

NRC's preemption of the field of nuclear regulation than is reflected in the present General Counsel opinion. The General Counsel, instead, was asked to render an opinion on the broad question of what present Federal case law points to as the governing principles of Federal preemption. The petitioner acknowledges that "the agency's determinations presumably would not be binding on a court," Petition at 5, and it is not evident that the General Counsel's opinion on this broad question would be entitled to the same weight as would be given to an agency's interpretation of its governing statute. Thus, a General Counsel opinion on this issue is unlikely to obtain for the agency an important benefit that normally would be expected to attach to a formal opinion. Similarly, the procedures for seeking an NRC staff determination as to whether State or local requirements are preempted by NRC's requirements would result only in guidance as to what, given current Federal preemption case law, a court might determine with respect to a State or local requirement challenged on preemption grounds. Agency procedures are wholly unnecessary because those persons subject to State or local requirements are free to take their preemption arguments to a Federal court for definitive resolution regardless of the NRC's views or even without seeking these views.

Finally, while the General Counsel's views on the subject of Federal preemption might provide guidance, this benefit must be balanced against the expenditure of agency resources that would be necessitated by the petitioner's request. In addition to the resources needed to undertake a legal review of judicial case law on the subject of Federal preemption and to undertake a rulemaking proceeding, the resources needed to implement the procedures requested by the petitioner for rendering NRC staff determinations on preemption could be considerable. These procedures include **Federal Register** notices, potential hearings, the need to respond to comments both on the initial application for a determination of preemption and for any petition for reconsideration, a formal written decision, and, potentially, the need to defend the NRC'S decision in court if judicial review is sought. The nature of the problem described by the petitioner does not warrant the expenditure of resources that would likely be involved. Local governments and non-Agreement States might be expected to look to their own counsel for competent advice on the state of Federal preemption law,

particularly because a General Counsel opinion would not be definitive on this issue. Persons harmed by the occasional unwarranted assertion of authority by a local government or non-Agreement State into the regulatory field reserved to the NRC have a ready remedy in the judicial system which can strike down requirements which are preempted by NRC regulations. In short, the petitioner's request is likely to require substantial expenditure of NRC resources with little benefit to either NRC or its licensees or the broader public.

For all the reasons stated above, the NRC denies the petition in its entirety.

Dated at Rockville, Maryland, this 24th day of October, 2002.

For the Nuclear Regulatory Commission,
Annette Vietti-Cook,
Secretary of the Commission.
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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA-2002-13069]

RIN 2125-AE78

Traffic Control Devices on Federal-Aid and Other Streets and Highways; Standards

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The FHWA proposes to revise its regulation on traffic control devices on Federal-aid and other highways, which prescribes procedures for obtaining basic uniformity of traffic control devices on all streets and highways. Recently, the FHWA underwent agency reorganization and various offices and position title changes were made within the headquarters and field offices. Therefore, we propose to provide nomenclature changes and to remove a reference to an outdated regulation.

DATES: Comments must be received on or before December 30, 2002.

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, or submit electronically at <http://dmses.dot.gov/submit>. All comments should include the docket number that

appears in the heading of this document. All comments received will be available for examination at the above address from 9 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 print the acknowledgement page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Huckaby, Office of Transportation Operations, (202) 366-9064; or Mr. Raymond W. Cuprill, Office of the Chief Counsel, (202) 366-0791, U.S. Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. 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, MS Word for Mac, Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Formation (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 by using a computer, modem, and suitable communications software. 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

This document proposes to revise the regulation that prescribes procedures for obtaining basic uniformity of traffic control devices on all streets and highways in order to provide nomenclature changes, and to remove the outdated reference to an outdated regulation. The Manual on Uniform Traffic Control Devices (MUTCD) is approved by the Federal Highway Administration 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. Due to the reorganization of the FHWA and the deletion of 23 CFR 1204.4 by the National Highway Traffic Safety Administration (NHTSA), it is necessary to update 23 CFR 655.603.

The FHWA is issuing this notice to provide an opportunity for public comment on the proposed changes to 23 CFR 655.603. Based on the comments received and its own experience, the FHWA may issue a final rule concerning the proposed changes included in this notice at any time after the close of the comment period.

Discussion of Proposed Amendments

The FHWA underwent restructuring in 1999 and various office and position title changes were made within the Headquarters and field offices. The FHWA regional offices were eliminated, resource centers were established, and additional responsibilities were given to FHWA's division offices (located in each State, Puerto Rico and the District of Columbia) and the Federal Lands Highway offices. These organizational changes require us to update § 655.603(b)(1), and § 655.603(b)(2), to reflect changes that resulted in the restructuring of the FHWA in 1999.

The FHWA proposes to modify the first sentence in § 655.603(b)(2) to delete the phrase "with the concurrence of the Office of Traffic Operations." The deletion of this phrase is based on the similar technical abilities of the Federal Lands Program offices and the FHWA Division offices. Additionally, the FHWA proposes to have the Associate Administrator of Federal Lands Highway Program Office approve the MUTCDs of the other Federal land management agencies (Bureau of Indian Affairs, National Park Service, Forest Service, and U.S. Fish and Wildlife Service).

Section 655.603(d)(1) discusses the systematic upgrading of substandard traffic control devices and installation of devices that conform to the MUTCD. This section refers to a program required by the former Highway Safety Program Standard Number 13, Traffic Engineering Services (23 CFR 1204.4), a National Highway Traffic Safety Administration (NHTSA) regulation and must be amended to remove the reference to 23 CFR part 1204.

The Highway Safety Act of 1966 (Pub. L. 89-564; 80 Stat 731; September 9, 1966), amended title 23, United States Code to add Chapter 4, entitled "Highway Safety." Section 402(a) of the U.S. Code, the Highway Safety program, required that States have a highway safety program designed to reduce traffic accidents and deaths, injuries,

and property damage resulting from traffic accidents. These programs were to be in accordance with uniform standards promulgated by the Secretary of transportation. The NHTSA was the agency within the U.S. DOT responsible for promulgating these uniform standards. Originally promulgated in November 1966, these uniform standards were codified in 23 CFR 1204. There were 18 standards in all.

Standard number 13 of the uniform standards, entitled "Traffic Control Devices" required, among other things, that each State's highway safety program have, at a minimum: a method to identify needs and deficiencies of traffic control devices; a method to upgrade all existing traffic control devices on all streets and highways to conform with standards issued by the Federal Highway Administrator; and program for preventive maintenance, repair, and daytime and nighttime inspection of all traffic control devices.¹

Until the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17; April 2, 1987), it was mandated that the States complied with these 18 standards, as there was financial sanctions imposed for non-compliance. In 1987, Congress revised 23 U.S.C. 402(a) to replace the word "standards" with the word "guidance." This change, combined with the changes made to the Highway Safety Program under the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102-240; December 18, 1991) lead to the revision of the uniform standards by NHTSA. In 1995, NHTSA revised the standards to make them guidelines and removed them from the code of Federal Regulations.² The guidelines, now 21 in all, are published in separate documents made available to the States.

Guideline 21, entitled "Roadway Safety," captures the requirements of former standard number 13 in that the same requirements regarding traffic control devices remain. This Guideline (No. 21) was published as a notice in the **Federal Register** on July 18, 1995 (60 FR 36641, 36665).

Section 655.603(d)(1) discusses the systematic upgrading of substandard traffic control devices and installation of devices to conform to the MUTCD. Currently, it still refers to 23 CFR 1204, which has since been removed from the Code of Federal Regulations; therefore, we proposed to amend § 655.603(d)(1) to reflect this change.

¹ See 33 FR 16560, 16564; November 14, 1966. Originally codified in 23 CFR 204, however, it was redesignated as 23 CFR 1204 in 1973 at 38 FR 10810; May 2, 1973.

² See 60 FR 36641, July 18, 1995.

Rulemaking Analysis 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 in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

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

The FHWA has determined preliminarily that this action will not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The changes proposed in this notice are intended to clarify 23 CFR 655.603 in light of the FHWA reorganization and to remove the reference to an outdated regulation. The FHWA expects that these proposed changes will provide clarity at little or no additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of these proposed changes on small entities. This action proposes to update the authorities of the FHWA, and referenced documents regarding MUTCD compliance on existing highways. Such updates will provide transportation entities with the appropriate points of contact regarding the MUTCD. The FHWA hereby certifies that these proposed revisions would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This notice of proposed rulemaking would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48, March 22, 1995). This proposed action will 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 to comply with these changes as these proposed changes are minor and non-substantive in nature, requiring no additional or new expenditures.

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 proposed action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States and local governments. The FHWA has also determined that this proposed rulemaking will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions and does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The proposed 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 highways.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that it would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. 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. It has been determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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 (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposed action does not contain collection information requirements for purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

This proposed 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. This is not an economically significant action and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed 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 proposed action for the purpose of the national Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it would not have any effect on the quality of the environment.

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, Signs, Traffic regulations.

Issued on: October 24, 2002.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend 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, 114(a), 217, 315, and 402; 23 CFR 1.32; and 49 CFR 1.48.

Subpart F—[Amended]

2. Revise § 655.603, paragraphs (b)(1), (b)(2) and (d)(1) to read as follows:

§ 655.603 Standards.

* * * * *

(b) *State of Federal MUTCD.* (1) Where State or other Federal agency MUTCDs or supplements are required, they shall be in substantial conformance with the national MUTCD. Changes to the national MUTCD issued by the FHWA shall be adopted by the States or other Federal agencies within 2 years of issuance. The FHWA Division Administrators shall approve the State MUTCDs and supplements that are in substantial conformance with the national MUTCD.

(2) The FHWA Associate Administrator of the Federal Lands Highway Program shall approve other Federal land management agencies' MUTCDs that are in substantial conformance with the national MUTCD. States and other Federal agencies are encouraged to adopt the national MUTCD as their official Manual on Uniform Traffic Control Devices.

* * * * *

(d) *Compliance—(1) Existing highways.* Each State, in cooperation with its political subdivisions, and Federal agency shall have a program as required by 23 U.S.C 402(a), which shall include provisions for the systematic upgrading of substandard traffic control devices and for the installation of needed devices to achieve conformity with the MUTCD.

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