

minimizing impacts on State and local governments, the FHWA establishes a three-year phase-in target compliance date from the effective date of this final rule for the changes regarding worker safety apparel.

Additionally, in the same GUIDANCE statement, the FHWA adds "Activity Area" to the list of key elements of worker safety and temporary traffic control management that should be considered to improve worker safety. The FHWA received two comments from Laborers' Health and Safety Fund of North America and NIOSH in support of this new text, and one comment from the NCUTCD opposed to it. The NCUTCD suggested that this text is already covered in Chapter 6B. The FHWA disagrees because worker safety is very important and early planning is where many significant worker safety improvements can be made. The FHWA adopts the new text in this final rule, with minor editorial changes.

The FHWA includes "Worker Safety Planning" to the list of key elements of worker safety and temporary traffic control management that should be considered to improve worker safety. The worker safety plan should be in accordance with the Occupational Safety and Health Act of 1970, "General Duty Clause" Section 5 (a)(1)—Public Law 91–596, 84 Stat. 1590, December 29, 1970, as amended, and with the requirement to assess worker risk exposures for each job site and job classification in accordance with the Occupational Safety and Health Administration (OSHA) Regulations as found in 29 CFR 1926.20(b)(2). While NIOSH supported this new language, there were comments from the NCUTCD, the Virginia, Kansas, California, and North Carolina DOTs, the City of Charlotte, North Carolina, and a private citizen opposed to it. The opposing commenters suggested that the information in this paragraph is beyond what would be typical MUTCD material. The FHWA disagrees with the opposing commenters because this is GUIDANCE rather than a STANDARD, and the FHWA adopts this text to emphasize the importance of worker safety and to assure that the applicable laws and regulations are referenced.

The FHWA adds a new SUPPORT statement at the end of the section that contains information previously included in item E of the GUIDANCE statement regarding the judicious use of special devices to maintain their effectiveness. The FHWA received one comment from NIOSH opposing this change, stating that the statement merits continued emphasis in order to prevent misuse. The FHWA disagrees because

the original placement of this statement in item E made it erroneously appear to be an OPTION, when in fact it was a SUPPORT. The FHWA adopts the change as proposed in the NPA.

231. In Section 6E.01 Qualifications for Flaggers, the FHWA rewrites the GUIDANCE statement in its entirety to describe in terms more appropriate to a temporary traffic control zone environment the recommended skills and abilities for a flagger. This change reflects the state of the practice in flagger selection and training. The FHWA received no comments regarding this change, and adopts this change.

232. In Section 6E.02 High-Visibility Safety Apparel (titled High-Visibility Clothing in the NPA), the FHWA proposed to add to the first STANDARD statement the requirement that flaggers wear safety apparel meeting the requirements of the American National Standard for High Visibility Apparel and labeled as meeting ANSI 107–1999 Standard Performance for Class 3 risk exposure, to improve worker visibility to approaching road users. While the FHWA received six comments from ATSSA, the Virginia DOT, the City of Tucson, Arizona, the International Safety Equipment Association, the Laborers' Health and Safety Fund of North America, and NIOSH in support of using Class 3 high visibility safety apparel for flaggers under all conditions, there were sixteen comments from the NCUTCD, ATSSA, NAATSHO, the South Carolina, North Carolina, Wisconsin, and Oregon DOTs, contractors, and a private citizen opposed to it, at least for daytime activity. Several commenters stated that with the extreme heat conditions in the South, Midwest, and Western States that their workers endure in the summer, wearing the required uniform jacket and pants or jumpsuit would create more health problems. Based on all of the docket comments, the FHWA agrees that Class 3 high visibility safety apparel for flagger activity should not be a requirement. Instead, the FHWA establishes that, for both day and night time activity, Class 2 high visibility safety apparel shall be required. The FHWA also concludes that for nighttime flagger activity, Class 3 high visibility safety apparel should be considered for flagger wear rather than Class 2. Even with the requirements for flagger stations to be illuminated for night activity that the FHWA establishes in Section 6E.05 Flagger Stations, Class 3 safety apparel should at least be considered for nighttime flagger wear because of its increased retroreflective surface area. The FHWA revises the

STANDARD statement and adds a GUIDANCE statement accordingly.

In the NPA, the FHWA proposed a phase-in target compliance date of five years for this change. The FHWA received comments from ATSSA and the Virginia DOT indicating that flagger clothing is considered expendable because it wears out 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 flaggers, including supervisors who sometimes perform this duty, 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 minimizing impacts on State and local governments, the FHWA establishes a three-year phase-in target compliance date from the effective date of this final rule for the changes regarding flagger safety apparel.

233. In Section 6E.03 Hand-Signaling Devices, the FHWA proposed in the NPA to add to the OPTION statement other design configurations for adding white lights to the STOP/SLOW paddle to improve visibility and conspicuity. The FHWA received two comments from the City of Tucson, Arizona, and the Laborers' Health and Safety Fund of North America in support of the proposed changes and nine comments from NCUTCD, the Arizona DOT, Caltrans, private citizens, and traffic control device manufacturers opposed to it. The opposing commenters suggested that red and yellow lights should also be permitted, and that the information regarding the design configurations needed more detail. The FHWA agrees that these other colors of lights will be helpful to road users at night, as determined by a New York State study.⁴⁴ Therefore, the FHWA revises the OPTION statement in this final rule to include the use of red and yellow lights, as appropriate. The FHWA also adds two new paragraphs to the following STANDARD statement to provide appropriate restrictions on the mixing of colors of lights on the STOP

⁴⁴ A copy of "Effectiveness of STOP/SLOW Paddles Equipped With Flashing Red and Flashing Yellow Lights," Experiment VI–117(E) STOP SLOW PADDLE, by Daniel Paddick, P.E., New York State Department of Transportation, is available on the docket.