

May 14, 2021

Docket Management Facility
United States Department of Transportation
1200 New Jersey Avenue SE
West Building, Ground Floor
Room W12-140
Washington, DC 20590-0001

RE: Docket No. FHWA-2020-0001, RIN 2125-AF85, National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Revision

The primary objective of federal roadway safety standards should be the preservation of public health. To accomplish this objective, federal agencies should encourage technology and innovation promoting highway safety and reliability. Accordingly, **the Manual on Uniform Traffic Control Devices (MUTCD) should allow the use of safety devices that hold intellectual property right protections.**

In 2019, FHWA repealed its anachronistic ban on the use of federal funds on patented and proprietary products. This action opened the door to new tools to protect public health and other infrastructure advances. Unfortunately, eliminating this regulatory impediment did not apply to the MUTCD. FHWA now needs to complement its 2019 reform by ensuring the repeal extends to the oversight of the devices and procedures that promote safety on the nation's highways and streets.

The current MUTCD policy stifles the development of technology by banning the use of new safety concepts on our nation's roadways. The notion of encouraging development of new technologies by allowing innovators to protect and take credit for their ideas is one that has existed since the founding of our nation. Patents for new technologies are highlighted in the U.S. Constitution, which empowers Congress to "promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

The MUTCD ban also makes FHWA an outlier amongst its fellow agencies, many of which have existing regulations allowing for sole-source contracts and patented technologies when appropriate. Multiple federal agencies, including the Department of Defense, Coast Guard and National Aeronautics and Space Administration allow for the use of unique technologies by relying on the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* ("Uniform Guidance") sets "standard requirements for financial management of Federal awards across the entire federal government."¹

Permitting the uses of new safety technologies will further FHWA's stated goal of allowing the MUTCD to "lay the groundwork for supporting the infrastructure of the future" and "allow more

¹ 2 CFR 200.320(f).

flexibility and innovation to improve travel for drivers, pedestrians and bicyclists²” by allowing the use of new safety technologies such as improvements in pavement marking technologies and traffic signals which have the ability to save lives and improve the safety of our transportation system as a whole.

FHWA has properly focused the current revision effort on ensuring the MUTCD will be able to adapt to and allow for the development of new innovations and technologies which will help further the overall safety goals of both the agency and the regulated community. Removing the MUTCD’s barriers to cutting-edge developments should be a first step in this process.

Sincerely,

American Road & Transportation Builders Association
American Concrete Pavement Association
Laborers’ Health & Safety Fund of North America
U.S. Chamber of Commerce

² <https://www.fhwa.dot.gov/pressroom/fhwa1823.cfm>.