

**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:** Supplemental notice of proposed rulemaking (SNPRM); request for comments.

**SUMMARY:** The FHWA proposed in an earlier notice of proposed rulemaking (NPRM) to amend its regulation that governs traffic safety and mobility in highway and street work zones. In response to this NPRM, the FHWA received several comments that raised concerns about the flexibility and scalability in the implementation of the provisions of the proposed rule. The FHWA believes that these comments raise valid points, and has decided to issue this supplemental notice to address the comments received in response to the NPRM.

**DATES:** Comments must be received by June 14, 2004.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001, or submit electronically at <http://dmses.dot.gov/submit> or fax comments to (202) 493-2251. Alternatively, comments may be submitted via the Federal eRulemaking Portal at <http://www.regulations.gov>. All comments must include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477-78) or you may visit <http://dms.dot.gov>.

**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 and Filing**

You may submit or retrieve comments online through the Document Management System (DMS) at: <http://dmses.dot.gov/submit>. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code for Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). 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 the web site. An electronic copy of this document may also 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 also reach the Office of the Federal Register's Home page at: <http://www.archives.gov> and the Government Printing Office's Web page at: <http://www.access.gpo.gov/nara>.

**Background**

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 (NHWSZSP) 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 amending its work zone safety regulation, the FHWA published in the **Federal Register** 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. We received several comments in response to the ANPRM.

As a result of the comments received on the ANPRM, the FHWA published a notice of proposed rulemaking (NPRM) on May 7, 2003, at 68 FR 24384 to facilitate consideration of the broader safety and mobility impacts of work zones in a more coordinated and comprehensive manner.

The primary message that the NPRM conveyed was that the trends of increased road construction, growing traffic, increased crashes, and public frustration with work zones call for a more broad-based understanding, examination, and management of the safety and mobility impacts of work zones. The provisions 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, starting early in project development and continuing through implementation. These provisions would help State Departments of Transportation (DOTs) meet current and future work zone safety and mobility challenges, and serve the needs of the American people.

The provisions proposed in the NPRM were intended to facilitate consideration and management of the broader safety and mobility impacts of work zones in a coordinated and comprehensive manner across project development stages. While most of the respondents agreed with the intent and the concepts proposed in the NPRM, they identified the need for flexibility and scalability in the implementation of the provisions of the proposed rule. They noted that some of the terms used in the proposed rule were ambiguous and lent themselves to subjective interpretation, and that there was a noticeable negative tone in the proposal. Respondents also commented that the documentation requirements in the proposal would impose time and resource burdens on State DOTs. The FHWA is issuing this SNPRM to address these concerns raised by the respondents.

Work zone safety and mobility issues, and the need to update 23 CFR 630, Subpart J, were discussed in the NPRM around the following three key themes:

**(1) Work Zone Safety and Mobility Issues and Trends**

- **More Work Zones.** Work zones are a necessary part of meeting the need to maintain and upgrade our aging highway infrastructure. With most of our highways at or near the end of their

service life, system preservation (resurfacing, restoration, rehabilitation, reconstruction) is a key responsibility of transportation agencies throughout the nation and this implies more work zones. Work zones cause safety and mobility impacts on the traveling public, businesses, highway workers, and transportation agencies, resulting in an overall loss in productivity and growing frustration.

- *Growing Traffic Volumes and Congestion.* At the same time, in many locations, traffic volumes continue to grow and create more congestion. As vehicle travel continues to increase significantly faster than miles of roadway, we have a growing congestion problem that is exacerbated by work zones.

- *Work Zone Safety Continues to be a Concern.* Work zone crashes continue to grow, resulting in fatalities and injuries to motorists and highway workers.

- *More Work is being Done Under Traffic and Contractors are under Added Pressure.* Current operating environments require work to be done near moving traffic, placing additional pressure on contractors to expedite construction and minimize disruption by reducing their work hours, compressing their schedules and shifts, and increasing the amount of night work. We need to ensure safety while preserving mobility and also need to be aware of the quality of work implications of such operating circumstances.

- *Customers are Dissatisfied with Work Zones.* In addition to increased road construction, growing traffic, and increases in crashes, our customers have indicated that work zones are one of the major reasons for their dissatisfaction with highway travel. Public frustration with work zones indicates that more effort is required to meet the needs and expectations of the American public.

#### *(2) Need for More Comprehensive Assessment and Management of Work Zone Safety and Mobility Impacts*

- The above stated work zone safety and mobility issues and trends indicate that we need to broaden our perspective on work zones, and be more comprehensive in our understanding, assessment, and management of work zone safety and mobility impacts.

- Over the years, highway professionals have devised and implemented several strategies and innovative practices for minimizing the disruption caused by work zones, while ensuring successful project delivery. However, the current and expected level of investment activity in highway

infrastructure (a significant portion of which is for maintenance and reconstruction of existing roadways) implies that increasingly, work will be done near traffic. Therefore, it is important that we broaden our understanding of work zone impacts and develop comprehensive mitigation measures that address both work zone safety and mobility.

#### *(3) Current Regulation is Narrow and Outdated*

- The current regulation has a broadly stated purpose of providing guidance and establishing procedures to ensure that adequate consideration is given to motorists, pedestrians, and construction workers on all Federal-aid construction projects. However, the content of the current regulation is focused primarily on the development of traffic control plans (TCPs), the operation of work zones on two-lane-two-way roadways, and other provisions that address project responsibility, pay items, training, and process review and evaluation.

- The provisions in the current regulation primarily address the issue of traffic control through the work zone itself. At the time this regulation was written (*i.e.*, at the beginning stages of rehabilitation and reconstruction activity), work zone issues were just emerging. TCPs for work zones are still essential; however, today's environment includes new challenges due to growing congestion, increasing reconstruction and public frustration with work zones. The impacts of work zones may extend to an area much bigger than the actual work area, and may be felt on the corridor on which the work is being performed, adjacent and/or alternate routes, alternate modes, and the immediate transportation network. In order to be able to address these new challenges, we need to clearly understand the broader safety and mobility impacts of work zones, and appropriately adopt additional strategies for sustained transportation management and operations, performance measurement and assessment, and public information and outreach.

The FHWA published an NPRM on May 7, 2003, that proposed to facilitate assessment of the broader safety and mobility impacts of work zones in a coordinated and comprehensive manner across project development stages, and development of broader transportation management strategies to minimize these work zone impacts.

The NPRM proposed several key provisions, which were intended to bring about a change in how highway

projects are planned, designed and built, so as to account for the safety and mobility of the traveling public and the safety of highway workers. These proposals included the following:

- (1) Change the title of 23 CFR 630, Subpart J to "Work Zone Safety and Mobility."

- (2) Change the structure of the regulation to include separate "Policy Level" and "Project Level" provisions, with a clear connection between the two levels.

- (3) Allow State transportation departments (hereinafter referred to as "States") to develop and adopt work zone safety and mobility policies. These policies would support the systematic consideration of the safety and mobility impacts of work zones during project development; and address the safety and mobility needs of all road users, workers, and other affected parties on Federal-aid highway projects.

- (4) Retain the current "Training" requirement, and expand it to include transportation management in addition to traffic control related training.

- (5) Modify the current "Process Review and Evaluation" requirements to provide flexibility to States with regard to the conduct of the reviews, and the frequency and the type of reviews.

- (6) Allow States to analyze work zone crash data to correct deficiencies on projects, and to continually improve work zone practices and procedures. This would also encourage States to collect and analyze work zone mobility data.

- (7) Allow States to conduct work zone impacts analysis during project development to better understand individual project characteristics and the associated work zone impacts. This would facilitate better decisionmaking on alternative project options and design strategies, and the development of appropriate work zone impact mitigation measures.

- (8) Allow States to develop Transportation Management Plans (TMPs) for projects as determined by the State's policy and the results of the work zone impacts analysis. A TMP would include requirements for a TCP, and if necessary for the project, a Transportation Operations Plan (TOP) and a Public Information and Outreach Plan (PIOP).

- (9) Include provisions that would allow States to be more creative and performance oriented in their procurement processes by allowing flexibility to choose either method-based or performance-based specifications for their contracts. In the case of method-based specifications,

this would require unit pay items for implementing the TCP.

#### Why Are We Issuing This SNPRM?

We received a substantial number of comments (62 total respondents) in response to the NPRM from both the public sector and private industry. 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 four major issues that the respondents raised are as follows:

(1) The need for State flexibility and scalability in the implementation of the provisions of the proposed rule.

(2) Some of the terms used in the proposed rule are ambiguous and lend themselves to subjective interpretation.

(3) The negative tone in the proposal with respect to the current state of work zone safety and mobility in general.

(4) The documentation requirements in the proposal would impose additional time and resource burdens on State Departments of Transportation (DOTs).

The issues raised by the respondents made it clear that the language as proposed in the NPRM was inadequate for real-world application. Therefore, in this SNPRM we are proposing to revise the regulatory language to reflect the following three key changes.:

(1) We propose to remove and clarify ambiguous terminology, and make the provisions more positive sounding.

(2) We propose to reorganize the content and soften and clarify the language, and provide clear explanation of the intent of the provisions.

(3) We propose to provide for appropriate room and flexibility to States to address the most critical issues of flexibility, scalability, and documentation needs.

We believe that we have addressed all comments received in response to the NPRM that are within the scope of this rulemaking, and the need to broaden the current thinking with respect to preserving the safety and mobility of our transportation system when performing work on our highways.

#### Summary Discussion of Comments Received on the NPRM

The following discussion provides an overview of the comments received in response to the NPRM. While this section provides an overview, the next section provides a detailed analysis and discussion of the comments on specific sections of the NPRM, along with and FHWA's proposed resolution.

#### Profile of Respondents

We received a total of 62 responses to the docket. About 61 percent of the respondents were from the public sector or represented public sector interests, 26 percent of the respondents were from the private sector or catered to private sector interests, 10 percent of the respondents represented both public and private sector interests, while the remaining 3 percent did not indicate their affiliation.

The break up of the agency types of the different respondents present the following statistics: About 59 percent of the respondents belonged to DOTs (either State or local); 3 percent of the respondents were contractors; 6 percent of the respondents were either private individuals or consultants; 6 percent of the respondents represented private sector equipment/technology providers; 23 percent of the respondents represented trade associations and special interest groups, including the American Traffic Safety Services Association (ATSSA), the American Road Transportation Builders Association (ARTBA) and the Associated General Contractors (AGC) of America; and 3 percent of the respondents did not indicate their agency affiliations.

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

The American Association of State Highway and Transportation Officials (AASHTO) provided a consolidated response to the NPRM on behalf of its member States. Several State DOTs provided their responses through AASHTO's response, while others submitted their comments individually. In general, AASHTO indicated that it fully supports the goals of increased safety and mobility throughout our Nation's work zones, but that some of the mandatory provisions in the proposed NPRM language would impose additional time, resource and financial burdens on the States and restrict their ability to perform their responsibilities effectively within the available constraints.

#### Overall Summary of Comments

This discussion provides a summary of the comments on the NPRM, and provides an overview of what the FHWA proposes to do in response.

*Overall Position of Respondents.* About 32 percent of the respondents generally supported the provisions proposed in the NPRM, about 60 percent of the respondents agreed with

the intent and the concepts but did not agree with many of the mandatory provisions, about 2 percent of the respondents were neutral, and the position of the remaining 6 percent of the respondents was unclear.

Of the 32 percent respondents who were supportive, 3 percent belonged to DOTs, 2 percent were contractors, 3 percent were private individuals and consultants, 6 percent were equipment/technology providers, and 18 percent were from trade associations/special interest groups. These respondents were not necessarily supportive of all the provisions in the individual sections, but rather their overall position on the NPRM was supportive. In fact, many of these respondents provided suggestions on modifications and revised language for specific provisions as they deemed appropriate.

For example, the Maryland State Highway Administration (MD-SHA) concurred with most provisions as proposed in the NPRM, and with the increased emphasis on consideration of work zone safety and mobility during all phases of project development, while providing specific recommendations for changing the language in some of the sections. For instance, they suggested that we include examples of "other affected parties" in § 630.1002, "Purpose."

Of the 60 percent of respondents who agreed with the intent and concepts proposed but did not agree with the mandatory provisions, 55 percent belonged to DOTs, 2 percent were contractors, 2 percent were from trade associations/special interest groups, and the remaining 1 percent did not indicate their agency affiliation. These respondents expressed support for the intent and general concepts proposed, but also indicated that blanket mandatory requirements should not be imposed to achieve the desired results. For example, many DOTs and the AASHTO commented that the provisions proposed under § 630.1012(b)(1), "Work Zone Impacts Analysis" should be provided as guidance as to what a work zone impacts analysis may entail, rather than requiring all the activities to be performed for all projects.

The overall position of the respondents clearly indicates that the majority of the respondents are supportive of the intent and concepts proposed in the NPRM, but they do not support mandatory requirements. Therefore, in this SNPRM we propose to alter the provisions in order to remove certain mandatory requirements that are overly restrictive. For example, in the SNPRM regulatory language, we are

proposing to remove the mandatory requirement for conducting a work zone impacts analysis which was proposed in § 630.1012(b)(1) of the NPRM. We are instead proposing to embed the work zone impacts analysis in the proposed requirement for a TMP. The regulatory language that was proposed for the work zone impacts analysis in the NPRM is now proposed to be provided as guidance for DOTs as to how work zone impacts analysis may be conducted for individual projects.

The major issues raised by the respondents are discussed in the following paragraphs.

*Need for State flexibility and scalability in the implementation of the provisions of the proposed rule.* In general, many of the respondents indicated that the provisions of the proposed rule need to be flexible enough for States to be able to apply them appropriately to the different types of projects located in a wide range of areas. Such flexibility would eliminate additional efforts, resources, and time that may not always be required for smaller projects.

For example, the State DOTs of North Dakota, South Dakota, Nebraska, Montana and Idaho commented that the rule needs to differentiate between provisions for “metropolitan” and “rural” areas. They cited that the costs and efforts involved in implementing some of the mobility related provisions will be too prohibitive to justify any benefits in rural areas. Similarly, several States also indicated that the rule needs to distinguish between provisions for “congested” and “non-congested” areas. Further, several respondents indicated that short-term and maintenance/utility type work zones are not very clearly addressed in the NPRM, such as, providing waivers for maintenance/short-term work zones from the provisions in § 630.1012(b)(1), “Work Zone Impacts Analysis,” and § 630.1012(b)(2), “Transportation Management Plan (TMP).”

The FHWA understands the need for such flexibility, which is why the proposed provisions in the NPRM were written in general terms which would allow States to customize the provisions according to their unique operating environments and individual project needs. For example, in § 630.1012(b)(1), “Work Zone Impacts Analysis,” of the NPRM, the language states that the scope and level of detail of the impacts analysis will vary based on the States’ policies, and their understanding of the anticipated severity of work zone impacts due to the project. It also provides that if the State determines that a project is expected to have

minimal sustained work zone impacts, they may exempt the project from the impacts analysis. However, the language when put in context with the remaining provisions in the section did not clearly indicate that States may exempt specific types of projects from the impacts analysis by providing policy level waivers for those projects. The FHWA proposes to remove the mandatory need for an impacts analysis, which is embedded indirectly in the TMP section of this proposal. We have included such flexibility (where appropriate) in all other sections of this proposal, which are discussed in detail in the following section.

*Some of the terms used in the proposed rule are ambiguous and lend themselves to subjective interpretation.* There was an overwhelming observation by many respondents that some of the terms used in the proposed rule are very ambiguous and that they lend themselves to subjective interpretation. The AASHTO and several DOTs further added that these terms, when used in the context of the proposed provisions, leave the States open to potential liability. Some of the ambiguous terminology includes, “other affected parties,” which is cited in §§ 630.1002(a), 630.1006, and 630.1008 of the NPRM; the terms “assure” and “ensure,” which are cited in §§ 630.1004, 630.1008, and 630.1012(b)(2)(iii)(A); the term “adequate,” which is cited in §§ 630.1002(a), 630.1012(b)(2)(iii)(b); and the term “workers,” which is cited in §§ 630.1002(a) and 630.1006. Further, several respondents also indicated that it is impossible to always consider “all road users” in conducting the impacts analysis and developing TMPs. Several respondents also commented on the intent of the term “encourage,” which is used many times in the proposed rule.

The FHWA agrees with the above observations, and we have either eliminated or clarified these and other ambiguous terms. The details of these revisions are provided in the Discussion of Comments section.

*There is a noticeable negative tone in the proposed regulatory language, with respect to the current state of work zone safety and mobility in general.* Several respondents, especially DOTs, feel that the language proposed in the NPRM conveys a “negative tone” about the current state of work zone safety and mobility and seems to imply that DOTs are not taking enough efforts to address these issues. Therefore, they recommend that we remove the “negative tone” from the document.

The FHWA would like to clarify our position because we do not mean to

imply that the efforts of State DOTs are inadequate, but rather, that the provisions in the current regulation are inadequate to meet current and future work zone safety and mobility issues. We are of the opinion that we need to act now and correct the regulations so that we can meet our responsibility of providing to the American public a safe and efficient transportation system. We have made an attempt to remove any phraseology that conveys a “negative tone” in this supplemental notice.

For example, in § 630.1004, “References” of the NPRM, there is language which implies that the Manual On Uniform Traffic Control Devices (MUTCD)<sup>1</sup> does not address all the actions that should be taken to mitigate safety and mobility impacts of work zones. This provides a connotation that the MUTCD is inadequate or incomplete in its standards and guidance. In response, we propose to remove that section, and relocate the language and make it more positive sounding. Throughout this proposal, we have made several such changes which are discussed in detail in the Discussion of Comments on individual sections of the NPRM.

*The documentation requirements in the proposal would impose additional time, resource, and financial burdens on States.* Several respondents, primarily State DOTs and the AASHTO commented that additional documentation requirements for work zone planning, assessment and implementation activities would place excessive time, resource, and financial burdens on the States, and may divert money and effort from the actual implementation of projects.

For example, the Florida Department of Transportation (FDOT) commented that the FHWA should partner with individual States in the review of the State’s work zone practices and offer suggestions for improvements rather than create more plans, documents, and data, which may require the creation and maintenance of databases and files.

The FHWA agrees. Our intent was for States to document their decisionmaking steps and rationale during project development, so that they may use that information to ensure smooth and effective project delivery, and as valuable input for planning,

<sup>1</sup> 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.

designing and implementing future projects of the same kind. Such formalized documentation and recordkeeping may actually serve as valuable lessons learned that will expedite decisionmaking and delivery on future projects. Nevertheless, we understand that such documentation may not always be practical for all situations and projects, and therefore, we have made changes to the provisions being proposed in this supplemental notice eliminating the requirement for formalized documentation and recordkeeping. Referring back to the impacts analysis example, we have eliminated the mandatory requirement for conducting a work zone impacts analysis for all projects, as proposed in the NPRM at § 630.1012(b)(1), "Work Zone Impacts Analysis."

*Need for additional FHWA clarification, guidance, training, and education in the implementation of the proposed rule.* Several respondents, both from the public and private sectors, commented that the FHWA would have to provide additional clarification on the intent and application of some of the proposed provisions. Further, they also cited that it would benefit practitioners greatly if the FHWA were to provide training and educate practitioners on the many new proposed concepts and requirements in the new rule.

Specifically, the AASHTO noted that the lack of clarity in some of the provisions increased the potential for inconsistent application of the proposed rule by the FHWA Division Offices from State to State.

Several respondents cited the need for FHWA guidance on project classification (small, medium, and large) as applicable to work zone impacts—either in separate guidance documents or in the regulation itself. Subsequently, respondents indicated that the FHWA should develop performance requirements for projects and work zones of different types.

Respondents also indicated that the FHWA should provide additional guidance as to what "work zone impacts analysis" would entail, and that a "pilot" program or project should be developed to test these rules.

The contracting community raised several concerns about the application of "performance specifications," because the use of performance specifications is in a very nascent stage and that currently available technical information and guidance on this topic is very limited.

In specific response to the lack of clarity in some of the provisions that were proposed in the NPRM, we have clarified the language, and have

attempted to provide concise explanations for the modified language that we are proposing in this notice. Although, we are limited by the need for brevity and directness in the rule language. We have provided clear explanations on the implications of the proposed provisions in the preamble. These explanations may be found in the Discussion of comments section which discusses specific comments and the FHWA's proposed resolution on the different sections.

*The provisions proposed in the NPRM do not address safety.* Several respondents, primarily from the private sector, commented that even though the purpose of the new rule is to address both safety and mobility, the provisions do not seem to emphasize the importance of safety. Most private sector respondents including, the AGC, the ARTBA, and the ATSSA, and some contractors and consultants noted that safety should not be compromised for motorist convenience and mobility. Contractors and the private sector also see "higher speeds" as a natural outcome of improvement in mobility, thereby giving them the impression that safety will eventually be compromised. They did not provide any specific recommendations for modification, but generally feel that there is a strong overtone of mobility in the proposal.

In response to this concern, we would like to assert that maintaining safety is the primary mission of the FHWA, and saving lives and reducing crashes are some of our critical objectives. The provisions proposed in the NPRM were intended to re-emphasize the importance of both traffic and worker safety and, at the same time, convey the notion that preservation of mobility, and construction efficiency and quality are vital to ensuring that we meet the needs of the traveling public during highway construction projects, and provide for a safe and efficient transportation system.

We believe that "safety" and "mobility" are inextricably linked, and that improvement in safety leads to improvement in mobility and vice-versa. For example, improvement in safety reduces the occurrences of traffic incidents, which reduces the resultant incident induced traffic congestion and delays. Similarly, the preservation of mobility and smooth traffic flow, reduces speed variations and thereby reduces the risk of crashes. It is generally accepted that the probability of crashes increases under heavy traffic conditions due to decrease in maneuverability and increases in motorist agitation and frustration, and therefore improvement in mobility, will also lead to preservation of safety.

Further, we would like to note that improvement in mobility does not automatically translate to "higher operating speeds," which may lead to crashes. Improvement in mobility simply means the reduction of drastic delays, congestion, and dead-stops as a result of work zones. What we mean by improvement in work zone mobility, is providing for motorists to pass through the work zone at or below the posted speed limit for the work zone without experiencing any intolerable work zone induced delays or congestion.

Nevertheless, in the provisions that we are proposing in this supplemental notice, we have made an attempt to further emphasize the importance of traffic control, and also recognize it as the most important component of the TMP. Further, the transportation operations (TO) and public information (PI) components that we are proposing as part of the TMP also provide for sustained monitoring and management of work zone safety from an operational perspective and enhance the overall safety of the work zone.

#### **Discussion of Comments on Specific NPRM Sections and Proposed FHWA Resolution**

##### *Overview of the Organization of This Section*

This section consists of a detailed discussion on the comments received to specific NPRM sections and the proposed FHWA resolution in response to these comments. For each section that was proposed in the NPRM, the following information is presented:

- Percentage breakdown of the position of the respondents with regards to the provisions proposed in that section;
- Major issues cited by the respondents—both public sector (primarily DOTs and the AASHTO) and private sector (private individuals, consultants, trade associations); and
- Proposed FHWA action in response to the comments and explanation of the provisions being proposed in the SNPRM.

The following paragraphs show percentages of the position of respondents, categorized by their respective agency types. For example, Supportive—50 percent, Oppose—10 percent, Don't Mandate—20 percent, Neutral—10 percent, Unclear—5 percent, and No Response—5 percent. The purpose of presenting the NPRM responses along the lines of percentages is not to assign statistical significance to the responses, but to present a general cross-section of the responses, and to present a general idea of the

respondents' position on different issues.

The rationale for assigning the different position statements is explained as follows:

- **Supportive**—If it is explicitly stated by the respondent, or it is apparent from the respondent's comments or tone.

- **Oppose**—If the respondent is explicitly opposed to the provisions, or it is apparent from the respondent's comments or tone.

- **No Mandate**—This is when the respondent supports the provision, but does not think that it should be mandated, but rather it should be provided as guidance.

- **Neutral**—If the respondents do not explicitly indicate whether they are supportive or opposed, but they do have some general comments which indicate the respondents' understanding of the proposed provisions. As a general rule, respondents whose position is marked as neutral may actually be supportive of the provisions, but since their position is not very clear from their comments, we assigned their position as neutral.

- **Unclear**—A respondent's position is assigned as unclear when his/her comments do not necessarily lend themselves to making a conclusive inference about what his/her position is. Sometimes, respondents either do not completely understand the provision, or they initiate a discussion, or address a subject outside the scope of this rulemaking.

- **No Response**—When the respondent has not provided specific comments on that particular section, or when the respondent's general feeling about that particular issue cannot be ascertained from his/her overall comments, or comments on other issues, we do not assign a specific response to that position.

#### Section 630.1002, Purpose

- In general, the majority of the respondents supported the proposed language in this section. About 66 percent of the respondents were supportive, 2 percent were neutral, and the remaining 32 percent did not provide a specific response to this section.

- Major issues cited by the respondents. Public sector agencies indicated the need to clarify the terminology used, such as, "assure," "adequate consideration," "all road users," "workers," and "other affected parties." They also suggested that we combine paragraphs (a) and (b) and remove the negative tone from the language. Private sector respondents also indicated the need to clarify and better define the terminology.

- Proposed FHWA action in response to the comments, and overview of the provisions being proposed in the SNPRM. We propose to clarify the language and remove the above cited subjective terminology to remove ambiguity. We propose to combine paragraphs (a) and (b) and remove the "negative tone" from the language. We also propose to combine the MUTCD reference from § 630.1004, "References" of the NPRM, and remove the "negative tone" from the language. We also propose to reorganize the content to directly convey the purpose of this regulation. We propose to add language that promotes the idea of systematic consideration and management of the work zone impacts of projects.

#### Section 630.1004, References

- Percentage breakdown of the position of the respondents with regards to the provisions proposed in this section. In general, a majority of the respondents supported the proposed language in this section. About 55 percent of the respondents were supportive and the remaining 45 percent did not provide a specific response to this section.

- Major issues cited by the respondents. Most respondents commented that they support this section, and the reference to the MUTCD. However, they suggested that it be revised to remove the "negative tone".

- Proposed FHWA action in response to the comments, and overview of the provisions being proposed in the SNPRM. We propose to modify the rule outline for clarity and simplicity. Therefore, we propose to delete section § 630.1004 and incorporate the main essence of the language in the preceding section, § 630.1002, "Purpose."

#### Section 630.1006, Definitions and Explanation of Terms

- The majority of the respondents supported the proposed language in this section. About 63 percent of the respondents were supportive, 2 percent were opposed, 1 percent did not agree with mandatory provisions in this regard, 2 percent were neutral, and the remaining 32 percent of the respondents did not provide a specific response to this section.

- Major issues cited by the respondents. Most respondents suggested that we modify existing definitions to clarify terminology and to make them more complete. Several State DOTs and the AASHTO suggested that we add some new definitions, such as, "other affected parties," and "highway workers." Private sector respondents

noted the need to define "Work Zone Mobility" and "Internal Traffic Control Plan."

- Proposed FHWA action in response to the comments, and overview of the provisions being proposed in the SNPRM. We propose to remove the definition for Public Information and Outreach Plan (PIOP), because we do not require a PIOP in the proposed rule. We propose to change the TCP to Temporary Traffic Control (TTC) Plan to be consistent with the most recent edition of the MUTCD. We propose to remove the TMP definition from this section and include it in the TMP provisions in § 630.1012(a), because it is referenced only once in the rule. We propose to remove the TOP definition, because we do not require a TOP in the proposed rule. We propose to retain the definition for "Work Zone," and to update it to be consistent with the most recent edition of the MUTCD. We propose to retain the definitions for "Work Zone Crash," and "Work Zone Impacts." We also propose to add definitions for, "Highway Workers," "Mobility," and "Safety." We do not propose to include a definition for "Internal Traffic Control Plan." Even though internal traffic control plans are important for worker safety, we believe that it is not an issue that is under the purview of this regulation.

#### Section 630.1008, Policy

- A majority of the respondents supported the proposed language in this section. About 56 percent of the respondents were supportive, 2 percent were opposed, 2 percent did not agree with mandatory provisions in this regard, 3 percent were neutral, and the remaining 37 percent of the respondents did not provide a specific response to this section.

- Major issues cited by the respondents. While most respondents were either supportive of the section or did not provide any specific comments, they did suggest that we clarify the terminology, such as, "other affected parties," "assure," and "consistent with." Private sector respondents suggested the idea of making this regulation applicable to the National Highway System (NHS) as well as utility and maintenance operations.

- Proposed FHWA action in response to the comments, and overview of the provisions being proposed in the SNPRM. Though we did not receive substantial negative reaction to this section, in reviewing all the comments in response to the NPRM, and modifying the language for this SNPRM, we determined that this section is redundant. Therefore, we propose to

eliminate this section to incorporate the concepts of the language removed in the proposed § 630.1006, "Work zone safety and mobility policy."

#### Section 630.1010, Implementation

- Percentage breakdown of the position of the respondents with regards to the provisions proposed in this section. A majority of the respondents supported the proposed language in this section. About 53 percent of the respondents were supportive, 6 percent were opposed, 2 percent did not agree with mandatory provisions in this regard, 3 percent were neutral, and the remaining 36 percent of the respondents did not provide a specific response to this section.

- Major issues cited by the respondents. The State DOTs and the AASHTO remarked that this section should be rewritten to clearly indicate that any FHWA review of State activities beyond that required to ensure compliance with the rule is nonbinding on the State. They also suggested that we clarify vague terms like "appropriate actions," and "results intended." Further, they observed that the first and second sentences seem to contradict each other, and that there are no defined goals for a State's efforts to be measured and deemed a success. Private sector respondents commented that we need to clarify the use of the term "assure," and that the FHWA review of revisions in established policies and procedures should be for more than just information purposes.

- Proposed FHWA action in response to the comments, and overview of the provisions being proposed in the SNPRM. We propose to move the implementation section to the end, and make changes to reflect the above comments. The new "Implementation" provision is § 630.1014. We propose to remove vague terms like, "appropriate actions," and "results intended." We also propose to remove the term "assure" as it is hard to clarify. Many States commented that there are no defined goals for a State's efforts to be measured and deemed a success. Therefore, we propose new language to convey a partnership approach, rather than a strictly regulatory approach to implementing the provisions in the new rule.

#### Section 630.1012(a), State Transportation Department Policy

- Percentage breakdown of the position of the respondents with regards to the provisions proposed in this section. About 24 percent of the respondents were supportive, 2 percent were opposed, 48 percent did not agree

with mandatory provisions in this regard, and the remaining 26 percent of the respondents did not provide a specific response to this section.

- Major issues cited by the respondents. The State DOTs and the AASHTO feel that this section is redundant with § 630.1008, "Policy", and that it should be deleted. They suggested that we clarify the language and remove subjective terms, such as "severity," "all road users," "affected parties," and "departments." They are very supportive of the use of a team approach, but indicated that clear definitions are needed, and that more direction is needed on processes, reviews and exemptions.

Private sector respondents were generally supportive of the provisions in this section. They indicated that the regulations need to make clear that the "work zone safety and mobility policy" of State DOTs is an internal review process for the State DOT and that it is not subject to validation, confirmation or review by any other public or private organization. They also remarked that we need to clarify the language and provide more guidance to State DOTs in implementing the work zone safety and mobility policies.

With regards to the "Training" provisions, the State DOTs and the AASHTO noted that we need to remove the mandatory requirement for training. They also commented that we need to clarify the terminology in this section, such as, "all persons responsible," and "adequate training." They also remarked that this section poses many open ended questions and opens up liability implications. For example, "is the State responsible for training contractors and consultants"?

Private sector respondents were generally supportive of the "Training" provisions, but they indicated the need to eliminate ambiguity and subjectivity in the terminology in using terms like "adequate" and "responsible persons."

In reference to the process review section, the States were generally pleased with the "encouraging" tone and the positive nature of this section, but they requested that we clarify terms such as, "departments."

With reference to the "Performance Data" section, the States expressed concern that crash data cannot be analyzed quickly enough to make changes to ongoing projects. Additionally, the States commented that the language has a "negative tone", and seemed to imply that work zones are always designed to have deficiencies. They also remarked that collection of mobility performance data may be very

expensive, and may strain the resources of the States.

Private sector respondents also noted that mobility data collection may be very expensive. They suggested that the FHWA develop guidelines and standards for analysis of safety and mobility data, and provide common benchmarks for reference and analysis, such as guidance or regulations on more uniform data collection and on how the data will be collected, recorded, and analyzed in a standard format. They also suggested that data on worker fatalities and injuries should be collected and analyzed.

- Proposed FHWA action in response to the comments, and overview of the provisions being proposed in the SNPRM. We propose to make the "Work zone safety and mobility policy" provision a separate section. We also propose to move the "Training," "Process review and evaluation," and "Work zone performance data" provisions to a new section entitled, "Agency Level Processes." This reorganization collects these agency level processes within one section.

We propose to combine the NPRM provisions under § 630.1012(a)(2), "Training," § 630.1012(a)(3), "Performance review and evaluation," and § 630.1012(a)(4), "Work zone performance data" into a new section entitled, "Agency-level processes and procedures." We propose to modify the language for these provisions to correspond to the language proposed in the NPRM. We also propose a new provision entitled, "Impact assessment and management procedures" under the "Agency-level processes and procedures" section.

We believe that we have responded to the State DOTs' concern that crash data cannot be analyzed quickly enough to make changes to ongoing projects, by proposing to remove the related language, and by changing the terminology to require management of the safety and mobility impacts of projects during implementation by using crash data. We propose to remove the negative tone and the implication that work zones are always designed to have deficiencies. We propose to partially adopt the AASHTO's proposed language, to make the wording less negative. We propose to add more detail about data resources/data elements and to explain the benefits of data.

We propose to retain the "shall" clause in this section as we believe that it is an essential requirement to help manage safety during project implementation. This is further reinforced by the National Transportation Safety Board (NTSB)



recommendation to the FHWA in "School Bus Run-off-Bridge Accident, Omaha, Nebraska, October 13, 2001," Highway Accident Report, NTSB/HAR-04/01, PB2004-916201, Notation 7610, Adopted February 10, 2004.<sup>2</sup> The NTSB made the following recommendation to the FHWA in this regard:

"Incorporate into the Manual for Uniform Traffic Control Devices the stricter criteria on work zone safety and management contained in the Federal-Aid Policy Guide, 23 Code of Federal Regulations 630 J, Subchapter G—Engineering and Traffic Operations, Part 630-Preconstruction Procedures, Subpart J—Traffic Safety in Highway and Street Work Zones, to include continuously monitoring traffic accident experience in work zones to detect and correct safety deficiencies existing in individual projects. Further, the traffic accident reports necessary to accomplish this should be obtained monthly, directly from local traffic law enforcement agencies. (H-04-01)

In the "Training" provisions, we propose to remove the term "all persons responsible," and replace it with "personnel" to remove subjectivity from the language. We propose to add personnel responsible for enforcement, in addition to personnel responsible for development, design, implementation, operation, and inspection of work zone related transportation management and traffic control. We also propose to remove the ambiguous phrase, "adequate training." To the second sentence of the training provision, we propose to add language to convey that training updates should reflect changing agency processes and procedures, in addition to changing industry trends.

The AASHTO and most DOTs were generally pleased with the "encouraging" tone and the positive nature of the "Performance review and evaluation section." However, the FHWA is charged with the responsibility of making sure that Federal Aid Highway funded projects meet the requirements set forth in Title 23, United States Code, "Highways" and accomplish this, in part, through information gathered by the States' periodic process review. Therefore, we propose to change it to a mandatory requirement rather than an encouraging statement. The need to make this requirement mandatory is further emphasized by the recommendations

made by the NTSB in its report entitled, "School Bus Run-off-Bridge Accident, Omaha, Nebraska, October 13, 2001." The NTSB made the following recommendation to the FHWA in this regard:

"Require divisional offices to participate in the States" work zone safety inspections and diligently monitor and evaluate the results of those inspections in conformance with the Federal-Aid Policy Guide, 23 Code of Federal Regulations 630 J, Subchapter G—Engineering and Traffic Operations, Part 630—Preconstruction Procedures, Subpart J—Traffic Safety in Highway and Street Work Zones. (H-04-02)"

However, flexibility is still offered to the States in the conduct of these reviews. We propose to change the term "departments" to "offices." We also propose to provide examples for personnel from the different offices within the State DOT. Finally, we propose to add text to indicate what will be done with the results of the review and evaluation.

#### Section 630.1012(b), Project Impact Analysis and Management Procedures

- Percentage breakdown of the position of the respondents with regards to the provisions proposed in this section. About 18 percent of the respondents were supportive, 1 percent were opposed, 47 percent did not agree with mandatory provisions in this regard, and the remaining 34 percent of the respondents did not provide a specific response to this section.

- Major issues cited by the respondents. The following are the major comments made by the State DOTs and the AASHTO in response to this section:

- (1) This section should be guidance and not a mandatory requirement.

- (2) The FHWA needs to clarify or delete subjective terms like, "severity."

- (3) If a requirement is imposed, there should be flexibility for States to exempt projects or classes of projects from the impacts analysis requirement or parts of it.

- (4) The individual activities listed under the impacts analysis should not be mandated. Revise the provisions to indicate that they are not always required, but may be appropriate on certain types of projects that meet certain conditions.

- (5) In general, most of the State DOTs and the AASHTO agree with the concept of a TMP.

- (6) The FHWA needs to rewrite and clarify some of the terms to remove subjectivity and ambiguity.

- (7) The three separate plans proposed under the TMP, namely the TCP, TOP and PIOP should not be required,

because this increases the documentation requirements. Instead of a TMP with three constituent plans, it would be more efficient to have one integrated TMP which may consist of any or all of traffic control, transportation operations and public information components.

- (8) The FHWA needs to make the regulatory language more like guidance than an absolute requirement, especially with respect to the constituent elements of the TMP.

- (9) The FHWA needs to remove language that seems to indicate that all the components in the TMP are mandatory, for example, change the phrases, "transportation operations requirements," and "public information and outreach requirements" to "transportation operations strategies," and "public information and outreach strategies."

- (10) The State DOTs and the AASHTO strongly opposed the mandatory unit pay items for individual TCP components, as they believe that State DOTs would lose their flexibility in contracting. These commenters remarked that this section is overly restricting and it takes away from the flexibility in current contracting options available to States. These commenters acknowledged that there needs to be a distinct pay item requirement for the TCP in the Plans, Specifications and Estimates (PS&Es), but there need not always be unit pay items for all the components of the TCP.

The following are the major comments made by private sector respondents:

- (1) The FHWA needs to clarify the terminology and revise the language to improve overall readability.

- (2) Private companies involved in short duration work zones were very concerned about the need to perform a detailed impacts analysis for small utility/maintenance type projects.

- (3) The way the provisions are written, it exposes the States/contractors to legal liability and lawsuits; especially because the impacts analysis is written as a mandatory clause that should account for impacts on all affected parties.

- (4) The regulation should make it very clear that the impacts analysis is an internal review process and that it is not subject to review by any private/public entity.

- (5) Contractors are skeptical of "contractor developed TMPs" and of "performance based specifications" because it could increase their liability exposure.

- (6) The FHWA needs to indicate that all portions of the TMP should be

<sup>2</sup>National Transportation Safety Board (NTSB) Accident Report, "School Bus Run-off-Bridge Accident, Omaha, Nebraska, October 13, 2001," Highway Accident Report, NTSB/HAR-04/01, PB2004-916201, Notation 7610, Adopted February 10, 2004. This report may be obtained by writing the NTSB at National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, D.C. 20594. An electronic copy may be downloaded at the following URL: <http://www.nts.gov/publictn/2004/HAR0401.pdf>.



developed in consultation with contractors and other required entities.

(7) The FHWA needs to try and exempt short duration and emergency work from a PIOP.

(8) The FHWA needs to remove the need for three separate plans and combine them into one integrated TMP with traffic control, transportation operations and public information components. The FHWA should add a note "for designated projects" in the regulatory language, to clearly indicate that all three components of the TMP are expected to apply to major projects.

(9) In stark contrast to the sentiments of the public sector, private sector respondents strongly supported unit pay item requirements for individual TCP components because contractors believe that this would ensure a fair playing field, thereby leveling the competition between multiple bidders. They suggested that the FHWA develop model contract specifications, special orders, and unit pricing for safety items that apply to federally supported roadway construction contracts, which they believe will level the playing field for contractors who place a high emphasis on safety. They further suggested that we need to include "worker safety and health" requirements in bid specifications. Some private sector respondents, primarily road building industry trade associations and contractors, recommend either regulatory language or guidance on the use of positive separation.

- Proposed FHWA action in response to the comments, and overview of the provisions being proposed in the SNPRM. The following are the major proposed changes in this notice:

(1) We propose to include a new section, entitled "Significant projects," which introduces the concept of projects with significant work zone impacts, and consists of requirements for States to develop and update a list of its significant projects. We propose language to define a significant project as one that, "alone or in combination with other concurrent projects nearby is anticipated to cause sustained work zone impacts (as defined in § 630.1004 of the proposal) that are greater than what is considered tolerable based on agency policy and/or engineering judgment." Identification of significant projects will help stratify the application of TMPs with the TO and PI components only to such significant projects. Such classification of certain projects as significant will also help the State allocate resources more effectively to projects, and apply a systematic

approach for identifying, characterizing, and managing work zone impacts.

In the same section on "Significant projects," we also propose to add language that would require States to designate all Interstate system projects that occupy a location for more than three days with either intermittent or continuous lane closures, as significant. We propose to allow exceptions to this requirement, if in the judgment of the State, a specific Interstate system project does not cause sustained work zone impacts. Exceptions may be granted by the FHWA based on the agency's ability to show that the specific Interstate system project does not have sustained work zone impacts.

(2) We propose to retain the concept of the "Project impact analysis and management procedures" section, but changed its title to "Project-level procedures," and made it more concise and straightforward. We propose to remove the requirement for conducting a work zone impacts analysis. We propose to retain the requirement to develop TMPs for projects, but clearly indicate that the transportation operations (TO) public information (PI) components of the TMP shall be required only for significant projects (as defined in the "Significant Projects" section). We would like to note that the impacts analysis concepts are indirectly embedded into the TMP, wherein, the scope, content, and degree of detail for TMPs may vary based on the State's policy and its understanding of the expected work zone impacts of the project.

(3) The proposed language for the "Project-level procedures" section is more concise. We propose to change the term "TCP" to "TTC plan" to be consistent with the most recent edition of the MUTCD.

(4) As in the NPRM, we propose that the TTC plan be mandatory for all projects, and require that the TTC plan be consistent with Part 6 of the MUTCD. We propose to add language to require TTC plans to be consistent with the work zone hardware recommendations in Chapter 9 of the AASHTO Roadside Design Guide.<sup>3</sup>

We also propose to add language to convey that, while developing and implementing TTC plans, States shall maintain pre-existing roadside safety

features at an equivalent or better level than existed prior to project implementation. These additions are a result of the NTSB's recommendations to the FHWA in its report entitled, "School Bus Run-off-Bridge Accident, Omaha, Nebraska, October 13, 2001." The NTSB made the following recommendation to the FHWA in this regard:

Include in the Manual for Uniform Traffic Control Devices a requirement that, for roadways under construction, traffic safety features (such as barrier systems) be maintained at an equivalent or better level than existed prior to construction. (H-04-03)

(5) We propose to change the terms "TOP" and "PIOP" to "Transportation Operations (TO)" and "Public Information (PI)" components, respectively. This is to remove the notion of three separate plans being required for all projects. As mentioned previously, we propose to require the TO and the PI components only for significant projects (as defined in the "Significant Projects" section).

(6) In response to the State DOTs' and the AASHTO's concerns regarding "Pay Items," we proposed to remove the mandatory requirement for unit-pay items for the TCP for method-based specifications. The proposed language revisions now require "a pay-item" in the Plans Specifications and Estimates (PS&Es) for implementing the TMP, and allows flexibility for States to choose either method-based or performance-based specifications.

In the case of method-based specifications, the proposed language allows flexibility to States in choosing individual pay items, lump sum payment, or a combination of both. For performance-based specifications, we propose to provide examples of safety performance criteria (such as number of crashes within the work zone); and mobility performance criteria (such as travel time through the work zone, delay, queue length, traffic volume; incident response and clearance criteria; and work duration criteria.)

The revisions that we are proposing in this supplemental notice do not necessarily address the private sector's comments on the requirement for unit-pay items for implementing the TTC plan. However, the requirement for "a pay item" for implementing the entire TMP, along with the other proposed revisions, would cover the issue of providing for a safe work zone and ensure that all contractors are provided an equal opportunity to bid on all projects without compromising on safety aspects of the project. We believe State DOTs know when to use unit pay

<sup>3</sup> "Roadside Design Guide," 3d Ed., 2002, is available for purchase from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, NW., 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.

items and when to use lump sum pay items; flexibility in the choice of pay items will help States select the most appropriate pay items to suit individual projects; and that the requirement of unit pay items for all projects and road work scenarios may not always be practicable in the real-world.

#### Section 630.1014, Compliance Date

- Percentage breakdown of the position of the respondents with regards to the provisions proposed in this section. About 3 percent of the respondents were supportive, 45 percent were opposed, 2 percent were neutral, and the remaining 50 percent of the respondents did not provide a specific response to this section.

- Major issues cited by the respondents. Private sector respondents did not have any specific comments to this section. The following are the major issues cited by the State DOTs and the AASHTO:

- (1) The FHWA needs to clearly explain how the rule will apply to ongoing projects, and to projects that are in the later stages of project development.

- (2) The FHWA should indicate clearly that the rule will apply only to projects that have not been initiated yet, and those that still have not passed through the entire project development process.

- (3) A blanket time requirement is very confusing.

- (4) The FHWA should provide flexibility to States to request waivers/exemptions on a case-by-case basis for those projects that are in the later stages of project development and would be significantly impacted by this rule's implementation.

- (5) The FHWA needs to provide implementation guidance on model documentation for implementation of the new rule.

- (6) The FHWA should consider "phased" implementation rather than absolute compliance.

- (7) The FHWA should clarify the terminology used and provide more guidance on applicability.

- Proposed FHWA action in response to the comments, and overview of the provisions being proposed in the SNPRM. We propose to retain the three-year compliance date, but allow variances on a case-by-case basis for projects in later stages of project development, if it is determined that the delivery of those projects would be significantly impacted as a result of this rule's provisions.

Further, in the interim period between publication of this rule and the compliance date, to provide for TMPs with both TO and PI components for

ongoing significant projects, State DOTs are encouraged, but not required, to apply the requirements in §§ 630.1012(b)(2) and (b)(3) to those projects that are in progress, and are determined by the State to have significant work zone impacts.

#### Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material.

The FHWA has limited the comment period for this proposal to 30-days in order to issue a final regulation on the earliest possible date. We believe that this comment period provides interested persons with an adequate opportunity for review and comment.

We have systematically and progressively given opportunity for interested parties to review and comment on this docket since early 2002. We first opened a docket on the issue of work zone safety and mobility by issuing the ANPRM on February 6, 2002, which was followed by the NPRM on May 7, 2003. Both the ANPRM and the NPRM had a comment period of 120 days each. The total duration that this docket has been open indicates that there has been ample opportunity for interested parties to conduct their analyses and submit their comments and views. Therefore, we believe that interested parties should be familiar enough with the topic, the issues addressed, and the provisions proposed in this notice, for them to be able to review and comment within the 30-day time-frame. With the growing concern of high levels of congestion on many highways and an increase in the number of work zone fatalities each of the past five years (for an overall increase of 70 percent between 1997 and 2002), further delaying the issuance of this final rule will compound these current problems associated with work zones.

Accordingly, we have determined that a 30-day comment period best serves the safety and mobility interests of the American public.

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

The FHWA has determined that this proposed rule would not be a significant regulatory action within the meaning of Executive Order 12866 and would not be significant within the meaning of the U.S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this action would be minimal.

These proposed changes are not anticipated to adversely affect, in a material way, any sector of the economy. In addition, these proposed changes would 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 proposed amendments of this regulation raise any novel legal or policy issues. Therefore, a full regulatory evaluation is not required.

Based upon the information received in response to this SNPRM, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the changes described in this document or any alternative proposal submitted.

#### 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 SNPRM on small entities and has determined that it would 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 proposed provisions in this rule would therefore 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. Therefore, the RFA does not apply and the FHWA certifies that the proposed action will not have a significant economic impact on a substantial number of small entities.

#### Unfunded Mandates Reform Act of 1995

This SNPRM would 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 actions proposed in this SNPRM would not result in the

expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

#### **Executive Order 13132 (Federalism)**

This proposed 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 proposed 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 proposed 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. In order to streamline the process, the FHWA intends to request that the OMB approve a single information collection clearance for all of the data in the proposed regulation.

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 proposed 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.

The FHWA is required to submit this proposed collection of information to the OMB for review and approval, and accordingly, seeks public comments. Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) Whether the collection of information is necessary for the performance of the functions of the FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

#### **Executive Order 13175 (Tribal Consultation)**

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that this proposed 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 proposed action 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 proposed action under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use. We have determined that this proposed action would not be a significant energy action under that order because any action contemplated would not be a significant regulatory action under Executive Order 12866 and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we believe that the implementation of the proposed

provisions by State departments of transportation would 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 proposed 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 proposed action will not have any effect on the quality of the environment. Further, we believe that the implementation of the proposed provisions by State departments of transportation would reduce the amount of congested travel on our highways. This reduction in congested travel would reduce automobile emissions thereby contributing to a cleaner environment.

#### **Executive Order 12630 (Taking of Private Property)**

The FHWA has analyzed this proposed rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA does not anticipate that this proposed action would 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 proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this proposed 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, Project agreement, Traffic regulations.

Issued on: May 10, 2004.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to revise title 23, Code of Federal Regulations, Part 630, subpart J as follows:

#### PART 630—PRECONSTRUCTION PROCEDURES [REVISED]

1. The authority citation 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 Work zone safety and mobility policy.

630.1008 Agency-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) <sup>1</sup> 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 smoothly through or around a work zone area with a minimum delay compared to baseline travel when no work zone is present. 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 danger for users of transportation facilities and highway workers. With specific reference to work zones, safety refers to minimizing the exposure to danger of road users in the vicinity of a work zone and road 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. 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 is a commonly used measure.

*Temporary Traffic Control (TTC) Plan* <sup>2</sup> describes TTC measures to be used for facilitating road users through a work zone or an incident area. TTC plans play 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.

*Work zone* <sup>3</sup> 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 TTC device.

*Work zone crash* <sup>4</sup> 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. 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,

<sup>3</sup> MUTCD, Part 6, "Temporary Traffic Control," Section 6C.02, "Temporary Traffic Control Zones."

<sup>4</sup> "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.

<sup>1</sup> 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.

<sup>2</sup> MUTCD, Part 6, "Temporary Traffic Control," Section 6C.01, "Temporary Traffic Control Plans."

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 representing the different project development stages, and in partnership with the FHWA. The States are encouraged to implement this policy for non-Federal-aid projects as well.

**§ 630.1008 Agency-level processes and procedures.**

(a) This section consists of agency-level processes and procedures for States to implement and sustain their respective work zone safety and mobility policies. Agency-level processes and procedures, well defined data 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 work zone crash and operational data to continually improve work zone safety and mobility. This data shall be used to manage work zone impacts during project development and implementation, and to improve agency procedures for on-going and future work zones. States are encouraged to establish data resources at both the agency and project levels to support these activities.

(d) *Training.* Personnel involved in the development, design, implementation, operation, inspection, and enforcement of work zone related transportation management and traffic control shall be trained. States are encouraged to keep records of the training successfully completed by these personnel, and provide periodic training updates that reflect changing industry practices and agency 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 agency level, and/or review of randomly selected projects throughout their jurisdictions. Appropriate personnel who represent the project development stages and the different offices within the State are encouraged to participate in this review.

This should include representation from planning, right-of-way, design, traffic, construction, and maintenance offices within the State. States should include an FHWA representative as a member of the review team, and are encouraged to address the reviews in the stewardship agreements<sup>5</sup> between each State and the FHWA. Other non-agency 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 resources, and training programs so as to enhance efforts to address safety and mobility on current and future projects.

**§ 630.1010 Significant projects.**

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 agency policy and/or engineering judgment. In addition, all Interstate system projects that occupy a location for more than three days with either intermittent or continuous lane closures shall be considered as significant projects. 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. For an Interstate system project that is classified as significant through the application of this subpart, but in the judgment of the agency it does not cause sustained work zone impacts, the agency may request an exception to §§ 630.1012(b)(2) and 630.1012(b)(3) from the FHWA. Exceptions to these provisions may be granted by the FHWA based on the agency's ability to show that the specific Interstate system project does 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 helps safely and efficiently handle traffic through a specific highway or street work zone or project. 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.<sup>6</sup> In developing and implementing the TTC plan, pre-existing roadside safety features 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 and traveler information.

<sup>5</sup> As defined in Section 1016 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Public Law 102-240; 105 Stat. 1914; Dec. 18, 1991).

<sup>6</sup> "Roadside Design Guide," 3d Ed., 2002, is available for purchase from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, NW., 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.

The scope of the TO component should be determined by the project characteristics, and the transportation operations and safety requirements 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. The scope of the PI component should be determined by the project characteristics and the public information and outreach requirements 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 coordination and partnership with stakeholders (*i.e.*, 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. Contractor developed TMPs shall be approved by the State prior to implementation.

(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 (*i.e.*, 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, etc.).

(e) *Responsible persons.* The State and the contractor shall each designate a qualified person at the project level who has the primary responsibility and sufficient authority for assuring that the TMP and other safety and mobility

aspects of the project are effectively administered.

#### **§ 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 subpart and reassessment of the State's implementation of its procedures at appropriate intervals. Each State is encouraged to address implementation of this subpart in its stewardship agreement with the FHWA.

#### **§ 630.1016 Compliance Date.**

States shall comply with all the provisions of this subpart no later than [date 30 days after publication of the final rule in the **Federal Register** plus 36 months]. 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 subpart's provisions, States may request variances for those projects from the FHWA, on a project-by-project basis.

[FR Doc. 04-10902 Filed 5-12-04; 8:45 am]

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## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Parts 110 and 165**

[CGD01-04-006]

RIN 1625-AA00, AA01, AA08

#### **Regulated Navigation Area, Anchorage Grounds, Safety and Security Zones; Tall Ships Environmental Festival, New London, Port of New London, CT**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a regulated navigation area, anchorage grounds, and safety and security zones in Niantic Bay, Long Island Sound, the Thames River and New London Harbor, for the Tall Ships Environmental Festival. These proposed regulations would provide for the safety of life and property on the navigable waters of the United States and for the security of participating tall ships during the Tall Ships Environmental Festival, New London, Connecticut. This action is intended to restrict vessel traffic in portions of Niantic Bay, Long

Island Sound, the Thames River, and New London Harbor.

**DATES:** Comments and related material must reach the Coast Guard on or before June 14, 2004.

**ADDRESSES:** You may mail comments and related material to Planning/Waterways Management, Coast Guard Group/Marine Safety Office Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Coast Guard Group/Marine Safety Office Long Island Sound maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Group/Marine Safety Office Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant A. Logman, Waterways Management Officer, Coast Guard Group/Marine Safety Office Long Island Sound at (203) 468-4429.

#### **SUPPLEMENTARY INFORMATION:**

##### **Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01-04-006), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the proposed rule in view of them.

We chose to publish this NPRM, and because of the closeness of the event, we anticipate making the final rule effective less than 30 days from publication in the **Federal Register**.

##### **Public Meeting**

We do not now plan to hold a public meeting, but you may submit a request for a meeting by writing to Coast Guard Group/Marine Safety Office Long Island Sound at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.