

Rule No.: 941 - 7501 - 09015

Agency: Mississippi Department of Transportation

Agency Effective Date: May 15, 2005

Agency Issued Date: March 8, 2005

Secretary of State Authority Date: May 15, 2005 Supercedes Rule:

Division: MAINTENANCE

Rule Title: Removal of Encroachments from Highway Right of Way

The person to be contacted regarding the proposed rule is: Facility and Records Management Director

Name of person originating the proposed rule: John Vance

Name of supervisor or person who approved the proposed rule: Melinda McGrath

Purpose:

To establish policy and outline procedures for the orderly removal of encroachments from highway rights of way.

Summary:

This rule establishes policy and procedures to remove encroachments from highway right of way.

The full text of the proposed rule is:

All cites herein refer to the most current version of the cited document.

STATEMENT OF POLICY:

In order to fulfill the Transportation Commission's agreements with the Federal Government to preserve and keep the rights of way free of encroachments on the Federal Aid Highways heretofore constructed and to be constructed and in order that there will be no interruption of federal funds for the continued improvements to the state's highways, it shall be the policy of the Transportation Commission that the rights of way of all state maintained highways be kept free from all encroachments. Reference is made to Rule 941-7501-09001 "RULES, REGULATIONS, AND ORDINANCES GOVERNING THE USE OF STATE HIGHWAY." The responsibility for removal of encroachments from highway rights of way within a municipality is that of the municipality in accordance with Mississippi Code Annotated, Section 65-1-75. The responsibility for removal of encroachments from highway rights of way outside municipalities is that of MDOT.

PROCEDURE:

- A. Encroachments on State Rights of Way Outside Municipalities
1. The District Engineer or his designee in each of the six districts shall have the responsibility of locating, identifying, and acting as the Commission's agent in the removal of all signs, obstructions, and encroachments from the rights of way of state highways.
 2. Each agent will regularly inspect all highways in an assigned area and locate, identify and secure removal of all signs, billboards, structures, or other obstructions on or encroaching upon highway rights of way in violation of the law and the regulations of the Commission.

3. The agent will prepare a report of each encroachment on Form MND-683 including a dated picture showing the encroachment and right of way line. Each line on the upper part of the form will be completed. The sketch is to be neat and legible, and must show:
 - (a) Centerline, appropriate right of way line, and distance from center line to right of way line.
 - (b) Location of encroachment with reference to the right of way line.
 - (c) Sign, supports, and legend, if encroachment is a sign.
 - (d) Size of other encroachments, if applicable.
 - (e) Any other details helpful in identifying the encroachment.
4. The owner will be given a forty-five (45) day notice, by certified mail or personal delivery, properly witnessed, to remove the encroachment. A copy of the report (Form MND-683) will be attached to the notice. (A suggested format for this notice is shown at the end of this Rule).
5. If, at the end of the forty-five (45) day period, the owner has not removed the encroachment or made satisfactory arrangements with the agent for removal, the steps will be taken as follows:
 - (a) **SIMPLE SIGNS AND ENCROACHMENTS LYING WHOLLY WITHIN THE RIGHT OF WAY, WITHIN THE DISTRICT'S CAPABILITY TO REMOVE, AND THE REMOVAL OF WHICH IS NOT CONTESTED BY THE OWNER.**
 - (1) Remove the encroachment immediately by District forces. The encroachment will be stored for thirty (30) days at the Maintenance Area Headquarters before disposing of them. Owners may retrieve the salvaged encroachment without penalty.
 - (b). **COMPLEX SIGNS AND ENCROACHMENTS LOCATED PARTIALLY ON AND PARTIALLY OFF THE RIGHT OF WAY, THOSE NOT WITHIN THE DISTRICT'S CAPABILITY TO REMOVE, THOSE WHOSE REMOVAL HAS BEEN CONTESTED BY THE OWNER IN WRITING TO THE DISTRICT, AND THOSE SIGNS AND ENCROACHMENTS NOT COVERED IN (a) ABOVE.**
 - (1) The agent will forward a copy of the notice to the owner, a copy of the report (Form MND-683), and a copy of the receipt (if notice was sent by certified mail) to the State Maintenance Engineer.
 - (2) The State Maintenance Engineer will review the data submitted for completeness and adequacy and will transmit the file to the

Legal Division (via the Assistant Chief Engineer-Operations) for further legal action.

- (3) The agent will meet the County or District Attorney or file affidavits against the owner when and as deemed necessary and as directed by Legal Counsel.

B. Encroachments on State Rights of Way Within Municipalities

1. The District will contact the applicable municipality, either verbally or in writing, when an illegal encroachment is discovered on state rights of way within the municipal limits. The municipality will be informed that, in accordance with Mississippi Code Annotated, Section 65-1-75, they assume the responsibility for not allowing “any encroachments, signs, or billboards to be erected or to remain on the state-owned rights of way on any designated highway within its corporate limits without consent of the commission.” As part of this responsibility, the municipality shall regularly inspect said rights of way for any illegal encroachments.
2. The District will continue to monitor the highway rights of way within the municipality and inform it of any violations to insure that the rights of way are clear of encroachments.

- C. Political signs located on the rights of way will be removed on a regular basis. No notification is necessary prior to removal. The signs will be held for two (2) weeks at the Maintenance Area Headquarters before disposing of them. Sign owners may retrieve the salvaged signs without penalty.

REFERENCES: (All references herein to other materials are as to the most current version of that particular document.)

- For Mississippi Code see www.state.ms.us
- MDOT specific rules, forms, publications, SOPs, and other support documentation are available for review at MDOT

SUGGESTED FORMAT FOR NOTICE TO OWNER

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
No. _____

Date: _____

(Name of Owner)
(Address of Owner)

Dear (Name of Owner):

A consideration for receipt of Federal Aid Funds used in the construction of state highways is that your Mississippi Transportation Commission keeps rights of way of such highways free of encroachments.

This is to advise you that you have a (**fence, sign, building, etc.**) illegally encroaching upon the rights of way of (**U.S. or State Route**) in (**name**) County. The exact location and nature of this encroachment is shown on the attached sheet.

Pursuant to § 65-1-169 of the Miss. Code of 1972, as amended, the Mississippi Department of Transportation intends to remove this encroachment unless, within forty-five (45) days from the date this notice is mailed, the encroachment is voluntarily removed by you or you institute a civil action in any court of competent jurisdiction with respect to the proposed removal of this encroachment by the Department.

Failure to take action on your part within the statutory period allowed will result in immediate further action being taken by the Department and may result in a judgment against you for any costs incurred by the Department in accomplishing the removal or termination of this encroachment.

Thank you for your earliest attention to this matter.

Very truly yours,

(Name)
District Engineer

By: _____

Enclosure