

rope, and other devices along a designated pathway. The FHWA received two comments from the City of Charlotte, North Carolina, and a private citizen opposed to the removal of the sentence. The commenters did not provide a justification for their opposition, and the FHWA removes the sentence in this final rule, because these devices should not be used where persons with visual disabilities are expected and because use of these devices is strongly discouraged in any case.

In the NPA, the FHWA proposed to add a paragraph at the beginning of the last GUIDANCE statement to indicate that tape, rope, and other devices are not detectable and should not be used as a control for pedestrian movements. The FHWA received one comment from the NCUTCD opposed to this change. The FHWA believes that this information is important to provide safe passage for persons with visual disabilities and adopts this text, as proposed in the NPA, in this final rule. The FHWA also expands the (new) second paragraph of this GUIDANCE to emphasize that pedestrian routes should be preserved in urban and commercial suburban areas and that alternate routing should be discouraged. The FHWA received one comment from the NCUTCD opposed to this language; however, to emphasize the importance of pedestrian routes in these areas, the FHWA adopts this language in this final rule.

In the NPA, the FHWA proposed to add a SUPPORT statement at the end of Section 6D.01 to state that the absence of a continuous passage, including accessible features, might preclude the use of the facility by pedestrians with disabilities. The FHWA received one comment from the NCUTCD opposed to this new paragraph, and the FHWA withdraws this proposal, because this information is included in new Section 6D.02 Accessibility Considerations in this final rule.

The FHWA establishes a phase-in target compliance date of five years from the effective date of this final rule for the changes in this section, which in turn affects many other sections in Part 6. However, this does not affect the obligations placed on governments by the ADA laws and regulations.

229. The FHWA adds a new section numbered and titled, "Section 6D.02 Accessibility Considerations." This new section contains SUPPORT, GUIDANCE, and STANDARD statements specific to pedestrian accessibility, including pedestrians with visual disabilities, in temporary traffic control zones. The FHWA received several comments

suggesting that the accessibility information that was repeated throughout Part 6 in the NPA should be consolidated into one location. While the FHWA includes some accessibility information in each chapter of Part 6 in this final rule, the FHWA includes this new section to provide all of the necessary information in one place. The dual provisions provide the practitioner with the necessary emphasis to ensure that there is consideration of the accessibility needs for persons with disabilities in the planning, design, implementation and operation of temporary traffic control zones. The FHWA strongly supports provisions in the MUTCD that provide accommodations for all pedestrians and road users. The FHWA establishes a five year phase-in target compliance date from the effective date of this final rule for accessibility considerations in temporary traffic control zones, which in turn affects many other sections in Part 6.

230. In Section 6D.03 Worker Safety Considerations (numbered and titled Section 6D.02 Worker Considerations in the NPA), the FHWA changes the title as suggested by NIOSH, because the first SUPPORT statement in this section rightly indicates that worker safety is equally as important as road user safety. The FHWA also adds to the SUPPORT statement information on the need to separate workers on foot from moving construction vehicles. The FHWA received one comment from the NCUTCD opposed to this new language, suggesting that the issues covered in the new text are covered by the Occupational Safety and Health Administration (OSHA) regulations and should not be included in the MUTCD. The Laborers' Health and Safety Fund of North America and NIOSH expressed support for the new language, stating that including this language in the MUTCD is very important, because it emphasizes the hazards to workers on foot created by moving construction vehicles and equipment within the work zone. Comments from the Kansas DOT and NIOSH suggested editorial revisions, which the FHWA adopts in this final rule.

In the NPA, the FHWA proposed adding to the GUIDANCE statement that workers exposed to the risks of moving roadway traffic or construction equipment should wear high visibility apparel meeting the requirements of the American National Standard for High Visibility Safety Apparel<sup>43</sup> and labeled

as meeting ANSI 107-1999 Standard Performance for Class 1, 2, or 3 risk exposure. The FHWA received seven comments from the North American Association of Transportation Safety and Health Officials (NAATHSO), ATSSA, the Virginia DOT, Caltrans, the Laborers' Health and Safety Fund of North America, NIOSH, and a traffic control device manufacturer in support of this change, three of which suggested stronger language to change this to a STANDARD. The FHWA received thirteen comments from the NCUTCD, contractors, and State and local highway agencies opposed to the proposed safety apparel recommendations. The FHWA adopts the wording, as proposed in the NPA, but makes changes in Section 6E.02 High Visibility Safety Apparel to address issues regarding high-visibility flagger safety apparel.

While NIOSH supported the proposed wording that a "competent person" be responsible for the worker safety plan within the activity area, several commenters representing State and local highway agencies and contractors opposed the language, stating that the phrase was vague. The FHWA believes that this language is not vague and that it is specific enough to be reasonably applied by jurisdictions. The FHWA adopts the text as proposed in the NPA.

In the NPA, the FHWA proposed a phase-in target compliance date of five years from the effective date of this final rule for this change. The FHWA received comment from the International Safety Equipment Association (ISEA) and the Laborers' Health and Safety Fund of North America, indicating that worker clothing is an expendable item that wears out quickly and must be replaced much sooner than five years and therefore no special phase-in target compliance date is needed. Other commenters suggested that a shorter phase-in target compliance date is advisable because of the important safety benefits of high visibility safety apparel. The FHWA believes that high-visibility safety apparel for all workers, including supervisors, is very important for safety in temporary traffic control areas. Not all worker clothing wears out and is replaced quickly, especially the safety apparel worn on the job site by supervisors and managers. To provide for a reasonably rapid implementation of this important change while

purchase from ISEA—The Safety Equipment Association, by telephone (703) 525-1695, facsimile (703) 528-2148, mail ISEA, 1901 North Moore Street, Suite 808, Arlington, VA 22209. Also, a summary of information about the three classes of apparel in the standard is available at the following URL: <http://www.safetysystem.org/hivisstd.htm>.

<sup>43</sup> "American National Standard for High Visibility Safety Apparel," ANSI/ISEA 107-1999, 1999 Edition, or equivalent revision, is available for