

## ***Best Highway Safety Practices Institute***

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Paul Pisano, Acting Director  
Federal Highway Administration  
Office of Transportation Operations (HOTO)  
400 Seventh Street, SW  
Washington, D.C. 20590

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RE: **Legal Interpretation**, Section 2B.13 Speed Limit Sign (R2-1) et al per 5 USC 706 the inclusions of STATUTORY and POSTED SPEED as foundation for traffic control or police powers authorities as promulgated in MUTCD, UVC or referenced by Section 1A.11 et al, UNDER THE COLOR OF FEDERAL LAW, in each instance, absent fully conforming factual foundations, are Unconstitutional, Arbitrary and Capricious, Unsafe, Violates the Equal Protection Clause, Substantive and Procedural Due Process et al.

**Amicus Curiae Attached** – Hayduk v. South Carolina, arguments/cites

We would like an interpretation regarding the current use of STATUTORY, invented POSTED LIMITS as the foundation for traffic control and police powers etc. UNDER THE COLOR OF FEDERAL LAW and other related purported authorities or oversight standards removal identified here, in context of this federally regulated field.

The Best Highway Safety Practices Institute is a 501(C)3 non-profit public advocacy organization, that among other things, works for fact based uniform federal safety standards and fair laws. The Institute focuses on a holistic approach to education, research, best practices and their application, and assuring public policy is founded in best practices to achieve roadway safety and that the exercise of police powers thereof is Constitutional as in this instance.

We have raised the issue of the unconstitutionality of the inclusion of the term STATUTORY as promulgated with HOTO as far back as 2000; reference in the attached brief.

Our concern has centered on the removal of uniform factual foundations for traffic control and the exercise of police powers UNDER THE COLOR OF FEDERAL LAW in a Constitutional field. In our opinion USDOT nonfeasance and misfeasance has resulted in substantial non-compliance with the Law of the Land and Rule of Law on our 4 million plus miles of roadways and that traverse 80,000 plus regulatory authorities.

When these FHWA acts are interpreted at face value, the obfuscation of their mandated by Congress oversight, being combined with your devolving standards up to the 2009 MUTCD, best engineering practices and due process have been displaced by an ever increasing state of anarchy in expectation, due process and manifest unsafe practices.

Conservative estimates show there are at least 50 million citations written a year now UNDER THE COLOR OF FEDERAL LAW that are being issued absent due process or a factual legal

or engineering foundation, manifested by disparate and non complying applications, expectations and the exercise of police powers from sign to sign.

No matter how many times or forums this issue has been raised, even when we on prior occasions we have asked for legal interpretations and likewise raised these issue in federal register rule making comments. The FHWA has declined to intercede in every instance, including telling their field personnel not to act (correspondence available upon request).

Under the Color of Federal Law: All federal regulations, laws and the exercise of police powers in this field are subordinate and shall be uniform and conform. Each act in its promulgation and the exercise of police powers thereof shall:

1. Be narrowly tailored and vetted as to factual foundations, that it will achieve its desired effect, the unintended consequences, vetted as to its effects on commerce and substantive due process;
2. Be promulgated in substantial conformance with a single uniform application, appearance, expectation and adjudication standard regardless of entity type or jurisdiction in the United States and its Territories;
3. Be fact based per nationally recognized engineering institutions and scientific methodologies et al; in which all subordinate act's foundation or justifications can be cross-examined in a court of law; and
4. Be in conformance with the domain of the Constitution per the Commerce, Supremacy and Equal Protection Clause(s), and Congress' intent et al in this field.

Within the U.S., its Territories and Protectorates all traffic control and the exercise of police power thereof within a right of way open to public travel are within a federally regulated field and the regulation thereof shall be subordinate, fact based, uniform and in substantial conformance within the bounds of federal law and the Constitution; because Congress or federal regulatory agencies cannot recede superior authority back to the States if said purported authority impinges on an unalienable or federal due process right or Constitutional authority et al; Substantive and Procedural due process, Equal Protection, Supremacy, Commerce, Confrontation Clause(s), habeas corpus, 4th, 5th, 6th, 9th, 14th Amendments.

Absent fact based standards or uniformity safety is compromised and due process is denied.

Immediate remedy desired, revisions removing all invented foundations for traffic control in the MUTCD or by reference;

5. 2B.13 (01 and 07) remove "(other than statutory speed limits)" or any other related authority for invented values for traffic control or the subordinate exercise of police powers thereof; where Under the Color of Federal Law the FHWA purportedly codified unsafe practices and the suspension of the 4th amendment via invented safety values posted on federal devices as well as invented enforcement thresholds and probable cause in the US and its Territories in courts that through administrative convenience have suspended federal due process.
6. Reinstate 1988 MUTCD Section 4b-20 which required signal timing to meet the safety needs of the traffic, with periodic reviews to assure efficacy. Basing signal timing on invented Posted Limit is manifestly unsafe and denies due process, and

returning to the mandates of 4b.20 would restore known basic best practices that recognized the need to assure the approach speeds or geometric features or other needs were met, with further adjustments until compliance could be attained.

7. Return prior best practice guidance in 2003 MUTCD 2B.13 Guidance: “At least once every 5 years, States and local agencies should reevaluate [~~non-statutory speed limits on segments of~~] their roadways *or when* ~~[that]~~ *they* have undergone a significant change in roadway characteristics or surrounding land use since the last review.” Absent scheduled periodic studies (safety audits) safety is compromised.
8. Remove any related standards or recommended adopted by references into the MUTCD via Section 1A.11 that on their face, or have not been transparently vetted as to be in full compliance with both the safety needs of the motorists and their due process. Recent ITE, TRB, NHTSA, UVC and model traffic laws or standards et al are in clear violation of these precepts per the attached brief.
9. Cease the approval or use of any traffic control device or traffic laws which have not been transparently vetted in full compliance with the law as cited herein, including their application and expectations regardless of state lines, jurisdiction type or classification.
10. Rewrite 1A.09, it intentionally misleads the uninformed as to the legal authority of the MUTCD; which included the US Supreme Court in CSX Transp. v. Easterwood, 507 U.S. 658 (1993).
11. MUTCD § 1A.09 Engineering Judgment and its “shall not be a legal requirement for their installation” in context, only applies to a licensed engineer’s decision process to determine the need or application of a device; but when a device is indicated in the text as a supplementary requirement, or if the device is installed, then all applicable standards and practices governing that particular device shall apply, and there are no exceptions. Exceptions can be applied for per 1A.10.

The US Constitution, Congress’ intent, the Code of Federal Regulations (CFR) and the scope of the Law of the Land are not merely guidelines or suggestions, they represent the Rule of Law of the United States in this field where every act, practice etc shall be promulgated in substantial conformance to its minimum standards.

The “Law of the Land” and “Rule of Law” regarding traffic control, interstate travel and commerce on our nation’s roadways must be taken in its entirety, and a Federal Agency or State et al under 5 USC 706 (UNDER THE COLOR OF FEDERAL LAW) cannot unilaterally select which governing laws it wishes to comply with, or reject, or under which enforcement conditions or roadways due process applies, or not, or permit within their domain a device, regulation or statute to become an instrument that facilitates the denial of due process or results in manifest unsafe practices.

Respectfully,

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