

Structure and Content of Administrative Regulations for Roadside Advertising Control

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• THE SUBJECT of this paper is treated in two phases: (a) the negotiation of the agreement between the States and the Secretary of Commerce provided for under Section 131 of the Federal Highway Code, and (b) the regulations necessary to supplement the State legislation relating to outdoor advertising control. Inasmuch as Maryland was the first State to enter into an agreement with the Federal Government relating to outdoor advertising and the bonus payment, it is probably appropriate to go into the mechanics of the agreement.

Agreeing on the agreement was relatively easy. Neither party had previous experience so most problems were worked out through a series of conferences between the author's office and the office of the General Counsel of the Bureau of Public Roads. As a result of the intercourse between these two offices, the first basic agreement relative to the bonus payment was born. That agreement sets out the detail and the mechanics under which the State is eligible to participate in the Federal Bonus of $\frac{1}{2}$ percent of the cost of constructing Interstate Highways on which outdoor advertising is controlled.

A copy of the text of the agreement appears in Appendix A for guidance to other States that may want to enter into such an agreement. Maryland did not find it too difficult to meet the requirements of the Bureau of Public Roads insofar as the terms of the agreement were concerned.

To participate and enter into the agreement it will be necessary to prepare a map or series of maps showing the Interstate System of Highways in the State. The map should show in one color (green) that portion of each Interstate Highway entitled to receive the bonus award, then in another color (red) that portion of each highway not entitled to receive the bonus. Some of the reasons for not receiving the bonus for a particular portion of highway are that the right-of-way was purchased or the highway constructed before the effective date of the Interstate Act of 1956; that the portion of highway is within a municipality or area where outdoor advertising is allowed; or that the section of highway passes through an interchange area or crosses a highway other than Interstate. Then there will be certain areas of some Interstate Highways where participation is in doubt. This may be occasioned by the highway traversing a heavily populated area where zoning changes and incorporated municipalities are frequent or intersecting roads close to each other and it is difficult to establish that portion of the highway eligible to participate. In some of these cases it might cost more to calculate the cost of the highway eligible for participation than the State would receive in bonus. These sections of the Interstate Highway should be shown in another color or by a dotted or broken line. Under the terms of the agreement, if it should be determined to seek later participation, the way would be open so to do.

After the maps are prepared and made part of the agreement by reference, it then remains for the engineer to determine the cost of those sections of Interstate Highways eligible for participation. Then all that is needed is for the Congress to appropriate the money and the Bureau of Public Roads to give the States that qualify the proper credit.

Because the author has worked close to this facet of highway development since the inception of Maryland's outdoor advertising act, he has been asked over and over again

how much Maryland will receive as a bonus. The only answer is "I don't know." The best guess at this time is about \$1.75 million, with about another \$0.25 million recoverable from the doubtful areas.

It might be said that Maryland did not pass its roadside control legislation to take advantage of the Federal bonus. The State enacted its legislation some two years before the Federal act in order to free its major highways from unsightly billboard advertising which reaps benefit to a small but powerful industry and a minority of landowners who are fortunate enough to live on or own property adjacent to the expressway systems.

When the necessary maps are prepared and the agreement with the Bureau of Public Roads entered into, it becomes necessary for the highway department or other State agency administering the law to prepare rules and regulations to supplement the Act. In the preparation of these rules and regulations it is suggested that common sense and moderation be used. Representatives of the outdoor advertising industry should be called in and their views obtained. They may be antagonistic, because they opposed the law and lost. But the fact that their advice is sought on administering it will help soothe their feelings. It may also be advisable to consult with such organizations as the Grange and the Farm Bureau, whose members will be affected by loss of outdoor advertising revenue. The law should be explained, and the reason for it, and their cooperation sought in drawing rules and regulations to implement the law. From experience in Maryland it can be said that this has proved helpful.

As to the regulations themselves, it should be kept in mind that through enforcement of them a small segment of the population is being deprived of income they feel entitled to receive. Then regulations should be worked so they will be clearly understood, and prefaced with a preamble stating their purpose and pointing out that as a result of their enforcement the State will receive certain benefits from the Federal Government. This is usually popular. After the regulations have been adopted wide publicity should be given through the newspapers and other media. Then they should be enforced without fear or favor.

The regulations should embrace the maximum size of signs advertising property for sale or lease, or products grown, or services rendered on the property. The type of wording or display may be indicated in the regulations. The number of signs on any one property should be spelled out, as well as the location where the signs may be placed. The regulations should be drafted so as not to permit circumvention of the law; e.g., "Have-a-Cola" in letters 6 ft high and the name of the proprietor of the business where it is sold in letters 6 in. high. Historical markers and church signs can by regulation be caused to be located in places that will not create traffic hazards. Signs should not be permitted that contain flashing lights or moving parts. The regulations should definitely prohibit signs that suggest traffic regulations; e.g., "Stop" in large letters to direct attention to somebody's home-made apple cider. The practice of placing signs on trees or painting them on rocks should be prohibited.

In Maryland these principles have been adopted in drawing up regulations, which have not as yet been challenged in the Courts on the constitutional grounds of "due process" or "equal protection." If they are challenged and the State's case is properly presented to the Courts, the regulations and the basic statute will probably be upheld.

There are twelve Maryland regulations, as follows:

1. Signs advertising property for sale or lease and signs advertising the sale of produce grown or made thereon or a service performed thereon or therein located contiguous and adjacent to an Expressway shall be of dimensions not in excess of ten feet (10') by ten feet (10'), or a total area of one hundred (100) square feet including border and trim, but excluding supports.
2. Signs advertising property for sale or lease will carry wording notifying the public that the property is for sale or lease, the name and address and telephone number of the owner or agent, and a description of the area for sale or lease. No superfluous descriptive information will be permitted. Not more than one such sign advertising the sale or lease of the property may be permitted, and only in such manner as to be visible to traffic proceeding in any one direction on an Expressway.
3. Not more than one sign advertising on-premise service may be permitted and only in such manner as it is visible to the traffic proceeding in any one direction on an

Expressway, and may not be more than fifty (50) feet from the advertised activity or service.

4. Signs erected for the purpose of advertising an on-premise service to the traveling public that displays any trade name which refers to or identifies any service rendered or product sold may not be permitted unless the name of the advertised activity of such sign is displayed as conspicuously as such trade name.

5. Signs erected for the purpose of advertising an on-premise service to the traveling public and signs advertising the sale or lease of the property must be placed beyond the limit of the right-of-way line of an Expressway, but may be located within six hundred and sixty (660) feet of the right-of-way line of the Expressway, and also must be placed at the location specified in Regulations 2 and 3, supra.

6. Historical monuments or markers will preferably be placed beyond the limits of the right-of-way. The location shall be adjacent to the historical point to be described and the design and size must meet the approval of the State Roads Commission. The contents and/or information to be conveyed thereon will be submitted to the Maryland Historical Society for form and historical accuracy.

7. No sign may be permitted which attempts or appears to attempt to direct the movement of traffic or which interferes with, imitates or resembles any official traffic sign, signal or device.

8. No sign may be permitted which prevents the driver of a vehicle from having a clear and unobstructed view of official signs and approaching or merging traffic.

9. No sign may be permitted which contains, includes, or is illuminated by any flashing, intermittent or moving light or lights.

10. No lighting may be permitted to be used in any way in connection with any sign unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way of an Expressway, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

11. No sign may be permitted which moves or has any animated or moving parts.

12. No sign may be permitted to be erected or maintained upon trees or painted or drawn upon rocks or other natural features.

Appendix B is an excerpt from the minutes of the State Roads Commission setting forth the regulations and other pertinent data that might be helpful to other States desiring to adopt rules and regulations. Particularly pertinent is the paragraph reading:

The District Engineer's office of the State Roads Commission will make inventory of all signs erected along Expressways at three (3) month intervals. State Roads Commission representatives will at all times seek the cooperation of the advertisers and property owners in the enforcement of this law and the regulations adopted thereunder.

This has proven most helpful in making it possible to rid Maryland's expressways of scores of unlawful and unsightly signs without resorting to court action.

At present there are less than a dozen advertising signs or billboards on Maryland's entire expressway system, including the Interstate System whereas there are in excess of 12,000 legal signs and billboards on the remaining State highways.

Appendix A

January 10, 1961

AGREEMENT FOR CARRYING OUT THE NATIONAL POLICY RELATIVE TO ADVERTISING ADJACENT TO THE NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS

In order to promote the safety, convenience and enjoyment of public travel and the free flow of interstate commerce, and to protect the public investment in the National System of Interstate and Defense Highways (hereinafter referred to as the "Interstate

System"), the Secretary of Commerce, acting by and through the Federal Highway Administrator, hereinafter referred to as the "Administrator," and the State Roads Commission of the State of Maryland, such commission being hereinafter referred to as the "State," do hereby agree as follows:

1. Definitions. (a) The term "Act" means section 131 of title 23, United States Code, as amended by section 10 of the Federal-Aid Highway Act of 1959 (P. L. 86-342, 72 Stat. 94).

(b) The term "national standards" means the National Standards for Regulation by States of Outdoor Advertising Signs, Displays and Devices Adjacent to the National System of Interstate and Defense Highways promulgated by the Secretary of Commerce pursuant to the Act, and in effect on the date of this agreement. Said national standards, as they were published in the Federal Register on November 13, 1958, (23 F.R. 8793) and amendments published in the Federal Register on January 12, 1960 (23 F.R. 218) and March 26, 1960 (23 F.R. 2575) are hereby incorporated herein by reference.

(c) Unless the context requires otherwise, the terms used herein shall have the same meaning as in the Act and the national standards.

2. Scope of Agreement. Except as otherwise expressly set forth herein, this Agreement shall apply to areas adjacent to all portions of Interstate System highways within the State that are constructed upon any part of a right of way, the entire width of which has been acquired subsequent to July 1, 1956. The said areas (hereinafter designated "Adjacent Areas") are those within 660 feet of the edge of the right of way of Interstate System highways, determined in accordance with the national standards.

There shall be excluded from application of the said national standards any segments of the Interstate System which traverse commercial or industrial zones within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control, or which traverse other areas where the land use, as of September 21, 1959, was clearly established by State law as industrial or commercial.

3. State's Obligation. The State hereby agrees that, in accordance with the terms of this Agreement, it will control or cause to be controlled the erection and maintenance of outdoor advertising signs, displays and devices in Adjacent Areas within such State consistent with the Act and the national standards.

4. Plan for Controlling Adjacent Areas. The State further agrees that its control of Adjacent Areas shall, as a minimum, be in conformity with the Act, and the national standards, and shall be carried out pursuant to the Plan.

5. Exceeding of Standards. Nothing contained herein shall prohibit the State from exercising control of outdoor advertising signs to a greater degree than that required or contemplated by the national standards and the Act.

6. Plan for Controlling Areas Adjacent to Interstate Highways. State has presented a "Plan for Controlling Areas Adjacent to Interstate Highways" dated _____, which is hereby approved by the Administrator and by this reference incorporated herein as if fully set out herein. Said plan shall hereinafter be referred to as the "Plan." The State shall promptly submit to the Administrator additions to or amendments of the Plan when the selection, designation, or modification of Interstate highway routes make such action necessary or desirable. The State may from time to time submit to the Administrator any proposals for amendment of the Plan. If approved by the Administrator, such additions or amendments shall be incorporated herein by reference and become a part of this Agreement.

7. Increase of Share. The Federal share payable on account of any project on the Interstate System provided for by funds authorized under section 108 of the Federal-Aid

Highway Act of 1956, as amended, to which the Act, the national policy, and this Agreement apply, shall be increased by one-half of one per centum of the total cost thereof, if and when funds are appropriated and made available for such purposes. However, no additional cost that may be incurred in carrying out this Agreement, no cost incurred in connection with any segment of highway, excluded from the application of the national standards, and no cost of any project not payable from funds authorized by section 108 of the Federal-Aid Highway Act of 1956, as amended, shall be included in such total for purposes of determining the amount of such increase.

8. The Obligation of the Federal Government. Notwithstanding any other provision of this Agreement, the United States shall not be required to make any payments hereunder unless and until Federal funds are duly appropriated in amounts sufficient to enable the Administrator to make payments as provided in this Agreement.

9. Payment Upon Evidence of Compliance. Payment of the one-half of one percent increase in the Federal share will be made by the Administrator from funds appropriated and available for such purpose with respect to any project upon the submission by the State to the Administrator of a satisfactory showing that the State has fulfilled its obligations under this Agreement in connection with such project, that such project is completed, and that State is continuing to carry out its obligations hereunder with reference to all other highways on the Interstate System.

Advertising signs, displays or devices shall be removed, or caused to be removed, by State as follows:

(a) No outdoor advertising signs, display or device which is inconsistent with the Act or the national standards shall be allowed to remain after July 1, 1964, in areas adjacent to any segment of the Interstate System which, prior to July 1, 1961, either has been completed to the geometric and design standards adopted for that system, or is under contract for completion to such standards.

(b) No outdoor advertising sign, display or device which is inconsistent with the Act or the national standards shall be allowed to remain in areas adjacent to any segment of the Interstate System after the date upon which the State highway department has accepted, as completed, a contract awarded on or after July 1, 1961, for the completion of such segment to the geometric and design standards approved for the Interstate System.

No part of the increased Federal share payable under the Act shall be paid to a State highway department on account of any project until outdoor advertising in areas adjacent to that project complies completely with the national standards.

10. Failure to Perform Obligations. If, after receiving payment of any portion of the aforementioned increase of one-half of one percent in the Federal share of the cost of any project, the State should fail to perform its obligations or continue the same under this Agreement in connection with any project, the State hereby agrees that, if, without good cause shown to the satisfaction of the Administrator, it fails to perform such obligations within 30 days after the date of mailing by the Administrator of written notice thereof, it will return to the Federal Government all payments heretofore made under this Agreement. In the event the State does not return all of such payments within a reasonable time, State hereby authorizes the Administrator to withhold from the State an amount equal to such payments out of any Federal-Aid Highway funds then due or that may thereafter become due to the State.

Notwithstanding any other provision in this section, if the State fails to perform any obligation of this Agreement and such failure is caused by a declaration of a court of competent jurisdiction or by a ruling of the Attorney General of said State that said State is without legal authority to perform said obligation under this contract, then the State will not be required to return to the Federal Government payments heretofore made under this Agreement unless and until sixty days have elapsed after the adjournment of the State legislative session next following such declaration or ruling.

11. Repayment Necessitated by Change in Zoning Within Incorporated Municipalities. If, after receiving payment of any portion of the aforementioned increase of one-half of one percent, which payment is due to the control of advertising by State in an area within the limits of an incorporated municipality as those limits existed on September 21, 1959, the status of any portion of said area is changed to a commercial or industrial zone, the national policy on advertising control shall no longer apply to the area or portion of area the status of which is changed, and State hereby agrees that it will repay so much of any bonus payment made on account of the area to which the national policy no longer applies. In lieu of repayment, State hereby authorizes the Administrator to withhold from the State an amount equal to such payments out of any Federal-Aid Highway funds then due or that may thereafter become due to the State.

12. Effective Date. This Agreement shall become effective when executed only if it be signed on behalf of both the State and the Administrator prior to July 1, 1961.

In Witness Whereof the State has caused this Agreement to be duly executed in its behalf, and the Administrator has likewise caused the same to be duly executed in his behalf, as of the dates specified below.

_____, 19__ : STATE ROADS COMMISSION OF MARYLAND
Attest: _____ (SEAL)
Chairman and Director of Highways
for the State of Maryland

Secretary
_____, 19__ : U.S. DEPARTMENT OF COMMERCE
Bureau of Public Roads
By _____

Appendix B

**EXCERPT FROM MINUTES OF MEETING OF THE STATE ROADS COMMISSION
WEDNESDAY, FEBRUARY 10, 1960**

* * *

Upon motion duly made and seconded, the following resolution was adopted by the Commission:

WHEREAS, under the provisions of Section 76 (1) and (2) of Article 89B of the Annotated Code of Maryland, 1957 Edition, the State Roads Commission is expressly authorized and empowered to do any and all acts and things necessary or desirable to comply with the terms, conditions and provisions to obtain the benefit of the provisions of the Federal Acts for the acceptance of Federal Funds under the Federal Highway Act as amended or supplemented, and

WHEREAS, the General Assembly of Maryland, 1959 Session, in order to comply with the Federal-Aid Highway Act of 1956, as amended, repealed and re-enacted, with amendments, Sections 231, 232 and 233 of Article 89B of the Annotated Code of Maryland, and

WHEREAS, under the provisions of Sections 231, 232 and 233 of Article 89B and Sections 207 and 208 of Article 56 of the Annotated Code of Maryland, 1957 Edition, the State Roads Commission is authorized to make certain rules and regulations relating to certain outdoor advertising and display signs, now therefore,

BE IT RESOLVED, by the State Roads Commission of Maryland that the following rules and regulations relating to certain outdoor advertising signs and display material along and adjacent to Expressways within the State of Maryland are hereby adopted to become effective February 10, 1960.

AND BE IT FURTHER RESOLVED, That said rules and regulations shall remain in force and effect until repealed or modified by this Commission.

**RULES AND REGULATIONS RELATING TO THE ERECTION OF SIGNS
ALONG THE EXPRESSWAYS OF THE STATE OF MARYLAND**

* * *

The State Roads Commission is authorized under the provisions of Sections 231, 232, 233, 76 (1) and (2) of Article 89B and Sections 207 and 208 of Article 56 of the Annotated Code of Maryland (1957 Edition and 1959 Supplement), to promulgate certain rules and regulations relating to the erection of certain advertising signs, posters and advertising devices within 660 feet of the right of way line of Expressways within the State. The hereinafter regulations are made in the interest of the safety of the traveling public and consistent with the general welfare of the State.

The law prohibits the erection of all outdoor advertising signs, posters or other advertising devices erected within 660 feet of the right of way line of an Expressway within the State.

The exceptions to the erection of outdoor advertising within 660 feet of any Expressway in Maryland, as set forth in the law, are as follows:

(a) Property owners who desire to erect signs advertising the sale or lease of their property; (b) The sale of produce or products grown or made on the premises; (c) Signs erected for the purpose of advertising a service to the traveling public, which service is conducted on the premises; (d) Signs denoting places of religious worship; (e) Historical monuments or markers.

A permit is required from the State Roads Commission prior to the erection of signs in categories (a), (b) and (c) above. Said permit will be issued without charge. No permit is required for the erection of signs in categories (d) and (e) above; however, all signs in any of the above categories must be erected pursuant to the rules and regulations adopted by the State Roads Commission.

The following rules and regulations govern the erection of advertising signs which are permitted to be erected within 660 feet of the right of way line of an Expressway:

1. Signs advertising property for sale or lease and signs advertising the sale of produce grown or made thereon or a service performed thereon or therein located contiguous and adjacent to an Expressway shall be of dimensions not in excess of ten feet (10') by ten feet (10'), or a total area of one hundred (100) square feet including border and trim, but excluding supports.
2. Signs advertising property for sale or lease will carry wording notifying the public that the property is for sale or lease, the name and address and telephone number of the owner or agent, and a description of the area for sale or lease. No superfluous descriptive information will be permitted. Not more than one such sign advertising the sale or lease of the property may be permitted, and only in such manner as to be visible to traffic proceeding in any one direction on an Expressway.

3. Not more than one sign advertising on-premise service may be permitted and only in such manner as it is visible to the traffic proceeding in any one direction on an Expressway, and may not be more than fifty (50) feet from the advertised activity or service.
4. Signs erected for the purpose of advertising an on-premise service to the traveling public that displays any trade name which refers to or identifies any service rendered or product sold may not be permitted unless the name of the advertised activity of such sign is displayed as conspicuously as such trade name.
5. Signs erected for the purpose of advertising an on-premise service to the traveling public and signs advertising the sale or lease of the property must be placed beyond the limit of the right of way line of an Expressway, but may be located within six hundred and sixty (660) feet of the right of way line of the Expressway, and also must be placed at the location specified in Regulations 2 and 3, supra.
6. Historical monuments or markers will preferably be placed beyond the limits of the right of way. The location shall be adjacent to the historical point to be described and the design and size must meet with the approval of the State Roads Commission. The contents and/or information to be conveyed thereon will be submitted to the Maryland Historical Society for form and historical accuracy.
7. No sign may be permitted which attempts or appears to attempt to direct the movement of traffic or which interferes with, imitates or resembles any official traffic sign, signal or device.
8. No sign may be permitted which prevents the driver of a vehicle from having a clear and unobstructed view of official signs and approaching or merging traffic.
9. No sign may be permitted which contains, includes, or is illuminated by any flashing, intermittent or moving light or lights.
10. No lighting may be permitted to be used in any way in connection with any sign unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main-traveled way of an Expressway, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.
11. No sign may be permitted which moves or has any animated or moving parts.
12. No sign may be permitted to be erected or maintained upon trees or painted or drawn upon rocks or other natural features.
13. No signs of whatsoever nature or howsoever erected on any material shall be permitted to be erected within the limits of the right of way line of an Expressway, or within six hundred and sixty (660) feet of the right of way line of an Expressway except those signs that are specifically permitted by these regulations.
14. Signs occupying areas leased for the purpose, and which have been erected, prior to June 1, 1958, on property within six hundred and sixty (660) feet of the right of way line of any Expressway, shall remain in place until June 1, 1961, unless the lease by its terms terminated prior to that date. Signs occupying areas leased for the purpose, and which have been erected, prior to June 1, 1959, on property within six hundred sixty (660) feet of the right of way line of any Expressway, shall remain in place until June 1, 1962, unless the lease, by its terms, terminates prior to that date. After either date, or the termination

of the lease, whichever shall first occur, they will be removed and the restoration of such signs shall comply with the requirements of the law and the regulations adopted thereunder.

15. If, on or after the effective date of these Regulations, the State Roads Commission shall determine that any billboard, sign, poster, or other advertising structure located within six hundred and sixty (660) feet of the right of way line of any Expressway, is so located as to create or cause a traffic hazard or be detrimental to the welfare of the State, the State Roads Commission has the authority to order such billboard, sign, poster or other advertising structure removed or relocated, subject to the financial interest of the lease.

The enforcement of the foregoing requirements will be subject to the following regulations:

1. The District Engineer's office of the State Roads Commission will make inventory of all signs erected along Expressways at three (3) months intervals. State Roads Commission representatives will at all times seek the cooperation of the advertisers and property owners in the enforcement of this law and the regulations adopted thereunder.
2. This information when prepared will be conveyed to the Director of Outdoor Advertising, and any infraction of the regulations will be reported by him, in writing, to the respective owner and/or agent for the sign owner, and also the property owner, with the request that adjustments be made within the fifteen (15) day period as specified in the Act. Any failure on the part of the owners or agents for the owners to comply with these requirements will be reported to the Legal Division for what action, in its judgment, is deemed necessary.