Control of Outdoor Advertising: Federal Law and Standards

CLIFTON W. ENFIELD,
General Counsel, Bureau of Public Roads,
U.S. Department of Commerce

During the past several years, there has been a steadily growing demand for the regulation of advertising adjacent to the nation's highways. More and more persons have become convinced that, if the safety and enjoyment of highway travel are to be promoted, there must be realistic and effective control of billboards.

Use of the figures in this paper is not for the purpose of singling out individual advertisers or advertising companies for criticism or commendation. The pictures were taken at random locations, and are intended simply to illustrate the conditions which led the Congress to adopt a national policy concerning outdoor advertising, and the objectives sought to be attained by controlling outdoor advertising consistent with the national standards.

Figures 1 and 2 are typical of advertising along many highways. Certainly these signs do not add to the pleasure or safety of motoring, and may create real hazards to the motoring public. It is questionable whether any particular sign among such a clutter has appreciable advertising value. Some signs (Fig. 3) however, are real attention getters. The sign in Figure 4 was deliberately placed upside down to attract attention.

Enactment of the Federal-Aid Highway Act of 1956, which provided for the early completion of the National System of Interstate and Defense Highways, gave impetus and direction to the efforts of those sincerely concerned with the problem of control of outdoor advertising adjacent to highways.

Figure 5 shows what is envisioned as a typical section of an Interstate highway in a rural area.

Congress responded to the overwhelming public demand for legislative action concerning the control of outdoor advertising adjacent to the Interstate System by enactment of section 12 of the Federal-Aid Highway Act of 1958, which was approved by the President on April 16, 1958, and is now codified as section 131, title 23, United States Code.

The Federal law is not designed to effectuate advertising control in and of itself, but, instead, to encourage and assist the States to control outdoor advertising.

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, the Congress declared it to be a national policy that "the erection and maintenance of outdoor advertising signs, displays, or devices within 60 feet of the edge of the right-of-way and visible from the main-traveled way of all portions of the Interstate System constructed upon any part of the right of way, the entire width of which is acquired subsequent to July 1, 1956, should be regulated, consistent with national standards to be prepared and promulgated by the Secretary **** ". An amendment to this law in 1959 (Public Law 86-342) also excluded from the effect of the national policy, segments of Interstate highways which traverse certain industrial and commercial areas.

Generally speaking the national policy applies only to those portions of the Interstate System which are constructed on completely new locations, outside of commercial or industrial zones. For purposes of simplification, this paper refers to portions of the Interstate System to which the national policy applies as "controlled portions."

The outdoor advertising signs, displays, and devices affected by the national policy are only those which are both within 660 ft of the right-of-way and visible from the main-traveled way of controlled portions of the Interstate System. Outdoor advertising signs which are more than 660 ft away from the right-of-way of an Interstate highway, or which are within 660 ft of the right-of-way but not visible from the controlled portions of the Interstate System, are not subject to the national policy.

The Federal law provides for promulgation of national standards by the Secretary of Commerce, which standards establish the minimum control of advertising to be effected by the States if they are to receive the Federal incentive payments. The national standards were promulgated on November 10, 1958, and amended on January 12 and March 26, 1960, to accommodate the changes made in the law in 1959.

The major features of the Federal law and national standards are discussed in the following:

The Federal law requires that the national standards include provisions permitting four specified classes of signs, and no others, in areas adjacent to controlled portions of the Interstate System.

These four classes of signs are identified in the standards generally as follows:

Class 1: Official signs (Fig. 6).—Directional or other official signs or notices erected and maintained

by public officers or agencies pursuant to and in accordance with direction or authorization contained in State or Federal law, for the purpose of carrying out an official duty or responsibility.

Class 2: On-premise signs (Fig. 7).—Signs not prohibited by State law which advertise the sale or lease of, or activities being conducted upon the real property where the signs are located.

Class 3: Signs within 12 miles of advertised activities (Fig. 8).—Signs not prohibited by State law which

Figure 1.

Figure 2.

Figure 3.

Figure 4.

Figure 5.

Figure 6.

advertise activities being conducted within 12 air miles of such signs. The sign shown in this picture might or might not be permitted under class 3. It advertises an activity 15 mi ahead. Presumably that distance is measured road mileage. If the activity is within 12 miles of the sign it would be permitted, but not otherwise.

Class 4: Signs in the specific interest of the traveling public (Fig. 9).—Signs authorized to be erected or maintained by State law which are designed to give information in the specific interest of the traveling public; such as, information about public places operated by Federal, State, or local governments, natural phenomena, historic sites, areas of natural scenic beauty or naturally suited for outdoor recreation, and places for camping, lodging, eating, and vehicle service and repair.

Class 3 and 4 signs (signs which advertise activities being conducted within 12 air miles of the sign, and signs designed to give information in the specific interest of the traveling public) may be erected or maintained under either of two alternative provisions:

1. In areas where no informational sites are provided by a State, class 3 and 4 signs may be erected in protected areas adjacent to Interstate highways, subject to certain spacing and frequency provisions.
2. They may be erected or maintained on panels within informational sites, if a State elects to provide such sites (Fig. 10). If informational sites are provided, class 3 and 4 signs within the area of coverage of such sites will, generally speaking, be placed therein upon panels, instead of along the highway in protected areas.

The standards do not go into detail concerning the location and frequency of informational sites, but provide simply that these matters will be determined by agreement between the Secretary of Commerce and the State highway departments.

It is anticipated, however, that informational sites will be permitted either within the right-of-way of Interstate highways or on adjacent publicly or privately owned property that is under control of the State

Figure 7.

Figure 8.

Figure 9.

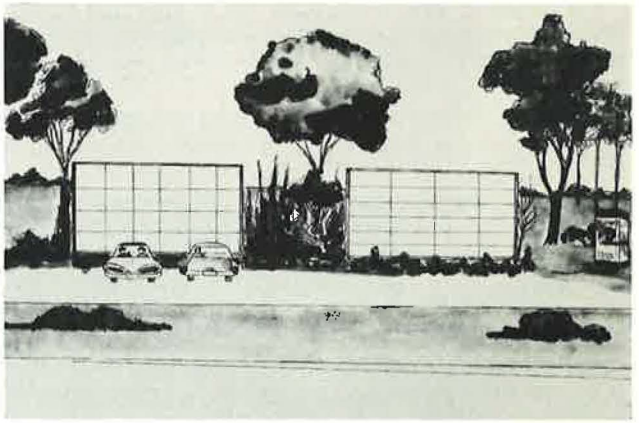

Figure 10.

highway department. The design of informational sites will be determined by the States, subject to requirements relative to the safe movement of traffic, control of access, and use of highway rights-of-way.

All class 2, 3 and 4 signs are subject to a number of general provisions concerning illumination, movement, and interference with or resemblance to official traffic signs. The national standards also contain several important provisions with respect to the location, spacing and frequency of class 3 and 4 signs outside informational sites.

It should be emphasized that the Federal law is not designed to effectuate advertising control in and of itself, but, instead to encourage and assist the States to control outdoor advertising. No State is obliged to control outdoor advertising, but those who enter into an agreement to do so, consistent with the national standards, will receive an incentive payment of one-half of one percent of the cost of Interstate projects to which the national policy and standards apply. Federal funds may also participate in the cost of acquiring advertising rights in areas adjacent to the Interstate System, subject to the limitation that Federal funds may not participate in such costs that exceed five percent of the cost of the right-of-way.

At the time the Federal law was enacted it was recognized that practically every State which desired to implement the national policy would have to enact legislation. The methods of control being considered vary, depending on the established policies, local conditions, and the constitutional provisions and judicial decisions of each State. Some States will desire to control outdoor advertising by exercise of the police power, through regulation and zoning. Some States will accomplish the same result through purchase or condemnation of advertising rights; whereas others may use a combination of police power and the power of eminent domain.

Because of these differing views and approaches, the Bureau of Public Roads has not attempted to draft a so-called "model" or "uniform" act. A bill which might be valid and acceptable in one State might be invalid or completely unacceptable in another State.

However, the Bureau has offered its services in reviewing proposed State legislation on this subject, and, in fact, encourages persons interested in sponsoring such legislation to submit draft bills for review. It is much better to determine the adequacy of such legislation before it is enacted, rather than learn of defects after the legislature has acted, and possibly adjourned. Of course, the review is limited to determining whether the proposed legislation would provide the legal authority to control outdoor advertising consistent with the Federal law and the standards promulgated by the Secretary of Commerce. The Bureau does not attempt to determine the validity of proposed legislation under the constitution and judicial decisions of the State involved, because the State officials are much better qualified to determine this.

During the past year or so the Bureau has received for review and analysis, legislation which has been enacted or was being considered in 21 States. It is probable that outdoor advertising legislation is being considered in other States, but that the proposals have not been submitted to the Bureau for review. The reviews indicate that most of the proposed legislation would control outdoor advertising to a greater extent than that required by the Federal law and standards.

For a State to become eligible for the Federal incentive payments, its regulation of outdoor advertising must be, as a minimum, in accordance with the national standards. It has been found that many of the draft bills submitted fail to provide for the regulation of certain aspects of outdoor advertising in accordance with the standards, even though they may prohibit some signs which could be permitted under the standards. For example, a proposed bill may regulate, or authorize a designated State official to regulate, the size, number, and spacing of signs, but be silent as to regulation of illumination, movement, or location. When proposed legislation is submitted to the Bureau for review, an attempt is made to ascertain whether there are such omissions, and to suggest corrective action.

As of the present time, legislation has been enacted in six States which, based on initial review, appears adequate to enable those States to control outdoor advertising consistent with the national standards. These States are Connecticut, Kentucky, Maryland, North Dakota, Virginia, and Wisconsin. In the Virginia enactment, the regulations are set forth in the law itself. The Connecticut, Kentucky, Maryland, and Wisconsin laws do not contain such detail, but authorize the heads of the State highway departments to adopt implementing regulations. The North Dakota law simply authorizes the highway department to acquire advertising rights by purchase or condemnation.

Maryland was the first State to make formal application to enter into an agreement with the Secretary of Commerce for the control of outdoor advertising, which is a prerequisite to eligibility for the Federal incentive payments of one-half of one percent of project costs. As of this date only one other State, Wiscosin has made formal application to enter into an agreement. However, other States have expressed an interest in acquiring advertising rights, with participating Federal-aid funds, without entering into an agreement for the additional one-half of one percent.

A proposed form of agreement prepared by the Bureau of Public Roads has been reviewed by the Maryland State Roads Commission, and has been approved in principle. Under the terms of this agreement, the State will agree, as a minimum, to control outdoor advertising consistent with the national standards. The agreement provides for an increase of one-half of one percent in the Federal share payable on account of projects on the Interstate System to which the national policy and the agreement apply. The agreement also has provisions relative to the withholding of payments, and recovery of money already paid, in the event the State fails to perform its obligations under the agreement.

As mentioned earlier, the national policy relative to the control of outdoor advertising does not extend to all segments of the Interstate Highway System. The policy does not apply to areas adjacent to segments of Interstate highways constructed on right-of-way, any part of the width of which was acquired on or before July 1, 1956, nor to segments which traverse certain industrial or commercial areas. To administer the law properly, and to be able to determine where outdoor advertising must or need not be controlled, the Bureau must have detailed information as to the methods and extent of the control contemplated by the State.

Accordingly, the proposed form of agreement incorporates by reference a "Plan for Controlling Areas Adjacent to Interstate Highways," which is to be prepared by the State. This plan should include the authority of the State to act, the methods it expects to follow, and should include maps or charts of all Interstate highways within the State of a scale and in sufficient detail to show all areas to which the national policy applies. To do this, the maps or charts must show the right-of-way limits, the portions of the right-of-way acquired on or before July 1, 1956, the boundaries of incorporated municipalities, and the limits of industrial or commercial areas excluded from the national policy.

Preparation of this material, and the various other steps which must be taken before an agreement can be entered into by a State and the Secretary of Commerce, are detailed and time consuming. In order for a State to be eligible for the Federal incentive payments it must enter into an agreement with the Secretary of Commerce before July 1, 1961. To assure that the State highway departments and the Bureau, with its limited staff, may have time to take necessary action before that date, and to guard against the possible loss of a State's opportunity to receive the Federal incentive payments, it is urged that all those interested in this matter act promptly.

The promotion and preservation of safe and enjoyable highway travel through the control of outdoor advertising depend on the events of the next few months, if the objectives of the Congress in enacting the Federal law on this subject are to be attained.