

January 12, 2011

U.S. Department of Transportation  
Dockets Management Facility, Room W12-140  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590

Fax: 202-493-2251

**FHWA Docket No. FHWA-2010-0159**

**RE: Manual on Uniform Traffic Control Devices (MUTCD) Compliance Dates**

The American Public Works Association (APWA) appreciates the opportunity to file comments in response to the Federal Highway Administration's (FHWA) notice concerning compliance dates to upgrade existing non-compliant traffic control devices to comply with certain requirements established in the Manual on Uniform Traffic Control Devices (MUTCD), published in the *Federal Register* November 30, 2010. These comments were developed through input provided by APWA's Transportation Technical Committee and its delegation to the National Committee on Uniform Traffic Control Devices (National Committee).

APWA and our representatives on the National Committee are concerned about the significant number of new mandates in the MUTCD. It has become overly prescriptive, rather than serving its original intent as a national aid for practitioners. The increase in the number of regulatory controls (unfunded mandates) has been enormous, increasing 44 percent from the 2003 MUTCD to the 2009 MUTCD. Specifically, the 2009 MUTCD substantially reduced user agency flexibility in what it could do and could not do without assuming substantial additional tort liability risk. Such mandates often suppress superior practices and proven techniques and cost agencies significant resources to implement compliance.

The MUTCD's original intent was to share good practices developed by engineering professionals, so that smaller agencies without professional staff could use the MUTCD directly to maintain and operate streets safely. Increasingly, however, the MUTCD places handcuffs on practicing professionals, stifling innovation in addition to undermining the basic profession of Traffic Engineering. The expansion of the MUTCD from 377 pages in the last MUTCD published by AASHTO and the professionals (1971) to 894 pages in the 2009 MUTCD published by FHWA makes it impractical for use by practitioners. While the number of pages increased from 377 to 894, page size also increased from 6" X 9" to 8 ½ X 11 adding to the volume.

The following three examples illustrate the challenges agencies face:

- 1) FHWA added a statement to the 2009 MUTCD, which in the opinion of the National Committee was not properly advertised in Rule Making. The change fundamentally reverses the long-standing philosophy contained in the MUTCD that engineering judgment is the key ingredient to making traffic control decisions. For years, the MUTCD made clear that no textbook or manual could be all inclusive and able to provide guidance as to optimum traffic control for all situations, given the myriad of differing situations that occur on public highways, county roads and city streets. Instead, the MUTCD prescribed that traffic control decisions be made by exercising engineering judgment by trained and qualified professionals (or their staff) familiar with local conditions. What FHWA added and deleted in the 2009 MUTCD tossed all that history aside. Its action was to provide a new definition of what a STANDARD is (Section 1A.13): STANDARD - **Standard statements SHALL NOT be modified or compromised based on engineering judgment or engineering study.**

This new statement means that, regardless of the optimum solution from an engineering judgment standpoint, even trained, qualified and registered professional traffic engineers are mandated to comply with standards and options. It is naive to think that one manual can contain all the best solutions.

- 2) This change of definition was magnified by removing an associated statement in Section 1A.09 of the MUTCD: “The decision to use a particular device at a particular location SHOULD be made on the basis of either an engineering study or the application of engineering judgment. Thus, while this Manual provides Standards, Guidance, and Options for design and application of traffic control devices, this Manual should not be considered a substitute for engineering judgment.”
- 3) The third example involves a decision FHWA unilaterally made several years ago, despite a unanimous appeal not to do so from the National Committee. At that time, FHWA issued a mandate changing the definition of “substantial compliance” in federal law. Essentially, the change in definition forbids any State Manuals from taking exception to the STANDARDS and GUIDANCE statements in the national MUTCD.

These three examples above are simply untenable from a public agency standpoint, in terms of providing the most effective traffic control and yet not unfairly burdening public agencies with unnecessary adversity regarding tort liability. Additionally, there are other concerns we feel are unjustifiably harmful to public agencies and the taxpayers who support them. Our other concerns are described in detail in the attached document. Both this transmittal letter and the detailed concerns are intended to be official comments from APWA.

The only acceptable manner by which the untenable content of the 2009 MUTCD can be corrected would be to either:

- 1) Create a new proposed rule, consistent with our proposed changes, OR
- 2) Retract the Final Rule regarding the 2009 MUTCD, leaving public agencies to operate with the 2003 MUTCD until corrections can be made.

It is our understanding either option above would require new rulemaking. Time is of the essence, so FHWA is urged to promptly promulgate a notice of proposed rulemaking addressing Sections 1A.09 and 1A.13, and handling 23-CFR 655 concerns regarding compliance dates by converting provisions with specific compliance dates to provisions without specific compliance dates. In the event our compliance date request is not honored, it is requested that the dates be extended by at least 10 years.

The MUTCD compliance dates described in the *Federal Register* notice reflect the increasingly prescriptive nature of the MUTCD. Complying with unfunded federal mandates places considerable strain on much diminished local resources. Local governments have been hit particularly hard by the recent economic downturn and continue to confront significant budgetary shortfalls, staff reductions and increased demand for essential local services. Public works agencies, particularly those in small and moderate-sized communities, deliver their programs and services with very limited personnel and very limited resources.

Smaller agencies, for instance, often do not have traffic engineers on staff. The number of small and moderate-sized communities is not insignificant. There are more than 18,800 cities in the United States whose populations are less than 50,000 people. More than 9,360 of those cities have a population of 1,000 or fewer. More than 40 percent of APWA members serve communities of 50,000 or fewer people.

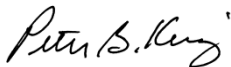
Local governments have responsibility for a vast transportation network. They own about 75 percent of the nation's nearly four million-mile roadway system and more than half of all highway bridges. As stewards of the nation's public infrastructure, APWA members are dedicated to managing and operating a transportation system that is safe and reliable.

Lastly, it is past time that philosophical changes delineated above be incorporated fully into future MUTCDs. APWA urges the publication of a new rule in the *Federal Register* less than one month after the close of the comment period in this docket, promptly followed by a notice adopting those recommendations as a final rule. FHWA simply must make prompt completion of corrective rulemaking action a top priority, lest state and local government face avoidable and significant cost burdens as implementation deadlines under the increasingly inflexible MUTCD draw closer.

APWA represents 29,000 members who plan, design, build, operate and maintain transportation, water supply, sewage and refuse disposal systems, public buildings and other structures and facilities essential to our nation's economy and way of life. Public works professionals serve a diverse range of local communities, municipalities, counties, townships, villages and districts, whether large or small, rural or urban.

Thank you for the opportunity to file comments.

Sincerely,



Peter B. King  
Executive Director