



This document is scheduled to be published in the Federal Register on 05/14/2012 and available online at <http://federalregister.gov/a/2012-11712>, and on FDsys.gov

DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–2010–0170]

RIN 2125–AF41

National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Revision; Final Rule

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final Rule.

SUMMARY: The MUTCD is incorporated in the FHWA regulations, approved by the FHWA, and recognized as the national standard for traffic control devices used on all streets, highways, bikeways, and private roads open to public travel. The purpose of this final rule is to revise certain definitions and guidance relating to traffic control devices in Part 1 (General) of the MUTCD. The changes will clarify the definition of Standard statements in the MUTCD and clarify the use of engineering judgment and studies in the application of traffic control devices.

EFFECTIVE DATE: This final rule is effective [Insert date 30 days after date of publication in the FEDERAL REGISTER]. The incorporation by reference of the publication listed in this regulation is approved by the Director of the Office of the Federal Register as of [Insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Chung Eng, Office of Transportation Operations, (202) 366-8043; or Mr. William Winne, Office of the Chief Counsel, (202) 366-1397, Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document, the notice of proposed amendment (NPA), and all comments received may be viewed online through the Federal eRulemaking portal at:

<http://www.regulations.gov>. Electronic submission and retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 366 days this year. Please follow the instructions. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: <http://www.archives.gov/federal-register> and the Government Printing Office's Web page at: <http://www.gpo.gov/fdsys>.

EXECUTIVE SUMMARY

I. Purpose of the Regulatory Action

The FHWA has the authority to prescribe standards for traffic control devices on all roads open to public travel pursuant to 23 U.S.C. 109(d), 114(a), 217, 315, and 402(a). In the 2009 edition of the MUTCD, the FHWA made clarifying revisions to the 2003 edition of the MUTCD to remove conflicting language and provide consistency in the

intended use of engineering judgment and engineering studies. After issuance of the Final Rule for the 2009 MUTCD, FHWA received correspondence from several entities indicating that the clarifying revisions had the effect of removing highway agencies' flexibility to address field conditions. This was not FHWA's intention. Thus, on August 2, 2011 the FHWA published a Notice of Proposed Amendment (NPA) proposing revisions to the MUTCD to address these concerns.

II. Summary of the Major Provisions of the Regulatory Action in Question

In consideration of the comments received in response to the NPA, this Final Rule restores certain language contained in the 2003 MUTCD edition. The restoration of such language will continue FHWA's current practice under Official Interpretation 1(09)-1 (I) which states that in limited, specific cases, deviation from a STANDARD is allowed at a location or other locations with the same conditions, provided that an agency or other official having jurisdiction fully documents the engineering reason for the deviation. The MUTCD, with these changes incorporated, is being designated as Revision 1 of the 2009 edition of the MUTCD.

III. Costs and Benefits

The changes in the MUTCD will provide additional clarification, guidance, and flexibility in the application of traffic control devices. The FHWA believes that the uniform application of traffic control devices will greatly improve the traffic operations

efficiency and roadway safety. The standards, guidance, and support are also used to create uniformity and to enhance safety and mobility at little additional expense to public agencies or the motoring public. These changes are not anticipated to adversely affect, in any material way, any sector of the economy. In addition, these changes will not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Although FHWA did not quantify the costs, we believe they will be minimal. One benefit of this rule is reduced expenditures for locations with identical conditions. For example, when a deviation is found to be warranted and can be justified, these locations will not have to spend funds on repetitive or duplicative engineering studies. In addition, since the rule restores language from the 2003 edition of the MUTCD, agencies would not have to expend resources to modify their existing operating procedures.

BACKGROUND

On August 2, 2011, at 76 FR 46213, the FHWA published an NPA proposing revisions to the MUTCD. Interested persons were invited to submit comments to the FHWA Docket Number FHWA-2010-0170. Based on the comments received and its own experience, the FHWA is issuing this final rule and is designating the MUTCD, with these changes incorporated, as Revision 1 of the 2009 edition of the MUTCD. The text of Revision 1 of the 2009 edition of the MUTCD, with these final rule changes incorporated, is available for inspection and copying, as prescribed in 49 CFR part 7, at

the FHWA Office of Transportation Operations (HOTO-1), 1200 New Jersey Avenue, SE., Washington, DC 20590. Furthermore, the text of Revision 1 of the 2009 edition of the MUTCD, with these final rule changes incorporated, is available on the FHWA's MUTCD Web site at: <http://mutcd.fhwa.dot.gov>. The original 2009 edition of the MUTCD and the 2003 edition of the MUTCD with Revisions 1 and 2 incorporated are also available on this Web site. Revision 1 of the 2009 edition of the MUTCD supersedes all previous editions and revisions of the MUTCD.

Summary of Comments

The FHWA received, reviewed, and analyzed the 51 letters submitted to the docket, which contain more than 125 different comments on the proposed changes. The American Association of State Highway and Transportation Officials (AASHTO), the National Committee on Uniform Traffic Control Devices (NCUTCD), the American Public Works Association (APWA), the National Association of County Engineers (NACE), the American Traffic Safety Services Association (ATSSA), State departments of transportation (DOTs), city and county government agencies, other associations, transportation consultants, and individual private citizens submitted comments.

The AASHTO generally supported FHWA's proposal to remove the last sentence in the definition of STANDARD in Section 1A.13; however, it expressed that the value of such a change would be minimized by the proposed language in Section 1A.09 regarding the use of engineering judgment and engineering studies. The AASHTO asserted that FHWA's proposed language in Section 1A.09 was insufficient because it

did not include additional sentences from the 2003 edition of the MUTCD GUIDANCE statement that emphasized the importance of using engineering judgment in the placement of traffic control devices. The AASHTO also disagreed with the OPTION statement proposed for Section 1A.09 in the NPA, contending that it limited the application of engineering judgment or an engineering study to a specific site. The AASHTO submitted a second letter recommending a new sentence that would allow programmatic deviations from a STANDARD based on an engineering study. The NCUTCD, APWA, NACE, 23 State DOTs, 4 local agencies, and 1 transportation consultant submitted comments similar to AASHTO's first letter.

The ATSSA and the Association of American Railroads supported the NPA in its entirety and specifically disagreed with AASHTO's comments regarding Section 1A.09. Three transportation consultants asserted that the definition of STANDARD and the 2009 edition of the MUTCD's text on the application of engineering judgment and studies are appropriate and do not need to be revised. These comments, including those raised by AASHTO that are identified above, are discussed in more detail in the section-by-section discussions below for both 1A.13 and 1A.09.

Comments Outside the Scope of the Rulemaking

In addition to commenting on the proposed changes, AASHTO and four State DOTs suggested that the FHWA use this rulemaking process to address the issue of "substantial conformance" of State MUTCDs, as defined in the Code of Federal Regulations (CFR). Specifically, AASHTO suggested that FHWA issue interim final

rules to revise 23 CFR 655.602 and 655.603 so that States could apply engineering judgment and studies to delete STANDARDS from their State MUTCDs and still have their State MUTCDs accepted by FHWA as being in substantial conformance with the national MUTCD. The meaning of “substantial conformance” was considered and established through a final rule published in the Federal Register on December 14, 2006 at 74 FR 75111. Because the NPA for this rulemaking did not propose any changes to this meaning and did not solicit public comments about this topic, this issue is outside the scope of this rulemaking and will not be addressed in this final rule.

Three States also expressed concern with compliance dates, suggesting that compliance dates the States viewed as unessential be removed or delayed. One State also suggested that FHWA address systematic upgrading of traffic control devices in this rulemaking. Comments related to the issue of compliance dates listed in the MUTCD are currently being considered in response to an NPA published in the Federal Register on August 31, 2011 at 76 FR 54156. Because the NPA for this rulemaking did not propose any changes to the compliance dates or to the meaning of “systematic upgrading of traffic control devices” and did not solicit public comments about these topics, these issues are outside the scope of this rulemaking and will not be addressed in this final rule.

Discussion of Comments by Section

1. In the MUTCD Section 1A.13, Definitions of Headings, Words, and Phrases, the FHWA proposed in the NPA to delete the last sentence in the definition of the heading

STANDARD. This sentence, which was added in the 2009 edition of the MUTCD, stated:

Standard statements shall not be modified or compromised based on engineering judgment or engineering study.

The majority of commenters, including AASHTO, NCUTCD, APWA, NACE, State DOTs, and local agencies, supported removing this sentence. Two States suggested adding language to the definition of STANDARD to help clarify that site-specific conditions may make it impossible or impractical for an agency to comply with a STANDARD. The FHWA believes that such a change is not necessary because restoration of certain GUIDANCE statements from the 2003 MUTCD will provide for deviation from a STANDARD in limited, specific cases at a location, or other locations with the same conditions, provided that an agency or other official having jurisdiction fully documents the engineering reason for the deviation. Therefore, the FHWA adopts the removal of this sentence from the definition of STANDARD in Section 1A.13, as proposed in the NPA.

The NCUTCD, APWA, and NACE also suggested that the definitions for “engineering judgment” and “engineering study” in Section 1A.13 should be restored to the text found in the 2003 edition of the MUTCD. Specifically, these commenters reasoned that because this rulemaking pertains to exercising engineering judgment and using engineering studies to make traffic control device decisions, it is appropriate to restore the definitions of these terms to the ones contained in the 2003 edition of the

MUTCD. The FHWA did not propose any changes to the definitions of “engineering judgment” or “engineering study,” which are contained within a STANDARD statement in Section 1A.13, and thus any changes to these definitions are outside the scope of this rulemaking. The FHWA might give consideration to proposing revisions to these definitions in conjunction with a future NPA for the next edition of the MUTCD.

2. In Section 1A.09, Engineering Study and Engineering Judgment, FHWA proposed in the NPA to add a GUIDANCE paragraph stating that the decision to use a particular device at a particular location should be made on the basis of either an engineering study or the application of engineering judgment. The FHWA proposed this change in order to reinstate one of the three GUIDANCE sentences in the 2003 edition of the MUTCD that had been removed in the 2009 edition of the MUTCD. The AASHTO, NCUTCD, APWA, NACE, and the majority of the State and local agencies supported FHWA’s proposal, but felt that it was insufficient because it did not include restoration of the two other sentences from the 2003 edition of the MUTCD GUIDANCE statement.

Those second and third sentences stated:

Thus, while this Manual provides Standards, Guidance, and Options for design and applications of traffic control devices, this Manual should not be considered a substitute for engineering judgment. Engineering judgment should be exercised in the selection and application of traffic control devices, as well as in the location and design of roads and streets that the devices complement.

Specifically, AASHTO stated that the exclusion of the second sentence from the 2003 edition of the MUTCD GUIDANCE statement, coupled with FHWA’s proposal, would

not adequately support the reinstatement of engineering judgment into the application of traffic control devices. The NCUTCD, NACE, and APWA suggested that only the second sentence from the 2003 edition of the GUIDANCE statement should be restored. Two State DOTs agreed with the NPA as proposed. Three transportation consultants disagreed with the proposed GUIDANCE in the NPA, asserting that the application of engineering judgment and studies as described in the 2009 edition of the MUTCD is appropriate and does not need to be revised.

In a second letter to the docket, AASHTO also recommended adding a new, fourth sentence to the GUIDANCE that would state:

An engineering study is required for programmatic deviations from Standards contained within this Manual.

Such language effectively would allow agencies to deviate from a STANDARD on a programmatic basis, rather than based on impracticality at a specific site supported by engineering judgment or study. As noted in the NPA, it is not and has never been the intention of the FHWA to authorize a highway agency to adopt or implement broad policies or practices that deviate from a STANDARD on a blanket or programmatic basis jurisdictionwide, regionwide, on all highways of a particular class, or using similar criteria. Therefore, FHWA believes adding a fourth sentence of GUIDANCE as suggested by AASHTO's second letter is not appropriate.

In the NPA, FHWA proposed to add a new OPTION paragraph stating that when an engineering study or the application of engineering judgment determines that unusual

site-specific conditions at a particular location make compliance with a STANDARD statement impossible or impractical, an agency may deviate from that STANDARD statement at that location. The AASHTO, NCUTCD, APWA, NACE, and 20 State DOTs disagreed and suggested that this language be removed because such an application would be overly restrictive and financially burdensome on agencies. Specifically, these commenters stated that such language would require jurisdictions to study each site individually, even where multiple locations with the same or similar conditions make a particular deviation necessary. Additionally, several State agencies indicated that the proposed OPTION statement did not reflect the intent of FHWA's Official Interpretation number 1(09)-1 (I),¹ dated October 1, 2010, which states that in limited, specific cases, deviation from a STANDARD is allowed at a location or other locations with the same conditions, provided that an agency or other official having jurisdiction fully documents the engineering reason for the deviation. We would note that FHWA did not intend for the proposed OPTION language to trigger studies for each location with similar conditions. Nevertheless, FHWA has determined that the OPTION paragraph proposed in the NPA is not needed because the topic is adequately addressed by Official Interpretation 1(09)-1 (I), which is still in effect.

In consideration of the comments received and our determination that the OPTION language in the NPA is not needed, we have decided, instead, to restore the three 2003 MUTCD GUIDANCE sentences that were subsequently removed in the 2009

¹ This Official Interpretation of the MUTCD can be viewed at the following Web site: http://mutcd.fhwa.dot.gov/resources/interpretations/1_09_1.htm.

MUTCD edition. The inclusion of such language will continue our current practice under Official Interpretation 1(09)-1 (I) to allow deviations from a STANDARD only on the basis of either an engineering study or the application of engineering judgment. Thus, the GUIDANCE language in Section 1A.09 will now read as follows:

The decision to use a particular device at a particular location should be made on the basis of either an engineering study or the application of engineering judgment. Thus, while this Manual provides Standards, Guidance, and Options for design and applications of traffic control devices, this Manual should not be considered a substitute for engineering judgment. Engineering judgment should be exercised in the selection and application of traffic control devices, as well as in the location and design of roads and streets that the devices complement.

The FHWA will continue to consider matters raised by this rulemaking to inform future decisions regarding the MUTCD.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and within the meaning of U.S. Department of Transportation regulatory policies and procedures because of the significant public interest in the MUTCD. Additionally, this action complies with the principles of Executive Order 13563. The changes in the MUTCD will provide additional clarification, guidance, and flexibility in the application of traffic control

devices. The FHWA believes that the uniform application of traffic control devices will greatly improve the traffic operations efficiency and roadway safety. The standards, guidance, and support are also used to create uniformity and to enhance safety and mobility at little additional expense to public agencies or the motoring public. These changes are not anticipated to adversely affect, in any material way, any sector of the economy. In addition, these changes will not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), the FHWA has evaluated the effects of this action on small entities, including small governments. The FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities. This rule will provide clarification and additional flexibility.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the FHWA has determined that this action will not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this rulemaking will not preempt any State law or State regulation or affect the States' ability

to discharge traditional State governmental functions. The MUTCD is incorporated by reference in 23 CFR Part 655, subpart F. These amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. The overriding safety benefits of the uniformity prescribed by the MUTCD are shared by all of the State and local governments, and changes made by this rule are directed at enhancing safety. To the extent that these amendments may override any existing State requirements regarding traffic control devices, they do so in the interest of national uniformity.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48, March 22, 1995). The changes provide additional guidance, flexibility, and clarification and will not require an expenditure of funds. This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$140.8 million or more in any 1 year (2 U.S.C. 1532).

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it 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. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that this is not a significant energy action under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

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

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 for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action does not contain a collection of information requirement for the purposes of the PRA.

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, to eliminate ambiguity, and to reduce burden.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This is not an economically significant action and does not concern an environmental risk to health or safety that might disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This action would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and has determined that it will not have any effect on the quality of the environment and meets the criteria for the categorical exclusion at 23 CFR 771.117(c)(20).

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 655

Design Standards, Grant programs—Transportation, Highways and roads, Incorporation by reference, Pavement Markings, Traffic regulations.

Issued on: May 9, 2012

Victor M. Mendez,

Administrator

In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, part 655, subpart F as follows:

PART 655 – TRAFFIC OPERATIONS

1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315 and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

Subpart F— [Amended]

2. Revise § 655.601, to read as follows:

§ 655.601 Purpose.

To prescribe the policies and procedures of the Federal Highway Administration (FHWA) to obtain basic uniformity of traffic control devices on all streets and highways in accordance with the following references that are approved by the FHWA for application on Federal-aid projects:

(a) MUTCD.

(b) AASHTO Guide to Metric Conversion.

(c) AASHTO Traffic Engineering Metric Conversion Factors .

(d) The standards required in this section are incorporated by reference into this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the FHWA must publish notice of change in the *Federal Register* and the material must be available to the public. All approved material is available for inspection at the Federal Highway Administration, Office of Transportation Operations, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366-8043 and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA call (202) 741-6030, or go to <http://www.archives.gov/federal-register/cfr/index.html>.

(1) AASHTO, American Association of State Highway and Transportation Officials, Suite 249, 444 North Capitol Street, NW., Washington, DC 20001

(i) AASHTO Guide to Metric Conversion, 1993;

(ii) AASHTO, Traffic Engineering Metric Conversion Factors, 1993—
Addendum to the Guide to Metric Conversion, October 1993.

(2) FHWA, Federal Highway Administration, 1200 New Jersey Avenue, SE.,
Washington, DC 20590, telephone (202) 366-1993, also available at
<http://mutcd.fhwa.dot.gov>.

(i) Manual on Uniform Traffic Control Devices for Streets and Highways
(MUTCD), 2009 Edition, including Revisions No. 1 and No. 2, FHWA,
dated May 2012.

(ii) [Reserved]

[FR Doc. 2012-11712 Filed 05/10/2012 at 4:15 pm; Publication Date: 05/14/2012]