

701 CMR: EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS

701 CMR 7.00: USE OF FLAGGERS AND POLICE DETAILS ON PUBLIC WORKS PROJECTS

Section

Friday, June 6, 2008

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7.01: Purpose, Scope, and Authority

- (1) Purpose. The purpose of 701 CMR 7.00 is to ensure the safety of pedestrians, the traveling public, and workers within a Construction Zone through the effective use of Traffic Control Devices, Flaggers, and Police Details and the efficient expenditure of public funds.
- (2) Scope. 701 CMR 7.00 applies to all Public Works Projects performed within the limits of, or impacts traffic on, any Public Road.
- (3) Authority. The Secretary of the Executive Office of Transportation and Public Works, in consultation with the Secretary of the Executive Office of Public Safety and Security adopts 701 CMR 7.00 under the authority of St. 2008, c. 86, § 10. The Massachusetts Department of Highways may issue Flagger and Police Detail Guidelines to implement 701 CMR 7.00, provided that any such guidelines shall not be inconsistent with 701 CMR 7.00 or with any provision of the Act.
- (4) Municipal Limitation. In the case when a Municipality is the Awarding Authority, the use of Flaggers, Police Details and other Traffic Control Devices at the Construction Zone shall comply with 701 CMR 7.00 and any Flagger and Police Detail Guideline in all respects except to the extent that any provision is inconsistent with: (a) the ordinances or by-laws of the Municipality in which the Public Works Project is being undertaken; or (b) any applicable provisions of a collective bargaining agreement under chapter 150E of the General Laws, in which case the provisions of such ordinance, by-law, or collective bargaining agreement shall control.

7.02: Definitions

Act. Section 10 of Chapter 86 of the Acts of 2008.

Authorized Representative(s). Those persons designated by the Awarding Authority, to implement and enforce 701 CMR 7.00 and guidelines on behalf of the Awarding Authority and vested with authority over the safety and management of the Construction Zone.

Average Daily Traffic (“ADT”). The average of 24-hour counts collected over a number of days, greater than one day but less than one year, used for planning of highway activities; measurement of current demand; and evaluation of existing traffic flow.

Awarding Authority. Any state or municipal entity, authority, commission or other public entity or governmental body that awards a contract to work, when such work is within the limits of, or impacts traffic on, any Public Road.

Commonwealth Entity. Any state agency, executive office, department, board, commission, bureau, division, or authority of the Commonwealth established to serve a public purpose.

Construction Zone. An area of a Public Road where construction, maintenance, or other work activities are identified as the limits of work on the approved construction plans or by Traffic Control Devices, including those on transport devices that mark the beginning and end of a construction, maintenance, or other work activity. Construction Zones also include sections of a Public Road where there is ongoing, moving work activity such as lane line painting or roadside mowing.

Construction Zone Safety Plan. A plan prepared for the Public Works Project by or on behalf of the Awarding Authority to address traffic safety and control through the Construction Zone, subject to compliance with the requirements of the Act and 701 CMR 7.00. It may be comprised of the Standard Traffic Control Plans, Work Zone Safety Guidelines and include any traffic management plan or temporary traffic control plan. It may detail Construction Zone impact management strategies and how they will be implemented, may require the use of personnel to ensure the safety of workers in the Construction Zone, and where Flaggers and Police Details are called for in the plan, may include the number of Flaggers and Police Details required to be on site daily and the procedures to be followed if the designated personnel fail to arrive at the Construction Zone as agreed. The plan will take into account such things as ADT, traffic patterns, roadway design, proximity to security sensitive areas such as airports and seaports, proximity to schools, hospitals, playgrounds, and other youth activity locations, and areas with a history of traffic accidents, or a history of criminal and civil ~~motor vehicle offenses~~ committed in close proximity to the Construction Zone.

EOPSS. The Executive Office of Public Safety and Security, established pursuant to M.G.L. c. 6A, §§ 2 and 18.

EOTPW. The Executive Office of Transportation and Public Works, established pursuant to M.G.L. c. 6A, §§ 2 and 19.

Flagger. An individual certified by MassHighway, or a MassHighway approved organization, to perform traffic control services on Public Roads.

MassHighway. The Massachusetts Department of Highways, established pursuant to M.G.L. c. 16 and M.G.L. c. 6A, § 19(b).

MUTCD. The Manual on Uniform Traffic Control Devices adopted by the United States Department of Transportation, including the MassHighway amendments, enforced by MassHighway in accordance with Title 23 of the United States Code.

Municipality. Any city or town in the Commonwealth.

Police Detail. Any uniformed sworn law enforcement officer and any official marked police vehicle on a Public Works Project.

Flagger and Police Detail Guidelines. Rules, guides, instructions, procedures and other information adopted and published by MassHighway as a means of implementing and providing guidance to Awarding Authorities, Flaggers, and Police Details in the implementation of 701 CMR 7.00.

Public Road. Any state highway, turnpike, limited access highway, divided highway, access road, parkway, bridge, path, public way or private way that is open to or is otherwise used for public vehicular travel in the Commonwealth of Massachusetts.

Public Works Project. Any construction, maintenance or other work activity performed by or on behalf of an Awarding Authority within the limits of or impacting traffic on a Public Road.

Setup. The arrangement of Traffic Control Devices used within and adjacent to a Construction Zone on a Public Works Project.

Traffic Control Devices. Any barrier, message board, warning sign, light, indicator, warning signal, direction sign, warning sign or light, curb, street or other traffic markings, mechanical traffic signal systems, including those items located on vehicles, Flagger or Police Detail, and any other item or device used to control traffic on a Public Road as a part of the Setup.

7.03: Tiers of Public Works Projects

Public Works Projects are classified into three tiers according to the type of Setup for the Construction Zone and the nature of the Public Road. Evaluation criteria used to categorize projects include public safety, time of day, legal speed limits, ADT, roadway design, MUTCD standards, length and duration of the Setup, and limited or full access road designations on the Public Road.

- (1) High Speed Roads. High Speed Roads are divided and undivided Public Roads with a legal speed limit greater than or equal to 45 miles per hour.
- (2) Low Traffic High Speed Roads. Low Traffic High Speed Roads are High Speed Roads with volumes of traffic less than a maximum of 4000 vehicles per day.
- (3) Low Speed Roads. Low Speed Roads are divided and undivided Public Roads, with a legal speed limit less than or equal to 40 miles per hour.

7.04: Use of Flaggers and Police Details.

The Awarding Authority may complete a Construction Zone Safety Plan for all work in the Public Road requiring design. The Awarding Authority may use or modify standard Construction Zone Safety Plans to accommodate projects that do not require the preparation of design plans.

- (1) Use of Police Details. The Construction Zone Safety Plan may require that Police Details be used in all Construction Zones located on High Speed Roads. Police Details may be used on Low Traffic High Speed Roads when the Authorized Representative determines it is necessary and appropriate to do so.
- (2) Use of Flaggers. The Construction Zone Safety Plan may require that Flaggers be used in all Construction Zones located on all Low Speed Roads. Flaggers may be used on Low Traffic High Speed Roads when the Authorized Representative determines it is necessary and appropriate to do so.
- (3) Use of Neither Police Details nor Flaggers. Notwithstanding 701 CMR 7.04(2) and 7.04(3), in instances when it is possible to protect the Construction Zone from vehicular traffic and where it is consistent with the Construction Zone Safety Plan, the Authorized Representative shall have the authority to determine that neither Flaggers nor Police Details are needed on all or a portion of a Public Works Project.

7.05: Authority of the Authorized Representative

- (1) Determination by the Authorized Representative. The Authorized Representative shall determine the number and placement of Flaggers and Police Details, if any, within the Construction Zone according to the Construction Zone Safety Plan, 701 CMR 7.00, and any Flagger and Police Detail Guideline.
- (2) Pre-Construction Conference. The Authorized Representative shall organize a conference with the law enforcement agency or agencies having jurisdiction over the Public Road within which the Construction Zone is located prior to the start of the Public Works Project. The purpose of the conference shall be to consult with the law enforcement organization to review the project, the Construction Zone Safety Plan, and the planned use or non-use of Flaggers and Police Details on the project. In instances where the Public Works Project is minor or does not involve a Construction Zone Safety Plan, the conference need not be in person.

- (3) Final Authority. As authorized by the Act, the Authorized Representative shall have the authority to make the final determination on the Setup and the use of Traffic Control Devices in the Construction Zone and the contents of the Construction Zone Safety Plan developed in accordance with 701 CMR 7.00, and shall have control and responsibility over the safety, security, and closure of the Construction Zone.
- (4) Report of Non-Compliance. The Authorized Representative shall report to the Awarding Authority the facts and circumstances of any non-compliance with 701 CMR 7.00, with any Flagger and Police Detail Guideline, or with any final determination of the Authorized Representative.
- (5) Alternative Plans. The Authorized Representative may implement an alternative to the Construction Zone Safety Plan or may use Flaggers in place of Police Details or Police Details in place of Flaggers when a scheduled Flagger or Police Detail is unavailable, fails to report to the Construction Zone, fails to comply with instructions, or otherwise fails to perform required duties outlined in 701 CMR 7.00 or in the Flagger and Police Detail Guidelines.

7.06: Responsibility of Flaggers and Police Details

- (1) Instruction. With respect to traffic control measures, Flaggers and Police Details shall comply with the instructions of the Authorized Representative. Flaggers and Police Details must be alert and receive and communicate specific instructions clearly and firmly. Flaggers and Police Details must understand and apply the Authorized Representative's safe traffic control practices, recognize dangerous traffic situations, and warn workers and the traveling public in sufficient time to avoid injury.
- (2) Training. Flaggers shall receive training in construction zone safety, traffic control, first aid, and such other necessary safety programs as identified by the Awarding Authority. Flaggers must successfully complete the MassHighway approved certification program and carry a valid certification card at all times.
- (3) Duration of Work and Compensation. Flaggers and Police Details shall remain at the Construction Zone for the hours scheduled by the Authorized Representative or the Awarding Authority, and shall be physically capable and properly equipped to perform required duties. Flaggers or Police Details who arrive late, depart early, or are terminated from the Construction Zone by the Authorized Representative for noncompliance with 701 CMR 7.00 shall be compensated only for the time spent at the Construction Zone.

7.07: Administration

- (1) Administration of 701 CMR 7.00 and Flagger and Police Detail Guidelines. The EOTPW, in consultation with EOPSS, shall administer 701 CMR 7.00 and, in cooperation with MassHighway, shall administer the Flagger and Police Detail Guidelines as necessary to implement 701 CMR 7.00.

- (2) Additional Police Details Requested By Municipalities. Police Details provided by a Municipality to any Commonwealth Entity shall be provided for the period of time and at the rate of compensation then approved by such entity. A Municipality may request in writing the placement of additional Police Details on a project awarded by a Commonwealth entity or may request the payment of additional compensation above such approved rate; provided however, the Municipality shall supply the additional Police Details and shall be responsible for any additional compensation.

7.08: Miscellaneous

- (1) Effective Date. 701 CMR 7.00 shall take effect upon publication in the Massachusetts Register.
- (2) Severability. The provisions of 701 CMR 7.00 shall be deemed severable. If any of its provisions shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

REGULATORY AUTHORITY

701 CMR 7.00: St. 2008, c. 86, § 10, M.G.L. c. 6A, § 19, M.G.L. c. 85, § 2, and M.G.L. c. 30A, §§ 2 and 3.