



UNITED STATES ACCESS BOARD

Advancing Full Access and Inclusion for All

1331 F Street NW, Suite 1000
Washington, DC 20004

1-202-272-0080 (voice/TTY)
www.access-board.gov

October 26, 2023

Mark Baker
Soft Lights Foundation
9450 SW Gemini Drive
Beaverton, OR 97008

RE: Petition to Amend Public Rights-of-Way Accessibility Guidelines Final Rule to Remove Mentions of RRFBs

Dear Mr. Baker:

This letter responds to your August 26, 2023 petition requesting that the Access Board amend the Public Rights-of-Way Accessibility Guidelines (PROWAG) final rule that was issued on August 8, 2023 to eliminate the recommendation for and promotion of use of Rectangular Rapid Flashing Beacons (RRFBs). In general, your petition indicates that you are concerned that flashing LED lights on RRFBs may trigger seizures in individuals with photosensitive epilepsy or panic attacks in individuals with autism spectrum disorder.

In your petition, you state that the Access Board has not complied with the Radiation Control for Health and Safety Act, 28 U.S.C 360hh-ss, to develop and publish performance and accessibility standards for Light Emitting Diodes (LEDs), which are used in RRFBs. You further indicate that because the FDA has not vetted or approved RRFB devices and has not declared them to be safe, the Access Board's "promotion of RRFBs violates federal regulatory requirements and federal law." The petition also states that the Access Board's proposed rule issued in 2013 did not mention RRFBs, but they are mentioned in the final rule text. Finally, the petition requests that the Access Board's PROWAG final rule "not promote, recommend, authorize, or mention" the use of RRFBs.

The Access Board has carefully reviewed your petition and denies it for the following reasons.¹ First, as we explained in our August 18, 2023 letter responding to your prior petition for rulemaking, the Access Board does not have statutory authority to issue performance standards for electronic products under the Radiation Control for Health and Safety Act.

Second, the Access Board is not the agency that authorizes uniform traffic devices for use in public rights-of-way. The Department of Transportation's Federal Highway Administration (FHWA) issues and maintains the Manual on Uniform Traffic Control Devices (MUTCD), and as such, is the agency that has approved RRFBs for optional use under an interim approval issued on March 20, 2018. See Federal Highway Administration, Interim Approval 21 –Rectangular Rapid-Flashing Beacons at Crosswalks (March 20, 2018), *available at* https://mutcd.fhwa.dot.gov/resources/interim_approval/ia21/index.htm. Consistent with this interim approval, jurisdictions are permitted to use these devices as pedestrian-actuated conspicuity enhancements pending the Federal Highway Administration's rulemaking to update the MUTCD. The interim approval allows RRFBs to be used in a variety of settings. The Board notes that the interim approval specifies that the flash rate of RRFBs shall not be between 5 and 30 flashes to avoid frequencies that may cause seizures. Interim Approval at 5c. You maintain in your petition that you believe a different flash rate and a specified peak luminance is appropriate for RRFBs and that your November 23, 2022 petition to FHWA to repeal its interim approval of RRFBs was added to FHWA's docket for the current rulemaking to update the MUTCD. The Access Board trusts that FHWA will consider your comments in its rulemaking process.

Third, the Access Board's final rule does not require the use of RRFBs but specifies that jurisdictions may use them as one of four enhanced pedestrian crossing treatment options at multilane roundabout and channelized turn lane crossings. See 36 CFR 1190, Appx., R306.4.2, R306.5. The Board notes that RRFBs may be used by jurisdictions in a variety of applications well beyond the optional, limited application included in the PROWAG final rule.

Finally, in its 2011 proposed PROWAG rule text, the Board noticed its intent to require enhanced pedestrian crossing treatments at multilane roundabout and channelized turn lane crossings. See U.S. Access Board, Notice of Proposed Rulemaking (NPRM) for Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way, 76 FR 44664, 44694 (July 26, 2011) (specifying at R306.3.2 and R306.4 requirements for "pedestrian activated signals"); *see also id.* at 44680 (explaining why enhanced pedestrian treatments are needed at roundabouts and channelized turn lanes to provide accessibility to people who are blind and indicating that the MUTCD allows transportation officials to request permission from FHWA to experiment with alternative signals). The Access Board received public comment in response to the NPRM asking that RRFBs be included as an option at these locations. See Proposed Accessibility

¹ In denying your petition, we make no factual findings regarding the accessibility of LEDs for every individual with a disability.

Guidelines for Pedestrian Facilities in the Public Right of Way Rulemaking Docket ATBCB-2011-0004, *available at* regulations.gov/docket/ATBCB-2011-0004. Thus, the inclusion of RRFBs in the PROWAG final rule as an option for enhanced pedestrian crossing treatments at multilane roundabouts and channelized turn lane crossings is a logical outgrowth of the proposed regulation.

The Access Board is a micro agency with fewer than 30 full-time staff members and is currently engaged in an aggressive rulemaking agenda to advance accessibility in many segments of society. The Access Board's submission to the current Unified Agenda, available on reginfo.gov, includes active rulemakings on Accessibility Guidelines for Electric Vehicle Charging Stations; Accessibility Standards for Medical Diagnostic Equipment; Accessibility Guidelines for Self-Service Transaction Machines; and updated Accessibility Guidelines for Rail Vehicles. We welcome you and other interested parties to submit comments for any of these open rulemakings during the public comment period.

Sincerely,

Chris Kuczynski
General Counsel
U.S. Access Board