

Federal Highway Administration  
400 Seventh Street, SW  
Washington, DC 20590

Refer to: HOTO-1

September 12, 2002

Mr. Michael Duffy  
President  
Keystone Automation, Inc.  
21 Industrial Drive  
Pittston, PA 18640

Dear Mr. Duffy:

Thank you for your April 30 letter requesting interpretation that your device "Automated/ Remote Flagger" is in conformance with the Manual on Uniform Traffic Control Devices (MUTCD). We apologize for the delay in responding to your request. All first class mail sent through the United States Postal Service to Federal agencies in the District of Columbia must be processed in a special way to protect government employees from the possibility of handling anthrax-tainted mail.

We have reviewed your letter and offer the following comments:

- Section 6E.01 Qualifications for flaggers - As stated in your letter, this section outlines requirements for a human and the Remote Flagger is not a human; therefore, the Remote Flagger is not in conformance with the Section 6E.01.
- Section 6E.04 Flagger Procedures - In this section, there are two methods that flaggers shall use to control road users through temporary traffic control zones. Both methods require that the flagger use the free arm as part of the flagging procedure. Since the Remote Flagger's free arm is fixed and cannot be used to perform hand signaling as noted in the two methods, then it is not in conformance with Section 6E.04.

Based on the information above, the Remote Flagger device is not in conformance with the Chapter 6E.

Also, in your letter you requested what information is required for experimentation approval. If you wish to experiment, you will need to submit an experimental plan as required by Section 1A.10 of the MUTCD and "A legally-binding statement certifying that the traffic control device is not protected by a patent or copyright."

The purpose of a release statement would be to protect Federal Highway Administration's (FHWA) interests and, specially ensure that the designer of an experimental device acknowledges FHWA's authority to include the traffic device in the MUTCD. This would allow

the device to remain in the public domain. We do not intend to request that you relinquish all your patented rights. The circuits and electrical operating components may be patented. We are looking for the ability to indicate a general concept of the automated/remote flagging device.

The Federal regulation 23 CFR 635.411 (copy enclosed) for patents and proprietary items is an important part of our long-standing policy for promoting open competition in Federal-aid construction contracts. The policy enables firms with new products to be given fair consideration. It allows equally suitable products to be used as alternatives. Therefore, all traffic control devices contained in the MUTCD shall not be protected by a patent or copyright, except for the Interstate Shield (see Section IA.01 of the MUTCD). A copy of Section IA.01 is enclosed.

For future reference purposes, we have assigned your request the following official experimentation number and title: 6-188(I)–"Automated/Remote Flagger."

We thank you for your interest in highway operations. If you have any questions, please call Mr. Charlie Sears at 202-366-1555.

Sincerely yours,

Ernie Huckaby (for)  
Shelley J. Row, P.E.  
Director, Office of Transportation  
Operations