

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 02-08-12
Rule ID(s): 5743
File Date: 02/17/2012
Effective Date: 07/29/2012

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Tennessee Department of Transportation
Division:	Maintenance Division
Contact Person:	John H. Reinbold, General Counsel
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1680-03-01	Adoption of the Tennessee Manual on Uniform Traffic Control Devices for Streets and Highways
Rule Number	Rule Title
1680-03-01-.02	Adoption of Manual on Uniform Traffic Control Devices

Chapter Number	Chapter Title
Rule Number	Rule Title

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Rule 1680-03-01-.02 Adoption of Manual on Uniform Traffic Control Devices is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

1680-03-01-.02 Adoption of Manual on Uniform Traffic Control Devices.

The current edition of the United States Department of Transportation, Federal Highway Administration, Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), 2009 Edition, is hereby adopted in its entirety and is incorporated herein by reference, with the following exceptions:

- (1) Section 1A.09, Engineering Study and Engineering Judgment, of the 2009 Edition is not adopted and the following text, including language copied from the Guidance portion of Section 1A.09 of the 2003 Edition of the MUTCD, shall be adopted in its place:

Section 1A.09 Engineering Study and Engineering Judgment

01 Definitions of an engineering study and engineering judgment are contained in Section 1A.13.

Standard:

02 This Manual describes the application of traffic control devices, but shall not be a legal requirement for their installation.

Guidance:

03 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.

04 Engineering judgment should be exercised in the selection and application of traffic control devices, as well as in the location and design of the roads and streets that the devices complement. Jurisdictions with responsibility for traffic control that do not have engineers on their staffs should seek engineering assistance from others, such as the State transportation agency, their County, a nearby large City, or a traffic engineering consultant.

Support:

05 As part of the Federal-aid Program, each State is required to have a Local Technology Assistance Program (LTAP) and to provide technical assistance to local highway agencies. Requisite technical training in the application of the principles of the MUTCD is available from the State's Local Technology Assistance Program for needed engineering guidance and assistance.

- (2) The definition of Standard in Section 1A.13, Definitions of Headings, Words, and Phrases in the 2009 Edition is not adopted and the following text shall be adopted in its place:

Section 1A.13 Definitions of Headings, Words, and Phrases in this Manual

Standard:

01 When used in this Manual, the text headings of Standard, Guidance, Option, and Support shall be defined as follows:

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.

B. **Guidance**—a statement of recommended, but not mandatory, practice in typical situations, with deviations allowed if engineering judgment or engineering study indicates the deviation to be appropriate. All Guidance statements are labeled, and the text appears in unbold type. The verb “should” is typically used. The verbs “shall” and “may” are not used in Guidance statements. Guidance statements are sometimes modified by Options.

C. **Option**—a statement of practice that is a permissive condition and carries no requirement or recommendation. Option statements sometime contain allowable modifications to a Standard or Guidance statement. All Option statements are labeled, and the text appears in unbold type. The verb “may” is typically used. The verbs “shall” and “should” are not used in Option statements.

D. **Support**—an informational statement that does not convey any degree of mandate, recommendation, authorization, prohibition, or enforceable condition. Support statements are labeled, and the text appears in unbold type. The verbs “shall,” “should,” and “may” are not used in Support statements.

The remaining text of Section 1A.13, Definitions of Headings, Words, and Phrases in this Manual, in the 2009 Edition of the MUTCD is adopted and incorporated herein by reference.

- (3) The United States Department of Transportation, Federal Highway Administration (FHWA), has authorized State MUTCDs to adopt the foregoing language in conformance with the 2003 MUTCD definition of Standard and the related Section 1A.09 Guidance statements, as provided in paragraphs (1) and (2) herein, while remaining in substantial compliance with the 2009 Edition of the MUTCD. See FHWA Official Interpretation—Manual on Uniform Traffic Control Devices, 1(09)-1 (I) – Definition of Standard Statement, October 1, 2010.

Authority: T.C.A. § 54-5-108(b).

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Commissioner of Transportation on 12/08/2011, and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

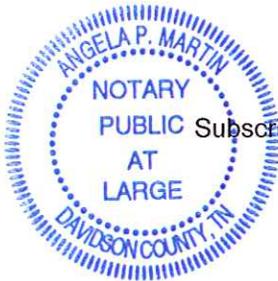
DEC 8 2011

Date: _____

Signature: _____

Name of Officer: John C. Schroer

Title of Officer: Commissioner of Transportation



Subscribed and sworn to before me on: December 8, 2011

Notary Public Signature: Angela P. Martin

My commission expires on: 3/10/2012

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

RE Cooper

Robert E. Cooper, Jr.
Attorney General and Reporter

2-13-12

Date

Department of State Use Only

Filed with the Department of State on: 02/17/2012

Effective on: 07/29/2012

Tre Hargett
Secretary of State

Regulatory Flexibility Addendum

Pursuant to § T.C.A. 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

The 2009 MUTCD applies to private roads that are open to public travel without access restrictions. Roads within private gated properties (except for gated toll roads) where access is restricted at all times, parking areas, driving aisles within parking areas, and private grade crossings are not subject to the MUTCD.

New or reconstructed traffic control devices installed after adoption of the 2009 MUTCD are required to meet the 2009 MUTCD provisions.

However, a private business can decide, where appropriate, to defer upgrading certain non-compliant devices until the device wears out, is damaged or destroyed, or is replaced. This would allow a private business to prioritize traffic control upgrades based on factors such as safety needs, costs, and available resources.

Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

(Insert statement here)

The 2009 MUTCD impacts local governments by modifying traffic control device standards that make certain existing devices non-compliant and by establishing standards that may require the installation of new devices.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

In general, the proposed rule adopts the Federal Highway Administration (FHWA) Manual on Uniform Traffic Control Devices (MUTCD), 2009 Edition, as the manual for the design and location of signs, signals, markings, and for posting traffic regulations on all public streets and highways in the State of Tennessee as well as on private roads where the public is allowed to travel without access restrictions. The MUTCD is the national standard for traffic control devices, and all States are required to adopt a manual for traffic control devices in substantial conformity with the MUTCD. However, the Department has declined to adopt two specific provisions of the 2009 Edition relating to the role of engineering judgment in applying the MUTCD, and has instead substituted the prior language in the 2003 Edition, as authorized by the FHWA.

The new MUTCD revises various standards, guidance, options, and supporting information relating to traffic control to expedite traffic operations, promote uniformity, improve highway safety, and incorporate technology advances in the selection and application of traffic control devices. Important changes to the MUTCD include:

- 1) Maintaining minimum sign retroreflectivity;
- 2) Installation of crashworthy signs on high speed roadways;
- 3) Installation of ONE WAY signs at select locations;
- 4) Installation of various horizontal alignment warning signs;
- 5) Requirements for yellow change and red clearance intervals;
- 6) Requirements for pedestrian intervals and signal phases;
- 7) Worker safety considerations;
- 8) Requirements for high-visibility apparel for adult crossing guards; and
- 9) Requirements for railroad grade crossings.

There has been much concern over retroreflectivity standards and street sign issues and how they will impact local governments. After nearly two years of state and local governments voicing concerns and months of reevaluation by the Federal Highway Administration, the FHWA has pending rule revisions that would eliminate or modify 46 of the compliance dates directed by the MUTCD.

When pending MUTCD revisions become final rules in the Federal Register, Tennessee will adopt them via the rulemaking process. Based on "Notice of Proposed Amendments" issued by FHWA and federal rulemaking process, it is expected the revisions will become final rules early next year.

In general, pending FHWA rule revisions will allow local governments to make decisions on when to replace or upgrade existing noncompliant devices in accordance with their own local environmental conditions and competing priorities for safety-related measures in the context of limited budgets.

The revisions allow for replacement of most noncompliant traffic control devices in the ordinary course of routine maintenance and/or upon the expiration of the useful life of such devices.

However, the elimination of a compliance date does not eliminate the regulatory requirement to comply with the MUTCD standards. The MUTCD standards shall apply to any new installations of traffic control devices, but firm fixed dates for replacing existing noncompliant devices are eliminated.

Summary:

- 1) The revised compliance dates do not require any signs to be replaced by a given date, only that agencies implement an assessment or management method for maintaining sign retroreflectivity by a certain date.
- 2) Revised compliance dates are expected to provide agencies with an estimated additional 1 to 2 years to implement their chosen assessment or management method.
- 3) FHWA is to make new compliance dates apply to implementing an assessment or management method for only regulatory and warning signs.
- 4) Street name signs are not required to be replaced by a certain date based on retroreflectivity standards or sign size. If street name signs are noncompliant based on retroreflectivity standards or sign size, they can be replaced considering local priorities, routine maintenance and budgetary planning for sign replacements based on limited resources.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 54-5-108(b) requires TDOT to adopt a manual for the design and location of signs, signals, markings, and for posting traffic regulations on all public streets and highways in the State of Tennessee. Federal law requires each State to adopt a traffic manual in substantial conformance with the current edition of the Manual on Uniform Traffic Control Devices as adopted by the Federal Highway Administration. 23 U.S.C. § 109(d); 23 C.F.R. § 655.603.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The MUTCD, as adopted in this rule, applies to all public streets and highways in the State of Tennessee, including city streets and county roads as well as state highways. Per Federal rule, it also applies to private entities installing and/or maintaining traffic control devices on roadways open to public travel without access restrictions. 23 C.F.R. § 655.603(a).

Some public agencies have opposed the extent of changes and compliance dates associated with the 2009 MUTCD, but have little or no recourse, as the MUTCD is a federal regulation applying to all roadways open to public travel. States are required to adopt a manual in substantial compliance with the Federal MUTCD, within two years. 23 C.F.R. § 655.603(b).

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

There are no known Attorney General opinions or judicial rulings directly relating to this rule.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

No increase in state revenue is expected from the promulgation of this rule. There will be increased expenditures for TDOT in excess of \$500,000, but less than 2% of agency annual budget. This estimate is based on the cost of upgrading, replacing, or installing traffic control devices on roadways under TDOT jurisdiction.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Michael L. Tugwell, State Traffic Engineer, Maintenance Division

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

John H. Reinbold, General Counsel; Michael L. Tugwell, Maintenance Division

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

John H. Reinbold, General Counsel
Tennessee Department of Transportation
Legal Division
Suite 300, James K. Polk Building
505 Deaderick Street
Nashville, TN 37243
Phone (615) 741-2941

Michael L. Tugwell, State Traffic Engineer
Tennessee Department of Transportation
Maintenance Division
Suite 400, James K. Polk Building
505 Deaderick Street
Nashville, TN 37243
Phone (615) 532-3418

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None at this time.

Redline Version of Rule:

1680-03-01-.02, Adoption of Manual on Uniform Traffic Control Devices.

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- (3) The United States Department of Transportation, Federal Highway Administration (FHWA), has authorized State MUTCDs to adopt the foregoing language in conformance with the 2003 MUTCD definition of Standard and the related Section 1A.09 Guidance statements, as provided in paragraphs (1) and (2) herein, while remaining in substantial compliance with the 2009 Edition of the MUTCD. See FHWA Official Interpretation—Manual on Uniform Traffic Control Devices, 1(09)-1 (I) – Definition of Standard Statement, October 1, 2010.