

Dear NHTSA Staff,

My name is Scott Brody. I hold a bachelor's in civil engineering and also recently finished a master's thesis on street design. A major focus was comparing standards in the US to other countries. I welcome NHTSA's rulemaking on implementing the Bipartisan Infrastructure Law. Please consider the following points:

NHTSA and sister agencies like FHWA have recently advocated taking a Safe Systems approach. This can help road safety, but ultimately many local engineers will refuse to implement better designs if conflicting regulations make it appear as if certain things are illegal or discouraged. The best step USDOT can take is to *eliminate conflicting and dated federal standards which run counter to the Safe System approach.*

Consider: Section 11111 of the 2021 Infrastructure Law amended the Highway Safety Improvement Program to include "multimodal roundabout[s]" Despite this law, the USDOT's traffic control device regulations (MUTCD Section 9) states:

"Bicycle lanes shall not be provided on the circular roadway of a roundabout.

Guidance: Bicycle lane markings should stop at least 100 feet before the crosswalk, or if no crosswalk is provided, at least 100 feet before the yield line, or if no yield line is provided, then at least 100 feet before the edge of the circulatory roadway."

What should I or any engineer do? Build a roundabout that accommodates multi-modal users, or build one where the bike lanes disappear, as the MUTCD says? It would be nice to build ones which are safe and accommodating to children (who cannot merge into traffic), but some would say this is against federal standards and will bring about liability.

Ultimately, rules cannot conflict. New regulations need to be written which are accommodating of the Highway Safety Improvement Program treatments referenced by Congress. While these are being developed, I suggest issuing a flexibility memorandum or even a policy stating USDOT will stop enforcing all regulations which are incompatible with the items referenced by Congress. Further state that anyone applying for a grant is encouraged to incorporate elements like multi-modal roundabouts, even if they have limited or no support in other standards. This would be consistent with the principles of legal hierarchy. Administrative Law has a duty to yield to the Laws of Congress.

§11111 of the Infrastructure Law further mentions "roadway improvements that provide separation between pedestrians and motor vehicles or between bicyclists and motor vehicles, including medians, pedestrian crossing islands protected bike lanes, and protected intersection features."

Again, many of these treatments cannot be implemented without running into challenges with other federal regulations. Midblock crossings are often blocked on the grounds that they aren't "warranted" based on traffic control standards to speed vehicle travel. The MUTCD is also completely written without context of protected intersections. The proposed update (issued before the infrastructure law) had many new diagrams but still zero protected intersections.

The Obama infrastructure bill, the FAST Act, also contained a host of referenced documents in §1404 that were supposed to be considered when developing road standards. One item, the *NACTO Urban Street Design Guide*, contained treatments to separate vulnerable road users including sidewalk level

bikeways, raised entrances, and shared spaces. Despite the law, USDOT proposed an MUTCD which conflicted with parts of the referenced document. When I filed a FOIA request, it turned out the person who worked on that section of regulation never even had a copy of what was supposed to be considered. This was reported in several news websites like *the Urbanist*, *NextCity*, *Streetsblog*, and *Streets.mn*. Search Scott Brody MUTCD.

I know this is not a comment about the MUTCD, but if we are on the subject of implementing the Infrastructure Law, any elements of other standards which conflict need be addressed.

ADA rules are also problematic because they are based on the premise that roads are of a certain nature which is different than that of Safe Systems. This forces designers and lawyers to figure out how to apply the rules to something they aren't meant to be applied to. It creates issues, and is too hard for some, hence they stick to the traditional design approach. For example, if a separated bikeway is treated as a vehicle lane (as some believe it is), then large waiting islands between the bike lane and street are required. This may make designs unreasonable to implement, ultimately encouraging agencies to not make improvements. In parts of Europe, separated bike lanes are so comfortable and free from car traffic that people with motor wheelchairs choose to ride on them. The European standards usually require less separation between bikes and pedestrians, reflecting the Safe System approach that vehicles should be integrated based on mass and the likelihood of human injury. ADA should do the same.

Another element of the comment prompt states "SSA [the Safe Systems Approach] calls for a system with redundancies in place to protect everyone...What non-traditional partners and safety stakeholders can the States work with to implement NRSS and SSA?"

My experience suggests the roadway design profession is very disconnected with communities most impacted by crashes and inequities. This relates to the general lack of female, Black, and Hispanic representation in STEM. Getting more diverse populations into design roles should be a goal, but this cannot be achieved quickly or easily. For now, I would encourage NHTSA to foster dialogue between design professionals and victims of crashes.

Crash victims and relatives often tell their stories in front of decision-makers. Many plead for changes to prevent tragedies from happening again. But these messages often fail to get through to the lower level people truly making the blueprints. To change the culture of traffic engineering, more people to people exchange needs to happen. Perhaps, state engineering license boards can provide continuing education credit to those who attend a memorial or protest in honor of a crash victim. States can also look to partner with non-profit advocacy organizations, like Vision Zero Network, and Families for Safe Streets, to bring safety programming into their workplaces.

Another non-traditional partner who should be consulted is foreign standards development organizations. For example, the Netherlands Centre for Cycling Policy (CROW) produces a version of their design manual in English. The Nordic Countries (Denmark, Sweden, Finland, and Norway) are also leaders. In 2019, the cities of Oslo and Helsinki had 1 and 3 fatal crashes respectively. In the US, comparatively sized cities Washington DC, Denver, and El Paso had 27, 61, and 67 crashes. Vision Zero is achievable. Rather than encouraging compliance with the same ineffective methods, NHTSA should facilitate use of European standards in the design process. This option should be clearly stated in the grant program.

Thank you for taking the time to read my comment and do not hesitate to reach out if you have further questions.

Very Truly Yours,

Scott Brody, EIT