



## National Committee on Uniform Traffic Control Devices

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### Attachment No. 2

Item No.: 17A-Edit-01

## NCUTCD Proposal for Changes to the Manual on Uniform Traffic Control Devices

TECHNICAL

Edit

COMMITTEE:

ITEM NUMBER:

17A-Edit-01

TOPIC:

Experimentation and Interim Approvals

ORIGIN OF REQUEST:

Edit Committee Task Force: Ernie Huckaby (chair), Scott Wainwright, Bill DeSantis.

AFFECTED SECTIONS

Sections 1B.05 & 1B.07 (as per previous NCUTCD action)  
[existing MUTCD Section 1A.10]

OF MUTCD:

### DEVELOPMENT HISTORY:

- Task Force: September-December 2016.
- Approved by Edit Committee: 1/4/2017
- Approved by Edit Committee following sponsor comments: 6/28/2017
- Approved by NCUTCD Council: 6/29/2017

This is a proposal for recommended changes to the MUTCD that has been approved by the NCUTCD Council. This proposal does not represent a revision of the MUTCD and does not constitute official MUTCD standards, guidance, or options. It will be submitted to FHWA for consideration for inclusion in a future MUTCD revision. The MUTCD can be revised only through the federal rulemaking process.

SUMMARY: This proposal recommends changes and additions to MUTCD provisions in Part 1 regarding experimentations and interim approvals. Specifically, text is added regarding termination of experiments when the required semi-annual reports or final reports are not submitted, additional criteria for issuing interim approvals, and clarifying use of devices under interim approval on site roadways open to public travel.

RESEARCH: None required.

DISCUSSION: Experiments and interim approvals are currently covered in Section 1A.10. However, in 2014, the NCUTCD received from FHWA for review a first draft of a proposed reorganization and consolidation of the MUTCD Introduction and Part 1, which was based predominantly on text for such a consolidation that had been developed by the Edit Committee. Under the reorganization, existing Section 1A.10 would be divided into four separate sections numbered 1B.05 through 1B.08. Experimentations would be in Section 1B.05 and interim

35 approvals would be in Section 1B.07. In June 2014, the NCUTCD reviewed the FHWA's  
36 proposed reorganized Part 1 and approved most of it, with a few relatively minor changes. The  
37 green text shown below under "Recommended MUTCD Changes" reflects the language  
38 NCUTCD approved in June 2014 and subsequently sent back to FHWA. Also, the change in  
39 terminology from "private roads open to public travel" to "site roadways open to public travel"  
40 has been incorporated, per the NCUTCD approval in June 2016.

41

## 42 **Experimentation**

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44 A major concern about experimentation is the large percentage of FHWA-approved experiments  
45 for which the experimenting agency never submits any semi-annual or final reports. It is  
46 proposed that language be added in Section 1B.05 indicating that there will be automatic  
47 termination of an agency's experiment if no semi-annual reports have been received by two years  
48 following FHWA approval of the experiment or if no final report has been received by two years  
49 after the last semi-annual report. This may provide additional incentive for experimenting  
50 agencies to comply with the terms they agreed to in order to obtain FHWA experimentation  
51 approval. New language is also proposed to describe the methods FHWA can use to terminate  
52 an experiment. ~~It is also proposed to add text indicating that an experiment is normally  
53 considered successful only when it culminates in a research report that demonstrates that the  
54 device or application provides a safety or operational improvement or meets other objectives  
55 established by FHWA. The "other objectives" might include encouraging alternative modes of  
56 travel, livable communities, or similar goals that the FHWA could consider worthwhile even if  
57 the experimental device or application does not provide a measurable safety or operations  
58 benefit.~~

59

## 60 **Interim Approval**

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62 To improve the interim approval process and make it more formal and research-driven, it is  
63 proposed that new language be added in Section 1B.07 stating that interim approval is ordinarily  
64 issued only after an ~~authoritative TRB, State DOT, or International~~ research report(s)  
65 demonstrates that the device or application provides a safety or operational improvement or  
66 meets other objectives established by FHWA. Also, individual experiments by various  
67 jurisdictions, without a research report on the overall findings of the experimental device or  
68 application, will not ordinarily qualify for issuance of an interim approval.

69

70 Additionally, to improve information about status to MUTCD users, text is proposed for  
71 addition, to state that when the FHWA does not propose to include in the next edition of the  
72 MUTCD a device or application for which an interim approval has been issued, the FHWA will  
73 include a statement in the *Federal Register* Notice of Proposed Amendments for the next edition  
74 of the MUTCD, indicating the status of the Interim Approval (terminated or still valid).

75

76 A new Guidance statement is also proposed, that if a State requests a statewide interim approval,  
77 the State should maintain a list of jurisdictions, toll facility ~~authorities operators~~, and owners of  
78 site roadways open to public travel that are using the statewide interim approval.

79

## 80 **Other**

81  
82 Other minor changes and additions are also proposed to provide more consistency between  
83 similar provisions of Sections 1B.05 and 1B.07. Some paragraphs have also been relocated  
84 editorially for better flow of information.

85  
86 **RECOMMENDED MUTCD CHANGES:**

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88 The following present the proposed changes to the current MUTCD within the context of the  
89 MUTCD language previously approved by the NCTUCD. Proposed additions to the MUTCD  
90 are shown in blue underline and proposed deletions from the MUTCD are shown in ~~red~~  
91 ~~strikethrough~~. Changes previously approved by NCUTCD Council (but not yet adopted by  
92 FHWA) are shown in green double underline for additions and ~~green double strikethrough~~ for  
93 deletions. In some cases, background comments may be provided with the MUTCD text. These  
94 comments are indicated by [highlighted light blue in brackets].

95  
96 The language as shown below reflects the combination of the MUTCD Introduction and Part 1  
97 General as suggested by FHWA and approved by the NCUTCD in June 2014, and the change in  
98 terminology from “private roads open to public travel” to “site roadways open to public travel”  
99 approved by the NCUTCD in June 2016.

100  
101 **Section 1B.05 Experimentations**

102 Support:

103 01 Requests to experiment include consideration of field deployment for the purpose of testing  
104 or evaluating a new traffic control device, its application or manner of use, or a provision not  
105 specifically described in this Manual.

106 02 A request for permission to experiment will be considered only when submitted by the public  
107 agency or toll facility authority operator responsible for the operation of the road or street on  
108 which the experiment is to take place. For a ~~private road~~ site roadway open to public travel, the  
109 request will be considered only if it is submitted by the private owner or ~~private~~ official having  
110 jurisdiction.

111 Guidance:

112 02a Before requesting permission to experiment with a new device or application, an owner of a  
113 site roadway open to public travel should first check for any State laws, regulations, and/or  
114 directives covering the application of the MUTCD that might apply exist in their State. [Similar  
115 to existing language re Interim Approvals]

116 Support:

117 03 A diagram indicating the process for experimenting with traffic control devices is shown in  
118 Figure 1A-1B-1.

119 Guidance:

120 04 The request for permission to experiment should contain the following:  
121     A. A statement indicating the nature of the problem.  
122     B. A description of the proposed change to the traffic control device or application of the  
123       traffic control device, how it was developed, the manner in which it deviates from the  
124       standard, and how it is expected to be an improvement over existing standards.  
125     C. Any illustration that would be helpful to understand the traffic control device or use of  
126       the traffic control device.

- 127 D. Any supporting data explaining how the traffic control device was developed, if it has  
128 been tried, in what ways it was found to be adequate or inadequate, and how this choice  
129 of device or application was derived.
- 130 E. A legally binding statement from the agency conducting the experiment, the manufacturer  
131 of the device, and the supplier of the device certifying that the concept of the traffic  
132 control device or its application is not protected by a patent, trademark, or copyright and  
133 that the traffic control device and its application is in the public domain and can be used  
134 freely in traffic control device design and application without infringement. The legally  
135 binding statement should also state that the agency conducting the experiment, the  
136 manufacturer of the device, and the supplier of the device are aware that if patent,  
137 trademark, or copyright protection is established in the future for the device concept  
138 and/or application, such protection would preclude its eligibility for use in traffic control  
139 device design or application and/or result in its removal from the MUTCD or in a  
140 cancellation of its Interim Approval. (An example of a traffic control device concept  
141 would be countdown pedestrian signals in general. Ordinarily an entire general concept  
142 would not be patented or copyrighted, but if it were it would not be acceptable for  
143 experimentation unless the patent or copyright owner signs a waiver of rights acceptable  
144 to the FHWA. An example of a patented or copyrighted specific device within the general  
145 concept of countdown pedestrian signals would be a manufacturer's design for its  
146 specific brand of countdown signal, including the design details of the housing or  
147 electronics that are unique to that manufacturer's product. As long as the general  
148 concept is not patented or copyrighted, it is acceptable for experimentation to  
149 incorporate the use of one or more patented devices of one or several manufacturers.)
- 150 [Text about examples was relocated to new paragraph 05 below—previous NCUTCD  
151 action.]
- 152 F. The time period and location(s) of the experiment.
- 153 G. A detailed research or evaluation plan that must provide for close monitoring of the  
154 experimentation, especially in the early stages of its field implementation. The evaluation  
155 plan should include before and after studies as well as quantitative data describing the  
156 performance of the experimental device.
- 157 H. An agreement to restore the site of the experiment to a condition that complies with the  
158 provisions of this Manual within 3 months following the end of the time period of the  
159 experiment. This agreement must also provide that the agency sponsoring the  
160 experimentation will terminate the experimentation at any time that it determines  
161 significant safety concerns are directly or indirectly attributable to the experimentation.  
162 The FHWA's Office of Transportation Operations has the right to terminate approval of  
163 the experimentation at any time if there is an indication of safety concerns. If, as a result  
164 of the experimentation, a request is made that this Manual be changed to include the  
165 device or application being experimented with, the device or application will be  
166 permitted to remain in place until an official rulemaking action has occurred.
- 167 I. An agreement to provide semi-annual progress reports for the duration of the  
168 experimentation, and an agreement to provide a copy of the final results of the  
169 experimentation to the FHWA's Office of Transportation Operations within 3 months  
170 following completion of the experimentation. [Relocated to Support below.]

171 Support:

172 [04a Relocated from previous guidance item I]

173 04a The FHWA's Office of Transportation Operations has the right to terminate approval  
174 of ~~the~~ an agency's experiment—if reports are not provided in accordance with this schedule, and  
175 termination is automatic two years after the date of FHWA's experimentation approval if no  
176 semiannual reports have been submitted or if the final report is not received within two years  
177 after the last semi-annual report.

178 04b ~~FHWA uses one or more of the following methods to terminate an experiment~~ The FHWA  
179 sends a notification letter to the agency whose experiment is terminated, and also uses other  
180 notices as appropriate, such as on the MUTCD web site and/or in the *Federal Register*.

- 181 a. ~~Posting a prominent notice on the MUTCD web site;~~
- 182 b. ~~Including a statement in the *Federal Register Notice of Proposed Amendments for*~~  
~~*the next edition of the MUTCD, indicating the status of the experiment (terminated or*~~  
~~*still valid). This method applies when the FHWA does not propose to include the*~~  
~~*experimental device or application in the next edition.*~~

186 05 In regard to item E of paragraph 4 above, an example of a traffic control device concept  
187 would be countdown pedestrian signals in general. Ordinarily an entire general concept would  
188 not be patented or copyrighted, but if it were, it would not be acceptable for experimentation  
189 unless the patent or copyright owner signs a waiver of rights acceptable to the FHWA. An  
190 example of a patented or copyrighted specific device within the general concept of countdown  
191 pedestrian signals would be a manufacturer's design for its specific brand of countdown signal,  
192 including the design details of the housing or electronics that are unique to that manufacturer's  
193 product. As long as the general concept is not patented or copyrighted, it is acceptable for  
194 experimentation to incorporate the use of one or more patented devices of one or several  
195 manufacturers.

196 05a ~~To be considered successful, an experiment will culminate in a research report that~~  
197 ~~demonstrates that the device or application provides a safety or operational improvement or~~  
198 ~~meets other objectives established by FHWA.~~

## 200 Section 1B.07 Interim Approvals

201 Support:

202 01 Interim approval allows interim use, pending official rulemaking, of a new traffic control  
203 device, a revision to the application or manner of use of an existing traffic control device, or a  
204 provision not specifically described in this Manual.

205 Option:

206 02 ~~The FHWA may issue an interim approval if considered as deemed appropriate, based on the~~  
~~results of successful experimentation, results of analytical or laboratory studies, and/or review of~~  
~~non-U.S. experience with a traffic control device or application. Interim approval~~  
~~considerations may include an assessment of relative risks, benefits, costs, impacts, and other~~  
~~factors.~~ [Moved to Support para 04 below.]

211 Support:

212 03 The FHWA issues an Interim Approval by official memorandum signed by the Associate  
213 Administrator for Operations and posts this memorandum on the MUTCD website. The issuance  
214 by FHWA of an interim approval will typically result in the traffic control device or application  
215 being placed into the next scheduled rulemaking process for revisions to this Manual.

216 04 Interim approval is considered based on the results of successful experimentation (*see*  
217 Section 1B.05, paragraph 05a), results of analytical or laboratory studies, and/or review of non-

218 U.S. experience with a traffic control device or application. Interim approval considerations  
219 include an assessment of relative risks, benefits, costs, impacts, and other factors.

220 ~~04a Interim approval is ordinarily issued considered only after an authoritative TRB, State DOT,~~  
221 ~~or International research report(s) demonstrates that the device or application provides a safety or~~  
222 ~~operational improvement or meets other objectives established by FHWA. Individual~~  
223 ~~experiments by various jurisdictions, without a research report on the overall findings of the~~  
224 ~~experimental device or application, will not ordinarily qualify for issuance of an interim~~  
225 ~~approval.~~

226 ~~05 The issuance by FHWA of an interim approval will typically result in the traffic control~~  
227 ~~device or application being placed into the next scheduled rulemaking process for revisions to~~  
228 ~~this Manual.~~ [Duplicate of 2<sup>nd</sup> sentence of para 03]

229 ~~05 When the FHWA does not propose to include in the next edition of the MUTCD a device or~~  
230 ~~application for which an Interim Approval has been issued, the FHWA will include a statement~~  
231 ~~in the Federal Register Notice of Proposed Amendments for the next edition of the MUTCD,~~  
232 ~~indicating the status of the Interim Approval (terminated or still valid).~~

233 06 Interim approval allows for optional use of a traffic control device or application and does  
234 not create a new mandate or recommendation for use. Interim approval includes conditions that  
235 jurisdictions, toll facility authorities operators, or owners of site roadways open to public travel  
236 agree to comply with in order to use the traffic control device or application until an official  
237 rulemaking action has occurred.

238 **Standard:**

239 07 A jurisdiction, toll facility authority operator, or owner of a private road site roadway  
240 open to public travel that desires to use a traffic control device for which FHWA has issued  
241 an interim approval shall request permission from FHWA.

242 *Guidance:*

243 08 The request for permission to place a traffic control device under an interim approval  
244 should contain the following:

- 245 A. A description of where the device will be used, such as a list of specific locations or  
246 highway segments or types of situations, or a statement of the intent to use the device  
247 jurisdiction-wide;
- 248 B. An agreement to abide by the specific conditions for use of the device as contained in  
249 the FHWA's interim approval document;
- 250 C. An agreement to maintain and continually update a list of locations where the device  
251 has been installed; and
- 252 D. An agreement to:
  - 253 1. Restore the site(s) of the interim approval to a condition that complies with the  
254 provisions in this Manual within 3 months following the issuance of a Final Rule  
255 on this traffic control device; and
  - 256 2. Terminate use of the device or application installed under the interim approval at  
257 any time that it determines significant safety concerns are directly or indirectly  
258 attributable to the device or application. The FHWA's Office of Transportation  
259 Operations has the right to terminate the interim approval at any time if there is  
260 an indication of safety concerns.

261 09 A local jurisdiction, toll facility authority operator, or owner of a private road site roadway  
262 open to public travel that is requesting permission to use a device or application under an  
263 interim approval should first check for any State laws, regulations, and/or directives covering

264 *the application of the MUTCD provisions that might exist apply in their State.* [Edited for  
265 consistency with changes in Section 1B.05 para 03a.]

266 Option:

267 10 A State may submit a request for the use of a device under interim approval for all  
268 jurisdictions in that State, as long as the request contains the information listed in Paragraph [08](#).

269 *Guidance:*

270 *10a If a State requests and receives approval from FHWA of a statewide interim approval, the  
271 State should maintain a list of jurisdictions, toll facility authorities operators, and owners of site  
272 roadways open to public travel that are using the statewide interim approval. The jurisdictions,  
273 toll facility authorities operators, and owners of site roadways open to public travel should  
274 inform the State of their use of a device or application under the statewide interim approval.*

275 *10b The respective jurisdictions, toll facility authorities operators, and owners of site roadways  
276 open to public travel should keep a record of all locations on their roads where the device or  
277 application is in place under any interim approval, statewide or otherwise.*

278 *Guidance:*

279 ~~*11 A local jurisdiction, toll facility operator, or owner of a private road open to public travel  
280 using a traffic control device or application under an interim approval that was granted by  
281 FHWA either directly or on a statewide basis based on the State's request should inform the  
282 State of the locations of such use.*~~ [Incorporated into new paragraphs 10a and 10b above.]

283 Option:

284 11 A device or application installed under an interim approval may remain in place, under the  
285 conditions established in the interim approval, until an official rulemaking action has occurred.