

[4910-22-P]

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

[FHWA Docket No. 95-15]

**NATIONAL SCENIC BYWAYS PROGRAM**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of FHWA interim policy.

**SUMMARY:** In response to the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) mandate to establish a national scenic byways program, the FHWA announces its interim policy for the National Scenic Byways Program. This interim policy sets forth the criteria for the designation of roads as National Scenic Byways or All-American Roads based upon their scenic, historic, recreational, cultural, archeological, and/or natural intrinsic qualities.

**DATES:** Comments must be received on or before (Insert date 60 days after date of publication in the FEDERAL REGISTER).

**ADDRESSES:** Submit written, signed comments to FHWA Docket No. 95-15, Federal Highway Administration Room 4232, HCC-10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Eugene Johnson, Intermodal Division, Office of Environment and Planning, HEP-50, (202) 366-2071; or Mr. Robert Black, Attorney, Office of Chief Counsel, HCC-31, (202) 366-1359. The address is Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** Beginning as early as 1966, the FHWA has participated in several studies relating to establishing national scenic byways programs. The most recent study was completed in 1991 and was conducted in response to a request in the 1990 Department of Transportation Appropriations Act. This study included recommendations for establishing a national scenic byways program, including recommended techniques for maintaining and enhancing the scenic, recreational, and historic qualities associated with each byway. The ISTEA incorporated many of the recommendations from this study and called for the establishment of a national scenic byways program. Section 1047 of the ISTEA, Pub. L. 102-240, 105 Stat. 1914, set up an advisory committee to assist the Secretary of Transportation in establishing a national scenic byways program. The advisory committee was composed of seventeen members: the designee of the Administrator of the FHWA; appointees from the U. S. Forest Service, the National Park Service, the Bureau of Land Management, the Bureau of Indian Affairs, and the U.S. Travel and Tourism Administration of the Department of Commerce; and individuals representing the interests of the recreational users of scenic byways, conservationists, the tourism industry, historic preservationists, highway users, State and local highway and transportation officials, the motoring public, scenic preservationists, the outdoor advertising industry, and the planning professions. The advisory committee was charged with developing minimum criteria for designating highways as scenic byways or all-American roads for purposes of a national scenic byways system. After meeting four times, the advisory committee

produced a report that made recommendations on all the facets of a national scenic byway program. The National Scenic Byway Program outlined in this notice follows those recommendations.

The FHWA has awarded grants to States for scenic byway projects under the interim scenic byways program established by ISTEA. The grant funds for the interim program ran out in fiscal year 1994. This notice specifies the type of projects eligible for funding and lists the funding priority for providing grants to the States under the National Scenic Byways Program.

Through this notice, the FHWA is establishing the interim policy for the National Scenic Byways Program. This interim policy sets forth the criteria for the designation of roads as National Scenic Byways or All-American Roads based upon their scenic, historic, recreational, cultural, archeological, and/or natural intrinsic qualities. To be designated as a National Scenic Byway, a road must significantly meet criteria for at least one of the above six intrinsic qualities. For the All-American Roads designation, criteria must be met for multiple intrinsic qualities. Anyone may nominate a road for National Scenic Byway or All-American Road status, but the nomination must be submitted through a State's identified scenic byway agency and include a corridor management plan designed to protect the unique qualities of a scenic byway. The FHWA solicits comments on any part of the policy.

The National Scenic Byways Policy is as follows:

1. **APPLICABILITY:** The policy and procedures of this document apply to any State or Federal agency electing to participate in the National Scenic Byways Program by seeking to have a road or highway designated as a National Scenic Byway or an All-American Road and for any State seeking funds for eligible scenic byways projects. Participation in the national program shall be entirely voluntary.
2. **DEFINITIONS:**
  - a. **Corridor** means the road or highway right-of-way and the adjacent area that is visible from and extending along the highway. The distance the corridor extends from the highway could vary with the different intrinsic qualities.
  - b. **Corridor Management Plan** means a written document that specifies the actions, procedures, controls, operational practices, and administrative strategies to maintain the scenic, historic, recreational, cultural, archeological, and natural qualities of the scenic byway.
  - c. **Federal Agency** means the U.S. Forest Service, Bureau of Land Management, National Park Service, and the Bureau of Indian Affairs, and their scenic byways programs.
  - d. **Federal Agency Scenic Byway** means a road or highway located on lands under Federal ownership which has been officially designated by the responsible Federal agency as a scenic byway for its scenic, historic, recreational, cultural, archeological, or natural qualities.
  - e. **Intrinsic Quality** means scenic, historic, recreational, cultural, archeological, or natural features that are considered representative, unique, irreplaceable, or distinctly characteristic of an area.
  - f. **Local Commitment** means assurance provided by communities along the scenic byway that they will undertake actions, such as zoning and other protective measures, to preserve the

scenic, historic, recreational, cultural, archeological, and natural integrity of the scenic byway and the adjacent area as identified in the corridor management plan.

g. **Regional Significance** means characteristics that are representative of a geographic area encompassing two or more States.

h. **Scenic Byways Agency** means the Board, Commission, Bureau, Department, Office, etc., that has the responsibility for administering the State's scenic byways program activities. Unless otherwise designated, FHWA will assume that the State Scenic Byways Agency is the State Department of Transportation or State highway agency as recognized in the administration of title 23, United States Code.

i. **Scenic Byway** means a public road having special scenic, historic, recreational, cultural, archeological, and/or natural qualities that have been recognized as such through legislation or some other official declaration. The terms "road" and "highway" are synonymous. They are not meant to define higher or lower functional classifications or wider or narrower cross-sections. Moreover, the terms State Scenic Byway, National Scenic Byway, or All-American Road refer not only to the road or highway itself but also to the corridor through which it passes.

j. **State Scenic Byway** means a road or highway under State, Federal, or local ownership that has been designated by the State through legislation or some other official declaration for its scenic, historic, recreational, cultural, archeological, or natural qualities. An Official Declaration is an action taken by a Governor or that of an individual, board, committee, or political subdivision acting with granted authority on behalf of the State.

### 3. **REQUIREMENTS**

a. Any highway or road submitted for designation under the National Scenic Byways Program by State or Federal agencies should be designated as a State scenic byway. However, roads that meet all criteria and requirements for National designation but not State or Federal agencies' designation criteria may be considered for national designation on a case-by-case basis. Any road nominated for the National Scenic Byway or All-American Road designation will be considered to be a designated State scenic byway.

b. A road or highway must safely and conveniently accommodate two-wheel-drive automobiles with standard clearances to be considered for designation as a National Scenic Byway or an All-American Road.

c. Roads or highways considered for National Scenic Byways and All-American Roads designations should accommodate, wherever feasible, bicycle and pedestrian travel.

d. To be considered for the All-American Roads designation, roads or highways should safely accommodate conventional tour buses.

e. A scenic byways corridor management plan, prepared in accordance with Paragraph 9 of this policy, must be submitted in order for any road or highway to be considered for the National Scenic Byway of All-American Road designation.

f. For All-American Roads, there must be a demonstration of the extent to which enforcement mechanisms are being implemented by communities along the highway in accordance with the corridor management plan.

g. Before a road or highway is nominated for designation as an All-American Road, user facilities (e.g. overlooks, food services, etc.) should be available for travelers.

h. An important criteria for both National Scenic Byways and All-American Roads is continuity. Neither should have too many gaps but rather should be as continuous as possible and should minimize intrusions on the visitor's experience.

#### 4. NOMINATION PROCESS

a. A nomination process will be used as the means by which roads or highways may be recognized for their intrinsic qualities and designated as National Scenic Byways or as All-American Roads. All nominations for National Scenic Byways or All-American Roads must be submitted by the State Scenic Byways Agency (SSBA) to the FHWA. The States will receive written notification of the time period for submitting nominations for designation consideration.

b. Nominations may originate from any local government, including Indian tribal governments, or any private group or individual.

c. Nominations to the program of byways on public lands may originate from the U.S. Forest Service, the National Park Service, the Bureau of Land Management, or the Bureau of Indian Affairs, but must also come through the SSBA, with the State's concurrence.

d. A two-step process may be used for nominations originating with local sponsors to help alleviate unnecessary documentation, time, and expense.

The first step is for local sponsors to submit to the SSBA the documentation necessary for the State to determine if the scenic byway possesses intrinsic qualities sufficient to merit its nomination as a National Scenic Byway or an All-American Road.

The second step is for the remainder of the nomination package to be submitted once the State has determined that the byway is appropriate for nomination.

e. A corridor management plan, prepared in accordance with Paragraph 9 of this policy, must be included as part of all nominations made to the FHWA for National Scenic Byways or All-American Roads designations. The corridor management plan is not required for the preliminary intrinsic quality evaluation identified above in paragraph 4d.

f. A single application may be used by a State to seek the designation of a nominated highway as either a National Scenic Byway, an All-American Road, or as both. A highway nominated for, but failing to meet, the requirements for All-American Road designation will automatically be considered for designation as a National Scenic Byway unless the State requests otherwise.

#### 5. DESIGNATION PROCESS

a. Designations of National Scenic Byways and All-American Roads shall be made by the Secretary of Transportation after consultation with the Departments of the Interior, Agriculture, and Commerce, as appropriate.

b. A panel consisting of six to eight experts, designated by FHWA and reflecting a cross-section of the scenic byways community of interests (including experts on intrinsic qualities, tourism, and economic development), may assist in the review of highways nominated as National Scenic Byways and All-American Roads.

6. DESIGNATION CRITERIA

a. National Scenic Byways Criteria

To be designated as a National Scenic Byway, a road or highway must significantly meet at least one of the six scenic byways intrinsic qualities discussed below.

The characteristics associated with the intrinsic qualities are those that are distinct and most representative of the region. The significance of the features contributing to the distinctive characteristics of the corridor's intrinsic quality are recognized throughout the region.

b. All-American Road Criteria

In order to be designated as an All-American Road, the road or highway must meet the criteria for at least two of the intrinsic qualities. The road or highway must also be considered a destination unto itself. To be recognized as such, it must provide an exceptional traveling experience that is so recognized by travelers that they would make a drive along the highway a primary reason for their trip.

The characteristics associated with the intrinsic qualities are those which best represent the nation and which may contain one-of-a-kind features that do not exist elsewhere. The significance of the features contributing to the distinctive characteristics of the corridor's intrinsic quality are recognized nationally.

7. INTRINSIC QUALITIES

The six intrinsic qualities are:

a. Scenic Quality is the heightened visual experience derived from the view of natural and manmade elements of the visual environment of the scenic byway corridor. The characteristics of the landscape are strikingly distinct and offer a pleasing and most memorable visual experience. All elements of the landscape -- landform, water, vegetation, and manmade development -- contribute to the quality of the corridor's visual environment. Everything present is in harmony and shares in the intrinsic qualities.

b. Natural Quality applies to those features in the visual environment that are in a relatively undisturbed state. These features predate the arrival of human populations and may include geological formations, fossils, landform, water bodies, vegetation, and wildlife. There may be evidence of human activity, but the natural features reveal minimal disturbances.

c. Historic Quality encompasses legacies of the past that are distinctly associated with physical elements of the landscape, whether natural or manmade, that are of such historic significance that they educate the viewer and stir an appreciation for the past. The historic elements reflect the actions of people and may include buildings, settlement patterns, and other examples of human activity. Historic features can be inventoried, mapped, and interpreted. They possess integrity of location, design, setting, material, workmanship, feeling, and association.

d. Cultural Quality is evidence and expressions of the customs or traditions of a distinct group of people. Cultural features including, but not limited to, crafts, music, dance, rituals, festivals, speech, food, special events, vernacular architecture, etc., are currently practiced. The cultural qualities of the corridor could highlight one or more significant communities and/or ethnic traditions.

e. Archeological Quality involves those characteristics of the scenic byways corridor that are physical evidence of historic or prehistoric human life or activity that are visible and capable of being inventoried and interpreted. The scenic byway corridor's archeological interest, as identified through ruins, artifacts, structural remains, and other physical evidence have scientific significance that educate the viewer and stir an appreciation for the past.

f. Recreational Quality involves outdoor recreational activities directly association with and dependent upon the natural and cultural elements of the corridor's landscape. The recreational activities provide opportunities for active and passive recreational experiences. They include, but are not limited to, downhill skiing, rafting, boating, fishing, and hiking. Driving the road itself may qualify as a pleasurable recreational experience. The recreational activities may be seasonal, but the quality and importance of the recreational activities as seasonal operations must be well recognized.

#### 8. DE-DESIGNATION PROCESS

a. The Secretary of Transportation may de-designate any roads or highways designated as National Scenic Byways or All-American Roads if they no longer possess the intrinsic qualities nor meet the criteria which supported their designation.

b. A road or highway will be considered for de-designation when it is determined that the local and/or State commitments described in a corridor management plan have not been met sufficiently to retain an adequate level of intrinsic quality to merit designation.

c. When a byway has been designated for more than one intrinsic quality, the diminishment of any one of the qualities could result in de-designation of the byway as a National Scenic Byway or All-American Road.

d. It shall be the State's responsibility to assure that the intrinsic qualities of the National Scenic Byways and All-American Roads are being properly maintained in accordance with the corridor management plan.

e. When it is determined that the intrinsic qualities of a National Scenic Byway or All-American Road have not been maintained sufficiently to retain its designation, the State and/or Federal agency will be notified of such finding and allowed 90 days for corrective actions before the Secretary may begin formal de-designation.

#### 9. CORRIDOR MANAGEMENT PLANS

a. A corridor management plan, developed with community involvement, must be prepared for the scenic byway corridor proposed for national designation. It should provide for the conservation and enhancement of the byway's intrinsic qualities as well as the promotion of tourism and economic development. The plan should provide an effective management strategy to balance these concerns while providing for the users' enjoyment of the byway. The corridor management plan is very important to the designation process, as it provides an understanding of how a road or highway possesses characteristics vital for designation as a National Scenic Byway or an All-American Road. The corridor management plan must include at least the following:

(1) A map identifying the corridor boundaries and the location of intrinsic qualities and different land uses within the corridor.

- (2) An assessment of such intrinsic qualities and of their context.
- (3) A strategy for maintaining and enhancing those intrinsic qualities. The level of protection for different parts of a National Scenic Byway or All-American Road can vary, with the highest level of protection afforded those parts which most reflect their intrinsic values. All nationally recognized scenic byways should, however, be maintained with particularly high standards, not only for travelers' safety and comfort, but also for preserving the highest levels of visual integrity and attractiveness.
- (4) A schedule and a listing of all agency, group, and individual responsibilities in the implementation of the corridor management plan, and a description of enforcement and review mechanisms, including a schedule for the continuing review of how well those responsibilities are being met.
- (5) A strategy describing how existing development might be enhanced and new development might be accommodated while still preserving the intrinsic qualities of the corridor. This can be done through design review, and such land management techniques as zoning, easements, and economic incentives.
- (6) A plan to assure on-going public participation in the implementation of corridor management objectives.
- (7) A general review of the road's or highway's safety and accident record to identify any correctable faults in highway design, maintenance, or operation.
- (8) A plan to accommodate commerce while maintaining a safe and efficient level of highway service, including convenient user facilities.
- (9) A demonstration that intrusions on the visitor experience have been minimized to the extent feasible, and a plan for making improvements to enhance that experience.
- (10) A demonstration of compliance with all existing local, State, and Federal laws on the control of outdoor advertising.
- (11) A signage plan that demonstrates how the State will insure and make the number and placement of signs more supportive of the visitor experience.
- (12) A narrative describing how the National Scenic Byway will be positioned for marketing.
- (13) A discussion of design standards relating to any proposed modification of the roadway. This discussion should include an evaluation of how the proposed changes may affect on the intrinsic qualities of the byway corridor.
- (14) A description of plans to interpret the significant resources of the scenic byway.
  - b. In addition to the information identified in Paragraph 9a above, corridor management plans for All-American Roads must include:
    - (1) A narrative on how the All-American Road would be promoted, interpreted, and marketed in order to attract travelers, especially those from other countries. The agencies responsible for these activities should be identified.
    - (2) A plan to encourage the accommodation of increased tourism, if this is projected. Some demonstration that the roadway, lodging and dining facilities, roadside rest areas, and other tourist

necessities will be adequate for the number of visitors induced by the byway's designation as an All-American Road.

- (3) A plan for addressing multi-lingual information needs.

Further, there must be a demonstration of the extent to which enforcement mechanisms are being implemented in accordance with the corridor management plan.

#### 10. FUNDING

a. Funds are available to the States through a grant application process to undertake eligible projects, as identified below in Paragraph 10c, for the purpose of:

- (1) Planning, designing, and developing State scenic byways programs, including the development of corridor management plans.

- (2) Developing State and Federal agencies' designated scenic byways to make them eligible for designation as National Scenic Byways or All-American Roads.

- (3) Enhancing or improving designated National Scenic Byways or All-American Roads.

b. The State highway agency (SHA) shall be responsible for the submission of grant requests to the FHWA. If the SHA is not the identified scenic byways agency, all grant requests must be forwarded from that agency to the SHA for submission to FHWA.

#### c. Eligible Projects

The following project activities are eligible for scenic byways grants:

- (1) Planning, design, and development of State scenic byway programs.

This scenic byways activity would normally apply to those States that are about to establish or they are in the early development of their scenic byways programs. All related project activities must yield information and/or provide related work that would impact on the Statewide scenic byways program.

- (2) Making safety improvements to a highway designated as a scenic byway to the extent such improvements are necessary to accommodate increased traffic and changes in the types of vehicles using the highway, due to such designation.

Safety improvements are restricted to the highway that has been designated as a scenic byway and must be the direct result of increased traffic and/or changes in the types of vehicles using the highway. The safety improvements are only considered eligible when they arise as a result of designation of the highway as a scenic byway. Any safety deficiencies that existed prior to designation of the highway as a scenic byway are not eligible for funding considerations.

- (3) Construction along the scenic byway of facilities for the use of pedestrians and bicyclists, rest areas, turnouts, highway shoulder improvements, passing lanes, overlooks, and interpretive facilities.

All the related facilities in this category must be constructed within or immediately adjacent to the right-of-way of the scenic byway. The facilities must also be directly related to the scenic byway.

- (4) Improvements to the scenic byway that will enhance access to an area for the purpose of recreation, including water-related recreation.

All eligible projects in this category must be construction alterations that are made to the scenic byway to enhance existing access to recreational areas. Improvements are generally confined to the right-of-way of the scenic byway. However, the acquisition of additional right-of-way along the byway is permitted when warranted to accommodate access improvements to the byway.

(5) Protecting historical, archeological, and cultural resources in areas adjacent to the highways.

Resource protection applies only to those properties that contribute to the qualities for which the highway has been designated as a scenic byway. The properties must be located directly adjacent to the scenic byway. Resource protection includes use restrictions that are in the form of easements. However, the purchase of the resource can be considered eligible only after it has been determined that all other protection measures are unsuccessful. Protection of a resource does not include rehabilitation or renovation of a property.

(6) Developing and providing tourist information to the public, including interpretive information about the scenic byway.

All information must be associated with the State's scenic byways. It may provide information relating to the State's total network of scenic byways or it may address a specific byway's intrinsic qualities and/or related user amenities. All interpretive information should familiarize the tourists with the qualities that are important to the highway's designation as a scenic byway. Tourist information can be in the form of signs, brochures, pamphlets, tapes, and maps. Product advertising is not permitted on tourist information that has been developed with grant funds received under the scenic byways program.

d. No grant shall be awarded for any otherwise eligible project that would not protect the scenic, historic, cultural, natural, and archeological integrity of the highway and adjacent area.

11. SCENIC BYWAYS AND THE PROHIBITION OF OUTDOOR ADVERTISING

As provided at 23 U.S.C. 131(s), if a State has a State scenic byway program, the State may not allow the erection of new signs not in conformance with 23 U.S.C. 131(c) along any highway on the Interstate System or Federal-aid primary system which before, on, or after December 18, 1991, has been designated as a scenic byway under the State's scenic byway program. This prohibition would also apply to Interstate System and Federal-aid primary system highways that are designated scenic byways under the National Scenic Byways Program and All-American Roads Program, whether or not they are designated as State scenic byways.

(Sec. 1047, Pub. L. 102-240, 105 Stat. 1914, 1948, 1996; 23 U.S.C. 131(s); 23 U.S.C. 315; 49 CFR 1.48)

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