled access highways that is restricted by a fence, a gate may be requested to provide access for right-of-way vegetation control only.

(2) Gates will be permitted upon any required approval from the Federal Highway Administration.

(u)(1) Any gate installed shall remain locked when the vegetation control activity is not underway.

(2) The permittee will be fined two hundred dollars (\$200) for each time a gate is found unlocked and unattended unless corrected within twenty-four (24) hours of being notified by the department.

(3) This subsection does not apply if the lock and chain have been cut by vandals over which the permittee had no control.

(4) However, upon discovery of the vandalism, the permittee will make any necessary repairs within two (2) business days.

(v) Cutting, leaving openings, or any other form of destruction to department fences is not allowed and the permittee will be fined two hundred dollars (\$200) for each occurrence.

(w)(1) Access through permitted gates is prohibited for routine billboard maintenance such as changing sign messages.

(2) When gates are used for sign maintenance or roadway access, the permittee will be fined two hundred dollars (\$200) per occurrence.

(x) Vegetation control will not be allowed within five hundred feet (500') of:

- (1) National parks;
- (2) State parks;
- (3) County parks;
- (4) City parks;
- (5) Wildlife management areas;
- (6) Cemeteries; or

(7) Where plantings are part of a public or private highway beautification or enhancement project.

(y) At locations which are free from barriers between the state highway right-of-way and the adjacent property and where mowing has previously been allowed by business owners or sign owners without an RPVP permit, mowing will be allowed to continue without an RPVP permit.

(z)(1) Vegetation control should not leave large, open spaces or gaps in the general outline of the tree.

(2) Shaping of trees to the extent practical may be allowed to control and direct the growth in a manner consistent with the remaining vegetation of the adjacent areas along the highway right-of-way.

(3) Shaping of trees shall only be allowed if performed under the direction of or as prescribed in a plan design by a certified arborist.

(4) The general outline of the tree should not be changed if trimmed in accordance with this policy.

(aa) No topping of trees will be allowed.

(bb)(1) RPVP permits granted for vegetation removal may require landscaping mitigation in the form of replacement plantings.

(2) If an applicant removes vegetation and the result is that a nonconforming junkyard or unsightly area also becomes visible, the department may also require planting of smaller trees or vegetation of a sufficient height to screen the area.

(3) Landscaping mitigation requirements are to be determined by the department.

(4) The initial cost and maintenance of these plantings shall be the responsibility of the permittee.

(5) In lieu of plantings, a privacy fence may be installed with the permission of the landowner.

(6) The permittee will be responsible for any maintenance or repairs to the fence as deemed necessary by the District Engineer.

(cc)(1) Stumps shall be cut or ground flush with the ground and treated with an Environmental Protection Agency-approved herbicide immediately after the stump is cut.

(2) Only the stumps are to be treated.

(3) The use of herbicides or chemicals on the grass or ground cover is not allowed.

(4)(A) Spraying an Environmental Protection Agency-approved herbicide along a privacy fence as described in subsection (b)(b) of this section would generally be acceptable.

(B) However, there are restricted areas, such as wellhead protection areas, that herbicide spraying would not be allowed.

(C) Identification of these restricted areas will be made during the environmental review process before issuing a permit.

(dd)(1) All mowing or cutting must be accomplished with hand tools, wheeled machinery, or rubber tracked machines not exceeding three (3) tons.

(2) No steel track equipped machines are allowed.

(3) Grass and weeds may be mowed, but surface growth of at least four inches (4") must be left for erosion control.

(4) Digging, scraping, bulldozing, clear cutting, uprooting trees, or scalping the ground is not allowed.

(ee) Vegetation control activities shall be conducted in a manner that does not obstruct or pose danger to motorists in their lawful use of the highway.

(ff) Vegetation control or work zone activities authorized by an RPVP permit shall be accomplished at no expense to the department.

(gg) The permittee is responsible for sprinkler systems, equipment, or devices authorized by an RPVP permit and assumes any risk of damage incurred by the department while performing maintenance activities on the highway right-of-way.

(hh) The permittee is responsible for repairing any damage to the right-of-way as a result of vegetation control activities including but not limited to rutting, erosion, or damage to permitted utilities.

(ii) The permittee shall be required to carry liability insurance with a limit of at least one million dollars (\$1,000,000) per occurrence.

(jj)(1) A performance bond of at least one thousand dollars (\$1,000) per site shall be required to ensure the restoration of highway right-of-way.

(2) In lieu of an individual performance bond for each site, sign owners may choose to post a standing performance bond in an amount of at least one thousand dollars (\$1,000) per site up to a maximum of fifty thousand dollars (\$50,000).

(kk) The permittee fully agrees to hold harmless the State Highway Commission and the department and their officers, agents, and employees from any and all damages of any nature to any person or property due to any performance or nonperformance of any work authorized by the RPVP permit.

(ll)(1) The department may, with good cause, deny, revoke, or amend any RPVP permit.

(2) If a sign permit is revoked the permittee has a right to request an administrative hearing.

(mm)(1) All RPVP permits must be renewed in four-year cycles beginning in July 2022 (see subsection (e) of this section).

(2) All RPVP permits must be renewed at the same time regardless of the original date of issue.

(3) The permits will allow cutting up to four (4) times per year.

(4) The renewal fee is one hundred sixty dollars (\$160) for a four-year renewal.

(nn)(1) The permittee must notify the appropriate department District Engineer a minimum of three (3) working days prior to performing any vegetation control activities.

(2) The department, at its option, may arrange to have an inspector on site while work is being performed.

(oo) For RPVP permits that include a Highway Access Safety Plan, the permittee must notify the appropriate department District Engineer a minimum of five (5) working days prior to performing any vegetation control or work zone activities in order to arrange for an inspector to be on-site.

Authority. Arkansas Code § 27-65-107.

27 CAR § 131-104. Violation of permit.

(a)(1) If Restore Property Visibility Policy (RPVP) permit provisions are violated, the first offense shall be a five hundred dollar (\$500) fine for each individual offense and/or the surrendering of the state billboard permit for any associated sign, subject to the right to an administrative hearing.

(2) A second violation from the same owner shall result in the denial of any future requests for RPVP permits for two (2) years, and for any associated signs, revocation of the state billboard permit for that sign, subject to the right to an administrative hearing.

(b)(1) The owner must also provide a statement, signed and dated, agreeing to abide by the terms of the RPVP permit.

(2) The sign owner must also agree to remove the sign at no cost to the Arkansas Department of Transportation if the terms of the RPVP permit are violated by either:

- (A) The sign owner;
- (B) The landowner; or
- (C) Third parties contracted to carry out vegetation control activities.

Authority. Arkansas Code § 27-65-107.

27 CAR § 131-105. Procedures.

(a) Restore Property Visibility Policy (RPVP) permits are issued by the Arkansas Department of Transportation's District Engineer for the highway district in which the vegetation control site is located and are issued in coordination with department Right of Way and Environmental Divisions, and Federal Highway Administration as necessary.

(b) Individual RPVP permits must be requested for each site using the department's application form and include:

(1) Eight-inch-by-ten-inch (8" x 10") photographs of the state highway right-of-way vegetation interfering with the view of the site and which is the subject of the RPVP permit request;

(2) A specific written proposal of the vegetation control work to be performed on the highway right-of-way to restore the visibility of the site;

(3)(A) A drawing of the highway right-of-way area where the work is to be performed indicating the location of sprinkler systems, vegetation to be mowed, bush hogged, cut, trimmed, pruned, and/or removed on the right-of-way.

(B) The drawing shall also show the length of frontage along the highway right-of-way boundary of the tract of land adjacent to the proposed area of vegetation control;

(4) Proof of liability insurance with a limit of at least one million dollars (\$1,000,000) (see 27 CAR § 131-103(ii));

(5)(A) A performance bond in the amount of at least one thousand dollars (\$1,000) per site issued or countersigned by a resident Arkansas agent or in the form of a cashier's check.

(B) In lieu of a performance bond for each site, a standing performance bond in the amount equal to at least one thousand dollars (\$1,000) per site up to a maximum of fifty thousand dollars (\$50,000) may be posted (see 27 CAR § 131-103(jj));

(6) A signed statement or statements by the landowner or landowners of record of the land at the proposed site or the landowner or landowners of record of an abutting tract or tracts of land where the vegetation cutting will occur, indicating concurrence with the proposed work on that portion of the highway right-of-way abutting the landowner's tract or tracts (see 27 CAR § 131-103(c) and (o));

(7) An application fee, nonrefundable, made payable to the department in the amount of one hundred sixty dollars (\$160) per site designated for vegetation control (see 27 CAR § 131-103(mm)); and

(8) A Highway Access Safety Plan as required by the department's District Engineer (see 27 CAR § 131-103(p) – (s)).

(c)(1) For permit applications that meet the terms of this part, the appropriate department's District Engineer will coordinate with the department's Right of Way and Environmental Divisions and request concurrence prior to issuing an RPVP permit.

(2) The department shall grant or deny these permits within sixty (60) days from the date on which the application was filed with the department's District Engineer.

(d)(1) For permit applications that do not meet the terms of this part or require a Highway Safety Access Plan, the department will respond accordingly.

(2) The department's sixty-day review time will be suspended for the duration the permittee is addressing the department's responses.

(e)(1) The RPVP permittee will advise the department's District Engineer of planned vegetation control activities at least three (3) working days prior to beginning work.

(2) The department, at its option, may arrange to have an inspector at the site while work is being performed (see 27 CAR § 131-103(nn)).

(f) For RPVP permits that include a Highway Access Safety Plan, the RPVP permittee shall advise the department's District Engineer of planned vegetation control activities at least five (5) working days prior to beginning work in order to arrange for an inspector to be onsite (see 27 CAR § 131-103(oo)).

(g)(1) Within thirty (30) calendar days from completion of work on an RPVP permit that included a Highway Access Safety Plan, the permittee is required to deliver a fee made payable to the department in the amount of two hundred fifty dollars (\$250) per day for each day the department inspector reported to the site.

(2) Failure to make payment is considered a violation of the RPVP permit and will be handled in accordance with 27 CAR § 131-104.

Authority. Arkansas Code § 27-65-107.