

ATTACHMENT NO. 5

TO: Docket No. FHWA-2007-28977
FROM: National Committee on Uniform Traffic Control Devices (NCUTCD)
SUBJECT: NCUTCD Petition for Reconsideration of Final Rule
DATE: January 14, 2010

Copy To: Hari Kalla, MUTCD Team Leader
Federal Highway Administration
U.S. Department of Transportation

Subject: NCUTCD Petition for Reconsideration of Final Rule

This is a petition for reconsideration of the Final Rule published by the Federal Highway Administration at 74 FR 240, page 66730 (December 16, 2009). Petitioners, the National Committee on Uniform Traffic Control Devices (NCUTCD), request reconsideration by FHWA regarding the following two items:

No. 1

NCUTCD Docket Comment Related to the Definition of a Standard in the 2009 MUTCD

On December 15, 2009, the FHWA published the final rule for the 2009 MUTCD. This final rule describes 611 significant issues related to the final rule. There were over 15,000 individual comments to the public docket for this rulemaking and the NCUTCD's comments numbered over 700 pages. Publishing a final rule that represents so many changes creates a significant opportunity for oversights, errors, and/or inappropriate changes. The NCUTCD believe that the final rule contains at least one significant change that was inappropriate.

In publishing the 2009 MUTCD final rule, the FHWA modified the definition of a standard (Section 1A.13) by adding a sentence at the end of the definition. The NCUTCD believes that this change is inappropriate for the following reasons:

1. It was not included in the NPA, meaning that there was no opportunity for public comment.
2. It is a very significant change which represents a fundamental shift in the application of MUTCD principles and the practice of traffic engineering.
3. FHWA provided little justification for making the change (FHWA indicates its justification based on one docket comment).
4. It conflicts with other language in the MUTCD.

The NCUTCD requests that the FHWA publish an amended final rule that removes the last sentence of the definition of a standard in Section 1A.13. It is important that this change be done as an amended final rule and not as Revision 1 of the 2009 MUTCD.

DETAILS ON THE INAPPROPRIATE CHANGE

Paragraph 1 of Section 1A.13 in the 2009 MUTCD contains the definition below for the term “standard.” The FHWA added the last sentence (underlined) to the definition in the final rule. The last sentence was not included in the NPA

- A. Standard—a statement of required, mandatory, or specifically prohibitive practice regarding a traffic control device. All Standard statements are labeled, and the text appears in bold type. The verb “shall” is typically used. The verbs “should” and “may” are not used in Standard statements. Standard statements are sometimes modified by Options. Standard statements shall not be modified or compromised based on engineering judgment or engineering study.

Item 32 of the final rule Federal Register notice provides the FHWA’s explanation for making this change. It states:

“Also based on a State DOT comment, the FHWA further clarifies the definition of STANDARD statements by adding that such statements shall not be modified or compromised based on engineering judgment or engineering studies. This prohibition has always been inherent in the meaning of Standards, but the FHWA is aware of cases where the lack of explicit text to this effect has resulted in the misapplication of engineering judgment or studies. Some agencies believed that Standards could be ignored based on engineering judgment or an engineering study, which is not the case.”

BACKGROUND

The MUTCD serves as the national standard and as an essential document for the use of traffic control devices. The principles in the MUTCD provide effective guidance in addressing the needs in most of the situations that require the use of one or more traffic control devices. However, the MUTCD cannot address every conceivable situation associated with traffic control device use. There are situations where the use or placement of a traffic control device must modify or compromise a standard in order to best meet the needs of road users. Such situations are rare, but until the MUTCD is written to address every conceivable situation that might exist, the effective use of the MUTCD requires some degree of flexibility to provide the safe and efficient travel for road users.

SUPPORT FOR AMENDED FINAL RULE

Adding this one sentence to the MUTCD presents the following problems for MUTCD users:

1. This change results in a major change in how the MUTCD is used. It reduces the ability of experienced traffic engineers to apply traffic control device principles in a manner that best meets the needs of road users.
2. This change was not included in the NPA. As a result, there was no opportunity for public comment on the change.
3. The Federal Register indicates that the change was made on the basis of one comment from a state DOT. One comment out of over 15,000 comments is not sufficient justification for making a significant change to an MUTCD standard without public comment.
4. This change creates a significant conflict with MUTCD language in several other sections in Part 1, which indicate MUTCD principles should be used to best meet road user needs.
5. This change will increase the liability for transportation agencies and organizations.

REQUESTED ACTION

The NCUTCD requests that the FHWA issue an amended final rule that removes the last sentence from the definition of a standard in Section 1A.13. It is important that the FHWA issue an amended final rule, rather than a revision of the MUTCD because of the potential problems that would be created by having this sentence in an official version of the MUTCD, even if only for a short period of time.

No.2

NCUTCD Docket Comment Related to Adoption of a Series of Signs in Figures 2E-11 and 2E-12

Item 203, 74 FR 240, page 66776 and related provisions in Item 200, 74 FR 240, page 66775 because the agency did not provide an opportunity for public comments on the merits of its decision to adopt the series of signs in Figures 2E-11 and 2E-12.

The agency failed to include a discussion of its rationale for adopting these particular sign designs for these particular applications, and it failed to include depictions of these signs in the Notice of Proposed Amendments at 73 FR 268. Of particular concern to the NCUTCD is that Figures 2E-11 and 2E-12 show series of signs that have not been evaluated through research to determine their effectiveness in communicating to the motorist.

In addition, FHWA failed to respond on the record specifying reasons why the agency evidently rejected the signs recommended by the NCUTCD in the NCUTCD's response filed with Docket Number FHWA 2007-28977 (submitted on July 29 and 30, 2008). No evaluation was made of the merits of the NCUTCD's recommended signs in the Preamble or elsewhere in the Final Rule, nor were the signs depicted or referenced in the

Preamble or in any other document filed in the Docket by the agency supporting its regulatory decision in the Final Rule.

In contrast to the signs shown in Figures 2E-11 and 2E-12, the NCUTCD recommended two series of signs that have been evaluated through research. Those two series of signs were labeled (in the NCUTCD's submittal) as Figures 2E-I and 2E-J.

These agency actions taken together constitute arbitrary, unsupported agency action. The NCUTCD asks FHWA to assess the merits of the NCUTCD's recommended signs, and the reasons thereto, supplied by the NCUTCD in its docket submission.

The NCUTCD believes that the signs recommended in its docket comments have superior information and guidance for motorists because those signs (Figures 2E-I and 2E-J) have been evaluated through research while the signs adopted by FHWA (Figures 2E-11 and 2E-12) have not been evaluated through research.

The NCUTCD also has the two following concerns regarding the series of signs adopted in the Final Rule.

1. Figures 2E-11 and 2E-12 both use post-mounted R3-8 regulatory signs to help communicate information on lane use to the motorist. Mounted on the right side of the roadway, these signs will often be blocked from view by trucks and not be visible by motorists who are not in the right-hand lane.
2. There is an inconsistency in the design of the signs at the gore in Figures 2E-11 and 2E-12. In spite of the fact that lane use at the gore is the same in both figures, the sign design is different. Figure 2E-11 uses black on yellow EXIT ONLY signing, while Figure 2E-12 uses white arrows on a green background.

The NCUTCD petitions the Federal Highway Administration for reconsideration of the language in Section 2E.23 and Figures 2E-11 and 2E-12 from the Final Rule and replacement of the text and figures as described on the attached pages. The NCUTCD reiterates its original recommendation that the signs shown in Figures 2E-I and 2E-J are appropriate ways to sign multi-lane exits with an option lane at intermediate and minor interchanges. The series of signs shown in Figures 2E-11 and 2E-12 should be further considered for possible inclusion in the MUTCD only after they have been evaluated through research, and only if they are shown to perform equal to, or better than, the signs in Figures 2E-I and 2E-J.

For the foregoing reasons, petitioners pray, that FHWA reconsider its regulatory decision to adopt the series of signs shown in Figures 2E-11 and 2E-12 and to provide adequate notice and opportunity for public comments on the merits.

Changes to text

Delete paragraph 04 of Section 2E.20 Signing for Option Lanes at Splits and Multi-Lane Exits, and replace with the following.

Guidance

04 *For locations with multi-lane exits with an option lane at intermediate interchanges where the use of sign bridges is not practical, the series of signs shown in Figure 2E-I should be used, in accordance with the provisions of Section 2E.23.*

05 *For locations with multi-lane exits with an option lane at minor interchanges, the series of signs shown in Figure 2E-I should be used, in accordance with the provisions of Section 2E.23.*

Option

06 For locations with multi-lane exits with an option lane at minor interchanges, the series of signs shown in Figure 2E-J may be used, in accordance with the provisions of Section 2E.23.

Delete paragraphs 02 through 06 of Section 2E.23 Signing for Intermediate and Minor Interchange Multi-Lane Exits with an Option Lane and replace with the following.

Support

The following provisions apply to the series of signs shown in Figures 2E-I and 2E-J.

Standard

If the sign designs in Figure 2E-J are used, the signs for this application shall be mounted overhead.

If the sign designs in Figure 2E-J are used, the Exit Direction sign shall be longitudinally located at the theoretical gore.

Guidance

If the sign designs in Figure 2E-I or 2E-J are used, Advance Guide signs of this design should be used only where the exit lane is fully developed.

If the sign designs in Figure 2E-I and 2E-J are used, the signs should be mounted such that the arrows are centered over the lanes to which they apply.

An Advance Guide sign should be placed at 0.5 miles in advance of the exit if spacing permits (see Section 2E.33).

Option

An additional Advance Guide sign may be placed at 1 mile in advance of the exit if spacing permits (see Section 2E.33).

Changes to Figures

Changes to figures are shown on two attached pages

Figure 2E-1

Example of Alternate Sign Series for a Two Lane Exit with an Option Lane at Intermediate or Minor Interchanges



Figure 2E-J

Example of Optional Sign Series for a Two Lane Exit with an Option Lane at Minor Interchanges

