

**Temporary Traffic Control Devices Final Rule  
23 CFR 630 Subpart K**

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**Questions and Answers**

(Q&A Updated February 29, 2008)

**1. Q: Who does this Rule apply to?**

**A:** This Rule applies to all State and local agencies that receive Federal-aid highway funding. Specifically, the provisions of the Rule apply to all Federal-aid highway projects, including highway construction, maintenance, and utility projects that are funded in whole or in part with Federal-aid funds. However, agencies are encouraged to apply the good practices that the Rule fosters to all highway projects.

**2. Q: Is this Rule an entirely new regulation?**

**A:** Yes – It was issued in response to Section 1110 of SAFETEA-LU that stated “the Secretary, after consultation with appropriate Federal and State officials, shall issue regulations establishing the conditions for the appropriate use of, and expenditure of funds for, uniformed law enforcement officers, positive protective measures between workers and motorized traffic, and installation and maintenance of temporary traffic control devices during construction, utility, and maintenance operations.”

**3. Q: How does this Rule relate to the Work Zone Safety & Mobility Rule?**

**A:** This Rule supplements the Work Zone Safety & Mobility Rule by establishing minimum requirements and providing guidance for specific components of work zone safety. These added considerations are intended to be integrated into the agency processes, procedures, and/or guidance for the systematic consideration and management of work zone impacts that have been established in accordance with the Work Zone Safety & Mobility Rule (section 630.1006).

**4. Q: Does this mean that the deadline for complying with the Work Zone Safety & Mobility Rule is being extended?**

**A:** No – This action has no impact on the deadline to comply with the Work Zone Safety & Mobility Rule. The compliance date established for the Temporary Traffic Control Devices Rule is only for incorporating the new considerations introduced by this Rule.

**5. Q: What are the key components of the new Rule?**

**A:** Key components of the new Rule include the following:

**Policy** – Policy and related processes, procedures, and guidance established under the WZ Safety & Mobility Rule for the systematic consideration and management of WZ impacts **shall** include consideration and management of road user and worker safety by addressing:

- Use of positive protection devices to prevent intrusions;
- Exposure control measures to avoid or minimize exposure;
- Other traffic control measures to minimize crashes; and
- Safe entry/exit of work vehicles onto/from the travel lanes.

**Positive Protection Devices** – use **shall** be based on an engineering study.

- An engineering study **may** be used to develop positive protection guidelines for the agency, or to determine the measures to be applied on an individual project;
- Use of positive protection **shall** be considered in work zone situations that place workers at increased risk from motorized traffic and where positive protection devices offer the highest potential for increased safety for workers and road users.

**Exposure Control Measures** – **should** be considered to avoid or minimize exposure for workers and road users.

**Other Traffic Control Measures** – **should** be considered to reduce work zone crashes, and risks and consequences of intrusions into the work space.

**Uniformed Law Enforcement** – **shall** develop a policy addressing the use of uniformed law enforcement on Federal-aid highway projects.

**Work Vehicles and Equipment** – Safe means for work vehicles and equipment to enter and exit traffic lanes and for delivery of construction materials to the work space **should** be addressed at the project level.

**Payment for Traffic Control Features and Operations** – **shall** not be incidental to the contract, or included in payment for other items of work not related to traffic control and safety.

- Separate pay items **shall** be provided for major categories of traffic control devices, safety features, and work zone safety activities.

**Quality Guidelines** – **shall** be implemented to help maintain the quality and adequacy of the temporary traffic control devices for the duration of the project.

**6. Q: Will an engineering study to determine if positive protection measures are warranted be necessary for each project?**

**A:** Not necessarily - An engineering study may be used to develop positive protection guidelines for an agency. Thus, the strategies and devices to be utilized may be determined by a project-specific engineering study, or determined from agency guidelines that define strategies and approaches to be used based on project and highway characteristics and factors.

**7. Q: Will the agency have to justify, in the engineering study, not using positive protection if the project is similar to those listed in items 1-5 of Section 630.1108(a)?**

**A:** Not necessarily - The agency's processes, procedures, and/or guidance should address the use of positive protection. Items 1-5 are intended to be examples of conditions that may warrant the use of positive protection and thus trigger application of these processes, procedures, and/or guidance as they relate to the use of positive protection.

**8. Q: Is the FHWA planning on providing additional guidance on the use of positive protection –such as defining the depth of a drop-off that will require positive protection?**

**A:** Yes and No – While additional guidance relating to the use of positive protection is being developed under the umbrella of the Work Zone Safety Grants, this guidance is unlikely to include any values that would specifically require the use of positive protection.

**9. Q: Our agency does not currently use law enforcement officers on projects. Does this rule require that law enforcement officers be used?**

**A:** This rule does not require the use of law enforcement officers on projects. It does require the agency to develop a policy addressing the use of uniformed law enforcement on Federal-aid highway projects. In developing this policy, the agency should consider situations where the use of uniformed law enforcement officers could improve the safety of the road user and workers. Several examples of conditions are provided in Section 630.1108(d) – items i-viii.

**10. Q: Is training required for law enforcement officers before they can be used on projects?**

**A:** Yes. As required in 23 CFR 630.1008(d), personnel involved in the development, design, implementation, operation, inspection, and enforcement of work zone related transportation management and traffic control must be trained, appropriate to the job decisions each individual is required to make. This includes law enforcement officers used on projects.

**11. Q: Will our agency have to adopt the American Traffic Safety Services Association's Quality Guidelines? We have developed a similar guide that has been in use for several years.**

**A:** The ATSSA Quality Guideline was included in the rule language as an example of the type of guidance that should be used to help control and maintain the quality of temporary traffic control devices. If the agency currently has a similar mechanism/process in place to address the quality of devices, that should be adequate.

**12. Q: The Work Zone Safety and Mobility Rule already requires that the PS&Es include appropriate pay item provisions for implementing the TMP - Why is payment for temporary traffic control being addressed again in the new Rule?**

**A:** Appropriate pay item provisions for work zone traffic control features are necessary to address the safety impacts of a project. Some agencies, however, provide little or no specific payment for work zone safety features, and in extreme cases, provide only minimal information as to what features are required. Any payment provided is either incidental to other items of work, or is grouped into a single item for traffic control. This Rule prohibits the practice of making payment for work zone traffic control features and operations incidental to the contract, or including such features in payment for other items of work not related to traffic control and safety. Separate pay items are required for major categories of traffic control devices, safety features, and work zone safety activities.

**13. Q: Does the requirement that separate pay items be provided for major categories of traffic control devices, safety features, and work zone safety activities mean that unit price pay items are required?**

**A:** Separate pay item does not mean unit price pay item. As provided in section 630.1108(f)(4), unit price pay items, lump sum pay items, or a combination thereof may be used with method-based specifications.

**14. Q: Do the considerations for using positive protection devices in the Rule include considerations for separating opposing traffic?**

**A:** The Rule does not specifically address the use of positive protection devices for separating opposing traffic. Its focus is primarily on the use of positive protection devices between the work space and motorized traffic, as directed by Section 1110 of SAFETEA-LU. This does not mean that considerations for separating opposing traffic are not important. Such considerations should be included as part of the engineering study to determine the need for longitudinal traffic barrier.

**15. Q: Do the provisions in 23 CFR 630.1108(d)(2) allowing for the payment of uniformed law enforcement services by the contractor conflict with the intent of 23 CFR 635.112(e)?**

**A:** No, 23 CFR 635.112(e) establishes a general rule which states: "No public agency shall be permitted to bid in competition or to enter into subcontracts with private contractors." The intent of this section was to ensure that public agencies did not compete with private industry in the performance of highway construction work. However, a recent amendment to Federal law required the issuance of regulations establishing the conditions for the appropriate use of, and expenditure of funds for, among other things, uniformed law enforcement officers during construction, utility, and maintenance operations (23 U.S.C. § 112(g)). The FHWA implemented this statutory requirement by publishing a final rule that included the provision in 23 CFR 630.1108(d)(2), which is interpreted as a limited exception to the general rule in section 635.112(e). The exception is necessary because uniformed law enforcement services are considered to be inherently governmental functions which must be performed by a representative of a public enforcement agency. Therefore, there is not a conflict between the provisions of the final rule and FHWA's existing construction contracting policy.

**16. Q: My agency has a "drop-off" policy that addresses the use of temporary concrete barrier. Will this satisfy the requirement of this rule to establish a policy on the use of positive protection?**

**A:** Not entirely. Protecting motorists from hazards is one factor that should be considered when deciding whether to use positive protection devices on a project. The focus of 23 CFR 630 Subpart K is broader, and includes the consideration and management of both road user and worker safety on Federal-aid highway projects. Accordingly, appropriate consideration of worker exposure to traffic, as well as roadside hazards such as drop-offs need to be considered as part of an engineering study to determine the need for longitudinal traffic barrier and other positive protection devices. Examples of factors and characteristics to consider as part of the engineering study are included in sections 630.1106(b) and 630.1108.