DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–2010–0159]

RIN 2125–AF43

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

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

ACTION: Final rule.

SUMMARY: The MUTCD is incorporated in 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 information relating to target compliance dates for traffic control devices. This final rule revises Table I–2 of the MUTCD by eliminating the compliance dates for 46 items (8 that had already expired and 38 that had future compliance dates) and extends and/or revises the dates for 4 items. The target compliance dates for 8 items that are deemed to be of critical safety importance will remain in effect. In addition, this final rule adds a new Option statement exempting existing historic street name signs within a locally identified historic district from the Standards and Guidance of Section 2D.43 regarding street sign color, letter size, and other design features, including retroreflectivity.

Consistent with Executive Order 13563, and in particular its emphasis on burden-reduction and on retrospective analysis of existing rules, the changes adopted are intended to reduce the costs and impacts of compliance dates on State and local highway agencies and to streamline and simplify the information. The MUTCD, with these changes incorporated, is being designated as Revision 2 of the 2009 edition of the MUTCD.

DATES: *Effective Date:* This final rule is effective June 13, 2012. 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 June 13, 2012.

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://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 purpose of this final rule is to revise certain information relating to target compliance dates for traffic control devices. The changes adopted are intended to reduce the impacts of compliance dates on State and local highway agencies and streamline and simplify information contained in the MUTCD without reducing safety. 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).

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

This final rule revises Table I–2 of the MUTCD by eliminating the compliance dates for 46 items (8 that had already expired and 38 that had future compliance dates) and extends and/or revises the dates for 4 items. The target compliance dates for 8 items that are deemed to be of critical safety importance will remain in effect. In addition, this final rule adds a new Option statement exempting existing historic street name signs within a locally identified historic district from the Standards and Guidance of Section 2D.43 regarding street sign color, letter size, and other design features, including retroreflectivity.

III. Costs and Benefits

The changes in this rulemaking will not require the expenditure of additional funds, but rather will provide State and local governments with the flexibility to allocate scarce financial resources based on local conditions and the useful service life of its traffic control devices. Since this rulemaking will benefit State and local governments by providing additional clarification, guidance and flexibility, it is anticipated that the economic impacts will be minimal and that costs and burdens will be reduced. Thus, a full regulatory evaluation was not conducted.

Revised Table I–2

This final rule amends Table I–2 of the 2009 MUTCD to read as follows:

2009 MUTCD Section No.(s)	2009 MUTCD Section title	Specific provision	Compliance date
2A.08	Maintaining Minimum Retroreflectivity.	Implementation and continued use of an assessment or management method that is designed to maintain regulatory and warning sign retroreflectivity at or above the established minimum levels (see Paragraph 2).	2 years from the effective date of this revision of the 2009 MUTCD*.
2A.19	Lateral Offset	Crashworthiness of sign supports on roads with posted speed limit of 50 mph or higher (see Paragraph 2).	January 17, 2013 (date established in the 2000 MUTCD).
2B.40	ONE WAY Signs (R6–1, R6–2).	New requirements in the 2009 MUTCD for the number and locations of ONE WAY signs (see Paragraphs 4, 9, and 10).	December 31, 2019.
2C.06 through 2C.14.	Horizontal Alignment Warning Signs.	Revised requirements in the 2009 MUTCD regarding the use of various horizontal alignment signs (see Table 2C–5).	December 31, 2019.

2009 MUTCD Section No.(s)	2009 MUTCD Section title	Specific provision	Compliance date
2E.31, 2E.33, and 2E.36.	Plaques for Left-Hand Exits.	New requirement in the 2009 MUTCD to use E1–5aP and E1–5bP plaques for left-hand exits.	December 31, 2014.
4D.26	Yellow Change and Red Clearance Intervals.	New requirement in the 2009 MUTCD that durations of yellow change and red clearance intervals shall be determined using engineering practices (see Paragraphs 3 and 6).	5 years from the effective date of this revision of the 2009 MUTCD, or when timing adjustments are made to the individual intersection and/or corridor, whichever occurs first.
4E.06	Pedestrian Intervals and Signal Phases.	New requirement in the 2009 MUTCD that the pedestrian change interval shall not extend into the red clearance interval and shall be followed by a buffer interval of at least 3 seconds (see Paragraph 4).	5 years from the effective date of this revision of the 2009 MUTCD, or when timing adjustments are made to the individual intersection and/or corridor, whichever occurs first.
6D.03**	Worker Safety Considerations.	New requirement in the 2009 MUTCD that all workers within the right-of-way shall wear high-visibility apparel (see Paragraphs 4, 6, and 7).	December 31, 2011.
6E.02**	High-Visibility Safety Apparel.	New requirement in the 2009 MUTCD that all flaggers within the right-of-way shall wear high-visibility apparel.	December 31, 2011.
7D.04**	Uniform of Adult Crossing Guards.	New requirement in the 2009 MUTCD for high-visibility apparel for adult crossing guards.	December 31, 2011.
8B.03, 8B.04	Grade Crossing (Crossbuck) Signs and Supports.	Retroreflective strip on Crossbuck sign and support (see Paragraph 7 in Section 8B.03 and Paragraphs 15 and 18 in Section 8B.04).	December 31, 2019.
8B.04	Crossbuck Assemblies with YIELD or STOP Signs at Passive Grade Crossings.	New requirement in the 2009 MUTCD for the use of STOP or YIELD signs with Crossbuck signs at passive grade crossings.	December 31, 2019.

*Types of signs other than regulatory or warning are to be added to an agency's management or assessment method as resources allow.
**MUTCD requirement is a result of a legislative mandate.
Note: All compliance dates that were previously published in Table I–2 of the 2009 MUTCD and that do not appear in this revised table have been eliminated.

Background

One of the purposes of the MUTCD is to provide for the consistent and uniform application of traffic control devices on streets and highways open to public travel. These traffic control devices are designed to promote highway safety and efficiency. As technology evolves and surroundings change, new provisions for traffic control devices and their application may be proposed. When new provisions are adopted in a new edition or revision of the MUTCD, any new or reconstructed traffic control devices installed after adoption are required to be in compliance with the new provisions. Existing devices already in use that do not comply with the new MUTCD provisions are expected to be upgraded by highway agencies over time to meet the new provisions, unless the FHWA establishes a target compliance date for upgrading such devices. If such a target date has been established by the FHWA through the Federal rulemaking process, agencies are to upgrade existing noncompliant devices on or before the target compliance date. Due to the current economic climate, State and local agencies have expressed concern about the potential costs associated with replacing noncompliant traffic control devices within the target compliance dates previously adopted in the MUTCD. In response to those concerns, the FHWA issued a Request for Comments in the **Federal Register** [1] seeking public input on traffic control device compliance dates.

After reviewing and considering the nearly 600 letters submitted by State and local government highway agencies, national associations, traffic industry representatives, traffic engineering consultants, and private citizens, on August 31, 2011, the FHWA published a Notice of Proposed Amendments (NPA), proposing revisions to the MUTCD at 76 FR 54156. The NPA proposed to revise Table I–2 of the 2009 edition of the MUTCD to eliminate the compliance dates for 46 items (8 that have already expired and 38 that have future compliance dates) and to extend and/or revise the dates for 4 items. In addition, the NPA proposed to retain the target compliance dates for eight items that were deemed to be of critical safety importance. Interested persons were invited to submit comments to FHWA Docket No. FHWA–2010–0159. 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 2 of the 2009 edition of the MUTCD.

The text of Revision 2 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 the 2009 edition of the MUTCD, with these final rule changes and the changes of Revision 1 also incorporated, is available on the FHWA's MUTCD Web site at: *http://mutcd.fhwa.dot.gov*. The 2009 edition with Revisions 1 and 2 incorporated supersedes all previous editions and revisions of the MUTCD.

Summary of Comments

The FHWA received, reviewed, and analyzed 158 letters submitted to the docket, which contain nearly 240 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), American Road and Transportation

[1] 75 FR 74128, November 30, 2010.

Builders Association (ARTBA), State departments of transportation (DOTs), city and county government agencies, other associations, transportation consultants, and individual private citizens submitted comments. The majority of the comments were fully or partially supportive of the NPA proposal, agreeing with the general intent. The AASHTO agreed with the NPA, except for two specific compliance dates that were retained in the NPA (see below for additional details). In addition to commenting on the compliance date proposal, several local jurisdictions and individuals submitted comments regarding existing provisions in Section 2D.43 of the MUTCD that affect ''historic'' street name signs in their communities. A summary of the comments received and the changes in the MUTCD adopted in this final rule are included in the following section.

Discussion of Comments on Table I–2 and Adopted Revisions

As noted above, most the comments were fully or partially supportive of the NPA proposal, and agreed with the general intent of the NPA. Many commenters had previously taken the opportunity to comment on the November 30, 2010, request for comments on traffic control compliance dates published at 75 FR 74128. As a result, the proposals in the NPA reflected many of the commenters' concerns and opinions. The following discussion addresses the significant issues raised by comments in opposition to elements of the NPA published on August 31, 2011 at 76 FR 54156.

1. In the NPA, the FHWA proposed to eliminate 46 of the existing compliance dates (not including the two associated with sign retroreflectivity). Six citizens and one association of local governments in Minnesota opposed these 46 eliminations, on the basis of reduced uniformity and safety of traffic control devices. The Maryland State Highway Administration noted that the NPA preamble stated that FHWA proposed to ''eliminate'' the dates that have already expired for eight items in Table I–2, but the note at the bottom of the table stated that these dates were ''deleted'' from the table. The eight specific compliance dates that have expired were intended to be legally eliminated (rather than just removed from the table). To clarify this issue, the FHWA revises the note at the bottom of the table in the final rule to read, ''All compliance dates that were originally published in Table I–2 of the 2009 MUTCD that do not appear in this revised table have been eliminated.'' The FHWA adopts the elimination of the compliance dates in Table I–2, as proposed in the NPA, for Sections 2B.03, 2B.09, 2B.10, 2B.11, 2B.13, 2B.26, 2B.55, 2C.04, 2C.13, 2C.20, 2C.30, 2C.38, 2C.40, 2C.41, 2C.42, 2C.46, 2C.49, 2C.50, 2C.61, 2C.63, 2D.43 (two provisions), 2D.44, 2D.45, 2G.01 through 2G.07, 2G.11 through 2G.15, 2H.05 and 2H.06, 2I.09, 2I.10, 2J.05, 2N.03, 3B.04 and 3B.05, 3B.18, 4D.01, 4D.31, 4E.07, 5C.05, 7B.11, 7B.12, 7B.16, 8B.19 and 8C.02 through 8C.05, 8C.09, 8C.12, and 9B.18.

The elimination of a compliance date for a given Standard contained in the MUTCD does not eliminate the regulatory requirement to comply with that Standard. The Standard itself remains in the MUTCD and applies to any new installations, but the compliance date for replacing noncompliant devices that exist in the field is eliminated. To further clarify, any new installation of an existing noncompliant device (such as moving a noncompliant device to another location) would also have to comply with the Standard upon installation

2. The FHWA proposed to extend the compliance date by approximately 2 years for the provision in Section 2A.08 that requires agencies to implement an assessment or management method designed to maintain sign retroreflectivity at or above the established minimum levels. As part of this proposal, the FHWA proposed to limit this particular compliance date to apply only to regulatory and warning signs. This compliance date does not require replacement of any signs by a particular date. Rather, it requires highway agencies to implement an assessment or management method for maintaining sign retroreflectivity, in accordance with section 406 of the Department of Transportation and Related Agencies Appropriations Act, 1993 (Pub. L. 102–388; October 6, 1992), by the compliance date. Safety advocacy organizations, the ARTBA, one State DOT, and some industry representatives generally disagreed with the proposal. The ATSSA and some State DOTs agreed with the extension for implementing an assessment/management method, but requested that guide signs not be excluded. However, many agencies stated that including guide signs in the assessment method would limit funds that could be used for other projects. The FHWA disagrees with including guide signs at this time because regulatory and warning signs constitute the highest priority for assessing retroreflectivity of existing signs. The FHWA, therefore, adopts the revisions as proposed in the final rule. The additional cost of including guide signs would increase the economic burden on agencies, whose funds are limited due to the current economic climate. The revisions to the compliance date and its applicability will provide relief and enable agencies to determine when their resources will allow them to add signs, other than regulatory and warning signs, to their assessment or management method. Several commenters noted the confusion and potential for misinterpretation introduced by limiting the compliance date to regulatory and warning signs. The FHWA reiterates that the language in Section 2A.08 still requires agencies to establish a method for all types of signs, but understands that limiting the compliance date to regulatory and warning signs could lead some agencies to mistakenly think that guide signs would never be required to be included in an agency's method. In addition, because the MUTCD requirement is for a method rather than a device, it is unclear how agencies would interpret the application of ''systematic upgrading'' (applicable to MUTCD requirements that have no specific compliance date) in the case of adding guide signs to the agency's management or assessment method. The FHWA adds a footnote to Table I–2 to clarify that other types of signs are to be added to an agency's management or assessment method as resources allow. The FHWA believes that adding this footnote in the final rule, rather than being silent on the issue, will provide clarity. The FHWA adopts the extension of the compliance date from January 22, 2012, to 2 years after this final rule and adds a footnote as discussed above.

In addition, the FHWA proposed in the NPA to eliminate the compliance dates for replacement of signs found not to meet the minimum retroreflectivity standards. The ATSSA, the ARTBA, other safety advocates, industry representatives, some States and cities, and several citizens disagreed with eliminating the January 22, 2015, and January 22, 2018, compliance dates and suggested that the dates instead be extended to 2018 and 2021, respectively. Even without a specific date, agencies will still need to replace any sign they identify as not meeting the established minimum retroreflectivity levels. Their schedules replacing the signs, however, would be based on resources and relative priorities, rather than specific compliance dates. As a result, the FHWA eliminates these compliance dates in the final rule.

3. The FHWA proposed to extend the compliance dates for signal timing adjustments associated with vehicular

yellow and red clearance intervals in Section 4D.26 and pedestrian clearance intervals in Section 4E.06 from December 31, 2014, to 5 years after this final rule. The National Association of City Transportation Officials requested a further extension to 10 years after the final rule and Pennsylvania DOT suggested eliminating this date instead of extending it. The FHWA disagrees with extending the compliance date even further into the future or eliminating it, as the extension that was proposed in the NPA achieves a reasonable balance between the need for these critical safety retiming efforts and resource constraints. As mentioned in the NPA, the original compliance date of December 31, 2014 published for the 2009 edition of the MUTCD was based on what FHWA believed to be the typical signal retiming frequency of about 5 years. This new proposed compliance date provides agencies with more than 2 additional years to implement the new requirements of Sections 4D.26 and 4E.06 at any locations that have not already been made compliant under a previous intersection or corridor retiming. Thus, the FHWA believes that it is reasonable for agencies to retime those signals by 2017 that have not already been made compliant under a previous intersection or corridor retiming. The FHWA adopts the extension of the compliance dates for Sections 4D.26 and 4E.06 to 5 years after this final rule, or when timing adjustments are made to the individual intersections and/or corridor, whichever occurs first, as proposed in the NPA.

4. In the NPA, the FHWA proposed to revise and extend the compliance dates in Sections 8B.03 and 8B.04 related to requiring retroreflective strips on the back of Crossbuck signs and on the front and back of supports for Crossbuck signs at passive railroad grade crossings (those crossings that do not have gates and/or flashing lights activated upon approach of a train). As discussed in the NPA, the FHWA proposed to extend this compliance date to December 31, 2019, which would coincide with the date for adding YIELD or STOP signs with Crossbuck signs at passive grade crossings so that railroad companies and highway agencies can avoid unnecessary expense and achieve greater economies of sending sign crews to crossings only once rather than twice. The FHWA also proposed to extend the compliance date to clarify that the requirements for retroreflective strips are in Section 8B.04 as well as Section 8B.03 and to clarify that the compliance date was also intended to apply to the retroreflective strip on the backs of the Crossbuck signs. Two State DOTs and one consultant opposed this extension, suggesting instead that the dates be eliminated. Two commenters questioned the effectiveness of the devices but did not provide supporting evidence. As a result, the FHWA could not evaluate the commenters' effectiveness concerns. As to the suggestion of eliminating the compliance date entirely, the FHWA disagrees with those commenters because the extension proposed in the NPA provides an additional 9 years beyond the original 10-year compliance period established for this requirement in the 2000 edition of the MUTCD, while achieving the practical benefit of allowing agencies and companies to apply the retroreflective strips at the same time that they add YIELD or STOP signs at those same crossings. The FHWA adopts the revision and extension of this compliance date to December 31, 2019, as proposed in the NPA.

5. The FHWA proposed in the NPA to retain the existing target compliance dates for eight items that it deemed to be of critical safety importance, based on existing evidence, FHWA's subject matter expertise, and FHWA's experience in traffic control device matters. As stated in the NPA, final rules establishing compliance dates for each of the eight items clearly identified the safety justification for the compliance dates established. As a general comment, the NCUTCD, the NACE, three State DOTs, two cities, and two State associations of engineers requested that all retained compliance dates be justified by a benefit/cost analysis in accordance with Executive Order 13563. The FHWA disagrees that such an analysis is necessary because the compliance dates are already in the MUTCD and were put in place prior to the issuance of the Executive Order. This rulemaking is not establishing new, more burdensome dates for these items and is actually relieving burdens associated with many existing compliance dates. The following paragraphs describe the concerns that commenters expressed specifically related to the target compliance dates retained by the FHWA.

The FHWA proposed to retain the January 17, 2013, target compliance date for provisions in Section 2A.19 requiring crashworthiness of existing sign supports on roads with posted speed limits of 50 miles per hour (mph) or higher. This compliance date was established in the 2003 edition of the MUTCD. The AASHTO, the NCUTCD, the NACE, four State DOTs, a city, and a state association of engineers requested extension of the January 17, 2013, compliance date to 2019, or the end of the useful life of the sign supports (with no specific compliance date), rather than retaining the existing compliance date. The commenters did not provide supporting evidence for their position. The FHWA disagrees with eliminating or extending the compliance date because eliminating fixed-object hazards on high-speed roads remains a critical safety need due to the potential for death or severe injury that can result from high-speed, run-off-the-road crashes when non-crashworthy sign supports are struck. The following data on fatal crashes on roads with speed limits of 50 mph or higher, where a sign support was the ''most harmful event,'' was obtained from the Fatality Analysis Reporting System (FARS).[2]

Most harmful event	Year				
	2005	2006	2007	2008	2009
Highway Sign Post	47	56	54	71	53
Overhead Sign Support	9	9	12	17	12
Total Fatalities	56	65	66	88	65

During the 5-year period from 2005 to 2009, on average each year, 68 fatalities occurred that can be attributed to collisions with sign supports. The most recent year where full data is available is 2009. The data does not differentiate between crashworthy and non-crashworthy supports. However, based on this data, if the compliance date was

[2] *http://www.nhtsa.gov/FARS.*

extended by 6 years, about 400 potential fatalities might occur during that time. Collisions with sign supports are the cause of about 15 percent of the total fatalities involving poles of any sort. Nevertheless, they represent a significant problem on high-speed roads. To address this problem, in late 2000, the MUTCD addressed this issue by adding a requirement for a 10-year compliance date (2013), which was formally adopted in 2003. By 2013, agencies will have had 12 years to comply. The FHWA adopts the retention of the existing January 17, 2013, compliance date for this item, as proposed in the NPA.

For provisions in Section 2B.40 that require agencies to install additional ONE WAY signs at certain types of intersections, the FHWA proposed retaining the target compliance date of December 31, 2019, as established in the 2009 edition of the MUTCD. Two State DOTs and a county disagreed with retaining the existing compliance date and asked that the date be eliminated instead. The FHWA adopts the retention of the existing compliance date for this item, as proposed in the NPA, because of the safety issues associated with wrong-way travel on divided highways (the subject of a current National Transportation Safety Board (NTSB) investigation), research on the needs of older drivers, and the significant safety benefits to road users that the addition of such signs may provide.[3]

The FHWA proposed in the NPA to retain the December 31, 2019, target compliance date for the provisions in Sections 2C.06 through 2C.14 that require the use of various horizontal alignment warning signs and determinations of advisory speed values, adopted in the 2009 edition of the MUTCD. The AASHTO, the NCUTCD, the NACE, eight State DOTs, one city, a State association of engineers, and a consultant requested postponing the existing compliance date until National Cooperative Highway Research Program (NCHRP) Project 03–106 (''Traffic Control Device Guidelines for Curves'') confirms or disproves the costs and benefits of these warning signs, rather than retaining the date. The FHWA disagrees with extending the date because the NCHRP research is due to be completed by the end of 2015, which is 4 years before the compliance date. Four years allows sufficient time for revision of the 2019 date, if necessary. As stated in the NPA, the FHWA established the 10-year compliance date due to the safety issues associated with run-off-the-road crashes at horizontal curves and the disproportionate number of fatalities at horizontal curves on the Nation's highways. The FHWA adopts the retention of the existing compliance date for this item, as proposed in the NPA.

One State DOT disagreed with the FHWA's proposal in the NPA to retain the December 31, 2014, compliance date associated with requiring the use of LEFT EXIT plaques on guide signs for left exits established in Sections 2E.31, 2E.33, and 2E.36 of the 2009 edition of the MUTCD. The State DOT suggested eliminating, rather than retaining, the compliance date. The FHWA disagrees, because the 5-year target compliance date was established to address a recommendation of the NTSB arising from a significant safety concern with left-hand exits. The NTSB made a specific recommendation that the implementation of the LEFT plaque at left-hand exits be accelerated with a 5-year compliance date due to the fact that left-hand exits, though relatively rare, continue to violate driver expectancy at freeway and expressway locations. The lack of clear notice of a left-hand exit was cited as a contributing factor in a 2007 fatal crash of a motorcoach that inadvertently departed the freeway lanes at a left-hand exit. The FHWA adopts the retention of the December 31, 2014, compliance date in the final rule. As stated in the NPA, the installation of these plaques generally does not require replacement of the existing sign or sign support and this change affects relatively few existing locations throughout the country.

As proposed in the NPA, the FHWA adopts the retention of the existing December 31, 2011, target compliance date associated with the requirements in Sections 6D.03, 6E.02, and 7D.04 that all workers, including flaggers and school crossing guards must wear high-visibility apparel within the right-of-way of all highways, not just Federal-aid highways. Although a consultant suggested that the compliance date for high-visibility apparel should be eliminated because the compliance date will have expired by the time the final rule becomes effective, the FHWA retains the existing compliance date. Due to safety concerns and minimal costs, the FHWA does not believe agencies that have not yet complied should be relieved from compliance at the earliest possible time.

Finally, as proposed in the NPA, the FHWA adopts the retention of the existing December 31, 2019, target compliance date for the provisions in Section 8B.04 that require the use of either a YIELD or STOP sign with the Crossbuck sign at all passive grade crossings. Two State DOTs and a consultant disagreed with retaining the existing compliance date, suggesting that the date be eliminated. One of these commenters stated that this signing was only minimally effective and that compliance by the existing date was too costly but did not provide any evidence for either of these statements. The FHWA disagrees, because the 10-year compliance period provides adequate time to install these signs and because research has found the signs are needed to improve grade crossing safety.[4]

Discussion of Comments on Section 2D.43 and Adopted Revisions

Comments on the provisions of Section 2D.43 regarding Street Name signs were submitted to the docket by officials and citizens of the Township of Lower Merion, Pennsylvania, the Town of Brookline, Massachusetts, citizens of Saugerties and Forest Hills, New York, and the organization Historic New England. The comments stated that the communities have ''historic'' Street Name signs that do not meet the Standards and Guidance of Section 2D.43 regarding color, letter size, and other design features, including retroreflectivity. These communities asked for an exemption from the MUTCD so that they can retain their historic Street Name signs without fear of noncompliance with the MUTCD. These docket comments are similar to other concerns raised previously to the FHWA by two other communities (Fox Point, Wisconsin, and Waverly, Pennsylvania). The FHWA understands the desire of some communities to retain truly historic Street Name signs that are a key component of maintaining the historic character and environment of a particular district.

The FHWA agrees to provide flexibility for communities with historic Street Name signs that do not meet the provisions of the MUTCD, where the community deems the historic Street Name signs to meet the need for effective navigational information to road users. However, the FHWA believes that such flexibility is appropriate only in specific circumstances and lower risk situations. The Code of Federal Regulations, in 36 CFR part 60, governs the listing on the

[3] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report No. FHWA–RD–01–051, May 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendations I.E(4), I.K(2), and I.K(3).

[4] See NCHRP Report 470: Traffic-Control Devices for Passive Railroad-Highway Grade Crossings, available at *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_470-a.pdf.*

National Register of Historic Places (NRHP) of historic districts and structures such as Street Name signs. Specifically, 36 CFR 60.4 provides criteria for evaluating a district to be identified as a historic district and for evaluating a system of structures, such as Street Name signs, to be identified as historic structures.

Therefore, the FHWA adds a new OPTION paragraph at the end of Section 2D.43 stating, ''On lower speed roadways, historic street name signs within locally identified historic districts that are consistent with the criteria contained in 36 CFR 60.4 for such structures and districts may be used without complying with the provisions of Paragraphs 3, 4, 6, 9, 12 through 14, and 18 through 20 of this section.''

The FHWA believes that the vast majority of what is expected to be a fairly small number of historic Street Name signs meeting the criteria will be on local roads with speed limits of 25 mph or less. If a community decides to use the new OPTION to retain existing historic Street Name signs within a historic district, the FHWA believes it is important for the community to ensure that the historic Street Name signs provide at least some degree of utility as navigational devices for road users. External illumination of the Street Name signs should be considered for this purpose. It is also important to note that the OPTION applies only to historic Street Name signs in historic districts meeting the eligibility criteria of 36 CFR 60.4 and does not apply to other types of traffic signs or devices, nor to locations outside of historic districts.

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 constitutes a significant regulatory action within the meaning of Executive Order 12866 and within the meaning of DOT regulatory policies and procedures due to the significant public interest in issues surrounding the MUTCD. This action complies with Executive Orders 12866 and 13563 to improve regulation. In particular, this action is consistent with, and can be seen as directly responsive to, the requirements of Executive Order 13563, and in particular its requirement for retrospective analysis of existing rules (section 6), with an emphasis on streamlining its regulations. This approach is also consistent with Presidential Memorandum, Administrative Flexibility, which calls for reducing burdens and promoting flexibility for State and local governments.

The changes in the MUTCD will reduce burdens on State and local government in the application of traffic control devices. They will provide additional clarification, guidance, and flexibility to such governments. The uniform application of traffic control devices will greatly improve roadway safety and traffic operations efficiency. The standards, guidance, options, and support are also used to create uniformity and to enhance safety and mobility. The changes in this rulemaking will not require the expenditure of additional funds, but rather will provide State and local governments with the flexibility to allocate scarce financial resources based on local conditions and the useful service life of its traffic control devices. It is anticipated that the economic impact of this rulemaking will be minimal and indeed costs and burdens will be reduced, not increased; therefore, a full regulatory evaluation is not required.

As noted, this action streamlines existing significant regulation to reduce burden and promote the flexibilities of State and local governments under Executive Order 13563. In response to concerns about the potential impact of previously adopted MUTCD compliance dates on State and local governments in the current economic climate, the FHWA published a Request for Comments on traffic control device compliance dates. The FHWA asked for responses to a series of seven questions about compliance dates, their benefits and potential economic impacts, especially economic hardships to State and local governments that might result from specific target compliance dates for upgrading certain non-compliant existing devices. The responses received from that notice were considered in the development of this final rule. The FHWA anticipates that this rulemaking will reduce the impacts of compliance dates on State and local highway agencies and will streamline and simplify information contained in the MUTCD without reducing safety. The FHWA has retained compliance dates where it is of critical safety importance.

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 these changes on small entities. I certify that this action will not have a significant economic impact on a substantial number of small entities because this rule will reduce burdens and provide clarification and additional flexibility, and will not require an expenditure of funds.

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. This action will increase flexibility for State and local governments. The FHWA has determined that this action would 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 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 the highway. The overriding safety benefits of the uniformity prescribed by the MUTCD are shared by all of the State and local governments. In general, this rule will increase flexibility for States and local governments. To the extent that these amendments 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 will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995). On the contrary, the rule provides additional guidance, flexibility, and clarification and would 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, Signs, 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]

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