



U.S. DEPARTMENT OF COMMERCE  
BUREAU OF PUBLIC ROADS  
WASHINGTON, D.C. 20235

July 19, 1966

CIRCULAR MEMORANDUM TO: Directors, Regional and Division Engineers

FROM: Lawrence Jones *Lawrence Jones*  
49-01 Deputy Federal Highway Administrator

SUBJECT: Billboards in commercial and industrial areas;  
Suggested criteria for agreement on outdoor advertising  
control under the Highway Beautification Act of 1965

Enclosed is a copy of General Counsel Dowell H. Anders' paper which he presented at the Workshop on Highway Law in Boulder, Colorado, on July 12, 1966.

Mr. Anders presents some very interesting information on the legislative background of several phases of the Highway Beautification Act of 1965, and also discusses the development of proposed standards relating to the following:

- I. The Definition of an Unzoned Industrial Area for Junkyards
- II. The Definition of an Unzoned or Commercial Area for Outdoor Advertising
- III. Criteria for Size, Lighting, and Spacing of Signs Permitted in Commercial or Industrial Zones and Areas

I feel certain that everyone working on the Highway Beautification Program will find Mr. Anders' talk very informative.

Enclosure

BILLBOARDS IN COMMERCIAL AND INDUSTRIAL AREAS:  
SUGGESTED CRITERIA FOR AGREEMENT ON OUTDOOR ADVERTISING  
CONTROL UNDER THE HIGHWAY BEAUTIFICATION ACT OF 1965

Dowell E. Anders - General Counsel  
Bureau of Public Roads, Department of Commerce  
at the Workshop on Highway Law  
University of Colorado, Boulder, Colorado  
July 12, 1966

I appreciate this opportunity to be here with you and discuss the subject of standards and criteria for agreements called for by the Highway Beautification Act of 1965.

What I want to do at this time, however, is to fill you in on a most interesting and challenging legal experience - the 52 State hearings held on the matter of standards and criteria for agreements. Also, I am quite pleased to be able to discuss with you a set of specific criteria which has been developed by members of the Bureau of Public Roads, Washington Staff and recommended to the Highway Administrator for discussion with the States.

Because of the somewhat complex subject matter and the shortness of time this morning, I am going to confine our discussion to the suggested criteria for size, lighting and spacing of signs permitted in commercial or industrial zones and areas, including the definition of an unzoned commercial or industrial area for outdoor advertising control and definition of unzoned industrial area for junkyard control. These, as you know, are required by the Act to be agreed upon between the States and the Secretary of Commerce. Copies of these staff recommendations have just been sent to each State highway department by AASHO and we anticipate making detailed explanations at a meeting of State highway department officials in the near future.

The Act itself as approved on October 22, 1965, accomplishes essentially the same basic objectives that the Administration's bill did as sent to Congress by the President in May of 1965. You will recall that the Administration measure provided for the control of junkyards and billboards along the Interstate and primary highways and extended the use of unmatched Federal funds for the acquisition and enhancement of scenic strips along our highways.

As was aptly stated in the House Report on the Highway Beautification Bill, subsection 131(d) is the heart of the legislation with respect to control of outdoor advertising. With the exception of "on premise" advertising signs and directional and other official signs, all outdoor advertising signs within 660 feet from the Federal-aid primary highways must now be located within commercial or industrial zoned or unzoned areas and subject to size, lighting, and spacing criteria in accordance with agreements entered into between the Secretary and the several States. Agreements must also be reached on what shall constitute an unzoned commercial or industrial area.

Section 303 of the Act required the Secretary of Commerce to hold public hearings in each State for the purpose of gathering relevant information on which to base the standards, criteria, rules and regulations for carrying out this Act. This requirement presented a tremendous challenge to the Bureau of Public Roads, for there is also the additional requirement that a report should be made to Congress by January 10, 1967, concerning the standards to be applied in carrying out the Act. We were all convinced that the public hearings should commence and be completed as soon as possible. A schedule was set up for holding approximately six hearings simultaneously every week between March 1 and the first week in May.

It was our contention, and I think testimony from the hearings has borne us out, that if we were to obtain relevant, meaningful information we would have to supply witnesses with a common base -- or a frame of reference for their remarks. General comments about the inequities of the law or possible standards would not help us nor would it help the participants. Since the public hearings to be held in each State were for the

purpose of gathering relevant information on which to base standards, criteria, rules and regulations necessary to carry out the outdoor advertising and junkyard control provisions of the Act, we determined the six groups or categories of standards or criteria that the Act called for and draft standards were prepared for these six categories. These six categories are:

- I. The Definition of an Unzoned Industrial Areas for Junkyards
- II. The Definition of an Unzoned or Commercial Area for Outdoor Advertising
- III. Criteria for Size, Lighting, and Spacing of Signs Permitted in Commercial or Industrial Zones and Areas
- IV. National Standards Concerning Outdoor Advertising Controls on Public Lands and Reservations of the United States
- V. National Standards for Directional and Other Official Signs and Notices Off the Right-of-Way
- VI. National Standards for Official Highway Signs Within Interstate Rights-of-Way Giving Specific Information for the Traveling Public

We are especially proud of the way these hearings were conducted, and especially the conduct of the members of the panel itself. Throughout the conduct of these 52 hearings we have not heard a single complaint with regard to any of the members on the panel. On the contrary, in practically every State we have been, there has been praise given to the panel members for their objective handling of the hearing.

In this same vein, we were very pleased with the splendid cooperation that we received from the State highway department and the highway department personnel for the fine help in carrying out this assignment. I would like to take this opportunity to thank each of you for the excellent assistance we received.

To give you some idea of the widespread interest in the program, we estimate that approximately 8,000 people attended these hearings and roughly 2,000 persons testified. In addition, we received innumerable written exhibits, diagrams, charts, building codes, and zoning ordinances. On the whole, I would estimate that we have received approximately 20,000 pages of testimony and 40,000 pages of exhibits. Even before all hearings had been completed, six committees were set up within the Bureau to evaluate this mass of material, with each committee being responsible for one of the categories. The preliminary results of the sign and junkyard inventory conducted by the State highway departments was extremely valuable and fully utilized.

The public hearings produced many witnesses appearing in behalf of the outdoor advertising industry and offering comments regarding subsection 131(d). The first part of this section provides "In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use is to be determined by agreement between the several States and the Secretary. . . ." These industry witnesses placed great emphasis on the phrase "consistent with customary use" when offering information on size, lighting, or spacing of signs. The proposals on criteria by the industry spokesmen, although implying that they construed "consistent with customary use" to mean maintaining the status quo, demonstrated that what is customary varies widely between the various segments of the industry.

It is our view that the term "consistent with customary use" must be used in conjunction with the term "consistent with the purposes of this section." Of course, the legislative purpose clause is found in section 131(a) and is stated to be to preserve natural beauty, promote safety, protect public investment, and to promote reasonable, orderly, and effective

display of outdoor advertising. Therefore "customary use" does not mean maintaining the status quo in the outdoor advertising industry, but can only be considered within the overall purposes of the act.

I believe it might be helpful at this point to set forth a little of the legislative history which brought into being this term "consistent with customary use." This term is found in section 131(d) of the Beautification Act and as this section was originally passed in the Senate it did not contain the term "customary use." Likewise, the House Bill merely required that the size, lighting, and spacing of signs in zoned and unzoned industrial and commercial areas must be determined by agreements to be worked out between the several States and the Secretary of Commerce.

On September 14, 1965, Honorable John C. Kluczynski, Chairman of the Subcommittee on Roads, Public Works Committee, House of Representatives, inquired of the Secretary of Commerce for an explanation of the broad criteria to be used in determining approval of State action for the regulation of billboards in those areas zoned or used as commercial or industrial areas. The Secretary replied, in part, that:

"It is the intention of the administration that the regulations, insofar as they are consistent with the purposes of this act, shall be helpful to the advertising industry and that, for instance, standards of size which may be adopted would be insofar as possible consistent with standard size billboards in customary use."

On October 7, 1965, in a debate on this bill in the House, the question came up for serious consideration. Congressman Tuten of Georgia offered an amendment which would add the words "consistent with customary use" following the words "size, lighting, and spacing." The argument was forcefully made in the debates that all this proposed amendment would do would be to carry out the intent of what the Secretary of Commerce had said in his letter of September 14. The argument was made in opposition to the amendment that the amendment goes further than the Secretary's letter in that

the amendment would apply the term "customary use" to lighting and spacing as well as to size. It was pointed out that such an amendment would greatly extend the intention of the Secretary of Commerce in connection with an orderly and effective administration of the bill. Nevertheless, when the vote was taken the amendment inserting "customary use" into this section was adopted by a vote of 122 to 112.

Of the six categories of criteria on which public hearings were required, three are to be agreed upon between the States and the Secretary. I would like to limit this discussion today to what the Bureau Staff has recommended to the Federal Highway Administrator as the suggested minimum standards to be submitted to the States for agreement on these particular three categories:

1. Definition of unzoned commercial or industrial areas for outdoor advertising control.
2. Definition of an unzoned industrial area for junkyard control.
3. Criteria for size, lighting and spacing of signs permitted in commercial or industrial zones.

There is attached to this paper a copy of the detailed criteria recommended by the Staff, and also some diagrams which will be helpful in understanding the criteria. Figure one illustrates the unzoned area for outdoor advertising control purposes.

#### UNZONED COMMERCIAL OR INDUSTRIAL AREA FOR OUTDOOR ADVERTISING CONTROL.

In developing a definition for unzoned commercial and industrial areas where outdoor advertising would be permitted, the Bureau Staff was guided, in addition to material revealed by the public hearings, by Under Secretary Boyd's statement to the House Public Works Committee to the effect that the purpose was to achieve an equality of treatment for those areas which are, in fact, used for commercial or industrial purposes but which may not be technically so zoned under State law. Also, it was guided by the Secretary's September 14, 1965, letter to Chairman Kluczynski of the Subcommittee on

Roads to the effect that the Bureau would look to the standards followed by a particular State in zoning an area industrial or commercial, and that the definition would be reached on the same basis as those areas which are actually zoned.

The Congress clearly recognized that the determination of what shall constitute an unzoned industrial or commercial area is primarily an issue of land use and is an extension of the concept of zoning. Based upon these concepts and interpretations, we developed the following proposed definition for consideration with the States:

"An unzoned commercial or industrial area shall mean the land occupied by the regularly used building, parking lot, storage or processing area of a commercial or industrial activity, and that land within 500 feet thereof which is:

1. Located on the same side of the highway as the principal part of said activity, and
2. Not predominantly used for residential purposes, and
3. Not zoned by State or local law, regulation or ordinance.

"Commercial or industrial activities, for purposes of this definition, shall mean those permitted only in commercial or industrial zones, respectively, or in less restrictive zones by the nearest zoning authority within the State, except that none of the following shall be considered commercial or industrial activities:

1. Outdoor advertising structures.
2. Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands.



3. Activities normally and regularly in operation less than three months of the year.
4. Activities not housed in a permanent building or structure.
5. Activities not visible from the main traveled way.
6. Activities more than 300 feet from the nearest edge of the main traveled way.
7. Activities conducted in a building principally used as a residence.
8. Railroad rights-of-way."

Congressman Jim Wright from Texas, in referring to "unzoned" areas used for commercial purposes where signs could be erected, made this statement:

" . . . in any area that is either zoned or used for business purposes - in other words, driving down a highway when you come to a cluster of stores or a filling station or a tourist court or a motel or a cafe, that these may be used for business purposes, signs can go there - private signs. . . under the law as the bill is written." [D.C.R. 10-7-65, page 25386.]

This statement afforded us a strong indication of not only the kind, but the extent of business activity which would permit the erection of signs. The existence of one business as constituting an "unzoned commercial area" also found strong support in the public hearings.

The addition of the distance of 500 feet beyond the business activity recognizes the fact that a commercial or industrial activity affects and influences the area around it. It is a standard practice in zoning to recognize and consider this sphere of influence when extending commercial or industrial zones. The degree and actual area of influence will vary depending upon the type and extent of the commercial or

industrial activity, and it is difficult to arrive at a lineal measurement that will properly fit all actual situations. For this reason, and based upon sound zoning practices, we believed that the 500-foot radius should not arbitrarily extend beyond natural or physical barriers or into areas used or intended for some other land use. Therefore, we have limited the unzoned area to the same side of the highway as the commercial or industrial activity and prohibited its extension into a predominately residential area or an area already zoned by law or ordinance.

The meaning of "commercial or industrial activity" is to be determined by reference to the nearest zoning code within the State. This affords the simplest and most effective way of utilizing local zoning standards which will more likely be keyed to local land uses.

We made every effort to preclude circumvention of the purposes of the Act by excluding certain activities which were only partially or temporarily in commercial or industrial use. Also, we excluded commercial and industrial activities which would not be visible or obvious to the traveling public.

We believe this definition is not only consistent with the purposes of the Act and with executive communications on the matter, but that it also has merit from an administrative and enforcement standpoint.

#### UNZONED INDUSTRIAL AREA FOR JUNKYARD CONTROL

Our definition of an unzoned industrial area for junkyard control, required by section 136(g) of the Act is very similar in format to our definition of an unzoned commercial and industrial area for outdoor advertising control, except that land within 1,000 feet of an unzoned industrial activity is considered as an unzoned industrial area. Again, the land would have to be on the same side of the highway as the industrial activity and not predominantly residential or commercial. We would again use the definition of an industrial activity as it is contained in the nearest zoning code or regulation within the State. Figure two illustrates the unzoned area.

## SIZE OF SIGNS

The proposed criteria prohibits signs greater than the following maximums:

1. Area - 750 square feet
2. Height of panel, including border and trim - 25 feet
3. Length of panel, including border and trim - 50 feet

From the State hearings, we learned that standard outdoor advertising industry structures include the following:

1. The Loewy Poster Panel measuring 12'3" x 24'6", or approximately 288 square feet.
2. The Deluxe Urban Bulletin measuring 13'4" x 46'10", or approximately 611 square feet.
3. The Standard Highway Bulletin measuring 13' x 41'8", or approximately 540 square feet.
4. The Association Standard Green Poster Panel measuring 11' 10-3/4" x 25', or approximately 300 square feet, and
5. The Streamliner Bulletin measuring 15' x 46' 2-1/2", or approximately 690 square feet.

The largest Holiday Inn regularly used bulletin is 15' x 50' or 750 square feet. The industry also has other signs which exceeded 750 square feet, some ranging up to 1,100 square feet. But our inventory indicates that these signs are in the minority. They are usually "custom made."

The hearings brought out that poster panels of approximately 300 square feet are customarily mounted side-by-side; however, painted bulletins which are larger signs are not mounted side-by-side, nor do we think they should be. Therefore, our proposed size criteria would only allow signs of 350 square feet or less to be mounted side-by-side or one over the other and facing the same direction.

## LIGHTING OF SIGNS

Our first lighting requirement would prohibit flashing, intermittent or moving lights except those giving public service information such as time, date, temperature, weather or similar information. This provision is, of course, based upon safety factors due to the distractive features of such signs. During the public hearings testimony from industry spokesmen made it clear that it is customary in outdoor advertising to provide public service information on signs, by the use of intermittent or moving lights.

The second lighting requirement would prohibit lights which are not effectively shielded from being directed at the highway and which are of such brilliance that they cause glare or impair a driver's vision or otherwise interfere with a driver's operation of a motor vehicle. This provision is based upon obvious safety factors. Testimony received during the hearings did not reveal any great opposition to such a requirement.

The third lighting requirement would prohibit signs illuminated in such a manner as to interfere with or obscure an official traffic sign, device, or signal. Again, the provision is based upon obvious safety factors.

## SPACING FOR OUTDOOR ADVERTISING SIGNS

As noted earlier, the Act states that criteria for spacing, consistent with customary use, are to be determined by agreement between the several States and the Secretary. These criteria are to govern spacing of signs permitted in commercial and industrial zones and areas. Again, the objectives of the Act, as stated in Section 131(a) are to protect the public investment in Interstate and primary highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

Our proposed spacing rules, and only these, contain different types of highways and different land use densities in areas adjacent to the highways. Some of the factors considered in developing and proposing different spacing standards were:

1. Variations in actual and potential traffic volumes.
2. Variations in speed of traffic.
3. Variations in customary use along freeway vs. non-freeway highways and in urban vs. rural developmental patterns.

#### Spacing Between Signs

Figure three illustrates our basic recommendation for spacing between signs in those areas essentially rural in nature, i.e., where intersections are 1,500 feet or over apart, would be a minimum of 500 feet between signs along one side of the highway. Signs may face in either direction and on non-freeway primary routes, V-type or back-to-back signs would be permitted, as would double-faced signs (two panels side-by-side or one over the other, facing the same direction), provided such signs are at least 1,000 feet from any other sign on the same side of the highway. The 500-foot spacing rule would apply to the entire Interstate system, as well as freeways on the primary system, both urban and rural, except that double-faced, V-type, and back-to-back signs would be prohibited.

This 500-foot figure is proposed following very thorough and lengthy deliberation. It is probably the most important single figure in the proposed standards, since it will to a great extent control the number of available sign locations in essentially rural areas. It is slightly over the length of the average city block, or the length of one and two-thirds football fields. A car traveling 60 mph travels 500 feet in under six seconds.

Five hundred feet between signs is widely regarded within the outdoor advertising industry as minimum spacing for effective display in rural areas. National Advertising Company representatives advised us that, generally, they will not place one of their signs closer than 500 feet to another one of their signs. Many sign leases, including those of National Advertising Company, provide that the landowner shall not permit another sign within 500 or 600 feet.

Spacing Between Signs - Urban Non-freeway Primary Routes

In built-up areas, where intersections are less than 1,500 feet apart, our proposed standards for non-freeway primary highways would permit two signs per block per side, facing in either direction as shown by figure four. There would be no restriction on space between signs within the block; the two signs permitted on one side could be side-by-side (double-faced), in a V-type arrangement, or back-to-back. In short blocks of say 200 feet, this would permit an average density of one sign in each 100 feet. In the average city block of about 400 feet, the average density, on one side of the highway amounts to one sign in each 200 feet.

Some of the factors which influenced us in proposing a two sign per block per side rule in urban areas are as follows:

1. Heavier sign density is customary in built-up or urban areas. This was repeatedly pointed out by the industry during the hearings, and is supported by the sign inventory.
2. Such a standard would be easily administered, compared to other possible standards which would necessitate measurements between signs, urban area definitions and delineations on maps and the ground, and the like. One of the frequently heard statements during the hearings was that spacing criteria, such as so many signs per mile would be difficult to administer.
3. This standard would permit flexibility to the industry not possible with any distance-between-signs rule. The hearings brought out that it is customary for the standardized industry to place two or more poster panels side-by-side or one above the other at the same location. The Outdoor Advertising Association of America advised us that their average number of poster panels per sign location is 1.7, indicating that most of their panels are in multiple sign locations.

4. By maintaining strict spacing criteria in essentially rural areas, and permitting more signs in built-up or urban areas, we feel one of the purposes of the Act has been served, i.e., the preservation of areas of natural beauty, and reflecting customary use.
5. This spacing standard would apply to build-up areas regardless of their size or incorporated status. According to the 1960 census, there are 622 unincorporated places over 2,500 population. Any standard should treat these areas similarly to incorporated cities, towns, and villages. Definition or delineation of unincorporated areas would, however, be a severe administrative problem.
6. This proposed standard would treat all built-up areas, small or large, equally. The need for outdoor advertising in small towns and villages was pointed out by one advertiser during the Ohio hearing. This person pointed out that local merchants in the Mt. Gilead - Edison area, population 3,347, relied on about 23 outdoor advertising signs in the area. Mt. Gilead is the county seat and these two towns serve an area of 19,000 persons. Outdoor advertising is the local merchants' principle means of communicating with the customers, since there is no radio station and only one weekly newspaper.

#### Spacing to Intersections - Non-freeway Primary Routes (Figure 5)

Our proposed standards would require that ground signs be set back 100 feet from intersections less than 1,500 feet apart and 200 feet back from intersections 1,500 or more feet apart. The 100-foot requirement would apply generally to urban intersections and the 200-foot to rural.

According to the National Safety Council, 42.8 percent of all urban motor vehicle accidents in 1964 involved collisions of two vehicles at intersections. During 1964, 22.7 percent of all rural motor vehicle accidents involved collisions of two motor vehicles at intersections. By prohibiting ground signs in areas close to intersections, driver distraction and interference with driver visibility caused by such signs

would be removed as a contributing factor in this type of accident. Although the Outdoor Advertising Association of America has a policy of placing ground signs on corner lots on stilts, thus permitting visibility under the sign, we feel that such a sign is still distracting.

Our proposed standard would not apply to wall or roof signs, since the building in this case, not the sign, is the cause of the visual obstruction. For the same reason, ground signs which are erected close to a building wall and which do not interfere with traffic visibility, would be permitted. Figure six illustrates this rule.

#### Spacing to Interchanges - Interstate and Freeways

Our proposed standards would prohibit signs within 2,000 feet of an interchange, intersection at grade, or rest area on the Interstate system and on freeways on the primary system. This, we feel, is a necessary safety factor. Figure six illustrates the prohibited area.

With normal interchange spacing and official guide sign placement, this would prohibit outdoor advertising closer to the interchange than the official sign known as the "exit direction sign," which reads "Metropolis - right lane." Beginning with the point on the highway where the driver reads this guide sign, decision making and weaving begin, and distractive influences should be minimal.

#### Miscellaneous Spacing Requirements

Our proposed spacing rules would prohibit signs which obscure an official traffic sign or signal, or intersecting, approaching or merging traffic. This is a safety factor.

Also prohibited would be signs within 500 feet of a public park, forest, playground, or designated scenic area. This is based on aesthetics.

#### GENERAL

The first general requirement would prohibit signs which imitate or resemble official traffic signs, signals, or devices. This provision is based upon obvious safety factors to avoid confusion with official signs and devices. We believe that testimony from the public hearings revealed



that the outdoor advertising industry was not opposed to such a requirement.

The second general requirement would prohibit signs erected upon trees or painted or drawn upon rocks or other natural features. This provision is based upon aesthetic considerations. Advertisements of this type are eyesores and would certainly be incongruous with the intent and purpose of the Act. The testimony revealed that this type of sign was contrary to customary use.

The third general requirement would prohibit signs which are structurally unsafe or in disrepair. This provision is based upon safety factors and aesthetic considerations.

#### CONCLUSION

Let me close by saying that the hearings have been a most worthwhile experience. They gave us the information that we needed to do our work. We now know facts about the industry we needed to know.

It was a beneficial program to have the hearings. We were able to go out into the States where the witnesses were, we were able to hear more witnesses, get more facts and a great spread of testimony than Congressional committees in Washington could have received.