TDOT WORK ZONE SAFETY AND MOBILITY MANUAL

Appendix A

The Final Rule

FHWA 23 CFR 30 Subpart J

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. FHWA–2001–11130]

RIN 2125–AE29

Work Zone Safety and Mobility

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA amends its regulation that governs traffic safety and mobility in highway and street work zones. The changes to the regulation will facilitate comprehensive consideration of the broader safety and mobility impacts of work zones across project development stages, and the adoption of additional strategies that help manage these impacts during project implementation. These provisions will help State Departments of Transportation (DOTs) meet current and future work zone safety and mobility challenges, and serve the needs of the American people.

DATES: *Effective Date:* October 12, 2007.

The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of October 12, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Battles, Office of Transportation Operations, HOTO–1, (202) 366–4372; or Mr. Raymond Cuprill, Office of the Chief Counsel, HCC–30, (202) 366–0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

This document and all comments received by the U.S. DOT Docket Facility, Room PL–401, may be viewed through the Docket Management System (DMS) at *http://dms.dot.gov*. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of this Web site.

An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web site at: *http://www.access.gpo.gov/nara*.

Background

History

Pursuant to the requirements of Section 1051 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), (Pub. L. 102–240, 105 Stat. 1914; Dec. 18, 1991), the FHWA developed a work zone safety program to improve work zone safety at highway construction sites. The FHWA implemented this program through non-regulatory action by publishing a notice in the **Federal Register** on October 24, 1995 (60 FR 54562). This notice established the National Highway Work Zone Safety Program (NHWZSP) to enhance safety at highway construction, maintenance, and utility sites. In this notice, the FHWA indicated the need to update its regulation on work zone safety (23 CFR 630, Subpart J).

As a first step in considering amendments to its work zone safety regulation, the FHWA published an advance notice of proposed rulemaking (ANPRM) on February 6, 2002, at 67 FR 5532. The ANPRM solicited information on the need to amend the regulation to better respond to the issues surrounding work zones, namely the need to reduce recurrent roadwork, the duration of work zones, and the disruption caused by work zones.

The FHWA published a notice of proposed rulemaking (NPRM) on May 7, 2003, at 68 FR 24384. The regulations proposed in the NPRM were intended to facilitate consideration and management of the broader safety and mobility impacts of work zones in a more coordinated and comprehensive manner across project development stages, and the development of appropriate strategies to manage these impacts. We received a substantial number of responses to the NPRM. While most of the respondents agreed with the intent and the concepts proposed in the NPRM, they recommended that the proposed provisions be revised and altered so as to make them practical for application in the field. The respondents identified the need for flexibility and scalability in the implementation of the provisions of the proposed rule; noted that some of the terms used in the proposed rule were ambiguous and lent themselves to subjective interpretation. Respondents also commented that the documentation requirements in the proposal would impose undue time and resource burdens on State DOTs.

In order to address the comments received in response to the NPRM, the FHWA issued a supplemental notice of proposed rulemaking (SNPRM) on May 13, 2004, at 69 FR 26513. The SNPRM addressed the comments related to flexibility and scalability of provisions, eliminated ambiguous terms from the language, and reduced the documentation requirements. We received several supportive comments in response to the SNPRM. Most respondents noted that the SNPRM addressed the majority of their concerns regarding the originally proposed rule. However, they did offer additional comments regarding specific areas of concern. In the final rule issued today, the FHWA has addressed all the comments received in response to the SNPRM that are within the scope of this rulemaking

The regulation addresses the changing times of more traffic, more congestion, greater safety issues, and more work zones. The regulation is broader so as to recognize the inherent linkage between safety and mobility and to facilitate systematic consideration and management of work zone impacts. The regulation can advance the state of the practice in highway construction project planning, design, and delivery so as to address the needs of the traveling public and highway workers. The key features of the final rule are as follows:

- A policy driven focus that will institutionalize work zone processes and procedures at the agency level, with specific language for application at the project level.
- A systems engineering approach that includes provisions to help transportation agencies address work zone considerations starting early in planning, and progressing through project design, implementation, and performance assessment.
- Emphasis on addressing the broader impacts of work zones to develop transportation management strategies that address traffic safety and control through the work zone, transportation operations, and public information and outreach.
- Emphasis on a partner driven approach, whereby transportation agencies and the FHWA will work together towards improving work zone safety and mobility.
- Overall flexibility, scalability, and adaptability of the provisions, so as to customize the application of the regulations according to the needs of individual agencies, and to meet the needs of the various types of highway projects.

Summary Discussion of Comments Received in Response to the SNPRM

The following discussion provides an overview of the comments received in response to the SNPRM, and the FHWA's actions to resolve and address the issues raised by the respondents.

Profile of Respondents

We received a total of 33 responses to the docket. Out of the 33 total respondents, 27 were State DOTs; 4 were trade associations; and 2 provided comments as private individuals. The 4 trade associations were namely, the Laborers' Health and Safety Fund of North America (LHSFNA), the American Traffic Safety Services Association (ATSSA), the Associated General Contractors (AGC) of America, and the Institute of Transportation Engineers (ITE). We classified the American Association of State Highway and Transportation Officials (AASHTO) as a State DOT because they represent State DOT interests. The AASHTO provided a consolidated response to the SNPRM on behalf of its member States. Several State DOTs provided their comments individually.

The respondents represented a cross-section of job categories, ranging from all aspects of DOT function, to engineering/traffic/safety/design, to construction and contracting.

Overall Position of Respondents

We received several supportive comments in response to the SNPRM. Most State DOTs, the AASHTO, and all private sector respondents greatly appreciated the FHWA's continued effort to receive input during the development of the proposed rule, and particularly in issuing the SNPRM. Most respondents also noted that the SNPRM addressed the majority of their concerns regarding the originally proposed rule.

The respondents also offered comments on specific areas of concern, and recommended changes to improve the rule's language. The State DOTs and the AASHTO offered comments, which relate to their continued concern that the rule allow for adequate flexibility and scalability while limiting unintended liability and cost. Private sector respondents also offered specific comments on certain areas of concern. Details regarding these issues and FHWA's specific response are discussed in the following section, which provides a section-by-section analysis of the comments.

The level of support for the SNPRM is indicated by the fact that 23 of the 33 respondents expressed overall support for the provisions proposed in the SNPRM. It is to be noted that these respondents were not necessarily supportive of all the provisions, but rather that, their overall position on the SNPRM was supportive. Many of these respondents provided suggestions on modifications and revised language for specific provisions as they deemed appropriate. Of the 23 respondents who were supportive, 21 represented State DOTs and 2 represented trade associations.

Of the remaining respondents, 2 opposed the issuance of the rule, 2 agreed with the intent and the concepts but did not agree with many of the mandatory provisions, and the remaining 6 did not expressly indicate their overall position.

One of the two respondents who opposed the issuance of the rule was the Iowa DOT. It expressed that it supports the goals of improved safety and reduced congestion, but opposes the proposed rule as it would not necessarily help achieve these goals. It believes that its current work zone policies are sufficient to provide for a high standard of safety and mobility. It noted that the rule is not flexible enough, and that it would require significant commitments from its limited staff.

The other respondent that opposed the rule was the Kansas DOT. It suggested that the FHWA retract the rule and, instead, issue the information on work zone safety and mobility as a guide for use by State DOTs. It believes that encouraging State DOTs to review and improve their current practices on work zone safety and mobility, through closer contact with FHWA and other partners, would be more effective than mandating specific processes. It also suggested changes to specific sections, and recommended that the FHWA implement the AASHTO's recommendations, if retraction of the rule was not an option.

Section-by-Section Analysis of SNPRM Comments and FHWA Response

Section 630.1002 Purpose

There were no major comments in response to this section. The overall sentiment of the respondents was supportive of the language as proposed in the SNPRM, and therefore, we will retain the language as proposed in the SNPRM.

Section 630.1004 Definitions and Explanation of Terms

Most respondents were supportive of this section. Some respondents offered specific comments on some of the definitions proposed in the SNPRM. They are discussed as follows:

- Definition for ''Mobility.'' The AGC of America remarked that the definition for mobility seems to imply a greater emphasis on mobility than on safety. It recommended that we change the second sentence of the definition to imply that work zone mobility should be achieved without compromising the safety of highway workers or road users. To address this comment the FHWA has amended the definition by adding the words, ''while not compromising the safety of highway workers or road users'' at the end of the second sentence. In addition, the word ''smoothly'' after the phrase, ''mobility pertains to moving road users,'' has been replaced by the word ''efficiently.''
- Definition for ''Safety.'' The AASHTO and several DOTs recommended that the term, ''road worker(s)'' be changed to ''highway worker(s)'' for the sake of consistency. We agree with this observation, and made this change. The Georgia DOT recommended that the term ''danger'' be changed to ''potential hazards'' to reduce potential liability. We agree with this recommendation, and therefore, replaced the word ''danger'' with ''potential hazards'' in the first sentence. In the second sentence, we rephrased ''minimizing the exposure to danger of road users'' with ''minimizing potential hazards to road users.''
- Definition for ''Temporary Traffic Control (TTC) Plan.'' We moved the definition for the TTC plan from § 630.1004, Definitions and Explanation of Terms, to § 630.1012(b), Transportation Management Plan (TMP), where the requirements for the TTC plan are laid out. This is in response to a comment from the Georgia DOT that the language under the TTC plan section of § 630.1012(b) was not consistent with the Manual On Uniform Traffic Control Devices (MUTCD).[1] Since the definition for the TTC plan was referenced from the MUTCD, it was removed from the definitions section and placed in § 630.1012(b)(1), where TTC plans are discussed.
- Definitions for ''Work Zone'' and ''Work Zone Crash.'' There were several comments recommending changes to certain terminology in both these definitions. For example, the AASHTO

[1] The MUTCD is approved by the FHWA and recognized as the national standard for traffic control on all public roads. It is incorporated by reference into the Code of Federal Regulations at 23 CFR part 655. It is available on the FHWA's Web site at *http://mutcd.fhwa.dot.gov* and is available for inspection and copying at the FHWA Washington, DC Headquarters and all FHWA Division Offices as prescribed at 49 CFR part 7.

and several DOTs suggested that the term, ''traffic units,'' in the first sentence of the Work Zone Crash definition be changed to ''road users.'' However, we have decided not to adopt the changes in order to maintain consistency with other industry accepted sources—the definition for ''work zone'' being referenced from the MUTCD, and that for ''work zone crash,'' from the Model Minimum Uniform Crash Criteria Guideline (MMUCC).[2]

Section 630.1006 Work Zone Safety and Mobility Policy

The majority of the respondents supported the proposed language in this section. The AASHTO and several DOTs recommended the removal of the second clause in the second to last sentence, ''representing the different project development stages.'' These respondents believe that this change would grant the States maximum flexibility to implement the most appropriate team for each project. The FHWA agrees with this observation and has deleted the phrase in question.

The ATSSA recommended that we specifically include or encourage the participation of experienced industry professionals in the multi-disciplinary team referenced in the second to last sentence. The FHWA believes that States will solicit the participation of industry representatives if required for the specific project under consideration.

The Kansas DOT commented that the use of the words ''policy'' and ''guidance'' in the same sentence could be confusing, as policies usually carry more weight than guidance. This comment refers to the second sentence, the first part of which reads, ''This policy may take the form of processes, procedures, and/or guidance * * *'' The FHWA disagrees because we believe that policies do not necessarily have to be mandates. For example, it may be a State DOT policy that it ''shall'' consider and manage work zone impacts of projects, but the actual methods to do so may be provided as guidance to its district/region offices which may vary according to the different types of projects that they encounter. The underlying purpose of the work zone safety and mobility policy section is to require State DOTs to implement a policy for the systematic consideration and management of work zone impacts, so that such consideration and management becomes a part of the mainstream of DOT activities. How a State chooses to implement the policy is its prerogative—and it may take the form of processes, procedures, and/or guidance, and may vary upon the work zone impacts of projects.

The Virginia DOT commented on the second sentence of this section that it does not agree with the ''shall'' requirement to address work zone impacts through the various stages of project development and implementation. It justified its objection by saying that ''addressing work zone impacts through the various stages of project development and implementation'' will not work from a practical standpoint due to unforeseen field conditions and circumstances, and that the shall clause could result in potential litigation. The FHWA disagrees with the Virginia DOT. We would like to mention that the second sentence by itself, when taken out of context, doesn't quite convey the message of the entire section. The preceding sentence and the following sentence need to be considered in interpreting what the second sentence means. The first sentence requires that State DOTs implement a policy for the systematic consideration and management of work zone impacts on all Federal-aid highway projects. The second sentence further qualifies the term ''systematic'' by saying that the policy shall address work zone impacts throughout the various stages of project development and implementation—this implies that the consideration and management of work zone impacts progresses through the various stages. The third sentence further clarifies that the methods to implement this policy may not necessarily be absolute requirements, but rather be implemented through guidance. Further, the third sentence provides a more specific delineator by saying that the implementation of the policy may vary based upon the characteristics and expected work zone impacts of individual projects or classes of projects.

Section 630.1008 Agency-Level Processes and Procedures

The AASHTO and several State DOTs remarked that there is inconsistency with the use of ''Agency'' and ''State Agency,'' and that this needs to be resolved. Further, a few State DOTs sought clarification as to whether ''agency'' applies to the State transportation agency or other entities that might be involved in the project development process (*i.e.*, county and/or local governments and authorities). In response to this comment, we changed all instances of the terms ''State Agency'' and ''Agency'' in the entire subpart to the term ''State,'' as referenced in the rule.

Section 630.1008(a), Section Introduction. There were no specific comments in response to the language in this paragraph. In the second sentence, to remove ambiguity and for clarity, we replaced the words ''well defined data resources'' with the words, ''data and information resources.''

The North Carolina DOT observed that the language in this paragraph is an introduction to the section, and that it should not be labeled as ''(a).'' We did not make this change because the Office of the Federal Register (OFR) requires paragraph designations on all text in a rule.

Section 630.1008(b), Work Zone Assessment and Management Procedures. Most respondents were supportive of the language in this paragraph.

Section 630.1008(c), Work Zone Data. Most State DOTs and the AASHTO opposed the mandatory requirement to use work zone crash and operational data towards improving work zone safety and mobility on ongoing projects, as well as to improve agency processes and procedures. One of the key reasons cited for this opposition was the difficulty and level of effort involved in obtaining and compiling data quickly enough to take remedial action on ongoing projects. A few DOTs also stated that using data to improve State-level procedures was feasible but not at the individual project level. The AASHTO also observed that there is already a reference to data in § 630.1008(e), ''Process Review,'' where the use of data is optional and not mandatory. Some States recommended that we clarify the term ''operational data,'' whether it is observed or collected data. They also noted that the ''shall'' clauses in the first two sentences are inconsistent with the ''encouraged to'' in the last sentence, and questioned as to how the use of data

[2] ''Model Minimum Uniform Crash Criteria Guideline'' (MMUCC), 2d Ed. (Electronic), 2003, produced by National Center for Statistics and Analysis, National Highway Traffic Safety Administration (NHTSA). Telephone 1–(800)–934–8517. Available at the URL: *http://www-nrd.nhtsa.dot.gov*. The NHTSA, the FHWA, the Federal Motor Carrier Safety Administration (FMCSA), and the Governors Highway Safety Association (GHSA) sponsored the development of the MMUCC Guideline which recommends voluntary implementation of the 111 MMUCC data elements and serves as a reporting threshold that includes all persons (injured and uninjured) in crashes statewide involving death, personal injury, or property damage of $1,000 or more. The Guideline is a tool to strengthen existing State crash data systems.

can be mandated when the data resources themselves are optional. The California Transportation Department (CalTrans) questioned the objective of developing TMPs and conducting process reviews if appropriate performance measures and data collection standards are not identified for determining success.

The FHWA provides the following comments and responses to the above stated concerns:

• The purpose of the provisions in this section is not to require States to collect additional data during project implementation, but rather, to improve the use of available work zone field observations, crash data, and operational information to: (1) Manage the safety and mobility impacts of projects more effectively during implementation; and (2) provide the basis for systematic procedures to assess work zone impacts in project development.

For example, most agencies maintain field diaries for constructions projects. These field diaries are intended to provide a log of problems, decisions, and progress made over the duration of a project. In many States, these diaries log incidents and actions such as the need to replace channelization devices into their proper positions after knockdown by an errant vehicle, or to deal with severe congestion that occurred at some point during the day. These log notes, when considered over time, may provide indications of safety or operational deficiencies. To address such deficiencies, it may be necessary and prudent to improve the delineation through the work zone to prevent future occurrences of knockdown events, or to alter work schedules to avoid the congestion that recurs at unexpected times due to some local traffic generation phenomena.

Police reports are another example of an available source of data that may be useful in increasing work zone safety. Provisions are made in many agencies for a copy of each crash report to be forwarded to the engineering section immediately upon police filing of the crash report. Where a work zone is involved, a copy of this report should be forwarded as soon as possible to the project safety manager to determine if the work zone traffic controls had any contribution to the crash so that remedial action can be taken.

These applications do not necessarily require that agencies gather new data, but there may be a need to improve processes to forward such reports to the appropriate staff member for review during project implementation and/or to provide guidance or training to facilitate interpretation of these reports. Agencies may choose to enhance the data they capture to improve the effectiveness of these processes by following national crash data enhancement recommendations and/or linking it with other information (*e.g.*, enforcement actions, public complaints, contractor claims). This same data and information can be gathered for multiple projects and analyzed by the agency to determine if there are common problems that could be remedied by a change in practices. The information may also be used for process reviews.

• The first sentence of this paragraph was revised to convey that States are required to use field observations, available work zone crash data, and operational information at the project level, to manage the work zone impacts of specific projects during project implementation. This provision requires States to use data and information that is available to them, so as to take appropriate actions in a timely manner to correct potential safety or mobility issues in the field. Operational information refers to any available information on the operation of the work zone, be it observed or collected. For example, many areas have Intelligent Transportation Systems (ITS) in place, and many others are implementing specific ITS deployments to manage traffic during construction projects. The application of this provision to a project where ITS is an available information resource, would result in the use of the ITS information to identify potential safety or mobility issues on that project.

• The second sentence was also revised to convey that work zone crash and operational data from multiple projects shall be analyzed towards improving State processes and procedures. Such analysis will help improve overall work zone safety and mobility. Data gathered during project implementation needs to be maintained for such post hoc analyses purposes. Such data can be used to support analyses that help improve State procedures and the effectiveness of future work zone safety and mobility assessment and management procedures.

• The respondents indicated that the use of ''encouraged to'' in the last sentence is inconsistent with the ''shall'' clauses in the first two sentences. Further, the phrase, ''establish data resources at the agency and project levels'' does not clearly convey the message of the provision. This provision does not require States to embark on a massive data collection, storage, and analysis effort, but rather to promote better use of elements of their existing/available data and information resources to support the activities required in the first two sentences. Examples of existing/available data and information resources include: Project logs, field observations, police crash records, operational data from traffic surveillance devices (*e.g.*, data from traffic management centers, ITS devices, *etc.*), other monitoring activities (*e.g.*, work zone speed enforcement or citations), and/or public complaints. We revised the last sentence to convey that States should maintain elements of their data and information resources that logically support the required activities.

• In response to CalTrans' comment regarding establishing performance measures and data collection standards, we appreciate the value of the input, but we believe that we do not have adequate information at this time to specify performance measures for application at the National level. State DOTs may establish such performance measures and data collection standards as applicable to their individual needs and project scenarios. For example, the Ohio-DOT mandates that there shall always be at least two traffic lanes maintained in each direction for any work that is being performed on an Interstate or Interstate look-alike. We believe that such policies need to be developed and implemented according to individual State DOT needs, and hence we maintain a degree of flexibility in the rule language.

Section 630.1008(d), Training. Most State DOTs and the AASHTO opposed the mandatory requirement that would require training for the personnel responsible for work zone safety and mobility during the different project development and implementation stages. These respondents noted that the proposed language implied that State DOTs would be responsible for training all the listed personnel, including those who do not work for the DOT itself, and that this would create a huge resource burden, as well as increase the liability potential for the DOTs. These commenters also ratified their opposition by quoting the MUTCD training requirement, which does not mandate training, but suggests that personnel should be trained appropriate to the job decisions that they are required to make. Some DOTs, including the New York State DOT (NYSDOT), requested that the reference to personnel responsible for enforcement of work zone related transportation management and traffic control be clarified as to whether it refers to law enforcement officers or to field construction/safety inspectors.

The FHWA provides the following comments and responses to the above stated concerns:

• The FHWA agrees that the first sentence in the training section seems to imply that the State would be responsible for training all mentioned personnel; therefore, we changed the sentence to convey that the State shall ''require'' the mentioned personnel be trained. This change will require the State to train direct State employees only, and takes away the burden from the State to train personnel who are not direct employees. We believe that personnel responsible for the development, design, operation, inspection, and enforcement of work zone safety and mobility need to be trained, and this requirement will allow for training to be provided by the appropriate entities. The responsibility of the State would be to require such training, either through policy or through specification. For example, the Florida DOT has developed and required work zone training of their designers and contractors by procedure and by specifications. Similarly, the Maryland State Highway Administration (MD–SHA) provides a maintenance of traffic (MOT) design class to personnel responsible for planning and designing work zones, including consultants and contractors.

• Further, in keeping with the MUTCD language on training, we added the phrase, ''appropriate to the job decisions each individual is required to make'' to the end of the first sentence. This clarifies that the type and level of training will vary according to the responsibilities of the different personnel. For example, Maryland State Highway Police officers attend a 4-hour work zone safety and traffic control session at the Police Academy.

• We also revised the second sentence to convey that States shall require periodic training updates that reflect changing industry practices and State processes and procedures. Since we revised the first sentence to convey that training of non-State personnel is not a State responsibility, in the second sentence, we deleted the phrase, ''States are encouraged to keep records of the training successfully completed by these personnel.''

• In response to the request that ''personnel responsible for enforcement'' of work zone related transportation management and traffic control be clarified, we believe that this group is inclusive of both law enforcement officers and field construction/safety inspectors.

Section 630.1008(e), Process Review. Most respondents were supportive of the language in this section. The AASHTO and several State DOTs recommended that States should have maximum flexibility to implement the most appropriate team for each project. These commenters suggested that the fourth and the fifth sentences of the section be deleted, and that the clause, ''as well as FHWA'' be added to the end of the third sentence.

The FHWA agrees with the observation made by the AASHTO and State DOTs that States should have maximum flexibility to implement the most appropriate review team for each project. Therefore, as suggested, we deleted the fourth and the fifth sentence of the section, and added the clause, ''as well as FHWA'' to the end of the third sentence. Further, in the third sentence, we changed the phrase ''are encouraged to'' to ''should.''

Section 630.1010 Significant Projects

All respondents agreed with the concept of defining significant projects, and the requirement to identify projects that are expected to have significant work zone impacts; however, most State DOTs and the AASHTO opposed the requirement to classify Interstate system projects that occupy a location for more than three days with either intermittent or continuous lane closures, as significant. They cited that all Interstate system projects that occupy a location for more than three days would not necessarily have significant work zone impacts, particularly on low-volume rural Interstate sections. Several DOTs remarked that designation of significant projects purely based on the duration would not be prudent, and that the volume of traffic on that Interstate should be taken into account. They also noted that such classification is not consistent with the MUTCD. They remarked that this provision could not be effectively applied to routine maintenance activities performed by State DOT maintenance crews, and that requesting exceptions to such routine work would be unreasonably arduous.

These respondents also objected to the associated exemption clause for the same provision, commenting that it would be very cumbersome to implement. Some States also requested clarification on whether general exceptions would be granted for work categories for defined segments of Interstate projects where the work would have little impact.

The DOTs of Idaho, Montana, North Dakota, South Dakota, and Wyoming commented that the threshold for designating the reference Interstate projects as significant was too low. They suggested that low volume Interstates and rural Interstates should be excluded, and that, the duration should be extended well above the three-day duration.

The AASHTO and the State DOTs also remarked that the identification of significant projects in ''cooperation with the FHWA'' should be changed to ''in consultation with the FHWA.''

The FHWA provides the following responses and proposed action in response to the referenced concerns:

• We agree with the majority of the concerns raised by the respondents.

• We changed the significant projects clause as applicable to Interstate system projects, to require States to classify as significant projects, all Interstate system projects within the boundaries of a designated Transportation Management Area (TMA), that occupy a location for more than three days with either intermittent or continuous lane closures. We believe that this change addresses all the concerns raised by the respondents. The delineation of projects by the boundaries of a designated TMA will address the work zone impacts of lane-closures on Interstate segments in the most heavily traveled areas with recurring congestion problems. We believe that in general, areas with recurring congestion tend to be severely impacted by lane closures as compared to those without recurring congestion. We also believe that the areas that are already designated as TMAs tend to exhibit patterns of recurring congestion on their Interstates due to heavy traffic demand and limited capacity. This revision, in most cases, would also not require low-volume rural Interstate segments to be classified as significant projects.

• We revised the exemption clause provisions related to the applicable Interstate system projects to allow for exemptions to ''categories of projects.'' This will provide for blanket exemptions for specific categories of projects on Interstate segments that are not expected to have significant work zone impacts. This will eliminate the burdensome procedural aspect of seeking exemptions for Interstate projects on an individual project basis.

• We also reorganized this section to consist of paragraphs (a), (b), (c), and (d). Paragraph (a) provides the general definition for a significant project, with no changes in language from what was proposed in the SNPRM. Paragraph (b) enumerates the purpose of classifying projects as significant, and lays out the requirements for States to classify projects as significant. This language is also the same as what was proposed in the SNPRM. Paragraph (c) provides the revised definition of significant projects

as applicable to Interstate system projects. Paragraph (d) provides the revised exemption clause as applicable to significant projects on the Interstate system.

• In keeping with the overall recommendation of respondents, we changed all instances of ''Agency'' and ''State Agency'' to ''State.''

• We do not agree with the recommendation that the identification of significant projects should be done in ''consultation'' with the FHWA rather than ''cooperation with the FHWA.'' We believe that this is a cooperative process, rather than requiring just consultation. Therefore, we did not make any change to this terminology.

Section 630.1012 Project-Level Procedures

Section 630.1012(a). The North Carolina DOT observed that the language in this section is an introduction to the section, and that it should not be labeled as ''(a).'' We did not make this change because the OFR requires paragraph designations on all text in a rule.

The ITE recommended that the FHWA should encourage consideration of work zone impacts prior to project development, at the corridor and Transportation Improvement Program (TIP) and program development stage. It provided examples of decisions that would be made at the earlier stages, such as, life-cycle cost decisions, and project scheduling decisions. We appreciate ITE's input and agree with the general intent of its suggested content. We believe that the language in §§ 630.1002, Purpose and 630.1010, Significant Projects covers some of the issues to which the ITE refers. Specifically, the following two sentences from the respective sections address the ITE's concerns:

• From § 630.1002, Purpose: ''Addressing these safety and mobility issues requires considerations that start early in project development and continue through project completion.''

• From § 630.1010, Significant Projects: ''This identification of significant projects should be done as early as possible in the project delivery and development process, and in cooperation with the FHWA.''

Section 630.1012(b), Transportation Management Plan (TMP). Most respondents were supportive of the provisions in this section.

The Florida DOT requested further definition for the phrase ''less than significant work zone impacts.'' We believe that the definition for ''work zone impacts'' as provided in § 630.1004 and the clauses for identification of projects with significant work zone impacts, as stated in § 630.1010 adequately describe the phrase ''less than significant work zone impacts.'' We did not take any action in response to this comment.

The New Jersey DOT recommended that, in order to facilitate maximum flexibility to States, the term ''typically'' be introduced before the word ''consists'' in the third sentence of this section. We do not agree with the suggested edit because for significant projects, a TMP shall always consist of a TTC plan, and address Transportation Operations (TO) and Public Information (PI) components, unless an exemption has been granted for that project. We did not take any action in response to this comment.

Section 630.1012(b)(1), Temporary Traffic Control (TTC) Plan. In general, most respondents were supportive of the provisions in this section, except the provision regarding maintenance of pre-existing roadside safety features.

Most State DOTs and the AASHTO were opposed to the provision, which required the maintenance of pre-existing roadside safety features in developing and implementing the TTC plan. They recommended that the FHWA either remove the requirement or change the mandatory ''shall'' to a ''should.''

Several DOTs stated that maintenance of all pre-existing roadside safety features would be very difficult, especially, in urban areas. Other DOTs requested clarification on what ''pre-existing roadside safety features'' would entail—whether it would include items like signs, guardrail, and barriers, or it would include features like shoulders, slopes and other geometric aspects. On that note, several DOTs mentioned that maintenance of pre-existing roadside safety ''hardware'' would be more practical than maintaining pre-existing roadside safety features.

The Laborers Health and Safety Foundation of North America (LHSFNA) continued to stress the requirement for Internal Traffic Control Plans (ITCPs) for managing men and materials within the work area, so as to address worker safety issues better, and to level the playing field for contractors.

The FHWA offers the following in response to the comments and concerns raised above:

• The FHWA agrees with most of the concerns raised by the respondents.

• In the fourth sentence of paragraph (b)(1), we changed the term ''pre-existing roadside safety *features*,'' to ''pre-existing roadside safety *hardware*.'' We believe that this change will address all the concerns raised by the respondents, and eliminate ambiguity and subjectivity from the requirement.

• In response to the LHSFNA's comment regarding ITCPs, we agree that ITCPs are important for providing for worker safety inside the work area, but we still believe that this issue is outside the purview of this rulemaking effort and this subpart.

• In order to be consistent with the remaining sections of this subpart, and to eliminate ambiguity, we deleted the first sentence of this section, and replaced it with the definition for TTC plan as stated in § 630.1004. Consequently, we removed the definition for TTC plan from § 630.1004.

Section 630.1012(b)(2), Transportation Operations (TO) Component. Most respondents were supportive of the provisions in this section. The AASHTO and several DOTs suggested that ''traveler information'' be removed as a typical TO strategy because ''traveler information'' fits more logically in the PI component. The New Jersey DOT recommended that the phrase ''transportation operations and safety *requirements*'' be changed to ''transportation operations and safety *strategies*,'' so as to soften the tone of the language.

We agree with both of the above observations; therefore, we removed ''traveler information'' from the listing of typical TO strategies in the second sentence. We also changed the phrase ''transportation operations and safety *requirements*'' to ''transportation operations and safety *strategies*'' in the last sentence.

Section 630.1012(b)(3), Public Information Component. Most respondents were supportive of the provisions in this section. The AASHTO and several DOTs suggested that ''traveler information'' be included as a typical PI strategy rather than a TO strategy, because ''traveler information'' fits more logically in the PI component. The New Jersey DOT recommended that the phrase ''public information and outreach *requirements*'' be changed to ''public information and outreach *strategies*,'' so as to soften the tone of the language.

We agree with both of the above observations; therefore, we added a new sentence after the first sentence, to indicate that the PI component may include traveler information strategies. We also changed the phrase ''public information and outreach *requirements*'' to ''public information and outreach *strategies*'' in the third sentence.

Section 630.1012(b)(4), Coordinated Development of TMP. Most respondents were supportive of the provisions in this section. The AASHTO and several DOTs

recommended that the terminology, ''coordination and partnership'' in the first sentence, be changed to ''consultation,'' so that it doesn't imply active and direct participation from all the subjects. They explained that the term ''coordination'' implies that all participants have veto/negative powers which may delay project delivery as it is impossible to satisfy everybody. Further, the DOTs of Idaho, Montana, North Dakota, South Dakota, and Wyoming commented that the use of ''*i.e.*'' for the list of stakeholders implies that all those stakeholders are required for all projects. So they recommended that we change the ''*i.e.*'' to ''*e.g.*'' so that it would imply that the list provides examples of possible stakeholders, and that all of them need not be involved in all projects.

The FHWA agrees with both of the above observations and recommendations; therefore, we changed the phrase ''partnership and coordination'' to ''consultation'' in the first sentence of this section. We also changed ''*i.e.*'' to ''*e.g.*'' for the list of stakeholders.

Section 630.1012(c), Inclusion of TMPs in Plans, Specifications, and Estimates (PS&Es). Most respondents were supportive of the provisions in this section. The DOTs of Idaho, Montana, North Dakota, South Dakota, and Wyoming noted that the last sentence in this section could imply that the State shall approve any TMP that is developed by the contractor, irrespective of whether it meets the standards or not. They recommended that the sentence be revised for clarity.

The FHWA agrees with the above observation. We revised the last sentence of this section to convey that contractor developed TMPs shall be subject to the approval of the State, and that the TMPs shall not be implemented before they are approved by the State. This clarifies the language and explicitly states the notion that it is the State that is ultimately responsible for approving any contractor developed TMP.

Section 630.1012(d), Pay Items. Most respondents were supportive of the provisions in this section. However, the ATSAA and the AGC of America opposed the option in § 630.1012(d)(1) for States to use lump sum pay items for implementing the TMPs. The ATSSA believes that unit bid items provide greater specificity and are a better indicator of the direct cost of work zones. Conversely, the use of a lump sum pay item provides less comprehensive data, and may, in some cases, limit, or eliminate the contractor's ability to make a profit on certain projects due to unknown equipment or device requirements either during bidding or project implementation. It cited that unit pay items, especially for the TTC plan, would require that all the identified work zone safety and mobility strategies/equipment/devices be provided for by the contractor. This would level the playing field, and not place conscientious contractors (those who lay emphasis on work zone safety and mobility and include them in their bids) at a disadvantage.

The FHWA recognizes ATSSA's and AGC's concerns, but we believe that States have the required understanding of when to use unit pay items and when not to, and that the requirement for unit pay items on all projects is not practical for real-world application. Therefore, we did not remove the option for DOTs to use lump sum contracting.

We changed ''i.e.'' to ''e.g.'' for the list of possible performance criteria for performance specifications in § 630.1012(d)(2), to remove the implication that the list is an exhaustive list of performance criteria.

Section 630.1012(e), Responsible Persons. Most respondents were supportive of the provisions in this section. A few State DOTs remarked that the terms ''qualified person,'' ''assuring,'' and ''effectively administered,'' in § 630.1012(e) were ambiguous and lent themselves to subjective interpretation.

The FHWA agrees with the above observations. We changed the term ''qualified'' to ''trained,'' as specified in § 630.1008(d) so as to clarify the requirement for the responsible person. We also changed the phrase ''assuring that'' to ''implementing,'' and deleted the phrase, ''are effectively administered.''

Section 630.1014 Implementation

Most respondents were supportive of the provisions in this section. We did not make any changes to the language in this section.

Section 630.1016 Compliance Date

Most respondents were supportive of the provisions in this section. We did not make any changes to the language in this section.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT

Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the U.S. Department of Transportation regulatory policies and procedures.

This final rule is not anticipated to adversely affect, in a material way, any sector of the economy. In addition, these changes will not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs; nor will the changes raise any novel legal or policy issues. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this final rule on small entities and has determined that it will not have a significant economic impact on a substantial number of small entities.

This rule applies to State departments of transportation in the execution of their highway program, specifically with respect to work zone safety and mobility. The implementation of the provisions in this rule will not affect the economic viability or sustenance of small entities, as States are not included in the definition of small entity set forth in 5 U.S.C. 601. For these reasons, the RFA does not apply and the FHWA certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This final rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120.7 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation or affects the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205,

Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations.

The FHWA has determined that this final rule contains a requirement for data and information to be collected and maintained in the support of design, construction, and operational decisions that affect the safety and mobility of the traveling public related to highway and roadway work zones. This information collection requirement was submitted to and approved by the OMB, pursuant to the provisions of the PRA. In this submission, the FHWA requested the OMB to approve a single information collection clearance for all of the data and information in this final rule. The requirement has been approved, through July 31, 2007; OMB Control No. 2125–0600.

The FHWA estimates that a total of 83,200 burden hours per year would be imposed on non-Federal entities to provide the required information for the regulation requirements. Respondents to this information collection include State Transportation Departments from all 50 States, Puerto Rico, and the District of Columbia. The estimates here only include burdens on the respondents to provide information that is not usually and customarily collected.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that this action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. This rulemaking primarily applies to urbanized metropolitan areas and National Highway System (NHS) roadways that are under the jurisdiction of State transportation departments. The purpose of this final rule is to mitigate the safety and mobility impacts of highway construction and maintenance projects on the transportation system, and would not impose any direct compliance requirements on Indian tribal governments and will not have any economic or other impacts on the viability of Indian tribes. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this action under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use. We have determined that this is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we believe that the implementation of the final rule by State departments of transportation will reduce the amount of congested travel on our highways, thereby reducing the fuel consumption associated with congested travel. Therefore, the FHWA certifies that a Statement of Energy Effects under Executive Order 13211 is not required.

National Environmental Policy Act

The FHWA has analyzed this action for the purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347 *et seq.*) and has determined that this action will not have any effect on the quality of the environment. Further, we believe that the implementation of the final rule by State departments of transportation will reduce the amount of congested travel on our highways. This reduction in congested travel will reduce automobile emissions thereby contributing to a cleaner environment.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this final rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA does not anticipate that this action will affect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action will not cause an environmental risk to health or safety that may disproportionately affect children.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 630

Government contracts, Grant programs—transportation, Highway safety, Highways and roads, Incorporation by reference, Project agreement, Traffic regulations.

Issued on: September 1, 2004.

Mary E. Peters,

Federal Highway Administrator.

■ In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, Part 630, as follows:

PART 630—PRECONSTRUCTION PROCEDURES

■ 1. The authority citation for part 630 continues to read as follows:

Authority: 23 U.S.C. 106, 109, 115, 315, 320, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

■ 2. Revise subpart J of part 630 to read as follows:

Subpart J—Work Zone Safety and Mobility

Sec.

630.1002 Purpose.
630.1004 Definitions and explanation of terms.
630.1006 Workzone safety and mobility policy.
630.1008 State-level processes and procedures.
630.1010 Significant projects.
630.1012 Project-level procedures.
630.1014 Implementation.
630.1016 Compliance date.

§ 630.1002 Purpose.

Work zones directly impact the safety and mobility of road users and highway workers. These safety and mobility impacts are exacerbated by an aging highway infrastructure and growing congestion in many locations. Addressing these safety and mobility issues requires considerations that start early in project development and continue through project completion. Part 6 of the Manual On Uniform Traffic

Control Devices (MUTCD)[1] sets forth basic principles and prescribes standards for the design, application, installation, and maintenance of traffic control devices for highway and street construction, maintenance operation, and utility work. In addition to the provisions in the MUTCD, there are other actions that could be taken to further help mitigate the safety and mobility impacts of work zones. This subpart establishes requirements and provides guidance for systematically addressing the safety and mobility impacts of work zones, and developing strategies to help manage these impacts on all Federal-aid highway projects.

§ 630.1004 Definitions and explanation of terms.

As used in this subpart:

Highway workers include, but are not limited to, personnel of the contractor, subcontractor, DOT, utilities, and law enforcement, performing work within the right-of-way of a transportation facility.

Mobility is the ability to move from place to place and is significantly dependent on the availability of transportation facilities and on system operating conditions. With specific reference to work zones, mobility pertains to moving road users efficiently through or around a work zone area with a minimum delay compared to baseline travel when no work zone is present, while not compromising the safety of highway workers or road users. The commonly used performance measures for the assessment of mobility include delay, speed, travel time and queue lengths.

Safety is a representation of the level of exposure to potential hazards for users of transportation facilities and highway workers. With specific reference to work zones, safety refers to minimizing potential hazards to road users in the vicinity of a work zone and highway workers at the work zone interface with traffic. The commonly used measures for highway safety are the number of crashes or the consequences of crashes (fatalities and injuries) at a given location or along a section of highway during a period of time. Highway worker safety in work zones refers to the safety of workers at the work zone interface with traffic and the impacts of the work zone design on worker safety. The number of worker fatalities and injuries at a given location or along a section of highway, during a period of time are commonly used measures for highway worker safety.

Work zone[2] is an area of a highway with construction, maintenance, or utility work activities. A work zone is typically marked by signs, channelizing devices, barriers, pavement markings, and/or work vehicles. It extends from the first warning sign or high-intensity rotating, flashing, oscillating, or strobe lights on a vehicle to the END ROAD WORK sign or the last temporary traffic control (TTC) device.

Work zone crash[3] means a traffic crash in which the first harmful event occurs within the boundaries of a work zone or on an approach to or exit from a work zone, resulting from an activity, behavior, or control related to the movement of the traffic units through the work zone. This includes crashes occurring on approach to, exiting from or adjacent to work zones that are related to the work zone.

Work zone impacts refer to work zone-induced deviations from the normal range of transportation system safety and mobility. The extent of the work zone impacts may vary based on factors such as, road classification, area type (urban, suburban, and rural), traffic and travel characteristics, type of work being performed, time of day/night, and complexity of the project. These impacts may extend beyond the physical location of the work zone itself, and may occur on the roadway on which the work is being performed, as well as other highway corridors, other modes of transportation, and/or the regional transportation network.

§ 630.1006 Work zone safety and mobility policy.

Each State shall implement a policy for the systematic consideration and management of work zone impacts on all Federal-aid highway projects. This policy shall address work zone impacts throughout the various stages of the project development and implementation process. This policy may take the form of processes, procedures, and/or guidance, and may vary based on the characteristics and expected work zone impacts of individual projects or classes of projects. The States should institute this policy using a multi-disciplinary team and in partnership with the FHWA. The States are encouraged to implement this policy for non-Federal-aid projects as well.

§ 630.1008 State-level processes and procedures.

(a) This section consists of State-level processes and procedures for States to implement and sustain their respective work zone safety and mobility policies. State-level processes and procedures, data and information resources, training, and periodic evaluation enable a systematic approach for addressing and managing the safety and mobility impacts of work zones.

(b) *Work zone assessment and management procedures.* States should develop and implement systematic procedures to assess work zone impacts in project development, and to manage safety and mobility during project implementation. The scope of these procedures shall be based on the project characteristics.

(c) *Work zone data.* States shall use field observations, available work zone crash data, and operational information to manage work zone impacts for specific projects during implementation. States shall continually pursue improvement of work zone safety and mobility by analyzing work zone crash and operational data from multiple projects to improve State processes and procedures. States should maintain elements of the data and information resources that are necessary to support these activities.

(d) Training. States shall require that personnel involved in the development, design, implementation, operation, inspection, and enforcement of work zone related transportation management and traffic control be trained, appropriate to the job decisions each individual is required to make. States shall require periodic training updates that reflect changing industry practices and State processes and procedures.

(e) Process review. In order to assess the effectiveness of work zone safety and mobility procedures, the States shall perform a process review at least every two years. This review may include the evaluation of work zone data at the State level, and/or review of randomly selected projects throughout

[1] The MUTCD is approved by the FHWA and recognized as the national standard for traffic control on all public roads. It is incorporated by reference into the Code of Federal Regulations at 23 CFR part 655. It is available on the FHWA's Web site at *http://mutcd.fhwa.dot.gov* and is available for inspection and copying at the FHWA Washington, DC Headquarters and all FHWA Division Offices as prescribed at 49 CFR part 7.

[2] MUTCD, Part 6, ''Temporary Traffic Control,'' Section 6C.02, ''Temporary Traffic Control Zones.''

[3] ''Model Minimum Uniform Crash Criteria Guideline'' (MMUCC), 2d Ed. (Electronic), 2003, produced by National Center for Statistics and Analysis, National Highway Traffic Safety Administration (NHTSA). Telephone 1–(800)–934–8517. Available at the URL: *http://www-nrd.nhtsa.dot.gov*. The NHTSA, the FHWA, the Federal Motor Carrier Safety Administration (FMCSA), and the Governors Highway Safety Association (GHSA) sponsored the development of the MMUCC Guideline which recommends voluntary implementation of the 111 MMUCC data elements and serves as a reporting threshold that includes all persons (injured and uninjured) in crashes statewide involving death, personal injury, or property damage of $1,000 or more. The Guideline is a tool to strengthen existing State crash data systems.

their jurisdictions. Appropriate personnel who represent the project development stages and the different offices within the State, and the FHWA should participate in this review. Other non-State stakeholders may also be included in this review, as appropriate. The results of the review are intended to lead to improvements in work zone processes and procedures, data and information resources, and training programs so as to enhance efforts to address safety and mobility on current and future projects.

§ 630.1010 Significant projects.

(a) A significant project is one that, alone or in combination with other concurrent projects nearby is anticipated to cause sustained work zone impacts (as defined in § 630.1004) that are greater than what is considered tolerable based on State policy and/or engineering judgment.

(b) The applicability of the provisions in §§ 630.1012(b)(2) and 630.1012(b)(3) is dependent upon whether a project is determined to be significant. The State shall identify upcoming projects that are expected to be significant. This identification of significant projects should be done as early as possible in the project delivery and development process, and in cooperation with the FHWA. The State's work zone policy provisions, the project's characteristics, and the magnitude and extent of the anticipated work zone impacts should be considered when determining if a project is significant or not.

(c) All Interstate system projects within the boundaries of a designated Transportation Management Area (TMA) that occupy a location for more than three days with either intermittent or continuous lane closures shall be considered as significant projects.

(d) For an Interstate system project or categories of Interstate system projects that are classified as significant through the application of the provisions in § 630.1010(c), but in the judgment of the State they do not cause sustained work zone impacts, the State may request from the FHWA, an exception to §§ 630.1012(b)(2) and 630.1012(b)(3). Exceptions to these provisions may be granted by the FHWA based on the State's ability to show that the specific Interstate system project or categories of Interstate system projects do not have sustained work zone impacts.

§ 630.1012 Project-level procedures.

(a) This section provides guidance and establishes procedures for States to manage the work zone impacts of individual projects.

(b) *Transportation Management Plan (TMP).* A TMP consists of strategies to manage the work zone impacts of a project. Its scope, content, and degree of detail may vary based upon the State's work zone policy, and the State's understanding of the expected work zone impacts of the project. For significant projects (as defined in § 630.1010), the State shall develop a TMP that consists of a Temporary Traffic Control (TTC) plan and addresses both Transportation Operations (TO) and Public Information (PI) components. For individual projects or classes of projects that the State determines to have less than significant work zone impacts, the TMP may consist only of a TTC plan. States are encouraged to consider TO and PI issues for all projects.

(1) A TTC plan describes TTC measures to be used for facilitating road users through a work zone or an incident area. The TTC plan plays a vital role in providing continuity of reasonably safe and efficient road user flow and highway worker safety when a work zone, incident, or other event temporarily disrupts normal road user flow. The TTC plan shall be consistent with the provisions under Part 6 of the MUTCD and with the work zone hardware recommendations in Chapter 9 of the American Association of State Highway and Transportation Officials (AASHTO) Roadside Design Guide. Chapter 9 of the AASHTO Roadside Design Guide: ''Traffic Barriers, Traffic Control Devices, and Other Safety Features for Work Zones'' 2002, is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the National Archives and Record Administration (NARA). For information on the availability of this material at NARA call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* The entire document is available for purchase from the American Association of State Highway and Transportation Officials (AASHTO), 444 North Capitol Street, NW., Suite 249, Washington, DC 20001 or at the URL: *http://www.aashto.org/bookstore.* It is available for inspection from the FHWA Washington Headquarters and all Division Offices as listed in 49 CFR Part 7. In developing and implementing the TTC plan, pre-existing roadside safety hardware shall be maintained at an equivalent or better level than existed prior to project implementation. The scope of the TTC plan is determined by the project characteristics, and the traffic safety and control requirements identified by the State for that project. The TTC plan shall either be a reference to specific TTC elements in the MUTCD, approved standard TTC plans, State transportation department TTC manual, or be designed specifically for the project.

(2) The TO component of the TMP shall include the identification of strategies that will be used to mitigate impacts of the work zone on the operation and management of the transportation system within the work zone impact area. Typical TO strategies may include, but are not limited to, demand management, corridor/network management, safety management and enforcement, and work zone traffic management. The scope of the TO component should be determined by the project characteristics, and the transportation operations and safety strategies identified by the State.

(3) The PI component of the TMP shall include communications strategies that seek to inform affected road users, the general public, area residences and businesses, and appropriate public entities about the project, the expected work zone impacts, and the changing conditions on the project. This may include traveler information strategies. The scope of the PI component should be determined by the project characteristics and the public information and outreach strategies identified by the State. Public information should be provided through methods best suited for the project, and may include, but not be limited to, information on the project characteristics, expected impacts, closure details, and commuter alternatives.

(4) States should develop and implement the TMP in sustained consultation with stakeholders (*e.g.*, other transportation agencies, railroad agencies/operators, transit providers, freight movers, utility suppliers, police, fire, emergency medical services, schools, business communities, and regional transportation management centers).

(c) The Plans, Specifications, and Estimates (PS&Es) shall include either a TMP or provisions for contractors to develop a TMP at the most appropriate project phase as applicable to the State's chosen contracting methodology for the project. A contractor developed TMP shall be subject to the approval of the State, and shall not be implemented before it is approved by the State.

(d) The PS&Es shall include appropriate pay item provisions for implementing the TMP, either through method or performance based specifications.

(1) For method-based specifications individual pay items, lump sum payment, or a combination thereof may be used.

(2) For performance based specifications, applicable performance criteria and standards may be used (*e.g.*, safety performance criteria such as number of crashes within the work zone; mobility performance criteria such as travel time through the work zone, delay, queue length, traffic volume; incident response and clearance criteria; work duration criteria).

(e) Responsible persons. The State and the contractor shall each designate a trained person, as specified in § 630.1008(d), at the project level who has the primary responsibility and sufficient authority for implementing the TMP and other safety and mobility aspects of the project.

§ 630.1014 Implementation.

Each State shall work in partnership with the FHWA in the implementation of its policies and procedures to improve work zone safety and mobility. At a minimum, this shall involve an FHWA review of conformance of the State's policies and procedures with this regulation and reassessment of the State's implementation of its procedures at appropriate intervals. Each State is encouraged to address implementation of this regulation in its stewardship agreement with the FHWA.

§ 630.1016 Compliance Date.

States shall comply with all the provisions of this rule no later than October 12, 2007. For projects that are in the later stages of development at or about the compliance date, and if it is determined that the delivery of those projects would be significantly impacted as a result of this rule's provisions, States may request variances for those projects from the FHWA, on a project-by-project basis.

[FR Doc. 04–20340 Filed 9–8–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–04–155]

RIN 1625–AA08

Special Local Regulations for Marine Events; Hampton River, Hampton, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.508 during the Hampton Bay Days Festival to be held September 10–12, 2004, on the waters of the Hampton River at Hampton, Virginia. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the festival events. The effect will be to restrict general navigation in the regulated area for the safety of event participants, spectators and vessels transiting the event area.

DATES: 33 CFR 100.508 will be enforced from 12 p.m. e.d.t. on September 10, 2004 through 6 p.m. e.d.t. on September 12, 2004.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket CGD05–04–155 and are available for inspection or copying at Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, VA 23703–2199.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Michael Bowling, at (757) 483–8521.

SUPPLEMENTARY INFORMATION: Hampton Bay Days, Inc. will sponsor the Hampton Bay Days Festival on September 10–12, 2004 on the Hampton River, Hampton, Virginia. The festival will include water ski demonstrations, personal watercraft and wake board competitions, paddle boat races, classic boat displays, fireworks displays and a helicopter rescue demonstration. A fleet of spectator vessels is expected to gather nearby to view the festival events. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.508 will be enforced for the duration of the festival activities. Under provisions of 33 CFR 100.508, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may enter and anchor in the special spectator anchorage areas if they proceed at slow, no wake speed. The Coast Guard Patrol Commander will allow vessels to transit the regulated area between festival events. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: August 19, 2004.

Ben R. Thomason, III,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 04–20454 Filed 9–8–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–114]

Drawbridge Operation Regulations: Fore River, ME

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Casco Bay Bridge, mile 1.5, across the Fore River between Portland and South Portland, Maine. This temporary deviation allows the bridge owner to require a four-hour advance notice for bridge openings from September 7, 2004 through November 5, 2004. Additionally, this deviation also allows the bridge to remain in the closed position, Monday through Friday, 9 p.m. to 5 a.m. from September 13, 2004 through October 1, 2004, and again, Monday through Friday, 6 a.m. to 6 p.m. from October 4, 2004 through October 22, 2004. This temporary deviation is necessary to facilitate structural modifications at the bridge.

DATES: This deviation is effective from September 7, 2004 through November 5, 2004.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The bridge owner, Maine Department of Transportation, requested a temporary deviation from the drawbridge operating regulations to facilitate structural modifications designed to improve reliability of the operating system at the bridge. The Coast Guard coordinated these requested closures with the mariners that normally use this waterway in order to minimize any disruption to the marine transit system.

Under this temporary deviation a four-hour advance notice for bridge openings shall be required from September 7, 2004 through November 5,