

Bonus Program

Background

In 1958, Congress passed the first outdoor advertising control legislation commonly known as the “Bonus Act,” P.L. 85-381, part of the Federal-Aid Highway Act of 1958. In 1965, this statute was repealed and replaced by the Highway Beautification Act; reference to the Bonus program is found in the United States Code at 23 U.S.C. 131 (j). Its provisions still exist by reason of agreements with the states. Bonus program regulations promulgated by the Federal Highway Administration are found at 23 C.F.R. 750, Subpart A.

The Bonus Act provided an incentive to states to control outdoor advertising within 660 feet of the Interstate Highway System. States volunteering for the program would receive a bonus of one-half of one percent of the federal-aid highway construction costs on segments of Interstate highways controlling outdoor advertising.

The Bonus Act allowed four categories of signs: Directional and official; for sale and on-premise; signs within 12 air miles of the advertised activity; and, signs giving information in the specific interest of the traveling public. Compensation for sign removal was voluntary on the part of the state. Also, states could use eminent domain to purchase easements to control signs.

Industry Position and “Bonus Act” Analysis

- The industry supports the reasonable control of billboards within commercial and industrial areas along Interstate highways consistent with the 1958 Bonus Law, as amended, and the Highway Beautification Act of 1965.
- Congress, the FHWA and the OAAA agree that the Bonus program is an unfunded Federal mandate. There have been no bonus program payments to the states since the early 1980’s. To date, \$44 million has been paid to states for billboard controls. Another \$10 million in outstanding claims remain to be paid to 21 states.
- The FHWA has indicated that a state may terminate its involvement in the Bonus program by reimbursing the federal government for its share of the bonus claims paid. (e.g. In July 2004, Iowa enacted legislation which allows new billboards in zoned commercial or industrial areas so long as there is an actual business use and entered into a repayment program with FHWA).
- Two amendments to the original Bonus Law were adopted which allowed billboards along portions of the Interstate highways

The first amendment was known as the “Cotton Amendment,” which exempted any areas adjacent to, or part of, the right-of-way acquired prior to July 1, 1956. This amendment allowed billboards in areas adjacent to interchanges, overpasses, and

along roads that ran parallel to the Interstate highway. It was named after Senator Norris Cotton of New Hampshire, the sponsor of the exemption. Because the HBA of 1965 is more restrictive, any “Cotton” areas must be zoned or unzoned commercial or industrial areas in order to qualify for billboard sites along Interstate highways.

The second amendment, known as the “Kerr Amendment” allowed billboards in commercial and industrial zones. Incorporated municipal boundaries were “frozen” as of September 21, 1959 (the date of the amendment). The Kerr Amendment permitted billboards outside municipal limits only in commercial or industrial zones as of September 21, 1959. Inside city boundaries, zoning was not frozen for purposes of billboard controls and controls by states and localities prevail. Senator Robert Kerr of Oklahoma sponsored the amendment.

Under the Highway Beautification Act of 1965, Bonus states must continue to control billboards under both programs (the more restrictive provisions apply). The state Bonus agreements were incorporated by reference into the HBA of 1965.

Bonus States

The following 25 states enacted laws to voluntarily implement the “Bonus” program; 22 remain in the bonus program:

California	New Jersey
Colorado	New York
Connecticut	*North Dakota
Delaware	Ohio
*Georgia	Oregon
Hawaii	Pennsylvania
Illinois	Rhode Island
*Iowa	Vermont
Kentucky	Virginia
Maine	Washington
Maryland	West Virginia
Nebraska	Wisconsin
New Hampshire	

*NOTE: Three states, Georgia, Iowa (partial), and North Dakota, dropped the bonus program; Georgia by court decision and Iowa and North Dakota by legislation

Bonus Payments Paid to States

BONUS CLAIMS & PAYMENTS				\123\STATS\BON890.UKI			
Fiscal Year 1990				8/31/90			
NO. State	Claims	Claims	Payments Boy	Balance FY 1990	Total Payments FY 1990	Total Payments Unpaid Claims	BOY
							To Date
1 California	110,467.77		57,417.85	53,049.92	4,479,911	4,537,329	
2 Colorado	1,523,834.84		1,523,834.84		1,473,350	1,473,350	
3 Connecticut	55,743.28		55,743.23	0.00	66,910	122,653	
4 Delaware	57,905.65					57,905.65	163,586
5 Hawaii	437,951.99					437,951.99	777,225
777,225							
6 Illinois	910,938.45		910,938.45	3,807,264	3,807,264		
7 Iowa	338,567.46		338,567.46	3,395,053	3,395,053		
8 Kentucky						261,882.25	216,295.03
45,587.22	2,364,156	2,580,451					
9 Maine	128,821.54		128,821.54	1,090,967	1,090,967		
10 Maryland	148,634.61		1,674.00	146,960.61	2,009,381	21011,055	
11 Nebraska	136,347.51		136,347.51	1,228,908	1,1228,908		
12 New Hampshire	17,790.96		17,790.96	1,253,437	1253,437		
13 New Jersey	497,805.82		497,805.82	277,940	277,940		
14 New York			0.00	439,822	439,822		
15 Ohio	136,860.55		136,860.55	3,069,982	3,069,982		
16 Oregon	202,346.81		202,346.81	986,408	986,408		
17 Pennsylvania	784,329.42		734,329.42	4,307,728	4,307,728		
18 Rhode Island	68,976.81		68,976.81	146,883	146,883		
19 Vermont	509,013.98		509,013.98	2,035,824	2,035,824		
20 Virginia	2,123,680.76		2,123,680.76	2,982,628	2,982,628		
21 Washington	29,261.83		29,261.83	3,475,310	3,475,310		
22 West Virginia	1,505,016.07		1,505,016.07	1,857,336	1,857,336		
23 Wisconsin	244,681.17		244,681.17	2,414,329	2,414,329		
Totals						9,968,977.28	261,882.25
331,130.16	9,899,729.37	44,104,338	44,435,468				



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

Pre-1956 Right-of-Way Exemption
1958 Bonus Act
(Cotton Areas)

The so-called 1958 Bonus Act, which represented initial Federal efforts at controlling outdoor advertising, was actually part of Public Law 85-381, the Federal-Aid Highway Act of 1958. This Act provided that States agreeing to control outdoor advertising adjacent to Interstate highways in accordance with the national policy and the national standards would receive a bonus of one-half of 1 percent of the highway's cost of construction. The pre-1956 right-of-way exemption is contained in the following underlined language as it appears in the Act:

" . . . It is hereby declared to be a national policy that the erection and maintenance of outdoor advertising signs, displays, or devices within 660 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 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, which shall include only the following four types of signs, and no signs advertising illegal activities"

Like many laws, the above language is somewhat obscure and difficult to understand. In simple terms, it means that an area adjacent to the Interstate highway may be exempt from outdoor advertising control if any part of the land on which the highway is constructed was acquired as right-of-way prior to 1956. It is important to remember also that the right-of-way need not have been acquired for the purpose of constructing an Interstate highway; it could have been acquired 30 years ago for the construction of a no-longer-used farm-to-market road. The pre-1956 right-of-way exempted areas are commonly referred to as "Cotton areas," after Senator Norris Cotton of New Hampshire, who introduced the amendment providing the exemption.

Not all of the States which complied with the 1958 Act in order to become eligible for the bonus wrote into their laws the Cotton area exemption and thus permitted signs in these areas. According to records of the Federal Highway Administration, the following Bonus States did recognize Cotton areas:

California	New Hampshire	
Colorado	New Jersey	
Delaware	New York	West Virginia
Maine	Oregon	
Nebraska	Pennsylvania	
Virginia	Rhode Island	

The pre-1956 right-of-way exemption, when included in a State's law, creates two broad loopholes in the State's control of outdoor advertising. A number of Interstate highways have been constructed by upgrading an existing facility, usually by the construction of additional lanes or roadways, providing for control of access, and other similar actions. In such instances, the entire length of the highway is constructed partly on right-of-way acquired prior to 1956 and there is no outdoor advertising control whatsoever. Figure 1 illustrates this type of Cotton area.

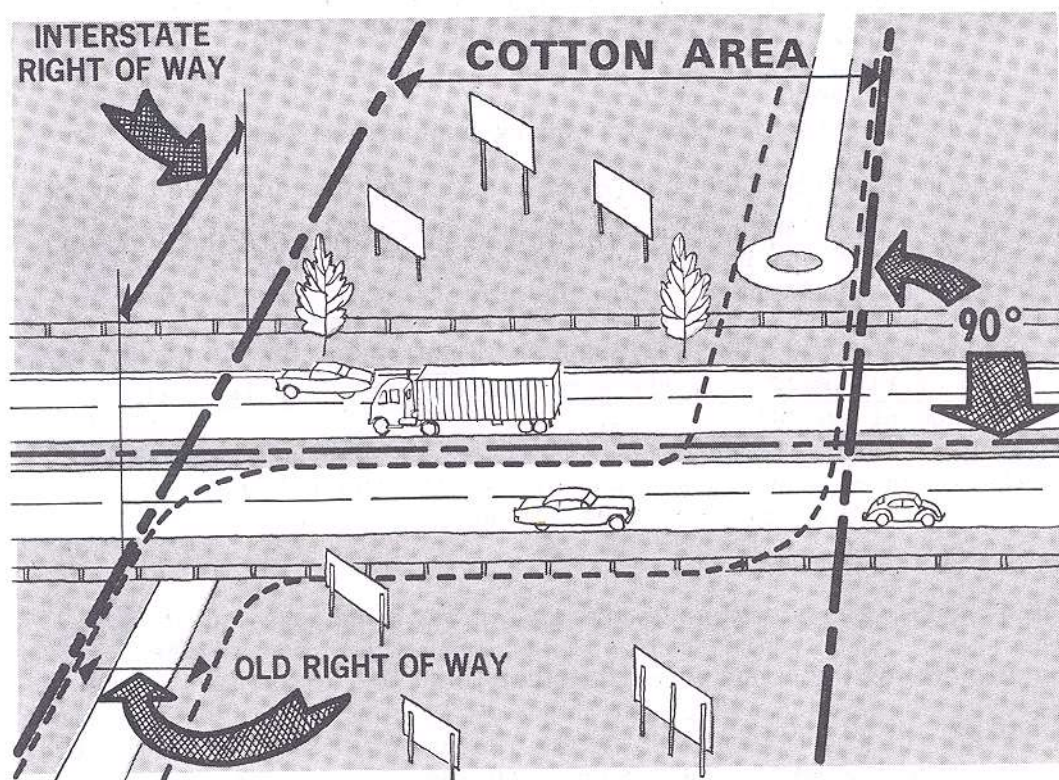


Figure 1

The second type of loophole occurs where an Interstate highway is constructed on a new location but crosses numerous existing State and county roads. In such instances, there are areas adjacent to the highway which become available for outdoor advertising by virtue of being adjacent to the right-of-way, a portion of which was acquired prior to 1956. The older existing State and county roads which cross the Interstate highway are rights-of-way acquired prior to 1956 and they thus create exempt areas. Figure 2 shows this type of Cotton area.

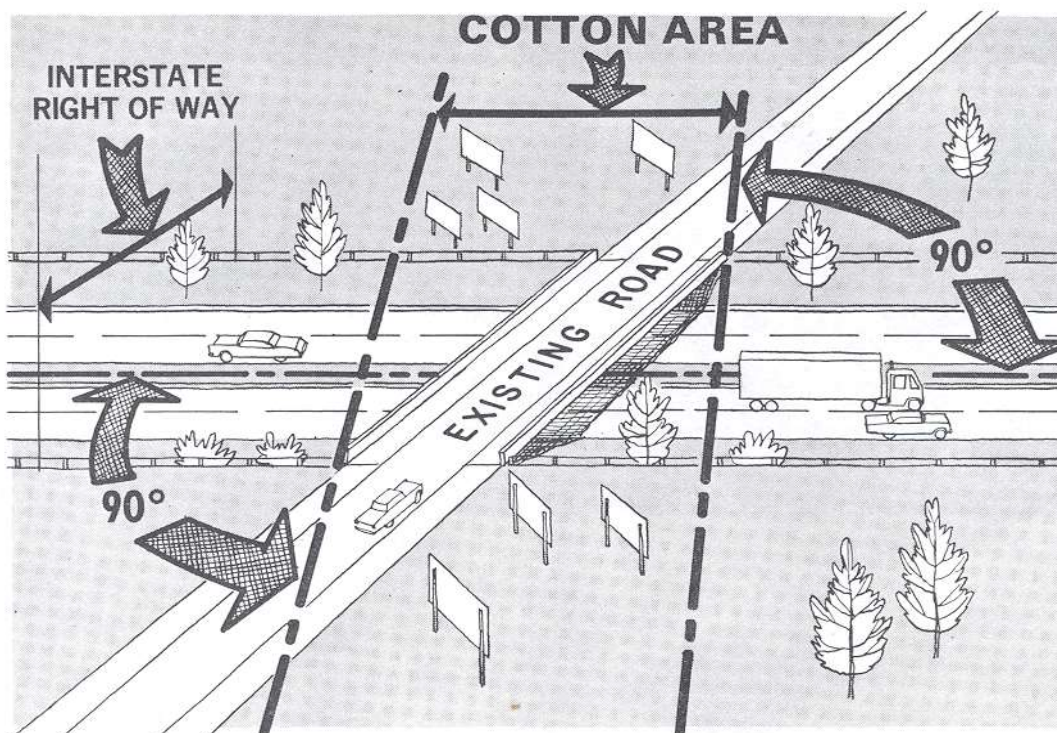


Figure 2

Where Cotton areas occur because of crossing roadways, signs will appear without regard to commercial or industrial zoning or the existence of commercial or industrial activities. Usually, they will be erected close to the right-of-way line of the crossing roadway. Figures 3 and 4 illustrate this type of situation. In some instances, the crossing roadway is terminated during construction of the Interstate highway or at some prior date and no grade structure will indicate that there is such a right-of-way crossing. In these instances, the signs will appear as shown in Figures 5 and 6.

The method of measuring or delineating the Cotton area is provided in Title 23, Code of Federal Regulations, Part 750. Subsection 750.102(c)(1) states:

"(c) Controlled portion of the Interstate System means any portion which:

- (1) Is constructed upon any part of right-of-way, the entire width of which is acquired for right-of-way subsequent to July 1, 1956 (a portion shall be deemed so constructed if, within such portion, no line normal or perpendicular to the centerline of the highway and extending to both edges of the right-of-way will intersect any right-of-way acquired for right-of-way on or before July 1, 1956);"



Figure 3



Figure 4

The language in parentheses indicates how a protected or controlled area is defined. If the line perpendicular to the centerline of the highway intersects rights-of-way acquired on or before July 1, 1956, a Cotton area, available for signs, will exist. The only exceptions are in the very limited instances wherein the crossroad crosses at exactly 90°. Where this occurs, the Cotton area coincides with the crossroad right-of-way and is not available for signs. See Figure 7.

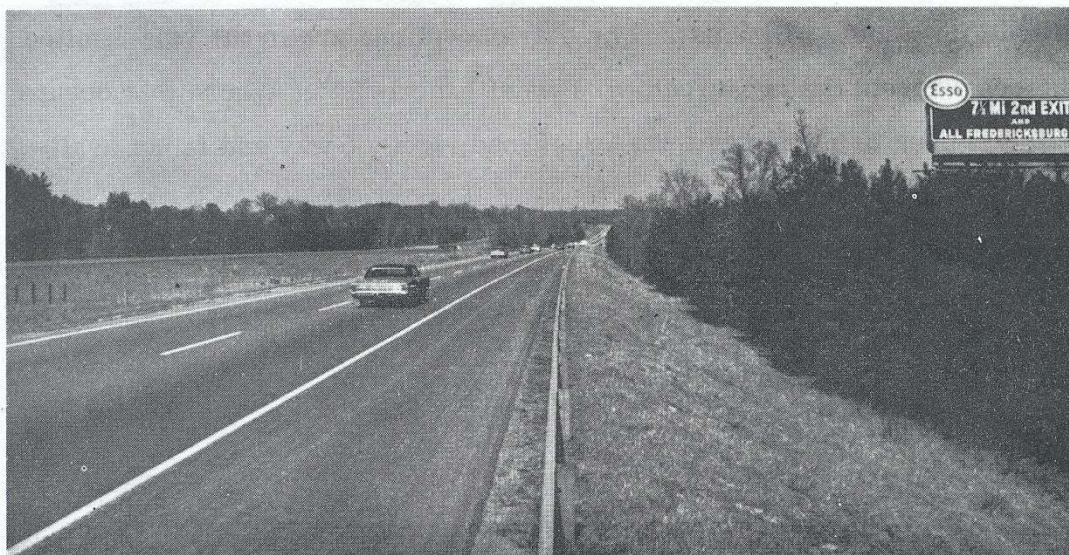


Figure 5



Figure 6

Effect of 1965 Act on Cotton Areas

The Highway Beautification Act of 1965 contains no pre-1956 right-of-way exemption. The only areas where commercial billboards are permitted are commercial and industrial zones and unzoned areas. Thus, the only Cotton area signs which will be allowed when a Bonus State complies with the

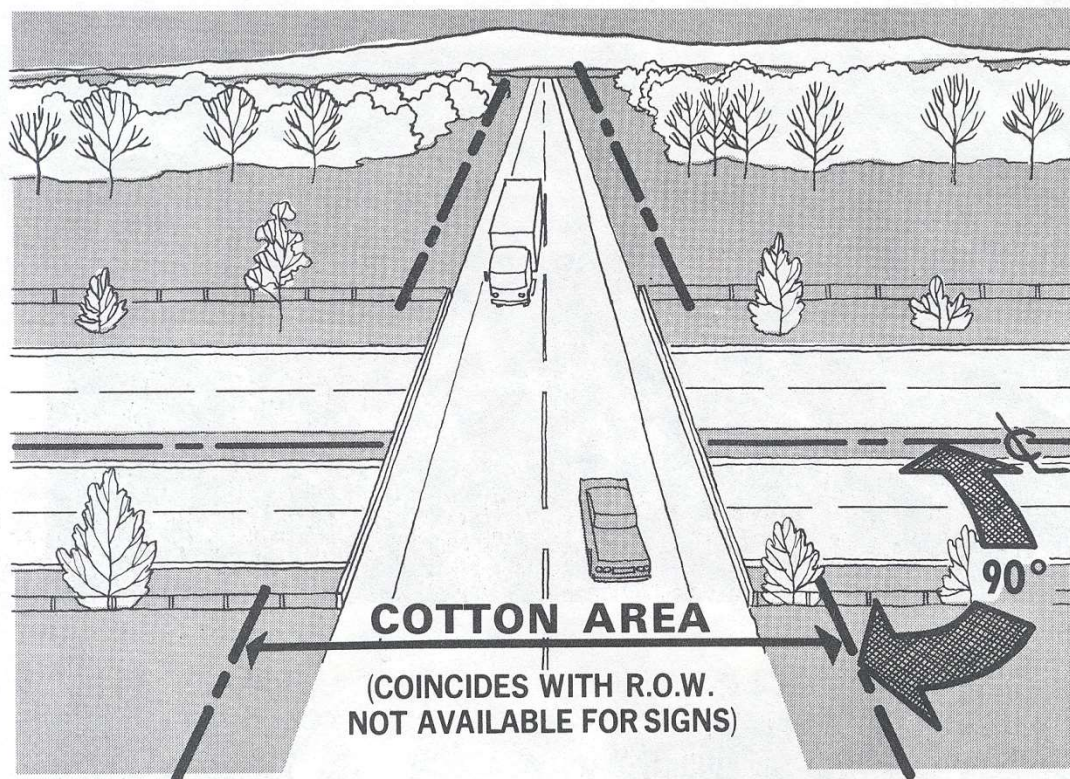


Figure 7

1965 Act are those Cotton area signs which are also in commercial or industrial areas. Stated another way, the only Cotton areas which will continue to exist are those which coincide with commercial or industrial zones and areas.

In those Bonus States which recognize Cotton areas, signs in these areas will be removed under the State's law complying with the 1965 Act, unless a Cotton area is also commercially or industrially zoned, or used in a manner that it falls within the State's unzoned commercial area definition, which is contained in the State's agreement with the Secretary.

Figure 8 illustrates the pre-1956 right-of-way exemption and the effect of the 1965 Act on Cotton areas. It should be kept in mind that the 1965 Act is ineffective until a State law is passed in compliance therewith. It is the State law which makes certain signs illegal rather than the Federal Act.

The Act of 1965 agreements with 1958 Bonus Act States illustrate the so-called Kerr and Cotton areas in the following manner. Each such agreement contains a section entitled "Scope of Agreement" which actually defines the areas adjacent to the State's Interstate and primary highways

COTTON AREAS

1958 ACT & 1965 ACT COMBINED

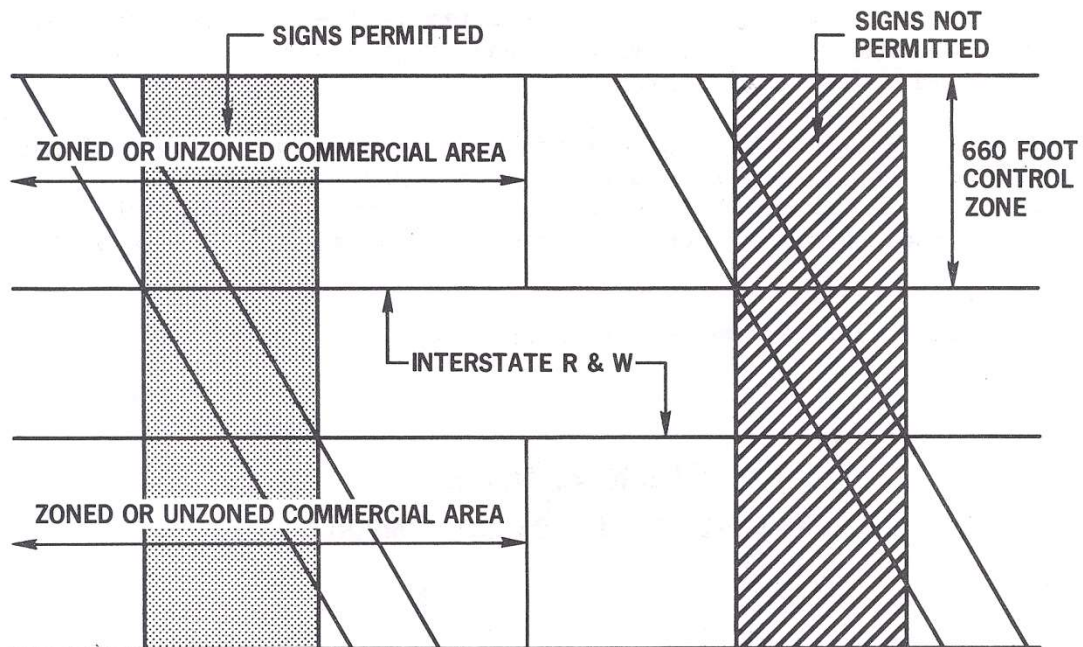


Figure 8

where signs will be permitted. A typical section from a Bonus State agreement follows:

"III. Scope of Agreement

This agreement shall apply to the following areas:

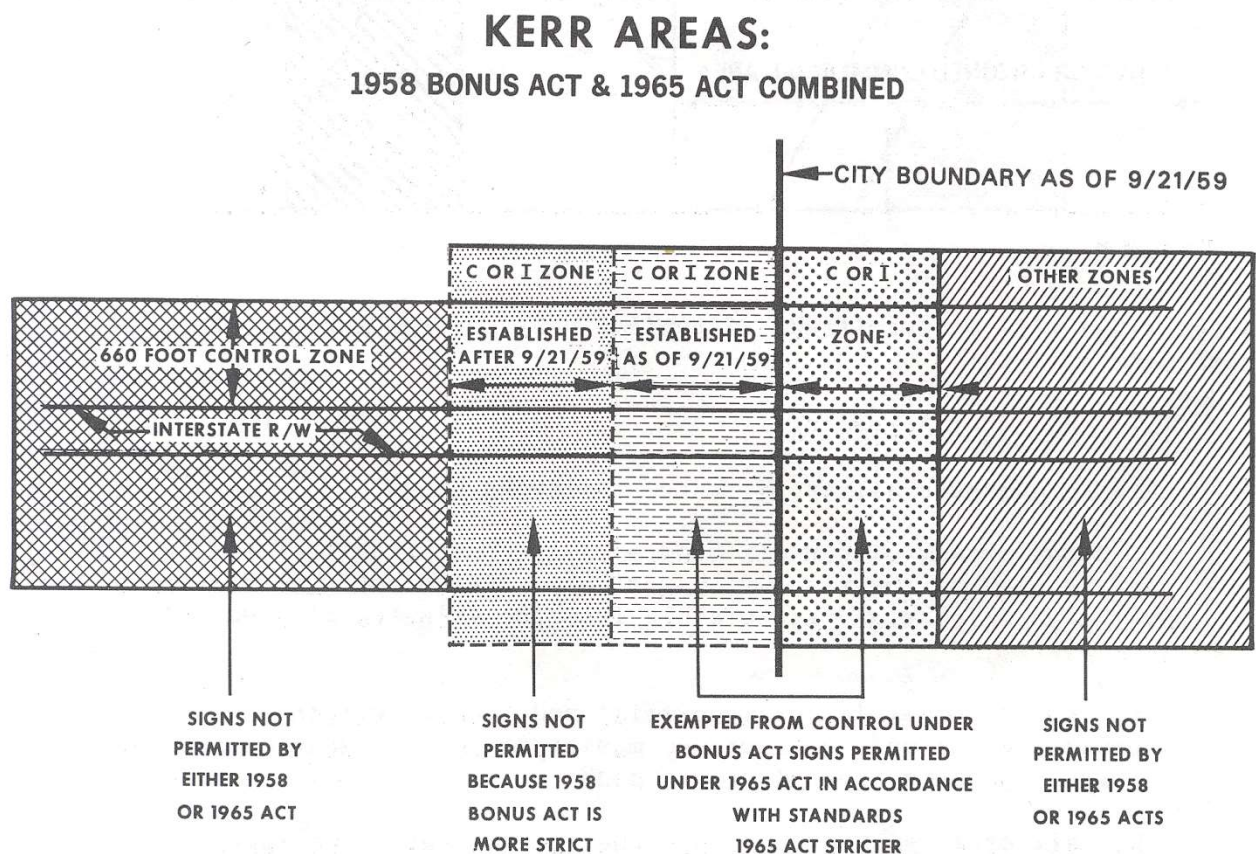
1. Those areas, within six hundred sixty feet (660') of the nearest edge of the right-of-way of all portions of the Interstate System in which signs are visible from the main-traveled way of said system,
 - a. zoned commercial or industrial and located within the boundaries of any incorporated municipality, as those boundaries existed on September 21, 1959, and
 - b. all other such areas where the land use as of September 21, 1959, was zoned commercial or industrial; and
2. All other zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way portions of the Interstate System constructed on right-of-way any part of

which was acquired on or before July 1, 1956, in which signs are visible from the main-traveled way of said system.

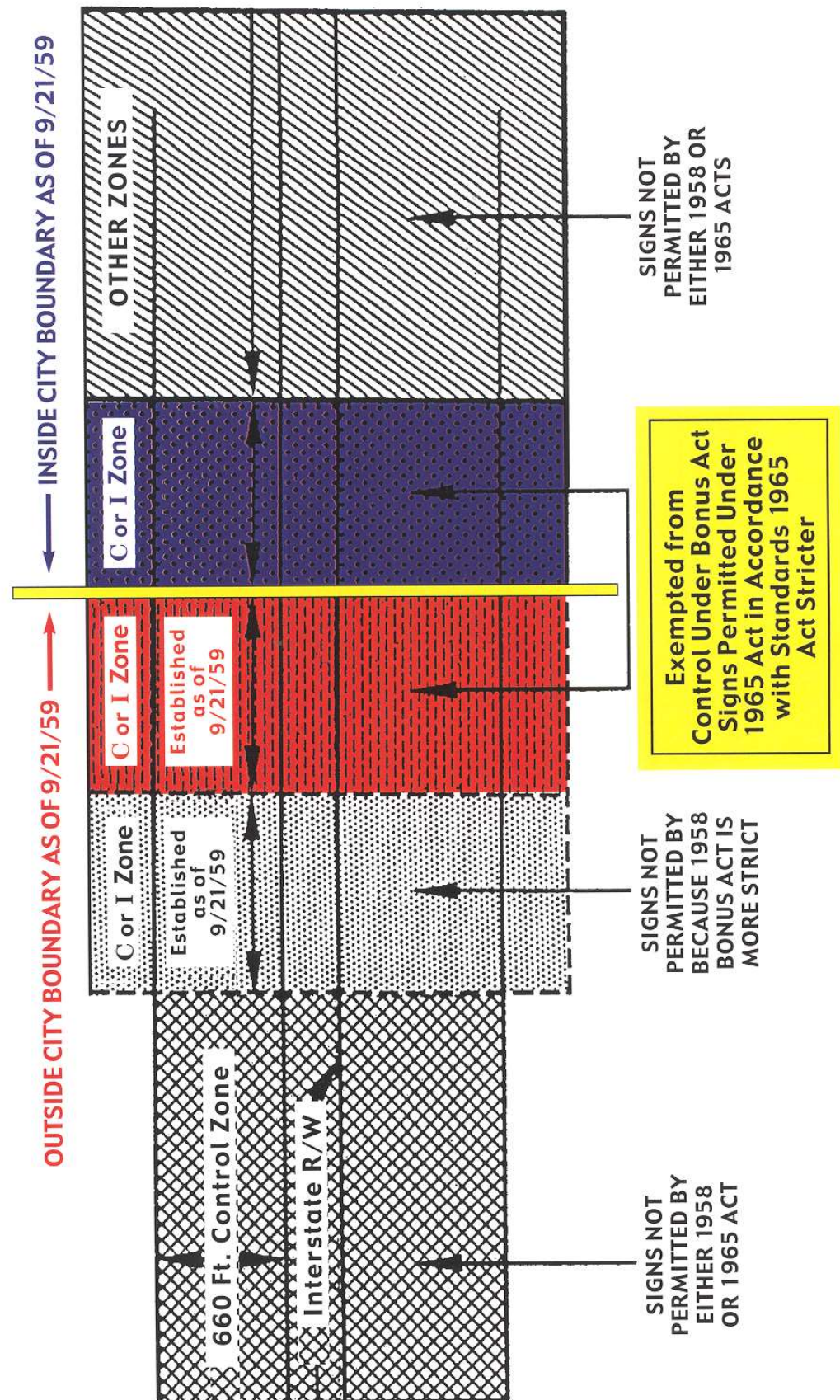
3. All zoned and unzoned commercial and industrial areas within 660 feet of the nearest edge of the right-of-way of all portions of the primary system in which signs are visible from the main-traveled way of said system."

Paragraph 1 defines so-called Kerr areas, which are the commercial and industrial zones exempt from control by the 1959 amendment to the 1958 Bonus Act. Paragraph 2 delineates Cotton areas. Paragraph 3 stipulates those areas adjacent to primary highways where signs will be allowed.

The following illustration depicts Kerr areas:



KERR AREAS: 1958 Bonus Act & 1965 Act Combined



*Diagrams Taken From FHWA Training Manual