



National Committee on Uniform Traffic Control Devices

Chair's Message

MESSAGE 2023-#4
December 4, 2023

Gene Hawkins
NCUTCD Chair

The NCUTCD Annual Meeting will take place in about a month. Even though we have not yet seen the final rule for a new MUTCD, I wanted to pass along information about the plans for the January meeting and what lies before and beyond. Plus a note about the passing of our first Honorary Member.

RIP Richard "Dick" Luettich

The NCUTCD has lost its most significant member. The first NCUTCD Chair and first Honorary Member, Dick Luettich, passed away on November 15, 2023. Dick's obituary is available [here](#). Dick's role in making the NCUTCD the organization it is today cannot be overstated. For those that do not know, one of our predecessor organizations was the National Advisory Committee on Uniform Traffic Control Devices (NAC). It was established in 1973 a formal committee to advise the federal government on the MUTCD. As stated in our history document ([NCUTCD-History](#)), all MUTCD decisions and revisions were developed by the NAC working with FHWA, without using the rulemaking process. Dick was elected Chair of the NAC in 1979 and later that year, the federal government dissolved the NAC. Dick was the driving force behind the transition of the NAC to the NCUTCD. He was the first NCUTCD Chair and served in that capacity from 1980-1990. When the Sign Technical Committee was split into two separate committees in 1992, Dick became chair of the Regulatory and Warning Sign Technical Committee and served in that role until 2002. He was selected as the first NCUTCD Honorary Member in 2003.

Our records indicate that Dick attended 111 meetings of the NCUTCD and its predecessors, from 1956 to 2016, indicating Dick's commitment to our organization and the MUTCD. On a personal note, I am grateful for the opportunity to have worked with Dick, first as RW secretary and most recently through my former Chairs group. I will miss his insights, advice, and historical perspectives on our work.

There will be a memorial service in February (details in obituary). For those that would like to share some thoughts regarding Dick, you can email them to me by January 16 (chair@ncutcd.org) and I will forward them to Dick's son for possible use in the service.

2023 MUTCD Final Rule

On October 13, the FHWA posted a message on the MUTCD website that indicated the Office of Management and Budget had completed its review of the MUTCD final rule, which was the last step of the regulatory process. FHWA is in the process of finalizing the new MUTCD and supporting documents/website and the message stated that they expect to publish the final rule before the end of the year. The NCUTCD is making its plans for the January meeting on the assumption that FHWA will stay true to this expectation and that we will see the final rule before the end of December.

NCUTCD Review of Final Rule and Potential Council Action

Once the final rule is published, I know that our members will begin to evaluate the new MUTCD in detail. In this section of my message, I would like to provide some guidance on what to look for in the initial review.

The new MUTCD becomes effective 30 days after the final rule. This 30-day period provides an opportunity to identify any objectionable content in the final rule (the new MUTCD). The

question becomes “what is objectionable content?” The answer would be content added to the MUTCD that violates the Administrative Procedures Act (APA). A basic premise of the APA is that the federal government cannot establish a regulation without giving the public a chance to comment on the regulation. Accordingly, during the initial 30-day review of the new MUTCD, our members should be looking for new content added to the MUTCD that establishes a new regulation. This is an oversimplification, but objectionable content could be described as a new Standard or Guidance. In doing so, reviewers should recognize that there is a difference between adding a new Standard/Guidance to the MUTCD final rule versus modifying a Standard/Guidance that was in the MUTCD NPA in response to docket comments. It is possible that a new Standard or Guidance could be added in response to docket comments and be consistent with the APA. Such a change would fall within the “logical outgrowth” concept in the APA. If you are not sure, flag a change for a more thorough evaluation.

If the initial review identifies a new regulation(s) in the new MUTCD, the appropriate technical committee should prepare a resolution describing the regulation(s) and why the regulation(s) should not have been included in the final rule. The resolution will be presented to the NCUTCD Council, most likely in our Friday General Session in January. If approved by two-thirds of the Council delegates, the resolution will be submitted to FHWA.

I am hopeful that the final rule will not contain any new regulations that would justify action by the NCUTCD Council. FHWA is well aware of the APA provisions, and I do not think that they will intentionally add new regulatory content into the final rule. Nevertheless, we do need to be thorough in our initial review as such content has found its way into previous final rules related to traffic control devices (see next section of this message).

If any of our members do identify objectionable content that may justify Council action, I ask that they share that information with their technical committee chair as quickly as possible. I have instructed the technical committee chairs to share that information with me so that I can have a conversation with FHWA, potentially dealing with such issues through a conversation before taking Council action.

It is vitally important to recognize that the 30-day period is not intended to identify changes from the NPA to final rule that are based on docket comments but with which we do not agree. Or conversely, changes that were suggested by a significant number of docket comments but which were not made in the final rule. The MUTCD is an FHWA document and they have the ability to make changes (or not) to the NPA content in response to the docket comments, as long as those changes do not create a new Standard or Guidance that the public was not provided an opportunity to comment on. If you don't like a change made in the final rule, but the change was made in a manner consistent with the APA, the proper course of action would be to develop a proposed change to the MUTCD and process that through the normal NCUTCD procedures. I am hopeful that we will not have to wait 14 years to see our future recommendation incorporated into an MUTCD revision and/or a new edition.

Examples of Objectionable Final Rule Content

In an effort to provide clarity on the type of content that might justify Council action, I offer two examples of changes to traffic control device regulations that justified comments during the 30 days after a final rule.

The first example relates to rulemaking to establish color standards for traffic control devices. On July 31, 2002, the FHWA published a final rule that established color specifications for signs and markings. The final rule added the term “in-service” to the color specifications when that term was not used in the NPA. This changed the nature of the rulemaking effort from color specifications used for material acceptance to one addressing maintenance of signs and markings. This change in the nature of the rulemaking was challenged by numerous agencies

during the 30 days after the initial final rule. On November 21, 2002, the FHWA published an amended final rule that removed the “in-service” language from the color specification.

The second example should be familiar to those that were around when the 2009 final rule was published on December 16, 2009. That final rule included language that changed the definition of a standard and that removed language regarding the use of engineering discretion. Numerous agencies challenged these changes. FHWA initially responded with an interpretation on October 1, 2010 but eventually restored the previous language through a revision on May 14, 2012.

MUTCD Final Rule FAQ

Below are some of the questions that I believe our members will have regarding the upcoming final rule, along with my personal answers to those questions. As a point of clarification, these answers are from Gene Hawkins and not FHWA, so reality may end up being different than what I anticipate.

1. What will be available on the day of the final rule?
 - a. At a minimum, I would expect to see the Federal Register notice, a revised MUTCD website, and the new MUTCD (likely only in PDF format). The revised website may not have updated content for all aspects of the MUTCD.
2. What will not be available on the day of the final rule?
 - a. It is possible that some items related to the new MUTCD may not be available on the day of the final rule. In order to make the MUTCD available, FHWA may proceed with the final rule without these items. MUTCD-related items that might not be available on the day of the final rule include: Standard Highway Signs book (it is being updated), training materials describing significant changes in the new MUTCD, states' use of the MUTCD, document showing changes from 2009 MUTCD, and other items.
3. When will other MUTCD-related content become available?
 - a. It is hoped that FHWA will add any missing items/content to the MUTCD website before the end of the 30-day period after the final rule.
4. Will we be provided with a Word version of the new MUTCD?
 - a. We should get a Word version at some point in time, but I do not know when.
5. Will the new MUTCD be called the 11th edition or the 2023 edition?
 - a. I believe that FHWA will continue to refer to it as the 11th edition but practitioners may call it the 2023 MUTCD due to force of habit.
6. What is the plan for updating the new MUTCD?
 - a. FHWA has indicated that they are committed to doing regular updates to the MUTCD. The IIJA states that the MUTCD be updated at least every four years.
7. What if the final rule is published before December 13?
 - a. If the final rule is published on a date where the 30-day period ends before our January meeting, and there are resolutions requiring Council action prior to the end of the 30-day period, then we will conduct a Council vote in a virtual Council meeting (likely the last week of December or first week of January) or conduct a Council vote by email.
8. Will the 30-day effective date be extended due to the holiday period?
 - a. It is highly unlikely that this would happen. Our members will have to conduct the review of the final rule during the holiday period.

NCUTCD Action on New MUTCD After the Initial 30-Day Period

Once we get beyond the 30-day period after the final rule, our review of content in the new MUTCD will shift from a regulatory focus to our normal “how do we make the MUTCD better” focus. This is where our technical committees and joint task forces may develop proposed changes to the MUTCD using our traditional approach. FHWA has indicated their intent to process MUTCD revisions on a timely basis. I expect to see Revision 1 soon (as the feds define “soon”)

after the final rule to incorporate PROWAG provisions into the MUTCD (see PROWAG section of this message). There were several topical issues identified in the NPA docket comments that might be addressed through focused revisions. Examples include one or more revisions that address: procedures for setting speed limits (which could include removing such content from the MUTCD), aesthetic treatments for crosswalks, experimental process for TCDs, TCDs for automated vehicles, and other topics.

I expect that our technical committees and joint task forces will have proposed changes ready soon after the Annual Meeting and that we will be sending them to sponsoring organizations for review and comment in the spring. From there, we are back to our normal process for the foreseeable future.

MUTCD Final Rule Pool

Believe it or not, there are still three individuals who had the foresight to pick a date in December or beyond. Those three are: Randy McCourt (12/15/23), Adam Greenstein (12/31/23), and Susan Chrysler (4/26/24).

2024 Annual Meeting

Our 2024 Annual Meeting will be January 10-12 at the Doubletree Crystal City Hotel in Arlington, VA. The early registration deadline has already passed and the deadline for online registration is December 22. We will return to our traditional meeting schedule for this meeting, with technical committees meeting on Wednesday and Thursday afternoons. General Sessions will be Thursday morning and Friday. The Thursday morning session will include the normal reports and activities before the mid-morning break, and the election will also be held before the break. After the break, we will hear (hopefully) an extended FHWA report regarding the new edition MUTCD. The Friday General Session will include consideration of the Bylaws revisions and reports from all of the Technical Committees, Joint Committees, and Joint Task Forces (13 reports). Some of those units may be presenting a resolution regarding content in the final rule that we believe was processed in a manner inconsistent with the APA (see previous section of this message).

NCUTCD Elections

During the first half of the Thursday General Session, we will hold the elections for NCUTCD officers. The candidates for each office are listed below. With one contested race, those candidates will have a brief opportunity to make statements in the General Session before the voting by Council delegates. Votes will be counted by a Teller Committee composed of George Butzer and Scott Wainwright. Results will be announced after the break.

- Chair: Gene Hawkins
- Vice-Chair for Programs: Bill Lambert, Jonathan Upchurch
- Vice-Chair for Research: Bryan Katz
- Treasurer: Monica Suter

Revisions of Bylaws and Operating Procedures

In June 2019, the NCUTCD began a process of updating its Bylaws and Operating Procedures (BOP). The effort was led by the BOP Committee, which included Bill Lambert (chair), Lee Billingsley, Neil Boudreau, Gene Hawkins, Tom Heydel, Richard Moeur, and Jonathan Upchurch. Both documents were in need of updates because they had never been coordinated as companion documents. The Bylaws were initially adopted in 1980 when the NCUTCD was created. The current Bylaws largely reflect an era where mail and meetings were the primary means of conducting our business. The first of the Operating Procedures was adopted in 2006. OPs have been revised/added on an individual basis since then. There are currently 14 OPs. Bylaws require

Council approval for changes and Operating Procedures require Executive Board approval. Among the goals of the update process was to move some content from the Bylaws to the Operating Procedures and to expand the Operating Procedures to better address current processes. The Bylaws were distributed on September 5 to Sponsoring Organizations for review and comment and the Operating Procedures were included for information purposes. The Executive Board approved changes to both documents on November 15 with the provision that the revised Operating Procedures become effective at the end of the meeting in which the Bylaws are approved.

Council will consider the revised Bylaws during the 2024 Annual Meeting, most likely in the Friday General Session. The presentation will include comments from the NCUTCD Chair and a presentation by the BOP Committee Chair. Given the interrelated nature and complexity of the two documents, the Bylaws will be presented for approval as written. There will be an opportunity for discussion, but there will be no amending motions on the Bylaws. There have been numerous opportunities for members to suggest changes to the documents this fall and the comments we received were either addressed or beyond the scope of the current changes. My primary goal with this undertaking is to get the NCUTCD guiding documents to a point where they largely reflect how we are or want to be functioning as an organization.

Approval of the Bylaws by Council will not be the end of the process. Both the Bylaws and Operating Procedures are living documents that will continue to need updating as our organization grows and improves. My hope is that future changes can focus on specific aspects of either document where improvements are appropriate. These changes are likely to be identified through a bottom-up approach than the top-down approach used for the significant overhaul that I hope is finished in January. After the Bylaws are approved, any of our members are welcome to prepared proposed changes to either document and share their ideas with me or any of our Executive Board.

PROWAG

The Public Right-of-Way Accessibility Guidelines (PROWAG) final rule was published on August 8, 2023. PROWAG includes content that affects the use of traffic control devices. As such, there may be a need to revise the MUTCD to incorporate PROWAG content. FHWA has indicated that they will do this through a stand-alone MUTCD revision. However, before FHWA can revise the MUTCD, The USDOT must adopt PROWAG as a regulation. This means that there will be two rulemaking actions. In the first, USDOT would adopt PROWAG as a regulation. In the second, FHWA will revise the MUTCD to incorporate PROWAG content. The timeframe for conducting these rulemaking actions is not known at this time. There may be other methods by which the USDOT would adopt PROWAG, so we will have to wait to see how the process plays out.

2024 Midyear Meeting

As you likely know, our Midyear Meeting is held in conjunction with the AASHTO Committee on Traffic Engineering. AASHTO picks the location of the meeting and rotates it among the four AASHTO regions. The 2024 NCUTCD Midyear Meeting will be held June 26-28 in AASHTO Region 1 (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, District of Columbia). AASHTO has asked that we work with them to coordinate the announcement of the specific location and a joint announcement will be made in the future. We anticipate announcing the location of the meeting on December 12.