603 KAR 4:040. TODS signs; placement on public roads other than interstates or parkways.

RELATES TO: KRS 189.337
STATUTORY AUTHORITY: KRS 189.337
NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.337 requires the Department of Highways to establish standards for the placement of signs within highway right-of-way of a public road. The Transportation Cabinet has promulgated 603 KAR 5:050 which deals with all traffic control devices by incorporating the Manual on Uniform Traffic Control Devices by reference. The Manual on Uniform Traffic Control Devices allows for the erection of tourist oriented directional signs (TODS) to provide directional information for tourist activities offering goods and services that are of significant interest to the traveling public within certain parameters, but requires each jurisdiction to establish policies for those areas not covered in the manual. This administrative regulation sets forth the criteria to be followed in the erection and maintenance of TODS. The criteria included in this administrative regulation are consistent with the guidelines set forth in the Manual on Uniform Traffic Control Devices.

Section 1. Definitions. (1) "Clear zone" means the area between the edge of the driving lane of a public road and an imaginary line running parallel to the road but thirty (30) feet (9.12 meters) away from the road.
(2) "Contractor" means the entity selected by the Department of Highways pursuant to KRS Chapter 45A and 600 KAR Chapter 6 to administer the tourist oriented directional signs program in Kentucky. The activities of the contractor shall include but not be limited to marketing, determination of business eligibility, maintenance, erection and removal of the information panels and TODS.
(3) "Contractor year" means July 1 through the following June 30.
(4) "Cover" means a protective shield over a TODS sign which prohibits viewing of the sign.
(5) "Department" is defined by KRS 189.010(1).
(6) "Eligibility distance" means the distance from the at-grade intersection of the state highway at the point where the directional sign is located to the entrance driveway to the business.
(7) "Fully-controlled access highway" means a highway that:
(a) Gives preference to through traffic;
(b) Has access only at selected public roads; and
(c) Does not have a highway intersection or at-grade crossing.
(8) "Illegal sign" means an advertising device which has been determined to be illegal according to the provisions of 603 KAR 3:080.
(9) "Information panel" means an official sign placed within the highway right-of-way with space for one (1) or more individual TODS to be attached to it and which may display the legend "TOURIST ACTIVITIES".
(10) "Intersection" is defined by KRS 189.010(4).
(11) "Motorist service" means a place of business or a business location providing gas, food, lodging, or camping facilities or a combination thereof.
(12) "MUTCD" means the Federal Highway Administration's Manual On Uniform Traffic Control Devices incorporated by reference in 603 KAR 5:050.
(13) "Public road" means all state-maintained roads other than interstate or parkway highways.
(14) "Ramp" means the on- or off-access road from the interstate highway or parkway to or from the first public road.
(15) "Shopping area" means a group of ten (10) or more retail and other commercial establishments located within close proximity of one another that employ a unifying theme carried out by

individual shops in their architectural design or their merchandise.

(16) "Shopping mall" means a group of retail and other commercial establishments that is 400,000 square feet or more and is planned, developed, owned, and managed as a single property.

(17) "TOD trailblazer" means a reduced-sized TODS used in areas where the speed limit is posted with a limit of forty-five (45) miles per hour or less (seventy-two and four-tenths (72.4) kilometers per hours) to direct the traveling public to a tourist attraction.

(18) "Tourist activity" means a public or private activity which provides a tourist attraction or motorist service to the traveling public.

(19) "Tourist attraction" means:

(a) A cultural, historical, recreational, agricultural, educational, or entertainment activity;

(b) A shopping mall or shopping area; or

(c) A commercial activity which is unique and local or indigenous in nature.

(20) "Tourist oriented directional sign" or "TODS" means an individual tourist information sign paid for and owned by the tourist activity and fabricated to the standards set forth in this administrative regulation and located on an information panel on the right-of-way of a public road. The TODS may provide the official name, directional information, and distance to a specific tourist activity.

Section 2. General Provisions. The Department of Highways shall control the erection and maintenance of information panels and TODS in accordance with the MUTCD and the provisions of this administrative regulation.

Section 3. Applications and Contracts for TODS. (1) An application for an activity or business to place a TODS or TOD trailblazer sign on an information panel shall be made on an "Application for Highway Tourist Oriented Directional Signage (TODS)" form prepared by the Kentucky Logos, Inc.

(2) The contract to be entered into between the participating activity or business and the Department of Highways' contractor shall be the "Highway TODS Program Agreement" form prepared by the Kentucky Logos, Inc. Addenda to this form may be included in the contract if appropriate.

Section 4. Information Panels for TODS. (1) General requirements for information panels.

(a) The information panels shall be located to:

1. Take advantage of natural terrain;

2. Have the least impact on the scenic environment; and

3. Avoid visual conflict with other signs within the highway right-of-way.

(b) Information panels for TODS shall not be erected:

1. On a fully-controlled access highway;

2. On the on/off ramps of a fully-controlled access highway;

3. Where there is insufficient space to locate both other traffic control devices and the information panels;

4. So that the traffic is directed onto a fully-controlled access highway; and

5. Except for TOD trailblazers, on those sections of public road with a speed limit of forty-five (45) miles (seventy-two and four-tenths (72.4) kilometers) per hour or less.

(c) Unprotected information panel supports located within the clear zone shall be of a breakaway design.

(d) An information panel may be located laterally outside the normal longitudinal alignment of other traffic control signs, but shall be erected within the highway right-of-way.

(e) The location of any other traffic control device shall at all times take precedence over the location of an information panel.

(2) Intersection approach information panels.

(a) Information panels may be erected at the approach of an intersection on a public road.

(b) Except as provided in paragraph (g) of this subsection, each intersection approach information panel shall be located at least 200 feet (sixty and eight-tenths (60.8) meters) from the intersection.

(c) Except as provided in paragraph (g) of this subsection, an intersection approach information panel shall be spaced at least 200 feet (sixty and eight-tenths (60.8) meters) from any other traffic control device including another intersection approach information panel.

(d) A separate information panel shall be installed for each of the directions of traffic on an approach to an intersection at which TODS will be placed for the identification of tourist activities. The directions of traffic are the following:

1. A right turn;

2. A left turn; and

3. No turn if the activity or business is located ahead if allowed by the provisions set forth in Section 6 of this administrative regulation.

(e) In the direction of traffic, the order of placement for separate information panels shall be for facilities to the left, to the right and straight ahead.

(f) If the AHEAD sign is used pursuant to the provisions of Section 6 of this administrative regulation, an attempt shall be made to locate it to the far right corner of the intersection, but it shall not obstruct the driver's critical viewing of other traffic control devices.

(g) The spacing requirements set forth in paragraphs (b) and (c) of this subsection may be waived by the State Highway Engineer's Office if, based on sound engineering judgment, it is determined that the intersection can safely accommodate the reduced spacing.

(3) Advance information panels.

(a) Advance information panels may be installed only in situations where sight distance, intersection vehicle maneuvers or other vehicle operation characteristics require advance notification of the service to reduce vehicle conflicts and improve highway safety;

(b) The last of the advance information panels to be driven past shall be located at least one-half (1/2) mile (eight-tenths (0.8) kilometers) from the intersection.

(c) Advance information panels shall have a minimum of 800 feet (243.2 meters) between the panels.

(d) A separate advance information panel shall be installed for each of the directions of traffic on and prior to the approach to an intersection at which TODS will be placed for the identification of tourist activities. The directions of traffic are the following:

1. A right turn;

2. A left turn; and

3. No turn if the activity or business is located ahead and if allowed by the provisions set forth in Section 6 of this administrative regulation.

(e) In the direction of traffic, the order of placement for separate advance information panels shall be for facilities to the left, to the right and straight ahead.

(f) If the AHEAD sign is used pursuant to the provisions of Section 6 of this administrative regulation, an attempt shall be made to locate it to the far right corner of the intersection, and it shall not obstruct the driver's critical viewing of other traffic control devices.

Section 5. TODS Design and Composition. (1) Each TODS shall:

(a) Be rectangular in shape;

(b) Have a white legend and border on a blue background;

(c) Have reflective legends, arrows, backgrounds and borders; and

(d) Contain the name of the business in not more than two (2) lines of legend which shall not include promotional advertising.

(2) Each TODS on an intersection approach information panel shall have:

(a) A separate directional arrow as set forth in Section 2D-8 of the MUTCD;

(b) The distance to the activity or business shown beneath the arrow;

(c) Arrows pointing to the right at the extreme right of the TODS; and

(d) Arrows pointing to the left or up at the extreme left of the TODS.

(3)(a) The arrangement of the tourist oriented directional signs on the advance information panel shall be the same as the arrangement on the intersection information panel except the directional arrows and distance shall be omitted.

(b) The appropriate legend NEXT RIGHT, NEXT LEFT, or AHEAD in letters of the same letter height as the other word messages shall be placed on the information panels above the TODS.

(c) The legend "RIGHT X MILE", "LEFT X KILOMETERS", or similarly worded legend may be used if there are intervening minor roads.

(4) More than four (4) TODS shall not be installed on a single information panel.

(5) TODS shall be arranged vertically on an information panel and if appropriate located so that the right turn signs are closer to the intersection. If not more than four (4) TODS are to be installed on an approach to an intersection, the TODS may be combined on the same information panel with the TODS for left turns placed above the TODS for right turns.

(6) The standard lettering for tourist oriented directional signs shall be in upper case letters of the type provided in the "Standard Alphabets for Highway Signs" book. Capital letters shall be six (6) inches (152.4 millimeters) in height. Spacing between characters shall conform to the tables in the metric edition of "Standard Alphabets for Highway Signs and Pavement Markings" published in 1966 by the U.S. Department of Transportation.

(7)(a) A TODS sign shall not exceed seventy-two (72) inches (1828.8 millimeters) wide and eighteen (18) inches (457.2 millimeters) tall.

(b) The TODS signs on the same information panel shall all be the same width.

(c) The directional arrow with the distance to the activity or business underneath shall not exceed sixteen (16) inches (406.4 millimeters) wide and sixteen (16) inches (406.4 millimeters) tall.

(d) There shall be a one (1) inch (twenty-five and four-tenths (25.4) millimeters) white border surrounding the sign and separating the directional arrow and legend.

(e) There shall be a one (1) inch (twenty-five and four-tenths (25.4) millimeters) spacing between the border and legend and two (2) inch (fifty and eight-tenths (50.8) millimeters) spacing between lines of legend.

(f) The maximum length of the legend shall be five feet four inches (5'4") (1.64 meters) per line.

(8) Clearance of panels shall be governed by Sections 2A and 2D of the MUTCD.

Section 6. AHEAD Signing. (1) The legend "AHEAD" may be used in lieu of the up directional arrow set forth in Section 5(2)(d) of this administrative regulation.

(2) Signing for tourist activities in the AHEAD direction shall be considered only under the following circumstances:

(a) There is signing for a similar facility in either the right or left direction;

(b) Through traffic is not the normal traffic pattern; or

(c) The visibility of the establishment is obscured until a motorist is within 800 feet (243.2 meters) of the entrance.

Section 7. Trailblazer Signs. (1) At each turn required to be made by the traveling public when proceeding from a TODS to the tourist attraction, a legal sign shall be in place directing the turn.

This may be accomplished by purchasing an additional TODS or TOD trailblazer sign.

(2) The Transportation Cabinet, based on engineering judgment, shall establish the size and location of each TOD trailblazer sign.

(3) The Transportation Cabinet shall approve the proposed trailblazing route for each tourist activity seeking trailblazing signs prior to the submission of the application for permit is required by Section 16 of this administrative regulation.

Section 8. Tourist Activity Eligibility. A tourist activity shall meet the following requirements to qualify for tourist oriented directional signing. A TODS sign shall not be erected until the tourist activity or site has been approved in accordance with this administrative regulation.

(1) A tourist activity shall be of significant interest to the traveling public. The types of activities or sites which are of significant interest to the traveling public are gas, food, lodging, camping, and tourist attractions, if at least one-third (1/3) of the income or visitors at the tourist activity are derived during the normal business season from visitors not residing within twenty (20) miles (32.18 kilometers) of the activity.

(2) The tourist activity shall be open to the general public during regular and reasonable hours, and not by appointment or reservation only.

(3) Approval shall not be granted if the tourist activity is using an illegal sign any place in the Commonwealth of Kentucky.

(4) Each tourist activity shall comply with all applicable local, state, and federal statutes and administrative regulations including those prohibiting discrimination based on race, religion, color, sex, age, disability, or national origin. Each tourist activity identified on a tourist oriented directional sign shall provide assurance of its conformance with all applicable federal, state or local laws and administrative regulations. If a tourist activity is in noncompliance of any of these laws or administrative regulations, it may be considered ineligible for participation in this program and its signs may be removed, with no return of any fees.

(5) The tourist activity shall be conducted in an appropriate building or area. The activity shall not be conducted in a building principally used as a residence unless there is a convenient, separate and well-marked entrance or the tourist activity is a bed and breakfast lodging. The building or area shall be maintained in a manner consistent with standards generally accepted for that type of business or activity.

(6) Any tourist activity which operates on a seasonal basis shall make provisions with the department's contractor to remove or cover the tourist activity's TODS sign during the off season. The tourist activity shall in writing notify the department's contractor at least thirty (30) days before the opening or closing occurs.

(7) A TODS shall not be displayed which would misinform the traveling public or is unsightly, badly faded, or in a state of dilapidation. In these instances the business shall make arrangements for a new TODS.

(8) The department shall have no responsibility for business lost due to TODS or information panels becoming temporarily out of service.

(9) The display of the tourist activity sign on the department's TODS structure shall not be considered an endorsement or recommendation by the State of Kentucky on behalf of the tourist activity.

(10) To qualify for a "GAS" TODS sign, a business shall:

(a) Be in continuous operation at least twelve (12) hours per day, six (6) days a week, twelve (12) months a year;

(b) Provide motor vehicle fuel, oil, air and water;

(c) Have restroom facilities, drinking water, and telephone available to the traveling public; and

(d) Have an eligibility distance of three (3) miles (4.83 kilometers) or less.

(11) To qualify for a "FOOD" TODS sign, a business shall:

(a) Be in continuous operation to serve two (2) meals a day, twelve (12) hours a day, six (6) days a week, anytime the TODS sign is displayed;

(b) Provide a telephone and restroom facilities for the traveling public; and

(c) Have an eligibility distance of three (3) miles (4.83 kilometers) or less.

(12) To qualify for a "LODGING" TODS sign, a business shall:

(a) Have off-street parking and at least two (2) rooms for sleeping accommodations;

(b) Be in operation anytime the TODS sign is displayed;

(c) Have an eligibility distance of fifteen (15) miles (24.14 kilometers) or less; and

(d) Have a private bathroom for each sleeping room with the exception of bed and breakfast establishments.

(13) To qualify for a "CAMPING" TODS sign, a business shall:

(a) Have a minimum of ten (10) individual campsites and parking space for each;

(b) Have modern sanitary facilities and telephone available to its guests;

(c) Be in continuous operation for the time the sign is displayed; and

(d) Have an eligibility distance of fifteen (15) miles (24.14 kilometers) or less.

(14) To qualify for a "TOURIST ATTRACTION" TODS sign, a business or activity shall:

(a) Be open a minimum of eight (8) hours a day, five (5) days a week, one (1) of which is a weekend, any time the TODS sign is displayed;

(b) Have adequate parking for the facility with a minimum of fifteen (15) spaces;

(c) Be listed on the state or national Register of Historic Sites if the tourist attraction is a historic site; and

(d) Have an eligibility distance of fifteen (15) miles (24.14 kilometers) or less.

Section 9. Priority of Eligible Tourist Activities. At an intersection with insufficient space available to accommodate all of the applications for TODS:

(1) The first priority shall be any tourist attractions. Any motorist services shall have second priority according to sign type with preference shown in the following order:

(a) "Camping";

(b) "Lodging";

(c) "Food"; and

(d) "Fuel".

(2) Any tourist attractions, including seasonal, shall have priority if they are located in a building or district which is on the state or national Register of Historic Sites.

(3) The next tourist activity priority shall be any year-round facilities having a higher priority than any seasonal facilities.

(4) The last prioritization factor for any tourist activity shall be the distance from the intersection with priority given to the applicant which is located closest to the intersection.

Section 10. Bumping. A nonparticipating tourist activity with a higher priority established pursuant to Section 9 of this administrative regulation than one (1) which already has a tourist activity sign displayed on a fully utilized information panel may apply to have its sign displayed at the beginning of the next contract year, if it files an application by April 1. The tourist activity with the lowest priority shall have its TODS removed at the end of the contract year.

Section 11. Changes. (1) When a participation business changes ownership, a new contract shall be signed at no additional cost to the business for the remainder of the contract year.

(2) When a participating business is sold and the new owner changes its name, if the new owner wants to continue on the program, a new application and contract shall be completed. This

is considered a new business and the applicant shall pay the annual fee, prorated according to time remaining in the contract year.

(3) If a participating business changes its name, a new application and contract may be completed.

(4) If a participating business changes its name only, a new application and contract shall not be required.

(5) A reinstallation fee shall be charged for the placement of a new TODS, if needed.

Section 12. Fees. (1)(a) Except as provided by in paragraph (c) of this subsection, the qualifying business shall pay to the department's contractor an annual fee of $216, in advance, for each TODS placed on the right-of-way.

(b) Except as provided in paragraph (c) of this subsection, the qualifying business shall pay to the department's contractor an annual fee of $216, in advance for each TOD trailblazer placed on the right-of-way.

(c) If the qualifying business has a "tourist attraction" logo as set forth in 603 KAR 4:035, the annual fee for each TOD trailblazing sign or TODS from the logo to the tourist activity shall be $150.

(2) The annual fee for the first year shall accompany the initial application.

(3) The first year's annual fee may be prorated on a monthly basis with each portion of a month the TODS is in place on the information panel requiring payment of one-twelfth (1/12) of the fee.

(4) The yearly renewal fee shall be due forty-five (45) days prior to the annual renewal date.

(5) The payment of the initial or renewal fee guarantees that the TODS or TOD trailblazer sign will be displayed for one (1) contract year or portion of the first contract year as long as the business does not violate any part of its agreement with the Department of Highways' contractor and is approved by the Transportation Cabinet.

(6) If the signs for a seasonal tourist activity are removed or covered by the department's contractor, a fee of $200 shall be charged for the removal or covering of all of the TODS or TOD trailblazer signs for the specific business.

(7) If the signs for a tourist activity are removed for any reason, a fee of $200 shall be charged for the reinstallation of all of the TODS for the specific business.

(8) The fee for the reinstallation, removal, or covering of TODS shall be paid to the department's contractor within thirty (30) days of the postmarked date of the invoice.

(9) The tourist activity shall be responsible for damages to its TODS or TOD trailblazer signs caused by acts of vandalism or natural causes which require repair or replacement of the TODS or TOD trailblazer sign.

Section 13. Revocation or Suspension. The contract between the department's contractor and the tourist activity may be revoked or suspended if:

(1) The activity no longer meets the eligibility requirements set forth in this administrative regulation;

(2) The owner or responsible operator of the activity willfully makes a false, deceptive, or fraudulent statement in its application or in other information submitted for review;

(3) The owner or responsible operator of the activity or an agent thereof revises or modifies a TODS sign erected by the department or its agents;

(4) The owner or responsible operator of the business or activity has engaged in a deceptive or fraudulent business practice;

(5) An illegal billboard advertising device advertising the business is located in the state of Kentucky;

(6) Payment is not received on time or is otherwise delinquent;

(7) The owner or responsible operator of the business or activity fails to notify the department's contractor of its seasonal closing; or

(8) The owner or responsible operator of the business or activity is a habitual violator of the provisions of this administrative regulation.

Section 14. Measurements. (1) Measurements taken to determine the qualifications or priority of tourist activities shall be from the juncture of the center line of the highway, measured between the center edges of the main traveled way of the route on which the sign is to be placed and the center line of the crossroad.

(2) Measurements for the qualification of tourist activities for display of TODS shall begin at the point of measurement described in subsection (1) of this section to the nearest point of vehicle travel to the exit from the crossroad to the particular tourist activity.

Section 15. TODS Contract. (1)(a) A TODS contract between a particular tourist activity and the department's contractor shall be approved by the Transportation Cabinet prior to the erection of the TODS.

(b) Each TODS and contract shall be subject to review by the Transportation Cabinet at any time.

(c) Failure to comply with any of the requirements of this administrative regulation including nonpayment by the participating tourist activity shall be cause for the revocation of the TODS contract.

(d) If the contract is revoked for cause, the prepaid fees for the contract year or portion thereof, shall not be refunded.

(2) If the Department of Highways or its contractor determines that a tourist activity does not comply with the requirement of this administrative regulation, the Department of Highways' contractor shall notify the tourist activity in writing of the violations.

(3) If the tourist activity fails to comply with the requirements of this administrative regulation within fifteen (15) days after receiving the notification, the Department of Highways' contractor shall take immediate action to cancel the contract and remove, replace, or cover the TODS.

Section 16. Permits. The Department of Highways' contractor shall apply for an encroachment permit pursuant to 603 KAR 5:150 for each new information panel proposed to be erected or removed from the state-owned right-of-way.

Section 17. Appeal of the Department of Highways Action. (1) Any business or person aggrieved by the action taken by the Department of Highways or its contractor in administering this administrative regulation may request a formal hearing before the Commissioner of the Department of Highways.

(2) The request for the formal hearing shall:

(a) Be filed in writing with the Commissioner of the Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622; and

(b) Set forth the nature of the complaint and the grounds for the appeal.

(3) Upon request of a request for a hearing, the general counsel of the Transportation Cabinet shall assign the matter to a hearing examiner.

(4) The hearing and subsequent procedures shall be conducted in accordance with the provisions of KRS Chapter 13B.

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Highway Tourist Oriented Directional Signing (TODS)" form prepared by the

Kentucky Logos, Inc., February 1997 edition;

(b) "Highway TODS Program Agreement" form prepared by the Kentucky Logos, Inc., February 1997 edition;

(c) The metric edition of "Standard Alphabets for Highway Signs" published by the U.S. Department of Transportation, 1966 edition: and

(d) "Standard Highway Signs," published by the U.S. Department of Transportation, 1979 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Transportation Cabinet, Department of Highways, Division of Maintenance, Permits Branch, 200 Mero Street, Mail code 3-9, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) The material in subsection (1)(a) and (b) of this section also may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Logos, Inc., Suite 6, State National Bank Building, 305 Ann Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The telephone number is 1-800-469-5646 or (502) 227-0802. The fax number is (502) 227-7286.

(4) The document incorporated by reference in subsection (1)(c) of this section may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. by referring to document number 620-809/71. (21 Ky.R. 1195; Am. 1511; 1723; eff. 1-9-95; 23 Ky.R. 178; eff. 9-3-96; 24 Ky.R. 1936; 2395; eff. 6-15-98; 29 Ky.R. 1686; 2678; eff. 5-15-03; 31 Ky.R. 217; eff. 9-7-04.)