Bureau of Local Roads & Streets Procedure Memorandums

BUREAU OF LOCAL ROADS AND STREETS MANUAL

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PM Number	Date Issued	Date Effective	Subject	Status*
2005-01	06/22/05	7/15/2005	Mobilization	Incorporated
2005-02	06/22/05	7/15/2005	Retainage	Incorporated
2005-03	06/22/05	7/15/2005	Requirements for Responsible Bidders	Incorporated
2005-04	07/01/05	7/1/2005	FHWA Section 4(f) Policy Paper	Active
2005-05	08/31/05	8/10/2005	Prevailing Wage Act	Incorporated
2005-06	08/31/05	8/2/2005	Competitive Bidding Threshold	Incorporated
2005-07	10/31/05	1/13/2005	NBIS Rules Changes - Qualifications for Bridge Inspection Personnel	Incorporated
2005-08	12/16/05	12/31/2006	Hot Mix Asphalt Overlay Policy	Incorporated
2005-09	12/21/05	12/31/2005	Disadvantaged Business Enterprise Payment Reporting	Incorporated
2005-10	12/21/05	12/31/2005	Amendment to Federal-Aid Agreement	Incorporated
2006-01	03/28/06	4/1/2006	APPRENTICESHIP AND TRAINING PROGRAM FOR LOCAL LET MATERIAL PROPOSALS	Modified
2006-02	04/21/06	4/21/2006	Guidance for Determining De Minimis Impacts to Section 4(f) Resources	Active
2006-03	07/12/06	9/22/2006	Plan Approval and Release Signature Block	Incorporated
2006-04	07/12/06	9/1/2006	Elimination of Direct Labor Multiplier on Federally Funded Projects	Incorporated
2006-05	11/01/06	11/29/2006	PARK ZONE SIGNS	Incorporated
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2006-08	12/06/06	1/1/2007	ENGINE BRAKING SIGNS	Incorporated
2006-09	12/28/06	1/1/2007	DESIGNATION OF TRUCK ROUTES	Incorporated
2007-01	01/08/07	1/8/2007	Categorical Exclusion Group II Approval Documentation	Incorporated
2007-02	04/26/07	5/1/2007	LETTING AND CONTRACT AWARD – MFT AND STATE FUNDS	Incorporated
2007-03	05/18/07	6/1/2007	CONTEXT SENSITIVE SOLUTIONS	Incorporated
2007-04	06/18/07	6/18/2007	Value Engineering Program	Incorporated
2007-05	10/01/07	10/1/2007	HIGHWAY BRIDGE PROGRAM (HBP) APPROACH LIMITS	Incorporated

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2008-02	02/28/08	2/28/2008	GOLF CARTS AND NEIGHBORHOOD VEHICLES	Incorporated
2008-03	03/06/08	3/1/2008	DENSITY TESTING ON HMA PAVEMENTS	Incorporated
2008-04	04/15/08	4/15/2008	JURISDICTIONAL TRANSFER AGREEMENTS	Incorporated
2008-05	10/17/08	1/1/2009	ECOLOGICAL COMPLIANCE ASSESSMENT TOOL (EcoCAT) AND MFT CERTIFICATION/PROJECT STATUS FORM	Incorporated
2008-06	10/01/08	10/1/2008	Use of Commercial and Department Wetland Mitigation Bank Site Credits	Active
2008-07	10/31/08	11/3/2008	Invoice Processing	Incorporated
2008-08	10/31/08	11/3/2008	Definition of Major/Minor Change in Plans	Incorporated
2009-01	03/06/09	3/6/2009	CATEGORICAL EXCLUSIONS AND DESIGN APPROVAL	Incorporated
2009-02	04/07/09	4/10/2009	HIGHWAY LIGHTING PLAN REVIEW	Incorporated
2009-03	09/11/09	10/1/2009	EMERALD ASH BORER	Incorporated
2009-04	10/13/09	10/26/2009	MAINTENANCE PERIOD AND MAINTENANCE GROUP DEFINITIONS	Incorporated
2009-05	12/28/09	1/1/2010	ASSET MANAGEMENT	Incorporated
2009-06	12/29/09	1/1/2010	96TH ILLINOIS GENERAL ASSEMBLY'S 2009 LEGISLATIVE CHANGES	Incorporated
2010-01	04/16/10	4/19/2010	HIGHWAY-RAIL GRADE CROSSING APPROACH GEOMETRIC DESIGN	Incorporated
2010-02	08/27/10	9/1/2010	Unsignalized Pedestrian Crosswalk Signs	Incorporated
2011-01	11/23/11	1/1/2012	Pavement Maintenance, Rehabilitation, and Design Policies	Incorporated
2011-02	11/23/11	1/1/2012	Local Agency Pavement Preservation Policy	Incorporated
2011-03	11/28/11	12/1/2011	Highway Signing	Incorporated
2011-04	11/28/11	1/1/2012	Maintenance Groups	Incorporated
2012-01	01/06/12	4/1/2012	CONSTRUCTION SUPERVISION FOR FEDERAL AID PROJECTS	Incorporated
2012-02	03/30/12	4/1/2012	COLD IN-PLACE RECYCLING AND FULL DEPTH RECLAMATION	Incorporated
2012-03	08/27/12	9/1/2012	Changes in Functional Classification Terminology	Incorporated
2012-04	10/24/12	10/24/2012	2010 Highway Capacity Manual	Incorporated

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PM Number	Date Issued	Date Effective	Subject	Status*
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2012-06	11/15/12	2/1/2013	Consultant Agreements	Incorporated
2012-07	11/26/12	11/26/2012	Ash Tree Removal Due to Emerald Ash Borer	Incorporated
2013-01	07/12/13	7/1/2013	Ecological Compliance Assessment Tool (EcoCAT)	Incorporated
2013-02	07/12/13	7/15/2013	Special Waste	Incorporated
2013-03	07/12/13	7/15/2013	Evaluation of Farmland Conversion Impacts	Incorporated
2013-04	07/25/13	7/31/2013	WORK ZONE TRANSPORTATION MANAGEMENT PLANS	Incorporated
2013-05	07/25/13	7/31/2013	Complete Streets	Incorporated
2013-06	07/25/13	7/31/2013	Noise Analysis	Incorporated
2013-07	10/15/13	10/15/2013	Motor Fuel Tax Usage	Incorporated
2013-08	10/23/13	10/25/2013	Bicycle Facilities	Incorporated
2013-09	10/29/13	10/29/2013	Speed Humps and Speed Tables	Incorporated
2013-10	10/31/13	1/1/2014	Public Rights-of-way Accessibility Guidelines (PROWAG)	Incorporated
2013-11	12/31/13	1/1/2014	Local Lettings	Incorporated
2014-01	04/25/14	4/25/2014	Local Lettings	Incorporated
2014-02	05/23/14	5/23/2014	Treatment or Removal of Ash Trees due to Emerald Ash Borer	Incorporated
2014-03	06/27/14	6/30/2014	Bridge Inventory and Inspections	Incorporated
2015-01	09/01/15	9/1/2015	Joint Funding Agreements	Incorporated
2016-01	07/07/16	7/7/2016	Categorical Exclusions	Incorporated
2016-02	07/29/16	8/1/2016	BLRS Policy Manual Rewrite	Incorporated

* Incorporated - These Procedure Memorandums have been inserted into the BLRS Manual. See Disposition Table for location.
Active - These Procedure Memorandums supplement or replace sections of the BLRS Manual.

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PM Number	Date Issued	Date Effective	Subject	Status*

Disposition Table

PM Number	Subject	Disposition
2005-01	Mobilization	Incorporated into 13-4.06 and 25-1.05(f) of the BLRS Manual (July 2005 Revision).
2005-02	Retainage	Incorporated into 13-2.04(c) and 25-1.03(c) of the BLRS Manual (July 2005 Revision).
2005-03	Requirements for Responsible Bidders	Incorporated into 12-3.03(a) of the BLRS Manual (July 2005 Revision).
2005-05	Prevailing Wage Act	Incorporated into 12-2.01(e) of the BLRS Manual (Sept 2005 Revision).
2005-06	Competitive Bidding Threshold	Incorporated into 12-1.02(a) and 12-1.02(c) of the BLRS Manual (Sept 2005 Revision).
2005-07	NBIS Rules Changes - Qualifications for Bridge Inspection Personnel	Incorporated into 6-3.02 of the BLRS Manual (January 2006 Revision)
2005-08	Hot Mix Asphalt Overlay Policy	Replaced Section 37-8 of the BLRS Manual (January 2006 Revision)
2005-09	Disadvantaged Business Enterprise Payment Reporting	Replaced Section 5-6 and Section 24-2 of the BLRS Manual (January 2006 Revision)
2005-10	Amendment to Federal-Aid Agreement	Replaced Section 5-3 of the BLRS Manual (January 2006 Revision)
2006-01	APPRENTICESHIP AND TRAINING PROGRAM FOR LOCAL LET MATERIAL PROPOSALS	Replaced Chapter 12 of the BLRS Manual (April 2006 Revision)
2006-03	Plan Approval and Release Signature Block	Incorporated into 11-2.04 and 23-2.04 of the BLRS Manual (July 2006 Revision)
2006-04	Elimination of Direct Labor Multiplier on Federally Funded Projects	Replaced Section 5-5 and 5-6 of the BLRS Manual (July 2006 Revision)
2006-05	PARK ZONE SIGNS	Adds Section 39-2.08(b) to the BLRS Manual (November 2006 Revision)
2006-06	Design Guidance for Median and Curb Treatments at Railroad Grade Crossings	Incorporated into Section 40-1.01(f) of the BLRS Manual (November 2006 Revision)
2006-07	APPRENTICESHIP AND TRAINING CERTIFICATION	Adds Section 12-4 to the BLRS Manual (December 2006 Revision)
2006-08	ENGINE BRAKING SIGNS	Adds Section 39-2.06(j) to the BLRS Manual (December 2006 Revision)
2006-09	DESIGNATION OF TRUCK ROUTES	Incorporated into Section 3-2.02(d) to the BLRS Manual datedDecember 2006.
2007-01	Categorical Exclusion Group II Approval Documentation	Incorporated into Section 19-1.04(c) of the BLRS Manual dated January 2007
2007-02	LETTING AND CONTRACT AWARD – MFT AND STATE FUNDS	Incorporated into Sections 12-1, 12-2, and 12-3 of the BLRS Manual dated April 2007

Disposition Table

PM Number	Subject	Disposition
2007-03	CONTEXT SENSITIVE SOLUTIONS	Adds Section 10-5 and Section 21-7 to the BLRS Manual (May 2007 Revision)
2007-04	Value Engineering Program	Adds Sections 4-1.15 and Sections 17-2.03 to the BLRS Manual (June 2007 Revision)
2007-05	HIGHWAY BRIDGE PROGRAM (HBP) APPROACH LIMITS	Incorporated into Sections 4-1, Section 32-2 and Section 35-3 of the BLRS Manual dated October 2007.
2008-01	FINAL RULE ON MAINTAINING SIGN RETROREFLECTIVITY	Replaced Section 39-2 of the BLRS Manual (February 2008 Revision)
2008-02	GOLF CARTS AND NEIGHBORHOOD VEHICLES	Replaced Section 39-2 of the BLRS Manual (February 2008 Revision)
2008-03	DENSITY TESTING ON HMA PAVEMENTS	Incorporated into Section 37-1 of the BLRS Manual (February 2008 Revision)
2008-04	JURISDICTIONAL TRANSFER AGREEMENTS	Incorporated into Section 5-2 of the BLRS Manual (April 2008 Revision)
2008-05	ECOLOGICAL COMPLIANCE ASSESSMENT TOOL (EcoCAT) AND MFT CERTIFICATION/PROJECT STATUS FORM	Incorporated in Section 10-1 and Section 20-9 of the BLRS Manual (October 2008 Revision)
2008-07	Invoice Processing	Adds Section 5-11 to the BLRS Manual (November 2008 Revision)
2008-08	Definition of Major/Minor Change in Plans	Incorporated in Section 13-2 of the BLRS Manual (November 2008 Revision)
2009-01	CATEGORICAL EXCLUSIONS AND DESIGN APPROVAL	Replaced Chapter 19 of the BLRS Manual (January 2007 Revision) and incorporated in Section 22-2 of the BLRS Manual (June 2006 Revision).
2009-02	HIGHWAY LIGHTING PLAN REVIEW	Revises Section 11-2 dated July 2006, Section 11-7 dated January 2006, and Section 23-7 dated January 2006 of the BLRS Manual.
2009-03	EMERALD ASH BORER	Revises Section 41-10 dated January 2006 of the BLRS Manual.
2009-04	MAINTENANCE PERIOD AND MAINTENANCE GROUP DEFINITIONS	Revises Section 5-5 dated July 2006, Section 11-7 dated April 2009, Section 12-2 dated April 2007, Section 14-2 dated January 2006 and Section 14-3 dated January 2006 of the BLRS Manual.
2009-05	ASSET MANAGEMENT	Revises Section 4-1 dated October 2007 and Section 4-3 dated January 2006 of the Bureau of Local Roads & Streets Manual.
2009-06	96TH ILLINOIS GENERAL ASSEMBLY'S 2009 LEGISLATIVE CHANGES	Revises Sect 3-2.05(a) -PA 96-0034 (HB0255); Sect 4-2.02(a), 4-2.03, 9-2.01(c) & 9-2.02 -PA 96-0366 (HB0641); Sect 4-2.04 & figure 4-3A - PA 96-0034 (HB0255); and Sect 12-1.02(a) & 12-1.02(b) -PA 96-0170 (HB0585)

Disposition Table

PM Number	Subject	Disposition
2010-01	HIGHWAY-RAIL GRADE CROSSING APPROACH GEOMETRIC DESIGN	This memorandum replaces Figure 33-3B in Section 33-3 of the BLRS Manual dated January 2006.
2010-02	Unsignalized Pedestrian Crosswalk Signs	Revises Section 39-2 of the BLRS Manual dated October 2008.
2011-01	Pavement Maintenance, Rehabilitation, and Design Policies	Makes the following changes to the BLRS Manual: revises Sections 14-1.02; moves Section 33-4 into a new Chapter as Section 46 3, Sections 37-1 through 37-7 into a new chapter as Sections 44-1 through 44-7, Section 37-8 into a new chapter as Section 46 4, and Section 37-9 into a new chapter as Section 44-8; deletes Section 33-5 and 33-6; and creates Section 46-5, 46-6, and 46-7.
2011-02	Local Agency Pavement Preservation Policy	Creates Chapter 46 of the BLRS Manual.
2011-03	Highway Signing	Revises Section 39-2 of the BLRS Manual dated August 2010.
2011-04	Maintenance Groups	Revises Sections 5-5 and 14-2 of the BLRS Manual dated October 2009.
2012-01	CONSTRUCTION SUPERVISION FOR FEDERAL AID PROJECTS	Revises Section 25-1.02(c) of the BLRS Manual dated January 2006.
2012-02	COLD IN-PLACE RECYCLING AND FULL DEPTH RECLAMATION	Revises Section 46-6 of the BLRS Manual dated January 2012.
2012-03	Changes in Functional Classification Terminology	Revises Section 27-3 of the BLRS Manual dated January 2006.
2012-04	2010 Highway Capacity Manual	Revises Section 27-6 of the BLRS Manual dated January 2006.
2012-05	MUTCD Revisions	Revises Section 39-2 of the BLRS Manual dated December 2011.
2012-06	Consultant Agreements	Combines Sections 5-5 and 5-6 of the BLRS Manual dated January 2012 and July 2006.
2012-07	Ash Tree Removal Due to Emerald Ash Borer	Revises Section 14-1 of the BLRS Manual dated January 2012.
2013-01	Ecological Compliance Assessment Tool (EcoCAT)	This memorandum supersedes Section 10-1 dated October 2008, Section 20-2 dated October 2008, Section 20-8 dated October 2008, and Section 20-9 dated October 2008 of the Bureau of Local Roads & Streets Manual.
2013-02	Special Waste	This memorandum supersedes Section 20-2 dated October 2008 and Section 20-12 dated October 2008 of the Bureau of Local Roads & Streets Manual.

Disposition Table

PM Number	Subject	Disposition
2013-03	Evaluation of Farmland Conversion Impacts	This memorandum supersedes Section 10-1 dated October 2008 and Section 20-10 dated January 2006 of the Bureau of Local Roads & Streets Manual.
2013-04	WORK ZONE TRANSPORTATION MANAGEMENT PLANS	This memorandum supersedes Section 10-2 dated July 2008 and Section 22-2 dated February 2009 of the Bureau of Local Roads & Streets Manual.
2013-05	Complete Streets	This memorandum supersedes Section 10-2 dated July 2008 and Section 22-2 dated February 2009 of the Bureau of Local Roads & Streets Manual.
2013-06	Noise Analysis	This memorandum supersedes Section 20-6 dated January 2006 of the Bureau of Local Roads & Streets Manual.
2013-07	Motor Fuel Tax Usage	This memorandum supersedes Section 4-3 dated November 2012 and Section 14-1 dated November 2012 of the Bureau of Local Roads & Streets Manual.
2013-08	Bicycle Facilities	This memorandum supersedes Chapter 42 dated January 2006 of the Bureau of Local Roads & Streets Manual.
2013-09	Speed Humps and Speed Tables	This memorandum creates a new Section 41-12 of the Bureau of Local Roads & Streets Manual.
2013-10	Public Rights-of-way Accessibility Guidelines (PROWAG)	This memorandum replaces Chapter 8 dated April 2005 and supersedes Section 41-6 dated October 2008 of the Bureau of Local Roads & Streets Manual.
2013-11	Local Lettings	This memorandum replaces Chapter 12 dated December 2009 of the Bureau of Local Roads & Streets Manual.
2014-01	Local Lettings	This memorandum supersedes portions of PM2013-11 dated December 31, 2013 and Sections 12-2.01(b), 12-3.04(a), 12-3.06(b), 12-3.07, and 12-3.08(a) dated December 2013 of the Bureau of Local Roads & Streets Manual.
2014-02	Treatment or Removal of Ash Trees due to Emerald Ash Borer	This memorandum supersedes Procedure Memorandum 2012-07 dated November 26, 2012 and revises Section 14-1 dated October 2013 of the Bureau of Local Roads & Streets Manual.
2014-03	Bridge Inventory and Inspections	This memorandum supersedes Chapter 6 of the Bureau of Local Roads and Streets Manual dated January 2006 and revised February 2008.
2015-01	Joint Funding Agreements	This memorandum adds requirements to Sections 5-3.01(b) of the Bureau of Local Roads & Streets Manual, and revise BLR Forms 05310 and BLR 05311.

Disposition Table

PM Number	Subject	Disposition
2016-01	Categorical Exclusions	This memorandum replaces Chapter 19 of the Bureau of Local Roads & Streets Manual dated February 2009 and Chapter 22 of the Bureau of Local Roads & Streets Manual dated January 2006 with revisions dated July 2013.
2016-02	BLRS Policy Manual Rewrite	This memorandum replaces Chapters 27 through 33 of the Bureau of Local Roads & Streets Policy Manual.

Disposition Table

PM Number	Subject	Disposition

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: 2005-01

SUBJECT: MOBILIZATION

ISSUED DATE: June 22, 2005

EFFECTIVE DATE: July 15, 2005

This memorandum adds Section 4.06 to Chapter 13 and Section 1.05(f) to Chapter 25 of the Bureau of Local Roads and Streets Manual dated April 2005.

Section 671 of the Standard Specifications for Road and Bridge Construction (SSRBC) contains the requirements for mobilization. The 2002 SSRBC allowed contractors to receive 3% of the contract price up front. This initial payment was then deducted from future payments. LR 671 *Mobilization* was issued to eliminate this section of the SSRBC if local agencies did not want mobilization payments.

In January 2003, Section 671 was revised to include a MOBILIZATION pay item. This allowed contractors to bid mobilization as a line item. If projects did not include the MOBILIZATION pay item, Section 671 did not apply. MOBILIZATION was on option on all local projects regardless of letting type. Therefore, the Bureau of Local Roads & Streets eliminated LR 671.

As of April 2005, the Office of the Chief Counsel requires prime contractors to pay subcontractors mobilization on state contracts. Therefore, BDE 80143 “Subcontractor Mobilization Payments” and the MOBILIZATION pay item is required for all local projects on state lettings after the effective date.

Charles J. Ingersoll

Engineer of Local Roads and Streets

KB

Attachments

SUBCONTRACTOR MOBILIZATION PAYMENTS (BDE)

Effective: April 2, 2005

To account for the preparatory work and operations necessary for the movement of subcontractor personnel, equipment, supplies, and incidentals to the project site and for all other work or operations that must be performed or costs incurred when beginning work approved for subcontracting in accordance with Article 108.01 of the Standard Specifications, the Contractor shall make a mobilization payment to each subcontractor.

This mobilization payment shall be made at least 14 days prior to the subcontractor starting work. The amount paid shall be equal to 3 percent of the amount of the subcontract reported on form BC 260A submitted for the approval of the subcontractor's work.

This provision shall be incorporated directly or by reference into each subcontract approved by the Department.

80143

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: 2005-02

SUBJECT: RETAINAGE

ISSUED DATE: June 22, 2005

EFFECTIVE DATE: July 15, 2005

This memorandum supersedes Chapter 13 Section 2.04(c) and Chapter 25 Section 1.03(c) of the Bureau of Local Roads and Streets Manual dated April 2005.

Subpart B Administrative Requirements for DBE Programs for Federally-Assisted Contracting of 49 CFR 26.29(b) provides three mechanisms for retainage administration on federal-aid contracts:

1. Awarding agencies may decline withholding retainage from prime contractors and prohibit prime contractors from withholding retainage from subcontractors.
2. Awarding agencies may decline withholding retainage from prime contractors and require prime contractors to make full and prompt payment of any retainage kept from subcontractors within 30 days after the subcontractor's work is satisfactorily completed.
3. Awarding agencies may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of the prime contract, pay retainage to prime contractors based on these acceptances, and require prime contractors to make full and prompt payment of any retainage kept from subcontractors within 30 days after the prime contractor receives retainage payments for that work.

605 ILCS 5/5-409 requires counties to withhold 10% of the value of the work then completed as retainage until 50% of the work has been completed. After 50% of the work is completed, the county must withhold at least 5% of the total adjusted contract price.

Therefore, if a local project contains federal funds, the local agency must comply with 49 CFR 26.29(b). If no federal funds are involved, the department will continue to apply the requirements of 605 ILCS 5/5-409 to all local projects.

The department administers projects on the state letting using the second option by using BDE Special Provision 80029 “Disadvantaged Business Enterprise Participation” and BDE Special Provision 80116 “Partial Payments”. These special provisions should be included in all local projects that are federally funded. BDE 80116 is not allowed and retainage is required for projects with no federal funds and locally let.

Charles J. Ingersoll

Engineer of Local Roads and Streets

KB

Attachments

Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting

§ 26.21 Who must have a DBE program?

(a) If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part:

(1) All FHWA recipients receiving funds authorized by a statute to which this part applies;

(2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) exceeding $250,000 in FTA funds in a Federal fiscal year;

(3) FAA recipients receiving grants for airport planning or development who will award prime contracts exceeding $250,000 in FAA funds in a Federal fiscal year.

(b)(1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts).

(2) You do not have to submit regular updates of your DBE programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval.

(c) You are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part. You must continue to carry out your program until all funds from DOT financial assistance have been expended.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000]

§ 26.23 What is the requirement for a policy statement?

You must issue a signed and dated policy statement that expresses your commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation. You must circulate the statement throughout your organization and to the DBE and non-DBE business communities that perform work on your DOT-assisted contracts.

§ 26.25 What is the requirement for a liaison officer?

You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program. You must also have adequate staff to administer the program in compliance with this part.

§ 26.27 What efforts must recipients make concerning DBE financial institutions?

You must thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in your community and make reasonable efforts to use these institutions. You must also encourage prime contractors to use such institutions.

§ 26.29 What prompt payment mechanisms must recipients have?

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within

30 days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

[68 FR 35553, June 16, 2003]

§ 26.31 What requirements pertain to the DBE directory?

You must maintain and make available to interested persons a directory identifying all firms eligible to participate as DBEs in your program. In the listing for each firm, you must include its address, phone number, and the types of work the firm has been certified to perform as a DBE. You must revise your directory at least annually and make updated information available to contractors and the public on request.

§ 26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?

(a) If you determine that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, you must devise appropriate measures to address this overconcentration.

(b) These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which you have determined that non-DBEs are unduly burdened. You may also consider varying your use of contract goals, to the extent consistent with § 26.51, to unsure that non-DBEs are not unfairly prevented from competing for subcontracts.

(c) You must obtain the approval of the concerned DOT operating administration for your determination of overconcentration and the measures you devise to address it. Once approved, the measures become part of your DBE program.

§ 26.35 What role do business development and mentor-protégé programs have in the DBE program?

(a) You may or, if an operating administration directs you to, you must establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: 2005-03

SUBJECT: REQUIREMENTS FOR RESPONSIBLE BIDDERS

ISSUED DATE: June 22, 2005

EFFECTIVE DATE: July 15, 2005

This memorandum supersedes Chapter 12 Section 3.03(a) of the Bureau of Local Roads and Streets Manual dated April 2005.

Public Act 93-0642 amended 30 ILCS 500, the *Illinois Procurement Code*, by adding section 30-22 *Construction Contracts; Responsible Bidder Requirements* effective June 1, 2004. To be a responsible bidder on a construction contract, this public act requires a bidder comply with six minimum requirements. These requirements do not apply to federally funded construction projects if such application would jeopardize the receipt or use of federal funds.

The Illinois Procurement Code does not apply to local agencies; however, the following statutes require the Illinois Department of Transportation (IDOT) to approve local agency contracts that use Motor Fuel Tax (MFT), or other funds received from the State, and are let to the lowest responsible bidder:

605 ILCS 5/5-402	Department approval and supervision required when certain funds are used; agreement between Department and County Highway Superintendent's Office
605 ILCS 5/5-403	Procedure when work is to be performed under supervision and approval of Department; resolutions; bids and letting of contracts
605 ILCS 5/6-701.1	Construction of roads and grades; procedure.
605 ILCS 5/7-203	Ordinances specifying purposes of motor fuel tax funds; Department approval for specifications and work; bidding and letting of contracts; inspection of work by Department

Therefore, IDOT's Office of Chief Counsel has determined that the department must use the requirements outlined in 30 ILCS 500/30-22 as minimum requirements when approving any local let construction projects that use MFT funds or other state funding source provided federal funds are not included. The department has defined local let construction projects to include general maintenance contracts; however, this does not include projects let as material proposals according to Chapter 12, Section 1.01(b) and Section 1.02(b), of the Bureau of Local Roads and Streets Manual.

BLR 12220 (formerly BLR 5704) has been revised to add an apprenticeship and training certification statement. All prospective bidders must submit this completed statement with their bid. If a bidder's certification statement is not completed their bid should be discarded. This statement does not apply to federal aid projects.

Charles J. Ingersoll

Engineer of Local Roads and Streets

KB

Attachments

AN ACT relating to procurement.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Procurement Code is amended by adding Section 30-22 as follows:

(30 ILCS 500/30-22 new)

Sec. 30-22. Construction contracts; responsible bidder requirements. To be considered a responsible bidder on a construction contract for purposes of this Code, a bidder must comply with all of the following requirements and must present satisfactory evidence of that compliance to the appropriate construction agency:

(1) The bidder must comply with all applicable laws concerning the bidder's entitlement to conduct business in Illinois.

(2) The bidder must comply with all applicable provisions of the Prevailing Wage Act.

(3) The bidder must comply with Subchapter VI ("Equal Employment Opportunities") of Chapter 21 of Title 42 of the United States Code (42 U.S.C. 2000e and following) and with Federal Executive Order No. 11246 as amended by Executive Order No. 11375.

(4) The bidder must have a valid Federal Employer Identification Number or, if an individual, a valid Social Security Number.

(5) The bidder must have a valid certificate of insurance showing the following coverages: general liability, professional liability, product liability, workers' compensation, completed operations, hazardous occupation, and automobile.

(6) The bidder and all bidder's subcontractors must

participate in applicable apprenticeship and training programs approved by and registered with the United States Department of Labor's Bureau of Apprenticeship and Training.

The provisions of this Section shall not apply to federally funded construction projects if such application would jeopardize the receipt or use of federal funds in support of such a project.

Illinois Department of Transportation

Notice to Bidders

RETURN WITH BID

Route _____
County _____
Local Agency _____
Section _____

Time and Place of Opening of Bids

Sealed proposals for the improvement described below will be received at the office of _____

_____
(address)

until _____ o'clock ____ M., _____ Proposals will be opened and read publicly
(date)

at _____ o'clock ____ M., _____ at the office of _____
(date)

_____
(address)

Description of Work

Name _____ Length _____ feet (_____ miles)

Location _____

Proposed Improvement _____

_____

Bidders Instructions

1. Plans and proposal forms will be available in the office of _____

   _____

2. If prequalification is required , the 2 low bidders must file within 24 hours after the letting an "Affidavit of Availability" (Form BC 57), in triplicate, showing all uncompleted contracts awarded to them and all low bids pending award for Federal, State, County, Municipal and private work. One copy shall be filed with the Awarding Authority and 2 copies with the IDOT District Office.
3. All proposals must be accompanied by a proposal guaranty as provided in BLRS Special Provision for Bidding Requirements and Conditions for Contract Proposals contained in the "Supplemental Specifications and Recurring Special Provisions".
4. The Awarding Authority reserves the right to waive technicalities and to reject any or all proposals as provided in BLRS Special Provision for Bidding Requirements and Conditions for Contract Proposals contained in the "Supplemental Specifications and Recurring Special Provisions".
5. Bidders need not return the entire contract proposal when bids are submitted unless otherwise required. Portions of the proposal that must be returned include the following:
   a. BLR 12210 - Contract Cover
   b. BLR 12220 - Notice to Bidders
   c. BLR 12221 - Contract Proposal
   d. BLR 12222 - Contract Schedule of Prices
   e. BLR 12223- Signatures
   f. BLR 12230 - Proposal Bid Bond (if applicable)
6. The quantities appearing in the bid schedule are approximate and are prepared for the comparison of bids. Payment to the Contractor will be made only for the actual quantities of work performed and accepted or materials furnished according to the contract. The scheduled quantities of work to be done and materials to be furnished may be increased, decreased or omitted as hereinafter provided.

7. Submission of a bid shall be conclusive assurance and warranty the bidder has examined the plans and understands all requirements for the performance of work. The bidder will be responsible for all errors in the proposal resulting from failure or neglect to conduct an in depth examination. The Awarding Authority will, in no case be responsible for any costs, expenses, losses or changes in anticipated profits resulting from such failure or neglect of the bidder.
8. The bidder shall take no advantage of any error or omission in the proposal and advertised contract.
9. If a special envelope is supplied by the Awarding Authority, each proposal should be submitted in that envelope furnished by the Awarding Agency and the blank spaces on the envelope shall be filled in correctly to clearly indicate its contents. When an envelope other than the special one furnished by the Awarding Authority is used, it shall be marked to clearly indicate its contents. When sent by mail, the sealed proposal shall be addressed to the Awarding Authority at the address and in care of the official in whose office the bids are to be received. All proposals shall be filed prior to the time and at the place specified in the Notice to Bidders. Proposals received after the time specified will be returned to the bidder unopened.
10. Permission will be given to a bidder to withdraw a proposal if the bidder makes the request in writing or in person before the time for opening proposals.
11. **DOES NOT APPLY TO FEDERAL AID PROJECTS**. In accordance with the provisions of Section 30-22 (6) of the Illinois Procurement Code, the bidder certifies that it is a participant, either as an individual or as part of a group program, in the approved apprenticeship and training programs applicable to each type of work or craft that the bidder will perform with its own forces. The bidder further certifies for work that will be performed by subcontract that each of its subcontractors submitted for approval either (a) is, at the time of such bid, participating in an approved, applicable apprenticeship and training program; or (b) will, prior to commencement of performance of work pursuant to this contract, begin participation in an approved apprenticeship and training program applicable to the work of the subcontract. The Department, at any time before or after award, may require the production of a copy of each applicable Certificate of Registration issued by the United States Department of Labor evidencing such participation by the contractor and any or all of its subcontractors. Applicable apprenticeship and training programs are those that have been approved and registered with the United States Department of Labor. The bidder shall list in the space below, the official name of the program sponsor holding the Certificate of Registration for all of the types of work or crafts in which the bidder is a participant and that will be performed with the bidder's forces. Types of work or craft work that will be subcontracted shall be included and listed as subcontract work. The list shall also indicate any type of work or craft job category that does not have an applicable apprenticeship or training program. **The bidder is responsible for making a complete report and shall make certain that each type of work or craft job category that will be utilized on the project is accounted for and listed.**

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

The requirements of this certification and disclosure are a material part of the contract, and the contractor shall require this certification provision to be included in all approved subcontracts. In order to fulfill this requirement, it shall not be necessary that an applicable program sponsor be currently taking or that it will take applications for apprenticeship, training or employment during the performance of the work of this contract.

By Order of

_____	_____
(Awarding Authority)	County Engineer/County Superintendent of Highways/Municipal Clerk

Note: All proposal documents, including Proposal Guaranty Checks or Proposal Bid Bonds, should be stapled together to prevent loss when bids are processed.

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BDE PROCEDURE MEMORANDUM

NUMBER: 46-05

BLRS PROCEDURE MEMORANDUM

NUMBER: 2005-04

SUBJECT: FHWA Section 4(f) Policy Paper and Final Nationwide Programmatic Section 4(f) Evaluation and Determination for Federal-Aid Transportation Projects That Have a Net Benefit to a Section 4(f) Property

DATE: July 1, 2005

This memorandum clarifies and expands the previous guidance on Section 4(f). This information supersedes the current information in Chapter 26-2 of the BDE Manual and 20-3 of the LRS Manual. The attached 4(f) Policy Paper and Federal Register Notice of Net Benefit to Section 4(f) Properties will be included in future updates of the BDE Manual and the LRS Manual.

Background

The information presented in the Section 4(f) Policy Paper is FHWA's official policy on the applicability of Section 4(f) to various types of land and resources and other Section 4(f) related issues. The paper is divided into three main sections: the Introduction, Section 4(f) Evaluation, and Section 4(f) Applicability. The paper also includes Appendices, an Analysis of Case Law and the Section 4(f) Evaluation Diagram. The introduction replaces and considerably revises the former Section 4(f) Background and Section 4(f) Evaluation sections of the 1989 document. This comprehensive overview provides an organized approach to Section 4(f) and emphasizes key elements of the Section 4(f) process. The Section 4(f) Applicability section is the heart of the Policy Paper. It includes guidance, in question and answer format, on the applicability of Section 4(f) to various situations often encountered in the project development process.

The "Final Nationwide Programmatic Section 4(f) Evaluation and Determination for Federal-Aid Transportation Projects That Have a Net Benefit to a Section 4(f) Property" Notice in the Federal Register is a programmatic evaluation that provides a procedural option for demonstrating compliance with the statutory requirements of Section 4(f). It is in addition to the existing nationwide programmatic evaluations, all of which remain in effect. This action is intended to promote environmental stewardship by encouraging the development of measures that enhance Section 4(f) properties and to

streamline the Section 4(f) by reducing the time it takes to prepare, review and circulate a draft and final individual Section 4(f) Evaluation

Applicability

The procedures in this memorandum are applicable to all Federally funded State and Local Roads highway projects.

Contact the BDE at 217-782-7526 (for State projects) or BLRS at 217-782-3805 (for Local Roads projects) if there are questions concerning this information.

Engineer of Design and Environment Michael L. Hine

Engineer of Local Roads and Streets Charles J. Zwagerdt

Attachments

Note: The attachments are available for download at the following:
www.environment.fhwa.dot.gov/projdev/4fpolicy.htm and
http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/05-7812.htm

U.S. Department
of Transportation
**Federal Highway
Administration**

FHWA Section 4(f) Policy Paper

Office of Planning, Environment and Realty

Project Development and Environmental Review

March 1, 2005

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INTRODUCTION

Section 4(f) was created when the United States Department of Transportation (USDOT) was formed in 1966. It was initially codified at 49 U.S.C. 1653(f) (Section 4(f) of the USDOT Act of 1966) and only applies to USDOT agencies. Later that year, 23 U.S.C. 138 was added with somewhat different language, which applied only to the highway program. In 1983, Section 1653(f) was reworded without substantive change and recodified at 49 U.S.C. 303. In their final forms, these two statutes have no real practical distinction and are still commonly referred to as Section 4(f):

> *"It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any program or project (other than any project for a park road or parkway under section 204 of this title) which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use. In carrying out the national policy declared in this section the Secretary, in cooperation with the Secretary of the Interior and appropriate State and local officials, is authorized to conduct studies as to the most feasible Federal-aid routes for the movement of motor vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas."*
>
> *23 U.S.C. 138*

The Federal Highway Administration (FHWA) originally issued the *Section 4(f) Policy Paper* in September 1987. There was a minor amendment in 1989 adding two additional questions and answers. This 2005 paper provides updated comprehensive guidance on when and how to apply the provisions of Section 4(f) on FHWA projects that propose to use 4(f) land or resources. The information presented in this paper is not regulatory, but is the official policy of FHWA on the applicability of Section 4(f) to various types of land and resources and other Section 4(f) related issues. The paper creates no private right of action and its guidance is not judicially binding on the FHWA.

Previous versions of this policy paper are no longer applicable. This issuance also rescinds the November 15, 1989, *Memorandum: Alternatives Selection Process for Projects Involving Section 4(f) of the DOT Act*, signed by Ali Sevin, Director of the Office of Environmental Policy, and by the creation of Question and Answer 24, supersedes the August 22, 1994, *Interim Guidance on Applying Section 4(f) On Transportation Enhancement Projects and National Recreation Trails*.

Purpose of this Paper

This paper explains how Section 4(f) applies generally and to specific situations where resources meeting the Section 4(f) criteria may be involved. It is based on court decisions, experience and on policies developed by FHWA and USDOT over the years. This paper serves as a guide for the applicability of Section 4(f) for common project situations often encountered by FHWA Division Offices, State Departments of Transportation and other partners.

For specific projects that do not completely fit the situations or parameters described in this paper, it is advisable to contact the FHWA Division Office. In turn, the Division Office may contact the Washington Headquarters' Office of Project Development and Environmental Review, the Resource Center Environmental Technical Service Team, and/or the Office of the Chief Counsel. For more information on Section 4(f) refer to the Environmental Guidebook (www.environment.fhwa.dot.gov/guidebook/index.htm) and the FHWA Re: NEPA Community of Practice (http://nepa.fhwa.dot.gov).

Important Points

At the outset, a few important points about Section 4(f) must be understood.

- **Section 4(f) Authority and Responsibility:** Section 4(f) applies only to the actions of agencies within the USDOT. While other agencies may have an interest in Section 4(f), the agencies within the USDOT are responsible for applicability determinations, evaluations, findings and overall compliance.

- **Section 4(f) Applicability:** Section 4(f) applies to any significant publicly owned public park, recreation area, or wildlife and waterfowl refuge and any land from an historic site of national, state or local significance.

- **Public Ownership and Public Access Criteria:** Section 4(f) applies to significant publicly owned public parks and recreational areas that are open to the public, and to significant publicly owned wildlife and waterfowl refuges, irrespective of whether these areas are open to the public or not, since the "major purpose" of a refuge may make it necessary for the resource manager to limit public access. When private institutions, organizations or individuals own parks, recreational areas or wildlife and waterfowl refuges, Section 4(f) does not apply to these properties, even if such areas are open to the public. If a governmental body has a permanent proprietary interest in the land (such as fee ownership or easement), it is considered "publicly owned" and thus, Section 4(f) may be applicable. Section 4(f) also applies to all historic sites of national, state or local significance, whether or not these sites are publicly owned or open to the public. Except in unusual circumstances, only historic properties on or eligible for inclusion on the National Register of Historic Places are protected under Section 4(f).

- **Significance Criteria:** A publicly owned park, recreation area or wildlife and waterfowl refuge must be a "significant" resource for Section 4(f) to apply. Pursuant to 23 C.F.R. 771.135 (c), 4(f) resources are presumed to be significant unless the official having jurisdiction over the site concludes that the entire site is not significant. Even if this is done, FHWA must make an independent evaluation to assure that the official's finding of significance or non-significance is reasonable.

- **Feasible and Prudent Criteria:** Numerous legal decisions on Section 4(f) have resulted in a USDOT policy that findings of "no feasible and prudent alternatives" and "all possible planning to minimize harm", must be well documented and supported. A feasible alternative is an alternative that is possible to engineer, design and build. The leading United States Supreme Court case, commonly known as Overton Park, (Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971)), held that to find that an alternative (that avoids a 4(f) resource) is not "prudent" one must find that there are unique problems or unusual factors involved with the use of such alternatives. This means that the cost, social, economic and environmental impacts, and/or community disruption resulting from such alternatives reach extraordinary magnitudes. One can use a totality of these circumstances to establish that these unique problems, unusual factors or other impacts reach extraordinary magnitudes. FHWA has incorporated this decision into existing regulations found at 23 C.F.R. 771.135(a)(2).

- **Documentation and Coordination:** The statute does not require the preparation, distribution or circulation of any written document. The statute also does not contain a public comment element. Other than the U.S. Departments of the Interior, Housing and Urban Development and

Agriculture, the statute also does not require or establish any procedures for coordinating with either other agencies or the public. USDOT has developed departmental requirements for documenting Section 4(f) decisions. For example, the requirements of DOT Order 5610.1C and its predecessors have been incorporated into FHWA regulations. FHWA developed procedures for the preparation, circulation and coordination of Section 4(f) documents in two places; 23 Code of Federal Regulations (C.F.R.) Section 771.135, and FHWA's *Technical Advisory, Guidance for Preparing and Processing of Environmental and Section 4(f) Documents: T 6640.8A.* Both of these sources of information are available at the FHWA NEPA Project Development Website: www.environment.fhwa.dot.gov/projdev/index.htm.

Two purposes of a written Section 4(f) evaluation are to establish an administrative record and to ensure that FHWA has followed the regulatory and statutory requirements. The administrative record is the agency's written record that memorializes the basis for determining that there is no feasible and prudent alternative to the use of the 4(f) resource and demonstrates that FHWA used all possible planning and measures to minimize harm. Likewise, when circulated with the NEPA document, it permits FHWA to obtain comments on avoidance alternatives and measures to minimize harm.

If a Section 4(f) evaluation is legally challenged, it is reviewed in accordance with the Administrative Procedure Act (APA) that provides judicial deference to USDOT actions. Under the APA, the agency's action must be upheld unless it is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law (5 U.S.C. 706 (2)(A)). The court will review the administrative record to determine whether FHWA complied with the elements of Section 4(f). If an inadequate administrative record is prepared, the court will lack the required Section 4(f) elements to review and, therefore, will be unable to defer to it (this is even truer if no Section 4(f) Evaluation is prepared). While agency decisions are entitled to a presumption of regularity and courts are not empowered to substitute their judgment for that of the agency, courts will carefully review whether the agency followed the applicable requirements.

Therefore, the administrative record should contain the following essential information:

1) The applicability or non-applicability of Section 4(f) to a property used by a project;
2) The coordination efforts with the officials having jurisdiction over or administering the land (relative to significance of the land, primary use of the land, mitigation measures, etc.);
3) The location and design alternatives that would avoid the use altogether or minimize the use and harm to the 4(f) land;
4) Analysis of impacts of avoidance and Section 4(f) use alternatives; and
5) All measures to minimize harm, such as design variations, landscaping and other mitigation.

The Section 4(f) analysis process is diagramed in Appendix B.

- **Other Laws and Requirements**: There are often concurrent requirements of other Federal agencies when 4(f) lands are involved in highway projects.[1] It should be noted that Section 4(f) has requirements that are independent from obligations found in these other authorities. In the instance where more than one Federal law is applicable to the 4(f) resource, just because the requirements of one law have been complied with, does not necessarily mean that Section 4(f) is

[1] Examples include: Compatibility determinations for the use of lands in the National Wildlife Refuge System and the National Park System, consistency determinations for the use of public lands managed by the Bureau of Land Management, determinations of direct and adverse effects for Wild and Scenic Rivers under the jurisdiction of such agencies as the U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management, and Forest Service, and approval of land conversions covered by the Federal-aid in Fish Restoration and the Federal-Aid in Wildlife Restoration Acts (the Dingell-Johnson and Pittman-Robertson Acts), the Recreational Demonstration Projects and the Federal Property and Administrative Service (Surplus Property) Acts, and Section 6(f) of the Land and Water Conservation Fund Act.

also satisfied. FHWA must demonstrate compliance with all the different requirements of applicable law in addition to its Section 4(f) responsibility.

Project mitigation required by other substantive laws can help FHWA satisfy the requirement that a project include all possible planning to minimize harm to a 4(f) resource if it is used. A good example of this is the terms of the Memorandum of Agreement (MOA) with the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) when an historic property is adversely affected (under Section 106 of the National Historic Preservation Act) by a FHWA project. Nevertheless, if more reasonable measures to minimize harm to the 4(f) resource can be taken, simply complying with another statutes mitigation measures is not enough.

SECTION 4(f) EVALUATION

When a project proposes to use resources protected by Section 4(f), a Section 4(f) evaluation must be prepared. The following information provides guidance on the key areas of a Section 4(f) evaluation.

Section 4(f) Evaluation Format and Approval

The Section 4(f) evaluation may be developed and processed as a stand-alone document, as in the case of a categorical exclusion (CE) determination, or incorporated into an environmental assessment (EA) or environmental impact statement (EIS) as a separate section of those documents. The format and content for these evaluation documents are addressed in the FHWA *Technical Advisory T 6640.8a, Guidance for Preparing and Processing of Environmental and Section 4(f) Documents, October 30, 1987* (www.environment.fhwa.dot.gov/projdev/impTA6640.htm).

The FHWA Division Office or the Federal Lands Highway Division approves all Section 4(f) evaluations. Prior to Division Office approval, all final Section 4(f) evaluations must undergo legal sufficiency review in accordance with 23 C.F.R. 771.135(k). It is advisable and strongly recommended that the Division Office provide copies of the administrative or pre-draft Section 4(f) evaluation to the appropriate legal staff for preliminary review instead of submitting only the pre-final evaluation for legal sufficiency review.

Alternatives Analysis

The intent of the Section 4(f) statute and the policy of the USDOT is to avoid the use of significant public parks, recreation areas, wildlife and waterfowl refuges and historic sites as part of a project, unless there is no feasible and prudent alternative to the use of such land.[2] In order to demonstrate that there is no feasible and prudent alternative to the use of 4(f) land, the evaluation must address both location alternatives and design shifts that totally avoid the 4(f) land. As noted before, supporting information must demonstrate that there are unique problems or unusual factors involved with the alternatives that avoid the use of 4(f) land, such as findings that these alternatives result in costs, environmental impacts or community disruption of extraordinary magnitudes. Likewise, design shifts that cannot totally avoid use but that minimize the impact, must also be employed unless they are not feasible and prudent.

The Section 4(f) evaluation must address the purpose and need of the project. The need must be sufficiently explained and be consistent with the need set forth in any concurrent National Environmental Policy Act (NEPA) documentation. The Section 4(f) evaluation may reference the purpose and need included in a NEPA document, without reiteration, when the evaluation is included as a chapter of the document. Any alternative that is determined to not meet the need of the project, including the no-build alternative, is not a feasible and prudent alternative[3]. The evaluation must include this analysis.

---

[2] "Significance" of one of these types of properties is presumed unless an official with jurisdiction determines that the entire site is not significant.

3 Alaska Center for Environment v. Armbrister, 131 F.3d 1285, 1288 (9th Cir. 1987); Arizona Past and Future Foundation v. Lewis, 722 F2d 1423, 1428 (9th Cir. 1983); Hickory Neighborhood Defense League v. Skinner, 910 F.2d 159, 163 (4th Cir. 1990); Eagle Foundation, Inc. v. Dole, 813 F.2d 798, 804 (7th Cir. 1987); Committee to Preserve Boomer Lake Park v. USDOT,

It is important to point out that the standard for evaluating alternatives under NEPA and the standard for evaluating alternatives under Section 4(f) are different. In general, under NEPA, FHWA can advance to detailed study any reasonable alternative, among a range of alternatives, as long as there is sufficient information that shows a well-reasoned decision to include that alternative. However, under Section 4(f), if there is a feasible and prudent alternative that avoids the use of a 4(f) resource, among alternatives that use a 4(f) resource, the alternative that must be selected is the one that avoids the 4(f) resource.

Likewise, the test under NEPA, to eliminate a reasonable alternative is based on a number of independent factors or a totality of cumulative factors. However, simply because under NEPA an alternative (that meets the purpose and need) is determined to be unreasonable, does not by definition, mean it is imprudent under the higher substantive test of Section 4(f). Therefore, it is possible for an alternative that was examined but dismissed during the preliminary NEPA alternative screening process to still be a feasible and prudent avoidance alternative under Section 4(f). In other words, there is more room to reject alternatives as unreasonable under NEPA than there is to find those same alternatives are imprudent under Section 4(f).

Feasible and Prudent Standard

The first test under Section 4(f) is to determine which alternatives are feasible and prudent. An alternative is feasible if it is technically possible to design and build that alternative. The second part of the standard involves determining whether an alternative is prudent or not, which is more difficult to define.

An alternative may be rejected as not prudent for any of the following reasons:

1) It does not meet the project purpose and need,
2) It involves extraordinary operational or safety problems,
3) There are unique problems or truly unusual factors present with it,
4) It results in unacceptable and severe adverse social, economic or other environmental impacts,
5) It would cause extraordinary community disruption,
6) It has additional construction costs of an extraordinary magnitude, or
7) There is an accumulation of factors that collectively, rather than individually, have adverse impacts that present unique problems or reach extraordinary magnitudes.

Where sufficient analysis demonstrates that a particular alternative is not feasible and prudent, the analysis or consideration of that alternative as a viable alternative comes to an end. If all alternatives use land from 4(f) resources, then an analysis must be performed to determine which alternative results in the least overall harm to the 4(f) resources. If the net harm to 4(f) resources in all the alternatives is equal, then FHWA may select any one of them. In other words, if the project proposes to use similar amounts of similar 4(f) resources, there is no alternative that would cause the least overall harm. In either situation, it is essential that the agency having jurisdiction over the 4(f) resource be consulted.

It should be noted that the net harm analysis is governed by all the possible mitigation that could be done to minimize harm to the 4(f) resource. The net harm should be determined in consultation with the agency having jurisdiction over the resource or, in the case of historic sites, the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), as appropriate. By including mitigation, impacts on the 4(f) property could be reduced or eliminated. The alternative that results in the least net harm must be selected.

Not all uses of 4(f) resources have the same magnitude of impact and not all 4(f) resources have the same quality. A qualitative evaluation is required. For example, evaluation of the net impact should consider whether the use of the 4(f) property involves:

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4 F.3d 1543, 1550 (10th Cir. 1993); Druid Hills v. FHWA, 772 F.2d 700 (11th Cir. 1985); Ringsred v. Dole, 828 F.2d 1300, 1304 (8th Cir. 1987).

1) A large taking or a small taking in relation to the overall size of the resource, or
2) Shaving an edge of a property as opposed to cutting through its middle, or
3) Altering part of the land surrounding an historic building rather than removing the building itself, or
4) Examining the key features of the 4(f) resource, or
5) An unused portion of a park rather than a highly used portion.

When different alternatives propose to use different 4(f) resources, the importance of the resources must be considered. For example, three marginal acres of a large park may be less important than one acre of a smaller city park. To provide support for these complex evaluations, the officials with jurisdiction over the 4(f) resources should be consulted and their opinions memorialized in the administrative record.

As Congress gave 4(f) resources paramount importance, care should be taken to apply consistent standards throughout the length of any given project. For example, it would be inconsistent to accept a restricted roadway cross section in order to reduce the project costs or to gain a minimal safety benefit, when at other locations on the same project this restricted roadway cross section is rejected as unacceptable in order to avoid a park. This same concept should be applied between projects as well.

Examples of the Alternative Selection Process

One of the most difficult areas of analysis is the evaluation of alternatives, and their impacts on both 4(f) and non-4(f) resources, and then deciding which alternative to select. Issues such as, what role does mitigation play in selecting alternatives, what to do if there are multiple 4(f) properties used and how other important resources in the project vicinity should be considered, make this area of analysis complex. It is essential to document the reasoning for dismissing an alternative as well as the reasoning for selecting an alternative. This documentation will become a key part of the administrative record. To address some of these scenarios, consider the following three project examples. Also, refer to the summary table on Page 7, following this discussion.

On project 1, Alternatives C and D are determined not to be feasible and prudent. While these alternatives may or may not use land from a 4(f) resource, it is immaterial since they simply cannot be built. Thus, no further analysis of C or D is warranted. Since Alternatives A and B are feasible and prudent and because B does not use land from a 4(f) resource, Alternative B must be selected. It is not necessary to determine the relative harm that Alternative A has on the 4(f) resources, because B is a feasible and prudent avoidance alternative.

On project 2, Alternatives C and D are determined not to be feasible and prudent. No further consideration need be given these alternatives. Of the remaining feasible and prudent alternatives, both Alternatives A and B use land from 4(f) resources. FHWA can approve only the feasible and prudent alternative that has the least overall harm to the 4(f) resource. Here, B must be selected since the harm to 4(f) resources is the least. When there are multiple alternatives that use a 4(f) resource, it should be noted that simply because an alternative uses more acreage, that might not be the greatest Section 4(f) use. In conclusion, to determine which alternative has the least harm, one should evaluate the importance of the 4(f) resource, the potential for mitigation and confer with the official(s) with jurisdiction over the 4(f) resource.

On project 3, all the build alternatives use 4(f) resources, such that there are no feasible and prudent alternatives that avoid the 4(f) resources. As all four alternatives use 4(f) land, one needs to evaluate the impacts both to 4(f) and non-4(f) resources to select the prudent and least overall harm alternative. Among the 4 alternatives, A and B have almost equal Section 4(f) net impacts but more impacts than Alternatives C and D, so neither A nor B can be selected. However, between Alternatives C and D, C has more Section 4(f) impacts than D. Therefore, usually one must choose Alternative D as illustrated in the example in project 2 above. There are times; however, that there will be additional important non-Section 4(f) environmental impacts that must go into the equation of what is the prudent alternative. If Alternative C has slightly higher Section 4(f) impacts than Alternative D, but there are additional important environmental impacts associated with Alternative D (that Alternative C does not have), it may be more prudent to choose Alternative C. Examples of non-4(f) resources could be an endangered species or

critical habitat being taken, CERCLA or superfund site problems, the elimination of valuable wetlands, and/or major environmental justice issues. In this instance, the prudent decision is the one that causes the overall least harm to all environmental resources, both 4(f) and non-4(f) resources. Section 4(f) plays a significant role in this decision-making process but in total, the prudent choice here is not the alternative that uses the least amount of 4(f) property. Therefore, Alternative C would be advanced. The courts have accepted this totality of impacts analysis[4].

Project	Alternative	Feasible and Prudent Alternative?	Uses 4(f) Land?	Relative Net Harm to Section 4(f) Land After Mitigation
1	A	Yes	Yes	NA[a]
	B	Yes	No	None
	C	No	Yes (NA)[b]	NA
	D	No	No (NA)[b]	NA
2	A	Yes	Yes	Greater
	B	Yes	Yes	Lesser
	C	No	Yes (NA)[b]	NA[b]
	D	No	No (NA)[b]	NA[b]
3	A	(NA)[c]	Yes	Equal to B, but more than C or D
	B		Yes	Equal to A but more than C or D
	C		Yes	Harm to 4(f) greater than alt. D, but with less overall impacts to important resources
	D		Yes	Harm to 4(f) less but with more overall impacts

[a] In project 1, there is a feasible and prudent alternative, which does not use Section 4(f) protected property (Alt. B). Any alternative which uses Section 4(f) protected property must be eliminated from further consideration.
[b] Since this alternative is not feasible and prudent, it should be eliminated from further consideration. Whether Section 4(f) land is used and the relative harm to Section 4(f) protected properties are no longer relevant factors.
[c] Since all alternatives use 4 (f) resources, a prudent and feasible avoidance alternatives analysis is not required.

Measures to Minimize Harm and Mitigation

In addition to determining that there are no feasible and prudent alternatives to avoid the use of 4(f) resources, the project approval process requires the consideration of "all possible planning to minimize harm" on the 4(f) resource. Minimization of harm entails both alternative design modifications that lessen the impact on 4(f) resources and mitigation measures that compensate for residual impacts. Minimization and mitigation measures should be determined through consultation with the official of the agency owning or administering the resource. Neither the Section 4(f) statute nor regulation requires the replacement of 4(f) resources used for highway projects, but this option is appropriate under 23 C.F.R. 710.509 as a mitigation measure for direct project impacts.

Mitigation measures involving public parks, recreation areas, or wildlife and waterfowl refuges may involve a replacement of land and/or facilities of comparable value and function, or monetary

[4] Hickory Neighborhood Defense League v. Skinner, 910 F.2d 159, 163 (4th Cir. 1990); Eagle Foundation, Inc. v. Dole, 813 F.2d 798, 805 (7th Cir. 1987); Louisiana Env. Society, Inc. v. Dole, 707 F.2d 116, 122 (5th Cir. 1983); Committee to Preserve Boomer Lake Park v. USDOT, 4 F.3d 1543, 1550 (10th Cir. 1993).

compensation, which could be used to enhance the remaining land. Mitigation of historic sites usually consists of those measures necessary to preserve the historic integrity of the site and agreed to in accordance with 36 C.F.R. Part 800, by FHWA, the State Historic Preservation Officer (SHPO) or the Tribal Historic Preservation Officer (THPO), and as appropriate, the Advisory Council on Historic Preservation (ACHP). In any case, the cost of mitigation should be a reasonable public expenditure in light of the severity of the impact on the 4(f) resource in accordance with 23 C.F.R. 771.105(d). Section 6(f) of the Land and Water Conservation Fund Act has its own mitigation requirements, but as noted before, these can be part of the 4(f) minimization requirement if the resource cannot be avoided[5].

Coordination

Preliminary coordination prior to the circulation of the draft Section 4(f) evaluation should be accomplished with the official(s) of the agency owning or administering the resource, the Department of Interior (DOI) and, as appropriate, the Departments of Agriculture (USDA) and Housing and Urban Development (HUD). The preliminary coordination with DOI and HUD should be either at the appropriate field office or at the regional level. The preliminary coordination with USDA should be with the appropriate National Forest Supervisor. There should be coordination with USDA whenever a project uses land from the National Forest System. Since the Housing and Urban Rural Recovery Act of 1983 repealed the use restrictions for the Neighborhood Facilities Program authorized by Title VII of the HUD Act of 1965 and the Open Space Program authorized by Title VII of the Housing Act of 1961, the number of instances where coordination with HUD should be accomplished has been substantially reduced. Coordination with HUD should occur whenever a project uses a 4(f) resource where HUD funding (other than the above) had been utilized.

If any issues are raised by these agencies resulting from the circulation of the draft Section 4(f) evaluation, follow up coordination must be undertaken to resolve the issues. In most cases the agency's response will indicate a contact point for the follow up coordination. However, case law indicates that if reasonable efforts to resolve the issues are not successful (one of these agencies is not satisfied with the way its concerns were addressed) and the issues were disclosed and received good-faith attention from the decision maker, FHWA has met the procedural obligation under Section 4(f) to consult with and obtain the agency's comments. Section 4(f) does not require more.

Programmatic Section 4(f) Evaluations

As an alternative to preparing an individual Section 4(f) evaluation, FHWA may, in certain circumstances utilize a programmatic evaluation. Under a programmatic Section 4(f) evaluation, certain conditions are laid out such that, if a project meets the conditions it will satisfy the requirements of Section 4(f) that there is no feasible and prudent alternative and that the project includes all possible planning to minimize harm. These conditions generally relate to the type of project, the severity of impacts to 4(f) property, the evaluation of alternatives, the establishment of a procedure for minimizing harm to the 4(f) resource, adequate coordination with appropriate entities and the NEPA class of action. Programmatic Section 4(f) statements have certain elements in common; (1) they involve projects with typical and limited range of alternatives; and (2) the official having jurisdiction over the land agrees with the use evaluation and the proposed mitigation. Programmatic evaluations can be nationwide, region-wide, or statewide. The development of statewide or regional programmatic evaluations must be coordinated with the Office of Project Development and Environmental Review and the Office of Chief Counsel.

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[5] State and local governments often obtain grants through the Land and Water Conservation Fund Act to acquire or make improvements to parks and recreation areas. Section 6(f) of this Act prohibits the conversion of property acquired or developed with these grants to a non-recreational purpose without the approval of the Department of the Interior's (DOI) National Park Service. Section 6(f) directs DOI to assure that replacement lands of equal value, location and usefulness are provided as conditions to such conversions. Consequently, where conversions of Section 6(f) lands are proposed for highway projects, replacement lands will be necessary. Regardless of the mitigation proposed, the Section 4(f) evaluation should document the National Park Service's tentative position relative to Section 6(f) conversion.

There are currently four approved Nationwide Programmatic Section 4(f) Evaluations. These evaluations are found at the links provided below to the FHWA Environmental Guidebook and the Project Development Website:

1) Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges. This evaluation sets forth the basis for approval that there are no feasible and prudent alternatives to the use of certain historic bridge structures to be replaced or rehabilitated with Federal funds and that the projects include all possible planning to minimize harm resulting from such use.
(www.environment.fhwa.dot.gov/guidebook/vol2/doc15j.pdf and www.environment.fhwa.dot.gov/projdev/4fbridge.htm)

2) Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges. This programmatic evaluation is applicable for projects that improve existing highways and use minor amounts of publicly owned public parks, recreation lands, or wildlife and waterfowl refuges that are adjacent to existing highways.
(www.environment.fhwa.dot.gov/guidebook/vol2/doc15g.pdf and www.environment.fhwa.dot.gov/projdev/4fmparks.htm)

3) Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites. This programmatic evaluation has been prepared for projects that improve existing highways and use minor amounts of land (including non-historic improvements thereon) from historic sites that are adjacent to existing highways where the effect is determined not to be adverse.
(www.environment.fhwa.dot.gov/guidebook/vol2/doc15e.pdf and www.environment.fhwa.dot.gov/projdev/4fmhist.htm)

4) Section 4(f) Statement and Determination for Independent Bikeway or Walkway Construction Projects. This 1977 negative declaration applies to bikeway and/or walkway projects that require the use of land from Section 4(f) resources.
(www.environment.fhwa.dot.gov/guidebook/vol2/doc15m.pdf and www.environment.fhwa.dot.gov/projdev/4fbikeways.htm)

The fact that these programmatic Section 4(f) evaluations are approved does not mean that these types of projects are exempt from or automatically comply with the requirements of Section 4(f). Section 4(f) does, in fact, apply to each of the types of projects addressed by these programmatic evaluations. Furthermore, the programmatic Section 4(f) does not relax the Section 4(f) standards of feasible and prudent and minimization of harm. The FHWA Division Administrator or Division Engineer is responsible for reviewing each individual project to determine that it meets the criteria and procedures of the specific programmatic Section 4(f) evaluation. The FHWA Division Administrator's or Division Engineer's determinations will be thorough and will clearly document the items that have been reviewed. The written analysis and determinations will be combined in a single document, placed in the project record and will be made available to the public upon request. This programmatic evaluation will not change the existing procedures for project compliance with the National Environmental Policy Act (NEPA) or with public involvement requirements.

Programmatic Section 4(f) evaluations streamline the documentation and approval process and amount of interagency coordination that is required for an individual Section 4(f) evaluation. Draft and final evaluations do not need to be prepared and FHWA legal sufficiency review is not required. Interagency coordination is required only with the official(s) with jurisdiction and not with DOI, USDA, or HUD (unless the Federal agency has a specific action to take, such as DOI approval of a conversion of land acquired using Land and Water Conservation Funds).

Section 4(f) Applicability

The following questions and answers provide guidance on the applicability of Section 4(f) to various types of land, resources and project situations. The examples represent FHWA's policy on the situations most often encountered in the project development process. For advice on specific situations or issues not covered in this paper, the FHWA Division Office should be consulted, and if necessary the Division Office can contact the Washington Headquarters Office of Project Development and Environmental Review and/or the Office of the Chief Counsel. An analysis of Section 4(f) case law as it relates to many of the following situations and examples is included in Appendix A, for your information.

1. Use of Resources

Question A: What constitutes a "use" of land from a publicly owned public park, public recreation area, wildlife refuge and waterfowl refuge or historic site?

Answer A: Section 4(f) "use" is defined and addressed in the FHWA/FTA Regulations at 23 C.F.R. 771.135(p). A "use" occurs when:

1) Land from a 4(f) site is permanently incorporated into a transportation facility,
2) There is a temporary occupancy of land that is adverse in terms of the Section 4(f) statute's preservationist purposes (23 C.F.R. 771.135(p)(7)), or
3) When there is a constructive use of land (23 C.F.R. 771.135(p)(2)).

Land will be considered permanently incorporated into a transportation project when it has been purchased as right-of-way or sufficient property interests have been otherwise acquired for the purpose of project implementation. For example, a "permanent easement" which is required for the purpose of project construction or that grants a future right of access onto 4(f) property, such as for the purpose of routine maintenance by the transportation agency, would be considered a permanent incorporation of land into a transportation facility.

Project activities involving the restoration, rehabilitation or maintenance of highways, bridges or other eligible transportation facilities (23 C.F.R. 771.135(f)) that are on or eligible for the National Register of Historic Places will not "use" land from these 4(f) resources when the project does not adversely effect (under Section 106 of the National Historic Preservation Act) the historic qualities of the facility for which it was determined eligible for the National Register of Historic Places, and the State Historic Preservation Officer has been consulted and does not object to the finding of no historic properties adversely affected (see also Question 4).

Question B: How is "constructive use" defined and determined?

Answer B: 23 C.F.R. 771.135(p) defines what a constructive use is. FHWA has identified certain project situations where a constructive use will occur and when a constructive use will not occur (see 23 C.F.R. 771.135(p)(4) and (5)). Constructive use is only possible in the absence of permanent incorporation or temporary occupancy of the type that constitutes a use of 4(f) land by a transportation project. Constructive use only occurs in those situations where, including mitigation, the proximity impacts of a project on the 4(f) property are so severe that the activities, features or attributes that qualify the property or resource for protection under Section 4(f) are substantially impaired. Substantial impairment occurs when the activities, features or attributes of the 4(f) property are substantially diminished (23 C.F.R. 771.135(p)(2)), which means that the value of the resource in terms of its Section 4(f) significance will be meaningfully reduced or lost. The degree of impact and impairment should be determined in consultation with the officials having jurisdiction over the resource.

An example of such an impact might be the traffic noise resulting from a new or improved highway facility proposed near an amphitheater that substantially interferes with the use and enjoyment of the noise-sensitive resource, and the conditions set forth in 23 C.F.R. 771.135(p) are satisfied. For additional information on noise, please refer to FHWA noise regulations at 23 C.F.R. 772.

Constructive use determinations will be rare[6]. The impacts outlined in 23 C.F.R. 771.135(p)(4), involving projects adjacent to or in the proximity of 4(f) resources should be carefully examined. If it is determined that the proximity impacts do not cause a substantial impairment, FHWA can reasonably conclude that there is no constructive use. FHWA has determined that certain impacts constitute a constructive use and that others do not (see 23 C.F.R. 771.135(p)(4) and (5)). Environmental documents should of course contain the analysis of any potential proximity effects and consider whether or not there is substantial impairment to a 4(f) resource. Except for responding to review comments in environmental documents, which specifically address constructive use, the term "constructive use" need not be used. Where a constructive use determination is likely, the FHWA Division Office must consult with the Headquarters Office of Project Development and Environmental Review during development of the preliminary-draft Section 4(f) evaluation.

Question C: When does temporary occupancy of a 4(f) resource result in a 4(f) use?

Answer C: In general, Section 4(f) does not apply to the temporary occupancy, including those resulting from a right-of-entry, construction, other temporary easements or short-term arrangements, of a significant publicly owned public park, recreation area or wildlife and waterfowl refuge, or any significant historic site where temporary occupancy of the land is so minimal that it does not constitute a use within the meaning of Section 4(f).

A temporary occupancy will not constitute a use of 4(f) resource when all of the conditions set forth in 23 C.F.R. 771.135(p)(7) are met:

(1) Duration (of the occupancy) must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;
(2) Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the 4(f) resource are minimal;
(3) There are no anticipated permanent adverse physical impacts, nor will there be interference with the activities or purpose of the resource, on either a temporary or permanent basis;
(4) The land being used must be fully restored, i.e., the resource must be returned to a condition which is at least as good as that which existed prior to the project; and
(5) There must be documented agreement of the appropriate Federal, State, or local officials having jurisdiction over the resource regarding the above conditions.

In the situation where a project does not meet all of the above criteria, the temporary occupancy will be considered a use of the 4(f) resource and the appropriate Section 4(f) analysis will be required.

2. Public Parks, Public Recreation Areas and Wildlife and Waterfowl Refuges

Question A: When is publicly owned land considered to be a park, recreation area or wildlife and waterfowl refuge and who makes this determination?

Answer A: Publicly owned land is considered to be a park, recreation area or wildlife and waterfowl refuge when the land has been officially designated as such by a Federal, State or local agency and the officials of these governmental entities, having jurisdiction over the land, determine that one of its major purposes and functions is for park, recreation or as a refuge. Incidental, secondary, occasional or dispersed park, recreational or refuge activities do not constitute a major purpose.

For the most part the "officials having jurisdiction" are the officials of the agency owning or administering the land. There may be instances where the agency owning or administering the land has delegated or

[6] The FHWA's constructive use policy was formalized in regulation on April 1, 1991, with the addition of paragraph (p) to 23 C.F.R. 771.135. The November 12, 1985, memorandum from Mr. Ali F. Sevin, Director of the Office of Environmental Policy to the Regional Federal Highway Administrators is no longer applicable.

relinquished its authority to another agency, via an agreement on how some of its land will function or be managed. FHWA will review this agreement and determine which agency has authority on how the land functions. If the authority has been delegated or relinquished to another agency, that agency must be contacted to determine the major purpose(s) of the land. Management plans that address or officially designates the major purpose(s) of the property should be reviewed as part of this determination. After consultation, and in the absence of an official designation of purpose and function by the officials having jurisdiction, FHWA will base its decision on its own examination of the actual functions that exist.

The final decision on applicability of Section 4(f) to a particular property or type of land is made by FHWA. In reaching this decision, however, FHWA will rely on the official having jurisdiction over the resource to identify the kinds of activities and functions that take place, and that these activities constitute a major purpose. Documentation of the determination of non-applicability should be included in the environmental document or project record.

Question B: How should the significance of public parks, recreation areas and wildlife and waterfowl refuges be determined?

Answer B: "Significance" determinations, on publicly owned land considered to be parks, recreation areas or wildlife and waterfowl refuges, pursuant to Answer 2 A above, are made by the Federal, State, or local officials having jurisdiction over the land. As discussed above, the "officials having jurisdiction" are officials of the agency owning or administering the land. For certain types of 4(f) resources, more than one agency may have jurisdiction or interest in the property.

Except for certain multiple-use land holdings, discussed in Question 6, significance determinations must consider the entire property and not just the portion of the property proposed for use by the project. The meaning of the term "significance", for purposes of Section 4(f), should be explained to the officials having jurisdiction. Significance means that in comparing the availability and function of the park, recreational area or wildlife and waterfowl refuge, with the park, recreation or refuge objectives of the community or authority, the resource in question plays an important role in meeting those objectives. Management plans or other official forms of documentation regarding the land, if available and up-to-date, are important in this determination. If a determination from the official with jurisdiction cannot be obtained, and a management plan is not available or does not address significance of the 4(f) land, it will be presumed to be significant until FHWA reviews the determination and reaches a different conclusion. All determinations, whether stated or presumed, are subject to review by FHWA for reasonableness.

Question C: Are publicly owned parks and recreation areas, which are significant but not open to the public as a whole, subject to the requirements of Section 4(f)?

Answer C: The requirements of Section 4(f) would apply if the entire public park or public recreation area permits visitation by the general public at any time during the normal operating hours of the facility. Section 4(f) would not apply when visitation is permitted to only a select group and not the entire public. Examples of select groups include residents of a public housing project; military and their dependents (see also Question 11 B); students of a school; and students, faculty, and alumni of a college or university. FHWA does, however, strongly encourage the preservation of such parks and recreation areas; even though they may not be open to the general public.

It should be noted that wildlife and waterfowl refuges have not been included in this discussion. The statute uses the modifying term public to parks and recreation areas and, therefore, the "open to the public" requirement only applies to park and recreational area lands. Many wildlife and waterfowl refuges allow public access, while others may not, especially during certain times or seasons of the year. In these cases, the publicly owned resource should be examined by the FHWA Division Office to determine that the primary purpose of the property and resource is for wildlife or waterfowl refuge and not for other non-Section 4(f) activities (see also Question 20).

Question D: When does an easement or lease agreement with a governmental body constitute "public ownership"?

Answer D: Case law holds that land subject to a public easement in perpetuity can be considered publicly owned land for the purpose the easement exists. Under special circumstances, lease agreements may also constitute a permanent and proprietary interest in the land. Such lease agreements must be determined on a case-by-case basis and such factors as the term of the lease, the understanding of the parties to the lease, cancellation clauses and the like should be considered. Any questions on whether or not the leasehold or other interest constitutes public ownership should be referred to the Federal Highway Administration Division Office, and if necessary the FHWA Division Office should consult with the Washington Headquarters Office of Project Development and Environmental Review and the Office of the Chief Counsel.

3. Historic Sites

Question A: How is the significance (for Section 4(f) purposes) of historic sites determined?

Answer A: Pursuant to the National Historic Preservation Act (NHPA), the FHWA Federal Lands Highway Division (for Federal-lands projects) or FHWA Division in cooperation with the Applicant, i.e. State Department of Transportation (for Federal-aid projects) consults with the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and if appropriate, with local officials to determine whether a site is on or eligible for the National Register of Historic Places. In case of doubt or disagreement between FHWA and the SHPO or THPO, a request for a determination of eligibility may be made to the Keeper of the National Register. A third party may also seek the involvement of the Keeper through the Advisory Council on Historic Preservation (ACHP) for a determination of eligibility,

For purposes of Section 4(f), an historic site is significant only if it is on or eligible for the National Register, unless FHWA determines that the application of Section 4(f) is otherwise appropriate. If an historic site is determined not to be on or eligible for the National Register, but an official (such as the Mayor, President of the local historic society, etc.) formally provides information to indicate that the historic site is of local significance, FHWA may determine that it is appropriate to apply Section 4(f) in that case. In the event that Section 4(f) is found inapplicable, the FHWA Division Office should document the basis for not applying Section 4(f). Such documentation might include the reasons why the historic site was not eligible for the National Register.

Question B: Does Section 4(f) apply when there is an adverse effect determination under the regulations implementing Section 106 of the National Historic Preservation Act (NHPA) (36 C.F.R. 800.5)?

Answer B: FHWA's determination of adverse effect under 36 C.F.R. 800.5 (www.achp.gov/work106.html) does not mean that Section 4(f) automatically applies, nor should it be presumed that the lack of an adverse effect finding (no historic properties adversely affected) means that Section 4(f) will not apply. When a project permanently incorporates land of an historic site, with or without an adverse affect, Section 4(f) applies. However, if a project does not physically take (permanently incorporate) historic property but causes an adverse effect, one must assess the proximity impacts of the project in terms of the potential for "constructive use" (see also Question 1 B). This analysis must determine if the proximity impact(s) will substantially impair the features or attributes that contribute to the National Register eligibility of the historic site or district. If there is no substantial impairment, notwithstanding an adverse effect determination, there is no constructive use and Section 4(f) requirements do not apply. Substantial impairment should be determined in consultation with the SHPO and/or THPO and thoroughly documented in the project record. The determination of Section 4(f) applicability is ultimately FHWA's decision.

As an example of a situation in which there is a Section 106 adverse effect but no Section 4(f) use, consider a transportation enhancement project where an abandoned National Register listed bus station

will be rehabilitated. Rehabilitation for public use will require consistency with the American with Disabilities Act (ADA). The incorporation of ramps or an elevator will meet the definition of an adverse effect, however, there is no permanent incorporation of land into a transportation facility and all parties agree that the rehabilitation will not substantially impair the property. Therefore, Section 4(f) would not apply.

An example of a Section 4(f) use without a Section 106 adverse effect involves a project on existing alignment, which proposes minor improvements at an intersection. To widen the roadway sufficiently, a small amount of property from an adjacent Section 106 property will be acquired, but the significance of the Section 106 resource is such that the SHPO concurs in FHWA's determination of no adverse effect. However, the use of the property will permanently incorporate property of the historic site into a transportation facility and Section 4(f) will apply. This project situation may be evaluated using the *Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites* (www.environment.fhwa.dot.gov/guidebook/vol2/doc15e.pdf), as long as the class of action is not an EIS.

Question C: How does Section 4(f) apply in historic districts on or eligible for National Register?

Answer C: Within a National Register (NR) listed or eligible historic district, Section 4(f) applies to the use of those properties that are considered contributing to the eligibility of the historic district, as well as any individually eligible property within the district. It must be noted generally, that properties within the bounds of an historic district are assumed to contribute, unless it is otherwise stated or they are determined not to be. For those properties that are not contributing elements of the district or individually significant, the property and the district as a whole must be carefully evaluated to determine whether or not it could be used without substantial impairment of the features or attributes that contribute to the NR eligibility of the historic district.

The proposed use of non-historic property within an historic district which results in an adverse effect under Section 106 of the NHPA will require further consideration to determine whether or not there may be a constructive use. If the use of a non-historic property or non-contributing element substantially impairs (see Question 2 B) the features or attributes that contribute to the NR eligibility of the historic district, then Section 4(f) would apply. In the absence of an adverse effect determination, Section 4(f) will not apply. Appropriate steps, including consultation with the SHPO and/or THPO, should be taken to establish and document that the property is not historic, that it does not contribute to the National Register eligibility of the historic district and its use would not substantially impair the historic district.

As an example, consider the situation where traffic signals are warranted in a National Register listed or eligible historic district. The locations of the mast arms and control box are severely limited because of the built-up nature of the district. Although no right-of-way will be acquired, it is consistent with the NHPA regulations that there will be an adverse effect on the historic district. However, it may be reasonably determined that no individually eligible property, contributing element, or the historic district as a whole will be substantially impaired; therefore Section 4(f) will not apply.

Question D: How should the boundaries of a property eligible for listing on the National Register be determined where a boundary has not been established?

Answer D: In this situation, FHWA makes the determination of an historic property's boundary under the regulations implementing Section 106 of the NHPA in consultation with the SHPO and/or the THPO. The identification of historic properties and the determination of boundaries should be undertaken with the assistance of qualified professionals during the very beginning stages of the NEPA process. This process requires the collection, evaluation and presentation of the information to document FHWA's determination of the property boundaries. The determination of eligibility, which would include boundaries of the site, rests with FHWA, but if SHPO, THPO, or other party disagrees with this determination it can

"appeal" FHWA's determination to the Keeper of the National Register in accordance with the provisions of the Section 106 process.

Selection of boundaries is a judgment based on the nature of the property's significance, integrity, setting and landscape features, functions and research value. Most boundary determinations will take into account the modern legal boundaries, historic boundaries (identified in tax maps, deeds, or plats), natural features, cultural features and the distribution of resources as determined by survey and testing for subsurface resources. Legal property boundaries often coincide with the proposed or eligible historic site boundaries, but not always and, therefore, should be individually reviewed for reasonableness. The type of property at issue, be it a historic building, structure, object, site or district and its location in either urban, suburban or rural areas, will require the consideration of various and differing factors. These factors are set out in the *National Park Service Bulletin Defining Boundaries for National Register Properties*. This Bulletin and other information can be found at the following website: www.cr.nps.gov/nr/publications/bulletins/boundaries.

Question E: How are National Historic Landmarks treated under Section 4(f)?

Answer E: Section 4(f) requirements related to the potential use of a National Historic Landmark (NHL) designated by the Secretary of Interior are essentially the same as they are for any historic property determined under the Section 106 process. Section 110(f) of the NHPA outlines the specific actions that an Agency must take when NHL may be directly and adversely affected by an undertaking. Agencies must, "to the maximum extent possible ... minimize harm" to the NHL affected by an undertaking. While not expressly stated in the Section 4(f) statutory language or regulations, the importance and significance of the NHL should be considered in the FHWA's Section 4(f) analysis.

4. Historic Bridges, Highways and Other Transportation Facilities

Question A: How does Section 4(f) apply to historic bridges and highways?

Answer A: The Section 4(f) statute places restrictions on the use of land from historic sites for highway improvements but makes no mention of historic bridges or highways, which are already serving as transportation facilities. The Congress clearly did not intend to restrict the rehabilitation, repair or improvement of these facilities. FHWA, therefore, determined that Section 4(f) would apply only when an historic bridge or highway is demolished, or if the historic quality for which the facility was determined to be eligible for the National Register is adversely affected by the proposed improvement. The determination of adverse effect under 36 CFR 800.5 is made by FHWA in consultation with the SHPO and/or THPO. Where FHWA determines that the facility will not be adversely affected the SHPO/THPO must concur with the determination or FHWA must seek further input from the ACHP.

Question B: Will Section 4(f) apply to the replacement of an historic bridge that is left in place?

Answer B: Section 4(f) does not apply to the replacement of an historic bridge on new location when the historic bridge is left in its original location if its historic value will be maintained, and the proximity impacts of the new bridge do not result in a substantial impairment of the historic bridge. To satisfy the first requirement, FHWA requires the establishment of a mechanism of continued maintenance to avoid the circumstance of harm to the bridge due to neglect.

Question C: How do the requirements of Section 4(f) apply to donations pursuant to 23 U.S.C. 144(o) to a State, locality, or responsible private entity?

Answer C: 23 U.S.C. 144(o) is a separate requirement related to historic bridges when demolition is proposed. 23 U.S.C. 144(o)(4) requires the State that proposes to demolish an historic bridge for a replacement project using Federal funds (i.e. Section 144 bridge funds) to first make the bridge available for donation to a State, locality or a responsible private entity. This process is commonly known as

"marketing the historic bridge". The State, locality or responsible entity that accepts the donation must enter into an agreement to maintain the bridge and the features that give it its historic significance, and assume all future legal and financial responsibility for the bridge. Therefore, Section 4(f) will not apply to the bridges that are donated according to requirements of 23 U.S.C. 144(o) as the bridge is not used in the transportation project. The exception found in 23 C.F.R. 771.135(f) also applies, given the maintenance agreement that is required under 23 U.S.C. 144(o).

If the bridge marketing effort is unsuccessful and the bridge is to be demolished, the evaluation must include the finding that there is no feasible and prudent alternative to the use and the project includes all possible planning to minimize harm.

Note: *Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges* (www.environment.fhwa.dot.gov/guidebook/vol2/doc15j.pdf) may be used for projects that require the use of an historic bridge.

Question D: Does Section 4(f) apply to other historic transportation facilities?

Answer D: Yes, but in the case of restoration, rehabilitation or maintenance of historic transportation facilities (e.g. railroad stations and terminal buildings which are on or eligible for the National Register) Section 4(f) only applies when the facility will be adversely affected (36 C.F.R. 800.5) by the proposed improvement.

5. Archaeological Resources

Question A: When does Section 4(f) apply to archaeological sites?

Answer A: Section 4(f) applies to all archaeological sites that are on or eligible for inclusion on the National Register and that warrant preservation in place. This includes those sites discovered during construction. Section 4(f) does not apply if FHWA, after consultation with the SHPO and/or THPO, determines that the archaeological resource is important chiefly because of what can be learned by data recovery (even if it is agreed not to recover the resource) and has minimal value for preservation in place (23 CFR 771.135(g)).

Question B: How are archeological sites discovered during construction of a project handled?

Answer B: For sites discovered during construction, where preservation of the resource in place is warranted, the Section 4(f) process will be expedited. In such cases, the evaluation of feasible and prudent alternatives will take into account the level of investment already made. The review process, including the consultation with other agencies should be shortened, as appropriate. An October 19, 1980, *Memorandum of Understanding with the Heritage Conservation and Recreation Service* (now part of the National Park Service) provides emergency procedures for unanticipated cultural resources discovered during construction. The MOU is available in the FHWA Environmental Guidebook (www.environment.fhwa.dot.gov/guidebook/vol2/doc10j.pdf). 36 C.F.R. 800.13 addresses the process for considering post-review discoveries under the Section 106 process.

Question C: How should the Section 4(f) requirements be applied to archaeological districts?

Answer C: Section 4(f) requirements apply to archeological districts in the same way as historic districts, but only where preservation in place is warranted. Section 4(f) would not apply if after consultation with the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), FHWA determines that the project would occupy only a part of the archaeological district which is considered a non-contributing element of that district or that the project occupies only a part of the district which is important chiefly because of what can be learned by data recovery and has minimal value for

preservation in place. As with an historic district, if FHWA determines the project will result in an adverse effect on an archaeological district, which is significant for preservation in place, then FHWA must consider whether or not the project impacts will result in a "substantial impairment" and a constructive use determination is warranted.

6. Public Multiple-Use Land Holdings

Question: Are multiple-use public land holdings (e.g., National Forests, State Forests, Bureau of Land Management lands, etc.) subject to the requirements of Section 4(f)?

Answer: Section 4(f) applies to historic properties (those on or eligible for the National Register of Historic Places) located on these multiple-use land holdings and only to those portions of the lands which are designated by statute or identified in the management plans of the administering agency as being primarily for park, recreation, or wildlife and waterfowl refuge purposes, and determined to be significant for such purposes. For example, within a large multiple-use resource, like a National Forest, there can be areas that qualify as 4(f) property (e.g. a campground, picnic area, etc.) while other areas of the property function primarily for purposes other than park, recreation or refuges. Coordination with the official having jurisdiction and examination of the management plan for the area are necessary to determine Section 4(f) applicability.

For public land holdings, which do not have management plans or existing management plans are out-of-date, Section 4(f) applies to those areas that are publicly owned and function primarily for 4(f) purposes. Section 4(f) does not apply to areas of multiple-use lands which function primarily for purposes other than park, recreation or refuges such as for those areas that are used for timber sales or mineral extraction in National Forests.

7. Late Designation of 4(f) Resources

Question: Are properties in the highway right-of-way that are designated (as park and recreation lands, wildlife and waterfowl refuges, or historic sites) late in the development of a proposed project subject to the requirements of Section 4(f)?

Answer: Except for archaeological resources (including those discovered during construction), a project may proceed without consideration under Section 4(f) if that land was purchased for transportation purposes prior to the designation or prior to a change in the determination of significance and if an adequate effort was made to identify properties protected by Section 4(f) prior to the acquisition. The adequacy of effort made to identify properties protected by Section 4(f) should consider the requirements and standards of adequacy that existed at the time of the search. Archaeological resources may be subject to the requirements of Section 4(f) in accordance with Question 5.

8. Wild and Scenic Rivers

Question A: Are Wild and Scenic Rivers (WSR) subject to Section 4(f)?

Answer A: A Wild and Scenic River (WSR) is defined as “a river and the adjacent area within the boundaries of a component of the National Wild and Scenic Rivers System (National System)”, pursuant to Section 3(a) and 2(a)(ii) of the National Wild and Scenic Rivers Act (WSRA) (36 C.F.R. 297.3). Significant publicly owned public parks, recreation areas, or significant wildlife and waterfowl refuges and historic sites (on or eligible of the National Register of Historic Places) in a WSR corridor are subject to Section 4(f). Privately owned lands in a WSR corridor are not subject to Section 4(f), except for historic and archeological sites (see Question 5). Publicly owned lands not open to the general public (e.g., military bases and any other areas with similar restricted access) and whose primary purpose is other than 4(f) are not subject to Section 4(f).

Lands in WSR corridors managed for multiple purposes may or may not be subject to Section 4(f) requirements, depending on the manner in which they are administered by the managing agency (see also Question 6). WSRs are managed by four different Federal agencies, including the U.S. Forest Service, the National Park Service, the Fish and Wildlife Service and the Bureau of Land Management. Close examination of the management plan (as required by the WSRA) prior to any use of these lands for transportation purposes is necessary. Section 4(f) would apply to those portions of the land designated in a management plan for recreation or other 4(f) purposes as discussed above. Where the management plan does not identify specific functions, or where there is no plan, FHWA should consult further with the river-administering agency prior to making the Section 4(f) determination.

The WSRA sets forth those rivers in the United States, which are designated as part of the Wild and Scenic River System. Within this system there are wild, scenic and recreational designations. In determining whether Section 4(f) is applicable to these rivers, one must look at how the river is designated, how the river is being used and the management plan over that reach of the river. If the river is designated a recreational river under the Act or is a recreation resource under a management plan, then it would be a 4(f) resource. A single river can be classified as having separate wild, scenic and recreation areas along the entire river. The designation of a river under the WSRA does not in itself invoke Section 4(f) in the absence of 4(f) attributes and qualities. For example, if a river is included in the System and designated as "wild" but is not being used as or designated under a management plan as a park, recreation area, wildlife and waterfowl refuge and is not an historic site, then Section 4(f) would not apply.

Aspects of the FHWA program determined to be a water resources project are subject to Section 7 of the WSRA (16 U.S.C. 1271 et seq.) This requires the river-administering agency to make a determination as to whether there are "direct and adverse effects" to the values of a WSR or congressionally authorized study river. Although Section 7 of the WSRA generally results in more stringent control, Section 4(f) may also apply to bridges that cross a designated WSR.

Question B: Are potential rivers and adjoining lands under study (pursuant to Section 5(a) of the Wild and Scenic Rivers Act) 4(f) resources?

Answer B: No, unless they are significant publicly owned public parks, recreation areas, and refuges, or significant historic sites in a potential river corridor. However, such rivers are protected under Section 12(a)[7] of the WSRA, which directs all Federal departments and agencies to protect river values in addition to meeting their agency mission. Section 12(a) further recognizes that particular attention should be given to "timber harvesting, road construction, and similar activities, which might be contrary to the purposes of this Act."

9. Fairgrounds

Question: Are publicly owned fairgrounds subject to the requirements of Section 4(f)?

Answer: Section 4(f) is not applicable to publicly owned fairgrounds that function primarily for commercial purposes (e.g. stock car races, annual fairs, etc.), rather than recreation. When fairgrounds are open to the public and function primarily for public recreation other than an annual fair, Section 4(f) only applies to those portions of land determined significant for recreational purposes.

[7] "The Secretary of the Interior, the Secretary of Agriculture, and the head of any other Federal department or agency having jurisdiction over any lands which include, border upon, or are adjacent to, any river included within the National Wild and Scenic Rivers System or under consideration for such inclusion, in accordance with section 2(a)(ii), 3(a), or 5(a), shall take such action respecting management policies, regulations, contracts, plans, affecting such lands, following the date of enactment of this sentence, as may be necessary to protect such rivers in accordance with the purposes of this Act."

10. School Playgrounds

Question: Are publicly owned school playgrounds subject to the requirements of Section 4(f)?

Answer: While the primary purpose of public school playgrounds is for structured physical education classes and recreation for students, these properties may also serve significant public recreational purposes and as such, may be subject to Section 4(f) requirements. When a playground serves only school activities and functions, the playground is not considered subject to Section 4(f). However, when a public school playground is open to the public and serves either organized or substantial "walk-on" recreational purposes, it is subject to the requirements of Section 4(f) if the playground is determined to be significant for recreational purposes (see also Question 2 B). In determining the significance of the playground facilities, there may be more than one official having jurisdiction over the facility. A school official is considered to be the official having jurisdiction of the land during school activities. However, the school board may have authorized the city park and recreation department or a public organization to control the facilities after school hours. The actual function of the playground is the determining factor under these circumstances. Therefore, documentation should be obtained from the officials having jurisdiction over the facility stating whether or not the playground is of local significance for recreational purposes.

11. Golf Courses

Question A: Are public golf courses subject to Section 4(f), even when fees and reservations are required?

Answer A: The applicability of Section 4(f) to a golf course depends on the ownership of the golf course. There are generally three types of golf courses:

1) Publicly owned and open to the general public,
2) Privately owned and open to the general public and
3) Privately owned and for the use of members only.

Section 4(f) would apply only to those golf courses that are publicly owned, open to public and determined to be significant recreational areas (see also Question 2 B). The first type of golf course mentioned above includes those that are owned, operated and managed by a city, county or state for the primary purpose of public recreation. These golf courses meet the basic applicability requirements, as long as they are determined to be significant by the city, county or state official with jurisdiction and FHWA agrees with this determination.

Section 4(f) would not apply to the two types of privately owned and operated golf courses mentioned above, even if they are open to the general public.

The fact that greens-fees or reservations (tee times) are required by the facility does not alter the Section 4(f) applicability to the resource, as long as the standards of public ownership, public access and significance are met. See Question 12 for more information on entrance or user fees.

Question B: How are "military" golf courses treated under Section 4(f)?

Answer B: Military golf courses are a special type of recreational area. They are publicly owned (by the Federal Government) but are not typically open to the general public. Because the recreational use of these facilities is generally limited to military personnel and their families they are not considered to be public recreational areas and, therefore, Section 4(f) does not apply to them (see Question 2 C).

12. User or Entrance Fees

Question: Does the charging of an entry or user fee affect Section 4(f) eligibility?

Answer: Many eligible 4(f) properties require a fee to enter or use the facility such as State Parks, National Parks, publicly owned ski areas, historic sites and public golf courses. The assessment of a user fee is generally related to the operation and maintenance of the facility and does not in and of itself negate the property's status as a 4(f) resource. Therefore, it does not matter in the determination of Section 4(f) applicability whether or not a fee is charged, as long as the other criteria are satisfied.

Consider a public golf course as an example. As discussed in Question 11, greens-fees are usually if not always required, and these resources are considered 4(f) resources when they are open to the public and determined to be significant. The same rationale should be applied to other 4(f) resources and lands in which an entrance or user fee is required.

13. Bodies of Water

Question: How does the Section 4(f) apply to publicly owned lakes and rivers?

Answer: Lakes are sometimes subject to multiple, even conflicting, activities and do not readily fit into one category or another. When lakes function for park, recreation, or refuge purposes, Section 4(f) would only apply to those portions of water which function primarily for those purposes. Section 4(f) does not apply to areas which function primarily for other purposes. In general, rivers are not subject to the requirements of Section 4(f). Rivers in the National Wild and Scenic Rivers System are subject to the requirements of Section 4(f) in accordance with Questions 8 A and 8 B. Those portions of publicly owned rivers, which are designated as recreational trails are subject to the requirements of Section 4(f). Of course Section 4(f) would also apply to lakes and rivers or portions thereof which are contained within the boundaries of parks, recreational areas, refuges, and historic sites to which Section 4(f) otherwise applies.

14. Trails

Question A: The National Trails System Act permits the designation of scenic, historic and recreational trails. Are these trails or other designated scenic or recreational trails on publicly owned land subject to the requirements of Section 4(f)?

Answer A: Public Law 95-625 provides that, no land or site located along a designated national historic trail or along the Continental Divide National Scenic Trail shall be subject to the provisions of Section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f)) unless such land or site is deemed to be of historical significance under appropriate historical site criteria, such as those for the National Register of Historic Places. Only lands or sites adjacent to historic trails that are on or eligible for the National Register of Historic Places are subject to Section 4(f). Otherwise (pursuant to Public Law 95-625), national historic trails are exempt from Section 4(f).

Question B: Are trails on privately owned land, including land under public easement and designated as scenic or recreational trails subject to the requirements of Section 4(f)?

Answer B: Section 4(f) does not apply to trails on privately owned land. Section 4(f) could apply where a public easement that permits public access for recreational purposes exists. In any case, it is FHWA's policy that every reasonable effort should be made to maintain the continuity of existing and designated trails.

Question C: Are trails on highway rights-of-way, which are designated as scenic or recreational trails subject to the requirements of Section 4(f)?

Answer C: If the trail is simply described as occupying the rights-of-way of the highway and is not limited to any specific location within the right-of-way, a use of land would not occur provided that adjustments or

changes in the alignment of the highway or the trail would not substantially impair the continuity of the trail. In this regard, it would be helpful if all future designations including those made under the National Trails System Act describe the location of the trail only as generally in the right-of-way.

It should be noted that in Title 23, Section 109(m) precludes the approval of any project, which will result in the severance, or destruction of an existing major route for non-motorized transportation traffic unless such project provides a reasonable alternative route or such a route exists.

Question D: Does Section 4(f) apply to trails funded under the Recreational Trails Program (RTP)?

Answer D: No. The Recreational Trails Program (RTP)[8] is exempt from the requirements of 23 U.S.C. 138 and 49 U.S.C. 303. This allows the USDOT/FHWA to approve RTP projects which are located on land within publicly owned parks or recreation areas without requiring a waiver or other Section 4(f) documentation (23 U.S.C. 206 (h)(2)). The exemption is limited to Section 4(f) and does not apply to other environmental requirements, such as the National Environmental Policy Act (NEPA) or the National Historic Preservation Act (NHPA). More information on the Recreational Trails Program is available at www.fhwa.dot.gov/environment/rectrails/index.htm.

15. Bikeways

Question: Do the requirements of Section 4(f) apply to bikeways?

Answer: If the publicly owned bikeway is primarily used for transportation and is an integral part of the local transportation system, the requirements of Section 4(f) would not apply, since it is not a recreational area. Section 4(f) would apply to publicly owned bikeways (or portions thereof) designated or functioning primarily for recreation, unless the official having jurisdiction determines it is not significant for such purpose. During early consultation with the official with jurisdiction it should be determined whether or not a management plan exists that addresses the primary purpose of the bikeway in question.

However, as with recreational trails, if the bikeway is simply described as occupying the highway rights-of-way and is not limited to any specific location within that right-of-way, a use of land would not occur and Section 4(f) would not apply, provided adjustments or changes in the alignment of the highway or bikeway would not substantially impair the continuity of the bikeway. Just as with trails, Title 23 Section 109(m) precludes the approval of any project, which will result in the severance or destruction of an existing major route for non-motorized transportation traffic, unless such project provides a reasonable alternative route or such a route exists.

16. Joint Development (Park with Highway Corridor)

Question: When a public park, recreation area, or wildlife and waterfowl refuge is established and an area within the 4(f) resource is reserved for highway use prior to, or at the same time the 4(f) resource was established, do the requirements of Section 4(f) apply?

Answer: No, the requirements of Section 4(f) do not apply to the subsequent use of the reserved area for its intended highway purpose. This is because the land used for the highway project was reserved from and, therefore, has never been part of the protected 4(f) area. Nor is there a constructive use (23 C.F.R. 771.135(p)(5)(v)) of the 4(f) resource, since it was jointly planned with the highway project. The specific governmental action that must be taken to reserve a highway corridor from the 4(f) resource is a question of state law and local law, but evidence that the reservation was contemporaneous with or prior to the establishment of the 4(f) resource is always required. Subsequent statements of intent to construct a highway project within the 4(f) resource are not sufficient. All measures which have been taken to

[8] In 1998, the Transportation Equity Act for the 21st Century (TEA-21) replaced the National Recreational Trails Funding Program created by the Intermodal Surface Transportation Efficiency Act (ISTEA) with the Recreational /Trails Program (RTP).

jointly develop the highway and the park should be completely documented in the project records. To provide flexibility for the future highway project, state and local transportation agencies are advised to reserve wide corridors.

17. Planned 4(f) Resources

Question: Do the requirements of Section 4(f) apply to publicly owned properties "planned" for park, recreation area, wildlife refuge, or waterfowl refuge purposes even though they are not presently functioning as such?

Answer: Section 4(f) applies when the land is one of the enumerated types of publicly owned lands and the public agency that owns the property has formally designated and determined it to be significant for park, recreation area, wildlife and waterfowl refuge purposes. Evidence of formal designation would be the inclusion of the publicly owned land, and its function as a 4(f) resource, into a city or county Master Plan. A mere expression of interest or desire is not sufficient. When privately held properties of these types are formally designated into a Master Plan, Section 4(f) is not applicable. The key is whether the planned facility is presently publicly owned, formally designated and significant. When this is the case, Section 4(f) would apply.

18. Temporary Recreational Occupancy or Uses of Highway Rights-of-way

Question: Does Section 4(f) apply to temporary recreational uses of land owned by a State Department of Transportation or other Applicant and designated for transportation purposes?

Answer: In situations where land which is owned by a State DOT or other Applicant and designated for future transportation purposes (including highway rights-of-way) is temporarily occupied or being used for either authorized or unauthorized recreational purposes such as for a playground or a trail (bike, snowmobile, hiking, etc.) on property purchased as right-of-way, Section 4(f) does not apply. For authorized temporary occupancy of highway rights-of-way for park or recreation, it is advisable to make clear in a limited occupancy permit, with a reversionary clause that no long-term right is created and the park or recreational activity is a temporary one pending completion of the highway or transportation project.

Note: In one recent proposed transportation project, lands designated for transportation purposes and utilized for recreational uses pursuant to a revocable agreement granting temporary use, were found by a court to be 4(f) resources, but this case had unusual facts. Nevertheless, it is important to recognize this decision, even though it is contrary to FHWA policy (see Stewart Park and Reserve Coalition v. Slater, 352 F.3d 545 (2nd Cir. 2003), Appendix A, Question 18).

19. Tunneling

Question: Is tunneling under a publicly owned public park, recreation area, wildlife or waterfowl refuge, or historic site subject to the requirements of Section 4(f)?

Answer: Section 4(f) would apply only if the tunneling:

1) Disturbs any archaeological sites on or eligible for the National Register of Historic Places which warrant preservation in place, or
2) Causes disruption which would permanently harm the purposes for which the park, recreation, wildlife or waterfowl refuge was established, or
3) Substantially impairs the historic values of the historic site.

20. Wildlife and Waterfowl Refuges

Question A: What is a wildlife or waterfowl refuge for purposes of Section 4(f)?

Answer A: The terms "wildlife refuge" and "waterfowl refuge" are not defined in the Section 4(f) law or in FHWA's regulations. However, in 1966, the same year Section 4(f) was passed; Congress also passed the National Wildlife Refuge System Act (NWRSA). The NWRSA defines these terms broadly focusing on the preservationist intent of the refuges. The FHWA has considered this in our implementation of Section 4(f) for refuges. For purposes of Section 4(f), a wildlife and waterfowl refuge is publicly owned land (including waters) where the major purpose of such land is the conservation, restoration, or management of endangered species, their habitat, and other wildlife and waterfowl resources. In determining the major purpose of the land, consideration must be given to the following: (1) the authority under which the land was acquired; (2) lands with special national or international designations; (3) the management plan for the land; and/or (4) whether the land has been officially designated by a Federal, State, or local agency having jurisdiction over the land, as an area for which its major purpose and function is the conservation restoration, or management of endangered species, their habitat or wildlife and waterfowl resources. Recreational activities, including hunting and fishing, are consistent with the broader species preservation.

Examples of properties that <u>may</u> function as wildlife or waterfowl refuges include: State or Federal wildlife management areas, a wildlife reserve, preserve or sanctuary, and waterfowl production areas, including wetlands and uplands that are set aside (in a form of public ownership) for refuge purposes. The FHWA must consider the ownership, significance and major purpose of these properties in determining if Section 4(f) should apply. In making these determinations FHWA should review the existing management plans and consult with the Federal, State or local officials having jurisdiction over the property. In some cases, these types of properties will actually be multiple-use public land holdings of the type discussed in Question 6, and should be treated accordingly.

Question B: Are "conservation easements" acquired by the United States on private lands considered Section 4(f) wildlife and waterfowl refuges?

Answer B: Easements (a form of property ownership, see Question 2 D) acquired by the United States are subject to Section 4(f) as a wildlife and waterfowl refuges when they are part of the National Wildlife Refuge System. Other lands may be subject to Section 4(f) when they meet the definition and criteria specified in Answer A, above. In all cases, FHWA must consider the ownership, significance, and major purpose of these types of properties in determining if Section 4(f) should apply.

21. Air Rights

Question: Do the requirements of Section 4(f) apply to bridging over a publicly owned public park, recreation area, wildlife or waterfowl refuge, or historic site?

Answer: Section 4(f) will apply if piers or other appurtenances are physically located in the park, recreation area, wildlife and waterfowl refuge, or significant historic property. Where the bridge will span the 4(f) resource entirely, the proximity impacts of the bridge on the 4(f) resource should evaluated to determine if the placement of the bridge will result in a constructive use (see Question 1 B).

22. Non-Transportation Use of 4(f) Resources

Question: Does the expenditure of Title 23 funds for mitigation or non-transportation activities on a 4(f) resource trigger the requirements of Section 4(f)?

Answer: No. Section 4(f) only applies where land is permanently incorporated into a transportation facility and when the primary purpose of the activity on the 4(f) resource is for transportation. If activities are proposed within a 4(f) resource solely for the protection, preservation, or enhancement of the resource and the official with jurisdiction has been consulted and concurs with this finding (in writing) then the provisions of Section 4(f) do not apply.

For example, consider the construction or improvement of any type of recreational facility in a park or recreation area (see Question 24) or the construction of a permanent structural erosion control feature, such as a detention basin. Where these activities are for the enhancement or protection of the 4(f) resource, do not permanently incorporate land into a transportation facility, do not appreciably change the use of the property and the officials having jurisdiction agree, Section 4(f) would not apply.

Another example involves the enhancement, rehabilitation or creation of wetland within a park or other 4(f) resource as part of the mitigation for a transportation project's wetland impacts. Where this work is consistent with the function of the existing park and considered an enhancement of the 4(f) resource by the official having jurisdiction, then Section 4(f) would not apply. In this case the 4(f) land is not permanently incorporated into the transportation facility, even though it is a part of the project as mitigation.

If activities funded with Title 23 funds result in a substantial change in the purpose, function or change the ownership from a 4(f) resource to transportation, then Section 4(f) will apply.

23. Scenic Byways

Question: How does Section 4(f) apply to scenic byways?

Answer: The designation of a road as a scenic byway is not intended to create a park or recreation area within the meaning of 49 U.S.C. 303 or 23 U.S.C. 138. The improvement (reconstruction, rehabilitation, or relocation) of a publicly-owned scenic byway would not come under the purview of Section 4(f) unless the improvement was to otherwise use land from a protected resource.

24. Transportation Enhancement Projects

Question A: How is Section 4(f) applied to transportation enhancement activity projects?

Answer A: A transportation enhancement activity (TEA) is one of twelve specific types of activities set forth by statute at 23 U.S.C. 101(a)(35). TEAs often involve the enhancement of, or improvement to, land that qualifies as a Section 4(f) protected resource. For a 4(f) resource to be used by a TEA, two things must occur, (1) the TEA must involve land of an existing 4(f) resource; and (2) there must be a use of that 4(f) resource as defined by 23 C.F.R. 771.135(p). Therefore, if a TEA permanently incorporates 4(f) land into a transportation facility then there is a use and Section 4(f) will apply.

The following TEAs have the greatest potential for Section 4(f) use:

- Facilities for pedestrians and bicycles
- Acquisition of scenic easements and scenic or historic sites
- Scenic or historic highway programs including tourist and welcome centers
- Historic preservation
- Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals)
- Preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails)

Conversely, the TEAs below are less likely to be subject to Section 4(f):

- Safety and educational activities for pedestrians and bicyclists
- Landscaping or other scenic beautification
- Control and removal of outdoor advertising
- Archeological planning and research
- Environmental mitigation of highway runoff pollution, reduce vehicle-caused wildlife mortality, maintain habitat connectivity
- Establishment of transportation museums

In both categories above, the question of Section 4(f) use must be evaluated on a case-by-case basis.

To illustrate how Section 4(f) is applicable to a TEA, consider the following two scenarios involving a significant public park:

Scenario 1: A TEA project is proposed for the construction of a new pedestrian or bike facility within a public park. The purpose of the project is primarily to promote a mode of travel and requires a transfer of land from the officials with jurisdiction over the 4(f) resource to the State DOT or local transportation authority. Since this project would involve the "permanent incorporation of 4(f) land into a transportation facility" there is a use of 4(f) land and a Section 4(f) evaluation should be prepared. In this instance, *The Programmatic Section 4(f) Evaluation for Independent Bikeway or Walkway Construction Projects* (www.environment.fhwa.dot.gov/guidebook/vol2/doc15m.pdf) would likely apply, depending on the particular circumstances of the project.

Scenario 2: The purpose of a TEA project is to construct, rehabilitate, reconstruct or refurbish an already existing bike path or walkway within a public park. This project relates to surface transportation but the improvement is primarily intended to enhance the park. In this case there is no "permanent incorporation of 4(f) land into a transportation facility" and, therefore, no Section 4(f) use. A Section 4(f) evaluation does not need to be prepared.

Other TEA projects can involve existing transportation facilities such as highways, bridges, and buildings which are expected to have a useful life that is finite and therefore, continually require maintenance or rehabilitation. While 23 C.F.R. 771.135(f) may apply in certain instances, generally speaking, the rehabilitation of a highway, building or bridge relates to surface transportation but does not rise to the level of a Section 4(f) use (see also Question 4).

Archaeological planning and research projects that involve the potential use of a significant archeological property are covered by the provisions of 23 C.F.R. 771.135(g) (see Question 5). Other TEAs may be handled in accordance with this answer. In complex situations the FHWA Division Office should contact the Headquarters Office of Project Development and Environmental Review or the Office of the Chief Counsel for assistance.

Note: This answer supersedes the August 22, 1994; *Interim Guidance on Applying Section 4(f) On Transportation Enhancement Projects and National Recreational Trails.*

Question B: Is it possible for a TEA to create a 4(f) resource?

Answer B: To be eligible for transportation enhancement funding, a proposed activity must relate to surface transportation and not be solely for recreation or other purpose. Also, the development of parks, recreation areas, or wildlife and waterfowl refuges are not designated eligible TEAs. Thus, in most cases, the TEA by itself would not create a 4(f) resource, where one did not previously exist.

That being said, it is possible for transportation enhancement funds to enhance existing 4(f) resources, such as a bikeway or pedestrian facility that is constructed within a park. The use of TEA funds in this case would not alter the future Section 4(f) status of the park and may add Section 4(f) values that would

have to be considered in subsequent projects. See Question 22 for additional discussion of the use of transportation funds within a park or other 4(f) resource for non-transportation purposes.

For more information, see the *FHWA Final Guidance on Transportation Enhancement Activities;* December 17, 1999, and the TE Program Related Questions & Answers; August, 2002, found at the Transportation Enhancement Website (www.fhwa.dot.gov/environment/te/index.htm).

25. Museums, Aquariums and Zoos?

Question: Does Section 4(f) apply to museums, aquariums and zoos?

Answer: Publicly owned museums or aquariums will not normally be considered parks, recreational areas, or wildlife and waterfowl refuges and are, therefore, not subject to Section 4(f) unless they are significant historic properties.

Publicly owned zoos on the other hand, should be evaluated on a case-by-case basis to determine the major purpose of these resources and if they are significant park and/or recreational resources. To the extent that these resources are considered to be significant park or recreational areas, or are significant historic properties, they will be treated as 4(f) resources.

26. Tribal Lands and Indian Reservations

Question: How are lands owned by Federally Recognized Tribes, and/or Indian Reservations treated for the purposes of Section 4(f)?

Answer: Federally recognized Indian Tribes are considered sovereign nations, therefore, lands owned by them are not considered to be "publicly owned" within the meaning of Section 4(f), nor open to the general public, and Section 4(f) does not automatically apply. However, in situations where it is determined that land or resources owned by a Tribal Government or on Indian Reservation functions as a significant park, recreational area (which are open to the general public), a wildlife and waterfowl refuge, or is eligible for the National Register of Historic Places, Section 4(f) would apply.

27. Traditional Cultural Properties

Question: Are lands that are considered to be traditional cultural properties subject to the provisions of Section 4(f)?

Answer: A traditional cultural property or TCP is defined in the 1990 National Register Bulletin # 38 generally as land that <u>may</u> be eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that; (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community. Land referred to as a TCP is not automatically considered historic property, or treated differently from other historic property. A TCP must also meet the National Register criteria as a site, structure, building, district, or object to be eligible for Section 4(f) protection.

For those TCPs related to an Indian tribe, the Tribal Historic Preservation Officer (THPO) or tribal resource administrator should be consulted in determining whether the TCP is on or eligible for the National Register. For other TCPs the State Historic Preservation Officer (SHPO) should be consulted.

28. Cemeteries

Question A: Does Section 4(f) apply to cemeteries?

Answer A: Cemeteries would only be considered 4(f) properties if they are significant historic resources, i.e., determined to be on or eligible for the National Register of Historic Places.

Question B: Does Section 4(f) apply to other lands that contain human remains?

Answer B: Lands that contain human remains, such as graveyards, family burial plots, or Native American burial sites and those sites that contain Native American grave goods associated with burials, are not in and of themselves considered to be 4(f) resources. However, these types of lands may also be historic properties included on or eligible for inclusion in the National Register. These sites should not automatically be considered only as archeological resources as many will have value beyond what can be learned by data recovery. If these sites are National Register listed or eligible and also warrant preservation in place, Section 4(f) applies (see Question 5). For more information on the subject of historic cemeteries see, National Register Bulletin #41, *Guidelines for Evaluating and Registering Cemeteries and Burial Places*; 1992.

When conducting the Section 4(f) determination for lands that may be Native American burial sites or sites with significance to a Federally Recognized Tribe, consultation with appropriate representatives from the Federally Recognized Tribes with interest in the site is essential.

29. Section 4(f) Evaluations in Tiered NEPA Documents

Question: How should Section 4(f) be handled in tiered NEPA documents?

Answer: This issue is addressed to some degree in 23 C.F.R. 771.135(o)(1). Because the project development process moves from a broad scale examination at the tier-one stage, to a more site specific evaluation in tier-two, does not relieve FHWA from its responsibility to consider feasible and prudent avoidance alternatives to the use of 4(f) resources at the tier-one stage. Where all alternatives in the second tier analysis use a 4(f) resource, it may be appropriate and necessary to reconsider the feasibility and prudence of an avoidance alternative that was eliminated during the tier-one evaluation phase.

30. Department of the Interior Handbook on Departmental Review of Section 4(f) Evaluations (2002)

Question: What is the official status of the February 2002, *Handbook on Departmental Reviews of Section 4(f) Evaluations,* issued by the Department of the Interior, Office of Environmental Policy and Compliance?

Answer: Section 4(f) legislation (23 U.S.C. 138 and 49 U.S.C. 303) identifies the Department of Interior, as well as the Departments of Agriculture and Housing and Urban Development as having a role in Section 4(f) matters. The U.S. Department of Transportation (DOT) is required to consult and cooperate with these Departments in Section 4(f) program and project related matters.

The purpose of the Handbook is to provide guidance to the National Park Service (NPS), U.S. Fish and Wildlife Service (F&WS) and other designated lead bureaus in the preparation of DOI comments on Section 4(f) evaluations prepared by the DOT, pursuant to the authority granted in Titles 23 and 49. The Handbook is an official DOI document and includes departmental opinion related to the applicability of Section 4(f) to lands for which they have jurisdiction and authority. FHWA values the DOI's opinions related to the resources under their jurisdiction, and while the Handbook provides resource information for FHWA to consider, it is not the final authority on Section 4(f) determinations.

Official FHWA policy on the applicability of Section 4(f) to lands that fall within the jurisdiction of the DOI is contained within 23 C.F.R. 771.135 and this *Policy Paper*. FHWA is not legally bound by the Handbook, or the comments provided by the DOI or lead bureaus, however, every attempt should be made to reach agreement during project consultation. In some situations one of the bureaus may be an official having jurisdiction. When unresolved conflicts arise during coordination with the NPS, F&WS or other bureaus related to the applicability of Section 4(f) to certain types of land or resources, it may be necessary for the Division Office to contact the Office of Project Development and Environmental Review for assistance.

APPENDIX A
Analysis of Case Law

The following analysis provides brief legal notes and citations to some Section 4(f) cases that relate to the subject matter discussed in the question and answer section of the Section 4(f) Policy Paper. This section is provided for informational purposes and as background to the policy addressed in the question and answers. In some instances, case law does not address the specific example in the Policy Paper. Also, there are some examples that have had no case address the subject matter of the question. When you have specific legal questions or need legal advice about Section 4(f) applicability, please contact the Legal Staff of the Office of Chief Counsel within your geographic area. FHWA reserves the right to modify and update this appendix as case law becomes applicable.

1. Use of Resources

Question A: What constitutes a "use" of land from a publicly owned public park, recreation area, wildlife refuge, and waterfowl refuge or historic site?

Legal Note: A number of cases have discussed "use" and "constructive use" and only a few are mentioned here. Several courts have held that the term "use" is to be construed broadly, not limited to the concept of physical taking, but includes areas that are significantly, adversely affected by the project. Adler v. Lewis, 675 F.2d 1085, 1092 (9th Cir. 1982); Concerned Citizens Alliance v. Slater, 176 F.3d 686 (3rd Cir. 1999). In Concerned Citizens, it was undisputed that the preferred alignment would "use" an historic district by sending through the district, resulting in visual, traffic, and noise and vibration impacts. The issue in that case was whether the preferred alternative would impose the least harm on the historic district.

In Brooks v. Volpe, 460 F.2d 1193 (9th Cir. 1972), the Court held that construction of a segment of Interstate Highway I-90 which would encircle campground areas would result in a "use" due to the indirect impacts to the campground under Section 4(f) expanding the physical use concept to what would later be called constructive use and codified in FHWA's regulations at 23 C.F.R. 771.135(p).

Question B: How is "constructive use" defined and determined?

Legal Note: Significant adverse indirect impacts, now called "substantial impairment" in FHWA's regulations, can result in a constructive use. D.C. Fed'n of Civic Ass'ns v. Volpe, 459 F.2d 1231 (D.C. Cir. 1971). At the same time, not every change within park boundaries constitutes a "use" of Section 4(f) lands. Coalition on Sensible Transp., Inc. v. Dole, 826 F.2d 60 (D.C. Cir. 1987). No "use" occurs where an action will have only an insignificant effect on the existing use of protected lands. In Geer v. FHWA, 975 F. Supp. 47, 73 (D. Mass. 1997), the court upheld the FHWA's determination of no constructive use, which concluded that the noise and visual impacts were not significant given the existing urban context of the project and existing impacts under the no-build option.

In Davis v. Mineta, 302 F.3d 1104 (10th Cir. 2002), construction of a project that would substantially impair the aesthetic attributes associated with the Jordan River Parkway was subject to Section 4(f) due to the disruption of the natural setting and feeling of the Parkway. In that case, noise levels were expected to increase at least ten decibels in the parkway. In Conservation Soc'y of S. Vt. v. Sec'y of Transp., 443 F. Supp. 1320 (D. Vt. 1978), "close proximity" of the proposed highway project to the Lye Brook Wilderness area was deemed a "use" of publicly owned recreation land subject to Section 4(f).

The effects of noise can result in a constructive use. In Allison v. DOT, 908 F.2d 1024, 1028 (D.C. Cir. 1990), the court determined that the FAA erred in considering only the effect on humans using a Section 4(f) state park. However, the court ultimately found that there was no violation of Section 4(f) because the operation of the new airport would not result in a significant increase in the noise level over the level of the current facility. There was a similar result in Sierra Club v. United States Dep't of Transp., 753 F.2d 120 (D.C. Cir. 1985), in which the increase in cumulative noise from the new facility was found not to be significant.

More recently, in City of S. Pasadena v. Slater, 56 F. Supp. 2d 1106 (C.D. Cal. 1999), the plaintiffs argued that the 710 Freeway Project would constructively use historic sites by substantially impairing the aesthetic features or attributes of the sites. They argued that the proximity of the freeway to historic properties resulted in at least two forms of constructive use. First, to the extent that the overall setting of a property is an important contributing element to the historic value of the property, this attribute would be impaired. Second, they argued, the mere proximity of the freeway to the historic properties would result in additional impairments. The Defendant argued that setting was not a major aspect of the qualities that made these specific properties eligible for the National Register. The court found that this determination was simply a conclusion for which no analysis was offered. With regard to proximity, the project would come within 15 feet of an historic district. The court noted that other courts have found that there is a constructive use in situation where there is a greater distance between the project and the section 4(f) resource. (See, for example, Coalition Against Raised Expressways, Inc. v. Dole, 835 F.2d 803 (11th Cir 1988) (on-ramp within 43 feet of Section 4(f) structure is a constructive use); Stop H-3 Ass'n v. Coleman, 533 F.2d 434 (9th Cir. 1976) construction of six-lane controlled access highway passing within 100-200 feet of Section 4(f) resource is a constructive use). In City of S. Pasadena, the court found serious questions as to whether defendants abused their discretion in finding that the 710 Freeway Project would not result in any constructive uses of eligible historic resources.

Question C: When does temporary occupancy of a 4(f) resource result in a 4(f) use?

Legal Note: In Coalition On Sensible Transp. Inc. v. Dole, 642 F. Supp. 573, (D. D.C.1986) the project in Montgomery County, Maryland, proposed to widen 16 miles of Interstate 270. Among other violations, plaintiffs argued that the projects impacts to several parklands constituted a use under Section 4(f).

The Section 4(f) statement for this project examined 7 parks and conservation areas. In 4 of the 7 resources, temporary construction easements would be granted for grading and after construction was completed, would be regraded, revegetated and then returned for use as a parkland. The court found that, "the projects temporary impact upon parkland during the construction period does not amount to 'use' within the meaning of section 4(f)." 642 F. Supp. at 596.

Further, since the narrow strips of parkland were in close proximity to the existing highway, and the administrative record established that none of the land was being actively used by park authorities, the court determined that this project would not 'substantially impair the value' of parkland in this case. Id. The court also found that even if the project resulted in a Section 4(f) use, Section 4(f) would not have been violated.

(On appeal in Coalition on Sensible Transp. Inc. v. Dole, 826 F.2d 60 (D.C. Cir. 1987), the Court affirmed the lower court's decision for other reasons. The Appeals Court reasoned that since there were other physical uses of other Section 4(f) resources in the project area, the question of temporary occupancy amounting to a use was not necessary).

Practitioner's note: The district court case is useful as an example where the temporary occupancy of parkland by a temporary construction easement did not result in a use under Section 4(f).

2. Public Parks, Public Recreation Areas, and Wildlife and Waterfowl Refuges

Question A: When is publicly owned land considered to be a park, recreation area, or wildlife and waterfowl refuge and who makes this determination?

Legal Note: In Kickapoo Valley Stewardship Ass'n. v. U.S. Dept. of Transp., 37 Fed. Appx. 810 (7th Cir. 2002) (unpublished), the Court held that Section 4(f) only applies to those lands formally classified as parks, recreation areas, wildlife and waterfowl refuges, or historic sites. The Kickapoo Valley Reserve property was originally planned for an Army Corps of Engineers flood-control project. The dam project was cancelled and an Act of Congress transferred the property to the State of Wisconsin. The legislation specified that the land was to "be preserved in a natural state and developed only to the extent necessary to enhance outdoor recreational and educational opportunities." The Court found that this legislative

language restricting use was not sufficient to designate the Reserve as Section 4(f) land. The Court further found that it was not arbitrary and capricious for USDOT to decide not to consider the Reserve as Section 4(f) land based on the multiple uses of the Reserve, including significant portions being used for agriculture.

In Stewart Park & Reserve Coalition v. Slater, 352 F.3d 545 (2nd Cir. 2003), the Court held that Section 4(f) contains no requirement that the public parklands to which it applies must be permanently designated as such. The Court determined that Section 4(f) applied, even though the public lands to be used in the project were originally acquired for transportation purposes (airport expansion and access). Although the land was never permanently designated as parklands, it was available to the public for use as park and recreational area for almost 30 years. (See also Legal Note in 18 of this Appendix)

Question B: How should the significance of public parks, recreation areas, and waterfowl and wildlife refuges be determined?

Legal Note: Land that is used as a public park is presumed significant for Section 4(f) purposes unless explicitly determined otherwise by the appropriate federal or local officials. Arlington Coalition on Transp. v. Volpe, 458 F.2d 1323 (4th Cir. 1972). FHWA reviews the state determination of significance of a public park for reasonableness. Concerned Citizens on I-90 v. Sec. of Transp., 641 F.2d 17 (1st Cir. 1981); Geer v. FHWA, 975 F. Supp. 47, 64 (D. Mass. 1997).

8. Wild and Scenic Rivers

Question A: Are Wild and Scenic Rivers (WSR) subject to Section 4(f)?

Legal Note: In Hells Canyon Pres. Council v. Jacoby, 9 F.Supp.2d 1216 (D. Or. 1998), the court found that a consistency determination supported FHWA's CE. Although that case did not involve a Section 4(f) analysis with respect to the river, the court's reliance on the consistency determination in concluding that there would be no significant impact on the wild and scenic river values should apply equally to a Section 4(f) constructive use analysis.

Practitioner's Note: When projects may have some arguable constructive use of publicly owned waters or on publicly-owned lands administered for Section 4(f) values, it generally will be helpful to obtain a written consistency determination from the river manager. Such consistency determination may prevent a "constructive use" determination.

10. School Playgrounds

Question: Are publicly owned school playgrounds subject to the requirements of Section 4(f)?

Legal Note: In Piedmont Envtl. Council v. U.S. Dept. of Transp., 159 F.Supp.2d 260 (W.D. Va. 2001), aff'd in relevant part, 58 Fed. Appx. 20 (4th Cir. 2003), the court found that the taking of some land of one school for a bypass constituted Section 4(f) property but that the agency was not arbitrary and capricious in concluding that there were no other feasible and prudent alternatives than taking the land. The court further found that "[b]ecause the defendants concluded that the recreational facilities affected by the noise and visual impacts of the bypass were not noise-sensitive and that differences in elevation and the existing wood buffer would screen the bypass from view, see id. at 35, the Secretary was within the scope of his authority and did not arbitrarily and capriciously conclude that no constructive use would occur."

Practitioner's Note: There is both an actual and a constructive use of school property that should be considered. When the project will take a portion or all of school property open for recreational activity, than Section 4(f) must be considered. However, when the project simply comes near such property, the visual and auditory impacts should be analyzed. If the school property is not noise sensitive, then auditory concerns will not translate into a constructive use. If the visual impact can be shielded by vegetation or elevation differences, then visual concerns may not translate into a constructive use.

However, a thorough study of the effects on the school property provides needed support for a conclusion that there is no constructive use.

15. Bikeways

Question: Do the requirements of Section 4(f) apply to bikeways?

Legal Note: In Laguna Greenbelt, Inc. v. U.S. Dept. of Transp., 42 F.3d 517 (9th Cir. 1994) the court found that an overpass over a bike trail, a widening of an existing bridge over a bike trail, and the relocation of a bike path within the designated right-of-way for the bike path did not constitute either actual or constructive use of the respective trails.

Calio v. Pa. Dep't of Transp., (No. 00-2163, 3d Circuit, October 10, 2001). This litigation involved a Pennsylvania Department of Transportation (PennDOT) proposal to develop a stretch of abandoned railroad track in suburban Philadelphia as a bicycle and pedestrian trail, using funds from the Congestion Mitigation and Air Quality Improvement Program (CMAQ). 23 U.S.C. 104(b)(2) 217. The proposed trail is a non-National Highway System project subject to an exemption agreement entered into by FHWA and PennDOT in 1992. See 23 U.S.C. 106(b)(2) (1991).

The case involved a single issue: would the trail be used principally for transportation, rather than recreation purposes as required for projects funded from the CMAQ program? The District Court upheld FHWA's determination that the trail project would be principally for transportation, saying it was supported by the administrative record and neither arbitrary nor capricious. The appellate court, in a three-page decision, agreed. Although the Third Circuit decision may not be cited as precedent, the District Court's decision has been published. See Calio v. Pa. Dept. of Transp., 101 F.Supp. 2d 325 (E.D. Pa. 2000).

Practitioner's Note: If the project can be constructed so as to preserve the trail, then generally there will not be a "use" of the trail. Thus, an overpass or even the relocation of the trail within the trail's existing right-of-way may avoid a "use" of the trail. Regarding the use of CMAQ funds, even if a bike path has recreational purposes, that does not mean it is not principally for transportation.

16. Joint Development (Park with Highway Corridor)

Question: When a public park, recreation area, or wildlife and waterfowl refuge is established and an area within the 4(f) resource is reserved for highway use prior to, or at the same time the 4(f) resource was established, do the requirements of Section 4(f) apply?

Legal Note: In Sierra Club v. Dole, 948 F.2d 568 (9th Cir. 1991) the 9th Circuit reversed the district court's 1987 ruling that the Secretary had failed to comply with Section 4(f) by ruling that a planned bypass road constructively used the McNee Ranch Park. In 1984, the McNee Ranch State Park was transferred to the California Department of Parks and Recreation. This transfer deliberately set aside part of the land that was to form the park, due to the CalTrans belief that this set aside land might be necessary for a future bypass of an area commonly know as "Devil's Slide" on California State Highway Route 1. The Devil's Slide was a 600-foot section of Route 1 that repeatedly was closed due to landslides.

In 1986, the Secretary approved a Final Environmental Impact Statement for the Martini Creek Alternative, but this FEIS did not include a Section 4(f) evaluation for the McNee Ranch Park.

In the 9th Circuit, USDOT claimed there was extensive cooperation between CalTrans and the park planners throughout the process of park acquisition and the road alignment. The court also examined the legislative history of Section 4(f) and found Congressional reports that stood for the proposition that Congress thought that the joint planning of roads and parks was desirable.

Additionally, the court stated that,

> "[w]here a park and a road are jointly planned on land which previously had neither park or road…no consensus is being upset. The community is not changing its mind about the type of park and road it would have, but is making the determination in the first instance. It is difficult to see how the road would significantly and adversely affect the park." (948 F.2d 575)

Further, the 9th Circuit held that a road does not "constructively use" a park if the road and park were jointly planned. The court also emphasized that this is only applicable when there is constructive not actual use of a parkland.

17. Planned 4(f) Resources

Question: Do the requirements of Section 4(f) apply to publicly owned properties "planned" for park, recreation area, wildlife refuge, or waterfowl refuge purposes even though they are not presently functioning as such?

Legal Note: In Nat'l Wildlife Fed'n v. Coleman, 529 F.2d 359 (5th Cir. 1976) plaintiffs contended that FHWA violated Section 4(f) by failing to prepare a Section 4(f) statement for a section of I-10 that planned to transect the habitat of the Mississippi Sandhill Crane, bisect the eastern portion of a proposed refuge for the crane, and traverse Section 16 land held by the State of Mississippi in trust for the Jackson County School District.

The court determined that for Section 4(f) to apply to the lands at issue in this case, they must meet the following two-part test. First, the land to be used by the project must be publicly owned and second, the land must be from one of the enumerated types of publicly owned lands. The court found that the Section 16 land, although publicly owned, was never designated or administered as a wildlife refuge or any other Section 4(f) purpose notwithstanding the fact that the land was used by the Sandhill Crane as a sanctuary. In addition, the court found Section 4(f) was not applicable to the proposed wildlife refuge, because at the time the right of way for the project was acquired, and during the time the plans were approved, estimates and specifications were given, construction awards were given, and when construction began, the land was not publicly owned. A subsequent transfer of the land to the Fish and Wildlife Service did not make Section 4(f) applicable after the fact.

In Davis v. Mineta, 302 F.2d 1104 (10th Cir. 2002) two parks were planned within the area of potential effect as part of a highway project within the cities of Draper, Sandy and South Jordan in Salt Lake County, Utah. Here, the Jordon River Parkway was owned by two private landowners and partially by the Utah Department of Natural Resources, Division of Parks and Recreations. This land was designated as parkland on the South Jordan City Parks and Recreation Master Plan. The other property at issue was the Willow Creek Park. This park was planned in the Draper City Master Plan to be parkland but was owned by a private landowner. The 10th Circuit found that Willow Creek did not qualify as a Section 4(f) property, due to its private ownership, as did that portion of the Jordan River Parkway not owned by the State of Utah. However, that part which was owned by the State of Utah did qualify as Section 4(f) property due to its public holding.

18. Temporary Recreational Occupancy or Uses of Highway Rights-of-Way

Question: Does Section 4(f) apply to temporary recreational uses of land owned by a State Department of Transportation or other Applicant and designated for transportation purposes?

Legal Note: In Collin County, Tex. v. Homeowners Ass'n For Values Essential to Neighborhoods (HAVEN) 716 F. Supp. 953 (N.D. Texas 1989) HAVEN contended that certain lands should have been viewed as Section 4(f) properties in the Section 4(f) evaluation in the Final Environmental Impact Statement. In this case, the properties at issue were acquired by Dallas County from a private party in 1973 for use as highway right-of-way. Under an agreement between the City of Carrollton and Dallas County, the right-of-way was being used for recreation. Plaintiffs countered that Section 4(f) is inapplicable to temporary uses of highway rights-of-way for recreational activities.

The court concluded that FHWA did not err when the Section 4(f) evaluation determined that these properties were not Section 4(f) resources. Reasoning,

> "The properties in this case were acquired from a private owner by Dallas County for right-of-way purposes; they are being used temporarily as a park. Simply because they have an interim use does not change their character: they were purchased as rights-of-way and they will be used as rights-of-way." 716 F. Supp. at 972

A recent decision, known as the Stewart Airport Case, undercuts the position that land acquired for transportation use cannot become a Section 4(f) resource by permissive interim use. Stewart Park and Reserve Coalition Inc. v. Slater, 352 F.3d 545 (2nd Cir. 2003).

The case involves approximately 1200 acres of some approximately 8600 acres of land acquired for airport use. The proposed use of the 1200 acres was for construction for airport access and highway improvements. The land at issue was never designated as a parkland, but was managed by the state as such, until its use was required for airport and transportation purposes. The airport land was initially an Air Force base and was transferred to the state for use as a commercial airport. The state acquired the adjacent approximate 8600 acres in the 70's for use as airport expansion land and uses consistent with airport use, as per FAA regulations. These lands also included buffer lands. At issue was whether Section 4(f) applied to these adjacent lands.

The state entered into a revocable agreement with the New York State Department of Environmental Conservation to manage the land until needed for airport use. The terms of the formal revocable agreement stated that the agreement could be terminated upon 60 days notice of the land becoming necessary for airport use. The land was managed and used for recreational purposes during the entire agreement period, until the time it became necessary for transportation purposes.

The court held that 30 years of uninterrupted contiguous use of public recreational uses of this land, regardless of the revocable agreement and that fact the lands were originally acquired for transportation purposes, nonetheless, constituted Section 4(f) protected land. Further, the statutory language does not condition protection of land on being permanently designated as such. Additionally, 30 years of use entitled the land in question to Section 4(f) protection as the uninterrupted period could not be characterized as interim.

21. Air Rights

Question: Do the requirements of Section 4(f) apply to bridging over a publicly owned park, recreation area, wildlife refuge, waterfowl refuge, or historic site?

Legal Note: In Citizens for the Scenic Severn River Bridge Inc. v. Skinner, 802 F. Supp 1325 (D. Md. 1991) citizens and opponents of a bridge construction project sought to enjoin state and federal officials from proceeding with construction of a bridge across the Severn River in Anne Arundel County, Maryland. Among other contentions, plaintiffs argued that use of the Severn River was not adequately considered in the Final Section 4(f) statement. However, in the Section 4(f) statement defendants concluded there would be a use of the river, which the court found to be a Section 4(f) resource. The use entailed placement of piers and pilings in the river, possible runoff and removal of the existing bridge. Further, the statement determined that any of the proposed alternatives would have used the river.

Coalition Against A Raised Expressway Inc. v. Dole, 835 F.2d 803 (11th Cir. 1988) examined the impacts of an elevated expressway on three Section 4(f) resources in the downtown area of Mobile, Alabama. At issue were a park, a railroad terminal and the city hall. Defendants argued that in light of the location of these properties in the downtown area, the impacts from the expressway would not be substantial so as to amount to a use of these properties. However, the court reasoned that,

> "In addition to the noise and air pollution, the raised highway would impact on the protected sites by impairing the view. The highway would cut off the city hall's view of the river and the docks.

> Conversely, it would reduce the view from the river of the city hall's architecture. For the park and the railroad terminal, the highway would replace the view of the downtown with the sight of the seventeen-foot concrete pillars holding up the freeway. In addition, the dirt and debris from an elevated freeway would lessen the beauty of the architecture itself.
>
> While the elimination of the view, the increase in noise and air pollution, and the close location of the highway may not individually constitute a use; cumulatively they significantly impair the utility of the properties." 835 F.2d at 812

The court found that the elevated expressway constructively used these Section 4(f) resources.

22. Non-Transportation Use of 4(f) Resources

Question: Does the expenditure of Title 23 funds for mitigation or non-transportation activities on a 4(f) resource trigger the requirements of Section 4(f)?

In National Trust for Historic Preservation v. Dole, 828 F.2d 776 (D.C. Cir. 1987), the court found that installing suicide prevention barriers on an historic bridge was not a *transportation program or project* and therefore Section 4(f) was not triggered. The court looked at the purpose of the project and found that since it was not a project to facilitate transportation - - the movement of vehicles, Section 4(f) did not apply.

Miscellaneous Section 4(f) Cases With Important Information

For general guidance on the issue of whether or not an avoidance alternative is imprudent and, therefore, may be rejected, relevant case law is below:

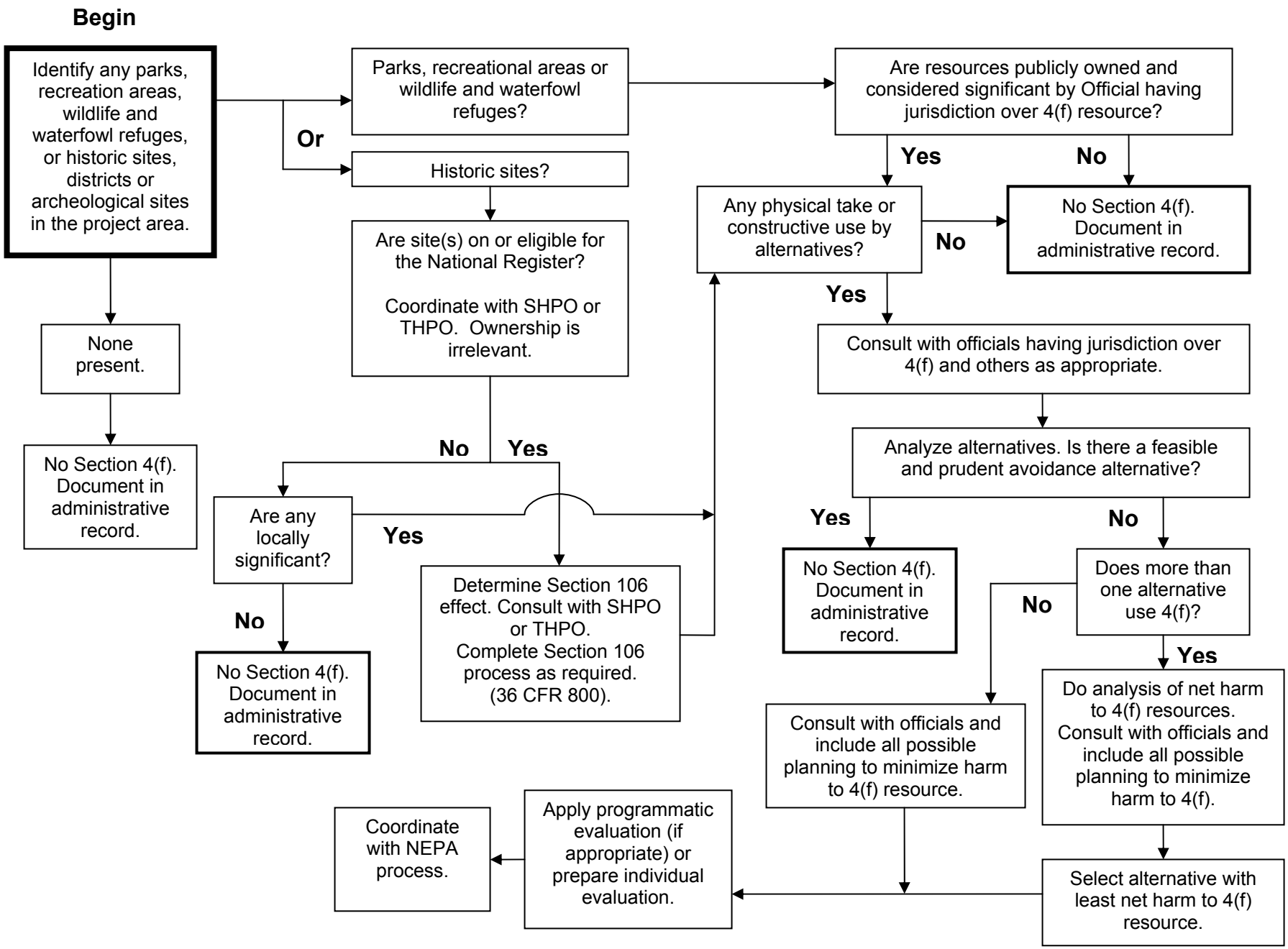
The Fifth, Ninth and Eleventh Circuit Courts of Appeals have employed a stricter standard in determining whether an alternative is imprudent than other Circuits. See, Louisiana Environmental Soviet v. Coleman, 537 F.2d 79 (5th Cir 1976); Stop H-3 Association v. Brinegar, 533 F.2d 434 (9th Cir. 1976); Druid Hills v. FHWA, 772 F.2d 700 (11th Cir. 1985).

Courts in the Fourth, Seventh and Tenth Circuits have interpreted the requirements less stringently. In these jurisdictions, a balancing test for determining whether an alternative is imprudent has been developed. Hickory Neighborhood Defense League v. Skinner, 910 F.2d 159, 163 (4th Cir. 1990); Eagle Foundation, Inc. v. Dole, 813 F.2d 798, 804 (7th Cir. 1987); Committee to Preserve Boomer Lake Park v. USDOT, 4 F.3d 1543, 1550 (10th Cir. 1993). In these jurisdictions the courts allow the Secretary to weigh the cumulative impacts of the avoidance alternative against the cumulative impacts of the non-avoidance alternative to reach a decision. The impacts to be compared in this type of analysis include other impacts in addition to the impacts on the Section 4(f) resource. The extent of harm that would be caused to the Section 4(f) resource if is not avoided would be taken into consideration under this test.

In the other Federal Circuits the case law is less clear. See Monroe County Council v. Adams, 566 F.2d 419 (2nd Cir. 1977) (employed a balancing test without stating it was doing so). The Eighth and the Third Circuits have recently adopted a more flexible standard for "prudent" but only for the limited purpose of determining whether an alternative that minimizes harm can be rejected as "imprudent." See, Bridgeton v. Slater, 212 F.3d 448 (8th Cir. 1999)(court refused to employ a rigid "least harm" test in an airport expansion case as this would conflict with Congressional mandate to facilitate airport expansion); Concerned Citizens Alliance v. Slater, 176 F.3d 686 (3rd Cir. 1999)(decision found that standard for "prudent and feasible" was not quite as high when applied to alternatives that minimized harm and granted the Secretary "slightly greater leeway" in eliminating options that minimized harm as imprudent).

When addressing the question of which standards apply in your state or district you should consult with the Office of the Chief Counsel's Legal Staff.

APPENDIX B
Section 4(f) Evaluation Diagram



Summary of Changes in the 2005 FHWA Section 4(f) Policy Paper

Revision Process Timeline and Overview

- **January to March 2004 -** All FHWA Division Offices; the Office of Chief Counsel; the Headquarters Office of Planning, Environment and Realty and the Resource Center Environmental TST were given the opportunity to submit new questions, comments and identify areas of the 1987/1989 Policy Paper that needed clarification and revision.

- **March 2004 -** Comments were organized for consideration and possible inclusion in the revised paper. Questions and responses from the Re: NEPA (http://nepa.fhwa.dot.gov) Section 4(f) discussion group were also reviewed to assist in determining subject areas to be addressed in the revision.

- **April to October 2004 -** Revision of the Section 4(f) Policy Paper was undertaken by Lamar Smith, Office of Project Development and Environmental Review (HEPE), and Lance Hanf and Rima Lewis, the Office of the Chief Counsel (HCC) in San Francisco.

- **October 8, 2004 -** The Draft Section 4(f) Policy Paper was circulated to FHWA Division Offices, Office of Chief Counsel, Headquarters Office of Environment, Planning and Realty, the Department of Interior (DOI), the Department of Housing and Urban Development (HUD), the Department of Agriculture, and the US DOT Office of the Secretary of Transportation (OST) (and in turn, other modal administrations) for review and comment.

- **November to February 2005 -** Comments on the draft were collected by the Office of Project Development and Environmental Review. The comments were reviewed and addressed as submitted and revisions were made the Policy Paper as appropriate. In December, 2004 FHWA met with the Department of Interior to address their comments.

- **February 2005 -** Final review and revisions.

- **March 2005 -** 2005 Section 4(f) Policy Paper issued on March 2, 2005 (dated March 1, 2005)

The 2005 Policy Paper

The paper is organized into 3 main sections: **Introduction**, **Section 4(f) Evaluation**, and **Section 4(f) Applicability**. It also includes two new appendices: **Appendix A, Analysis of Case Law**, and **Appendix B, Section 4(f) Evaluation Diagram**. Hyperlinks are added throughout the paper where websites are referenced for ease of use. Previous FHWA memorandums have been incorporated and rescinded.

- **Introduction.** This section considerably revises the former "Section 4(f) Background". It provides a comprehensive overview of the history of Section 4(f) and emphasizes important key policy and procedural points.

- **Section 4(f) Evaluation**. This section expands the 1987/1989 discussion of the alternatives analysis process and "feasible and prudent" standard. It also provides an organized approach to the Section 4(f) process and includes an expanded discussion of the application of existing nationwide programmatic Section 4(f) evaluations.

- **Section 4(f) Applicability (Questions and Answers).** Since this section is the heart of the Policy Paper, material and substantive changes were made to address frequent Section 4(f) situations and issues and to provide clarity thereto. The 1987/1989 Policy Paper covered 22 subject areas with 34 questions and answers, whereas the 2005 paper covers 30 subject areas with 53 question and answers. Of the questions and answers in the 1987/1989 Policy Paper, all but 4 have been updated and changed. Former subject area 20 was eliminated due to a law being repealed and former subject areas 22 and 18 were reformatted into questions and answers 1C and 20C, respectively. Many of the former subject areas have new numbers and the majority of new subject areas have been added to the end of the question and answer section.

- **Appendices.** Appendix A includes an analysis of applicable case law and is provided for information. Appendix B presents a comprehensive diagram of the Section 4(f) evaluation process.

Outline of Changes to the Question and Answers

The following annotated Table of Contents from the 2005 Policy Paper illustrates the changes that were made and the differences between the 1987/1989 Section 4(f) Policy Paper and the updated 2005 FHWA Section 4(f) Policy Paper.

1) Use of Resources (subject area modified)

   A. Use (answer modified)
   B. Constructive Use (question and answer modified)
   C. Temporary Occupancy (formerly 22 with modifications to question and answer)

2) Public Parks, Public Recreation and Wildlife and Waterfowl Refuges (subject area modified)

   A. Publicly Owned Park, Recreation Area or Wildlife and Waterfowl Refuge (question and answer modified)
   B. Significant Park, Recreation Are, or Wildlife and Waterfowl Refuge (question and answer modified)

C. Public Access (question and answer modified)
D. Easements and Lease Agreements (question and answer modified)

3) Historic Site

A. Section 4(f) Significance (question and answer modified)
B. Section 106 Adverse Effect and Section 4(f) Use (formerly 3C with question and answer modified)
C. Historic Districts (formerly 3B with question and answer modified)
D. Historic Property Boundary (new question and answer)
E. National Historic Landmarks (new question and answer)

4) Historic Bridges, Highways and Other Transportation Facilities (subject area modified)

A. Historic Bridges and Highways (question and answer modified)
B. Historic Bridge Replacement (new question and answer)
C. Donations of Historic Bridges (question and answer modified)
D. Other Transportation Facilities (new question and answer)

5) Archeological Resources

A. General Applicability (answer modified)
B. Sites Discovered During Construction (new question and answer)
C. Archeological Districts (formerly 5B with answer modified)

6) Public Multiple-Use Land Holdings (answer slightly modified)

7) Late Designation of 4(f) Resources (subject area and question and answer modified)

8) Wild and Scenic Rivers

A. Designated Wild and Scenic Rivers (formerly 8B with question and answer substantially modified)
B. Potential Rivers and Adjoining Lands Under Study (formerly 8A with question and answer modified)

9) Fairgrounds (No changes)

10) School Playgrounds (answer slightly modified)

11) Golf Courses (new subject area)

A. Public Golf Courses (new question and answer)
B. Military Golf Courses (new question and answer)

12) User or Entrance Fees (new subject area and question and answer)

13) Bodies of Water (formerly 11, answer slightly modified)

14) Trails (formerly 12)

    A. National Trails System Act (answer modified and includes former 12D)
    B. Trails on Private Land (answer slightly modified)
    C. Trails on Highway Rights-of-Way (answer modified)
    D. Recreational Trails Program (new question and answer)

15) Bikeways (formerly 13, answer modified)

16) Joint Development (Park with Highway Corridor) (formerly 14 question and answer modified)

17) Planned Facilities (formerly 15, answer modified)

18) Temporary Recreational Occupancy or Uses of Highway Rights-of-Way (formerly 16, subject area modified, question and answer modified)

19) Tunneling (formerly 17 and no changes)

20) Wildlife and Waterfowl Refuges (new subject area)

    A. 4(f) Wildlife and Waterfowl Refuges (new question and answer)
    B. Conservation Easements (new question and answer)
    C. Wildlife or Waterfowl Areas (formerly subject area 18 with question and answer modified)

21) Air Rights (formerly 19, answer slightly modified)

22) Non-Transportation Use of 4(f) Resources (new subject area and new question and answer)

23) Scenic Byways (formerly 21 and no changes)

24) Transportation Enhancement Projects (new subject area)

    A. General Applicability (new question and answer)
    B. Creation of Future 4(f) Resources (new question and answer)

25) Museums, Aquariums and Zoos (new subject area and question and answer)

26) Tribal Lands and Indian Reservations (new subject area and question and answer)

27) Traditional Cultural Properties (new subject area question and answer)

28) Cemeteries (new subject area)

A. General Applicability (new question and answer)
B. Other Lands with Human Remains (new question and answer)

29) 4(f) Evaluations in Tiered NEPA Documents (new subject area and question and answer)

30) Department of the Interior Handbook on Departmental Review of Section 4(f) Evaluations (2002) (new subject area and question and answer)

Side by Side Comparison

1989 Policy Paper	**2005 Policy Paper**
1. Use of Land A. What is "Use" B. Substantially Impair (Constructive Use)	1. Use of Resources A. Use B. Constructive Use C. Temporary Occupancy of Resources
2. Public Parks, Recreation Areas, Waterfowl and Wildlife Refuges A. Major Function B. Significance C. Not Open to Entire Public D. "Public Ownership"	2. Public Parks, Public Recreation Areas and Wildlife and Waterfowl Refuges A. Publicly Owned Park, Recreation Area or Wildlife and Waterfowl Refuges B. Significant Park, Recreation Area, or Wildlife and Waterfowl Refuge C. Public Access D. Easements and Lease Agreements
3. Historic Sites A. Significance B. Historic Districts C. Adverse Effect versus Section 4(f)	3. Historic Sites A. Section 4(f) Significance B. Section 106 Adverse Effect and Section 4(f) Use C. Historic Districts D. Historic Property Boundary E. National Historic Landmark

4. Historic Bridges and Highways

   A. Applicability
   B. Replacement of Historic Bridges (pursuant to Section 144)

5. Archeological Resources

   A. Individual Site
   B. Archeological Districts

6. Public Multiple-Use Land Holdings

7. Late Designation

8. Wild and Scenic Rivers

   A. Study Rivers
   B. Designated Rivers

9. Fairgrounds

10. School Playgrounds

11. Bodies of Water

12. Trails

   A. Scenic and Recreation Trails on Public Land
   B. Scenic and Recreation Trails on Private Land
   C. Trails on Highway Rights-of Way
   D. Historic Trails

13. Bikeways

4. Historic Bridges, Highways and Other Transportation Facilities

   A. Historic Bridges and Highways
   B. Historic Bridge Replacement
   C. Donations of Historic Bridge
   D. Other Historic Transportation Facilities

5. Archeological Resources

   A. General Applicability
   B. Sites Discovered During Construction
   C. Archeological Districts

6. Public Multiple-Use Land Holdings

7. Late Designation of 4(f) Resources

8. Wild and Scenic Rivers

   A. Designated Wild and Scenic Rivers
   B. Rivers Under Study

9. Fairgrounds

10. School Playgrounds

11. Golf Courses

   A. Public Golf Courses
   B. Military Golf Courses

12. User or Entrance Fees

13. Bodies of Water

14. Joint Development (Park with Highway Corridor)

15. "Planned" Facilities

16. Temporary Occupancy of Highway Rights-of-Way

17. Tunneling

18. Wildlife Management Areas

19. Air Rights

20. Access Ramps (in accord with Section 147)

21. Scenic Byways (June 7, 1989)

22. Temporary Construction Easements (June 7, 1989)

14. Trails

    A. National Trails System Act
    B. Trails on Private Land
    C. Trails on Highway Rights-of-Way
    D. Recreational Trails Program

15. Bikeways

16. Joint Development (Park with Highway Corridor)

17. Planned 4(f) Resources

18. Temporary Recreational Occupancy or Uses of Highway Rights-of- Way

19. Tunneling

20. Wildlife and Waterfowl Refuges

    A. 4(f) Wildlife and Waterfowl Refuges
    B. Conservation Easements
    C. Wildlife or Waterfowl Areas

21. Air Rights

22. Non-Transportation Use of 4(f) Resources

23. Scenic Byways

24. Transportation Enhancement Projects

    A. General Applicability
    B. Creation of Future 4(f) Resources

25. Museums, Aquariums and Zoos

26. Tribal Lands and Indian Reservations

27. Traditional Cultural Properties

28. Cemeteries

    A. General Applicability
    B. Other Lands with Human Remains

29. Section 4(f) Evaluations in Tiered NEPA Documents

30. Department of the Interior Handbook on Departmental Review of Section 4(f) Evaluations (2002)

Division, APP–600, 800 Independence Avenue, SW., Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261.

Mike Covalt, Airport Manager, City of Flagstaff, Flagstaff Pulliam Airport, 6200 South Pulliam Drive, Flagstaff, Arizona 86001.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California, on April 7, 2005.

Mia Paredes Ratcliff,

Acting Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 05–7828 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–23]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 5, 2005.

ADDRESSES: You may submit comments (identified by DOT DMS Docket Number FAA–200X–XXXXX) by any of the following methods:

- Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 12, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2004–19468.

Petitioner: Flight Level Aviation, Inc.

Section of 14 CFR Affected: 14 CFR 61.56(i)(1).

Description of Relief Sought: To allow Flight Level Aviation, Inc., to use a flight simulator or flight training device that is not used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

[FR Doc. 05–7825 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2002–13290]

Final Nationwide Programmatic Section 4(f) Evaluation and Determination for Federal-Aid Transportation Projects That Have a Net Benefit to a Section 4(f) Property

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA is issuing this approved final nationwide programmatic Section 4(f) evaluation (programmatic evaluation) for use in certain Federal (Federal-aid or Federal Lands Highway) transportation improvement projects where the use of publicly owned property from a Section 4(f) park, recreation area, or wildlife and waterfowl refuge or property from a historic site results in a net benefit to the Section 4(f) property. The application of this programmatic evaluation is intended to promote environmental stewardship by encouraging the development of measures that enhance Section 4(f) properties and to streamline the Section 4(f) process by reducing the time it takes to prepare, review and circulate a draft and final individual Section 4(f) Evaluation (individual evaluation) that documents compliance with Section 4(f) requirements. This programmatic evaluation provides a procedural option for demonstrating compliance with the statutory requirements of Section 4(f) and is an addition to the existing nationwide programmatic evaluations, all of which remain in effect. This programmatic evaluation can be applied to specific project situations that fit the criteria contained in the *Applicability* section. To fully realize the streamlining benefits of this programmatic evaluation, the FHWA and the Applicant (defined later) are encouraged to initiate coordination with the official(s) with jurisdiction (defined later) over a Section 4(f) property as early as possible and practicable to facilitate the assessment of benefits and harm to a Section 4(f) property.

EFFECTIVE DATE: April 20, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Lamar S. Smith, Office of Project Development and Environmental Review, HEPE, (202) 366–8994 and Ms. Diane Mobley, Office of the Chief Counsel, HCC–30, (202) 366–1366. FHWA office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays. The offices are located at 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://*

www.access.gpo.gov. An electronic version of the programmatic evaluation may be downloaded at the FHWA Web site: *http://www.environment.fhwa.dot.gov/guidebook/gbwhatsnew.htm.*

Contents of Preamble

- Background on the Nationwide Section 4(f) Evaluation and Determination.
- Description of Action.
- Why Issue a New Nationwide Section 4(f) Evaluation?
- Actions Taken to Date.
- Comments and Responses on the Draft Nationwide Section 4(f) Evaluation and Determination.
- Examples.

Background on the Nationwide Section 4(f) Evaluation and Determination

The FTA initially anticipated participating in this proposed programmatic evaluation as reflected in the draft Nationwide Section 4(f) Evaluation and Proposed Determination for Federal-Aid Transportation Projects That Have a Net Benefit to a Section 4(f) Property published at 67 FR 77551, on December 18, 2002. The FTA currently utilizes no programmatic evaluation and relies on individual evaluations to satisfy the requirements of Section 4(f) for transit projects that use Section 4(f) properties. Upon further transit program and policy review, the FTA has elected not to participate in this programmatic evaluation and will continue to perform individual Section 4(f) evaluations in all cases.

Proposed federally funded highway projects that would use property from significant publicly owned public parks, recreation areas, or wildlife and waterfowl refuges or from significant historic sites are subject to Section 4(f) of the U.S. Department of Transportation Act of 1966 (Public Law 89–670, 80 Stat. 931, October 15, 1966), a provision now codified in title 49, United States Code, Section 303. Section 4(f) prohibits such use unless the FHWA determines that: (1) There is no feasible and prudent avoidance alternative; and (2) that the project includes all possible planning to minimize harm to the Section 4(f) property. These efforts are normally documented in an individual evaluation or one of four existing nationwide programmatic evaluations. For some FHWA projects, it may be possible to utilize one or more programmatic evaluations that were developed for specific circumstances.[1]

Court decisions, particularly in the 1970s, resulted in strict interpretations of Section 4(f) requirements. Many of these early decisions resulted from large projects that impacted Section 4(f) properties during the peak of Interstate highway construction and expansion. In recent years, however, some courts have provided a more flexible interpretation, responding to the reduction in the severity of impacts and a transportation program that is currently focused more on system preservation and modernization than on expansion.

Programmatic evaluations reduce the processing time and effort necessary to document the analysis and illustrate that the Section 4(f) requirements have been met. Each of the programmatic evaluations contains specific and limiting applicability criteria and findings. For projects that do not meet the specified applicability criteria, the FHWA must prepare and circulate for comment, a draft individual evaluation, which is subject to internal legal sufficiency review prior to approval and circulation of a final individual Section 4(f) evaluation.

Description of Action

This programmatic evaluation facilitates compliance with Section 4(f) requirements for those situations in which there is agreement among the FHWA, the Applicant and the official(s) with jurisdiction over the Section 4(f) property that the transportation use of Section 4(f) property, the measures to minimize harm and the mitigation incorporated into the project will result in a net benefit to the Section 4(f) property. If an agreement on net benefit cannot be reached among the FHWA, the Applicant and the official(s) with jurisdiction over the Section 4(f) property, then this programmatic evaluation cannot be used. This programmatic evaluation may be used, when applicable, for a project of any class of action as defined in 23 CFR 771.115 of the FHWA Environmental Impact and Related Procedures (National Environmental Policy Act (NEPA) regulations).

Why Issue a New Nationwide Programmatic Section 4(f) Evaluation?

Individual evaluations are approved after extensive internal review and interagency coordination. The internal process consists of a review of both a draft and final evaluation by the FHWA Division Office and, in some cases, the FHWA Headquarters Office. In addition, each final individual evaluation undergoes a separate review by the FHWA Office of Chief Counsel to ensure legal sufficiency. Interagency coordination is undertaken on all individual evaluations with the official(s) with jurisdiction over the Section 4(f) property and with the DOI. A draft individual Section 4(f) evaluation is provided for coordination and comment for a minimum of 45 days and a final individual Section 4(f) evaluation is prepared to support the FHWA Section 4(f) determination. In addition, the U.S. Departments of Agriculture (USDA) and Housing and Urban Development (HUD) are consulted on those projects involving a Section 4(f) property for which they have program responsibilities.

The process associated with individual evaluation documentation, review and consultation is time consuming. The process is appropriate for projects that have the potential to substantially impair, through use, the activities, features or attributes that qualify the property for Section 4(f) protection. For other projects, where the use of Section 4(f) property is minor and/or does not result in a substantial impairment of specific qualities that make a property eligible for Section 4(f) protection, the project is still subject to the same thorough and time-consuming process of evaluation, unless it qualifies for a simplified review under one of the existing programmatic evaluations. This programmatic evaluation is intended to address those projects where there is agreement among the FHWA, the Applicant and the official(s) with jurisdiction that, (1) a use of property does not result in a substantial impairment; (2) the project includes all possible planning to minimize harm, including mitigation; and (3) that the cumulative result is an overall improvement and enhancement of the Section 4(f) property.

An understanding of the intent of this programmatic evaluation, applicability requirements and the meaning of net benefit is a prerequisite to agreement.

[1] Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects With Minor Involvements With Public Parks, Recreational Lands, and Wildlife and Waterfowl Refuges, Issued December 23, 1986, Published in **Federal Register**, August 19, 1987, and can be found at 52 FR 31111.

Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects With Minor Involvements With Historic Sites, Issued December 23, 1986, Published in **Federal Register**, August 19, 1987, and can be found at 52 FR 31118. Department of Transportation, Federal Highway Administration—Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges, Issued July 5, 1983, Published in **Federal Register**, August 22, 1983, and can be found at 48 FR 38135.

Negative Declaration/Section 4(f) Statement for Independent Bikeway or Walkway Construction Projects, FHWA Memorandum, May 23, 1977, and can be found at *http://www.environment.fhwa.dot.gov/projdev/4fbikeways.htm.*

Where conflict arises in reaching agreement with the official(s) with jurisdiction, the FHWA should assess the nature of the disagreement to determine whether it is procedural or substantive (related to the applicability criteria of the actual project action) before deciding not to use this programmatic evaluation. If substantive disagreement persists, then this programmatic evaluation cannot be used.

As established in this programmatic evaluation, the Administration will review the specific facts of a project, compare them to the applicability requirements of the programmatic evaluation and determine if it is applicable. When applicable, appropriate supporting documentation will be placed in the project file and/or referenced in the appropriate environmental document. Since this programmatic evaluation was reviewed and determined to be legally sufficient according to the requirements of 23 CFR 771.135(k), the utilization of this programmatic evaluation on specific projects will not require legal sufficiency review under 23 CFR 771.135(k). Similarly, interagency coordination is streamlined, as described in this programmatic evaluation, by consulting only with the official(s) with jurisdiction, and not with DOI, USDA, or HUD, except when those agencies have an official responsibility related to the property or where conversion of the 4(f) property to highway use is encumbered such that, specific subsequent agency action will be required (*e.g.*, lands acquired with Land and Water Conservation Fund Act (LWCFA) assistance, 16 U.S.C. 460*l*(8)(f)(3)). It is estimated that these streamlining steps will reduce processing and approval time for certain projects by 3 to 6 months. Of equal importance is the extent of internal review and interagency coordination, which will be commensurate with the severity of impacts and the potential for enhancement of the Section 4(f) property.

Actions Taken to Date

The draft Nationwide Section 4(f) Evaluation and Proposed Determination for Federal-Aid Transportation Projects That Have a Net Benefit to a Section 4(f) Property was published on December 18, 2002, at 67 FR 77551, requesting public and agency comment (FHWA Docket No. FHWA–2002–13290). The proposed programmatic evaluation was provided specifically to the DOI, the USDA, HUD and the Advisory Council on Historic Preservation (ACHP).

After careful analysis of all comments received, the FHWA has decided to finalize and approve this programmatic evaluation. Minor changes have been made in this final programmatic evaluation to add clarity and incorporate suggested improvements from insightful comments. This decision is based upon the belief that the programmatic evaluation will assure full compliance with the statute while enhancing Section 4(f) properties and reducing duplicative administrative processes for eligible projects. The decision is consistent with congressional streamlining initiatives.

Comments and Responses on the Draft Nationwide Programmatic Section 4(f) Evaluation

The following discussion is a summary of comments received on the draft programmatic evaluation. Responses are provided on how the FHWA considered and addressed the concerns and/or issues raised.

Comments were received from 18 entities, including Federal agencies, two national transportation organizations, one national environmental organization, eight State transportation agencies, one transit agency, two State resource agencies, and two private consulting firms. Commenters included the Department of the Interior (DOI), and the National Park Service (NPS), the American Highway Users Alliance (AHUA), the American Association of State Highway and Transportation Officials (AASHTO), the Sierra Club, the State of California Department of Transportation (CALTRANS), the Maryland State Highway Administration (MDSHA), the Pennsylvania Department of Transportation (PennDOT), the New York State Department of Transportation (NYSDOT), the Missouri Department of Transportation (MODOT), the Texas Department of Transportation (TXDOT), the Wisconsin Department of Transportation (WIDOT), the Washington State Department of Transportation (WSDOT), the Central Puget Sound Regional Transit Authority (Sound Transit), the State of Alabama Historical Commission (AHC), the Wyoming Game and Fish Department (WGF) through its Office of Federal Land Policy, Transportation Environmental Management Inc. (TEM) and the HR Green Company (HR Green). In addition, the FTA provided comments and recommendations for consideration prior to its decision not to be a participant in the programmatic evaluation.

Many comments were general in nature and are summarized and addressed collectively under the following general comment headings: General Comments, Net Benefit, Official(s) with Jurisdiction, and Section 106 Integration. Many comments included recommendations related to a specific section of the programmatic evaluation which are addressed in the section-by-section analysis.

A number of the specific comments received, focused on the overall reform of Section 4(f) and suggested that this programmatic evaluation does not do enough to reform and streamline existing Section 4(f) requirements. All comments and recommendations have been read and considered by the FHWA. These concerns are beyond the scope of this effort and have not been addressed in this document.

General Comments

Comments received demonstrated a need for additional definition of terms used in the final programmatic evaluation. Definitions were added for: ''Administration'', ''Applicant'', ''net-benefit'' and ''officials with jurisdiction.''

''Administration'' refers to the Federal Highway Administration, FHWA Division Administrator or Division Engineer.

''Applicant'' refers to the State Highway Agency or State Department of Transportation, or local governmental agency acting through the State Highway Agency or State Department of Transportation.

A ''net benefit'' is achieved when the transportation use, the measures to minimize harm and the mitigation incorporated into the project results in an overall enhancement of the Section 4(f) property when compared to both the future do-nothing or avoidance alternatives and the present condition of the Section 4(f) property taking into consideration the activities, features and attributes that qualify the property for Section 4(f) protection. A project does not achieve a ''net benefit'' if it will result in a substantial diminishment of specific functions or values that made the property eligible for Section 4(f) protection.

''Official(s) with jurisdiction'' over Section 4(f) property (typically) include: for a park, the Federal, State or local park authorities or agencies that own and/or manage the park; for a refuge, the Federal, State or local wildlife or waterfowl refuge owners and managers; and for historic sites, the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), whichever has jurisdiction under Section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

Many commenters expressed overall support for the programmatic evaluation. They generally recognized and noted the potential benefits of the programmatic evaluation in streamlining the procedural requirements of Section 4(f), such as reducing paperwork and internal review, while at the same time, encouraging enhancement of Section 4(f) properties and promoting environmental stewardship.

The guiding principle regarding the use of the programmatic evaluation is that there must be a ''net benefit'' to the Section 4(f) property. The ability of the FHWA, the Applicant and the official(s) with jurisdiction to reach agreement with respect to the impacts, measures to minimize harm, mitigation and that a net benefit will result is inherent in the decision of whether or not the programmatic evaluation is applicable. ''Negotiations'' in this regard, should be no more complicated or require skills other than those required for normal project development and Section 4(f) consultations related to impacts, measures to minimize harm and mitigation.

A situation where the necessary agreement or determination of applicability is substantially difficult to achieve or make may be an indication that an individual Section 4(f) evaluation is appropriate in that case. On the other hand, this situation may be an indication that one or more of the participants lack understanding of the intent of the programmatic evaluation or the individual applicability requirements. As stated above, an understanding of the intent of the applicability and net benefit requirements is a prerequisite to agreement. Where conflict arises in coordinating agreement with the officials with jurisdiction, the FHWA should assess the nature of the disagreement to see if it is procedural or substantive before deciding not to use this programmatic evaluation.

The FHWA is committed to providing additional guidance, if needed, on a case-by-case basis to ensure that misunderstanding about the intent of the programmatic evaluation is not an impediment to its use.

Although only a few comments received can be characterized as negative or in general opposition to this programmatic evaluation, many commenters requested clarification and/or refinement of the language used.

The Sierra Club generally objected to the programmatic evaluation because in its view, it contradicts judicial interpretations of Section 4(f), derails the regulatory safeguards and circumvents the 4(f) mandate that special effort be taken to preserve the natural beauty of the countryside, public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Sierra Club also suggested that FHWA has provided no evidence that the new programmatic evaluation will result in any tangible benefits to areas currently protected under Section 4(f) and the streamlining approach may severely reduce the number of protected natural areas and historic sites.

This programmatic evaluation is not a waiver or relaxation of any of the Section 4(f) standards or judicial interpretations of the legislative requirements. All existing Section 4(f) legislative provisions remain intact. In addition, the use of the programmatic evaluation will allow an increase in environmental stewardship opportunities resulting in greater protection and enhancement of Section 4(f) protected properties.

The requirement for a documented agreement of the resulting net benefit to a Section 4(f) property will safeguard the preservation provisions of Section 4(f) law by ensuring that there will be an enhancement of the functions and values that originally qualified the property for Section 4(f) protection. There is no less protection afforded by this programmatic evaluation than with an individual evaluation and its application will allow a more efficient process of the regulatory requirements.

The DOI was neutral regarding the advantages of the programmatic evaluation and recommended that FHWA expand on and clarify what ''net benefits'' to a Section 4(f) property means, especially with regard to resources under its jurisdiction. The DOI also noted that that without further clarification the programmatic may not satisfy the statutory mandate to consult with DOI on Section 4(f) issues. In response to this and other similar comments, we have clarified the definition of ''net benefit'' in the final programmatic.

The PennDOT commented that the programmatic would provide some time savings in processes but that it would be limited. The NYSDOT and the TEM offered similar comments regarding limited benefit, suggesting that the procedure for utilizing a programmatic evaluation is the same as that required for an individual evaluation.

The intent of this programmatic evaluation is to address administrative burden when it is in the interest of all parties involved to take an action where a use of Section 4(f) property will result in an enhancement of that property. There may be a limited history of experience with this programmatic evaluation; however, there are many examples of ''missed opportunities'' to benefit or enhance an existing property where a transportation use was imminent.

This programmatic evaluation constitutes an approved evaluation for which the FHWA need only to demonstrate compliance with the criteria contained in the programmatic evaluation. The independent review by the DOI and the USDA or HUD official(s) of the draft and final individual Section 4(f) evaluations and the legal sufficiency review by the FHWA necessary for an individual evaluation are not required for this or other programmatic evaluations. In many instances the time necessary to conduct these regulatory internal reviews for individual Section 4(f) evaluations are not apparent to the parties not directly involved in the evaluation process. Procedurally, the time savings may be limited to 3 to 6 months in normal project development; however, the overall benefit is enough to encourage its use and will result in efforts that enhance Section 4(f) properties while avoiding some procedural steps.

The Sierra Club commented that the proposed changes do not ''streamline'' the Section 4(f) procedural requirements. As an example, the Sierra Club noted that the programmatic evaluation cannot be utilized if a feasible and prudent alternative exists and when a project has no prudent and feasible alternative, the agency with jurisdiction must agree to mitigation measures to ensure the proposed action results in a net benefit. The Sierra Club further opined that under this scenario, the programmatic evaluation expands FHWA's discretion and the review process, without full consideration of benefits or losses to Section 4(f) areas.

As stated above, the programmatic evaluation does not waive any of the existing Section 4(f) requirements including the determination that there are no feasible and prudent avoidance alternatives to the Section 4(f) use of the property, and that the project includes all possible measures to minimize harm to the Section 4(f) property. The savings that are being sought through use of the programmatic evaluation come from eliminating internal reviews within the FHWA and the case-by-case coordination with the DOI and other Federal agencies currently required for individual evaluations. Coordination, consultation and agreement with the officials with jurisdiction are essential components of compliance.

There is an important distinction to be made in understanding the programmatic evaluation and how the agreement of net benefit is reached, documented, and approved by the Administration. Comments received from the Sierra Club and others appear to have interpreted the FHWA as the ''official with jurisdiction.'' This is not the case. For clarification, the definition of ''official(s) with jurisdiction'' was added to the final programmatic evaluation. The Sierra Club's concerns regarding the expansion of agency discretion are unfounded, given that the FHWA must reach an agreement with the official(s) with jurisdiction over the Section 4(f) property in order for the programmatic evaluation to apply. If anything, the role of the officials with jurisdiction is enhanced due to their required participation and agreement on achieving a net benefit.

The MDSHA and the AHC commented that the official(s) with jurisdiction over Section 4(f) property may be the SHPO or THPO and recommended changes to *Applicability,* Item Number 5 to denote that official(s) with jurisdiction may include the SHPO or THPO.

The definition of ''officials with jurisdiction'' has been clarified as to the role of the SHPO or THPO as the official in the case of historic properties. As previously noted, there may be instances where a Section 4(f) property has more than one official with jurisdiction.

The Sierra Club expressed concern that without a coherent set of criteria to measure the impact of the project on the Section 4(f) area itself, the proposed changes alter the FHWA's role in parkland and historic site preservation by placing undue weight on external factors.

The role of the FHWA throughout the history of Section 4(f) has been to protect and preserve specific defined properties. That role or responsibility does not change with this programmatic evaluation; indeed, protection of Section 4(f) properties is enhanced, by providing an incentive to improve the property and a less cumbersome mechanism when agreement on net benefit can be reached.

The FHWA retains the responsibility for determining the applicability of Section 4(f) and of this programmatic evaluation, which is dependent on agreement of net benefit. The FHWA will give deference to the official(s) with jurisdiction to assist in determining whether the project will ''substantially diminish'' the function or values for which Section 4(f) was found to be applicable to the property, and all parties involved must reach agreement as to whether a proposed project will result in a ''net benefit'' to the property. If agreement is not reached, this programmatic evaluation will not apply.

The programmatic evaluation also does not include impact criteria as part of the applicability standards. This was done intentionally to allow the official(s) with jurisdiction, the FHWA and the Applicant flexibility in determining the measures appropriate to each individual property necessary to generate a net benefit. Deference is given to officials with jurisdiction, who have special expertise in the property, to determine positive outcomes where there will be a use of the property by a transportation project.

Through the review of all the comments, it was noted that some questions or confusion might be attributable to the inconsistent use of the terms Section 4(f) ''land'', ''property'' and ''resource'' throughout Section 4(f) regulations, guidance, documents and even the statute itself. For this final programmatic evaluation, the term ''property'' has been used as consistently as possible, when not quoted from or directly related to the language of an existing document.

Net Benefit

Several commenters asked for further clarification on what constitutes a ''net benefit'' and who makes that determination.

The DOI suggested that the term ''net benefits'' is subjective and could potentially lead to counterproductive proposals. DOI recommended that the definition of ''net benefit'' to Section 4(f) property be expanded and clarified.

Both the ACH and the MDSHA questioned how and by whom the determination of ''net benefit'' would be made. Several commenters also recommended that criteria be developed to ensure that people with knowledge about the property have key roles in the determination of net benefit.

There is a wide range of what will constitute a net benefit, which will vary depending on the property and the project situation. In other words, net benefit determination is property and project specific, rather than generally subjective, and the development of criteria would serve to restrict the ability to develop mutually agreeable net benefits. For this reason the FHWA, the Applicant and the official(s) with jurisdiction must work collaboratively to define and agree upon what is reasonable and required to achieve a net benefit to a particular Section 4(f) property, on a case-by-case basis. Each of the participants plays an important role in this joint determination to ensure that individual resource experts will be involved. Net benefit is a joint decision, but it is only one of the prerequisites to application of this programmatic evaluation. Consistent with the responsibilities and authorities provided by Section 4(f) itself, the FHWA will determine whether the proposed action satisfies the applicability criteria for the use of this programmatic evaluation.

The AASHTO recognized one major difference in this programmatic evaluation compared to the existing programmatic evaluations related to historic properties considered under the National Historic Preservation Act. In some cases, this programmatic evaluation could apply where a Section 106 ''adverse effect'' finding has been made. The AASHTO, however, expressed some concern that it would apply only if the project had a net benefit on each individual historic property affected by the project and recommended that the programmatic evaluation allow the net ''benefit'' finding to be made for the project as whole rather than each individual property affected by a project. Similarly the NYSDOT recommended revising the net benefit finding to apply to the project as a whole, as a change more likely to promote environmental stewardship.

As noted earlier, this programmatic evaluation does not allow for the waiver or relaxation of existing Section 4(f) standards or the judicial interpretation of the legislative requirements. As such, each Section 4(f) protected property must continue to be considered individually as is currently required for any project or Section 4(f) evaluation. Generally speaking, impacts and benefits to individual Section 4(f) properties must be considered when applying the Applicability criteria. An individual Section 4(f) property, such as an historic district or park complex, might have multiple components. The net benefit must be achieved for an individual Section 4(f) property and for the functions and values that qualified that property for Section 4(f) protection. Although a historic district may experience a net benefit and be appropriately covered by this programmatic evaluation, each property within the historic district that is individually eligible for the National Register and is used by the project must be considered separately under this programmatic evaluation, if it applies, or in an individual Section 4(f) evaluation.

There can be impacts to the functions and values of the Section 4(f) property,

but these impacts cannot reach a level of ''substantial diminishment'' as determined by the FHWA. This determination will be made in consultation with the official(s) with jurisdiction. For instance, there may be general agreement among the FHWA, the Applicant and the official(s) with jurisdiction that an overall enhancement to a Section 4(f) property is achievable. However, if the official with jurisdiction believes that the functions and values that made the property eligible for Section 4(f) protection will be substantially diminished upon completion of the project, then the FHWA must find that the programmatic evaluation is not applicable and that the protected property requires the preparation of an individual Section 4(f) evaluation.

The AASHTO recommended that the net benefit finding take into account the likely future condition of the historic property if the transportation project is not implemented, *e.g.*, the potential for demolition of the historic property by a private landowner.

The revised definition of net benefit included in the final programmatic evaluation addresses this comment, in part. This determination relies on a comparison of Section 4(f) functions and values of the property without the transportation project and use to determine net benefit.

The WIDOT commented that agreements on what constitutes ''net benefit'' could be difficult to reach among the stakeholders involved.

The WIDOT recognized the potential difficulties that may occur when working out the details sufficiently enough that all officials with jurisdiction are satisfied that a net benefit will result. Because the range of what constitutes a net benefit will vary from property to property, by the official(s) with jurisdiction, and by the policies of both the FHWA and the Applicant, creative measures used to achieve net benefits on a project level should be developed and shared with the larger environmental and transportation community in the form of ''Best Practices.'' The flexibility inherent within the language of the programmatic evaluation provides official(s) with jurisdiction an opportunity and incentive to participate in efforts that maintain and achieve benefits to Section 4(f) properties under their protection. The Applicant and the FHWA are encouraged to communicate the beneficial qualities of the programmatic evaluation with the official(s) with jurisdiction in order to maximize its potential benefit to the Section 4(f) property.

Several commenters noted that the use of the term ''net benefit'' is inconsistent throughout the programmatic evaluation. It was unclear whether there merely needs to be a net benefit, or does the project have to preserve, rehabilitate, enhance, and have a net benefit. It was further noted that in some situations, it would be difficult to argue that the project does all four even though it may have an overall net benefit.

From these comments and others, the FHWA recognizes the need to clarify the term ''net benefit.'' Therefore, as noted above, the definition of net benefit has been modified and simplified for consistency in the final programmatic evaluation. This definition clarifies that the resulting Section 4(f) functions and values of the property are ''better,'' overall, than if the project did not use the Section 4(f) property. The ''net benefit'' determination may be based on a number of approaches to mitigate and minimize harm as long as there is an overall enhancement or betterment from the future do-nothing or avoidance condition.

As previously discussed, further instruction has been provided in this programmatic evaluation on how the net benefit is determined and by whom it is determined.

The NPS expressed concern with the definition of ''net benefit'' and objected to the inclusion of the ''substantial diminishment'' requirement without providing standards for measuring what is or is not substantial.

The subjectivity of individual values and functions of a significant Section 4(f) property demonstrate the variability of impacts, mitigation, and net benefits, thus, providing guidance or strict criteria on this determination may be viewed as overly prescriptive. There is similar subjectivity and context in determining ''substantial diminishment.'' For these reasons, it is important to consider the insight of the official(s) with jurisdiction when it comes to deciding ''net benefit'' and/or ''substantial diminishment'' and the officials with jurisdiction are in the best position to assist in these determinations. Therefore, some deference should be given to the officials with jurisdiction when determining if the project will ''substantially diminish'' the activities, features or attributes that qualify the property for Section 4(f) protection. And this determination is essential to deciding if there is a ''net benefit.'' If agreement on net benefit cannot be reached, this programmatic evaluation will not apply to the property.

Officials With Jurisdiction

Addressing park, recreational, wildlife and waterfowl resources and cultural, historic, and tribal properties within a single nationwide programmatic evaluation has created some confusion when discussing coordination with appropriate individuals or official(s) with jurisdiction. Several comments were received that reflect a general concern about the definition and intended role of the official(s) with jurisdiction.

For example, the AHC asked that the programmatic evaluation clarify who has official jurisdiction over Section 4(f) property and whether it must take the SHPO's advice into consideration.

A substantial effort has been made to clarify language in the final programmatic evaluation. Consistent with existing Section 4(f) regulations and guidance, whichever of the SHPO and/or THPO has responsibility under the Section 106 regulations is considered the official with jurisdiction over an historic property. The FHWA must seek and consider the opinion of the SHPO when determining effect under the Section 106 regulations and would likewise, under Section 4(f), seek the opinion of the SHPO as an official with jurisdiction when determining whether a net benefit will result from the Section 4(f) use of an historic site. In an example of an historic park owned by a municipality that was purchased with funding from the Land and Water Conservation Funds Act, the officials with jurisdiction would be the municipal parks department and the SHPO. All officials with jurisdiction must agree with a net benefit determination to a Section 4(f) property for this programmatic evaluation to apply. Coordination with the NPS would also be required in this case, relative to its responsibilities under the LWCFA, to assist in determining appropriate and acceptable mitigation for the project's Section 4(f) use.

Section 106 Integration

Several commenters expressed a desire to improve the integration of Section 4(f) requirements with those of the Section 106 process. The NYSDOT commented that the programmatic evaluation would do little or nothing to streamline the Section 4(f) process with respect to an historic property. The TEM recommended that the programmatic evaluation ''adopt'' the conclusion of the Section 106 process such that, if a project has been found to have no effect, no adverse effect, or results in a MOU that addresses adverse effects, it should

be exempt from Section 4(f) requirements on that basis.

The current laws and regulations continue to apply. The FHWA has, to the extent consistent with both laws, combined the common elements of the two processes for this programmatic evaluation. Much of the coordination required, the assessment of impacts, and mitigation is basically the same whether intended to comply with NEPA, Section 106 or Section 4(f). An integrated approach that satisfies multiple requirements is consistent with existing FHWA policy to use the NEPA process as the ''umbrella'' under which all environmental and related laws and regulations are addressed. It is within the unique requirements of Section 4(f) that this programmatic evaluation will provide relief in the preparation of a single evaluation rather than a draft and a final, the elimination of certain internal FHWA reviews, and the elimination of project-by-project review by the DOI and the USDA, and the HUD, all of which are now required for an individual Section 4(f) evaluation.

Section-by-Section Analysis

Revisions were made to several sections of the programmatic evaluation based upon either suggestions or comments received. The substantive changes not discussed above are considered in this Section-by-Section Analysis.

Preamble

In response to comments, the Preamble has been revised to improve its consistency with the main body of the programmatic evaluation and to respond to the comments received.

Examples

Several comments were received on the examples provided in the draft to illustrate application and implementation of the programmatic evaluation. These examples have been rewritten to provide further clarity on the use of the programmatic evaluation.

The TXDOT commented on the example of a renovated historic railroad station with the opinion that such renovation, if completed in compliance with the Secretary of Interior's Standards and Guidelines, should result in a ''no adverse effect'' determination, and thus, no 4(f) analysis would be required.

In specific instances, where the purpose of a project was to improve an existing transportation facility, the observation of the TXDOT would be correct (as provided in 23 CFR 771.135(f)). However, for situations not covered by 23 CFR 771.135(f), the FHWA's determination of ''no adverse effect,'' as defined by the regulations implementing the NHPA, and its subsequent concurrence by the SHPO, would not necessarily eliminate the need for a Section 4(f) evaluation. The programmatic evaluation provides additional flexibility in addressing adverse impacts and Section 106 ''adverse effects'' to historic property, where, notwithstanding these impacts, there results an overall enhancement of the Section 4(f) property. In the example cited above, if the Applicant or the FHWA developed plans to renovate the historic railroad station in such a way that the functions and values of the station were enhanced yet the design still did not meet the Secretary of Interior's Standards and Guidelines (*e.g.*, due to changes necessary to comply with the Americans with Disabilities Act), the project might still qualify for this programmatic evaluation. The example has been rewritten for clarity.

The MDSHA commented on the example where a Section 106 adverse effect determination was rendered; that it was not clear how the programmatic evaluation could be applied as the official with jurisdiction would be contradicting itself by agreeing that the action had a beneficial effect.

This result would depend upon the enhancement and mitigation provided and, in the end, how the officials with jurisdiction view the results of that mitigation and enhancement. The FHWA may determine that a project has an adverse effect as defined in the Section 106 regulation on a particular function or value of a Section 4(f) property, but for the programmatic evaluation to apply there cannot be a ''substantial diminishment'' of the activities, features, and attributes that qualify the property for Section 4(f) protection. Not every adverse effect rises to the level of substantial diminishment. For instance, the removal or moving of one contributing component of a historic district may result in an improvement to the access or continuity of the overall property. An example would be the creation of a pedestrian promenade within the historic district that recreates a lost element of the district and improves its economic vitality. Additionally, the Section 106 process does not consider the future do-nothing alternative, yet within this programmatic evaluation the future do-nothing is considered when determining net benefit. Therefore, the SHPO, without conflict, may concur with an adverse effect determination under Section 106, but may agree that the proposed project has a net benefit and will not result in substantial diminishment of the property under this programmatic evaluation.

When the FHWA utilizes this programmatic evaluation, documentation should be requested from the official(s) with jurisdiction that a net benefit will result from implementation of the project and that there is no substantial diminishment of protected activities, features or attributes of the protected property. This agreement may be incorporated into the Section 106 Agreement or other correspondence related to the Section 106 consultation process where the Section 4(f) protected property is historic, however, it should be clear that the Section 4(f) related request is separate and distinct from Section 106 consultation. If a historic property also meets other Section 4(f) criteria (*i.e.*, historic park) and there are multiple officials with jurisdiction, they also have a role in determining net benefit.

In response to the comments received concerning needed guidance and in recognition of the need to further clarify the intended use of this programmatic evaluation, the examples from the draft were rewritten and new examples were added.

Introduction

Referring to the last sentence of the Introduction, the NPS commented that the listing of these few programs in the proposed programmatic evaluation might lead to the incorrect interpretation that the list is all-inclusive rather than a sampling.

Not to mislead any intending user of the programmatic evaluation, the partial listing has been removed and the portion of the all-inclusive discussion stating, ''any other applicable Federal environmental requirements'' was retained.

Applicability

The WIDOT commented that the proposed programmatic evaluation is limited in its scope and will apply only to a small subset of projects.

Initially, utilization of the programmatic evaluation may be limited, but over time it is anticipated that it will have increased use as Applicants, the official(s) with jurisdiction, and the FHWA learn how to incorporate actions beneficial to Section 4(f) properties into transportation projects and realize the reduction in regulatory and internal review times that will result from the application of this programmatic evaluation.

The TXDOT and others requested clarification of language found in

Applicability, Item Numbers 4 and 5, which contain discussions of the roles of ''all parties'' and ''other appropriate parties.'' It was suggested that this be clarified to avoid the appearance of subjectively defining these categories on a case-by-case basis and recommend referencing Section 106 language for ''consulting parties.''

The concern expressed in this comment is recognized and the recommendation has been adopted in part. The language has been reworded to eliminate ''other appropriate parties.'' This change respects the distinction between Section 4(f) and 36 CFR part 800.

The NPS commented that the success of existing ''minor involvement'' programmatic Section 4(f) evaluations has been due to the following factors, (1) they are restricted to improvements on essentially the existing alignment, (2) the maximum acreage limitations are defined, and (3) they do not apply to projects for which an EIS is prepared.

The essence of this programmatic evaluation is distinct from the existing ''minor uses'' programmatic evaluations in that its application is dependent on a resulting positive outcome instead of a minor use. For this reason its application is appropriate and allowable in conjunction with both existing and new alignments. The maximum-acreage-allowable criterion was specified in the programmatic evaluation for minor uses of parks, recreation areas and wildlife and waterfowl refuges to assist in defining minor use in spatial terms. The amount of property used is not an appropriate factor in determining the net benefit and may inappropriately limit application of this evaluation in some cases. Therefore, the application of this programmatic will remain the same so as not to reduce its potential effectiveness and application.

Since this programmatic evaluation can provide the impetus necessary to develop creative measures of avoidance, minimization, and enhancement for impacts to protected Section 4(f) properties, it is appropriate for use with all environmental class of actions, including EISs, in which the applicability criteria is satisfied.

The NPS and DOI noted that the programmatic evaluation does not clearly define the role of agencies holding a contractual or real estate interest in the subject property.

We do not believe it is necessary to specify a criterion that singles out the NPS or any other agency in determining applicability of the programmatic evaluation. Such an encumbrance would not be affected by FHWA's Section 4(f) determination. Where the NPS or another agency has the ''last word'', under another statute, that responsibility remains intact. A sentence was added to the final programmatic evaluation requiring coordination with the appropriate agency, where such encumbrances exist, to clarify the process.

For Section 4(f) properties, other than privately owned historic resources, the FHWA and the Applicant shall pursue with due diligence, during early stages of project development, determination of whether or not the property in question received a LWCFA grant. If the Applicant or the FHWA have concerns about whether a park area might have received a LWCF grant they should contact one of the National Park Service field offices or State Agency, as listed in the ''Contact List'' on the following Web site: *http://www.nps.gov/ncrc/programs/lwcf/protect.html*. Administrators have databases of grant-assisted sites that will help them to determine whether Fund protections apply; also some States have their own grant programs that afford similar protection. Additional information and addresses for National Park Service Offices and State Liaison Officers for the Land and Water Conservation Fund can be found at the following Web site: *http://www.nps.gov/ncrc/programs/lwcf/protect.html*.

The NEPA documentation, project file or Section 4(f) documentation shall include evidence of the determination.

The DOI suggested that ''National Historic Landmarks'' should be explicitly identified as National Register eligible property and that additional stipulations to address situations that involve National Natural Landmarks be added.

Since there is no distinction between National Historic Landmarks and other National Register eligible properties where Section 4(f) is concerned, the draft language is retained. Also, the programmatic evaluation would apply to those National Natural Landmarks that met the statutory definition of a Section 4(f) protected property.

The NPS also expressed concern that the FHWA will have the ''sole responsibility'' for determining whether a public park area will receive a net benefit. The programmatic evaluation requires the FHWA to reach agreement with the officials with jurisdiction; therefore, FHWA will never have the ''sole responsibility'' for determining net benefit.

As stated above, the language in the final programmatic evaluation addresses the concerns of the NPS. If agreement is not reached among the FHWA, the Applicant and official(s) with jurisdiction, then the programmatic evaluation cannot be used. If, for example, the NPS requires full replacement of federally encumbered property pursuant to LWCFA, then that obligation will continue to require at least full replacement of the impacted land as determined under that statute whether or not there is a net benefit finding. This holds true for any necessary provision, whether Federal or State, that relates to the impacts of a Section 4(f) property. This is why early consultation and input from all appropriate official(s) with jurisdiction is necessary and required.

The MDSHA commented on an apparent discrepancy between one of the examples and the *Applicability* section. The MDSHA notes that the *Applicability* section states that the programmatic evaluation may be applied if, among other things, the project does not require the demolition or major alteration of the characteristics that qualify the property for the NRHP. Yet the example of the reconstructed, deteriorated historic feature was deemed appropriate, even given the adverse effect determination.

Changes have been made to the *Applicability* section to address this concern. Additionally, the example has been rewritten for clarity. There is no discrepancy as the example is for a reconstruction of a contributing element, which the SHPO, as the official with jurisdiction, deems to be a net benefit to the property when compared to the do-nothing alternative, which leaves the wall in a deteriorated condition. Even though the FHWA could determine and the SHPO concur that the removal and reconstruction of the wall would be an adverse effect under Section 106, the SHPO or THPO could find that the project results in an overall benefit. The programmatic evaluation allows for impacts of some of the functions and/or values of the property as long as there is a collective improvement and there is no substantial diminishment to those functions and values that originally qualified the property for protection.

Relating this back to the example at hand, even though the wall is considered an important function or value in determining Section 106 significance of the historic property, the reconstruction of the wall is neither considered a substantial diminishment nor a major alteration but rather an improvement over its existing condition, the anticipated condition of the future no-build and the condition of the historic site itself, thereby qualifying as a net benefit.

The MDSHA commented on *Applicability,* Item Number 4, and identified a perceived duplication of Section 106 and Section 4(f) efforts. The MDSHA asked whether an adverse effect on an historic property is obviated by a net benefit to the resource such that, there will not be a need for a Section 106 MOA. The CALTRANS added that the SHPO's or THPO's written determination of no adverse effect under Section 106 should suffice as evidence of written agreement under *Applicability,* Item Number 5 to eliminate the need for additional efforts on the part of the SHPO or THPO.

Where required by 36 CFR part 800, an MOA or Programmatic Agreement would be a prerequisite for Section 4(f) approval under this programmatic evaluation similar to the Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites and the Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges. The conditions and measures to achieve a net benefit may be established in the MOA. However, the MOA, or any additional or separate documentation, must clearly record that agreement has been reached among the officials with jurisdiction, the FHWA and the Applicant and all appropriate documentation must be retained for the project record consistent with NEPA project documentation retention practices and policies.

In summation, any written agreement developed as part of the Section 106 process can suffice for the *Applicability* criteria of this programmatic evaluation if such agreements (typically MOAs) include an agreement by the officials with jurisdiction that the project results in a net benefit to a protected Section 4(f) property. However, all the officials with jurisdiction may not want to be party to a Section 106 agreement and other Section 106 parties not necessarily the ''officials with jurisdiction.''

Regarding *Applicability,* Item Number 4, the AHC commented that ''such measures'' are ''vague and weak'' and recommended that this be a stronger, more specific statement.

The language in *Applicability,* Item Number 4 is consistent with existing programmatic evaluations and is retained with minor editorial changes in the final version. The language allows for flexibility that makes the programmatic evaluation as viable a procedural option as possible while being as responsive to the expert opinions of the official(s) with jurisdiction and the varied qualities of the properties they manage.

The NYSDOT commented on the ''substantial diminishment'' requirement related to determining ''net benefit'' in the *Applicability* section. It suggested that the requirement is contrary to the concept of ''net benefit'', weakens the concept and narrows the opportunity to effectively benefit the resource.

Programmatic evaluations by their nature are limited to projects that meet a specific set of facts and applicability requirements. A project that will result in a substantial diminishment of any of the functions or values that originally qualified the property for Section 4(f) protection should be evaluated using an individual evaluation. The wording of this programmatic evaluation is designed to ensure that a net benefit is achieved without substantial diminishment of the functions or values (features or attributes) that make the property eligible for Section 4(f) protection. Still, there is flexibility in determining what function or values are keys to the properties' eligibility for protection and what constitutes a substantial diminishment of those functions and values.

Alternatives

The AHC commented that it is difficult to discern how the programmatic evaluation helps the FHWA when it comes to its avoidance alternatives analysis and the PennDOT recognized that the programmatic evaluation limits the alternatives that must be analyzed and documented.

The PennDOT is correct; the avoidance alternatives that must be considered are all-inclusive. This approach is consistent with the existing programmatic evaluations.

The DOI suggested that the ''Do Nothing Alternative'' be replaced with the term ''No Action Alternative,'' in accordance with NEPA guidance.

To avoid confusion, the term ''Do Nothing Alternative'' will be retained, as it is consistent with the other programmatic evaluations.

The PennDOT recommended that the ''qualitative importance or value'' of each Section 4(f) resource should be considered in determining whether or not an avoidance alternative is feasible and prudent. It further recommended that for historic properties, the condition and ownership should be considered as well.

The programmatic addresses those situations where the transportation use results in an overall enhancement of the property as agreed to by the official(s) with jurisdiction, the FHWA and the Applicant. The ability to benefit the property must be factored into the feasible and prudent determination. The consideration of the avoidance alternative comes from the Section 4(f) statutory requirements, which have not changed. The Section 4(f) legislation addresses historic properties regardless of ownership of the property.

Findings

The DOI recommended revising the first sentence to indicate that to apply the programmatic evaluation to a project, the required no-action and avoidance alternatives must be found not feasible and prudent through a written determination.

The wording has been changed to reflect the comment.

The DOI suggested inserting the phrase ''jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat,'' before the phrase ''substantial damage to wetlands''. The suggested language has been incorporated.

The NYSDOT commented on the proposed language, ''An accumulation of these kinds of problems must be of extraordinary magnitude when compared to the proposed use of the Section 4(f) land to determine that (the avoidance) alternative is not feasible and prudent.'' It was suggested that this approach would seem more valid in the context of a full 4(f) evaluation where there is a net negative effect to a historic property, than in a programmatic evaluation context where the ''net'' effect is positive.

This language is consistent with existing Section 4(f) implementation policy and has been incorporated in essence. The first condition of Section 4(f) use is the determination that no feasible and prudent avoidance alternatives exist. The programmatic evaluation must include this determination in order to facilitate compliance with the statute and regulations. This programmatic evaluation identifies the variables that must be considered when making the determination of feasible and prudent. Application of this programmatic evaluation is optional and an individual evaluation may be prepared at the discretion of the Administration in those cases where it is appropriate.

The AHC asked about how the evidence of no feasible and prudent alternative will be collected and distributed.

Appropriate evidence that no feasible and prudent alternative to the use of Section 4(f) property exists must be a part of the FHWA's administrative record for the project. This supporting

information and determination will be documented in the appropriate NEPA document or project record consistent with current Section 4(f) policy, guidance and the requirements of this programmatic evaluation.

The AHC also asked about what would constitute a ''substantial increase in cost'' and suggested that we include an approximate figure or at least a percentage.

The FHWA, in consultation with the Applicant, will determine what is considered a substantial increase. The language is identical to that used in previous programmatic evaluations.

The AHC commented that Findings 2(e) seem to be intended to play one resource improvement against another's adverse effect.

The statement found in Findings 2(e) is not intended to play one property against another. The purpose of the statement is to give appropriate consideration and weight to the beneficial measures of the project when determining whether an alternative is prudent and feasible.

In regard to item number 2(e), the NPS questioned whether ''a missed opportunity'' to benefit a Section 4(f) property has any relevance in determining whether or not an alternative is feasible and prudent.

Section 4(f) established a two-fold emphasis for the Secretary of Transportation: to protect and to enhance significant resources identified for special consideration. To date, programmatic evaluations have focused on projects with minor impacts to these protected properties. This programmatic evaluation is designed to allow the FHWA, the Applicant and official(s) with jurisdiction over the Section 4(f) properties, to look for opportunities where transportation actions can enhance Section 4(f) properties, even where there is a use of some property. Because a net benefit on a property can only be determined when all parties agree, the programmatic evaluation will only be used when it is deemed appropriate and in the best interests of the protected property. To ensure that 2(e) is not abused or equated to a low bar, we included language to clarify that for a project to qualify for 2(e) there must be a substantial missed opportunity to benefit a Section 4(f) property.

Mitigation and Measures To Minimize Harm

Several commenters indicated a confusion regarding the wording of this section and offered suggestions. The principal reason is the combination of ''Measures to Minimize Harm'' and ''Mitigation Measures.'' When put together, commenters read it as ''Measures to Minimize Harm and Measures to Minimize Mitigation''. Obviously this is not the intent; however, to rectify this misunderstanding the language has been changed to read: ''Mitigation and Measures to Minimize Harm.'' Although, measures to minimize harm are considered mitigation, this language is consistent with the Section 4(f) statute.

Coordination

The NPS recommended that the programmatic evaluation require that all projects be coordinated with the appropriate DOI bureaus.

As noted earlier, for those projects where an agency or bureau of DOI is an official with jurisdiction, or where the LWCFA applies, coordination will be necessary as a procedure in meeting the applicability requirements and approval of this programmatic evaluation.

Another comment questioned the statement regarding the need for the FHWA to coordinate with the United States Coast Guard (USCG) before applying the programmatic evaluation to projects requiring a Section 9 Bridge permit.

When the proposed programmatic evaluation was issued, the USCG was still a part of the USDOT and therefore it had Section 4(f) responsibilities. Since that time, the USCG has been relocated to the U.S. Department of Homeland Security, eliminating its Section 4(f) responsibility. However, the USCG still has responsibility related to issuance of Section 9 Bridge permits. Wording has been changed to remove coordination with the USCG relative to Section 4(f) compliance.

The WIDOT noted that the constructive consultation of transportation officials, the officials with jurisdiction and resource agency staff is encouraged.

Consultation is not only encouraged, it is required. For this programmatic evaluation to be successful, good coordination and consultation are imperative.

Public Involvement

There were no substantive comments regarding this section and no changes have been made.

Approval Procedure

The AHC asked, relative to the last sentence of Item Number 6, if the Advisory Council on Historic Preservation agreed to review all programmatic evaluations.

The last sentence in Item Number 6 of the *Approval Procedures* in the draft programmatic should have been a separate paragraph. The purpose of the statement in the draft was to indicate that the ACHP and other agencies had been given the opportunity to review and comment on the draft. Furthermore, the FHWA consulted with the ACHP, the DOI and the NPS prior to finalizing the programmatic evaluation. To avoid confusion, this statement has been removed from the final programmatic evaluation.

Examples of Intended Use

One example of a net benefit to a historic property would be the reconstruction of a deteriorated or lost historic feature (such as a rock wall or auxiliary building) where mitigation related to Section 106 consultation includes the reconstruction of the feature in a slightly different location because of the design requirements of a needed improvement to the adjacent transportation facility. Consultation pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) would likely result in an ''adverse effect'' determination. However, the SHPO, the FHWA, and the Applicant all agree that the reconstruction would enhance those qualities for which the property was determined eligible, even with the removal and replacement of the historically associated feature. In this case, the existing FHWA Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites would not be applicable, but if SHPO, as the official with jurisdiction, agrees that the impacts do not reach a level of substantial diminishment, the FHWA may determine that this programmatic evaluation would be applicable if the evaluation finds that the use of the property is prudent.

A second example involves a partial or even total relocation of a Section 4(f) property (such as a community park) to a location within the community that would have a greater value and use to that community. In this case, the existing nationwide minor use programmatic could not be used because the take of land would exceed the limitation included in it and would impair the use of the remaining Section 4(f) land. Again, this programmatic evaluation would be applicable if the officials with jurisdiction agree that the partial (or total) relocation would be a net benefit to the park and that the relocation does not result in the substantial diminishment of the activities, feature or attributes for which

the park is protected under Section 4(f). For instance, this programmatic evaluation can apply where the officials with jurisdiction identify a net benefit due to existing inadequate or unsafe access conditions to a park which presently minimizes the use of the park and the partial relocation can provide safe access; or in a situation where a park has minimal public use due to changes in adjacent land use and where the officials with jurisdiction agree that the total relocation will be of greater park or recreational value to the community.

A final example is the rehabilitation of an historic railroad station to maintain its major historic elements and to permit its continued use as a historic transportation facility. In some cases, such rehabilitation, even with considerable sensitivity to the historic character of the resource, cannot be accomplished without a Section 106 adverse effect determination, and neither the regulatory provision at 23 CFR 771.135(f) related to historic transportation facilities nor the historic site programmatic could be used. The adverse effect may be caused, for example, by modifications to provide access for the disabled or by interior reconfiguration to provide retail space to keep the station economically viable as a transportation facility. The SHPO, as the official with jurisdiction, may concur with the FHWA determination of ''adverse effect,'' but may also recognize the net benefits of the restoration of the station and the assurance of its continued use may greatly outweigh the adverse effect, *i.e.*, not substantially diminish the qualities for which the property was determined eligible.

There will be situations when this programmatic evaluation would not apply. For example, the owner of an individually eligible historic building has abandoned the building so that it is likely to continue to deteriorate. The transportation agency proposes to demolish the building for a transportation improvement, and agrees to record the building in accordance with the standards set by the Historic American Building Survey (HABS) prior to its demolition. In the project design year (20 years hence) without the project, the building may be effectively demolished through neglect. In the design year of the project, the building will be demolished but a record of the building will be made. Although having the record of the demolished building is an improvement over not having such a record, it is not a net benefit to the resource, as the resource will no longer exist. Therefore, this programmatic evaluation would not apply because it requires that there be a resource to which a net benefit would result. In this case, an individual Section 4(f) evaluation would be needed. On the other hand, if the same abandoned historic building (contributing component) lies within a large commercial historic district, where the officials with jurisdiction (*i.e.*, the SHPO) concur with an ''adverse effect'' determination pursuant to Section 106 consultation, but determine that the removal of the building with appropriate mitigation will have a net benefit to the historic district as the use of the resource (historic district) by the transportation project will improve access or parking which will likely improve the economic viability of the majority of the historic district, thus determining that the use will not rise to the level of ''substantial diminishment'' of the qualities of the resource. In such a situation, this programmatic evaluation might be applied.

The FHWA recognizes and appreciates the effort of all parties who provided comments for consideration in the development and finalization of this programmatic evaluation.

Authority: 49 U.S.C. 303; 23 U.S.C. 138; 49 CFR 1.48.

Issued on: April 13, 2005.

Mary E. Peters,

Federal Highway Administrator.

The text of the FHWA Programmatic Section 4(f) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4(f) Property is as follows:

U.S. Department of Transportation
Federal Highway Administration (FHWA)
FINAL

Programmatic Section 4(f) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4(f) Property

This nationwide programmatic Section 4(f) evaluation (programmatic evaluation) has been prepared for certain federally assisted transportation improvement projects on existing or new alignments that will use property of a Section 4(f) park, recreation area, wildlife or waterfowl refuge, or historic property, which in the view of the Administration and official(s) with jurisdiction over the Section 4(f) property, the use of the Section 4(f) property will result in a net benefit to the Section 4(f) property. Definitions:

''Administration'' refers to the Federal Highway Division Administrator or Division Engineer (as appropriate).

''Applicant'' refers to a State Highway Agency or State Department of Transportation, local governmental agency acting through the State Highway Agency or State Department of Transportation.

A ''net benefit'' is achieved when the transportation use, the measures to minimize harm and the mitigation incorporated into the project results in an overall enhancement of the Section 4(f) property when compared to both the future do-nothing or avoidance alternatives and the present condition of the Section 4(f) property, considering the activities, features and attributes that qualify the property for Section 4(f) protection. A project does not achieve a ''net benefit'' if it will result in a substantial diminishment of the function or value that made the property eligible for Section 4(f) protection.

''Official(s) with jurisdiction'' over Section 4(f) property (typically) include: for a park, the Federal, State or local park authorities or agencies that own and/or manage the park; for a refuge, the Federal, State or local wildlife or waterfowl refuge owners and managers; and for historic sites, the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), whichever has jurisdiction under Section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

Applicability

The Administration is responsible for review of each transportation project for which this programmatic evaluation is contemplated to determine that it meets the criteria and procedures of this programmatic evaluation. The information and determination will be included in the applicable National Environmental Policy Act (NEPA) documentation and administrative record. This programmatic evaluation will not change any existing procedures for NEPA compliance, public involvement, or any other applicable Federal environmental requirement.

This programmatic evaluation satisfies the requirements of Section 4(f) for projects meeting the applicability criteria listed below. An individual Section 4(f) evaluation will not need to be prepared for such projects:

1. The proposed transportation project uses a Section 4(f) park, recreation area, wildlife or waterfowl refuge, or historic site.

2. The proposed project includes all appropriate measures to minimize harm and subsequent mitigation necessary to preserve and enhance those features and values of the property that originally qualified the property for Section 4(f) protection.

3. For historic properties, the project does not require the major alteration of

the characteristics that qualify the property for the National Register of Historic Places (NRHP) such that the property would no longer retain sufficient integrity to be considered eligible for listing. For archeological properties, the project does not require the disturbance or removal of the archaeological resources that have been determined important for preservation in-place rather than for the information that can be obtained through data recovery. The determination of a major alteration or the importance to preserve in-place will be based on consultation consistent with 36 CFR part 800.

4. For historic properties, consistent with 36 CFR part 800, there must be agreement reached amongst the SHPO and/or THPO, as appropriate, the FHWA and the Applicant on measures to minimize harm when there is a use of Section 4(f) property. Such measures must be incorporated into the project.

5. The official(s) with jurisdiction over the Section 4(f) property agree in writing with the assessment of the impacts; the proposed measures to minimize harm; and the mitigation necessary to preserve, rehabilitate and enhance those features and values of the Section 4(f) property; and that such measures will result in a net benefit to the Section 4(f) property.

6. The Administration determines that the project facts match those set forth in the Applicability, Alternatives, Findings, Mitigation and Measures to Minimize Harm, Coordination, and Public Involvement sections of this programmatic evaluation.

This programmatic evaluation can be applied to any project regardless of class of action under NEPA.

Alternatives

To demonstrate that there are no feasible and prudent alternatives to the use of Section 4(f) property, the programmatic evaluation analysis must address alternatives that avoid the Section 4(f) property. The following alternatives avoid the use of the Section 4(f) property:

1. Do nothing.

2. Improve the transportation facility in a manner that addresses the project's purpose and need without a use of the Section 4(f) property.

3. Build the transportation facility at a location that does not require use of the Section 4(f) property.

This list is intended to be all-inclusive. The programmatic evaluation does not apply if a feasible and prudent alternative is identified that is not discussed in this document. The project record must clearly demonstrate that each of the above alternatives was fully evaluated before the Administration can conclude that the programmatic evaluation can be applied to the project.

Findings

For this programmatic evaluation to be utilized on a project there must be a finding, given the present condition of the Section 4(f) property, that the do-nothing and avoidance alternatives described in the Alternatives section above are not feasible and prudent. The findings (1, 2, and 3. below) must be supported by the circumstances, studies, consultations, and other relevant information and included in the administrative record for the project. This supporting information and determination will be documented in the appropriate NEPA document and/or project record consistent with current Section 4(f) policy and guidance.

To support the finding, adverse factors associated with the no-build and avoidance alternatives, such as environmental impacts, safety and geometric problems, decreased transportation service, increased costs, and any other factors may be considered collectively. One or an accumulation of these kinds of factors must be of extraordinary magnitude when compared to the proposed use of the Section 4(f) property to determine that an alternative is not feasible and prudent. The net impact of the do-nothing or build alternatives must also consider the function and value of the Section 4(f) property before and after project implementation as well as the physical and/or functional relationship of the Section 4(f) property to the surrounding area or community.

1. *Do-Nothing Alternative.*

The Do-Nothing Alternative is not feasible and prudent because it would neither address nor correct the transportation need cited as the NEPA purpose and need, which necessitated the proposed project.

2. *Improve the transportation facility in a manner that addresses purpose and need without use of the Section 4(f) property.*

It is not feasible and prudent to avoid Section 4(f) property by using engineering design or transportation system management techniques, such as minor location shifts, changes in engineering design standards, use of retaining walls and/or other structures and traffic diversions or other traffic management measures if implementing such measures would result in any of the following:

(a) Substantial adverse community impacts to adjacent homes, businesses or other improved properties; or

(b) Substantially increased transportation facility or structure cost; or

(c) Unique engineering, traffic, maintenance or safety problems; or

(d) Substantial adverse social, economic or environmental impacts; or

(e) A substantial missed opportunity to benefit a Section 4(f) property; or

(f) Identified transportation needs not being met; and

(g) Impacts, costs or problems would be truly unusual, unique or of extraordinary magnitude when compared with the proposed use of Section 4(f) property after taking into account measures to minimize harm and mitigate for adverse uses, and enhance the functions and value of the Section 4(f) property.

Flexibility in the use of applicable design standards is encouraged during the analysis of these feasible and prudent alternatives.

3. *Build a new facility at a new location without a use of the Section 4(f) property.*

It is not feasible and prudent to avoid Section 4(f) property by constructing at a new location if:

(a) The new location would not address or correct the problems cited as the NEPA purpose and need, which necessitated the proposed project; or

(b) The new location would result in substantial adverse social, economic or environmental impacts (including such impacts as extensive severing of productive farmlands, displacement of a substantial number of families or businesses, serious disruption of community cohesion, jeopardize the continued existence of any endangered or threatened species or resulting in the destruction or adverse modification of their designated critical habitat, substantial damage to wetlands or other sensitive natural areas, or greater impacts to other Section 4(f) properties); or

(c) The new location would substantially increase costs or cause substantial engineering difficulties (such as an inability to achieve minimum design standards or to meet the requirements of various permitting agencies such as those involved with navigation, pollution, or the environment); and

(d) Such problems, impacts, costs, or difficulties would be truly unusual or unique or of extraordinary magnitude when compared with the proposed use of the Section 4(f) property after taking into account proposed measures to minimize harm, mitigation for adverse use, and the enhancement of the Section 4(f) property's functions and value.

Flexibility in the use of applicable design standards is encouraged during the analysis of feasible and prudent alternatives.

Mitigation and Measures To Minimize Harm

This programmatic evaluation and approval may be used only for projects where the Administration, in accordance with this evaluation, ensures that the proposed action includes all possible planning to minimize harm, includes appropriate mitigation measures, and that the official(s) with jurisdiction agree in writing.

Coordination

In early stages of project development, each project will require coordination with the Federal, State, and/or local agency official(s) with jurisdiction over the Section 4(f) property. For non-Federal Section 4(f) properties, *i.e.*, State or local properties, the official(s) with jurisdiction will be asked to identify any Federal encumbrances. When encumbrances exist, coordination will be required with the Federal agency responsible for such encumbrances.

Copies of the final written report required under this programmatic evaluation shall be offered to the official(s) with jurisdiction over the Section 4(f) property, to other interested parties as part of the normal NEPA project documentation distribution practices and policies or upon request.

Public Involvement

The project shall include public involvement activities that are consistent with the specific requirements of 23 CFR 771.111, Early coordination, public involvement and project development. For a project where one or more public meetings or hearings are held, information on the proposed use of the Section 4(f) property shall be communicated at the public meeting(s) or hearing(s).

Approval Procedure

This programmatic evaluation approval applies only after the Administration has:

1. Determined that the project meets the applicability criteria set forth in *Applicability* section;
2. Determined that all of the alternatives set forth in the *Findings* section have been fully evaluated;
3. Determined that the findings in the programmatic evaluation (which conclude that the alternative recommended is the only feasible and prudent alternative) result in a clear net benefit to the Section 4(f) property;
4. Determined that the project complies with the *Mitigation and Measures to Minimize Harm* section of this document;
5. Determined that the coordination and public involvement efforts required by this programmatic evaluation have been successfully completed and necessary written agreements have been obtained; and
6. Documented the information that clearly identifies the basis for the above determinations and assurances.

[FR Doc. 05–7812 Filed 4–19–05; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–20930 (PDA–31(F))]

Application by American Trucking Associations, Inc. for a Preemption Determination as to District of Columbia Requirements for Highway Routing of Certain Hazardous Materials

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation (DOT).

ACTION: Public notice and invitation to comment.

SUMMARY: FMCSA invites interested parties to submit comments on an application by The American Trucking Associations, Inc. for an administrative determination as to whether Federal hazardous materials transportation law preempts highway routing requirements of the District of Columbia in restricting transportation of certain hazardous materials.

DATES: Comments received on or before June 6, 2005, and rebuttal comments received on or before July 19, 2005, will be considered before an administrative ruling is issued. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: You may submit comments, identified by DOT DMS Docket Number FMCSA–2005–20930, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Agency Web site: http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001. Please submit three copies of written comments.
- *Hand Delivery:* Submit three copies of written comments to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: Comments must refer to Docket Number FMCSA–2005–20930. All comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. For detailed instructions on submitting comments, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. For a summary of DOT's Privacy Act Statement or information on how to obtain a complete copy of DOT's Privacy Act Statement please see the ''Privacy Act'' heading of the **SUPPLEMENTARY INFORMATION** section.

Docket: For access to the docket to read the application or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. William Quade, Chief, Hazardous Materials Division (MC–ECH), (202) 366–2172; Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation

A copy of each comment must also be sent to Richard Moskowitz, Assistant General Counsel, American Trucking Associations, 2200 Mill Road, Alexandria, VA 22314. Certification of sending a copy to Mr. Moskowitz must accompany your comments. (The following format is suggested: ''I certify copies of this comment have been sent to Mr. Moskowitz at the address specified in the **Federal Register**.'')

The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the DMS Web site. If you want us to notify you of receiving your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page displaying after receipt of on-line comments.

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: 2005-05

SUBJECT: PREVAILING WAGE ACT

ISSUED DATE: August 31, 2005

EFFECTIVE DATE: August 10, 2005

This memorandum supersedes Chapter 12 Section 2.01(e) of the Bureau of Local Roads and Streets Manual dated July 2005.

On August 10, 2005, Public Act 94-0515 amended the Prevailing Wage Act by requiring the contractor and each subcontractor participating on public works projects to submit monthly a certified payroll to the public body in charge of the project. Certified payrolls have long been required on Federal-aid projects; however, certified payrolls are now required on all state and locally funded projects as well.

For projects on the state lettings or any federal-aid project, BDE Special Provision 80155 “Payrolls and Payroll Records” should be inserted into all contracts. Contractors and subcontractors should use the Bureau of Small Business Enterprises form SBE 48 or approved facsimile for submitting the certified payroll.

For local let projects using only state and local funds, LR Special Provision 107-3 “Wages of Employees on Public Works” should be inserted into all contracts. Contractors and subcontractors should submit the certification in a format approved by the local authority. The local authority is required to keep the certification records submitted for a period of not less than three years. Furthermore, these records, except an employee’s address, telephone number, and social security number, shall be made available in accordance with the Freedom of Information Act.

Charles J. Ingersoll

Engineer of Local Roads and Streets

KB

Attachments

AN ACT concerning employment.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Prevailing Wage Act is amended by changing Section 5 as follows:

(820 ILCS 130/5) (from Ch. 48, par. 39s-5)

Sec. 5. Certified payroll.

(a) While participating on public works, the ~~The~~ contractor and each subcontractor ~~or the officer of the public body in charge of the project~~ shall:

(1) make and keep, for a period of not less than 3 years, ~~true and accurate~~ records of all laborers, mechanics, and other workers employed by them on the project; the records shall include each worker's ~~the~~ name, address, telephone number when available, social security number, classification or classifications, ~~and occupation of all laborers, workers and mechanics employed by them, in connection with said public work. The records shall also show~~ the ~~actual~~ hourly wages paid in each pay period, ~~to each employee and~~ the number of hours worked each day, and ~~in each work week by each employee. While participating on public works, each contractor's payroll records shall include~~ the starting and ending times of work each day; and ~~for each employee~~

(2) submit monthly, in person, by mail, or electronically a certified payroll to the public body in charge of the project. The certified payroll shall consist of a complete copy of the records identified in paragraph (1) of this subsection (a). The certified payroll shall be accompanied by a statement signed by the contractor or subcontractor which avers that: (i) such records are true and accurate; (ii) the hourly rate paid to each worker is

not less than the general prevailing rate of hourly wages required by this Act; and (iii) the contractor or subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class B misdemeanor. A general contractor is not prohibited from relying on the certification of a lower tier subcontractor, provided the general contractor does not knowingly rely upon a subcontractor's false certification. Any contractor or subcontractor subject to this Act who fails to submit a certified payroll or knowingly files a false certified payroll is in violation of this Act and guilty of a Class B misdemeanor. The public body in charge of the project shall keep the records submitted in accordance with this paragraph (2) of subsection (a) for a period of not less than 3 years. The records submitted in accordance with this paragraph (2) of subsection (a) shall be considered public records, except an employee's address, telephone number, and social security number, and made available in accordance with the Freedom of Information Act. The public body shall accept any reasonable submissions by the contractor that meet the requirements of this Section.

(b) Upon 2 business days' notice, the contractor and each subcontractor shall make available for inspection the records identified in paragraph (1) of subsection (a) of this Section ~~The record shall be open at all reasonable hours~~ to the ~~inspection of the~~ public body in charge of the project ~~awarding the contract~~, its officers and agents, and to the Director of Labor and his deputies and agents. Upon 2 business days' notice, the contractor and each subcontractor shall make such records available at all reasonable hours at a location within this State.

~~Any contractor or subcontractor that maintains its principal place of business outside of this State shall make the required records or accurate copies of those records available within this State at all reasonable hours for inspection.~~

(Source: P.A. 92-783, eff. 8-6-02; 93-38, eff. 6-1-04.)

Section 99. Effective date. This Act takes effect upon becoming law.

State of Illinois
Department of Transportation
Bureau of Local Roads and Streets

SPECIAL PROVISION
FOR
WAGES OF EMPLOYEES ON PUBLIC WORKS

Effective: August 10, 2005

Replace Check Sheet LRS 12 of the Recurring Special Provisions with the following:

" All wages paid by the Contractor and each subcontractor shall be in compliance with The Prevailing Wage Act (820 ILCS 130), as amended, except where a prevailing wage violates a federal law, order, or ruling, the rate conforming to the federal law, order, or ruling shall govern. The Contractor shall be responsible to notify each subcontractor of the wage rates set forth in this contract and any revisions thereto. If the Department of Labor revises the wage rates, the revised rate as provided by the public body shall apply to this contract and the Contractor will not be allowed additional compensation on account of said revisions.

The Contractor and each subcontractor shall make and keep, for a period of not less than 3 years, records of all laborers, mechanics, and other workers employed by them on the project; the records shall include each worker's name, address, telephone number when available, social security number, classification or classifications, the hourly wages paid in each period, the number of hours worked each day, and the starting and ending times of work each day.

The Contractor and each subcontractor shall submit monthly, in person, by mail, or electronically a certified payroll to the public body in charge of the project. The certified payroll shall consist of a complete copy of the records. The certified payroll shall be accompanied by a statement signed by the contractor or subcontractor which avers that:

(i) such records are true and accurate;
(ii) the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required; and
(iii) the contractor or subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class B misdemeanor.

Upon 2 business days' notice, the contractor and each subcontractor shall make available for inspection the records to the public body in charge of the project, its officers and agents, and to the Director of Labor and his deputies and agents at all reasonable hours at a location within this State. The Contractor and each subcontractor shall permit his/her employees to be interviewed on the job, during working hours, by compliance investigators of the Department or the Department of Labor."

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: 2005-06

SUBJECT: COMPETITIVE BIDDING THRESHOLD

ISSUED DATE: August 31, 2005

EFFECTIVE DATE: August 2, 2005

This memorandum supersedes Chapter 12 Section 1.02(a) and 1.02(c) of the Bureau of Local Roads and Streets Manual dated July 2005.

On August 2, 2005, Public Act 94-0435 amended the Township Code, the Illinois Municipal Code, and the Illinois Highway Code by increasing the competitive bidding threshold for townships and municipalities from $10,000 to $20,000. The counties' bidding threshold was already $20,000. Therefore, all local agencies must use a competitive bid process if the estimated cost exceeds $20,000.

Charles J. Ingersoll

Engineer of Local Roads and Streets

KB/kb

Attachments

AN ACT concerning libraries.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 3. The Township Code is amended by changing Section 85-30 as follows:

(60 ILCS 1/85-30)

Sec. 85-30. Purchases; bids. Any purchase by a township ~~having fewer than 10,000 inhabitants and located in a county with a population under 3,000,000~~ for services, materials, equipment, or supplies in excess of $20,000 ~~$10,000~~ (other than professional services) ~~and any purchase by a township in a county with a population of 3,000,000 or more, or by a township having 10,000 or more inhabitants and located in a county with a population of less than 3,000,000, for services, materials, equipment, or supplies in excess of $10,000 (other than professional services)~~ shall be contracted for in one of the following ways:

(1) By a contract let to the lowest responsible bidder after advertising for bids at least once (i) in a newspaper published within the township, or (ii) if no newspaper is published within the township, then in one published within the county, or (iii) if no newspaper is published within the county, then in a newspaper having general circulation within the township.

(2) By a contract let without advertising for bids in the case of an emergency if authorized by the township board.

This Section does not apply to contracts by a township with the federal government.

(Source: P.A. 92-627, eff. 7-11-02.)

Section 4. The Illinois Municipal Code is amended by

changing Sections 4-5-11 and 8-9-1 as follows:

(65 ILCS 5/4-5-11) (from Ch. 24, par. 4-5-11)

Sec. 4-5-11. Except as otherwise provided, all contracts, of whatever character, pertaining to public improvement, or to the maintenance of the public property of a municipality involving an outlay of $10,000 ~~$1,500~~ or more, shall be based upon specifications to be approved by the council. Any work or other public improvement which is not to be paid for in whole or in part by special assessment or special taxation, when the expense thereof will exceed $20,000 ~~$10,000~~, shall be constructed as follows:

(1) By a contract let to the lowest responsible bidder after advertising for bids, in the manner prescribed by ordinance, except that any such contract may be entered into by the proper officers without advertising for bids, if authorized by a vote of 4 of the 5 council members elected; or

(2) In the following manner, if authorized by a vote of 4 of the 5 council members elected: the commissioner of public works or other proper officers to be designated by ordinance, shall superintend and cause to be carried out the construction of the work or other public improvement and shall employ exclusively for the performance of all manual labor thereon, laborers and artisans whom the city or village shall pay by the day or hour, but all material of the value of $20,000 ~~$10,000~~ and upward used in the construction of the work or other public improvement, shall be purchased by contract let to the lowest responsible bidder in the manner to be prescribed by ordinance.

Nothing contained in this section shall apply to any contract by a municipality with the United States of America or any agency thereof.

(Source: P.A. 86-576.)

(65 ILCS 5/8-9-1) (from Ch. 24, par. 8-9-1)

Sec. 8-9-1. In municipalities of less than 500,000 except as otherwise provided in Articles 4 and 5 any work or other

public improvement which is not to be paid for in whole or in part by special assessment or special taxation, when the expense thereof will exceed $20,000 ~~$10,000~~, shall be constructed either (1) by a contract let to the lowest responsible bidder after advertising for bids, in the manner prescribed by ordinance, except that any such contract may be entered into by the proper officers without advertising for bids, if authorized by a vote of two-thirds of all the aldermen or trustees then holding office; or (2) in the following manner, if authorized by a vote of two-thirds of all the aldermen or trustees then holding office, to-wit: the commissioner of public works or other proper officers to be designated by ordinance, shall superintend and cause to be carried out the construction of the work or other public improvement and shall employ exclusively for the performance of all manual labor thereon, laborers and artisans whom the municipality shall pay by the day or hour; and all material of the value of $20,000 ~~$10,000~~ and upward used in the construction of the work or other public improvement, shall be purchased by contract let to the lowest responsible bidder in the manner to be prescribed by ordinance. However, nothing contained in this section shall apply to any contract by a city, village or incorporated town with the federal government or any agency thereof.

In every city which has adopted Division 1 of Article 10, every such laborer or artisan shall be certified by the civil service commission to the commissioner of public works or other proper officers, in accordance with the requirement of that division.

In municipalities of 500,000 or more population the letting of contracts for work or other public improvements of the character described in this section shall be governed by the provisions of Division 10 of this Article 8.

(Source: P.A. 86-576.)

Section 5. The Illinois Local Library Act is amended by

changing Section 5-5 as follows:

(75 ILCS 5/5-5) (from Ch. 81, par. 5-5)

Sec. 5-5. When the directors determine to commence the construction of the building or the remodeling, repairing or improving of an existing library building or the erection of an addition thereto, the purchase of the necessary equipment for such library, or the acquisition of library materials such as books, periodicals, recordings and electronic data storage and retrieval facilities in connection with either the purchase or construction of a new library building or the expansion of an existing library building, they may then revise the plan therefor or adopt a new plan and provide estimates of the costs thereof, and shall, when the cost is in excess of $20,000 ~~$10,000~~, advertise for bids for the construction of the building, or the remodeling, repairing or improving of an existing library building or the erection of an addition thereto, or the purchase of the necessary equipment for such library, or the acquisition of library materials such as books, periodicals, recordings and electronic data storage and retrieval facilities in connection with either the purchase or construction of a new library building or the expansion of an existing library building, and shall let the contract or contracts for the same, when the cost is in excess of $20,000 ~~$10,000~~, to the lowest responsible bidder or bidders and may require from such bidders, such security for the performance of the bids as the board shall determine. The directors may let the contract or contracts to one or more bidders, as they shall determine.

(Source: P.A. 86-405.)

Section 10. The Public Library District Act of 1991 is amended by changing Section 40-45 as follows:

(75 ILCS 16/40-45)

Sec. 40-45. Bids for construction, improvements, or

equipment purchases.

(a) When the trustees determine to commence constructing the building, purchasing a site or a building, remodeling, repairing, or improving an existing library building, erecting an addition to an existing library building, or purchasing the necessary equipment for the library, they may then revise the plan or adopt a new plan and provide estimates of the costs of the revised or new plan.

(b) The board shall, when the cost is in excess of $20,000 ~~$10,000~~, advertise for bids for constructing the building, remodeling, repairing, or improving of an existing library building, erecting an addition to an existing library building, or purchasing the necessary equipment for the library and shall let the contract or contracts for the project, when the cost is in excess of $20,000 ~~$10,000~~, to the lowest responsible bidder or bidders. The board shall require from the bidders security for the performance of the bids determined by the board pursuant to law. The trustees may let the contract or contracts to one or more bidders as they determine.

(Source: P.A. 87-1277.)

Section 15. The Illinois Highway Code is amended by changing Section 6-201.7 as follows:

(605 ILCS 5/6-201.7) (from Ch. 121, par. 6-201.7)

Sec. 6-201.7. Construct, maintain and repair and be responsible for the construction, maintenance and repair of roads within the district, let contracts, employ labor and purchase material and machinery therefor, subject to the limitations provided in this Code. Contracts, labor, machinery, disposal, and incidental expenses related to special services under Section 6-201.21 of this Code constitute maintenance, for purposes of this Section.

Except for professional services, when the cost of construction, materials, supplies, new machinery or equipment exceeds $20,000 ~~$10,000~~, the contract for such construction,

materials, supplies, machinery or equipment shall be let to the lowest responsible bidder after advertising for bids at least once, and at least 10 days prior to the time set for the opening of such bids, in a newspaper published within the township or road district, or, if no newspaper is published within the township or road district then in one published within the county, or, if no newspaper is published within the county then in a newspaper having general circulation within the township or road district, but, in case of an emergency, such contract may be let without advertising for bids. For purposes of this Section "new machinery or equipment" shall be defined as that which has been previously untitled or that which shows fewer than 200 hours on its operating clock and that is accompanied by a new equipment manufacturer's warranty. (Source: P.A. 92-268, eff. 1-1-02; 93-109, eff. 7-8-03; 93-164, eff. 7-10-03; 93-610, eff. 11-18-03; revised 12-4-03.)

Section 99. Effective date. This Act takes effect upon becoming law.

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: 2005-07

SUBJECT: NBIS RULES CHANGES - QUALIFICATIONS FOR BRIDGE INSPECTION PERSONNEL

ISSUED DATE: October 31, 2005

EFFECTIVE DATE: January 13, 2005

This memorandum supersedes Chapter 6 Section 6-3.02 of the Bureau of Local Roads and Streets Manual dated April 2005. This information will be included in future updates of the BLRS Manual.

On January 13, 2005, new rules became effective for the National Bridge Inspection Standards (NBIS), as provided in Title 23, Code of Federal Regulations, Part 650, Subpart C, dated December 14, 2004 and are located at the Federal Highway Administration (FHWA) website at http://www.fhwa.dot.gov/bridge/nbis.htm. The Bureau of Bridges & Structures (BBS) has worked with the FHWA to resolve issues regarding interpretation of the new rules, particularly those involving the qualifications for bridge inspection personnel. In addition, the FHWA has provided Questions & Answers (Q&A) regarding the new NBIS rules on the above website; review of the Q&A is recommended. The Department has developed the information, guidelines and procedures contained in this memorandum, and incorporated into Section 6-3.02 of the Bureau of Local Roads and Streets (BLRS) Manual, for implementation of the new NBIS rules. Please note that for the purposes of the NBIS and this procedure memorandum, licensing as a Structural Engineer in Illinois is accepted in Illinois in lieu of licensing as a Professional Engineer for satisfying NBIS qualification requirements.

PROGRAM MANAGER

Under the new NBIS rules, all state departments of transportation must designate an individual to function as the state “Program Manager” to provide overall leadership for the bridge inspection program. For the Illinois Department of Transportation (IDOT), the FHWA has concurred that the Engineer of Structural Services of the BBS is qualified to function as the state Program Manager (PM). The state PM can delegate program manager responsibilities to qualified individuals as needed to ensure compliance with the NBIS rules. In accordance with this authority to delegate program manager responsibilities, the IDOT BBS Unit Chief of Local Bridges will function under the state PM as the Local Bridge PM to oversee bridge inspections and the reporting of inspection and inventory data for local agency structures.

All local agencies (LAs) having responsibility for a structure in the NBIS must designate a PM to ensure compliance with the NBIS and to provide guidance and management of their bridge inventory. If a LA does not have an employee who is qualified, they may hire a consultant to serve as their PM. If IDOT District personnel perform the NBIS inspections for a LA, the District or Region Bridge Maintenance Engineer (BME) will serve as the LA's PM. The BME should ensure the qualifications and provide oversight of the inspection l for such structures in the District/Region.

PROGRAM MANAGER QUALIFICATIONS

Per NBIS Section 650.309 "Qualifications of personnel" a Program Manager must, at a minimum:

1. Be a registered professional engineer, or have ten years bridge inspection experience; and
2. Successfully complete a FHWA approved comprehensive bridge inspection training course.

Persons assuming the position of PM for an agency subsequent to the effective date of the present NBIS rules, January 13, 2005, must meet the above requirements.

Prior to January 13, 2005, the NBIS rules stated that the "individual in charge" of an agency's bridge safety inspection program was qualified to do so based solely on their licensing as a Professional Engineer. The intent of the new rules is to provide a uniform interpretation of the NBIS and to ensure that a PM has sufficient training and experience to oversee the bridge safety inspections conducted to satisfy NBIS requirements. Persons who were functioning as the "individual in charge" for an agency may continue to perform in the capacity of a PM for that agency when the following conditions are met:

1. Prior to January 13, 2005, the person was a licensed Professional Engineer functioning as an "individual in charge" with responsibility for the collection of bridge inventory data, the performance of bridge inspections and the reporting of inspection information to satisfy NBIS requirements for a designated agency.
2. The person certifies that they are knowledgeable of the requirements of the NBIS and the responsibilities of a PM for ensuring compliance.
3. The person certifies that they are familiar with the Department's "Illinois Highway Information System – Structure Information and Procedure (SIP) Manual", which provides the policies and procedures established by the Department for complying with the regulatory requirements of the NBIS.

Although not mandatory at this time, all licensed Professional Engineers who were functioning as an agency's PM prior to January 13, 2005, but have not had formal training, such as that provided by the 10-day National Highway Institute (NHI) course titled Safety Inspection of In-Service Bridges, are strongly encouraged to attend the 3-day NHI course titled Bridge Inspection Refresher Training, which is a condensed version of the 10-day course.

To comply with the present NBIS rules, the Department must establish a database to track approval of PM qualifications. To assist the Department in

documenting the qualifications and experience of local agency PMs, we have attached form, *PROGRAM MANAGER QUALIFICATIONS;* this form shall be completed and returned to the BBS, Attn: Local Bridge Engineer. Please provide to the BBS by December 31, 2005 a completed form for any person proposed to serve as a local agency PM.

TEAM LEADER

One of the primary concerns with the new rules is the effect they have on the ability of local agencies to provide qualified personnel to function as a bridge inspection Team Leader (TL). The FHWA website provides information at http://www.fhwa.dot.gov/bridge/nbis/index.htm in the answer to Q&A question "Q309-3" that permits local agencies to field bridge inspection TLs essentially as in the past. The guidelines provided by this procedure memorandum are consistent with the FHWA's interpretation of the new NBIS rules for evaluating TL qualifications.

TEAM LEADER QUALIFICATIONS

The qualifications of a potential TL will be first reviewed by the local agency PM who has oversight responsibility for the local agency structures. All candidates should be familiar with the requirements of the NBIS and IDOT's Structure Information and Procedure (SIP) Manual. If the local agency PM deems an individual's qualifications acceptable for functioning as a Team Leader, the local agency PM must forward the documentation of the individual's licensing, training, and experience to the Local Bridge PM, who will review for concurrence. For consultants serving as a local agency TL, the submittal should be made directly to the Local Bridge PM. To assist the Department in documenting the qualifications and experience of local agency TLs, we have attached form, *TEAM LEADER QUALIFICATIONS;* this form shall be completed and returned to the BBS, Attn: Local Bridge Engineer.

Please provide a completed form to the BBS by December 31, 2005 for all personnel that the local agency PM has determined to be qualified to act as a TL for future inspections.

The new NBIS rules provide the following requirements for evaluating engineers and for technical personnel qualifications to function as a TL:

Program Manager: An individual who is approved by the state PM to function as a local agency PM is qualified to function as a Team Leader.

Professional Engineer: An individual who is licensed in Illinois as a Professional Engineer, and has successfully completed a FHWA approved comprehensive bridge inspection training course, is qualified to function as a Team Leader. Unless otherwise approved by the state PM, a comprehensive bridge inspection training course is considered to be the 10 days of training that has been routinely provided by IDOT through a course offered by the NHI. Based on evidence of professional licensing and successful completion of the 10-day training, a Professional Engineer can be accepted by the state PM to function as a TL.

Engineering Personnel: For the purpose of this procedure memorandum, Engineering Personnel are considered to be graduates of an engineering program, approved by the Accreditation Board of Engineering and

Technology, who have passed the "Fundamentals of Engineering" exam (Engineer In Training exam), but are not yet licensed as Professional Engineers. To be considered for assignment as a TL, Engineering Personnel must have successfully completed a FHWA approved bridge inspection training course. Based on the guidelines provided by the FHWA, Engineering Personnel can function as Team Leaders after the PMs have evaluated their training and experience, and determined that they are qualified. The criteria used for the evaluation of experience is the same as that provided below for Technical Personnel, except the individual is required to have a total of two years of bridge related experience accumulated over the course of their career, rather than five years, and 12 months of bridge inspection experience, rather than 30 months.

Technical Personnel: For the purpose of this memorandum, Technical Personnel are considered to be individuals functioning within the local agency as 1) "Engineering Technicians" or, 2) "Civil Engineers" who are not licensed professional engineers and have not passed the "Fundamentals of Engineering" exam (Engineer In Training exam). Technical Personnel must have successfully completed a FHWA approved bridge inspection training course to function as a Team Leader. Based on the guidelines provided by the FHWA, Technical Personnel can function as Team Leaders after the Program Managers have evaluated their training and experience and determined that they are qualified based on one of the following:

Criteria #1: An individual having accumulated at least five years of bridge related experience over the course of their career through the performance of NBIS bridge safety inspections, bridge design, bridge maintenance, or bridge construction activities, with more than 30 months of the accumulated bridge related experience obtained through the performance of NBIS bridge safety inspections, is qualified to function as a Team Leader. Technical Personnel meeting these requirements have the "desired minimum bridge inspection experience level" preferred by the FHWA for acceptance as Team Leader, and in-depth evaluation of the individual's experience by the Program Manager to verify qualifications is not required. However, the performance of the Team Leader is subject to review by the Program Manager to ensure the quality of inspections, and assignments must be consistent with the experience of the individual.

Criteria #2: An individual having accumulated at least five years of bridge related experience over the course of their career through the performance of NBIS bridge safety inspections, bridge design, bridge maintenance, or bridge construction activities, with more than 30 months of the accumulated bridge related experience obtained through the performance of various bridge inspections activities, is qualified to function as a Team Leader, if the Program Manager has evaluated and approved the potential Team Leader's overall experience as acceptable. A portion of the individual's bridge inspection experience must have been acquired through the performance of NBIS bridge safety inspections with the remainder of the individual's bridge inspection experience derived from inspections associated with bridge design, bridge construction inspections, and bridge maintenance inspections. When evaluating an individual's experience, the Program Manager must, at a minimum, consider the factors listed under "Evaluation of Experience Criteria" provided in this memorandum.

Criteria #3: An individual having less than five years of bridge related experience accumulated over the course of their career through the performance of NBIS bridge safety inspections, bridge design, bridge maintenance, or bridge construction activities, with a portion of their accumulated bridge related experience obtained through the performance of NBIS bridge safety inspections, is qualified to function as a Team Leader only if both the state Program Manager and the FHWA concur that the individual's experience is acceptable. This criterion should only apply to special situations involving highly qualified individuals performing NBIS bridge safety inspections that require specialized knowledge or training on unusual or complex bridges.

Note that in *all* cases, a portion of the experience accumulated by Technical Personnel must have been derived from the performance of NBIS safety inspections in order to be considered qualified to function as a Team Leader.

Evaluation of Experience Criteria: When evaluating the experience of Technical Personnel to function as a Team Leader, the FHWA has indicated that the Program Manager must consider the following:

1. The relevance of the individual's actual experience (i.e., has the experience that was not acquired directly through the performance of NBIS safety inspections enabled the individual to develop the skills needed to properly lead a bridge safety inspection team?).
2. The individual's exposure to the problems or deficiencies common in the types of bridges being inspected by the individual.
3. The complexity of the structures being inspected in comparison to the knowledge and skills that the individual has gained through their experience.
4. The individual's understanding of specific data collection needs and requirements.
5. The individual's demonstrated ability, through a formal certification program, to lead bridge safety inspections.
6. The level of oversight and supervision under which the individual will function as Team Leader.

Item number "5" of the "Evaluation of Experience Criteria", refers to a "formal certification program". In order to track the experience level of bridge inspectors, to document the evaluation and approval of experience to function as a Program Manager or as a Team Leader and to establish categories of certification for various bridge types, the BBS will develop a database to track and document bridge inspection experience, as well as the certification process to be followed by Program Managers. The BBS will notify applicants of the determination of their application, and coordinate the development of the database and certification process with the local agencies, through the Bureau of Local Roads and Streets.

NHI CLASS SCHEDULE

To assist the local agencies and consultants in achieving the required NBIS training, the following is the schedule for the NBIS inspection course dates currently scheduled in Illinois for next year:

3 Day - Bridge Inspection Refresher Training.
January 10 – 12, 2006 in Springfield

Fracture Critical.
February 21 – 24, 2006 in Springfield

Note: This class is not required, but is recommended, for individuals performing Fracture Critical Inspections.

10 Day - Safety Inspection of In-Service Bridges (2 classes).
February 27 – March 10, 2006 in Springfield
March 20 – 31, 2006 in Schaumburg

The contact at IDOT for enrollment is Brad Risinger; he may be contacted at:

Brad Risinger, Technical Training Manager
Training and Educational Development
phone: (217)782-3708; e-mail: risingerbd@dot.il.gov

We encourage interested parties to enroll as soon as possible, as space will be limited. Additional class locations in other states may be found at the following site: http://www.nhi.fhwa.dot.gov/schedule.asp.

If you have any questions regarding this memorandum, please contact Mr. Jayme Schiff at 217/785-8748 or schiffjf@dot.il.gov.

Very truly yours,

Ralph E. Anderson

Ralph E. Anderson, P.E., S.E.
Engineer of Bridges and Structures

Charles J. Ingersoll

Charles J. Ingersoll, P.E.
Engineer of Local Roads and Streets

JFS/

cc FHWA, Illinois Division/Attn: Dan Brydl
Illinois Department of Natural Resources/Attn: Dale W. Brockamp
Illinois State Toll Highway Authority
Township Officials of Illinois/Attn: Bryan Smith
Township Highway Commissioners of Illinois/Attn: Dale Schultz

Attachments

PROGRAM MANAGER QUALIFICATIONS

The National Bridge Inspection Standards (NBIS) defines Program Manager as "the individual in charge of the program, that has been assigned or delegated the duties and responsibilities for bridge inspection, reporting and inventory. The program manager provides overall leadership and is available to inspection team leaders to provide guidance". The person designated on this form is being presented for concurrence by the State Program Manager to function as the Program Manager for the designated organizational unit.

Name: _____ Date: _____

Present Position Classification/Title: _____

Supervising operations for compliance with NBIS requirements in (check one of the following):

____ IDOT (Region No. ____ District No. ____)

____ County (name of county _____)

____ Municipality (name of municipality _____)

____ other (explanation _____)

List Profession Licenses held in Illinois (provide license type and license no.)

_____

_____

Documentation of Comprehensive Bridge Inspection Training

Training provided Through: _____

Course Title: _____

Course Number (if applicable):_____

Hours of Instruction: _____

Location of Training (city & state): _____

Date of Training: _____

Persons who are licensed as a professional or structural engineer in Illinois and have successfully completed a comprehensive bridge inspection course approved by the Federal Highway Administration are not required to complete the remainder of this form, except for signature and contact information. Persons who have not successfully completed a comprehensive bridge inspection training course, or who are not licensed as a professional or structural engineer in Illinois, must provide the following information regarding experience:

Prior Experience as a Program Manager

Prior to January 13, 2005, the effective date of the current rules for the National Bridge Inspection Standards, had you been functioning as a Program Manager for a governmental unit: _____ YES _____ NO

If Yes, list the governmental organizations for which you served as Program Manager and the length of time served in that capacity prior to January 13, 2005:

Organization _____ Months of Service _____

Organization _____ Months of Service _____

Organization _____ Months of Service _____

Bridge Inspection Related Experience

Performance of NBIS Safety Inspections ---------- _____ Months

Inspections Associated with Bridge Construction --------- _____ Months

Inspections to Determine Maintenance Needs ---------- _____ Months

Field Inspections Associated with Bridge Design --------- _____ Months

Other Bridge Related Inspection Experience (show types):

_____ -------- _____ Months

Comments _____

_____

General Bridge Related Experience (not inspection related)

Bridge Construction Activities ---------- _____ Months

Bridge Maintenance Activities ---------- _____ Months

Bridge Design Activities ---------- _____ Months

Other Bridge Related Activities (show types):

_____ -------- _____ Months

Comments _____

_____

Other Engineering/Technical Experience

List activities that are not directly bridge related, but can be considered as beneficial in developing the skills required for a Team Leader:

1) _____ ------ _____ Months

2) _____ ------ _____ Months

3) _____ ------ _____ Months

Comments _____

_____

Contact Information

If you are a consulting engineer requesting concurrence to function as a Program Manager for the purpose of overseeing the inspections for bridges in Illinois that are subject to the requirements of the National Bridge Inspection Standards, contact information must be provided:

Name:

Company Name:

Business Address: _____

State _____ Zip Code _____

Business Phone(s): _____

Business Fax: _____

Signatures

Candidate for Program Manager_____ _____ Date _____
(signature)

Concurrence by State Program Manager _____ Date _____
(signature)

TEAM LEADER QUALIFICATIONS

Inspector Name: _____Present Position Classification: _____

List Professional Licenses held in Illinois (provide license type and license no.)

_____

Comprehensive Bridge Inspection Training

Training provided Through: _____

Course Title: _____

Course Number (if applicable):_____

Hours of Instruction: _____

Location of Training (city & state): _____

Date of Training: _____

Bridge Inspection Related Experience

Performance of NBIS Safety Inspections ---------- _____ Months

Inspections Associated with Bridge Construction --------- _____ Months

Inspections to Determine Maintenance Needs ---------- _____ Months

Field Inspections Associated with Bridge Design --------- _____ Months

Other Bridge Related Inspection Experience (show types):

_____ -------- _____ Months

Comments _____

_____

General Bridge Related Experience (not inspection related)

Bridge Construction Activities ---------- _____ Months

Bridge Maintenance Activities ---------- _____ Months

Bridge Design Activities ---------- _____ Months

Other Bridge Related Activities (show types):

_____ -------- _____ Months

Comments _____

_____

Other Engineering/Technical Experience

List activities that are not directly bridge related, but can be considered as beneficial in developing the skills required for a Team Leader (use attachment if necessary):

1) _____ ------ _____ Months

2) _____ ------ _____ Months

3) _____ ------ _____ Months

Comments _____

_____

Recommended by Region or LA Program Manager _____ Date _____
(signature)

Concurrence by State Program Manager _____ Date _____
(signature)

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: 2005-08

SUBJECT: HOT MIX ASPHALT OVERLAY POLICY

ISSUED DATE: December 16, 2005

EFFECTIVE DATE: December 31, 2005

This memorandum replaces Section 37-8 of the Bureau of Local Roads and Streets Manual.

When the Bureau of Local Roads & Streets Manual was issued in April 2005, the manual did not provide local agencies with a hot mix asphalt (HMA) overlay design procedure. Therefore, local agencies still had to use the overlay design procedures contained in the Federal-Aid Procedures for Local Highway Improvements or the Administrative Policies Manual. These manual allowed the "Modified AASHTO" design procedure. This procedure assigns coefficients to the various pavement layers to determine the pavement thickness for a projected traffic volume. These coefficients have not been reviewed since the department switched to a policy overlay procedure in the mid 1980's.

The new local HMA overlay policy is separated into two types: Functional and Structural. Functional overlays are used to improve the ride, address safety, or prolong the life of the pavement. Local agencies are not required to perform an overlay design procedure for functional overlays; however, minimum lift thicknesses and required overlay thicknesses must be met. Structural overlays are used to improve the load carrying capacity of a pavement and a pavement design must be performed.

The modified AASHTO design procedure is still allowed for HMA overlays; however, the coefficients may not equate to modern materials and construction processes. Therefore, local agencies may want to use alternative design procedures; however, the District Bureau of Local Roads must approve the final design procedure and thickness.

Please contact Kevin Burke of the Bureau of Local Roads & Streets at (217) 785-5048 or BurkeK@dot.il.gov with any questions.

Charles J. Ingersoll

Engineer of Local Roads and Streets

KB/kb

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: 2005-09

SUBJECT: DISADVANTAGED BUSINESS ENTERPRISE PAYMENT REPORTING

ISSUED DATE: December 21, 2005

EFFECTIVE DATE: December 31, 2005

This memorandum revises Sections 5-6 and 24-2 of the Bureau of Local Roads and Streets Manual.

The Bureau of Local Roads and Streets has been asked to report actual DBE accomplishments to FHWA. The bureau will begin identifying the actual amount paid to each consultant/contractor associated with all federally funded engineering and locally let construction projects.

Completion of a new form will be required for all federally funded engineering and locally let construction projects which are initiated after January 1, 2006. The new form BLR 05613 for engineering and the new form BC 2115 for local lettings must be included. Form SBE 2115 will continue to be a required form for local lettings.

These forms will need to be completed by the prime consultant/contractor and submitted to the respective district office upon completion of the project. Form BLR 05613 should then be forwarded to the central bureau along with the final invoice. Central bureau staff will then enter the data into the Agreement Status Database. District personnel should process the BC 2115 and the SBE 2115 in the same manner as they have processed SBE 2115 in the past.

Attached are copies of BLR 05613, BC 2115, and SBE 2115. BC 2115 can be found under “Doing Business” on the IDOT webpage and will be available as a web form only. New references to these forms are included in the above-noted sections of the BLRS Manual.

Charles J. Ingersoll

Engineer of Local Roads and Streets

MJL/mjl

Illinois Department of Transportation

Engineering Payment Report

Prime Consultant

Name _____
Address _____
Telephone _____
TIN Number _____

Project Information

Local Agency _____
Section Number _____
Project Number _____
Job Number _____

This form is to verify the amount paid to the Sub-consultant on the above captioned contract. Under penalty of law for perjury or falsification, the undersigned certifies that work was executed by the Sub-consultant for the amount listed below.

Sub-Consultant Name	TIN Number	Actual Payment from Prime
	Sub-Consultant Total:	
	Prime Consultant Total:	
	Total for all Work Completed:	

_____ Signature and title of Prime Consultant

_____ Date

Note: The Department of Transportation is requesting disclosure of information that is necessary to accomplish the statutory purpose as outlined under state and federal law. Disclosure of this information is REQUIRED and shall be deemed as concurring with the payment amount specified above.

Illinois Department of Transportation

Subcontractor Payment Agreement
Non-DBE

Prime Contractor

Name:

Address:

City, State, Zip 00000-0000

Phone Number:

TIN Number:

Project Information

Contract Number:

Section Number:

County:

This form is to verify the amount paid to the Subcontractor on the above captioned contract. Under penalty of law for perjury or falsification, the undersigned certifies that work was executed by the Subcontractor for the amount listed below.

Subcontractor's Name	TIN Number	Actual Payment from Prime
		$0.00
	Total $ for Work Completed	$0.00

Signature and Title

Date

The Department of Transportation is requesting disclosure of information that is necessary to accomplish the statutory requirements as outlined under state (CFR 49.26.11) and federal law. Disclosure of this information is REQUIRED.

BC 2115

Illinois Department of Transportation

DBE Payment Agreement

Subcontractor

Name _____
Address _____
Telephone _____

Prime Contractor

Name _____
Address _____
Telephone _____

Subject

Contract number _____
Amount originally committed _____
Section _____
County _____

This agreement is to verify the work completed and the amount paid to the DBE Subcontractor on the above captioned contract. Under penalty of law for perjury or falsification, the undersigned certifies that the work reported herein was executed by the DBE, that the DBE actually performed, managed and supervised the work and that the work reported herein conforms to the work reported in the approved Utilization Plan together with any amendments approved by the Department.

Pay Item No.	Description	Quantity	Unit of Measure	Unit Price	Total
				Total $ Amount for Work Completed	

Partial Pay Item(s)
For any of the above items which are partial pay items, specifically describe the work and subcontract dollar amount.

Back Charges (if any; provide support documentation:) _____

Bond charge by prime _____
Equipment rental from prime _____
Material used paid by prime _____
Other (explain and provide documentation) _____

Payment Received _____
Balance Due (if any) _____
Retainage due pending final payment _____

_____ Signature and title of DBE Subcontractor

_____ Date

_____ Signature and title of Prime Contractor

_____ Date

Note: Submittal of this agreement shall be deemed as concurring with the payment amount specified above.

The Department of Transportation is requesting disclosure of information that is necessary to accomplish the statutory purpose as outlined under the state and federal law. Disclosure of this information is **REQUIRED**. Failure to provide any information will result in the contract not being awarded. This form has been approved by the State Forms Management Center.

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: 2005-10

SUBJECT: AMENDMENT TO FEDERAL-AID AGREEMENT

ISSUED DATE: December 21, 2005

EFFECTIVE DATE: December 31, 2005

This memorandum revises Section 5-3 of the Bureau of Local Roads and Streets Manual.

The bureau has created a new form BLR 05311 Local Agency Amendment for Federal Participation for cases where the original division of cost requires modification. All requirements of Chapter 5 "Joint Agreements", 5-3.01(c) and 5-3.01(d) should be addressed.

Utilization of this form will allow amending federal joint funding agreements to become uniform and accelerate the approval process. With the implementation of this new form we hope to eliminate past confusion with the amendment process.

Attached you will find a copy of the new BLR 05311. You will also find reference to this addition in the on-line BLRS Manual in the above-noted section of the manual.

Charles J. Ingersoll

Engineer of Local Roads and Streets

MJL/mjl

Illinois Department of Transportation	Local Agency	State Contract	Day Labor	Local Contract	RR Force Account
Local Agency Amendment # for Federal Participation	Section	Fund Type		ITEP Number	

Construction		Engineering		Right-of-Way	
Job Number	Project Number	Job Number	Project Number	Job Number	Project Number

This Amendment is made and entered into between the above local agency hereinafter referred to as the "**LA**" and the state of Illinois, acting by and through its Department of Transportation, hereinafter referred to as "**STATE**".

BE IT MUTUALLY AGREED that all remaining provisions of the original agreement not altered by this amendment shall remain in full force and effect and the amendment shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

Amended Division of Cost

Type of Work	**FHWA**	**%**	**STATE**	**%**	**LA**	**%**	**Total**
Participating Construction		( )		( )		( )	
Non-Participating Construction		( )		( )		( )	
Preliminary Engineering		( )		( )		( )	
Construction Engineering		( )		( )		( )	
Right of Way		( )		( )		( )	
Railroads		( )		( )		( )	
Utilities		( )		( )		( )	
TOTAL	$		$		$		$

NOTE: The costs shown in the Division of Cost table are approximate and subject to change. The final **LA** share is dependent on the final Federal and State participation. The actual costs will be used in the final division of cost for billing and reimbursment.

If funding is not a percentage of the total, place an asterisk in the space provided for the percentage and explain above.

The Federal share of construction engineering may not exceed 15% of the Federal share of the final construction cost.

APPROVED

Name _____

Title _____
County Board Chairperson/Mayor/Village President/etc.

Signature _____

Date _____

TIN Number _____

NOTE: If signature is by an APPOINTED official, a resolution authorizing said appointed official to execute this agreement is required.

APPROVED

State of Illinois
Department of Transportation

_____
Timothy W. Martin, Secretary

Date _____

By: _____
Secretary's Delegate – , Director of Highways

_____
Ellen Schanzle-Haskins, Chief Counsel

_____
Ann Sundeen, Director of Finance and Administration

BLR 05311 (Eff. 01/06)

Printed on 12/28/2005 10:10:27 AM

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2006-01

SUBJECT: APPRENTICESHIP AND TRAINING PROGRAM FOR LOCAL LET MATERIAL PROPOSALS

ISSUED DATE: March 28, 2006

EFFECTIVE DATE: April 1, 2006

This memorandum replaces Chapter 12 of the Bureau of Local Roads and Streets Manual dated January 2006.

Procedure Memorandum 2005-03 issued on June 22, 2005 established responsible bidder requirements for local let contract proposals. The Office of Chief Counsel has determined that these requirements also apply to local let material proposals that require the contractor to perform work at the jobsite. Therefore, all material proposals that have not been advertised by April 1, 2006 will require all prospective bidders to complete the apprenticeship and training certification if work is to be performed by the contractor or subcontractors.

BLR 12240 has been revised to add an apprenticeship and training certification statement. The awarding local agency will need to require this certification if work is being performed by the contractor on a material proposals and denote this requirement in the *Notice to Contractors Bulletin*. All prospective bidders must submit this completed statement with their bid. If a bidder's certification statement is not completed their bid should be discarded. This statement does not apply to federal aid projects.

As a general guideline, local agencies should require apprenticeship and training certification if prevailing wage rates are required. The certification is not required if material is being delivered to stockpile or the local agency is transporting the material to the jobsite. If you are unsure if the certification is required, please contact the Office of Chief Counsel at (217) 782-0692.

Charles J. Ingersoll
Engineer of Local Roads and Streets

Chief Counsel

Attachments

KB/kb

Illinois Department of Transportation

Notice of Material Letting

1. Sealed proposals will be received in the office of the _____ until _____ o'clock _____ M., _____ (Date) for furnishing materials required in the construction/maintenance of Section _____ County _____ Municipality _____ Road District _____ and at that time publicly opened and read.
2. Proposals shall be submitted on forms furnished by the Local Agency which may be obtained at the office of _____ and shall be enclosed in an envelope endorsed "Material Proposal, Section _____ ".
3. The right is reserved to waive technicalities and to reject any or all proposals.
4. **Proposal Guaranty**. A proposal guaranty in the proper amount, as specified in BLRS Special Provision for Bidding Requirements and Conditions for Material Proposals, will be required. Bid bonds ☐ will ☐ will not be allowed as proposal guaranties.
5. **Contract Bond**. The successful bidder at the time of execution of the contract ☐ will ☐ will not be required to deposit a contract bond for the full amount of the award. When a contract bond is not required, the proposal guaranty check will be held in lieu thereof. Failure on the part of the contractor to deliver the material within the time specified or to do the work specified herein will be considered just cause to forfeit his surety as provided in Article 108.10 of the Standard Specifications.

By Order of _____
(Awarding Authority)

_____ Date

_____ (County Engineer/Superintendent of Highways/Municipal Clerk)

Material Proposal

To _____
(Awarding Authority)

If this bid is accepted within 45 days from date of opening, the undersigned agrees to furnish any or all of the materials, at the quoted unit prices, subject to the following:

1. It is understood and agreed that the "Standard Specifications for Road and Bridge Construction" adopted _____ and the "Supplemental Specifications and Recurring Special Provisions", adopted, _____ prepared by the Department of Transportation, shall govern insofar as they may be applied and insofar as they do not conflict with the special provisions and supplemental specifications attached hereto.
2. It is understood that quantities listed are approximate only and that they may be increased or decreased as may be needed to properly complete the improvement within its present limits or extensions thereto, at the unit price stated and that bids will be compared on the basis of the total price bid for each group.
3. Delivery in total or partial shipments as ordered shall be made within the time specified in the special provisions or by the acceptance at the point and in the manner specified in the "Schedule of Prices". If delivery on the job site is specified, it shall mean any place or places on the road designated by the awarding authority or its authorized representative.
4. The contractor and/or local agency performing the actual material placement operations shall be responsible for providing work zone traffic control, unless otherwise specified in this proposal. Such devices shall meet the requirements of and be installed in accordance with applicable provisions of the "Illinois Manual on Uniform Traffic Control Devices" and any referenced Illinois Highway Standards.
5. Each pay item should have a unit price and a total price. If no total price is shown or if there is a discrepancy between the product of the unit price multiplied by the quantity, the unit price shall govern. If a unit price is omitted, the total price will be divided by the quantity in order to establish a unit price.
6. A bid will be declared unacceptable if neither a unit price nor a total price is shown.

7. **Certified Apprenticeship and Training Program**. All contractors ☐ will ☐ will not be required complete the following certification:

In accordance with the provisions of Section 30-22 (6) of the Illinois Procurement Code, the bidder certifies that it is a participant, either as an individual or as part of a group program, in the approved apprenticeship and training programs applicable to each type of work or craft that the bidder will perform with its own forces. The bidder further certifies for work that will be performed by subcontract that each of its subcontractors submitted for approval either (a) is, at the time of such bid, participating in an approved, applicable apprenticeship and training program; or (b) will, prior to commencement of performance of work pursuant to this contract, begin participation in an approved apprenticeship and training program applicable to the work of the subcontract. The Department, at any time before or after award, may require the production of a copy of each applicable Certificate of Registration issued by the United States Department of Labor evidencing such participation by the contractor and any or all of its subcontractors. Applicable apprenticeship and training programs are those that have been approved and registered with the United States Department of Labor. The bidder shall list in the space below, the official name of the program sponsor holding the Certificate of Registration for all of the types of work or crafts in which the bidder is a participant and that will be performed with the bidder's forces. Types of work or craft work that will be subcontracted shall be included and listed as subcontract work. The list shall also indicate any type of work or craft job category that does not have an applicable apprenticeship or training program. **The bidder is responsible for making a complete report and shall make certain that each type of work or craft job category that will be utilized on the project is accounted for and listed.**

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

The requirements of this certification and disclosure are a material part of the contract, and the contractor shall require this certification provision to be included in all approved subcontracts. In order to fulfill this requirement, it shall not be necessary that an applicable program sponsor be currently taking or that it will take applications for apprenticeship, training or employment during the performance of the work of this contract.

Discounts will be allowed for payment as follows: _____ % _____ calendar days: _____ % _____ calendar days.
Discounts will not be considered in determining the low bidder.

Bidder _____ By _____
(Signature)

Address _____ Title _____

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BDE PROCEDURE MEMORANDUM

NUMBER: 49-06

BLRS PROCEDURE MEMORANDUM

NUMBER: 2006-02

SUBJECT: Guidance for Determining *De Minimis* Impacts to Section 4(f) Resources

DATE: April 21, 2006

Section 6009(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, amended existing Section 4(f) legislation at Section 138 of Title 23 and Section 303 of Title 49, United States Code. This is a revision of Section 4(f) legislation that is meant to simplify the processing and approval of projects that have only *de minimis* (minimal) impacts on lands protected by Section 4(f). The changes presented below will be incorporated in a future update of the BDE Manual.

Background

This revision provides that once the consideration of Section 4(f) impact avoidance, minimization, and mitigation or enhancement measures has occurred, the U.S. Department of Transportation (DOT) may determine that a transportation use of Section 4(f) property will result in a *de minimis* impact on that property. The analysis of avoidance alternatives will not be required in order to complete the Section 4(f) evaluation process. Refer to the attached guidance for additional information.

Applicability

The procedures in this memorandum are applicable to all Federally funded State and Local Roads highway projects.

Contact the BDE at 217-782-7526 (for State projects) or BLRS at 217-782-3805 (for Local Roads projects) if there are questions concerning this information.

Engineer of Design and Environment Michael L. Kline

Engineer of Local Roads and Streets Charles J. Dragerscll

Attachment

U.S. Department of Transportation
Federal Highway Administration

Memorandum

Sent Via E-mail

Subject: **ACTION**: Guidance for Determining *De Minimis* Impacts to Section 4(f) Resources

Date: December 13, 2005

Original Signed by:
From: Cynthia J. Burbank
Associate Administrator, Planning, Environment and Realty, FHWA
Brigid Hynes-Cherin, Associate Administrator for Planning and Environment, FTA

Reply to Attn. of:
HEPE

To: FHWA Division Administrators
FTA Regional Administrators

Section 6009(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, amended existing Section 4(f) legislation at Section 138 of Title 23 and Section 303 of Title 49, United States Code, to simplify the processing and approval of projects that have only *de minimis* impacts on lands protected by Section 4(f). This is the first substantive revision of Section 4(f) legislation since passage of the U.S. Department of Transportation Act of 1966. This revision provides that once the U.S. Department of Transportation (DOT) determines that a transportation use of Section 4(f) property, after consideration of any impact avoidance, minimization, and mitigation or enhancement measures, results in a *de minimis* impact on that property, an analysis of avoidance alternatives is not required and the Section 4(f) evaluation process is complete.

Section 6009(c) of SAFETEA-LU requires the U.S. DOT to conduct a study and issue a report on the implementation of the new Section 4(f) provisions. The study will include evaluation of: 1) the implementation processes developed and the resulting efficiencies; 2) the post-construction effectiveness of any impact mitigation and avoidance commitments adopted as part of the projects; and 3) the number of projects determined to have *de minimis* impacts, including information on the location, size, and cost of the projects. The initial study and report will address the first three years of implementation. The Federal Highway Administration (FHWA) Division and Federal Transit Administration (FTA) Regional Offices should maintain a record of the projects for which *de minimis* findings were made and track the progress of those projects in order to facilitate the future evaluation of the post construction effectiveness of any commitments of mitigation made as part of the *de minimis* finding. Additional guidance and information regarding the study and report will be provided in the future.

BUCKLE UP AMERICA

Questions and Answers on the Application of the Section 4(f) *De Minimis* Impact Criteria

Introduction

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) amendment to the Section 4(f) requirements allows the U.S. Department of Transportation (DOT) to determine that certain uses of Section 4(f) land will have no adverse effect on the protected resource. When this is the case, and the responsible official(s) with jurisdiction[1] over the resource agrees in writing, compliance with Section 4(f) is greatly simplified, as explained in this guidance.

The *de minimis*[2] impact criteria and associated determination requirements specified in Section 6009(a) of SAFETEA-LU[3] are different for historic sites than for parks, recreation areas, and wildlife and waterfowl refuges. *De minimis* impacts related to historic sites are defined as the determination of either "no adverse effect" or "no historic properties affected" in compliance with Section 106 of the National Historic Preservation Act (NHPA)[4]. *De minimis* impacts on publicly owned parks, recreation areas, and wildlife and waterfowl refuges are defined as those that do not "adversely affect the activities, features and attributes" of the Section 4(f) resource.

The following questions and answers provide information and guidance on the process of determining *de minimis* impacts of highway and transit projects that propose the use of Section 4(f) property. A diagram of the determination process for parks, recreation areas, and wildlife and waterfowl refuges is included for illustration following the questions and answers.

1. General Information Regarding Application of the *De Minimis* Impact Criteria.

Question A. Are *de minimis* impact findings limited to any particular type of project or National Environmental Policy Act (NEPA) document?

Answer: No. The *de minimis* impact criteria may be applied to any project, as appropriate, regardless of the type of environmental document required by the NEPA process as described in the FHWA and FTA Environmental Impact and Related Procedures[5].

Question B. What effect does the *de minimis* impact provision have on the application of the existing FHWA nationwide programmatic evaluations?

Answer: Existing FHWA programmatic Section 4(f) evaluations[6] remain in effect and may be applied, as appropriate, to the use of Section 4(f) property by a highway project. However, since FTA does not have its own or share FHWA's programmatic evaluations, the programmatic option applies only to FHWA projects and to multimodal projects in which FHWA and FTA are co-lead agencies.

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[1] "Official(s) with jurisdiction" means the SHPO, THPO and ACHP, if participating in the consultation, for historic resources, and is defined in Question 3C for other Section 4(f) resources.

[2] Black's Law Dictionary (8th ed. 1999) defines de minimis as 1. Trifling, minimal. 2. (Of a fact or thing) so insignificant that a court may overlook it in deciding an issue or case. 3. *De Minimis Non Curat Lex, The law does not concern itself with trifles.*

[3] Section 6009 amends 49 U.S.C. § 303 and 23 U.S.C § 138; see specifically 49 U.S.C. § 303(d) and 23 U.S.C §138(b)

[4] 16 U.S.C. 470f, with implementing regulation at 36 CFR part 800

[5] 23 CFR 771.115

[6] http://environment.fhwa.dot.gov/projdev/4fnspeval.htm

Question C. Is it appropriate to apply the *de minimis* impact criteria to projects that are already in the project development process?

Answer: Yes. The Section 4(f) statutory amendment was effective immediately upon enactment of SAFETEA-LU and the *de minimis* impact criteria may be applied to projects currently in the project development process, where the requirements of a *de minimis* impact finding have been or will be satisfied. The decision to apply the *de minimis* impact criteria to those projects is a matter of agency choice and professional judgment. The factors that should be considered in decisions to apply the *de minimis* impact criteria to projects in the "pipeline" include, but are not limited to: 1) the stage of the NEPA or project development process the project is in; 2) the benefits to the project delivery schedule realized by applying the *de minimis* impact criteria; 3) the impact to the project delivery schedule due to other agency (e.g., SHPO and/or THPO and park authorities) or public concern; 4) the overall benefit to the project realized by the reevaluation of a more viable alternative through a *de minimis* impact finding; 5) the degree and type of controversy and/or public scrutiny related to the project; and 6) the resulting benefits realized to a Section 4(f) resource by the *de minimis* impact finding.

While the *de minimis* impact criteria may be applied to any project meeting the specified requirements, Section 6009(a) of SAFETEA-LU does not require the U.S. DOT to re-open decisions already made concerning Section 4(f) impacts of individual projects. Project sponsors are encouraged to examine projects currently in the environmental process to see if any would benefit from application of the *de minimis* impact criteria, but the decision must be made on a case-by-case basis.

Question D. Can a *de minimis* impact finding be made for a project as a whole, where multiple Section 4(f) resources are involved?

Answer: No. Where multiple Section 4(f) resources are present in the study area and potentially used by a transportation project, *de minimis* impact findings must be made for the individual Section 4(f) resources. The impacts to Section 4(f) resources and any impact avoidance, minimization, and mitigation or enhancement measures must be considered on an individual resource basis and *de minimis* impact findings made individually for each Section 4(f) resource. However, when there are multiple resources for which *de minimis* impact findings are appropriate, the procedural requirements of Section 4(f) can and should be completed in a single process, document and circulation, so long as it is clear that distinct determinations are being made. Also in these cases, the written concurrence of the official(s) with jurisdiction may be provided for the project as a whole, so as long as the *de minimis* impacts findings have been made on an individual resource basis.

Question E. What role does mitigation play in the *de minimis* impact finding?

Answer: The *de minimis* impact finding is based on the degree or level of impact including any avoidance, minimization, and mitigation or enhancement measures that are included in the project to address the Section 4(f) use. The expected positive effects of any measures included in a project to mitigate the adverse effects of a Section 4(f) resource must be taken into account when determining whether the impact to the Section 4(f) resource is *de minimis*. The purpose of taking such measures into account is to encourage the incorporation of Section 4(f) protective measures as part of the project[7]. *De minimis* impact findings must be expressly conditioned upon the implementation of any measures that were relied upon to reduce the impact to a *de minimis* level. The implementation of such measures will become the responsibility of the project sponsor, with FHWA or FTA oversight[8].

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[7] Conference Report of the Committee of Conference on H.R. 3, Report 109-203, page 1057.

[8] 23 CFR 771.109(b)

Question F. How should the *de minimis* impacts to Section 4(f) resources be considered in the alternative selection process when all feasible and prudent alternatives result in Section 4(f) use?

Answer: For those situations in which multiple Section 4(f) resources will be used by a project and it has been determined that no feasible and prudent avoidance alternatives exist, the *de minimis* impacts of Section 4(f) resources must be factored into the analysis to determine which alternative results in the least overall harm as described in the FHWA Section 4(f) Policy Paper[9].

In most cases, the *de minimis* impacts will have little or no influence on the determination of overall harm because the activities, features and attributes of the Section 4(f) resources will not be adversely affected. Also, because potential adverse impacts to the Section 4(f) resources will be completely mitigated or enhanced by inclusion of such measures as part of the project in making *de minimis* impact findings, the Section 4(f) benefit should be included in the least harm analysis. Where it is not clear which alternative results in the least overall harm, consultation with the FHWA or FTA Headquarters or the FHWA or FTA Office of the Chief Counsel is recommended.

Question G. Can a *de minimis* impact finding be made for a "constructive use" of Section 4(f) property?

Answer: No. A *de minimis* impact finding can only be made where the transportation use would not adversely affect the activities, features, and attributes that qualify a property for protection under Section 4(f). Constructive use, by definition, involves impacts to a Section 4(f) resource such that the protected activities, features, and attributes would be substantially impaired[10]. Therefore, a *de minimis* impact finding would not be appropriate where there is a constructive use. Furthermore, if a potential constructive use can be reduced below a substantial impairment, with the inclusion of mitigation measures, then Section 4(f) would not apply.

Question H. Can a *de minimis* impact finding be made for a "temporary occupancy" of Section 4(f) property?

Answer: Yes. As long as the *de minimis* impact criteria are met, the impacts associated with a temporary occupancy of a Section 4(f) resource could be determined to be *de minimis*. It should be noted, however, that Section 4(f) does not apply to the temporary occupancy of Section 4(f) property when the conditions set forth in the FHWA and FTA Environmental Impact and Related Procedures[11] are satisfied. Therefore, application of the *de minimis* impact provision for these situations should only be considered when the project does not meet the temporary occupancy exception criteria.

Question I. Who makes the *de minimis* impact findings?

Answer: The FHWA Division Administrator or FTA Regional Administrator makes the *de minimis* impact findings. In the determination, FHWA or FTA shall consider any impact avoidance, minimization, and mitigation or enhancement measures that are included in the project to address the impacts and adverse effects on the Section 4(f) resource. The FHWA Division Administrator or FTA Regional Administrator must consider the facts supporting the determination of a *de minimis* impact, the record that was compiled in the coordination that must precede the determination of *de minimis* impact, the concurrence of the official(s) with jurisdiction, and use his or her own best judgment in making the *de minimis* impact finding. It is ultimately the

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[9] March 1, 2005, pages 6, 7; http://www.environment.fhwa.dot.gov/projdev/4fpolicy.htm

[10] 23 CFR 771.135(p)(2)

[11] 23 CFR 771.135(p)(7)

responsibility of the FHWA or FTA to ensure that *de minimis* impact findings and required concurrences are reasonable.

Coordination with the FHWA or FTA Headquarters or the FHWA or FTA Office of the Chief Counsel is not required for routine *de minimis* impact findings but is recommended for controversial projects and complex situations.

2. *De Minimis* Impact Findings for Section 4(f) Uses of Historic Properties.

Question A. What are the requirements for a finding of *de minimis* impact on a historic site?

Answer: A finding of *de minimis* impact on a historic site may be made when:

1) The process required by Section 106 of the National Historic Preservation Act[12] results in the determination of "no adverse effect" or "no historic properties affected" with the concurrence of the SHPO and/or THPO, and ACHP if participating in the Section 106 consultation;
2) The SHPO and/or THPO, and ACHP if participating in the Section 106 consultation, is informed of FHWA's or FTA's intent to make a *de minimis* impact finding based on their written concurrence in the Section 106 determination; and
3) FHWA or FTA has considered the views of any consulting parties participating in the Section 106 consultation.

Question B. How should the concurrence of the SHPO and/or THPO, and ACHP if participating in the Section 106 determination, be documented when the concurrence will be the basis for a *de minimis* finding?

Answer: Section 4(f)[13] requires that the SHPO and /or THPO, and ACHP if participating, must concur in writing in the Section 106 determination of "no adverse effect" or "no historic properties affected." The request for concurrence in the Section 106 determination should include a statement informing the SHPO or THPO, and ACHP if participating, that the FHWA or FTA intends to make a *de minimis* finding based upon their concurrence in the Section 106 determination.

Under the Section 106 regulation, concurrence by a SHPO and/or THPO may be assumed if they do not respond within a specified timeframe, but Section 4(f) explicitly requires their written concurrence. It is recommended that transportation officials share this guidance with the SHPOs and THPOs in their States so that these officials fully understand the implication of their concurrence in the Section 106 determinations and the reason for requesting written concurrence.

Question C. Certain Section 106 programmatic agreements (PAs) allow the lead agency to assume the concurrence of the SHPO and/or THPO in the determination of "no adverse affect" or "no historic properties affected" if response to a request for concurrence is not received within a period of time specified in the PA. Does such concurrence through non-response, in accordance with a written and signed Section 106 PA, constitute the "written concurrence" needed to make a *de minimis* finding?

Answer: In accordance with the provisions of a written and signed programmatic agreement, if the SHPO and/or THPO does not respond to a request for concurrence in the Section 106

[12] 16 U.S.C. 470f, with implementing regulation at 36 CFR part 800

[13] 49 U.S.C 303(d)(2)

determination within the specified time, the non-response together with the written agreement, will be considered written concurrence in the Section 106 determination that will be the basis of the *de minimis* finding by FHWA or FTA.

FHWA or FTA must inform the SHPOs and THPOs who are parties to such PAs, in writing, that a non-response that would be treated as a concurrence in a "no adverse effect" or "no historic properties affected" determination will also be treated as the written concurrence for purposes of the FHWA or FTA *de minimis* impact finding. It is recommended that this understanding of the parties be documented by either appending the written notice to the existing PA, or by amending the PA itself.

Question D. For historic properties, will a separate public review process be necessary for the determination of a *de minimis* impact?

Answer: No. Section 6009(a) of SAFETEA-LU requires the U.S. DOT to consult with the parties participating in the Section 106 process but does not require additional public notice or opportunity for review and comment. Documentation of consulting party involvement is recommended. For projects requiring the preparation and distribution of a NEPA document, the information supporting a *de minimis* impact finding will be included in the NEPA documentation and the public will be afforded an opportunity to review and comment during the formal NEPA process.

3. *De Minimis* Impact Findings for Parks, Recreation Areas, and Wildlife and Waterfowl Refuges

Question A. What constitutes a *de minimis* impact with respect to a park, recreation area, or wildlife and waterfowl refuge?

Answer: An impact to a park, recreation area, or wildlife and waterfowl refuge may be determined to be *de minimis* if the transportation use of the Section 4(f) resource, including consideration of impact avoidance, minimization, and mitigation or enhancement measures, does not adversely affect the activities, features, and attributes that qualify the resource for protection under Section 4(f). Language included in the SAFETEA-LU Conference Report[14] provides additional insight on the meaning of *de minimis* impact.

> "The purpose of the language is to clarify that the portions of the resource important to protect, such as playground equipment at a public park, should be distinguished from areas such as parking facilities. While a minor but adverse effect on the use of playground equipment should not be considered a *de minimis* impact under section 4(f), encroachment on the parking lot may be deemed *de minimis*, as long as the public's ability to access and use the site is not reduced."

This simple example helps to distinguish the activities, features, and attributes of a Section 4(f) resource that are important to protect from those which can be used without resulting adverse effects. Playground equipment in a public park may be central to the recreational value of the park that Section 4(f) is designed to protect. When impacts are proposed to playground equipment or other essential feature, a *de minimis* impact finding will, at a minimum, require a commitment to replace the equipment with similar or better equipment at a time and in a location that results in no adverse effect to the recreational activity. A parking lot encroachment or other similar type of land use, on the other hand, could result in a *de minimis* impact with minimal mitigation, as long as there are no adverse effects on public access and the official(s) with jurisdiction agree.

[14] Conference Report of the Committee of Conference on H.R. 3, Report 109-203, page 1057.

Question B. What are the requirements for a finding of *de minimis* impact with respect to a park, recreation area, or wildlife and waterfowl refuge?

Answer: The impacts of a transportation project on a park, recreation area, or wildlife and waterfowl refuge that qualifies for Section 4(f) protection may be determined to be *de minimis* if:

1) The transportation use of the Section 4(f) resource, together with any impact avoidance, minimization, and mitigation or enhancement measures incorporated into the project, does not adversely affect the activities, features, and attributes that qualify the resource for protection under Section 4(f);
2) The official(s) with jurisdiction over the property are informed of FHWA's or FTA's intent to make the *de minimis* impact finding based on their written concurrence that the project will not adversely affect the activities, features, and attributes that qualify the property for protection under Section 4(f); and
3) The public has been afforded an opportunity to review and comment on the effects of the project on the protected activities, features, and attributes of the Section 4(f) resource.

Question C. What officials are considered to be "officials with jurisdiction" over a park, recreation area, or wildlife or waterfowl refuge for the purposes of the *de minimis* impact finding?

Answer: The officials with jurisdiction are the officials of an agency or agencies that own or administer a Section 4(f) property and who are empowered to represent that agency on related matters. In some cases, the agency that owns or administers the land has either delegated or relinquished its authority to another agency. In those cases, FHWA or FTA should review the applicable agreements to determine which agency or agencies have the authority to concur in the assessment of impacts to the property.

Question D. How should Section 6(f) of the Land and Water Conservation Fund Act (LWCFA) or other U.S. Department of Interior (DOI) grants-in-aid programs be treated in *de minimis* impact findings?

Answer: *De minimis* impact findings will satisfy Section 4(f) requirements only. For projects that propose the use of land from a property or site purchased or improved with funds under the LWCFA, the Federal Aid in Fish Restoration Act (Dingell-Johnson Act), the Federal Aid in Wildlife Act (Pittman-Robertson Act), or other similar law, or the lands are otherwise encumbered with a Federal interest, coordination with the appropriate Federal agency is required to ascertain the agency's position on the land conversion or transfer. Other federal requirements that may apply to the Section 4(f) land should be determined through consultation with the officials with jurisdiction or appropriate DOI or other federal official. These federal agencies may have regulatory or other requirements for converting land to a different use. These requirements are independent of the *de minimis* impact finding and must be satisfied.

Question E. Is consultation with DOI routinely required for *de minimis* impact findings?

Answer: No. As a routine matter, FHWA and FTA do not need to consult with the DOI on *de minimis* impact findings. Where the Section 4(f) resource involved is owned or administered by the DOI, FHWA or FTA will need the written concurrence of the appropriate DOI official as the official with jurisdiction. If the Section 4(f) resource is encumbered with a Federal interest as a result of a DOI grant, then the answer to Question D applies.

Question F. Does the concurrence of the official(s) with jurisdiction over the Section 4(f) resource need to be in writing?

Answer: Yes. The concurrence of the official(s) with jurisdiction that the protected activities, features, and attributes of the resource are not adversely affected must be in writing. The written

concurrence can be in the form of a signed letter on agency letterhead, signatures in concurrence blocks on transportation agency documents, agreements provided via e-mail or other method deemed acceptable by the FHWA Division Administrator or FTA Regional Administrator. Obtaining these agreements in writing is consistent with effective practices related to preparing project administrative records.

Question G. What constitutes compliance with the public notice, review and comment requirements related to *de minimis* impact findings?

Answer: Information supporting a *de minimis* impact finding should be included in the appropriate NEPA document prepared for the project. This information includes, at a minimum, a description of the involved Section 4(f) resource(s), the impact(s) to the resources and any impact avoidance, minimization, and mitigation or enhancement measures that are included in the project as part of the *de minimis* impact finding. The public involvement requirements related to the specific NEPA document and process will, in most cases, be sufficient to satisfy the public notice and comment requirements for the *de minimis* impact finding.

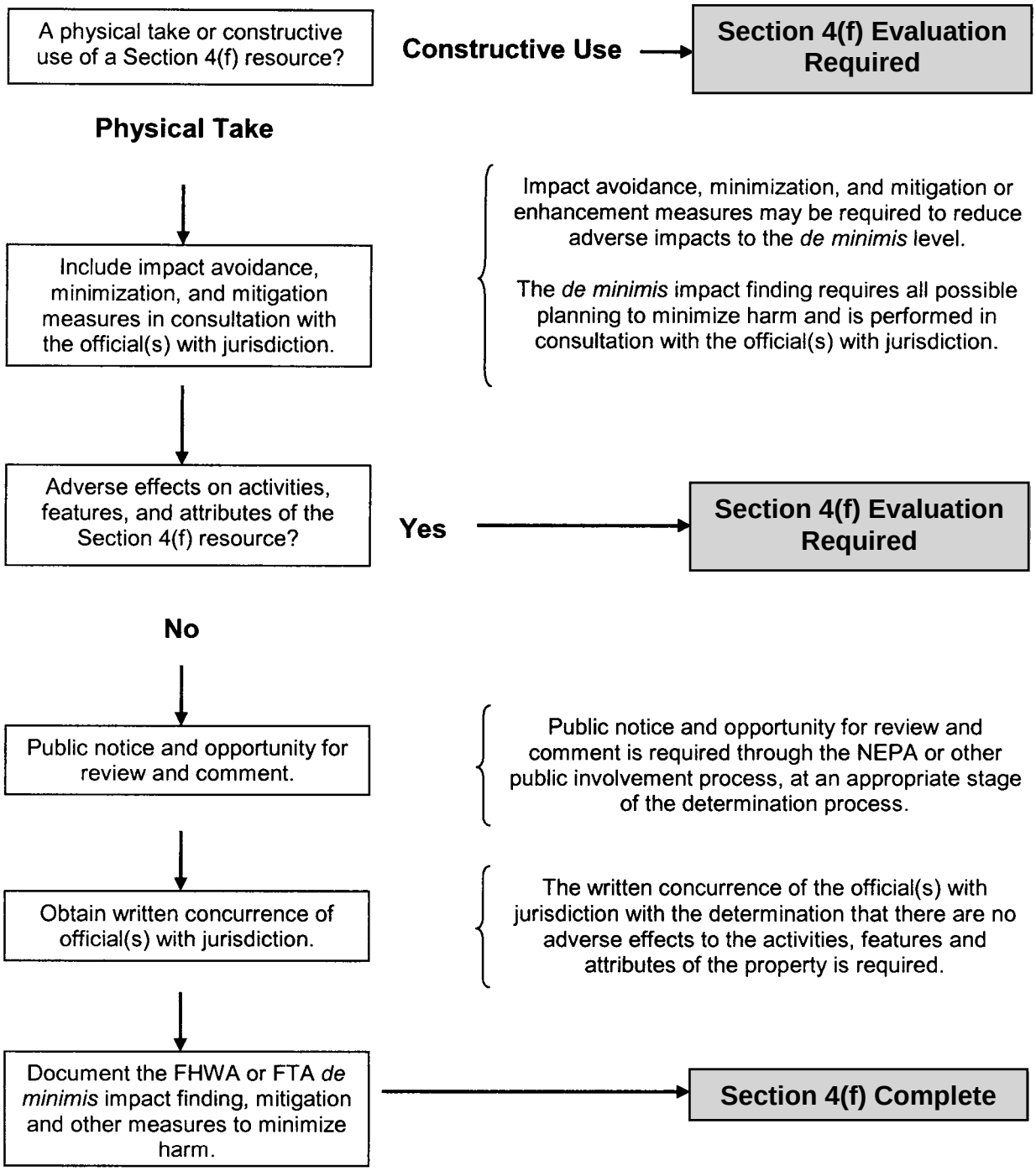
In general, for highway projects, the public notice and comment process related to *de minimis* impact findings will be accomplished through the State DOT's approved public involvement process[15].

For those actions that do not routinely require public review and comment (e.g., certain categorical exclusions and reevaluations) but for which a *de minimis* impact finding will be made, a separate public notice and opportunity for review and comment will be necessary. In these cases, appropriate public involvement should be based on the specifics of the situation and commensurate with the type and location of the Section 4(f) resource(s), impacts and public interest.

All comments received and responses thereto, shall be documented in the same manner that other comments on the proposed action would be handled. Where public involvement was initiated solely for the purpose of a *de minimis* impact finding, responses or replies to the public comments may not be required, depending on the substantive nature of the comments. All comments and responses shall be documented in the administrative record.

[15] 23 CFR 771.111(h)(1))

Suggested Section 4(f) *De Minimis* Impact Determination Process for Parks, Recreation Areas, and Wildlife and Waterfowl Refuges



Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2006-03

SUBJECT: PLAN APPROVAL AND RELEASE SIGNATURE BLOCK

ISSUED DATE: July 12, 2006

EFFECTIVE DATE: September 22, 2006

This memorandum adds Chapter 11 Section 2.04 and Chapter 23 Section 2.04 to the Bureau of Local Roads and Streets Manual dated January 2006.

In order to ensure consistency between the districts, the department has created a uniform signature block for all local agency plans that require department review and approval. The signature block should be used on any plans that have not been submitted to the district for review; however, as of the September 22, 2006 letting, it will be required for all local agency projects requiring department review and approval.

Charles J. Ingersoll

Engineer of Local Roads and Streets

KB/kb

Attachments

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2006-04

SUBJECT: ELIMINATION OF DIRECT LABOR MULTIPLIER ON FEDERALLY FUNDED PROJECTS

ISSUED DATE: July 12, 2006

EFFECTIVE DATE: September 1, 2006

This memorandum replaces Chapter 5 Section 5 and Section 6 of the Bureau of Local Roads and Streets Manual dated January 2006.

The Illinois Division of the Federal Highway Administration (IL-FHWA) notified the department that the numeric multiplier used in the Direct Labor Multiplier (DLM) compensation method is no longer allowed as a result of recent changes to 23 U.S.C. § 112(b)(2). Accordingly the DLM compensation method will no longer be an option for federally funded engineering projects. The IL-FHWA will allow local agencies that had previously discussed or negotiated specific projects using DLM prior to December 1, 2005 to finalize the agreement using DLM. As of September 1, 2006, DLM agreements will no longer be accepted regardless of when negotiations began.

Please note that details concerning consultant compensation formulas have been moved to section 5-5.06 (Engineering Agreements – MFT and State Funds). Allowable formulas for federally funded projects, section 5-6.01(d), will now refer back to the appropriate formula details in section 5-5.06.

If you have any questions concerning consultant payment methods, please contact Greg Lupton at Greg.Lupton@illinois.gov or 217/785-1670.

Charles J. Ingersoll

Engineer of Local Roads and Streets

Attachments

GSL/kb

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2006-05

SUBJECT: PARK ZONE SIGNS

ISSUED DATE: November 1, 2006

EFFECTIVE DATE: November 26, 2006

This memorandum adds Chapter 39 Section 2.08(b) to the Bureau of Local Roads and Streets Manual dated January 2006.

Public Act 94-0808, effective May 26, 2006 adds a Section 11-605.3 to the Illinois Vehicle Code allowing local agencies to establish Park Zones and Park Zone Street speed limits of 20 mph on designated streets or intersections posted and controlled by local agencies. It also charges the Department with the responsibility of designing a set of standardized traffic signs for park zones and park zone streets.

In order to designate a park zone and park zone streets, and establish a park zone speed limit, local agencies need to pass an ordinance or resolution. If a local agency establishes a park zone, the traveling public shall not exceed the posted reduced speed limit on any day when children are present and within 50 feet of motorized traffic on such designated zone streets.

Chapter 39, Section 2.08(b) establishes a set of signs to be posted and maintained by local agencies in such designated areas as defined by 625 ILCS 5/11-605.3.

Charles J. Ingersoll

Engineer of Local Roads and Streets

JK/jk

Public Act 094-0808

SB0509 Enrolled LRB094 07627 DRH 37799 b

AN ACT concerning transportation.

WHEREAS, The Illinois General Assembly finds that laws protecting school-age children with legislation limiting speed limits near schools has successfully protected Illinois children for decades, and a considerable number of recreational facilities in Illinois often border or are in close proximity to educational facilities and do not have the same protections afforded to educational facilities; and

WHEREAS, The Illinois General Assembly finds that ensuring Safe Streets near educational and recreational facilities is a goal requiring the full attention of this General Assembly and the full cooperation of the federal, State, and local units of government and their respective executive departments and agencies; therefore

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Vehicle Code is amended by adding Section 11-605.3 as follows:

(625 ILCS 5/11-605.3 new)

Sec. 11-605.3. Special traffic protections while passing parks and recreation facilities and areas.

(a) As used in this Section:

(1) "Park district" means the following entities:

(A) any park district organized under the Park District Code;

(B) any park district organized under the Chicago Park District Act; and

(C) any municipality, county, forest district, school district, township, or other unit of local government that operates a public recreation department or public recreation facilities that has recreation facilities that are not on land owned by any park district listed in subparagraphs (A) and (B) of this subdivision (a)(1).

(2) "Park zone" means the recreation facilities and areas on any land owned or operated by a park district that are used for recreational purposes, including but not limited to: parks; playgrounds; swimming pools; hiking trails; bicycle paths; picnic areas; roads and streets; and parking lots.

(3) "Park zone street" means that portion of any street or intersection under the control of a local unit of government, adjacent to a park zone, where the local unit of government has, by ordinance or resolution, designated and approved the street or intersection as a park zone street. If, before the effective date of this amendatory

Act of the 94th General Assembly, a street already had a posted speed limit lower than 20 miles per hour, then the lower limit may be used for that park zone street.

(4) "Safety purposes" means the costs associated with: park zone safety education; the purchase, installation, and maintenance of signs, roadway painting, and caution lights mounted on park zone signs; and any other expense associated with park zones and park zone streets.

(b) On any day when children are present and within 50 feet of motorized traffic, a person may not drive a motor vehicle at a speed in excess of 20 miles per hour or any lower posted speed while traveling on a park zone street that has been designated for the posted reduced speed.

(c) On any day when children are present and within 50 feet of motorized traffic, any driver traveling on a park zone street who fails to come to a complete stop at a stop sign or red light, including a driver who fails to come to a complete stop at a red light before turning right onto a park zone street, is in violation of this Section.

(d) This Section does not apply unless appropriate signs are posted upon park zone streets maintained by the Department or by the unit of local government in which the park zone is located. With regard to the special speed limit on park zone streets, the signs must give proper due warning that a park zone is being approached and must indicate the maximum speed limit on the park zone street.

(e) A first violation of this Section is a petty offense with a minimum fine of $250. A second or subsequent violation of this Section is a petty offense with a minimum fine of $500.

(f) When a fine for a violation of this Section is imposed, the person who violates this Section shall be charged an additional $50, to be paid to the park district for safety purposes.

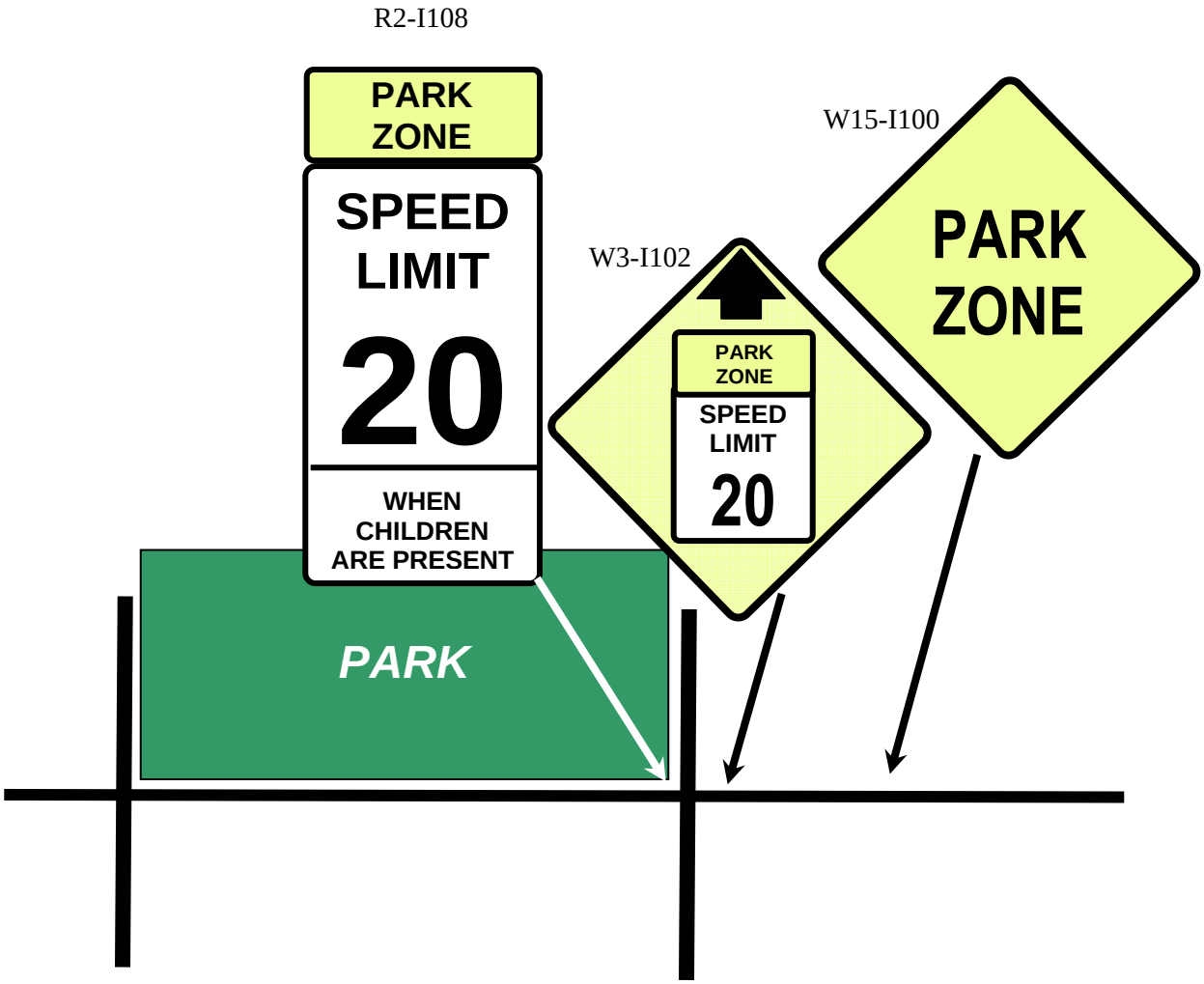
(g) The Department shall, within 6 months of the effective date of this amendatory Act of the 94th General Assembly, design a set of standardized traffic signs for park zones and park zone streets, including but not limited to: "park zone", "park zone speed limit", and "warning: approaching a park zone". The design of these signs shall be made available to all units of local government or manufacturers at no charge, except for reproduction and postage.

Section 99. Effective date. This Act takes effect upon becoming law.

Effective Date: 5/26/2006

Floor Actions

Date	Action
5/26/2006	Public Act 094-0808



TYPICAL PARK ZONE SIGNING

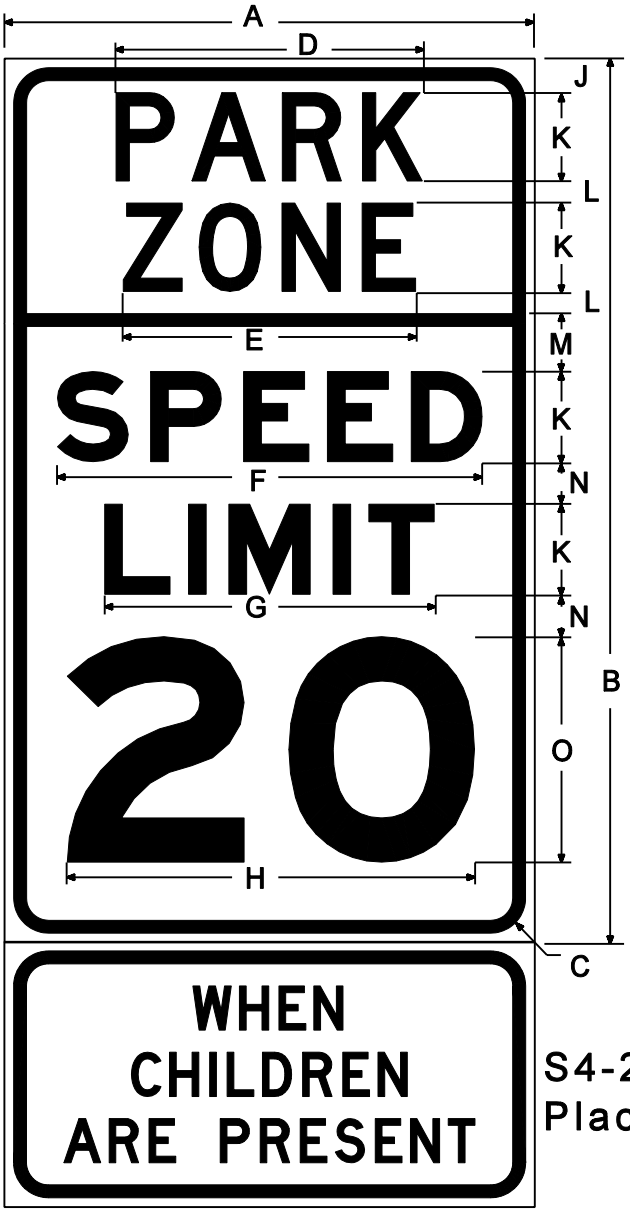
If the local ordinance or resolution establishing a Park Zone Speed limit includes the hours the limit is in effect, the hours may be included on lower portion of the PARK ZONE SPEED LIMIT sign (R2-I108) such as “8 AM - 8 PM WHEN CHILDREN ARE PRESENT.”

The advance PARK ZONE sign (W15-I100) may be used alone where a Park Zone Speed Limit is not established.

Standard Speed Limit signs shall not be placed within a Park Speed Zone. The end of the Park Speed Zone shall be designated with a standard speed limit sign.

ILLINOIS STANDARD

R2-I108



S4-2
Placement Shown

Federal Standard S4-2 shall be used on lower portion of sign. If local ordinance or resolution includes hours those may be included as well and placed on lower portion. Example: (8 AM - 8 PM)

COLOR	LEGEND AND BORDER	BLACK	NON-REFLECTORIZED
	BACKGROUND (TOP)	YELLOW/GREEN	REFLECTORIZED
	BACKGROUND (BOTTOM)	WHITE	REFLECTORIZED

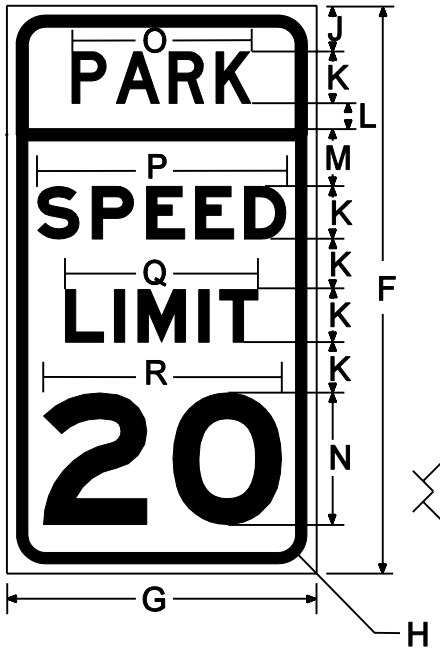
SIGN SIZE	DIMENSIONS													
	A	B	C	D	E	F	G	H	J	K	L	M	N	O
24 X 42	24.00	42.00	1.50	14.00	13.20	19.20	15.00	18.40	1.90	4.00	1.00	3.60	2.00	10.00
36 X 60	36.00	60.00	3.00	20.80	19.80	28.80	22.40	27.40	2.30	6.00	1.50	4.00	3.00	15.00

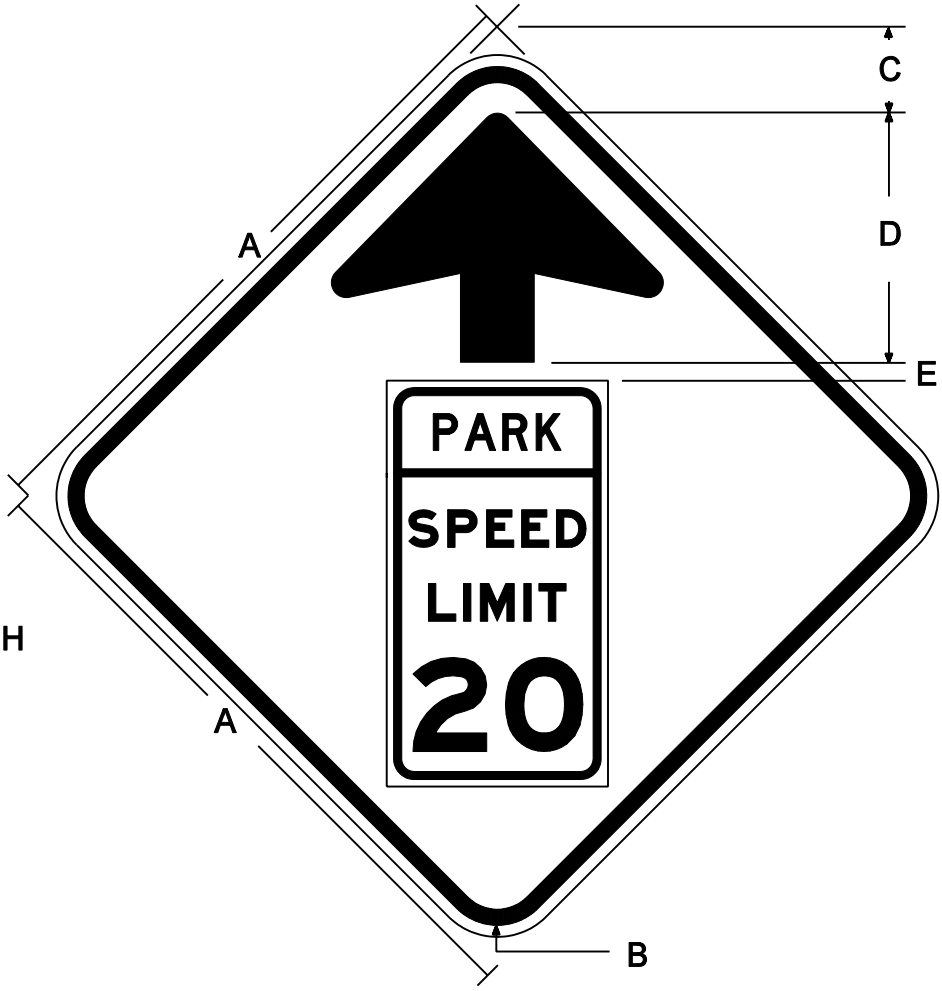
SIGN SIZE	SERIES BY LINE					MARGIN	BORDER
	1	2	3	4	5		
24 X 42	4D	4D	4E	4E	10E	0.375	0.625
36 X 60	6D	6D	6E	6E	15E	0.625	0.875

All dimensions in inches. Sign not to scale.

ILLINOIS STANDARD

W3-I102





COLOR	LEGEND AND BORDER	BLACK	NON-REFLECTORIZED
	BACKGROUND(SIGN)	YELLOW/GREEN	REFLECTORIZED
	BACKGROUND(PARK)	YELLOW/GREEN	REFLECTORIZED
	BACKGROUND(SPEED LIMIT 20)	WHITE	REFLECTORIZED

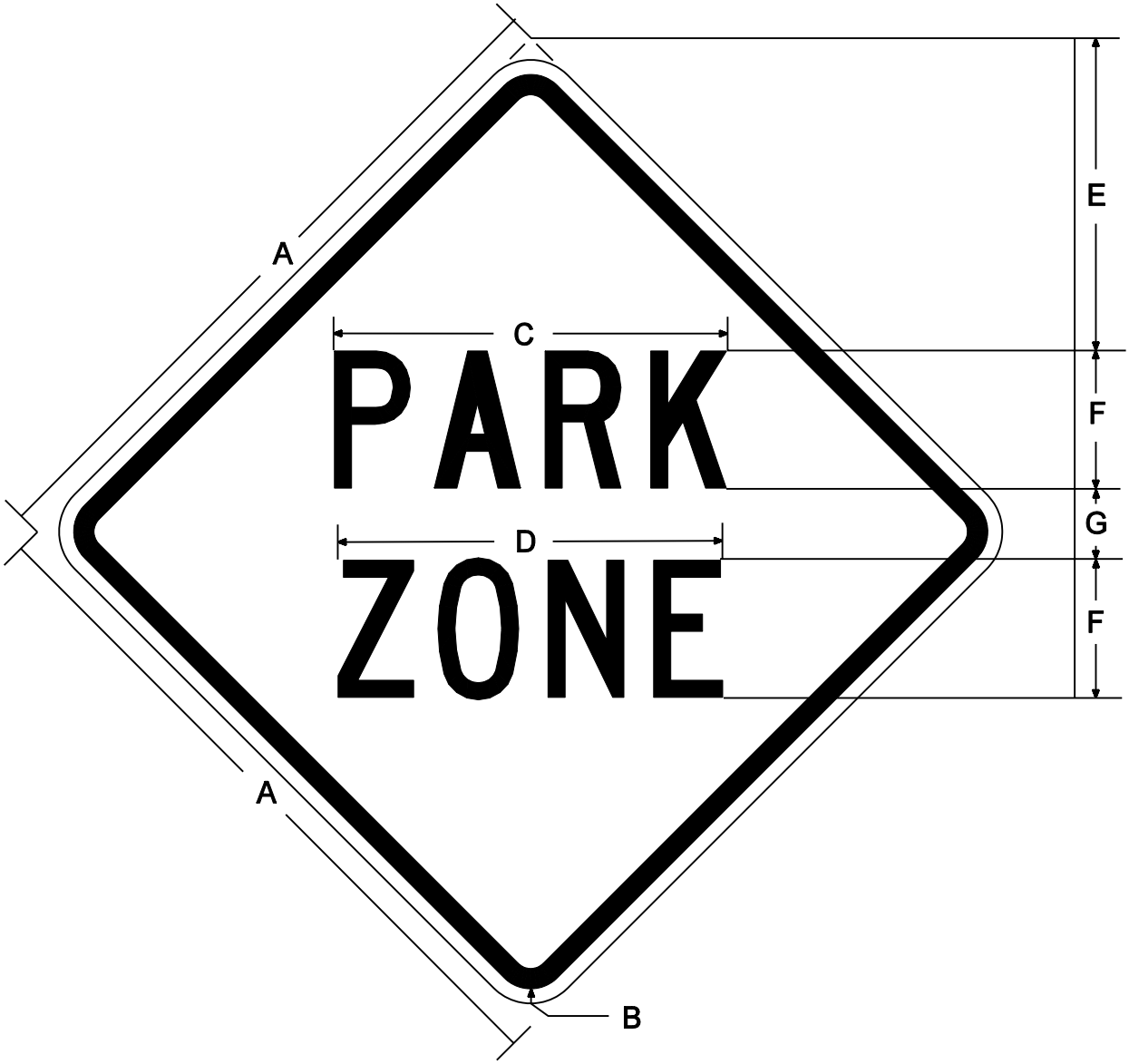
SIGN SIZE	DIMENSIONS																
	A	B	C	D	E	F	G	H	J	K	L	M	N	O	P	Q	R
36 X 36	36.00	2.25	3.20	13.50	1.00	22.00	12.00	1.50	1.80	2.00	1.00	3.20	5.00	7.00	9.60	7.40	9.20

SIGN SIZE	SERIES BY LINE				MARGIN	BORDER	PARK SPEED LIMIT	
	1	2	3	4			MARGIN	BORDER
36 X 36	2D	2E	2E	5E	0.625	0.875	0.375	0.438

All dimensions in inches. Sign not to scale.

ILLINOIS STANDARD

W15-I100



COLOR	LEGEND AND BORDER	BLACK	NON-REFLECTORIZED
	BACKGROUND	YELLOW/GREEN	REFLECTORIZED

SIGN SIZE	DIMENSIONS						
	A	B	C	D	E	F	G
30 X 30	30.00	2.25	16.90	16.60	12.40	6.00	3.00
36 X 36	36.00	2.25	22.50	22.10	15.40	8.00	2.20

SIGN SIZE	SERIES BY LINE		MARGIN	BORDER
	1	2		
30 X 30	6C	6C	0.625	0.875
36 X 36	8C	8C	0.625	0.875

All dimensions in inches. Sign not to scale.

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BDE PROCEDURE MEMORANDUM

NUMBER: 53-06

BLRS PROCEDURE MEMORANDUM

NUMBER: 2006-06

SUBJECT: Design Guidance for Median and Curb Treatments at Railroad Grade Crossings

DATE: November 15, 2006

This memorandum revises information in Sections 7-3.02 and 34-2.04 of the BDE Manual and Section 40-1.01(f) of the LRS Manual. The changes presented below will be incorporated in future updates of the BDE Manual and LRS Manual.

Background

The Department and the Illinois Commerce Commission collaborated to develop revised details for median and curb treatments at railroad grade crossings. The revision entails providing mountable curb on the departure side of at-grade railroad crossings instead of barrier curb. This change will provide escape areas for vehicles that may be trapped on the railroad tracks.

Applicability

The procedures in this memorandum are applicable to State Highway projects with median and curb treatments at railroad grade crossings.

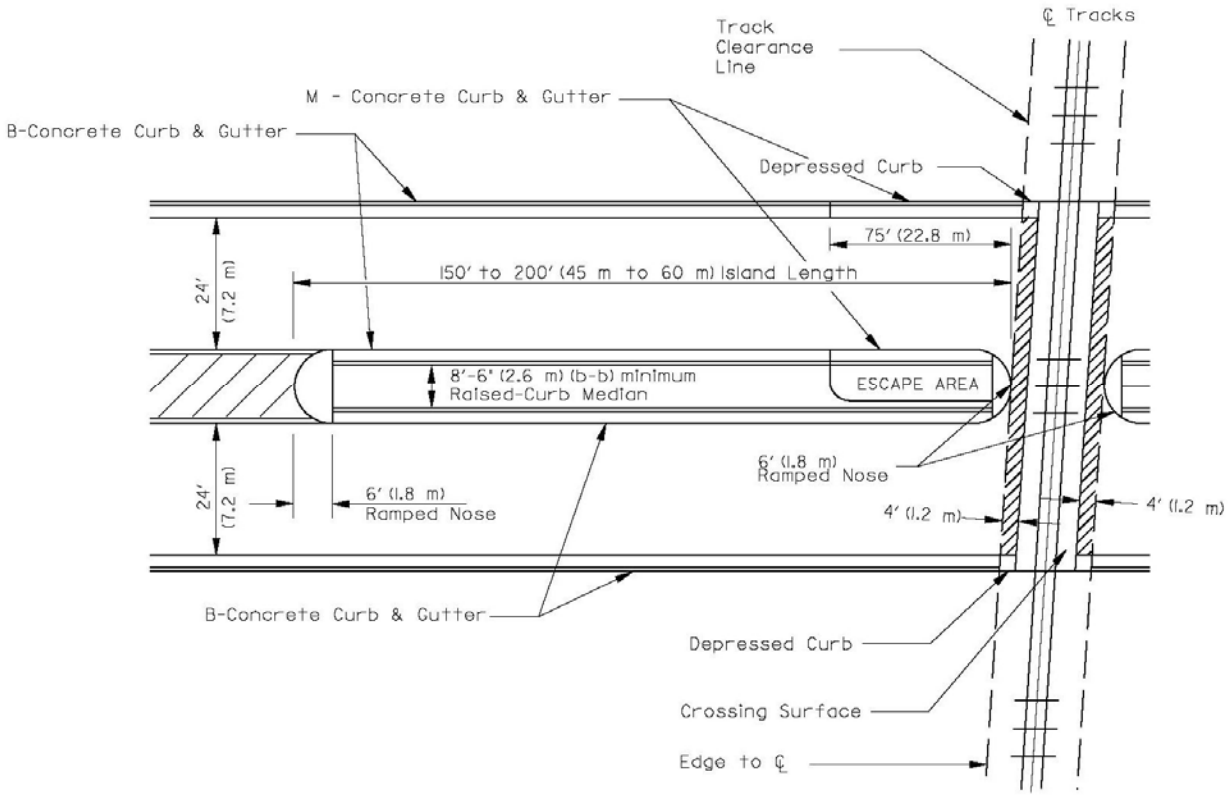
Procedures

7-3.02(f) Design Considerations *[40-1.01(f) of LRS Manual]*

Revise subsection 1.b. of this Section to read:

Medians. Where median-mounted warning devices will be installed and other than an earth median is adjacent to a grade crossing, the median should have a minimum median width of 8.5 ft (2.6 m) (10 ft (3.0 m) desirable) back-to-back of curb. Depress all medians and curbs on approaches to the crossing to the level of the pavement edge or gutter flag within the track clearance line which is parallel to and 8 ft (2.4 m) from the centerline of the nearest track. See Figure 7-3E.

Revise Figure 7-3E *(LRS Figure 40-1C)* as follows:



Notes:

1. Where a raised-curb, flush, or traversable type median is used on the roadway, provide B-6 or B-9 (B-15 or B-22) raised-curb median on crossing approaches and provide M-2 or M-4 (M-5 or M-10) raised-curb median on crossing departures adjacent to each side of the railroad track(s); see Section 34-2.04.

2. In addition to deterring vehicular movements over the track(s) in the median area, the raised-curb median provides a space for mounting railroad warning device units, if required. Also, see Section 36-8.

3. If the railroad tracks are located close to a cross street and lie within the left-turn lane of the intersection, this section will require a special design and the use of barrier type curb along the median adjacent to the turn lane.

4. The median should have a minimum width of 8.5 ft (2.6 m) (10 ft (3.0 m) desirable) back-to-back of curb.

TYPICAL MID-BLOCK MEDIAN TREATMENT ADJACENT TO RAILROAD CROSSINGS
(Multilane Urban and Suburban Highways)

Figure 7-3E *(LRS Figure 40-1C)*

34-2.04(c) Curb Type Selection

Add the following after the first paragraph of subsection 9.a., Special Median Conditions for Railroads:

Where a highway departs an at-grade railroad crossing and the design speed is 45 mph or less, provide M-4 (M-10) CC&G along the median edges for a short distance adjacent to the crossing. When the design speed is 50 mph or greater, provide M-2 (M-5) CC&G. These mountable curb types will provide an escape area for vehicles. See Figure 7-3E.

Engineer of Design and Environment Michael L. Hine

Engineer of Local Roads and Streets Charles J. Ingersoll

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2006-07

SUBJECT: LOCAL LETTING PROTESTS - APPRENTICESHIP AND TRAINING CERTIFICATION

ISSUED DATE: December 6, 2006

EFFECTIVE DATE: January 1, 2007

This memorandum adds Section 4 to Chapter 12 of the Bureau of Local Roads and Streets Manual dated April 2006.

Procedure Memorandums 2005-03 and 2006-01 established responsible bidder requirement for local let contract and material proposals.

Chapter 12, Section 4 establishes a uniform protest acceptance and handling procedure previously outlined in Circular letter 2006-01 that the department has implemented to handle responsible bidder protests on local let projects funded with motor fuel tax or other state funds administered by the department. The protest procedure outlined in Section 4 may be utilized to protest a lack of participation in the approved apprenticeship and training program only.

All other protests, as outlined in the same Section 4, should be handled and resolved based on the local authority's procurement practices. If the local authority does not have protest procedures, Special Provision LR 102 may be inserted into the contract or material proposal in order to establish protest guidelines on local lettings.

Charles J. Ingersoll

Engineer of Local Roads and Streets

Attachments

JK/jk

State of Illinois
Department of Transportation
Bureau of Local Roads and Streets

SPECIAL PROVISION
FOR
PROTESTS ON LOCAL LETTINGS

Effective: January 1, 2006

All protests will be handled according to Subpart F of Subtitle B of Title 44 of the Illinois Administrative Code except for apprenticeship and training certification issues. The Chief Procurement Officer will be a representative of the awarding authority.

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2006-08

SUBJECT: ENGINE BRAKING SIGNS

ISSUED DATE: December 6, 2006

EFFECTIVE DATE: January 1, 2007

This memorandum adds Section 39-2.06(j) to the Bureau of Local Roads and Streets Manual dated November 2006.

Effective January 1, 2007, Public Act 94-0756 adds a Section 12-602.1 to the Illinois Vehicle Code allowing a county or municipality to post signs prohibiting the use of engine braking systems emitting excessive noise. The act prescribes a specific content of the signs, such as “EXCESSIVE ENGINE BRAKING NOISE PROHIBITED”. Additionally, it requires the department to promulgate rules concerning the signs. Finally, the Act provides that the provision does not apply to the use of an engine braking system that has an adequate sound muffling system in proper working order that prevents excessive noise.

92 Illinois Administrative Code 547, Engine Braking Signs, was adopted by IDOT. The rules provide that counties and municipalities may furnish, install and maintain signs on streets and highways under their jurisdiction and with permission of the Department, on state roads and streets within their corporate limits. The signs are not to be used on freeways or interstate highways.

Chapter 39, Section 2.06(j) establishes a Engine Braking (R5-I106) sign to be furnished, posted and maintained by a county or municipality as defined by 625 ILCS 5/12-602.1. Because the Public Act is very specific as to the wording of the sign, existing non-conforming signs on state highways should be removed and replaced with the new design.

Charles J. Ingersoll

Engineer of Local Roads and Streets

JK/jk

Attachments

Public Act 094-0756

HB2497 Enrolled LRB094 09720 DRH 39976 b

AN ACT concerning transportation.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Vehicle Code is amended by adding Section 12-602.1 as follows:

(625 ILCS 5/12-602.1 new)

Sec. 12-602.1. Excessive engine braking noise signs.

(a) A county or municipality may post signs that prohibit the driver of a commercial vehicle, as defined in Section 1-111.8 of this Code, from operating or actuating any engine braking system that emits excessive noise.

(b) The sign shall state, "EXCESSIVE ENGINE BRAKING NOISE PROHIBITED". The Department of Transportation shall adopt rules providing for the erection and placement of these signs.

(c) This Section does not apply to the use of an engine braking system that has an adequate sound muffling system in proper working order that prevents excessive noise.

(d) It is a defense to this Section that the driver used an engine braking system that emits excessive noise in an emergency to avoid a collision with a person or another vehicle on the highway.

(e) A violation of this Section is an equipment violation punishable by a fine of $75.

Effective Date: 1/1/2007

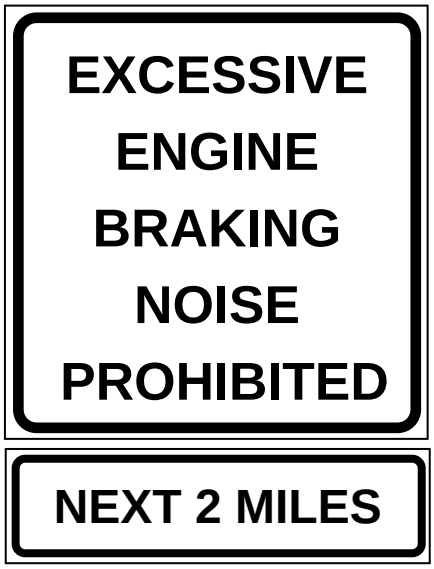
ENGINE BRAKING SIGN
R5-I106

The standard size sign shall be 30” wide by 36” high with 3”D letters. The plaque size will vary with the message.

For high-speed locations or multi-lane highways, a larger sized 48” by 60” sign with 5” D letters may be used.

The sign shall be black on white and shall be retroreflective.

The message on the sign is prescribed by statute.*



The sign and plaque may be combined into a single panel.

A plaque should be used to define the extent of the prohibition such as NEXT X MILES, ON VILLAGE STREETS, NEXT X BLOCKS, etc. and may indicate a time such as 8 PM - 7 AM.

**See Section 12-602.1 of the Illinois Vehicle Code (Public Act 094-0756) and 92 Ill. Admin. Code 547, Engine Braking Signs.*

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2006-09

SUBJECT: DESIGNATION OF TRUCK ROUTES

ISSUED DATE: December 28, 2006

EFFECTIVE DATE: January 1, 2007

This memorandum revises Chapter 3 Section 2.02(d) to the Bureau of Local Roads and Streets Manual dated December 2006.

Public Act 94-0763 was signed into law on May 12, 2006, and will become effective on January 1, 2007. This law requires the Department of Transportation to maintain and provide a listing of all Class I, Class II, and Class III designated highways and streets defined by 625 ILCS 5/1-126.1. Additionally, this law includes local streets and highways that have been designated as Class II or Class III highways by local agencies. It is the responsibility of local agencies with jurisdiction over a Class II or III designated highway to report its location to the department.

Chapter 3, Section 2.02(d) establishes local agencies' reporting requirements of their designated Class II and Class III streets and highways, reference names, and telephone numbers to the Department. Local agencies should use BLR 03210 to designate Class II or III highways or streets.

Charles J. Ingersoll

Engineer of Local Roads and Streets

JK/jk

Attachments

Public Act 094-0763

SB1086 Enrolled LRB094 04762 DRH 34791 b

AN ACT concerning transportation.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Vehicle Code is amended by adding Section 15-116 as follows:

(625 ILCS 5/15-116 new)

Sec. 15-116. Designated truck route system. The Department of Transportation shall maintain and provide a listing of all Class I, Class II, and Class III designated streets and highways as defined in Chapter 1 of this Code. The Department shall also maintain and provide a listing of all local streets or highways that have been designated Class II or Class III by local agencies. Local agencies shall be responsible for reporting to the Department all streets and highways under their jurisdiction designated Class II and Class III. Local agencies shall also provide to the Department reference contact names and telephone numbers. The Department shall also maintain and provide an official map of the Designated State Truck Route System that includes State and local streets and highways that have been designated Class I, Class II, or Class III.

Effective Date: 1/1/2007

Illinois Department of Transportation

Resolution Establishing a Class II or Class III Designated Truck Route

WHEREAS, the State of Illinois, by its General Assembly, has enacted "The Illinois Vehicle Code"; and

WHEREAS, 625 ILCS 5/1-126.1 provides that local authorities may designate Class II or Class III highways within their jurisdiction, and in accordance with 625 ILCS 5/15-111(f), weight limitations shall be designated by appropriate signs placed on such highways; and

WHEREAS, the Local Agency, _____ , is desirous of providing a truck route for the purpose of accommodating a load limit of 80,000 pounds:

NOW THEREFORE, BE IT RESOLVED, that the portions of _____ beginning at the intersection of _____ and extending _____ for _____ miles be designated as a ☐ Class II or ☐ Class III Truck Route.

Ayes: _____

Nays: _____

Absent: _____

Name _____

Title _____

Signature _____

STATE OF ILLINOIS)
) ss
COUNTY OF _____)

I, _____ , Clerk, in and for the Local Agency and State aforesaid, and keeper of the records and files of said office, hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Local Agency, _____ at their Adjourned Meeting held on _____ .

Witness my hand and seal of the Local Agency, _____
this _____ day of _____ , A.D. _____ .

_____
Clerk

(SEAL)

BLR 03210 (Rev. 11/06)

Illinois Department of Transportation

Resolution Establishing a Class II or Class III Designated Truck Route

DESCRIPTION

This form should be used by local agencies to designate Class II or Class III truck routes on highways and streets under their jurisdiction.

COMPANION FORMS

BLR 05321 and BLR 05322, if necessary.

DEFINITIONS

Local Agency is a municipality, road district/township and county.

Clerk is a person charged with a record keeping duty for a local agency.

INSTRUCTIONS

Body of the Resolution:

In all fields following “Local Agency,” a full name of a municipality, road district/township or county should be inserted.

In the fields for “Name,” “Title” and “Signature,” appropriate terms should be inserted by mayor/village president, highway commissioner or chairman of a county board.

Clerk Certification:

A name of the clerk, full name of a municipality, road district/township or county, and a date should be inserted into the fields, respectively. A signature of a clerk should appear in a field above the “Clerk” line.

SUBMITTAL

Local Agency must submit 2 (two) copies of this form and a location map to their District Engineer. The District will distribute the forms and location maps as follows:

1 copy to the District files
1 copy to the Central Bureau of Operations.

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BDE PROCEDURE MEMORANDUM

NUMBER: 54-07

BLRS PROCEDURE MEMORANDUM

NUMBER: 2007-01

SUBJECT: Categorical Exclusion Group II Approval Documentation

DATE: January 8, 2007

This memorandum revises information in Section 23-1.05(d) of the BDE Manual and Section 19-1.04(c) of the LRS Manual.

Background

The Department and the Federal Highway Administration (FHWA) conducted a process review of Categorical Exclusions. An observation in the review noted that districts document CE determination decisions in the minutes of the coordination meetings and it is also documented in the project report. When decisions are made via phone call, e-mails, or special meetings, CE determination decisions are documented in the project files. The process review team recommended a clear, concise statement that should be used for documentation.

Applicability

The procedures in this memorandum are applicable to all projects utilizing federal funds.

Procedures

23-1.05(d) Group II Actions [19-1.04(c) of LRS Manual]

Replace the last sentence of the first paragraph [last sentence of the third paragraph of LRS manual] with the following:

“Minutes of the meeting or a memorandum to the file, as appropriate, shall document the discussions and concurrence by stating ‘The FHWA approves the designation of this project as a Categorical Exclusion Group II on [DATE].’”

Replace the last sentence of the fifth paragraph [second to last sentence of the fourth paragraph of LRS manual] with the following:

"When verbal concurrence is obtained from the FHWA, minutes of the meeting or a memorandum to the file, as appropriate, shall document the discussions and concurrence by stating 'The FHWA approves the designation of this project as a Categorical Exclusion Group II on [DATE].'"

Interim Engineer of Design and Environment _____

Engineer of Local Roads and Streets _____

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2007-02

SUBJECT: LETTING AND CONTRACT AWARD – MFT AND STATE FUNDS

ISSUED DATE: April 26, 2007

EFFECTIVE DATE: May 1, 2007

This memorandum supersedes Section 12-1 dated April 2006 and Sections 12-1 and 12-3 dated December 2006 of the Bureau of Local Roads and Streets Manual.

In order to clarify the apprenticeship or training certification applicability in locally let projects, the department created a new type of proposal - Deliver and Install Proposal.

A deliver and install proposal is similar to a material proposal in that the cost and delivery of material for the work operation is the substantial or principal cost of the contract. A deliver and install proposal, however, includes work performed at the site. Section 12-1.01(c) describes when a deliver and install proposal may be used. The apprenticeship or training program certification is required for all deliver and install proposals. BLR 12325 shall be inserted in all deliver and install proposals and has to be completed appropriately by every bidder.

When the on site work included in a contract or deliver and install proposal is performed solely by individual owners, partners, or members and not by employees to whom the payment of prevailing wages would be required, the certification is not required. BLR 12325 provides an appropriate section to indicate that.

A material proposal shall be used for furnishing material to the job site, stockpile, or other location. A material proposal may also be used when the supplier is tailgating and distributing the material. The apprenticeship or training certification is not required for a material proposal.

Material proposals and deliver and install proposals shall utilize the same invitation for bid documents, as outlined in Section 12-2.01(b). Prequalification of bidders is optional for all material proposals and deliver and install proposals regardless of the estimated cost.

Charles J. Ingersoll

Engineer of Local Roads and Streets

Chief Counsel

Attachments
JK/jk

Illinois Department of Transportation

Apprenticeship or Training Program Certification

Return with Bid

Route _____
County _____
Local Agency _____
Section _____

All contractors are required to complete the following certification:

☐ For this contract proposal or for all groups in this deliver and install proposal.

☐ For the following deliver and install groups in this material proposal:

_____
_____
_____
_____

Illinois Department of Transportation policy, adopted in accordance with the provisions of the Illinois Highway Code, requires this contract to be awarded to the lowest responsive and responsible bidder. The award decision is subject to approval by the Department. In addition to all other responsibility factors, this contract or deliver and install proposal requires all bidders and all bidders' subcontractors to disclose participation in apprenticeship or training programs that are (1) approved by and registered with the United States Department of Labor's Bureau of Apprenticeship and Training, and (2) applicable to the work of the above indicated proposals or groups. Therefore, all bidders are required to complete the following certification:

I. Except as provided in paragraph IV below, the undersigned bidder certifies that it is a participant, either as an individual or as part of a group program, in an approved apprenticeship or training program applicable to each type of work or craft that the bidder will perform with its own employees.

II. The undersigned bidder further certifies for work to be performed by subcontract that each of its subcontractors submitted for approval either (A) is, at the time of such bid, participating in an approved, applicable apprenticeship or training program; or (B) will, prior to commencement of performance of work pursuant to this contract, establish participation in an approved apprenticeship or training program applicable to the work of the subcontract.

III. The undersigned bidder, by inclusion in the list in the space below, certifies the official name of each program sponsor holding the Certificate of Registration for all of the types of work or crafts in which the bidder is a participant and that will be performed with the bidder's employees. Types of work or craft that will be subcontracted shall be included and listed as subcontract work. The list shall also indicate any type of work or craft job category for which there is no applicable apprenticeship or training program available.

_____
_____
_____
_____
_____

IV. Except for any work identified above, any bidder or subcontractor that shall perform all or part of the work of the contract or deliver and install proposal solely by individual owners, partners or members and not by employees to whom the payment of prevailing rates of wages would be required, check the following box, and identify the owner/operator workforce and positions of ownership. ☐

_____

_____

_____

_____

_____

The requirements of this certification and disclosure are a material part of the contract, and the contractor shall require this certification provision to be included in all approved subcontracts. The bidder is responsible for making a complete report and shall make certain that each type of work or craft job category that will be utilized on the project is accounted for and listed. The Department at any time before or after award may require the production of a copy of each applicable Certificate of Registration issued by the United States Department of Labor evidencing such participation by the contractor and any or all of its subcontractors. In order to fulfill the participation requirement, it shall not be necessary that any applicable program sponsor be currently talking or that it will take applications for apprenticeship, training or employment during the performance of the work of this contract, material or deliver and install proposal.

Bidder: _____ By: _____
(Signature)

Address: _____ Title: _____

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2007-03

SUBJECT: CONTEXT SENSITIVE SOLUTIONS

ISSUED DATE: May 18, 2007

EFFECTIVE DATE: June 1, 2007

This memorandum adds Section 10-5 and Section 21-7 to the Bureau of Local Roads & Streets Manual.

Public Act 093-0545, which became effective January 1, 2004, provides that the Illinois Department of Transportation "…shall embrace principles of context sensitive design and context sensitive solutions in its policies and procedures for the planning, design, construction, and operation of its projects for new construction, reconstruction, or major expansion of existing transportation facilities." This is to ensure that the Department's projects "…adequately meet the State's transportation needs, exist in harmony with their surroundings, and add lasting value to the communities they serve." Departmental Policy D&E 21, issued on August 1, 2005, formally codified Context Sensitive Solutions (CSS) as the official policy of the Department for projects utilizing CSS principles.

If local agencies chose to implement CSS on local highway projects funded with federal, State, or Motor Fuel Tax, the procedures outlined in BDE Procedure Memorandum 48-06 should be used. Under certain circumstances the department may require CSS to be used on local projects in order to comply with PA 093-0545.

For more information about CSS, go to www.dot.il.gov/css/home.html. Please contact Kevin Burke at kevin.burkeiii@illinois.gov with any questions.

Charles J. Ingersoll

Engineer of Local Roads and Streets

Attachments

KB/kb

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BDE PROCEDURE MEMORANDUM

NUMBER: 5-07

BLRS PROCEDURE MEMORANDUM

NUMBER: 2007- 04

SUBJECT: Value Engineering Program

DATE: June 18, 2007

This memorandum supersedes and replaces BDE Procedure Memorandum 5-00, dated April 3, 2000. The changes clarify and expand the previous guidance and will be incorporated in future updates of the BDE Manual and into Section 4-1.15 of the LRS Manual.

Background

Under 23 CFR, Part 627, the FHWA requires a program be established to improve project quality, reduce project costs, foster innovations, eliminate unnecessary and costly design elements, and to ensure efficient investments through the use of Value Engineering (VE).

Applicability

The procedures in this memorandum are applicable to all federal-aid highway projects with an estimated cost of $25 million or more and all federal-aid bridge projects with an estimated cost of $20 million or more.

Definitions

Highway Project - Projects with an estimated cost of $25 million or more and bridge projects with an estimated cost of $20 million or more. Such projects may encompass multiple construction contracts.

Value Engineering (VE) - The systematic application of recognized techniques by a multi-disciplinary team to identify the function of a product or service, establish a worth for that function, generate alternatives through the use of creative thinking, and provide the needed functions to accomplish the original purpose of the project, reliably and at the lowest life-cycle cost without sacrificing safety, necessary quality, and environmental attributes of the project.

Procedures

(a) **Project Selection**. Each district identifies applicable projects during the preparation of the multi-year program. Due to the complexity and scope of large projects, more than one VE study may be desirable. Other projects not meeting the definition may be selected for this program. The District shall notify the central office and FHWA of the identified projects as part of the multi-year plan development.

(b) **Project Cost.** Costs associated with environmental studies, preliminary engineering, final design, land acquisition and construction should be used in determining the selected project's cost. The project cost includes state, local agency, and federal-aid highway funds.

(c) **Scope of Studies**.

(1) Initiation of VE Study. Schedule VE studies in such a manner so as not to cause delay of the project. For a Phase I report with multiple construction contracts, develop a plan for conducting the VE study(s) based on the Phase I considerations and the nature and complexity of the work type, (e.g., one VE study may cover alike construction projects). A single VE study should cover as many construction contracts under the single Phase I report as practicable and beneficial. The VE study should be initiated as close to the completion of the Phase I report as possible. Initiate the VE study no later than the time the construction plans are 30% complete and to allow for the implementation of the recommendations without delaying the project. The VE study should be, at the least, scheduled when the Phase I report is completed.

(2) Team Makeup. The VE team, selected by the district, consists of individuals not personally involved in the design of the project. The team leader should have attended the NHI course on Value Engineering or have equivalent experience in the preparation of VE studies. When making up the team, take into account the following:

- Draw team members from either the district or central office;
- Consider individuals from specialty areas depending on the project scope;
- Assign personnel from construction, maintenance, and studies and plans (as applicable);
- Include representatives from environment, operations, and land acquisition as necessary;
- Include individuals from the public and other agencies when in the public interest;
- Participation by FHWA members is encouraged where feasible;
- Participation by the central office is encouraged; and
- Invitation of IDOT personnel from nearby districts should be considered.

Qualified consultants may be retained to conduct VE studies provided the consultant has not worked on the subject project or the consultant maintains an independent VE study team.

(3) Process. To best accomplish the goals of Value Engineering, the districts have considerable latitude in determining the type, size, and complexity of a VE study. Value engineering studies should follow widely recognized problem solving principles.

(4) Final Report. Each Study concludes with a formal VE report, which outlines the decisions and recommendations and is presented to the Deputy Director/Regional Engineer or his/her representative. Each district establishes a procedure for prompt review and implementation of the approved recommendations. When any recommendation is a major change to an approved Design Report or is a design exception to policy, the recommended change is coordinated through the appropriate central bureau.

(5) Monitoring. Each district appoints a VE coordinator who is knowledgeable in VE studies and trained in VE procedures. The VE coordinator's responsibilities include monitoring each VE study from initiation through the final report, reviewing the report, and assisting in the implementation of the findings. As there may be local projects meeting this threshold, the district VE coordinator will be responsible for coordinating both state and local roads administered projects. During the month of October, each year, the district VE coordinator sends the Bureau of Design and Environment's VE coordinator a list, which itemizes the total number of VE studies conducted over the past year and the estimated cost savings for each study. BDE will summarize the information and forward it to the FHWA. The central office BDE VE coordinator will compile an annual list of approved recommendations from all VE studies completed within that year. This report shall be compiled and highlights presented at the fall project development meeting.

Constructability Reviews

Constructability reviews are a useful tool for complex or unusual projects and are encouraged as a cost or time saving measure. These reviews may include the use of IDOT personnel, unassociated with the project, or consultant/contractor teams that would not be bidding on the project. These reviews would not typically be making complex design change recommendations as would be expected in a full VE study. The constructability review would focus upon staging issues, work staging areas, field expedient procedures or methods, and similar activities focused upon accelerating or enhancing the proposed design.

Interim Engineer of Design and Environment _____

Engineer of Local Roads and Streets _____

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2007-05

SUBJECT: HIGHWAY BRIDGE PROGRAM (HBP) APPROACH LIMITS

ISSUED DATE: October 1, 2007

EFFECTIVE DATE: October 1, 2007

This memorandum modifies Sections 4-1, Section 32-2 and Section 35-3 to the Bureau of Local Roads and Streets Manual.

The Illinois Department of Transportation formed a task force comprised of staff from the Federal Highway Administration, Department of Transportation and local government highway officials to review and specify the eligible approach and touchdown limits for federally-funded projects; to clarify requirements for use of a design speed greater than the minimum design speed in appropriate situations; and to increase funding opportunities for bridge approaches, thereby reducing the effects of immediate functional obsolescence that could result from constructing “perched” bridges.

Extended eligible approach limits allow local governments with limited funds to fully construct bridge projects in a safe and functionally adequate manner. The design engineer may decide to use a higher design speed for given bridges in order to provide an operating speed commensurate with the use of the highway. The design speed shall be applied consistently throughout the project.

Please contact Darrell Lewis at (217)782-3827 or Jim Klein at (217)782-5928 with any questions.

Charles J. Ingersoll

Engineer of Local Roads and Streets

Attachments

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2008-01

SUBJECT: FINAL RULE ON MAINTAINING SIGN RETROREFLECTIVITY

ISSUED DATE: February 28, 2008

EFFECTIVE DATE: January 22, 2008

This memorandum and PM2008-02 supersede Chapter 39 Section 2 of the BLRS Manual dated August 2007.

Revision 2 of the 2003 Manual on Uniform Traffic Control Devices (MUTCD) was published in the Federal Register on December 21, 2007, and became effective on January 22, 2008. The final rule provides additional requirements, guidance, and clarification in maintaining traffic sign retroreflectivity that is already required by the MUTCD. The minimum retroreflectivity levels and maintenance methods consider changes in the composition of the vehicle population, vehicle headlamp design, and the demographics of drivers. The FHWA expects that the levels and maintenance methods will help to promote safety and mobility on the nation's streets and highways

The final rule establishes the following compliance periods from the effective date:

- 4 years for implementation and continued use of an assessment or management method that is designed to maintain traffic sign retroreflectivity at or above the established minimum levels;
- 7 years for replacement of regulatory, warning, and ground-mounted guide (except street name) signs that are identified using the assessment or management method as failing to meet the established minimum levels; and
- 10 years for replacement of street name signs and overhead guide signs that are identified using the assessment or management method as failing to meet the established minimum levels.

Resource guides and other information are available from the Federal Highway Administration's (FHWA) website at www.fhwa.dot.gov/retro.

The Bureau of Local Roads & Streets' Illinois Technology Transfer (ILT2) Center in partnership with FHWA IL Division is holding several training courses to assist local highway agencies comply with the final rule. Please go to www.dot.il.gov/blr/training.asp for a complete list of training courses.

The ILT2 Center has also partnered with the Utah Local Technical Assistance Program (UT LTAP) to provide Geographic Information System (GIS) based sign inventory. This software will be made available to local highway agencies over the upcoming months and training will be provided. However, agencies may elect to maintain a sign inventory and inspection records using a field book, other paper documentation, in-house developed software, or purchased software.

If you have any questions, please contact Kevin Burke of this bureau at kevin.burkeiii@illinois.gov.

Charles J. Ingersoll

Engineer of Local Roads and Streets

KB/kb

Attachments

KNOW YOUR RETRO 2007

U.S. Department of Transportation
Federal Highway Administration

NEW MUTCD SIGN RETROREFLECTIVITY REQUIREMENTS

Maintaining Traffic Sign Retroreflectivity

FHWA-SA-07-020

Traffic signs provide important information to drivers at all times, both day and night. To be effective, their visibility must be maintained. The 2003 *Manual on Uniform Traffic Control Devices* (MUTCD) addresses sign visibility in several places, including Sections 1A.03, 1A.04, 1A.05, 2A.06, 2A.08, and 2A.22. These sections address factors such as uniformity, design, placement, operation, and maintenance. Previously, the MUTCD did not specify minimum retroreflectivity levels.

The second revision of the 2003 MUTCD introduces new language establishing minimum retroreflectivity levels that must be maintained for traffic signs. **Agencies have until January 2012, to establish and implement a sign assessment or management method to maintain minimum levels of sign retroreflectivity.** The compliance date for regulatory, warning, and ground-mounted guide signs is January 2015. For overhead guide signs and street name signs, the compliance date is January 2018. The new MUTCD language is shown on page 2 and 3 of this document.

The new standard in Section 2A.09 requires that agencies maintain traffic signs to a minimum level of retroreflectivity outlined in Table 2A-3 of the MUTCD. The Federal Highway Administration (FHWA) believes that this proposed change will promote safety while providing sufficient flexibility for agencies to choose a maintenance method that best matches their specific conditions.

Including Table 2A-3 in the MUTCD does not imply that an agency must measure the retroreflectivity of every sign. Rather, the new MUTCD language describes five methods that agencies can use to maintain traffic sign retroreflectivity at or above the minimum levels. Agencies can choose from these methods or combine them. Agencies are allowed to develop other appropriate methods based on engineering studies. However, agencies should adopt a consistent method that produces results that correspond to the values in Table 2A-3.

The new MUTCD language recognizes that there may be some individual signs that do not meet the minimum retroreflectivity levels at a particular point in time. As long as the agency with jurisdiction is maintaining signs in accordance with Section 2A.09 of the MUTCD, the agency will be considered to be in compliance. This document describes methods that can be used to maintain sign retroreflectivity at or above the MUTCD's minimum maintained retroreflectivity levels.

RETROREFLECTIVITY MAINTENANCE

The MUTCD describes two basic types of methods that agencies can use to maintain sign retroreflectivity at or above the MUTCD minimum maintained retroreflectivity levels — assessment methods and management methods. The FHWA has identified and listed assessment and management methods for maintaining sign retroreflectivity in accordance with Section 2A.09. These methods are described on page four. A full report on these methods can be found at *www.fhwa.dot.gov/retro*.

New MUTCD Minimum Retroreflectivity Compliance Periods

- Four years for implementation and continued use of an assessment or management method that is designed to maintain traffic sign retroreflectivity at or above the established minimum levels;
- Seven years for replacement of regulatory, warning, and ground-mounted guide (except street name) signs that are identified using the assessment or management methods as failing to meet the established minimum levels; and
- Ten years for replacement of street name signs and overhead guide signs that are identified using the assessment or management method as failing to meet the established minimum levels.

New MUTCD Section 2A.09 Maintaining Minimum Retroreflectivity

Support:
Retroreflectivity is one of several factors associated with maintaining nighttime sign visibility (see Section 2A.22).

Standard:
Public agencies or officials having jurisdiction shall use an assessment or management method that is designed to maintain sign retroreflectivity at or above the minimum levels in Table 2A-3.

Support:
Compliance with the above Standard is achieved by having a method in place and using the method to maintain the minimum levels established in Table 2A-3. Provided that an assessment or management method is being used, an agency or official having jurisdiction would be in compliance with the above Standard even if there are some individual signs that do not meet the minimum retroreflectivity levels at a particular point in time.

Guidance:
Except for those signs specifically identified in the Option portion of this Section, one or more of the following assessment or management methods should be used to maintain sign retroreflectivity:

A. **Visual Nighttime Inspection** – The retroreflectivity of an existing sign is assessed by a trained sign inspector conducting a visual inspection from a moving vehicle during nighttime conditions. Signs that are visually identified by the inspector to have retroreflectivity below the minimum levels should be replaced.

B. **Measured Sign Retroreflectivity** – Retroreflectivity is measured using a retroreflectometer. Signs with retroreflectivity below the minimum levels should be replaced.

C. **Expected Sign Life** – When signs are installed, the installation date is labeled or recorded so that the age of a sign is known. The age of the sign is compared to the expected sign life. The expected sign life is based on the experience of sign retroreflectivity degradation in a geographic area compared to the minimum levels. Signs older than the expected life should be replaced.

D. **Blanket Replacement** – All signs in an area/corridor, or of a given type, should be replaced at specified intervals. This eliminates the need to assess retroreflectivity or track the life of individual signs. The replacement interval is based on the expected sign life, compared to the minimum levels, for the shortest-life material used on the affected signs.

E. **Control Signs** – Replacement of signs in the field is based on the performance of a sample of control signs. The control signs might be a small sample located in a maintenance yard or a sample of signs in the field. The control signs are monitored to determine the end of retroreflective life for the associated signs. All field signs represented by the control sample should be replaced before the retroreflectivity levels of the control sample reach the minimum levels.

F. **Other Methods** – Other methods developed based on engineering studies can be used.

Support:
Additional information about these methods is contained in the 2007 Edition of FHWA's *"Maintaining Traffic Sign Retroreflectivity"* (see Section 1A.11).

Option:
Highway agencies may exclude the following signs from the retroreflectivity maintenance guidelines described in this Section:

A. Parking, Standing, and Stopping signs (R7 and R8 series)

B. Walking/Hitchhiking/Crossing signs (R9 series, R10-1 through R10-4b)

C. Adopt-A-Highway signs

D. All signs with blue or brown backgrounds

E. Bikeway signs that are intended for exclusive use by bicyclists or pedestrians

New MUTCD Table 2A-3. Minimum Maintained Retroreflectivity Levels ①

SIGN COLOR	SHEETING TYPE (ASTM D4956-04)				ADDITIONAL CRITERIA
	Beaded Sheeting			Prismatic Sheeting	
	I	II	III	III, IV, VI, VII, VIII, IX, X	
White on Green	W*; G ≥ 7	W*; G ≥ 15	W*; G ≥ 25	W ≥ 250; G ≥ 25	Overhead
	W*; G ≥ 7	W ≥ 120; G ≥ 15			Ground-mounted
Black on Yellow or Black on Orange	Y*; O*	Y ≥ 50; O ≥ 50			②
	Y*; O*	Y ≥ 75; O ≥ 75			③
White on Red	W ≥ 35; R ≥ 7				④
Black on White	W ≥ 50				—

① The minimum maintained retroreflectivity levels shown in this table are in units of cd/lx/m^2 measured at an observation angle of 0.2° and an entrance angle of -4.0°.
② For text and fine symbol signs measuring at least 1200 mm (48 in) and for all sizes of bold symbol signs
③ For text and fine symbol signs measuring less than 1200 mm (48 in)
④ Minimum Sign Contrast Ratio ≥ 3:1 (white retroreflectivity ÷ red retroreflectivity)
* This sheeting type should not be used for this color for this application.

BOLD SYMBOL SIGNS

- W1-1, -2 – Turn and Curve
- W1-3, -4 – Reverse Turn and Curve
- W1-5 – Winding Road
- W1-6, -7 – Large Arrow
- W1-8 – Chevron
- W1-10 – Intersection in Curve
- W1-15 – 270 Degree Loop
- W2-1 – Cross Road
- W2-2, -3 – Side Road
- W2-4, -5 – T and Y Intersection
- W2-6 – Circular Intersection
- W3-1 – Stop Ahead
- W3-2 – Yield Ahead
- W3-3 – Signal Ahead
- W4-1 – Merge
- W4-2 – Lane Ends
- W4-3 – Added Lane
- W4-6 – Entering Roadway Added Lane
- W6-1, -2 – Divided Highway Begins and Ends
- W6-3 – Two-Way Traffic
- W10-1, -2, -3, -4, -11, -12 – Highway-Railroad Advance Warning
- W11-2 – Pedestrian Crossing
- W11-3 – Deer Crossing
- W11-4 – Cattle Crossing
- W11-5 – Farm Equipment
- W11-6 – Snowmobile Crossing
- W11-7 – Equestrian Crossing
- W11-8 – Fire Station
- W11-10 – Truck Crossing
- W12-1 – Double Arrow
- W16-5p, -6p, -7p – Pointing Arrow Plaques
- W20-7a – Flagger
- W21-1a – Worker

FINE SYMBOL SIGNS – Symbol Signs Not Listed As Bold Symbol Signs

SPECIAL CASES

- W3-1 – Stop Ahead: Red retroreflectivity ≥ 7
- W3-2 – Yield Ahead: Red retroreflectivity ≥ 7; White retroreflectivity ≥ 35
- W3-3 – Signal Ahead: Red retroreflectivity ≥ 7; Green retroreflectivity ≥ 7
- W3-5 – Speed Reduction: White retroreflectivity ≥ 50
- For non-diamond shaped signs such W14-3 (No Passing Zone), W4-4p (Cross Traffic Does Not Stop), or W13-1, -2, -3, -5 (Speed Advisory Plaques), use largest sign dimension to determine proper minimum retroreflectivity level.

ASSESSMENT METHODS

Assessment methods require evaluation of individual signs within an agency's jurisdiction. There are two basic assessment methods — visual assessment and measured sign retroreflectivity.

1. VISUAL ASSESSMENT

Nighttime Inspection

In the visual nighttime inspection method, on-the-fly assessments of retroreflectivity are made by an inspector during nighttime conditions. The following recommendations provide general guidance for the inspections:

- Develop guidelines and procedures for inspectors to use in conducting the nighttime inspections and train inspectors in the use of these procedures.
- Conduct inspections at normal speed from the travel lane(s).
- Conduct inspections using low-beam headlights while minimizing interior vehicle lighting.
- Evaluate signs at typical viewing distances so that adequate time is available for an appropriate driving response.

One or more of the following procedures should be used to support visual inspections.

Calibration Signs Procedure

In this procedure, an inspector views a "calibration sign" prior to conducting the nighttime inspection described above. Calibration signs have known retroreflectivity levels at or above minimum levels. These signs are set up where the inspector can view the calibration signs in a manner similar to nighttime field inspections. The inspector uses the visual appearance of the calibration sign to establish the evaluation threshold for that night's inspection activities. The following factors provide additional information on the use of this procedure:

- Calibration signs are needed for each color of sign in Table 2A-3.
- Calibration signs are viewed at typical viewing distances using the inspection vehicle.
- Calibration signs need to be properly stored between inspections so that their retroreflectivity does not deteriorate over time.
- Calibration sign retroreflectivity should be verified periodically.

Comparison Panels Procedure

Comparison panels are used to assess signs that have marginal retroreflectivity. The comparison panels are fabricated at retroreflectivity levels at or above the minimum levels. When the visual inspection identifies the retroreflectivity of a sign as marginal, a comparison panel is attached to the sign and the sign/panel combination is viewed and compared by the inspector.

Consistent Parameters Procedure

Nighttime inspections are conducted under similar factors that were used in the research to develop the minimum retroreflectivity levels. These factors include:

- Using a sport utility vehicle or pick-up truck to conduct the inspection.
- Using a model year 2000 or newer vehicle for the inspection.
- Using an inspector who is at least 60 years old.

2. MEASURED SIGN RETROREFLECTIVITY

In this method the retroreflectivity of a sign is measured and directly compared to the minimum level appropriate for that sign. ASTM E1709, Standard Test Method for Measurement of Retroreflective Signs Using a Portable Retroreflectometer, provides a standard method for measuring sign retroreflectivity.

An agency can choose to use either an assessment method or a management method, or a combination of the two. Agencies may develop other methods as long as they are documented in an engineering study and correspond to the values in Table 2A.3.

MANAGEMENT METHODS

Management methods provide an agency with the ability to maintain sign retroreflectivity without having to assess individual signs. There are three basic management methods — sign replacement based on expected sign life, blanket replacement of large numbers of signs at appropriate intervals, and use of control signs.

1. EXPECTED SIGN LIFE

In this method, individual signs are replaced before they reach the end of their expected service life, which is the time anticipated for the retroreflective material to degrade to the appropriate minimum level. Expected service life can be based on sign sheeting warranties, weathering deck results, measurements of field signs, or other criteria.

This method requires a system for tracking sign age. A common approach for identifying the age of individual signs uses a label on the sign to mark the year of fabrication or installation. Sign management systems can also be used to track the age of individual signs.

2. BLANKET REPLACEMENT

With this method, an agency replaces all signs in an area, or of a given type, at specified time intervals based on the relevant expected sign life. This method typically requires that all of the designated signs within a replacement area, or of the particular sign type, be replaced even if a sign was recently installed.

3. CONTROL SIGNS

In this method, a control sample of signs is used to represent all of an agency's signs. The retroreflectivity of the control signs is monitored and sign replacement is based on the performance of the control signs.

- Agencies should develop a sampling plan to determine the appropriate number and type of control signs needed to represent the agency's signs.
- Control signs may be actual signs in the field or signs in a maintenance yard (for convenience).
- The retroreflectivity of the control signs should be monitored using an assessment method.

MUTCD Revision 2

Introduction

Add the following new entry in the compliance date list that begins on Page I-3:

Section 2A.09 Maintaining Minimum Retroreflectivity—new section—from the effective date of the Final Rule for Revision 2 of the 2003 MUTCD:

- 4 years for implementation and continued use of an assessment or management method that is designed to maintain traffic sign retroreflectivity at or above the established minimum levels;
- 7 years for replacement of regulatory, warning, and ground-mounted guide (except street name) signs that are identified using the assessment or management method as failing to meet the established minimum levels; and
- 10 years for replacement of street name signs and overhead guide signs that are identified using the assessment or management method as failing to meet the established minimum levels.

Section 1A.11 Relation to Other Publications

Add the following new paragraph just prior to the paragraph that begins with "Other publications that are useful sources...":

The publication entitled “Maintaining Traffic Sign Retroreflectivity” (2007 Edition) is available at www.fhwa.dot.gov/retro, or write to the FHWA, 1200 New Jersey Avenue, SE, HSA-1, Washington, DC 20590.

Section 2A.09 Maintaining Minimum Retroreflectivity

Replace the previous title and parenthetical note that reserved this section for future rulemaking with the title shown above and the text shown below:

Support:

Retroreflectivity is one of several factors associated with maintaining nighttime sign visibility (see Section 2A.22).

Standard:

Public agencies or officials having jurisdiction shall use an assessment or management method that is designed to maintain sign retroreflectivity at or above the minimum levels in Table 2A-3.

Support:

Compliance with the above Standard is achieved by having a method in place and using the method to maintain the minimum levels established in Table 2A-3. Provided that an assessment or management method is being used, an agency or official having jurisdiction would be in compliance with the above Standard even if there are some individual signs that do not meet the minimum retroreflectivity levels at a particular point in time.

Guidance:

Except for those signs specifically identified in the Option in this Section, one or more of the following assessment or management methods should be used to maintain sign retroreflectivity:

A. Visual Nighttime Inspection – The retroreflectivity of an existing sign is assessed by a trained sign inspector conducting a visual inspection from a moving vehicle during nighttime conditions. Signs that are visually identified by the inspector to have retroreflectivity below the minimum levels should be replaced.

B. Measured Sign Retroreflectivity – Sign retroreflectivity is measured using a retroreflectometer. Signs with retroreflectivity below the minimum levels should be replaced.

C. Expected Sign Life – When signs are installed, the installation date is labeled or recorded so that the age of a sign is known. The age of the sign is compared to the expected sign life. The expected sign life is based on the experience of sign retroreflectivity degradation in a geographic area compared to the minimum levels. Signs older than the expected life should be replaced.

D. Blanket Replacement – All signs in an area/corridor, or of a given type, should be replaced at specified intervals. This eliminates the need to assess retroreflectivity or track the life of individual signs. The replacement interval is based on the expected sign life, compared to the minimum levels, for the shortest-life material used on the affected signs.

E. Control Signs – Replacement of signs in the field is based on the performance of a sample of control signs. The control signs might be a small sample located in a maintenance yard or a sample of signs in the field. The control signs are monitored to determine the end of retroreflective life for the associated signs. All field signs represented by the control sample should be replaced before the retroreflectivity levels of the control sample reach the minimum levels.

F. Other Methods – Other methods developed based on engineering studies can be used.

Support:

Additional information about these methods is contained in the 2007 Edition of FHWA's "Maintaining Traffic Sign Retroreflectivity" (see Section 1A.11).

Option:

Highway agencies may exclude the following signs from the retroreflectivity maintenance guidelines described in this Section:

A. Parking, Standing, and Stopping signs (R7 and R8 series)

B. Walking/Hitchhiking/Crossing signs (R9 series, R10-1 through R10-4b)

C. Adopt-A-Highway signs

D. All signs with blue or brown backgrounds

E. Bikeway signs that are intended for exclusive use by bicyclists or pedestrians

Table 2A-3 Minimum Maintained Retroreflectivity Levels

Add the following new table:

Table 2A-3. Minimum Maintained Retroreflectivity Levels①

Sign Color	Sheeting Type (ASTM D4956-04)				Additional Criteria
	Beaded Sheeting			Prismatic Sheeting	
	I	II	III	III, IV, VI, VII, VIII, IX, X	
White on Green	W*; G ≥ 7	W*; G ≥ 15	W*; G ≥ 25	W ≥ 250; G ≥ 25	Overhead
	W*; G ≥ 7	W ≥ 120; G ≥ 15			Ground-mounted
Black on Yellow or Black on Orange	Y*; O*	Y ≥ 50; O ≥ 50			②
	Y*; O*	Y ≥ 75; O ≥ 75			③
White on Red	W ≥ 35; R ≥ 7				④
Black on White	W ≥ 50				—

① The minimum maintained retroreflectivity levels shown in this table are in units of cd/lx/m^2 measured at an observation angle of 0.2° and an entrance angle of -4.0°.
② For text and fine symbol signs measuring at least 1200 mm (48 in) and for all sizes of bold symbol signs
③ For text and fine symbol signs measuring less than 1200 mm (48 in)
④ Minimum Sign Contrast Ratio ≥ 3:1 (white retroreflectivity ÷ red retroreflectivity)
* This sheeting type should not be used for this color for this application.

Bold Symbol Signs

- W1-1, -2 – Turn and Curve
- W1-3, -4 – Reverse Turn and Curve
- W1-5 – Winding Road
- W1-6, -7 – Large Arrow
- W1-8 – Chevron
- W1-10 – Intersection in Curve
- W1-11 – Hairpin Curve
- W1-15 – 270 Degree Loop
- W2-1 – Cross Road
- W2-2, -3 – Side Road
- W2-4, -5 – T and Y Intersection
- W2-6 – Circular Intersection
- W3-1 – Stop Ahead
- W3-2 – Yield Ahead
- W3-3 – Signal Ahead
- W4-1 – Merge
- W4-2 – Lane Ends
- W4-3 – Added Lane
- W4-5 – Entering Roadway Merge
- W4-6 – Entering Roadway Added Lane
- W6-1, -2 – Divided Highway Begins and Ends
- W6-3 – Two-Way Traffic
- W10-1, -2, -3, -4, -11, -12 – Highway-Railroad Advance Warning
- W11-2 – Pedestrian Crossing
- W11-3 – Deer Crossing
- W11-4 – Cattle Crossing
- W11-5 – Farm Equipment
- W11-6 – Snowmobile Crossing
- W11-7 – Equestrian Crossing
- W11-8 – Fire Station
- W11-10 – Truck Crossing
- W12-1 – Double Arrow
- W16-5p, -6p, -7p – Pointing Arrow Plaques
- W20-7a – Flagger
- W21-1a – Worker

Fine Symbol Signs – Symbol signs not listed as Bold Symbol Signs.

Special Cases

- W3-1 – Stop Ahead: Red retroreflectivity ≥ 7
- W3-2 – Yield Ahead: Red retroreflectivity ≥ 7; White retroreflectivity ≥ 35
- W3-3 – Signal Ahead: Red retroreflectivity ≥ 7; Green retroreflectivity ≥ 7
- W3-5 – Speed Reduction: White retroreflectivity ≥ 50
- For non-diamond shaped signs such W14-3 (No Passing Zone), W4-4p (Cross Traffic Does Not Stop), or W13-1, -2, -3, -5 (Speed Advisory Plaques), use largest sign dimension to determine proper minimum retroreflectivity level.

Section 2A.22 Maintenance

Replace the first paragraph with the text shown below:

Maintenance activities should consider proper position, cleanliness, legibility, and daytime and nighttime visibility (see Section 2A.09). Damaged or deteriorated signs should be replaced.

§ 563e.26 Small savings association performance standards.

(a) *Performance criteria*—(1) *Small savings associations that are not intermediate small savings associations.* * * *

* * * * *

Dated: December 5, 2007.

Julie L. Williams,

First Senior Deputy Comptroller and Chief Counsel.

By order of the Board of Governors of the Federal Reserve System.

Dated: December 14, 2007.

Jennifer J. Johnson,

Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, this 10th day of December, 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: December 14, 2007.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. E7–24719 Filed 12–20–07; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–2003–15149]

RIN 2125–AE98

National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Maintaining Traffic Sign Retroreflectivity

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The Manual on Uniform Traffic Control Devices (MUTCD) is incorporated by reference in 23 CFR part 655, subpart F, approved by the Federal Highway Administration, and recognized as the national standard for traffic control devices used on all public roads. The purpose of this final rule is to revise standards, guidance, options, and supporting information relating to maintaining minimum levels of retroreflectivity for traffic signs on all roads open to public travel.

EFFECTIVE DATE: This final rule is effective January 22, 2008. 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 January 22, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Mary McDonough, Office of Safety Design, (202) 366–2175, or Mr. Raymond W. Cuprill, Office of the Chief Counsel, (202) 366–0791, U.S. Department of Transportation, Federal Highway Administration, 1200 New Jersey Ave., SE., 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

This document, the notice of proposed amendments (NPA), the supplemental notice of proposed amendments (SNPA), 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 under the help section of the Web site.

An electronic copy of this document may also be downloaded from 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

On July 30, 2004, at 69 FR 45623, the FHWA published in the **Federal Register** a NPA proposing to amend the MUTCD to include methods to maintain traffic sign retroreflectivity. The NPA was issued in response to section 406 of the Department of Transportation and Related Agencies Appropriations Act, 1993 (Pub. L. 102–388; October 6, 1992). Section 406 of this Act directed the Secretary of Transportation to revise the MUTCD to include a standard for minimum levels of retroreflectivity that must be maintained for traffic signs and pavement markings, which apply to all roads open to public travel. The FHWA is currently conducting research to develop a standard for minimum levels of pavement marking retroreflectivity. The FHWA expects to initiate the pavement marking retroreflectivity rulemaking process once the research is concluded and the results are analyzed and considered.

The FHWA has led a significant effort toward establishing minimum-maintained levels of sign retroreflectivity since the statute was issued in 1993. Three national workshops were held in 1995 to educate State and local highway agency personnel and solicit their input regarding an initial set of minimum maintained sign retroreflectivity levels. In 1998, FHWA published revisions to initial research recommendations on minimum sign retroreflectivity levels [1] noting that additional work would be needed because the National Highway Traffic Safety Administration was also revising the Federal Motor Vehicle Safety Standard Number 108 Lamps, Reflective Devices, and Associated Equipment (FMVSS 108). The additional research was completed in 2003, at which time FHWA began preparing the NPA for traffic sign retroreflectivity for the MUTCD, which was published in 2004.

After considering and analyzing the comments on the NPA for minimum levels of retroreflectivity for traffic signs, FHWA decided to publish a supplemental notice of proposed amendments (SNPA). In particular, the SNPA was developed to address comments to the docket that: (1) Expressed concern that the NPA proposal did not meet the intent of the 1993 statute, (2) suggested that the table of minimum retroreflectivity levels should be placed in the MUTCD, (3) requested clarification of the compliance period, and (4) expressed concern about the resource requirements for complying with the rulemaking. The proposed MUTCD text in the SNPA included a STANDARD statement that required that a method be used to manage and maintain retroreflectivity and required that sign retroreflectivity be maintained at minimum levels. It also included the table of minimum retroreflectivity levels in the MUTCD. These changes were significant enough to warrant an SNPA to allow FHWA to obtain and assess additional public comments. The SNPA was published on May 8, 2006, at 71 FR 26711. The comment period for the SNPA ended on November 6, 2006.

Based on the comments received and its own experience, FHWA is issuing this final rule establishing the minimum levels of retroreflectivity that must be maintained for traffic signs. The FHWA is designating the MUTCD, with these changes incorporated, as Revision 2 of the 2003 Edition of the MUTCD.

The text of this Revision No. 2 and the text of the 2003 Edition of the MUTCD with Revision No. 2 final text incorporated are available for inspection and copying as prescribed in 49 CFR

[1] A copy of ''An Implementation Guide For Minimum Retroreflectivity Requirements for Traffic Signs,'' dated April 1, 1998, can be found on the Docket Management System (FHWA–2003–15149–229) for this ruling at the following Web address: *http://dms.dot.gov/search/document.cfm?documentid=467771&docketid=15149.*

part 7 at the FHWA Office of Transportation Operations. Furthermore, final Revision No. 2 changes are available on the official MUTCD Web site at *http://mutcd.fhwa.dot.gov.* The entire MUTCD text with final Revision No. 2 text incorporated is also available on this Web site.

Summary of Comments

The FHWA received 121 letters submitted to the docket in response to the SNPA containing approximately 550 individual comments. The FHWA received comments from the National Committee on Uniform Traffic Control Devices (NCUTCD), the American Association of State Highway and Transportation Officials (AASHTO) and 20 State Departments of Transportation (DOT) members of AASHTO, the National Association of County Engineers (NACE) and seven county association members of NACE, city and county governmental agencies, consulting firms, private industry, associations, other organizations, and individual private citizens. The FHWA has considered all these comments. Docket comments and summaries of FHWA's analyses and determinations are discussed below. General comments are discussed first, followed by discussion of major issues and adopted changes, and finally, discussion of other comments.

Discussion of General Comments

Many respondents agreed with the intent and the concepts proposed in both the NPA and the SNPA. In analyzing the comments to the SNPA, FHWA decided that additional clarification should be provided in the MUTCD text and in the explanations provided in the final rule in order to address the following five major issues:

(1) Clarification of compliance period;

(2) Resource burdens on public agencies;

(3) Statutory requirements;

(4) Table of minimum retroreflectivity levels in the MUTCD; and

(5) Impacts of sign retroreflectivity on safety.

Discussion of Major Issues

This section provides a discussion of each of the five major issues raised by commenters in response to the SNPA, along with FHWA's analysis and resolution.

(1) Clarification of the compliance period.

Several county associations and many county and local officials requested an extension from 2 to 4 years for the compliance period for the establishment and implementation of a method to maintain sign retroreflectivity, in order to accommodate their programs within their 2-year budget cycles. There were also a few requests to extend the 7 and 10 year compliance periods for the signs themselves.

Considering the comments regarding budget cycles, particularly budget cycles for local agencies, FHWA has extended to 4 years the compliance period for establishing and implementing a sign assessment or management method to maintain minimum levels of sign retroreflectivity. This extended compliance period will allow transportation agencies to make allowances for budgets (including working with the States or regional organizations) to access funds and/or partnerships to achieve the minimum levels of sign retroreflectivity.

The 7 and 10 year compliance dates for minimum levels for sign retroreflectivity will remain 7 years for regulatory, warning, and ground-mounted guide signs and 10 years for street name and overhead guide signs, because these compliance target dates correspond to the normal expected service life of sign sheeting and will allow highway agencies to make the proper accommodations in their efforts to maintain minimum retroreflectivity levels. The 7 and 10 year compliance dates are counted from the effective date of this rule and are not in addition to the 4-year period for establishing the methods.

(2) Resource burdens on public agencies.

While the Minnesota DOT (MNDOT) recognized that the proposed language would impose additional time and resource burdens on public agencies, it did not perceive this rule as an ''unmanageable burden.'' Several sign manufacturers and some private citizens appreciated the FHWA's effort to point out that Federal funds are available for up to 100 percent funding of ''replacement of signs in this program.'' In addition, the American Traffic Safety Services Association (ATSSA), the American Automobile Association (AAA), the American Association of Retired People (AARP), the American Highway Users Alliance (AHUA), and several private citizens agree that the benefits from this rulemaking will outweigh the costs that agencies may experience. However, AASHTO, NACE, and several State and local DOTs believe that the requirements, as proposed in the SNPA, are an unfunded mandate with serious financial implications to their agencies.

The FHWA conducted a study to determine if unfunded mandates, as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995), would be imposed by including requirements in the MUTCD for minimum maintained traffic sign retroreflectivity levels.[2] Based on the analysis, this rulemaking effort does not impose an unfunded mandate. Additionally, because Federal-aid highway dollars are often provided to States to use for these types of sign replacements, this requirement does not rise to the level of an unfunded mandate.

One commenter reviewed the FHWA's report ''Maintaining Traffic Sign Retroreflectivity: Impacts on State and Local Agencies (DRAFT)'' (1994—15149–06), and suggested that perhaps there was a mathematical error in that report that would mean that the costs incurred by agencies when replacing signs would be above those that can be required from agencies without funding. The FHWA has updated the 1994 draft report with a 2007 version (see footnote # 2). The updated report now includes the costs of overhead and street name signs, which the 1994 version excluded. The updated report concludes that the national impact of including the minimum maintained traffic sign retroreflectivity levels in the MUTCD is approximately $37.5 million over a 10-year implementation period, with a maximum annual impact of $4.5 million in years 1 through 7. This is below the annual $128.1 million unfunded mandate level.

The FHWA has also provided ample phase-in time for agencies to comply. Agencies are already required to have a highway safety program that includes provisions for the upgrading of substandard traffic control devices and installations to achieve conformity with the MUTCD, so this rulemaking does not create additional burdens.

While many counties believe that FHWA should consider a funding stream directly to local jurisdictions for rulemaking activities such as minimum retroreflectivity standards, such funding stream discussions are outside the scope of this rulemaking. Signing programs remain eligible for Federal-aid highway dollars.

(3) Statutory requirements:

Several organizations representing highway users from a safety perspective agree that the language proposed in the SNPA satisfied the statutory requirements to establish a standard for the minimum levels of sign

[2] ''Maintaining Traffic Sign Retroreflectivity: Impacts on State and Local Agencies,'' Publication No. FHWA–HRT–07–042, dated April 2007, is available at the following Web address: *http://www.tfhrc.gov/safety/pubs/07042/index.htm.*

retroreflectivity; however, AASHTO, and several States, commented that Congress did not explicitly indicate that the minimum values for maintaining sign retroreflectivity had to be included in the MUTCD as a Standard. Alternatively, the Advocates for Highway and Auto Safety (AHAS) believe that the language proposed in the SNPA still did not fully satisfy the statutory requirements, which AHAS interprets as requiring the establishment of specific and mandatory minimum levels of retroreflectivity for signs and pavement markings in the MUTCD and an obligation on State and local authorities to maintain those specific minimum values of retroreflectivity. AHAS stated that the intent can only be met by including such requirements in a ''standard'' statement in the MUTCD, which is defined as one of the ''required, mandatory, or specifically prohibitive practice regarding a traffic control device.''

The FHWA includes the reference to minimum levels for sign retroreflectivity in a Standard statement because the statute requires the Secretary to revise the MUTCD to include a standard for minimum levels of retroreflectivity that must be maintained for traffic signs. Under the MUTCD's current organization, the best way to do this is by including it in a STANDARD statement, because Standards represent requirements.[3] In addition, the congressional reference to a standard did not exclude the use of GUIDANCE, OPTION, and SUPPORT statements to help clarify the STANDARD statement of required minimum levels of retroreflectivity that must be maintained, similar to the other sections of the MUTCD.

The FHWA also received comments from the city of Plano, Texas, and the Illinois County Engineers expressing a concern and/or confusion that the language proposed in the SNPA ''imbedded'' a GUIDANCE statement within a STANDARD, because the STANDARD statement referenced the GUIDANCE statement for minimum retroreflectivity levels.

Based on this concern, and to clarify FHWA's intent, FHWA revises the STANDARD statement to explicitly reference Table 2A–3 Minimum Maintained Retroreflectivity Levels, which contains minimum-maintained retroreflectivity levels for various sign color combinations and types of sign sheeting.

The National Association of Counties (NACo) and NACE suggested adding ''recommended'' before ''minimum level'' in describing the retroreflectivity levels shown in Table 2A–3. The FHWA retains the wording ''minimum level'' in describing the levels shown in Table 2A–3, because the word ''recommended'' is not appropriate when referencing a Standard.

(4) Table of minimum retroreflectivity levels in the MUTCD.

The ATSSA, AAA, AARP, AHUA, Minnesota and Virginia DOTs, the city of Plano, Texas, sign manufacturers, and many private citizens were in favor of including the table of minimum retroreflectivity levels in the MUTCD. However, many organizations, such as AASHTO, NACo, NACE, and numerous State DOTs, as well as county and local agencies were opposed to the inclusion of the table. Those who opposed including the table in the MUTCD expressed concern over potential litigation that could be brought against public agencies if an individual sign within their jurisdiction was to fall below the minimum maintained levels in the table. The NCUTCD also commented that before any table is inserted into the MUTCD, FHWA should provide substantial clarification regarding the process and frequency for updating or changing the table of retroreflectivity values.

The FHWA believes that including this table in the MUTCD is necessary to satisfy the statutory requirement that the MUTCD be amended to include minimum retroreflectivity levels. Therefore, the FHWA includes Table 2A–3, titled ''Minimum Maintained Retroreflectivity Levels'' in the MUTCD. The FHWA also believes inclusion of the table will provide clarity and convenience to the users of the MUTCD. In response to the request by the NCUTCD that FHWA clarify the process for updating or changing values in the table, we note that updates or changes to the table would be subject to a public rulemaking process before FHWA could adopt changes to the values of the table in the MUTCD. This process will include notice and opportunity for comment by the public.

Table 2A–3 will be included in the MUTCD as follows (note that the values in this table have not changed during the rulemaking process):

[3] In the context of this final rule, the definitions of STANDARD and GUIDANCE are identical to the definitions provided in the Introduction of the MUTCD (*http://mutcd.fhwa.dot.gov*). Specifically, a STANDARD is a statement of required, mandatory or specifically prohibitive practice regarding a traffic control device, while a GUIDANCE is a statement of recommended, but not mandatory, practice in typical situations, with deviations allowed if engineering judgment or engineering study indicates the deviation to be appropriate.

Table 2A-3. Minimum Maintained Retroreflectivity Levels①

Sign Color	Sheeting Type (ASTM D4956-04)				Additional Criteria
	Beaded Sheeting			Prismatic Sheeting	
	I	II	III	III, IV, VI, VII, VIII, IX, X	
White on Green	W*; G ≥ 7	W*; G ≥ 15	W*; G ≥ 25	W ≥ 250; G ≥ 25	Overhead
	W*; G ≥ 7	W ≥ 120; G ≥ 15			Ground-mounted
Black on Yellow or Black on Orange	Y*; O*	Y ≥ 50; O ≥ 50			②
	Y*; O*	Y ≥ 75; O ≥ 75			③
White on Red	W ≥ 35; R ≥ 7				④
Black on White	W ≥ 50				—

① The minimum maintained retroreflectivity levels shown in this table are in units of cd/lx/m^2 measured at an observation angle of 0.2° and an entrance angle of -4.0°.
② For text and fine symbol signs measuring at least 1200 mm (48 in) and for all sizes of bold symbol signs
③ For text and fine symbol signs measuring less than 1200 mm (48 in)
④ Minimum Sign Contrast Ratio ≥ 3:1 (white retroreflectivity ÷ red retroreflectivity)
* This sheeting type should not be used for this color for this application.

Bold Symbol Signs

- W1-1, -2 – Turn and Curve
- W1-3, -4 – Reverse Turn and Curve
- W1-5 – Winding Road
- W1-6, -7 – Large Arrow
- W1-8 – Chevron
- W1-10 – Intersection in Curve
- W1-11 – Hairpin Curve
- W1-15 – 270 Degree Loop
- W2-1 – Cross Road
- W2-2, -3 – Side Road
- W2-4, -5 – T and Y Intersection
- W2-6 – Circular Intersection
- W3-1 – Stop Ahead
- W3-2 – Yield Ahead
- W3-3 – Signal Ahead
- W4-1 – Merge
- W4-2 – Lane Ends
- W4-3 – Added Lane
- W4-5 – Entering Roadway Merge
- W4-6 – Entering Roadway Added Lane
- W6-1, -2 – Divided Highway Begins and Ends
- W6-3 – Two-Way Traffic
- W10-1, -2, -3, -4, -11, -12 – Highway-Railroad Advance Warning
- W11-2 – Pedestrian Crossing
- W11-3 – Deer Crossing
- W11-4 – Cattle Crossing
- W11-5 – Farm Equipment
- W11-6 – Snowmobile Crossing
- W11-7 – Equestrian Crossing
- W11-8 – Fire Station
- W11-10 – Truck Crossing
- W12-1 – Double Arrow
- W16-5p, -6p, -7p – Pointing Arrow Plaques
- W20-7a – Flagger
- W21-1a – Worker

Fine Symbol Signs – Symbol signs not listed as Bold Symbol Signs.

Special Cases

- W3-1 – Stop Ahead: Red retroreflectivity ≥ 7
- W3-2 – Yield Ahead: Red retroreflectivity ≥ 7; White retroreflectivity ≥ 35
- W3-3 – Signal Ahead: Red retroreflectivity ≥ 7; Green retroreflectivity ≥ 7
- W3-5 – Speed Reduction: White retroreflectivity ≥ 50
- For non-diamond shaped signs such W14-3 (No Passing Zone), W4-4p (Cross Traffic Does Not Stop), or W13-1, -2, -3, -5 (Speed Advisory Plaques), use largest sign dimension to determine proper minimum retroreflectivity level.

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The FHWA received comments from NACo, NACE and several local agencies that suggested adding a statement clarifying that all signs need not meet the minimum retroreflectivity values at every point in time.

Considering these comments in conjunction with FHWA's understanding that there will be cases where vandalism, weather, or damage due to a crash influences the visibility of a sign, the FHWA clarified the SUPPORT statement in Section 2A.09. The revised statement clarifies that an agency or an official having jurisdiction would be in compliance with the Standard even if there are some individual signs that do not meet the minimum retroreflectivity levels at a particular point in time, provided that an assessment or management method implemented in accordance with Section 2A.09 of the MUTCD is being used.

The FHWA also received comments from NACo, NACE and several local agencies stating specific concerns that the establishment of specific retroreflectivity values within Table 2A–3 will become ''the de-facto standard'' that will be used against highway agencies in tort claims and lawsuits.

The FHWA believes that the selection of a reasonable method for maintaining sign retroreflectivity and strict adherence to the same might serve to defend highway agencies in tort liability claims and litigation. Public agencies and officials that implement and follow a reasonable method in conformance with the national MUTCD would appear to be in a better position to successfully defend tort litigation involving claims of improper sign retroreflectivity than jurisdictions that lack any method. In addition, as a result of adding clarifying language to the Support statement indicating that once an assessment or management method is used by an agency or official having jurisdiction, agencies would be in compliance with the STANDARD even if some individual signs do not meet the minimum retroreflectivity levels at a point in time.

Including Table 2A–3 in the MUTCD does not imply that an agency needs to measure the retroreflectivity of every sign in its jurisdiction. Instead, agencies must implement methods designed to provide options on how to maintain the minimum retroreflectivity levels, using the criteria in Table 2A–3.

(5) Impacts of sign retroreflectivity on safety.

The ATSSA and several sign manufacturers believe there is a proven link between maintained sign retroreflectivity and safety, especially as it relates to older drivers. In addition, several citizens believe that improved retroreflectivity will lead to safer roads. One citizen who worked for several years in the field of nighttime visibility stated that his research with actual drivers on the road showed conclusive results that greater levels of retroreflectivity increase a driver's ability to be warned well in advance of a traffic situation or pedestrian encounter. The North Carolina DOT (NCDOT) and the AHAS, however, recommend that further FHWA studies be done to demonstrate that retroreflective improvements translate into safety improvements.

The FHWA believes that improving sign retroreflectivity will be a benefit to all drivers, including older drivers. All drivers need legible signs in order to make important decisions at key locations, such as intersections and exit ramps on high speed facilities. This is particularly true for regulatory and warning signs. This is fundamental to safe driving, and the lack of uniform retroreflectivity standards has led to wide variations in maintenance levels of these critical signs. As discussed in the SNPA, there have been some investigations that demonstrate potential safety benefits of upgrading sign materials.[4] More importantly, maintaining sign retroreflectivity is consistent with one of FHWA's primary goals, which is to improve safety on the Nation's streets and highways. Improvements in sign visibility will also support FHWA's efforts to be responsive to the needs of older drivers, which is important because the number of older drivers is expected to increase significantly in the next 30 years.

Discussion of Other Comments

In addition to the five major issues discussed in the previous section, FHWA also received comments that can be grouped into the following three topics:

(6) Assessment methods;

(7) Blue and brown signs; and

(8) Minimum retroreflectivity levels.

This section contains a discussion of each of these topics.

(6) Assessment methods:

The FHWA received comments from the AASHTO, NCUTCD, ATSSA, AHAS, AAA, AARP, AHUA, ARTBA, Maryland and Wisconsin DOTs, and several counties in Illinois regarding the assessment and management methods for maintaining sign retroreflectivity as proposed in the GUIDANCE statement of the SNPA. The AASHTO and several State DOTs did not support actual measurement of signs as one of the methods, but supported visual nighttime inspections, blanket replacement, control signs, and expected sign life methods.

The city of Plano, Texas and a private citizen suggested that the numerical values in Table 2A–3 should only apply to Method B: Measured Sign Retroreflectivity. Those commenters suggested that for all other methods where subjective judgment is used, such as visual nighttime inspection, the table should serve as guidance for local offices to reject and accept signs.

Finally, the NCUTCD, the Illinois Association of County Engineers, and the DeWitt County, Illinois Highway Department suggested adding additional language to the GUIDANCE statement to explicitly, rather than implicitly, state that other assessment methods based on engineering study can be used to assess sign retroreflectivity.

The FHWA believes that the final rule provides several assessment or management methods that agencies can choose from, based on the method that best fits the agencies' resources and needs. An agency can choose to use either assessment methods or management methods, or a combination; however, agencies should develop a method in such a way that it corresponds to the values in Table 2A–3. The methods have been developed to provide flexibility for agencies for addressing their local conditions. To address the comments received regarding the types of assessment methods that should be used, FHWA clarifies the GUIDANCE statement by adding a sixth method to the list of assessment or management methods titled ''Other Methods,'' which explicitly states that other methods developed based on engineering studies can be used.[5]

(7) Blue and brown signs:

In the SNPA, FHWA asked for comments on the need for retroreflectivity levels to be developed for signs with blue and brown

[4] Supplemental Notice of Proposed Amendments, page 26717. The SNPA was published on May 8, 2006, at 71 FR 26711. This notice can be found at: *http://www.gpoaccess.gov/fr/retrieve.html* and on the Docket Management System (FHWA–2003–15149–229) for this ruling at the following Internet Web site: *http://dms.dot.gov.*

[5] As defined in the MUTCD, an engineering study shall be performed by an engineer, or by an individual working under the supervision of an engineer, through the application of procedures and criteria established by the engineer. An engineering study shall be documented. In accordance with the text heading GUIDANCE in the MUTCD, deviations to a recommended practice are allowed if engineering study indicates the deviation to be appropriate.

backgrounds.[6] The Maryland State Highway Administration suggested that recommended minimum retroreflectivity levels be established for blue-background signs and that those levels apply to certain signs such as Hospital, EMS, Ambulance Station, and Emergency Medical Care signs, whose nighttime readability can be important. The combined letter from a representative of AAA, AARP, and AHUA, and one comment letter from a sign manufacturer stated that blue and brown signs are intended for use both day and night, and that motorist safety, particularly for older drivers, would be enhanced by including minimum retroreflectivity levels for blue and brown signs. The commenters acknowledged that if blue and brown signs are being excluded because there is a lack of data on which to base a requirement, a ''placeholder'' could be included in the MUTCD until more data is available and the table of minimum levels can be updated.

The FHWA is currently studying blue and brown minimum sign retroreflectivity levels. Because the study has not been finalized and FHWA did not analyze the costs associated with the sign retroreflectivity of blue and brown signs in the economic impacts study, minimum retroreflectivity levels for blue and brown signs are not included in the MUTCD at this time. At the conclusion of FHWA's study on this topic, the results may indicate a need to pursue such a requirement. If so, updates or changes to Table 2A–3 would be subject to the public rulemaking process before FHWA could add blue and brown minimum retroreflectivity levels.

(8) Minimum retroreflectivity levels:

Several of the commenters, including AASHTO, NACE, the Illinois and Indiana Associations of County Engineers, DeWitt County, Illinois Highway Department, the North Carolina DOT and the Maryland State Highway Administration suggested that the data within the table were not precise, and reflected data that were developed based on assumptions and varying characteristics.

The FHWA acknowledges that the data are based on some assumptions and varying characteristics; however, they are based on the latest science and empirical-based research emphasizing older drivers.[7] The supporting research reflects the best information at this time. One of the key aspects to the research supporting the minimum retroreflectivity levels is that it was based on field studies under conditions on a closed course facility that represented real roadway scenarios to the maximum extent possible without jeopardizing safety. Research subjects were recruited and participated in the research, which ultimately developed cumulative distribution profiles for luminance levels needed to accommodate the legibility of older drivers. These luminance levels were then used in conjunction with computer modeling to determine the retroreflectivity needed under a variety of roadway conditions. The computer modeling allows analyses of an infinite set of roadway scenarios, but is based on the luminance levels derived through the human factors research supported by FHWA.

After the research was completed, FHWA held national workshops, which included nighttime inspections of signs at various retroreflectivity levels. The participants of the workshops evaluated the signs at night using a visual inspection technique. The results of this effort helped confirm that the minimum retroreflectivity levels in Table 2A–3 are appropriate.

The NCDOT suggested that a tiered system be applied to the retroreflectivity levels, similar to the tiered system used for letter heights and sign sizes based on roadway classification.[8] The NCDOT commented that retroreflective sign applications for lower speed, lower volume roads should be coordinated with lower retroreflectivity values.

The FHWA believes that the values shown in the table are applicable to all classifications of roads, including lower volume and slower speed roadways. The retroreflectivity levels are based on the legibility design threshold level as specified in Section 2A.14 of the MUTCD (40 feet of legibility per inch of letter height). Therefore, the size of the sign, and the message on the sign, play a key role in the retroreflectivity levels. Smaller signs have smaller messages, which mean drivers need to be closer to the signs to read them. As the distance between the sign and the vehicle decreases, the efficiency of retroreflectivity materials generally decreases, meaning that more retroreflectivity is needed. This often outweighs the increased illumination available from the vehicle headlamps. The minimum retroreflectivity levels were designed to be easy to implement, without added complexities such as a tiered system based on letter heights and sign sizes. However, with the proper support (i.e., an engineering study), and using the values in Table 2A–3 as minimum maintained retroreflectivity levels, there is flexibility in this final rule and the associated MUTCD language that allows for an agency to develop a more complex set of minimum retroreflectivity levels, if it chooses to do so. Such levels cannot be below the minimums in Table 2A–3.

As mentioned in item 3 under Major Issues, a few commenters such as NACE, the NCUTCD and others, believed that Table 2A–3 and its title should be referred to as ''Recommended.'' The FHWA believes that it is inappropriate to include ''Recommended'' in the title of a table that is referenced in a STANDARD statement of the MUTCD. In addition, the word ''Recommended'' implies guidance, rather than a standard, and would therefore be confusing.

ATSSA, the AHAS and the MNDOT agreed with eliminating Type I material for ground-mounted signs, and they also agreed with eliminating Types I, II, and III for overhead guide sign legends. These commenters felt that prohibiting the use of these less efficient retroreflective materials would substantially improve the nighttime driving environments, especially for older drivers with a variety of visual impairments. ATSSA also supported including Type X materials so that all currently defined American Society of Testing Materials (ASTM) Type designations that are used for traffic signs will be included in the MUTCD.

The NCDOT disagrees with any retroreflective requirement for illuminated signs. Their reasoning is that the assessment and management methods used to maintain retroreflectivity do not address signs with illumination and that Section 2A.08 does not require retroreflectivity for illuminated signs.

Illuminated signs do need to meet the minimum retroreflectivity requirements because there are times that the signs may not be illuminated due to power failure. Previous research has shown that overhead signs can be effective

[6] Blue signs are generally described as informational signs, and include evacuation route and road user signs. Examples include hospital, specific service signs (food, gas, lodging, camping, and attraction) and tourist-oriented directional signs. Brown signs, which are also informational signs, are primarily recreational and cultural interest area signs.

[7] Carlson, P.J. and H.G. Hawkins. Minimum Retroreflectivity Levels for Overhead Guide Signs and Street-Name Signs. FHWA–RD–03–082. U.S. Department of Transportation, Federal Highway Administration, Washington, DC. This document is available at the following Web address: *http://www.tfhrc.gov/safety/pubs/03082/index.htm.*

[8] Part 2 of the MUTCD includes a table titled, ''Table 2B–1 Regulatory Sign Sizes'' that includes sign sizes for conventional roads, expressways, freeways, and oversized as well as minimum sign sizes. Generally, sign sizes for conventional roads are smaller than those for expressways or freeways.

without lighting, as long as the appropriate retroreflective sheeting materials are used to fabricate the sign.[9] With this knowledge, many agencies have elected to use more efficient retroreflective sheeting on overhead guide signs without sign lighting, citing adequate visibility and concerns about energy use and light pollution (although sign lighting may continue to be used in areas of complex surroundings and/or roadway geometries). The minimum retroreflectivity levels in Table 2A–3 in the MUTCD prohibit the use of less efficient reflective materials for overhead signs so that agencies do not use them. As a result, agencies are more likely to select appropriate materials to meet nighttime driving requirements.

One supplier of overhead sign lighting systems and 22 citizens suggested that lighting of overhead signs should be mandatory. This final rule does not change the existing MUTCD language recommending lighting for overhead signs. Mandating lighting for overhead signs is outside the scope of this rulemaking.

One sign manufacturer suggested that retroreflectivity levels measured at 0.5 degree observation angle be included. As discussed in item #12 of the SNPA, research has been completed that supports moving toward the 0.5-degree concept and the ASTM has started working toward a revision to its specifications to describe 0.5-degree measurements.[10] The FHWA believes that it is not practical to implement minimum retroreflectivity levels based on an observation angle of 0.5 degrees until measuring devices become more readily available, and the ASTM completes its work developing a standard measurement specification. At that time there may be a need for an alternative table and a transition period established while the 0.2-degree measurement geometries and devices are phased out. If so, these changes will be introduced through public rulemaking procedures described earlier for MUTCD changes or additions.

[9] Carlson, P.J. and H.G. Hawkins. Minimum Retroreflectivity Levels for Overhead Guide Signs and Street-Name Signs. FHWA–RD–03–082. U.S. Department of Transportation, Federal Highway Administration, Washington, DC. This document is available at the following Web address: *http://www.tfhrc.gov/safety/pubs/03082/index.htm*.

[10] The ASTM E12 committee is working to develop a standard measurement specification for 0.5 degree instruments. The committee is using ASTM E1709 as a template (ASTM E1709 is the standard measurement specification for 0.2 degree instruments). More information is available at *http://www.astm.org*.

Conclusion

To address the comments to the docket, the FHWA adopts the following key changes to Section 2A.09 Maintaining Minimum Retroreflectivity in the MUTCD from what was proposed in the SNPA:

(A) In the STANDARD statement, a reference to Table 2A–3 was added to clarify that the levels contained in Table 2A–3 are the minimum levels that are to be used by public agencies or officials having jurisdiction when they develop an assessment or management method that is designed to maintain sign retroreflectivity.

(B) The 2nd SUPPORT statement was clarified to indicate that once an assessment or management method is used, an agency or official having jurisdiction would be in compliance with the STANDARD even if some individual signs do not meet the minimum retroreflectivity levels at a particular point in time.

(C) The GUIDANCE statement was modified by adding a sixth method to the list of assessment or management methods that should be used to maintain sign retroreflectivity titled ''Other Methods,'' which explicitly states that other methods developed based on engineering studies can be used.

In addition, FHWA adopts a 4-year compliance date (instead of the proposed 2-year compliance date) for implementation and continued use of an assessment or management method that is designed to maintain traffic sign retroreflectivity at or above the established minimum levels.

The final rule meets statutory requirements, provides clarity where needed, and provides flexibility for compliance.

Rulemaking Analyses and Notices

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or under the regulatory policies and procedures of the U.S. Department of Transportation. While the FHWA had preliminarily designated this rulemaking as significant during the NPRM and SNPRM stages, the FHWA has determined that this rulemaking does not meet the criteria for a ''significant regulatory action'' under Executive Order 12866. This rule will not adversely affect, in a material way, any sector of the economy. Additionally, this rulemaking will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees or loan programs.

It is anticipated that the economic impact of this rulemaking would cause minimal additional expenses to public agencies. In 2007, FHWA updated its analysis of the cost impacts to State and local agencies to reflect higher material costs due to inflation, an increase in the proportion of signs that would be replaced with higher-level sign sheeting material, and changes in the overall mileage of State and local roads.[11] The findings of the 2007 analysis show that the costs of the proposed action to State and local agencies would be less than $128.1 million per year.[12] The 7-year implementation period for ground-mounted signs will allow State and local agencies to delay replacement of recently installed Type I signs until they have reached their commonly accepted 7-year service life. The 10-year compliance period for overhead signs would allow an extended period of time because of the longer service life typically used for those signs. The final rule does not affect the impacts assessments described above.

Currently, the MUTCD requires that traffic signs be illuminated or retroreflective to enhance nighttime visibility. In 1993, Congress mandated that the MUTCD contain standards for maintaining minimum traffic sign and pavement marking retroreflectivity.[13] The final rule provides additional guidance, clarification, and flexibility in maintaining traffic sign retroreflectivity that is already required by the MUTCD. The minimum retroreflectivity levels and maintenance methods consider changes in the composition of the vehicle population, vehicle headlamp design, and the demographics of drivers. The FHWA expects that the levels and maintenance methods will help to promote safety and mobility on the Nation's streets and highways.

This rulemaking addresses comments received in response to the Office of Management and Budget's (OMB's) request for regulatory reform nominations from the public. The OMB is required to submit an annual report to Congress on the costs and benefits of Federal regulations. The 2002 report included recommendations for

[11] ''Maintaining Traffic Sign Retroreflectivity: Impacts on State and Local Agencies,'' Publication No. FHWA–HRT–07–042, dated April 2007, is available at the following Web address: *http://www.tfhrc.gov/safety/pubs/07042/index.htm*.

[12] Ibid.

[13] United States Department of Transportation and Related Agencies Act of 1993, Public Law 102–388, 106 Stat. 1520, Section 406.

regulatory reform that OMB requested from the public.[14] One recommendation was that the FHWA should establish standards for minimum levels of brightness of traffic signs.[15] The FHWA has identified this rulemaking as responsive to that recommendation.

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 of this final rule on small entities and has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

This rule would apply to State Departments of Transportation in the execution of their highway programs, specifically with respect to the retroreflectivity of traffic signs. Additionally, sign replacement is often eligible for up to 100 percent Federal-aid funding—this applies to local jurisdictions and tribal governments, pursuant to 23 U.S.C. 120(c). The implementation of this final rule would not affect the economic viability or sustenance of small entities, as States are not included in the definition of a small entity that is set forth in 5 U.S.C. 601.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995). The impacts analysis shows that State and local agencies would be likely to incur impacts of roughly $37.5 million. Using a 7-year implementation period for regulatory, warning, and guide signs and a 10-year implementation period for street name and overhead guide signs, the annual impacts are estimated to be approximately $4.5 million for years 1 through 7, and $2.1 million for years 8 through 10. The estimates are based upon the added cost of more efficient performance sign materials. The labor, equipment, and mileage costs for sign replacement were excluded under the assumption that the proposed implementation period was long enough to allow replacement of non-compliant signs under currently planned maintenance cycles. Therefore, this final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any one year. In addition, sign replacement is often eligible for up to 100 percent Federal-aid funding—this applies to local jurisdictions and tribal governments, pursuant to 23 U.S.C. 120(c). Further, the definition of ''Federal Mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism)

The FHWA analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and FHWA has determined that this final rule will not have a substantial direct effect or sufficient federalism implications on States and local governments that would limit the policy-making discretion of the States and local governments. Nothing in the MUTCD directly preempts any State law or regulation.

The MUTCD is incorporated by reference in 23 CFR Part 655, subpart F. This final rule is 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 Nation's streets and highways.

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, although it is a significant regulatory action under Executive Order 12866, 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 OMB 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 final rule 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.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory

[14] A copy of the OMB report ''Stimulating Smarter Regulation: 2002 Report to Congress on the Costs and Benefits of Regulation and Unfunded Mandates on State, Local, and Tribal Entities'' is available at the following Web address: *http://www.whitehouse.gov/omb/inforeg/summaries_nominations_final.pdf.*

[15] 15 A complete compilation of comments received by OMB is available at the following Web address: *http://www.whitehouse.gov/omb/inforeg/key_comments.html.* Comment 93 includes the recommendation concerning the retroreflectivity of traffic signs.

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: December 13, 2007.

J. Richard Capka,

Federal Highway 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—Traffic Control Devices on Federal-Aid and Other Streets and Highways—[Amended]

■ 2. Revise § 655.601(a), to read as follows:

§ 655.601 Purpose.

* * * * *

(a) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), 2003 Edition, including Revision No. 1, FHWA, dated November 2004, and revision No. 2, FHWA, dated January 2008. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the National Archives and Record 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/code_of_federal_regulations/ibr_locations.html.* It is available for inspection at the Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590, as provided in 49 CFR part 7. The text is also available from the FHWA Office of Transportation Operations' Web site at *http://mutcd.fhwa.dot.gov*.

* * * * *

[FR Doc. E7–24683 Filed 12–20–07; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9368]

RIN 1545–BG55

Reduction of Foreign Tax Credit Limitation Categories Under Section 904(d)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary Income Tax Regulations regarding the reduction of the number of separate foreign tax credit limitation categories under section 904(d) of the Internal Revenue Code (Code). Section 404 of the American Jobs Creation Act of 2004 (AJCA) reduced the number of section 904(d) separate categories from eight to two, effective for taxable years beginning after December 31, 2006. These temporary regulations affect taxpayers claiming foreign tax credits and provide guidance needed to comply with the statutory changes made by the AJCA. The text of these temporary regulations also serves as the text of the proposed regulations (REG–114126–07) set forth in the notice of proposed rulemaking on this subject published elsewhere in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on December 21, 2007.

Applicability Dates: For dates of applicability, see §§ 1.904–2T(i)(3), 1.904–4T(n), 1.904–5T(o)(3), 1.904–7T(g)(6), and 1.904(f)–12T(h)(6). These regulations apply to taxable years of United States taxpayers beginning after December 31, 2006, and ending on or after December 21, 2007, and to taxable years of foreign corporations which end with or within taxable years of their domestic corporate shareholders beginning after December 31, 2006, and ending on or after December 21, 2007.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Parry (202) 622–3850 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the regulations under section 904 relating to the application of separate foreign tax credit limitations to certain categories of income under section 904(d), as amended by the AJCA. Prior to the effective date of the AJCA amendments (that is, for taxable years beginning before January 1, 2007 (''pre-2007 taxable years'')), the foreign tax credit limitation applied separately to the following categories of income: passive income, high withholding tax interest, financial services income, shipping income, certain dividends from a DISC or former DISC, taxable income attributable to certain foreign trade income, certain distributions from a FSC or former FSC, and any other income not described in this sentence (''general limitation income''). Other provisions of the Code that subject other categories of income to separate foreign tax credit limitations were not amended by the AJCA. See, for example, sections 56(g)(4)(C)(iii)(IV), 245(a)(10), 865(h), 901(j), and 904(h)(10); see also H.R. Rep. No. 108–755, at 383 (October 7, 2004).

Effective for taxable years beginning after December 31, 2006 (''post-2006 taxable years''), the AJCA reduced the number of section 904(d) separate categories to two categories for ''passive category income'' and ''general category income.'' New section 904(d)(2)(A) defines passive category income as passive income and specified passive category income, and general category income as income other than passive category income. In addition, new section 904(d)(2)(C) and (D) provides rules concerning the treatment of financial services income and companies.

These temporary regulations modify the regulations under section 904 to reflect the new separate categories for passive category income and general category income, and provide transition rules for the treatment of earnings and profits and foreign income taxes of controlled foreign corporations and noncontrolled section 902 corporations accumulated in pre-2007 taxable years, overall foreign losses and separate limitation losses under section 904(f), and the carryover and carryback of excess foreign taxes under section 904(c).

Explanation of Provisions

I. Carryovers and Carrybacks of Excess Foreign Taxes Under Section 904(c)

Section 904(d)(2)(K)(i), as added by the AJCA, provides that excess taxes carried from a pre-2007 taxable year to a post-2006 taxable year shall be assigned to the post-2006 separate categories based on where the related income would have been assigned had such taxes been paid or accrued in a post-2006 taxable year.

Consistent with this statutory amendment, § 1.904–2T(i)(1)(i) provides that if a taxpayer carries over to a post-2006 taxable year any excess taxes that

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2008-02

SUBJECT: GOLF CARTS AND NEIGHBORHOOD VEHICLES

ISSUED DATE: February 28, 2008

EFFECTIVE DATE: February 28, 2008

This memorandum and PM2008-01 supersede Chapter 39 Section 2 of the BLRS Manual dated August 2007.

According to 625 ILCS 5/11-1426.1 and 625 ILCS 5/11-1428 a municipality, township, county, or other unit of local government may authorize, by ordinance or resolution, the operation of neighborhood vehicles or golf carts on roadways under its jurisdiction if the unit of local government determines that public safety will not be jeopardized. The unit of local government must consider the volume, speed, and character of traffic on the roadway and determine whether neighborhood vehicles may safely travel on or cross the roadway. Upon determining that neighborhood vehicles or golf carts may safely operate a roadway, appropriate signs shall be posted.

A Golf Cart (W11-11) warning sign shall be posted at all locations where golf cart operation is permitted.

A Golf Cart (W11-11) warning sign and a supplemental warning plaque carrying the message NEIGHBORHOOD VEHICLE shall be posted at all locations where neighborhood vehicle operation is permitted.

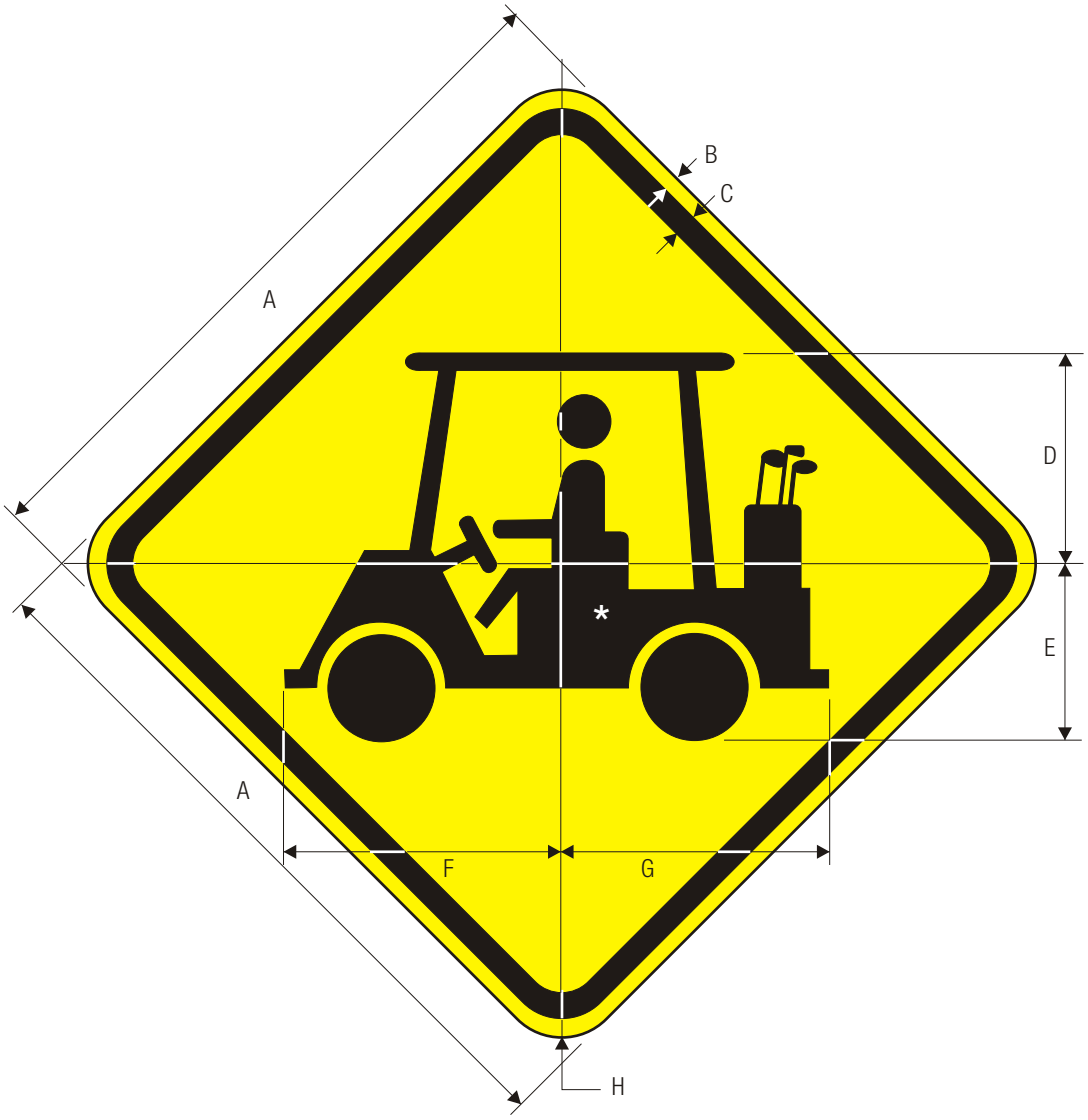
If you have any questions, please contact Kevin Burke of this bureau at kevin.burkeiii@illinois.gov.

Charles J. Ingersoll

Engineer of Local Roads and Streets

KB/kb

Attachments



W11-11

GOLF CART TRAFFIC

Section 4(f) Complete

A	B	C	D	E	F	G	H
24	.375	.625	7.285	6.064	9.467	9.126	1.5
30	.5	.75	9.126	7.605	11.889	11.448	1.875
36	.625	.875	10.928	9.126	14.250	13.730	2.25
48	.75	1.25	14.571	12.129	18.934	18.253	3

COLORS: SYMBOL — BLACK
BACKGROUND — YELLOW (RETROREFLECTIVE)

(625 ILCS 5/11-1426.1)

(Text of Section from P.A. 95-150)

Sec. 11-1426.1. Operation of neighborhood electric vehicles on streets, roads, and highways.

(a) As used in this Section, "neighborhood electric vehicle" means a self-propelled, electronically powered four-wheeled motor vehicle which is capable of attaining in one mile a speed of more than 20 miles per hour, but not more than 25 miles per hour, and which conforms to federal regulations under Title 49 C.F.R. Part 571.500.

(b) Except as otherwise provided in this Section, it is unlawful for any person to drive or operate a neighborhood electric vehicle upon any street, highway, or roadway in this State. If the operation of a neighborhood electric vehicle is authorized under subsection (d), the neighborhood electric vehicle may be operated only on streets where the posted speed limit is 35 miles per hour or less. This subsection (b) does not prohibit a neighborhood electric vehicle from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.

(b-5) A person may not operate a neighborhood electric vehicle upon any street, highway, or roadway in this State unless he or she has a valid Illinois driver's license issued in his or her name by the Secretary of State.

(c) Except as otherwise provided in subsection (c-5), no person operating a neighborhood electric vehicle shall make a direct crossing upon or across any highway under the jurisdiction of the State, tollroad, interstate highway, or controlled access highway in this State.

(c-5) A person may make a direct crossing at an intersection controlled by a traffic light or 4-way stop sign upon or across a highway under the jurisdiction of the State if the speed limit on the highway is 35 miles per hour or less at the place of crossing.

(d) A municipality, township, county, or other unit of local government may authorize, by ordinance or resolution, the operation of neighborhood electric vehicles on roadways under its jurisdiction if the unit of local government determines that the public safety will not be jeopardized. The Department may authorize the operation of neighborhood electric vehicles on the roadways under its jurisdiction if the Department determines that the public safety will not be jeopardized.

Before permitting the operation of neighborhood electric vehicles on its roadways, a municipality, township, county, other unit of local government, or the Department must consider the volume, speed, and character of traffic on the roadway and determine whether neighborhood electric vehicles may safely travel on or cross the roadway. Upon determining that neighborhood electric vehicles may safely operate on a roadway and the adoption of an ordinance or resolution by a municipality, township, county, or other unit of local government, or authorization by the Department, appropriate signs shall be posted.

If a roadway is under the jurisdiction of more than one unit of government, neighborhood electric vehicles may not be operated on the roadway unless each unit of government agrees and takes action as provided in this subsection.

(e) No neighborhood electric vehicle may be operated on a roadway unless, at a minimum, it has the following: brakes, a

steering apparatus, tires, a rearview mirror, red reflectorized warning devices in the front and rear, a slow moving emblem (as required of other vehicles in Section 12-709 of this Code) on the rear of the neighborhood electric vehicle, a headlight that emits a white light visible from a distance of 500 feet to the front, a tail lamp that emits a red light visible from at least 100 feet from the rear, brake lights, and turn signals. When operated on a roadway, a neighborhood electric vehicle shall have its headlight and tail lamps lighted as required by Section 12-201 of this Code.

(f) A person who drives or is in actual physical control of a neighborhood electric vehicle on a roadway while under the influence is subject to Sections 11-500 through 11-502 of this Code.

(Source: P.A. 94-298, eff. 1-1-06; 95-150, eff. 8-14-07.)

(Text of Section from P.A. 95-414 and 95-575)

Sec. 11-1426.1. Operation of neighborhood vehicles on streets, roads, and highways.

(a) As used in this Section, "neighborhood vehicle" means a self-propelled, electronically powered four-wheeled motor vehicle (or a self-propelled, gasoline-powered four-wheeled motor vehicle with an engine displacement under 1,200 cubic centimeters) which is capable of attaining in one mile a speed of more than 20 miles per hour, but not more than 25 miles per hour, and which conforms to federal regulations under Title 49 C.F.R. Part 571.500.

(b) Except as otherwise provided in this Section, it is unlawful for any person to drive or operate a neighborhood vehicle upon any street, highway, or roadway in this State. If the operation of a neighborhood vehicle is authorized under subsection (d), the neighborhood vehicle may be operated only on streets where the posted speed limit is 35 miles per hour or less. This subsection (b) does not prohibit a neighborhood vehicle from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.

(b-5) A person may not operate a neighborhood vehicle upon any street, highway, or roadway in this State unless he or she has a valid Illinois driver's license issued in his or her name by the Secretary of State.

(c) No person operating a neighborhood vehicle shall make a direct crossing upon or across any highway under the jurisdiction of the State, tollroad, interstate highway, or controlled access highway in this State.

(d) A municipality, township, county, or other unit of local government may authorize, by ordinance or resolution, the operation of neighborhood vehicles on roadways under its jurisdiction if the unit of local government determines that the public safety will not be jeopardized. The Department may authorize the operation of neighborhood vehicles on the roadways under its jurisdiction if the Department determines that the public safety will not be jeopardized.

Before permitting the operation of neighborhood vehicles on its roadways, a municipality, township, county, other unit of local government, or the Department must consider the volume, speed, and character of traffic on the roadway and determine whether neighborhood vehicles may safely travel on or cross the roadway. Upon determining that neighborhood vehicles may safely operate on a roadway and the adoption of

an ordinance or resolution by a municipality, township, county, or other unit of local government, or authorization by the Department, appropriate signs shall be posted.

If a roadway is under the jurisdiction of more than one unit of government, neighborhood vehicles may not be operated on the roadway unless each unit of government agrees and takes action as provided in this subsection.

(e) No neighborhood vehicle may be operated on a roadway unless, at a minimum, it has the following: brakes, a steering apparatus, tires, a rearview mirror, red reflectorized warning devices in the front and rear, a slow moving emblem (as required of other vehicles in Section 12-709 of this Code) on the rear of the neighborhood vehicle, a headlight that emits a white light visible from a distance of 500 feet to the front, a tail lamp that emits a red light visible from at least 100 feet from the rear, brake lights, and turn signals. When operated on a roadway, a neighborhood vehicle shall have its headlight and tail lamps lighted as required by Section 12-201 of this Code.

(f) A person who drives or is in actual physical control of a neighborhood vehicle on a roadway while under the influence is subject to Sections 11-500 through 11-502 of this Code.

(Source: P.A. 94-298, eff. 1-1-06; 95-414, eff. 8-24-07; 95-575, eff. 8-31-07.)

(625 ILCS 5/11-1428) (from Ch. 95 1/2, par. 11-1428)

Sec. 11-1428. Operation of golf carts on streets, roads and highways.

(a) Except as otherwise provided in this Section, it shall be unlawful for any person to drive or operate any golf cart upon any street, highway or roadway in this State.

(b) Except as provided under subsection (c) of this Section, golf carts may make a direct crossing over a street, highway or roadway that runs through a golf course provided:

(1) The crossing is made at an interchange approved by the local unit of government and at a place where no obstruction prevents a quick and safe crossing; and

(2) The golf cart is brought to a complete stop before attempting a crossing; and

(3) The operator of the golf cart yields the right of way to all pedestrian and vehicular traffic which constitutes a hazard; and

(4) There is no tunnel or overpass ramp provided for the golf cart to cross through the golf course.

(c) No person operating a golf cart shall make a direct crossing upon or across any highway under the jurisdiction of the State, tollroad, interstate highway, or controlled access highway in this State.

(d) For purposes of this Section, "golf cart" means a vehicle specifically designed and intended for the purposes of transporting one or more persons and their golf clubs or maintenance equipment while engaged in the playing of golf, supervising the play of golf, or maintaining the condition of the grounds on a public or private golf course.

(e) Subject to subsection (b), a municipality, township, county, or other unit of local government may authorize, by ordinance or resolution, the operation of golf carts on roadways under their respective jurisdictions. The Department may authorize the operation of golf carts on the roadways under its jurisdiction.

Before permitting the operation of golf carts on its roadway, a municipality, township, county, other unit of local government, or the Department must consider the volume, speed, and character of traffic on the roadway and determine whether golf carts may safely travel on or cross the roadway. Upon determining that golf carts may safely operate on a roadway and the adoption of an ordinance or resolution by a municipality, township, county or other unit of local government, or authorization by the Department, appropriate signs shall be posted.

If a roadway is under the jurisdiction of more than one unit of government, golf carts may not be operated on the roadway unless each unit of government agrees and takes action as provided in this subsection.

No golf cart may be operated on a roadway unless, at a minimum, it has the following: brakes, a steering apparatus, tires, a rearview mirror, red reflectorized warning devices in the front and rear, a slow moving emblem (as required of other vehicles in Section 12-709) on the rear of the golf cart, a headlight that emits a white light visible from a distance of 500 feet to the front, a tail lamp that emits a red light visible from at least 100 feet from the rear, brake lights, and turn signals. When operated on a roadway, a golf cart shall have its headlight and tail lamps lighted as required by Section 12-201.

(f) A person who drives or is in actual physical control of a golf cart on a roadway while under the influence is subject to Section 11-500 through 11-502.
(Source: P.A. 90-683, eff. 1-1-99.)

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2008-03

SUBJECT: DENSITY TESTING ON HOT MIX ASPHALT (HMA) PAVEMENTS

ISSUED DATE: March 6, 2008

EFFECTIVE DATE: March 1, 2008

This memorandum revises Section 37-1 of the Bureau of Local Roads and Streets Manual, dated August 2007.

Illinois Department of Transportation's Quality Control/Quality Assurance (QC/QA) procedures require correlated nuclear gauge density testing on all Hot Mix Asphalt projects. If a correlated gauge is not appropriate for the mixture (low tonnage, thin lift, etc.), core density testing is required.

For local agency HMA projects constructed under general maintenance, special maintenance, Local Agency Pavement Preservation (LAPP), functional overlay policy, or for any mixture quantity less than 3,000 tons, the preferred alternative test method is also core density testing. Core density testing assures a reliable comparison to the maximum density for the mix. If core holes are not filled properly, potholes and other pavement distresses may occur at the test location. LR 406 "Filling HMA Core Holes with Non-Shrink Grout" may be used to reduce the possibility of pot holes at the test location.

Local agencies may also use uncorrelated nuclear gauge density or growth curves; however, both of these alternative methods may lead to inaccurate results. Since an uncorrelated nuclear gauge is not adjusted to the material and pavement cross-section on the project, density errors as high as 2% are common. Likewise, growth curves are subject to numerous environmental (temperature, wind, etc.) and equipment variables (speed, frequency, etc.); therefore, growth curve density should be approached with caution. LR 1030 "Growth Curve" shall be used on all projects verifying density with growth curves. For more information about growth curve variability, see attached "Growth Curve Variables" summary.

If alternative density testing is performed, both the contractor and local agency must comply with the QC/QA testing frequency required for a given mixture.

If you have any questions, please contact Kevin Burke of this bureau at kevin.burkeiii@illinois.gov.

Charles J. Ingersoll
Engineer of Local Roads and Streets

Attachments

Growth Curve Variables

The primary difficulty in utilizing a percentage of the growth curve is determining an “accurate” peak density. There are numerous variables to control and/or account for when performing a growth curve to ensure the peak density obtained is accurate. Listed below are a few variables that should be considered:

1. **Mix Temperature**. Too Cold; Too Hot; Temperature Gradient
2. **Ambient Conditions**. Sunshine vs. Overcast; Wind Speed; Base Temperature.
3. **Roller**. Operator Experience; Force Applied (Static or Dynamic); Speed; Amplitude; Frequency; Length of Pattern.
4. **Existing Pavement Condition**. Variability; Stiffness; Cracks; Patches; Cross Slope.
5. **Pavement Preparation for Bond**. Milled; Cleaned; Tack Coat (Type, Amount, Uniformity, Condition)
6. **Mix Thickness**. Nominal Maximum Aggregate Size; Coarse or Fine Graded.
7. **Mix Properties**. Gradation; AC Content; Voids; VMA; VFA.
8. **Segregation**.
9. **Density Gauge**. Operator Experience; Reading Time; Cleanliness; Accuracy.
10. **Peak Determination**. Stabilization; Aggregate Degradation

Controlling and/or accounting for all of these variables (at a given point in time and at a given location) is difficult. Therefore, the “peak” density in a growth curve is often questionable. If multiple growth curves are performed, variability in the peak density is often observed.

There are two basic characteristics that are sought in HMA – stability and durability. As the in-place density achieved increases, both of these characteristics are improved. Problems with just a few of the variables listed previously will often work together to provide a peak density that is too low and therefore provide a benchmark that is too low, if a percentage of the growth curve is used. The end result will be less in-place density (in terms of % G_{mm}), less stability and less durability. There are many things that can contribute to field compaction problems and the goal should be to remedy as many of these things as possible in order to achieve the most stability and durability as possible to ensure long term pavement performance.

Adapted by the Federal Highway Administration - Illinois Division, Illinois Department of Transportation Bureau of Materials & Physical Research, and Illinois Department of Transportation Bureau of Local Roads & Streets from information provided by William J. Pine, P.E., Emulsicoat, Inc. / Heritage Research Group on May 9, 2007.

State of Illinois
DEPARTMENT OF TRANSPORTATION
Bureau of Local Roads & Streets

SPECIAL PROVISION FOR GROWTH CURVE

Effective: March 1, 2008

All references to Sections and Articles in this Special Provision shall be construed to mean specific Sections and Articles in the Standard Specifications for Road and Bridge Construction adopted by the Department of Transportation.

The Contractor shall perform a growth curve at the beginning of placement of each type of mix and each lift. The growth curve for each type of mix and each lift shall be performed within the first 200 tons (180 metric tons). If an adjustment is made to the specific mix design, the Engineer reserves the right to request an additional growth curve and supporting tests at the Contractor's expense.

Compaction of the growth curve shall commence immediately after the course is placed and at a temperature of not less than 280 ºF (140 ºC). The growth curve, consisting of a plot of lb/cu ft (kg/cu m) vs. number of passes with the project breakdown roller, shall be developed. Roller speed during the growth curve testing shall be the same as the normal paving operation. This curve shall be established by use of a nuclear gauge. Tests shall be taken after each pass until the highest lb/cu ft (kg/cu m) is obtained. This value shall be the target density provided the HMA Gyratory air voids are within acceptable limits. If the HMA Gyratory air voids are not within the specified limits, corrective action shall be taken, and a new target density shall be established.

A new growth curve is required if the breakdown roller used on the growth curve is replaced with a new roller during production. The target density shall apply only to the specific gauge used. If additional gauges are to be used to determine density specification compliance, the Contractor shall establish a unique minimum allowable target density from the growth curve location for each gauge.

At least one core sample per day shall be taken at a location specified by the Engineer. Core densities will be determined using the Illinois-Modified AASHTO T 166 or T 275 procedure by the Department. The core density shall be according to Articles 1030.05(d)(4) and (d)(7). The QA Manager is responsible for assuring and documenting that the determined number of roller passes has been accomplished. The Engineer reserves the right to take core samples at any time to verify density from the nuclear gauge,

All lifts shall be compacted to an average nuclear gauge density of not less than 95 percent nor greater than 102 percent of the target density obtained on the growth curve. The average nuclear gauge density shall be based on tests representing one day's production.

Quality Control density tests shall be performed at randomly selected locations within 1/2 mile (800 m) intervals per lift per lane. In no case shall more than one half day's production be completed without density testing being performed.

If the Contractor is not controlling the compaction process and is making no effort to take corrective action, the operation shall stop as directed by the Engineer.

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2008-04

SUBJECT: JURISDICTIONAL TRANSFER AGREEMENTS

ISSUED DATE: April 15, 2008

EFFECTIVE DATE: April 15, 2008

This memorandum revises Chapter 5, Section 5-2.04 of the Bureau of Local Roads and Streets Manual, dated December 2006.

The Bureau of Local Roads and Streets (BLRS) has revised forms BLR5210, BLR5211 and BLR5212. In addition, Section 5-2.04 of the BLRS Manual has been revised to strongly recommend that draft agreements for all proposed jurisdictional transfers be submitted to the central BLRS for review prior to execution by the local agency(ies).

Utilization of these revised forms and submission of draft agreements will minimize the need for revisions to the final agreements.

If you have any questions, please contact Steve Dwyer at (217) 782-3401.

Charles J. Ingersoll

Engineer of Local Roads and Streets

Attachments

Illinois Department of Transportation

Local Agency-State Jurisdictional Transfer

Local Agency	Type of Systems Transfer	
Municipality:	**Type 1**	**Type 2**
Township/Road District:	**From:** State Highway System	**From:** Local Highway System
County:	**To:** Local Highway System	**To:** State Highway System
Section Number:	Indicate Type of Systems Transfer:	

The above local agency, and the State of Illinois, acting by and through its Department of Transportation, agree to transfer the jurisdiction of the designated location in the manner indicated above under **Type of Systems Transfer**.

Location Description

Name _____ Route _____ Length _____

Termini _____

_____, in its entirety.

This transfer ☐ does ☐ does not include Structure No. _____

The transfer ☐ does ☐ does not include a transfer to land rights (4-508). If it does, attach letter of intent approved by the Department.

WHEREAS, the authority to enter into this contract is granted the STATE by Section 4-409 of the Illinois Highway Code and the authority to make changes in the State Highway System is granted the State under Section 2-101 of the Illinois Highway Code.

Include for Municipalities Only

WHEREAS, the authority to make changes to the Municipal Street System is granted to the Municipality by Section 7-101 of the Illinois Highway Code.

NOW THEREFORE IT IS AGREED that the corporate authority of said municipality will pass an ordinance providing for the transfer of the above location and shall attach hereto and make a part hereof a copy of a location map as Addendum No. 1 and a copy of the ordinance as Addendum No. 2, and

Include for Counties Only

WHEREAS, the authority to make changes to the County Highway System is granted to the County by Section 5-105 of the Illinois Highway Code.

NOW THEREFORE IT IS AGREED that the County Board of said County will pass a resolution providing for the transfer of the above location and shall attach hereto and make a part hereof a copy of a location map as Addendum No, 1 and a copy of the resolution as Addendum No. 2, and

Include for Township/Road Districts Only

WHEREAS, the authority to make changes to the Township/Road District System is granted to the Highway Commissioner under Section 6-201.3 of the Illinois Highway Code and said Highway Commissioner shall attach hereto and make a part hereof a copy of a location map as Addendum No. 1, and

IT IS MUTUALLY AGREED, that this jurisdictional transfer will become effective _____ calendar days after:

(check one)

☐ Final Inspection by the State (Type)
☐ Acceptance by the State
☐ Execution of Agreement
☐ Approval of Land Conveyance
☐ Other: _____

Supplements

Additional information and/or stipulations, if any, are hereby attached and identified below as being a part of this jurisdictional transfer.

Supplement _____

(Insert supplement numbers of letters and page numbers, if applicable.)

IT IS FURTHER AGREED, that the provisions of this jurisdictional transfer shall be binding and inure to the benefit of the parties hereto, their successors and assigns.

Illinois Department of Transportation

Local Agency State Agreement for Jurisdictional Transfer

Local Agency	Type of Systems Transfer	
Municipality:	**Type 1**	**Type 2**
Township/Road District:	**From:** State Highway System	**From:** Local Highway System
County:	**To:** Local Highway System	**To:** State Highway System
Section Number	Indicate Type of Systems Transfer :	

The above local agency, hereinafter referred to as "LA", and the State of Illinois, acting by and through its Department of Transportation, agree, to transfer the jurisdiction of the designated location in the manner indicated above under **Type of Systems Transfer**.

Location Description

Name _____ Route _____ Length _____

Termini _____

_____, in its entirety.

This transfer ☐ does ☐ does not include Structure No. _____

The transfer ☐ does ☐ does not include a transfer to land rights (4-508). If it does, attach letter of intent approved by the Department.

WHEREAS, the authority to enter into this contract is granted the STATE by Section 4-409 of the Illinois Highway Code and the authority to make changes in the State Highway System is granted the State under Section 2-101 of the Illinois Highway Code.

Include for Municipalities Only

WHEREAS, the authority to make changes to the Municipal Street System is granted to the Municipality by Section 7-101 of the Illinois Highway Code.

NOW THEREFORE IT IS AGREED that the corporate authority of said municipality will pass an ordinance providing for the transfer of the above location and shall attach hereto and make a part hereof a copy of a location map as Addendum No. 1 and a copy of the ordinance as Addendum No. 2, and

Include for Counties Only

WHEREAS, the authority to make changes to the County Highway System is granted to the County by Section 5-105 of the Illinois Highway Code.

NOW THEREFORE IT IS AGREED that the County Board of said County will pass a resolution providing for the transfer of the above location and shall attach hereto and make a part hereof a copy of a location map as Addendum No, 1 and a copy of the resolution as Addendum No. 2, and

Include for Township/Road Districts Only

WHEREAS, the authority to make changes to the Township/Road District System is granted to the Highway Commissioner under Section 6-201.3 of the Illinois Highway Code and said Highway Commissioner shall attach hereto and make a part hereof a copy of a location map as Addendum No. 1, and

IT IS MUTUALLY AGREED, that this jurisdictional transfer will become effective 21 calendar days after (check one)

☐ Execution of Agreement ☐ Acceptance by the State
☐ Approval of Land Conveyance ☐ Final Inspection by the State (Type)

Supplements

Additional information and/or stipulations, if any, are hereby attached and identified below as being a part of this agreement

Supplement _____

(Insert supplement numbers of letters and page numbers, if applicable.)

APPROVED

Name: _____

Title: _____.

Chairman County Board/Mayor/Village President/etc.

Signature _____

APPROVED STATE OF ILLINOIS
DEPARTMENT OF TRANSPORTATION

By _____

Director of Highways

Date _____

BLR 05211 (Rev. 4/11/08)

Illinois Department of Transportation

Local Agency Agreement for Jurisdictional Transfer

Local Agency No. 1 (Conveyor)	**Local Agency No. 2** (Recipient)
Municipality:	Municipality:
Township/Road District:	Township/Road District:
County:	County:

In accordance with authority granted in Section 4-409 of the Illinois Highway Code, this agreement is made and entered into between the above Local Agency No. 1, hereinafter referred to as "Conveyor" and the above Local Agency No. 2, hereinafter referred to as "Recipient", to transfer the jurisdiction of the designated location from the Conveyor to the Recipient.

Location Description

Name _____ Route _____ Length _____

Termini _____

_____, in its entirety.

This transfer ☐ does ☐ does not include Structure No. _____

Include for Municipalities Only

WHEREAS, the authority to make changes to the Municipal Street System is granted to the Municipality by Section 7-101 of the Illinois Highway Code.
NOW THEREFORE IT IS AGREED that the corporate authority of said municipality will pass an ordinance providing for the transfer of the above location and shall attach hereto and make a part thereof a copy of the ordinance, and

Include for Counties Only

WHEREAS, the authority to make changes to the County Highway System is granted to the County by Section 5-105 of the Illinois Highway Code.
NOW THEREFORE IT IS AGREED that the County Board of said County will pass a resolution providing for the transfer of the above location and shall attach hereto and make a part thereof a copy of the resolution, and

Include for Township/Road Districts Only

WHEREAS, the authority to make changes to the Township Road District System is granted to the Highway Commissioner under Section 6-201.3 of the Illinois Highway Code.

The Conveyor Agrees to prepare a map of the above location and attach a copy of such location map hereto.

IT IS MUTUALLY AGREED, that this jurisdictional transfer will become effective:

☐ upon IDOT approval ☐ _____ calendar days after _____ .

Supplements

Additional information and/or stipulations, if any, are hereby attached and identified below as being a part of this agreement.

Supplement _____

(Insert supplement numbers or letters and page numbers, if applicable)

IT IS FURTHER AGREED, that the provisions of this agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

APPROVED BY CONVEYOR

Name _____

Title _____
Chairman County Board/Mayor/Village President/etc.

Signature _____

APPROVED BY RECIPIENT

Name _____

Title _____
Chairman County Board/Mayor/Village President/etc.

Signature _____

APPROVED
STATE OF ILLINOIS
DEPARTMENT OF TRANSPORTATION By: _____ _____
Director of Highways Date

BLR 05212 (Rev. 4/11/08)

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2008-05

SUBJECT: ECOLOGICAL COMPLIANCE ASSESSMENT TOOL (EcoCAT) AND MFT CERTIFICATION/PROJECT STATUS FORM

ISSUED DATE: October 17, 2008

EFFECTIVE DATE: January 1, 2009

This memorandum supersedes Section 10-1 dated December 2006, and Section 20-9 dated January 2006 of the Bureau of Local Roads & Streets Manual.

The *Illinois Natural Areas Preservation Act* (525 ILCS 30/17), Section 11b of the *Illinois Endangered Species Protection Act* (520 ILCS 10/11), and the implementing rules (17 Ill. Adm. Code 1075) requires consultation with the Illinois Department of Natural Resources (IDNR) on all construction, land management, or other activities that are authorized, funded, or performed in whole or in part by agencies of State and local governments and that will result in a change to the existing environmental conditions or may affect listed threatened or endangered species or their essential habitat or Natural Areas.

The *Interagency Wetland Policy Act of 1989* (20 ILCS 830/1 et seq.) and the *Implementation Procedures for the Interagency Wetland Policy Act* (17 Ill. Admin. Code 1090) requires consultation with IDNR on all state and state pass-through funded construction projects.

For projects that are not funded with federal funds, consultation is done directly between the local agency and IDNR. IDNR has developed a web based system, Ecological Compliance Assessment Tool (EcoCAT), to streamline the consultation process. This system replaces the Agency Action Report and is available at http://dnrecocat.state.il.us/ecopublic/.

The EcoCAT system has four sections that need completed:

- General Information
- Applicant Information
- Project Information
- Location Information

An instruction sheet is attached to assist applicants with completing an EcoCAT submittal.

EcoCAT will provide local agencies with an instant biological and wetland review of the project area. If no resources are in the vicinity of the project, the report will state that consultation is closed and the local agency may proceed with the project.

If the report lists T&E species or INAI sites that may be in the vicinity, the project may not proceed until consultation is complete. IDNR will contact the applicant within 30 to 45 days after the project is first submitted. At that point in the consultation, IDNR will either: close consultation because impacts are unlikely; request additional information, which could include field studies; or recommend measures to avoid, minimize, or mitigate impacts. Whenever measures are recommended, the local agency must notify IDNR that the recommendations were considered and specify which measures will be implemented. If measures will not be implemented, the agency should include an explanation. At that point, IDNR will send the agency a letter closing consultation.

If the EcoCAT report states that wetlands are within 250 feet of the project location, the local agency will need to conduct a site visit and delineate any wetlands that could be impacted by the project. While the EcoCAT report may state that an IDNR staff member will contact you about wetland compliance, IDNR will not contact applicants about wetland compliance for projects funded with Motor Fuel Tax (MFT), Township Bridge Program (TBP), or other State funds. Beyond the initial EcoCAT submission, wetland compliance should be coordinated with IDOT according to Section 10-1.05 of the BLRS Manual.

BLR 10100 should be used to document environmental review for MFT, TBP, and State Funded projects. Local agencies, including those under Agreements of Understanding, should submit the completed form to the District BLRS prior to letting for all projects except for general maintenance. Copies of the consultation termination letter or consultation closed report from EcoCAT shall be submitted to the District BLRS with BLR10100 prior to advertisement in IDOT's *Notice to Contractors Bulletin* for all projects let after January 1, 2009. The District will acknowledge receipt of BLR 10100 by signature and return the signed copy for the project file.

The department will coordinate the EcoCAT submittal on all federally funded projects.

Charles J. Ingersoll

Engineer of Local Roads and Streets

KB/kb

Attachments

cc: Tom Flattery, Illinois Department of Natural Resources

How to Use EcoCAT

General Information

The General Information section asks three multiple choice questions that you must answer to ensure that your project receives the appropriate review and is assigned to the correct IDNR staff member. If you do not answer all of the questions, the program will not allow you to proceed to the mapping tool. The questions, with explanations, are provided below.

Q1. Why are you submitting the project to EcoCAT?

- To initiate consultation with IDNR (*Title 17 Ill. Admin. Code Part 1075)* to determine potential impacts to Illinois Natural Area Inventory sites or state-listed threatened or endangered species.
- To obtain information on Illinois T&E species or INAI sites for **project planning**.
- To obtain information on Illinois T&E species or INAI sites for **federal agency** actions (including NEPA compliance).

Choose "To initiate consultation."

Q2. Indicate the government unit and type of action that has prompted consultation.

- **Local Government**
  - Authorization (a unit of local government must issue a permit or other authorization)
  - Funding (a unit of local government will provide a grant, loan, or other direct support)
  - Performance (a unit of local government is performing the action, such as construction)
- **State Agency**
  - Authorization (a state agency must issue a permit or other authorization)
  - Funding (a state agency will provide a grant, loan, or other direct support)
  - Performance (a state agency is performing the action, such as construction)

Choose "State Agency", "Funding," and "Illinois Department of Transportation" as the agency and "Bureau of Local Roads and Streets" as the Bureau.

Q3. Will state technical assistance or funding (including federal funding through a state agency) support the project?

- Yes.
- No.
- Don't Know.

Choose "Yes."

- Screen resolution—1024 x 768 or higher is required.
- Preferred browser—Internet Explorer 6.0 or later.
- EcoCAT data entry must be completed within 20 minutes or previously entered information will be lost and the process will not work correctly.
- EcoCAT is a public record that is subject to disclosure under the Freedom of Information Act.

Applicant and Project Information

After you answer the three general information questions, you will move on to Applicant Information. Here you will be asked to indicate the applicant category to which you belong:

○ Non-governmental/Individual ○ Local Government ○ State Agency ○ Federal Agency

Choose "Local Government" unless a consultant is submitting the project—then "Non-governmental/Individual" should be selected. The individual or organization submitting the project to EcoCAT is considered the Applicant. Any further communication from IDNR will be directed to the Contact Person at the address listed for Applicant.

Project Information asks you to provide a project name and a brief description of the proposed action.

Next is Project Location. In addition to County, you must know the Township, Range, and Section of the site location. (The correct Meridian will come up automatically when you click the Meridian button.) You can find the TRS—also known as the Public Land Survey System (PLSS)—on standard legal descriptions of property, on USGS topographical maps, and in plat books.

If the proposed action will occur in more than one section, just enter one section number because, once you click on "Go to Map Tool", that is enough information to get you to the general location of the project. (*If the map tool doesn't appear, check your screen resolution. It must be set at 1024 x 768 or higher*.)

When you are in the mapping tool click the "zoom out" or "zoom in" button at the top and click the map until you are at the map scale needed to encompass the project area. When you have the appropriate scale, click the "Draw" button and draw a polygon around the project area. If your project is longer than five miles, you should break it up into five-mile segments and submit them as multiple projects with an identifying name, such as Witherspoon Road, segment 1.

The last step is to click the submit button to get the EcoCAT Results Report. (If the report does not appear, turn off pop-up blockers.) To print or save the report, click the printer icon on the EcoCAT toolbar (not your browser print icon) and select print all. An Acrobat dialogue box will appear from which you can print and/or save the report.

If no T&E species or wetlands are listed on the report, it will state that consultation is closed.

If the report lists T&E species or INAI sites, an IDNR staff person will contact you to either:

- Terminate consultation because adverse effects are unlikely,
- Request additional information, or
- Recommend methods to minimize potential adverse effects.

If the EcoCAT report states that wetlands are within 250 feet of the project location, you will need to conduct a site visit and delineate any wetlands that could be impacted by the project. While the EcoCAT report may state that an IDNR staff member will contact you, IDNR will not contact applicants about wetland compliance for IDOT-funded projects. You should coordinate wetland compliance with IDOT according to Section 10-1.05 of the Bureau of Local Roads and Streets Manual.

Illinois Department of Transportation

Motor Fuel Tax Certification/ Project Status

Route: _____
County: _____
Local Agency: _____
Section: _____

Funding Source: ☐ MFT ☐ TBP ☐ TARP ☐ Other State Funds _____

	DATE	A	E
ENVIRONMENTAL ISSUES (Chapter 10-1)			
1. Section 6(f) Land and Water Conservation (LAWCON) Land Conversion	_____	☐	☐
2. Open Space Lands Acquisition and Development (OSLAD) Land Conversion	_____	☐	☐
3. Wetlands Compliance	_____	☐	☐
4. Historic Preservation/Cultural Compliance:	_____	☐	☐
5. Threatened and Endangered Species/Natural Areas Compliance	_____	☐	☐
6. Farmland Conversion Impacts	_____	☐	☐
7. Special Waste Screening	_____	☐	☐
PROJECT STUDIES/REPORTS (Chapter 10-2)			
1. Airport Coordination	_____	☐	☐
2. Railroad Coordination	_____	☐	☐
3. Intersection Design Study (IDS)	_____	☐	☐
4. Bridge Condition Report (BCR)	_____	☐	☐
5. Preliminary Bridge Design and Hydraulic Report (PBDHR)	_____	☐	☐
6. Bridge Asbestos Determination	_____	☐	☐
7. Drainage Studies	_____	☐	☐
8. Geotechnical Report	_____	☐	☐
9. Commitments	_____	☐	☐
10. Variances	_____	☐	☐
RIGHT-OF-WAY (Chapter 10-3)	_____	☐	☐
PERMITS (Chapter 7)			
1. NPDES ☐ ILR10 Permit # _____ ☐ ILR40 Permit # _____	_____	☐	☐
2. Section 404 (USACE) ☐ Nationwide ☐ Regional ☐ Individual	_____	☐	☐
3. Section 401 Water Quality Certification	_____	☐	☐
4. Section 9 (Coast Guard)	_____	☐	☐
5. Burning of Landscape Waste	_____	☐	☐

A = Approved, Clear or Yes
E = Exempt or Not Applicable

Completed by _____ (Agency and Title) _____ (Signature) _____ (Date)

Local Agency Approval _____ (Local Official) _____ (Date)

Released for Advertisement _____ (Local Roads Engineer) _____ (Date)

MOTOR FUEL TAX CERTIFICATION/ PROJECT STATUS CHECKLIST – BLR10100

This form is used to track compliance with Phase I (BLRS Manual Chapter 10) and Permit (BLRS Manual Chapter 7) requirements for local let projects funded with motor fuel tax and/or other state funds. Below is a brief description of each item on the checklist. For complete details the BLRS Manual should be consulted.

ENVIRONMENTAL ISSUES (Chapter 10-1)

1. Section 6(f) procedures must be followed for all projects, regardless of project type or funding source, which involve the taking of property acquired or developed with Land and Water Conservation (LAWCON) funds. See Section 10-1.03 of the BLRS Manual for more information.

2. Compliance procedures for proposed conversion of Open Space Lands and Development (OSLAD) assisted lands are applicable to all projects proposing conversion regardless of project type or funding source. See Section 10-1.04 of the BLRS Manual for more information about OSLAD assisted lands.

3. The *Interagency Wetland Policy Act* and the Illinois Administrative Code apply to all State and IDOT pass-through funded projects involving possible wetland impacts. This includes federal, Motor Fuel Tax (MFT), and other State funded projects. A copy of the Ecological Compliance Assessment Tool (EcoCAT) termination report/letter should be submitted with this form. See Section 10-1.05 of the BLRS Manual for more information.

4. Historic Preservation/Cultural compliance applies to all State-funded and State-approved projects that do not involve Federal funds or are not regulated by a Federal agency. Projects that are funded with MFT and State funds and do not require a Federal permit must comply with this Act. See Section 10-1.06 of the BLRS Manual for more information.

5. Threatened and Endangered Species/Natural Areas compliance applies where a project funded or authorized by State and local agencies involves acquisition of additional right-of-way or easements (temporary or permanent); construction activities outside the existing right-of-way; a drainage structure runaround or any in-stream work; impacts to a recognized Illinois Natural Areas Inventory site or Illinois dedicated Nature Preserve, a wetland; or a location where a State or federal listed species is known to occur. A copy of the Ecological Compliance Assessment Tool (EcoCAT) termination report/letter should be submitted with this form if applicable. See Section 10-1.07 of the BLRS Manual for more information.

6. Coordination with the Illinois Department of Agriculture (IDOA) is required for highway and bridge projects funded in whole or in part with State funds including TBP funds and Federal-aid projects, but not MFT, and which require additional right-of-way, unless any of the following apply:

   - The project is located within the boundaries of an incorporated municipality.
   - The project is within the official 1.5 mile (2.4 km) planning area of an incorporated municipality.
   - The project is nonlinear and requires acquisition of no more than 10 acres (4 hectares) of land.
   - The project is linear; requires acquisition of no more than 3 acres of land per project mile (0.75 ha per project kilometer); and does not involve alternative alignment in which the right-of-way diverges from, and is not contiguous to, the existing right-of-way.

   See Section 10-1.08 of the BLRS Manual for more information.

7. Special Waste Screening applies to all local agency Federal- and State-funded projects, and is recommended for MFT-funded projects. See Section 10-1.09 of the BLRS Manual for more information.

PROJECT STUDIES/REPORTS (Chapter 10-2)

1. Highway and bridge improvements within 2 miles (3.2 km) of publicly owned airports, within 1 mile (1.6 km) of privately owned airports open to the public, and within 0.5 miles (0.8 km) of restricted-landing areas require coordination with the IDOT Division of Aeronautics. See Section 10-2.01(e) of the BLRS Manual for more information.

2. When a project is involved with a railroad grade crossing or separation, coordination with the affected railroad should take place at an early stage to determine if any improvement is necessary to the railroad facility and to determine funding responsibilities for the improvement. Before the railroad work can begin, it will be necessary to prepare a railroad agreement or to obtain the approval of the Illinois Commerce Commission (ICC). See Section 10-2.01(f) of the BLRS Manual for more information.

3. The local agency will be required to prepare an Intersection Design Study for intersections if any of the following conditions apply. See Section 10-2.02 of the BLRS Manual for more information.

   - in a rural area when both roads have a current 30th maximum design hourly volume (DHV) of 300 vehicles or more;
   - in a rural area when a local road with a current DHV of 300 or more intersects a State marked route;
   - in an urban area when both streets have a current DHV of 400 vehicles or more;
   - in an urban area when a local street with a current DHV of 400 or more intersects a State marked route;
   - when additional lanes and/or channelization is proposed on one or both routes; or
   - when any intersection designed as a roundabout.

4. A Bridge Condition Report (BCR) is not required for total structure replacement for projects using non-Federal funding. A BCR is required for all rehabilitation and widening projects for which a Preliminary Bridge Design and Hydraulic Report (PBDHR) must be submitted for IDOT approval. See Section 10-2.03(a) of the BLRS Manual for more information.

5. Submittal of a PBDHR is required when a permit is to be issued and for all structures, including all county and road district structures having a clear span greater than 30 feet using non-MFT funding, except for the following exempt categories:

   - structures having a clear span of 10 ft (3 m) or less, or a waterway opening of 100 ft^2 (9 m^2) or less (including over-the-road flow) for the design flood; or
   - structures for which the preliminary design has been prepared by IDOT.

   See Section 10-2.03(b) of the BLRS Manual for more information.

6. Submittal of the Asbestos Determination Certification for Local Highway Bridges must be submitted for all structures undergoing reconstruction or rehabilitation, even for non-MFT structures not otherwise requiring approvals from the BBS. This will enable the department to update the confirmed/unconfirmed list.

7. A drainage study containing preliminary hydrologic and hydraulic analyses should be prepared where highway drainage and/or structures will significantly affect the design or cost of a project. See the BBS Drainage Manual and Chapter 38 of the BLRS Manual for more information.

8. If soil stability problems are anticipated, a preliminary Geotechnical Report should be prepared during the preliminary study phase. See the IDOT Geotechnical Manual for more information.

9. A commitment file must be kept for all State-funded local projects and is recommended for MFT projects. See Section 10-2.06 of the BLRS Manual for more information.

10. Form BLR 22120 is used to document the justification and approval of variances that are necessary for the completion of the project. See Section 10-2.07(b) of the BLRS Manual for more information.

RIGHT-OF-WAY (Chapter 10-3)

1. Local agency projects built under the supervision of IDOT should not be advertised for letting until the necessary right-of-way has been secured. Material awards for day labor projects should not be made until the necessary right-of-way for construction has been secured. See Section 10-3 of the BLRS Manual for more information.

PERMITS (Chapter 7)

1. NPDES permits are required for construction activities involving clearing, grading, and excavation activities that disturb 1 acre (0.4 ha) or more of land area. Local agencies that are part of an MS4 will use the ILR40 permit. All other local agencies will use the ILR10. See Section 7-4.01 of the BLRS Manual for more information.
2. Section 404 permits, issued by the USACE, are required for activities that involve the discharge of dredged or fill material into waters of the United States, including wetlands. See Section 7-4.02 of the BLRS Manual for more information.
3. State certification is required in conjunction with the authorization by US Army Corps of Engineers (USACE) of any activity that may result in any discharge into waters of the United States requiring a Section 404 Permit. Water Quality Certification is also required for Section 9 Permits. See Section 7-4.03 of the BLRS Manual for more information.
4. Section 9 permits are required for the construction, modification, replacement, or removal of bridges or causeways over a navigable waterway. Construction of bridges crossing waters not presently used or susceptible to be used as a means of transporting Interstate or foreign commerce does not require a permit. Removal of an existing bridge without replacing it with another bridge also does not require a permit. See Section 7-4.04 of the BLRS Manual for more information.
5. For the burning of landscape waste in any area of the State, if open burning is conducted with the aid of an air curtain destructor or comparable device to reduce emissions substantially and does not occur within 1000 ft (300 m) of any residential or other populated area. See Section 7-3.01 of the BLRS Manual for more information.

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BDE PROCEDURE MEMORANDUM

NUMBER: 57-08

BLRS PROCEDURE MEMORANDUM

NUMBER: 2008-06

SUBJECT: Use of Commercial and Department Wetland Mitigation Bank Site Credits

DATE: October 1, 2008

The information herein supersedes Procedure Memorandum 57-07, dated October 15, 2007, and augments sections of Procedure Memorandum 33-03 and Section 10-1.05(i) of the Bureau of Local Roads & Streets Manual.

Background

A mitigation bank is a site where wetlands and/or other aquatic resources are restored, created, enhanced, or preserved to provide compensatory mitigation in advance of authorized impacts to similar resources. Commercial wetland mitigation bank sites are in operation in various parts of Illinois. To date, several Districts have established wetland mitigation bank sites with more being planned.

Applicability

The procedures in this memorandum apply to all transportation projects funded by or through all divisions of the Department.

Procedures

The Department's preferred method of wetland compensation involves the use of pre-existing wetland credits from a commercial or Department owned wetland mitigation bank site. This preference may be met when the project is within the service area of a bank site. Information on Department wetland mitigation bank sites and service areas may be accessed at the Department's Environment webpage (http://www.dot.il.gov/environment.html). For projects that are not within the service area of a mitigation bank, Section 4.B of PM 33-03 should still be followed.

Credits generated at approved commercial and Department bank sites may be used by all Department divisions to satisfy impact requirements of Section 404 of the Clean Water Act and the Illinois Interagency Wetland Policy Act of 1989.

Coordination

All proposals for use of credits from commercial and Department owned bank sites shall be coordinated with the Bureau of Design and Environment (BDE). State transportation projects (highway, aviation, mass transit, etc.) shall be coordinated in accordance with PM 33-03. For Local Roads projects, proposals shall be coordinated in accordance with Section 10-1.05 of the Bureau of Local Roads & Streets Manual.

For proposals to draw credits from a Department bank, a Wetland Impact Evaluation (WIE), the bank site name and number or debits sought shall be coordinated with BDE. Debits will be recorded on the bank site ledger. BDE will forward a copy of the WIE to the District Environmental Coordinator and District Programming Engineer. Debits are considered pending until the project is awarded. District bank site ledger information can be obtained by contacting BDE.

District Preference for Credit Use

The District will receive priority consideration for use of credits from their own bank(s), and BDE will only approve credit withdrawals if the bank has sufficient credits available to meet the foreseeable needs of the bank owning District. Each District will have the option to object to an incoming WIE in writing within twenty working days of receipt of the WIE. The reason for the objection must be included in the letter.

Regulatory Agencies

BDE will serve as the principal point of contact with the wetland regulatory agencies for resolving issues regarding the use of bank credits on specific projects and for any required reporting to those agencies associated with the banks (e.g. concerning credit balances, credits used, etc).

Credit Surplus

A District or other transportation entity may want to purchase a block or surplus of credits from a commercial or Department owned bank site. These credits would be purchased in advance of any known impacts and used to compensate for small losses (less than 0.5-acre) from several projects. When a block of credits is purchased, a ledger for tracking debits from that block shall be created and held by the District or other entity of the Department. When coordinating with BDE, the District or other entity shall submit a copy of the ledger associated with the block purchase along with the WIE.

Billing and Reimbursement of Bank Credits

A District or transportation entity that draws credits from a commercial bank must commit program funds to cover the purchase of credits. In cases where credits are sought from a Department owned wetland bank site, the site owning District must be reimbursed.

State Transportation Projects

Billing and reimbursement will be accomplished through the re-appropriation of District program funds by the Office of Planning and Programming (OPP). Re-appropriations will occur once each year and will be based on information provided by BDE. Each District should submit their cost for bank site development to OPP to ensure the District is adequately compensated during the re-appropriation process. Cost should be the sum of land acquisition, construction and maintenance for each acre.

Local Roads & Streets Transportation Projects

The local agency is responsible for purchasing all required wetland credits either with their own funds or with federal funds. If federal funds are involved, the purchase cannot occur prior to federal authorization of the project phase or the Federal Highway Administration will not approve reimbursement for the credits to the local agency. However, the use of local funds to purchase the wetland credits will not have any impact on the timing of the federal authorization.

In addition, the funding for the wetland credits will be included on the Joint Funding Agreement for either Preliminary Engineering (PE) or construction.

Phase II is the preferred phase for including the wetland credit funding. However, since many of the downstate local agencies combine their Phase I and Phase II into one funding agreement, the joint funding agreement would then have to be amended once the wetland requirements were identified in Phase I.

If the funding is included in the construction phase, as long as there is assurance from the local agency that the credits will be purchased after the authorization and prior to the letting, the project can proceed to letting. When the plans, specifications and estimate are submitted to the central Bureau of Local Roads and Streets (BLRS), the District/local agency should provide information at that time that the necessary wetland credits will be purchased after authorization. Including the wetland funding on the construction agreement alleviates the need for amending the PE Joint Funding Agreement.

The funding for the wetland credits will be shown as a separate ‘Wetland Credit’ line on the Division of Cost table of the Joint Funding Agreement.

When the wetland credit is included in the Joint Funding Agreement, that funding will be programmed in the Annual Proposed Highway Improvement Program through BLRS.

Federal funds: If the wetland credit is included on a PE agreement or locally-let construction agreement, only the federal funding (80% of the wetland credit) will be required to be programmed. If the project is on a state letting, the federal funding and required matching funds will need to be programmed.

Local funds: If the local agency uses their local funds to purchase the wetland credits, this funding will still be required to be programmed to accommodate the necessary transfer of appropriation (see last bullet point below). However, the use of local funds alleviates the need for federal authorization prior to reimbursement.

Once the federal funding is authorized, the local agency will then be able to be reimbursed for the 80% of federal funding to account for their expenditure for the wetland credit. Payment for wetland credit occurs through a reduction of their federal balances and BLRS transfers the associated appropriation.

BDE will send an annual report at the end of each fiscal year to BLRS that lists the wetland credits purchased and the local agency and wetland bank involved. Based on this information, BLRS will verify that the funds for these credits were programmed and will transfer the necessary amount of appropriation to OPP for use on the state side of the program for the District from whose bank the credits were purchased.

Wetland Bank Prohibitions

The following is prohibited for Department owned wetland banks:

- The selling of credits to private entities.
- The use of wetland banks for non-transportation related projects.

Interim Engineer of Design and Environment _____

Engineer of Local Roads and Streets _____

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2008-07

SUBJECT: INVOICE PROCESSING

ISSUED DATE: October 31, 2008

EFFECTIVE DATE: November 3, 2008

This memorandum adds Section 5-11 concerning invoice processing to Chapter 5 of the Bureau of Local Roads & Streets Manual.

Procedures for processing local agency invoices have been added to Chapter 5 of the Bureau of Local Roads and Streets Manual. Section 5-11 outlines general submittal procedures and supporting documentation requirements. The addition of this section to Chapter 5 simply formalizes existing procedures.

Charles J. Ingersoll

Engineer of Local Roads and Streets

GSL/gsl

Attachments

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2008-08

SUBJECT: DEFINITION OF MAJOR/MINOR CHANGE IN PLANS

ISSUED DATE: October 31, 2008

EFFECTIVE DATE: November 3, 2008

This memorandum revises Section 13-2 of the Bureau of Local Roads & Streets Manual dated November 2007.

The Motor Fuel Tax Streamlining workgroup composed of department staff, municipal representatives, county representatives, and consultant representatives recommended increasing the dollar amount in the definition of Major/Minor Change of plans from $10,000 to $20,000. The increase is reflective of the current bidding threshold of $20,000.

In accordance with 720 ILCS 5/33E-9, all change orders or series of change orders that authorize a net increase or decrease in the cost of a local agency contract by a total of $10,000 or more, or an increase or decrease in the time of completion by 30 days or more, still must contain one of the following written determinations depending upon the circumstances of the change:

- The undersigned has determined that the circumstances that necessitate this change were not reasonably foreseeable at the time the contract was signed.
- The undersigned has determined that the circumstances that necessitate are germane to the original contract.
- The undersigned has determined that this change is in the best interest of the local agency and is authorized by law.

Please contact Kevin Burke of this office at kevin.burkeiii@illinois.gov with any questions.

Charles J. Ingersoll

Engineer of Local Roads and Streets

KB/kb

Attachments

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2009-01

SUBJECT: CATEGORICAL EXCLUSIONS AND DESIGN APPROVAL

ISSUED DATE: March 6, 2009

EFFECTIVE DATE: March 6, 2009

This memorandum replaces Chapter 19 dated January 2006 and revises Section 22-2 dated June 2006 of the Bureau of Local Roads and Streets Manual.

A process review team consisting of representatives of the Federal Highway Administration (FHWA) and the Illinois Department of Transportation (IDOT) recommended an effort to update IDOT's Categorical Exclusion (CE) policies and the FHWA/IDOT agreement where revisions are necessary for clarification, streamlining, or bringing consistency with each other and with current laws and regulations. Based on the results of this process review and the proposal to require design approval for all projects requiring a Project Development Report, revisions have been incorporated into the Bureau of Local Roads and Streets Manual.

CE Group I actions (actions that do not involve the possibility of unusual circumstances) have been updated in Chapter 19 as recommended by the process review team. Also updated in Chapter 19 is clarification regarding which CE Group I projects would require a Project Development Report (PDR) using form BLR 22211. If a PDR is not required for CE Group I actions use form BLR 19100. For CE Group II actions, use form BLR 22210 (formerly form BLR 22110).

All projects requiring a Project Development Report will now require design approval. The districts will have design approval authority for certain CE Group I projects and the Central Office will have design approval authority for all CE Group II projects.

Please contact Gary Galecki at 217.785.8564 or gary.galecki@illinois.gov of this office with any questions.

Darrell Lewis

Acting Engineer of Local Roads and Streets

GJG/kb

Attachments

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2009-02

SUBJECT: HIGHWAY LIGHTING PLAN REVIEW

ISSUED DATE: April 7, 2009

EFFECTIVE DATE: April 10, 2009

This memorandum revises Section 11-2 dated July 2006, Section 11-7 dated January 2006, and Section 23-7 dated January 2006 of the Bureau of Local Roads & Streets Manual.

The department recently reviewed the highway lighting plan approval for both MFT and federal projects. Based on the review, the department has made revisions to the highway lighting plan approval policy.

For both MFT and federal local projects, only highway lighting improvements that impact a State highway will require a pre-final plan review and final plan approval by the department. If requested by the local agency, the department will perform a review on any highway lighting improvement; however, the local agency must comply with any recommended changes as a result of the requested review. Region 1 District 1 will handle reviews and approvals of highway lighting plans within District 1. Central Bureau of Design & Environment's (BDE) Electrical and Mechanical Unit will handle reviews and approvals of highway lighting plans within Districts 2 – 9.

In order to ensure highway lighting plans meet existing lighting standards, all highway lighting plans will require the seal of the professional engineer responsible for the lighting plans.

Please contact the Local Policy & Technology Unit of this office at DOT.LocalPolicy@illinois.gov with any questions.

Darrell Lewis

Acting Engineer of Local Roads and Streets

KB/kb

Attachments

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2009-03

SUBJECT: EMERALD ASH BORER

ISSUED DATE: September 11, 2009

EFFECTIVE DATE: October 01, 2009

This memorandum revises Section 41-10 dated January 2006 of the Bureau of Local Roads & Streets Manual.

The Emerald Ash Borer (EAB) is an exotic Asian beetle that was first found in Detroit, MI in 2002. Since its introduction, the EAB has spread to Illinois, Indiana, Ohio, Pennsylvania, Maryland, Virginia, West Virginia and Wisconsin as of November 2008. The EAB larvae feed on the inner bark and disrupt the tree's ability to transport water and nutrients resulting in mortality.

The United States Department of Agriculture (USDA) has established a quarantine zone that prohibits the moving of ash firewood across state lines and prohibits the intrastate movement of regulated articles. The Illinois Department of Agriculture (IDOA) prohibits intrastate movement of the following items:

- the emerald ash borer in any living stage of development;
- ash trees of any size;
- ash limbs and branches;
- any cut, non-coniferous firewood;
- bark from ash trees and wood chips larger than one inch from ash trees;
- ash logs and lumber with either the bark or the outer one inch of sapwood, or both, attached;
- any item made from or containing the wood of the ash tree that is capable of spreading the emerald ash borer; and
- any other article, product or means of conveyance determined by the Illinois Department of Agriculture to present a risk of spreading the beetle infestation.

Due to the federal and state EAB quarantine, agencies shall not include any species of ash tree (*Fraxinus spp.*) in highway plans. Design plans should be reviewed. Any pay items for ash trees shall be removed and replaced with different trees. While the EAB is currently only a problem in Districts 1, 2, 3, 4, and 5, it is very likely that the EAB will continue to spread. Continuing to plant ash trees only serves to provide future food and breeding sites for this insect.

The IDOA has established a web site to assist and educate individuals about EAB. For the most recent information about confirmed locations, please visit www.agr.state.il.us/eab/.

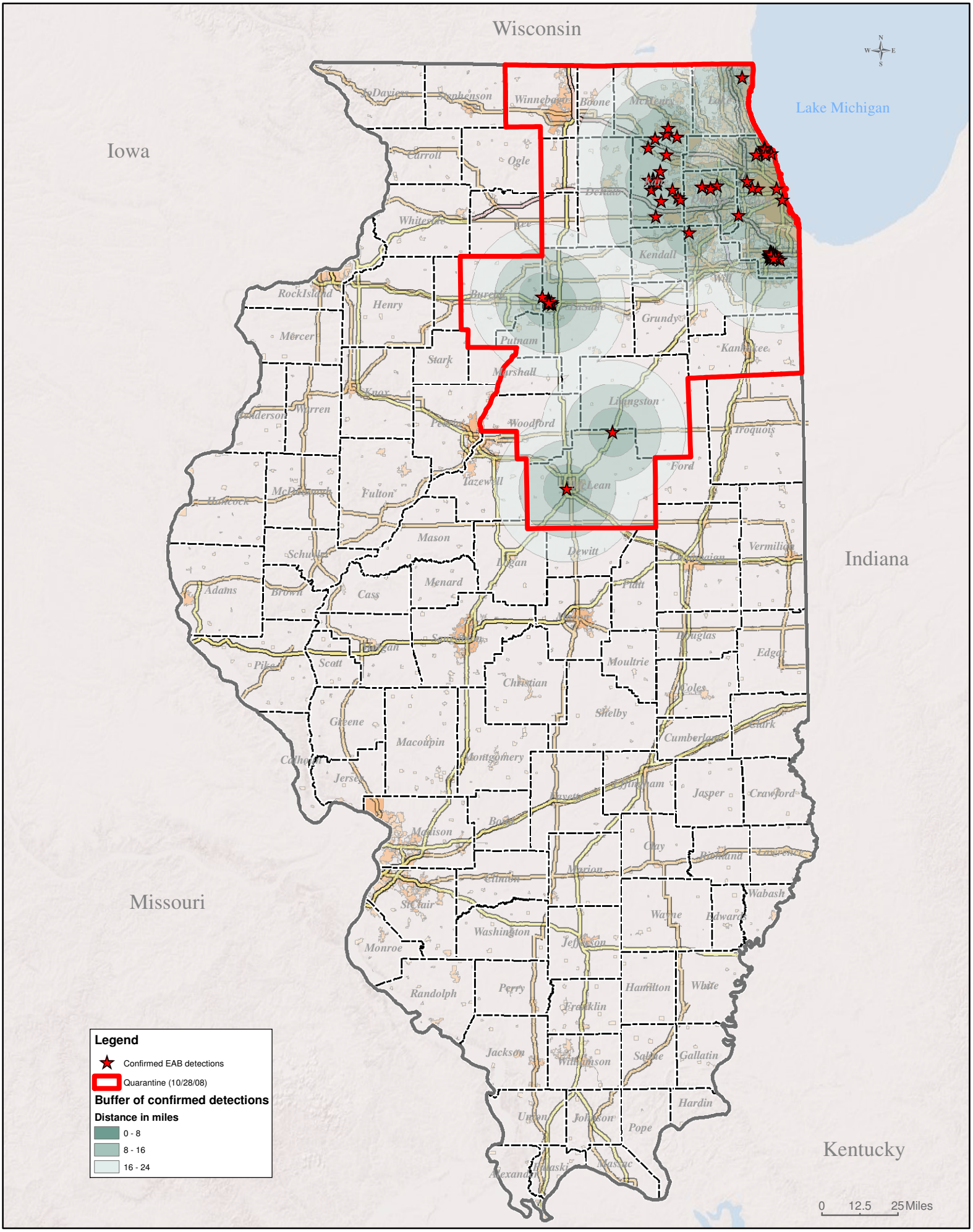
Please contact the Local Policy & Technology Unit at IDOT.LocalPolicy@illinois.gov with any questions.

Darrell Lewis

Acting Engineer of Local Roads and Streets

KB/kb

Attachments



Illinois Department of Agriculture

Warren D. Goetsch, P.E., Chief
Bureau of Environmental Programs
Division of Natural Resources

Confirmed Emerald Ash Borer Detections in Illinois & State Interior Quarantine Boundary as of November 2008

Rod R. Blagojevich, Governor
Thomas E. Jennings, Director

Illinois Department of Agriculture

EMERALD ASH BORER COMPLIANCE AGREEMENT

Nursery, Nursery Dealer, Landscape Waste, Tree & Shrub Maintenance, Tree Pruning & Removal, Firewood

---

Company Name: _____ **Contact Name: Mr./Ms.**_____

Mailing Address: Street _____ **City/Town** _____ **State** _____ **Zip code** _____

Telephone:_____ **Fax:**_____ **E-mail:**_____

County _____

Disposal or Processing Yard Location (if different than mailing address above): Street _____

City/Town_____ **Zipcode** _____ **County** _____

Applicable to State or Federal Cooperative Domestic Quarantines for the Emerald Ash Borer (*Agrilus planipennis*) pursuant to the Insect Pest and Plant Disease Act (505 Illinois Compiled Statutes 90/1 et seq.)

I acknowledge State and Federal regulations governing the Emerald Ash Borer (EAB) and "regulated articles"*. When working within and near EAB quarantine zone(s), I agree to supply records that may be required for inspection. I agree to comply with the procedures listed in this agreement or with other procedures as required by the Director of the Illinois Department of Agriculture as follows:

1. Regulated articles shall not be moved out of quarantine zone(s) at any time unless: a) the regulated articles have been chipped/processed to a size measuring less than 1.0 inch in two dimensions; or b) the bark and outer½inch of sapwood has been removed;
2. From April 30 to September 1, regulated articles originating from EAB-infested areas shall only be transported within the quarantine zone(s) if: a) the regulated articles are transported in an enclosed vehicle or a vehicle completely enclosed by a covering, such as canvas, plastic or other tightly woven cloth, adequate to prevent the passage of the Emerald Ash Borer to the environment; and b) upon arrival at the final destination, the regulated articles are immediately processed to compliance standards;
3. All ash stumps will be ground to eight inches (8") below the soil surface and covered with soil;
4. Employers will inform their employees about the EAB quarantine zone(s) borders and about EAB quarantine regulations. Employers will also instruct employees how to identify the EAB and its signs;
5. The Illinois Department of Agriculture will be informed of any suspected EAB infestation;
6. A copy of this compliance agreement will be carried by employees working within EAB quarantine zone(s);
7. Per this agreement, ash products, ash nursery stock and/or live ash trees that originate from or are brought into a quarantine zone may not be removed from the zone, and may be subject to immediate processing to compliance standards, confiscation, and destruction; and
8. Movement of ALL deciduous (non-coniferous) firewood out of or through the quarantine zone(s) is prohibited, regardless of initial origin unless the firewood has been treated compliant with one of the following: a) USDA-APHIS-PPQ Kiln Sterilization Standard T404-b-4; b) USDA-APHIS_PPQ Fumigation Treatment Standard T404-b-1-1; USDA-APHIS-PPQ Heat Treatment Standard T314-a; or d) all bark and the outer½inch of sapwood has been completely removed.

---

*"Regulated Articles" are hereby defined as the following:

1) The Emerald Ash Borer (*Agrilus planipennis* Fairmaire) in any living stage of development;
2) Ash trees (*Fraxinus spp.)* of any size;
3) Ash limbs and branches;
4) Any cut non-coniferous firewood;
5) Bark from ash trees and wood chips larger than one inch in two dimensions from ash trees;
6) Ash logs and lumber with either the bark or the outer one-half-inch of sapwood or both, attached;
7) Any item made from or containing the wood of the ash tree which is capable of spreading the emerald ash borer;
8) Any other article, product, or means of conveyance when it is determined by the Director of Agriculture that it presents the risk of spread of the Emerald Ash Borer in any stage of development.

Affixing of the signatures below will validate this agreement which shall remain in effect until cancelled. This document may be revised as necessary or revoked for noncompliance by the Department.

Signature/Title _____ **Date Signed**_____

State Agency Official Signature _____ **Compliance Agreement No:** _____

Illinois Department of Agriculture
2280 Bethany Road, Suite B
DeKalb, Illinois 60115
Phone: 815-787-5476
Fax: 815-787-5488

Illinois Department of Agriculture
P.O. Box 19281
Springfield, Illinois 62794-9281
Phone: 217-785-2427
Fax 217-524-4882

One original signed agreement to be maintained at the Illinois Dept. of Agriculture and a second original signed agreement to be maintained at the company office. For up-to-date information on EAB please go to: www.IllinoisEAB.com or www.state.il.us/EAB.

[12/12/2008, EABComplianceAgreement V.doc]

You Can Help...

Do Not Move Firewood!

Photo: Canadian Food Inspection Agency

- Emerald ash borer can easily be transported in ash logs.
- Purchase firewood locally from a known source.
- Be sure to use all of the firewood in the cold months so that no hidden emerald ash borer larvae or adults can survive on logs left through the spring.
- Monitor the health of ash trees. Look for dead and dying branches at the top of the tree's crown.

If You Think You Have Emerald Ash Borer:

- For assistance in identifying suspect insects visit www.emeraldashborer.info/ or www.na.fs.fed.us/fhp/eab/
- Call the national EAB hotline 866-EAB-4512
- Contact Illinois Department of Agriculture's Pesticide Hotline at 800-641-3934 or in the Chicago area use 312-74BEETL (312-742-3385)
- Contact your city or village forester or arborist for assistance.
- Contact the University of Illinois Extension Service office in your county. Find a nearby office at http://web.extension.uiuc.edu/cie2/offices/findoffice.cfm or by calling 217-333-5900
- Contact a certified arborist. You may find one nearby at www.isa-arbor.com/findArborist/findarborist.aspx
- Or contact The Morton Arboretum Plant Clinic at 630-719-2424

APHIS

The Morton Arboretum

For more information about The Morton Arboretum visit www.mortonarb.org

The Morton Arboretum
4100 Illinois Route 53, Lisle, IL 60532-1293

Emerald Ash Borer

The Morton Arboretum

Stop the Borer, Save Ash Trees

Emerald Ash Borer

The emerald ash borer, (*Agrilus planipennis* Fairmaire) is a small (1/2 inch long, 1/8 inch wide) metallic green beetle native to Asia. Though it was first found in Michigan in 2002, it was likely that a beetle population had been established in the Detroit area for many years prior. More than 15 million ash trees have been killed. It has been also detected in Ohio, Indiana, Virginia, Maryland, and Ontario, Canada.

Actual size

Biology

The adult emerald ash borer emerges in May – July and the female lays numerous eggs in bark crevices and between layers of bark. The eggs hatch in 7 – 10 days and larvae bore into the tree where they chew the inner bark and phloem creating serpentine galleries as they feed. This cuts off the flow of water and nutrients in the tree, causing dieback and death.

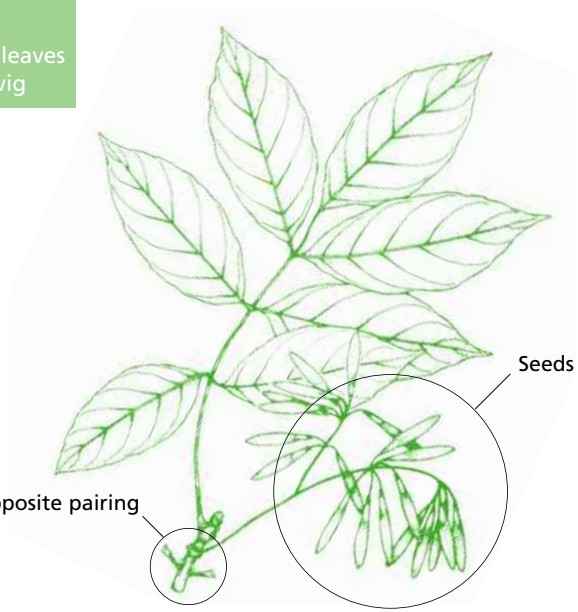
Larva

S-shaped galleries

Ash Trees

Ash trees are very common in landscapes and most species, namely white ash (*Fraxinus americana*) and green ash (*F. pennsylvanica*) are native to Illinois forests. It is estimated that as much as 20% of street trees in the Chicago area are ash.

Ash leaves & twig



Characteristics of ash:

- Compound leaves made up of small, glossy green leaflets.
- Leaves, twigs and branches grow in opposite pairs.
- Bark of mature trees is gray and furrowed, often appearing in a diamond pattern.
- Some ash trees will produce small canoe paddle-shaped seeds.
- Seedless ash trees may develop ash flower galls that turn from green to brown and may persist in the crown throughout the year.

Dieback

Epicormic branching or suckers

Bark slits

Emergence hole - Shown actual size of 1/8" and D-shaped

Signs and Symptoms

The most visible sign of infestation is crown dieback, which appears after the first year. Branches at the top of the crown will die and more branches will die in subsequent years. Typically, the tree will be completely dead in about three years, though suckers will sprout from the base of the tree and on the trunk. The bark may also split vertically and woodpeckers may feed on the beetle leaving visible damage on the bark. Treatments with insecticides are being studied. However, all ash trees proximate to any new infestation will be lost.

Adult beetles emerging from trees will leave a very small, 1/8 inch diameter distinctly "D" shaped exit hole that may appear anywhere on the trunk or upper branches.

Other Stressors:

Ash trees may suffer from a large number of pest and disease problems that cause similar symptoms. Native borers also attack ash trees, though they leave larger exit holes up to a 1/4 inch in diameter that are usually circular or oval in shape.

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2009-04

SUBJECT: MAINTENANCE PERIOD AND MAINTENANCE GROUP DEFINITIONS

ISSUED DATE: October 13, 2009

EFFECTIVE DATE: October 26, 2009

This memorandum revises Section 5-5 dated July 2006, Section 11-7 dated April 2009, Section 12-2 dated April 2007, Section 14-2 dated January 2006 and Section 14-3 dated January 2006 of the Bureau of Local Roads & Streets Manual.

The Motor Fuel Tax Streamlining Workgroup composed of department staff, municipal representatives, county representatives, and consultant engineering representatives recommended allowing a 24-month general maintenance period and reducing approval requirements for certain routine general maintenance items.

Local highway agencies shall establish either a 12 or 24-month general maintenance period. Maintenance resolutions, engineering agreements, estimates, and expenditure statements will be submitted only once per maintenance period.

Contract proposals involving lighting maintenance, signal maintenance, or any other maintenance project that only involves contractor equipment and/or labor may be awarded for a period not exceeding 3 years. Material proposals for the purchase of salt or other ice control measures may be for an entire winter period even if it extends over two maintenance periods. All other contract or material proposals must be completed within the maintenance period.

General maintenance group definitions have been modified and approval requirements for general maintenance groups have been revised. Maintenance items that are not required to be competitively bid and routine maintenance operations will not need department's approval of plans, specifications, and estimates and approval of proposal prior to the letting. While using department standard forms is still recommended, local agencies are not required to use department standard forms on proposals that do not require department review and approval.

All MFT funded projects will still require compliance with prevailing wage, apprenticeship and training certification, and all other applicable regulations, laws, and MFT policies. Any MFT funded project that does not comply with the applicable regulations, laws, and MFT policies will not be eligible for MFT funding. All MFT funded projects subject to competitive bidding must be advertised in the department's Notice to Contractor's Bulletin.

Please contact the BLRS Local Policy & Technology Unit at DOT.LocalPolicy@illinois.gov with any questions.

Darrell Lewis

Acting Engineer of Local Roads and Streets

KB/kb

Attachments

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2009-05

SUBJECT: ASSET MANAGEMENT

ISSUED DATE: December 28, 2009

EFFECTIVE DATE: January 1, 2010

This memorandum revises Section 4-1 dated October 2007 and Section 4-3 dated January 2006 of the Bureau of Local Roads & Streets Manual.

Asset management is a business process and a decision-making framework that covers an extended time horizon, draws from economics as well as engineering, and considers a broad range of assets. The asset management approach incorporates the economic assessment of trade-offs among alternative investment options and uses this information to help make cost-effective investment decisions.

Local agencies may use federal funds to participate in the costs incurred for management systems related to the development, establishment, and implementation of a system for managing certain assets located on and off Federal-aid highways. Local agencies may also use Motor Fuel Tax (MFT) funds for asset management, if the assets are eligible to be constructed or maintained with MFT funds. Asset management may be performed by consulting engineers or local agency staff using paper or electronic methods.

Please contact the BLRS Local Policy & Technology Unit at DOT.LocalPolicy@illinois.gov with any questions.

Darrell Lewis

Acting Engineer of Local Roads and Streets

KB/kb

Attachments

U.S. Department of Transportation
Federal Highway Administration

FHWA Home | Feedback

Planning

FHWA > HEP > Planning

Memorandum

U.S. Department of Transportation
Federal Highway Administration

Subject: **INFORMATION:** Treatment of Management Systems Cost

Date: **May 6, 2009**

From: Robert Ritter, Acting Director, Office of Planning
Butch Wlaschin, Director, Office of Asset Management

Reply to Attn. of : HEPP-20/ HIAM-10

To: Division Administrators
Directors of Field Services

In accordance with Section 303, Title 23, United States Code (U.S.C.) Federal funds may participate in the costs incurred by States for management systems. The purpose of this memorandum is to clarify the eligibility of costs related to the State development, establishment, and implementation of a system for managing each of the following:

- Highway pavement of Federal-aid highways
- Bridges on and off Federal-aid highways
- Highway safety
- Traffic congestion
- Public transportation facilities and equipment
- Intermodal transportation facilities and systems

As each State carries out the continuing, cooperative, and comprehensive transportation planning process that provides for consideration and implementation of projects, strategies, and services that will address efficient system management and emphasize preservation of the existing systems, Surface Transportation Program (STP), National Highway System Program (NHS), Highway Bridge Program (HBP), and Congestion Mitigation and Air Quality Program (CMAQ) funds may be used for development of an integrated management system and linking management systems as a decision-making tool. Furthermore, 23 U.S.C. 505(a)(3) states that State Planning and Research (SPR) funds are also eligible to support the development and implementation of management systems in 23 U.S.C. 303.

The management systems listed above and the data collection and data management that support these systems are funded as a direct project cost[1]. To further clarify, costs associated with on- or off-system data, as appropriate, pertaining to the comprehensive transportation network system that benefits or that is part of the transportation planning process may also be considered as a direct project cost.

Costs associated with updating data components may be considered necessary expenses associated with running a functioning management system, but in implementing the management system, it may be necessary to augment the system data with updated annual or biennial data collection. In such case, the State may fund this as a direct project cost at its discretion.

As the management systems mature, the allocable portion of necessary costs associated with running them, including costs of utilities, insurance, security, servicing, normal repairs and alterations, and the like is allowable as indirect costs to the extent that they keep such management systems in an efficient operating condition and do not add to the permanent value of the system nor appreciably prolong its intended life. They are allowable as an indirect cost provided the State has an approved indirect cost rate and may also be eligible for Federal funding (see May 5, 2004 memo – "Clarification of Policy on Indirect Costs of State and Local Governments: http://www.fhwa.dot.gov/legsregs/directives/policy/indirectcost.htm). After the implementation of the management systems, we anticipate such general or routine costs will be treated as indirect costs, in accordance with Title 2, Code of Federal Regulations, Part 225, "Cost Principles for State, Local, and Indian Tribal Governments." Once the systems are fully operational and fully utilized, such indirect costs may either be paid with State funds, or through equitable distribution to all benefiting cost objectives via an approved indirect cost allocation plan. It should be noted

that costs for major management system upgrades, including integration of management systems as support to the transportation planning process, may be eligible as a direct project cost if such upgrades add to the permanent value of the system or appreciably prolong its intended life.

The management systems as provided for in 23 U.S.C. 303 and 505, are eligible to be charged to the project as a direct cost as follows:

- Pavement Management System, as it pertains to Federal-aid system is eligible for SPR, NHS, and STP funds.
- Bridge Management (NBIS) System is eligible (see 23 U.S.C. 151) for SPR, NHS, STP, and HBP funds.
- Safety Management System (now called the Strategic Highway Safety Plan) is funded under the Highway Safety Improvement Program (23 U.S.C. 148) but can also use SPR, STP, and NHS funds.
- Congestion Management Program (formerly CMS) is eligible for SPR, PL, NHS, STP, and CMAQ funds.
- Public Transportation and Facilities is eligible for Federal Transit Administration funding.
- Intermodal Transportation Facilities Management System is eligible for SPR, NHS, and STP funds.
- Integration and upgrading of management systems, as support to the transportation planning process, is eligible for SPR, NHS, and STP funds; however, general maintenance must be treated as an indirect cost.
- Data collection, data management, and updating data components that support management systems are eligible and funded as a direct project cost.
- Administrative or financial management information systems are not eligible for use with Federal funds as a direct project cost. A State's administrative or financial system can be funded entirely with State funds or with State funds and the applicable annual depreciation cost allocated to all benefiting cost objectives identified in the State's indirect cost allocation plan.

If you have any questions regarding this information or would like to discuss this further, please contact Kenneth Petty at kenneth.petty@dot.gov or (202) 366-6654 or Lorrie Lau at lorrie.lau@dot.gov or (415) 744-2628 in the Office of Planning or Nastaran Saadatmand at nastaran.saadatmand@dot.gov or (202) 366-1337 in the Office of Asset Management.

1 Pursuant to 2 CFR 225, Appendix A, (C)(1)(b), the portion of the allocable cost for general computers that is for the management systems development and implementation are funded as a direct cost. The computer cost for the other portion may be charged to eligible funds as an indirect cost under an approved indirect cost allocation plan.

To provide feedback, suggestions or comments for this web page about its appearance, navigation, or operation, please contact Kenneth Petty at kenneth.petty@dot.gov.

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2009-06

SUBJECT: 96TH ILLINOIS GENERAL ASSEMBLY'S 2009 SESSION CHANGES

ISSUED DATE: December 29, 2009

EFFECTIVE DATE: January 1, 2010

This memorandum revises various sections of the Bureau of Local Roads & Streets Manual.

This memorandum supersedes sections 3-2 dated December 2006, 4-2 dated January 2006, 9-2 dated January 2006, 12-1 dated April 2007 and Figure 4-3A dated January 2006.

P.A. 96-0034 (HB 0255) amended the Illinois Vehicle Code by increasing a vehicle load to 80,000 on non-designated highways. The BLRS Manual's section 3-2.05(a) was revised to reflect this change. The law is effective 1/1/2010.

P.A. 96-0366 (HB 0641) amended the Illinois Highway Code by increasing a lapse period to 48 months (4 years) for the Township Bridge Program funds. Subsequently, the changes were made to the BLRS Manual's following sections 4-2.02(a), 4-2.03, 9-2.01(c), and 9-2.02. The law is effective 1/1/2010.

P.A. 96-0034 (HB 0255) amended the Motor Fuel Tax Law by increasing the monthly amount to be transferred to the Grade Crossing Protection Fund to $3,500,000 (previously $2,250,000). The amount to be used for the construction or reconstruction of rail highway grade separation structures was increased to $12,000,000 (previously $6,000,000) annually. Such increase is reflected in the BLRS Manual's section 4-2.04 and Figure 4-3A. The law is effective 7/1/2009.

P.A. 96-0170 (HB 0585) amended the Counties Code by increasing a competitive bidding requirement threshold for counties with fewer than 2 million inhabitants to $30,000 (previously $20,000). As a result, the changes were made to the BLRS Manual's sections 12-1.02(a) and 12-1.02(b). The law is effective 1/1/2010.

All public acts may be viewed at the Illinois General Assembly's official website at http://www.ilga.gov.

Sincerely,

Darrell W. Lewis, P.E.
Acting Engineer of Local Roads and Streets

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2010-01

SUBJECT: HIGHWAY-RAIL GRADE CROSSING APPROACH GEOMETRIC DESIGN

ISSUED DATE: April 16, 2010

EFFECTIVE DATE: April 19, 2010

This memorandum replaces Figure 33-3B in Section 33-3 of the BLRS Manual dated January 2006

The Bureau of Local Roads and Streets and the Illinois Commerce Commission have reviewed the geometric design guidelines for approaches on highway-rail grade crossings using Motor Fuel Tax Funds, Grade Crossing Protection Funds, or other State Funds. Reconstruction of existing highway-rail grade crossing approaches should be designed according to Chapter 33 of the BLRS Manual. On figure 33-3B, new footnotes modifying the design speed and travelled way width has been added to the 250 and 400 ADT columns for highway-rail grade crossing approaches on the road district system.

Please contact dot.localpolicy@illinois.gov with any questions.

Darrell Lewis

Acting Engineer of Local Roads and Streets

KB/kb

Attachment

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2010-02

SUBJECT: Unsignalized Pedestrian Crosswalk Signs

ISSUED DATE: August 27, 2010

EFFECTIVE DATE: September 1, 2010

This memorandum revises Section 39-2 of the Bureau of Local Roads & Streets Manual dated October 2008

Public Act 096-1165 effective July 22, 2010 amends 625 ILCS 5/11-1002. The statute now requires when traffic control signals are not in place or not in operation the driver of a vehicle shall stop and yield the right-of-way, to a pedestrian crossing the roadway within a crosswalk.

Section 2B.11 and Section 2B.12 of the 2009 Manual on Uniform Traffic Control Devices outline the requirements for unsignalized pedestrian crosswalk sign series. The STOP HERE FOR PEDESTRIAN signs (R1-5b and R1-5c) and the STOP FOR PEDESTRIAN signs (R1-6a and R1-9a) shall only be used where state law specifically requires that a driver must stop for a pedestrian in a crosswalk. Therefore, signs using the yield symbol or yield text (R1-5, R1-5a, R1-6, or R1-9) shall not be used at unsignalized pedestrian crosswalks.

Please contact the Local Policy & Technology Unit at DOT.LocalPolicy@illinois.gov with any questions.

Darrell Lewis

Acting Engineer of Local Roads and Streets

KB/kb

Attachments

AN ACT concerning transportation.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Vehicle Code is amended by changing Sections 11-1002 and 11-1002.5 as follows:

(625 ILCS 5/11-1002) (from Ch. 95 1/2, par. 11-1002)

Sec. 11-1002. Pedestrians' right-of-way at crosswalks. (a) When traffic control signals are not in place or not in operation the driver of a vehicle shall stop and yield the right-of-way~~, slowing down or stopping if need be to so yield,~~ to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(b) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a moving vehicle which is so close as to constitute an immediate hazard.

(c) Paragraph (a) shall not apply under the condition stated in Section 11-1003 (b).

(d) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other

vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(e) Whenever stop signs or flashing red signals are in place at an intersection or at a plainly marked crosswalk between intersections, drivers shall yield right-of-way to pedestrians as set forth in Section 11-904 of this Chapter.

(Source: P.A. 79-857.)

(625 ILCS 5/11-1002.5)

Sec. 11-1002.5. Pedestrians' right-of-way at crosswalks; school zones.

(a) For the purpose of this Section, "school" has the meaning ascribed to that term in Section 11-605.

On a school day when school children are present and so close thereto that a potential hazard exists because of the close proximity of the motorized traffic and when traffic control signals are not in place or not in operation, the driver of a vehicle shall stop and yield the right-of-way~~, slowing down or stopping if need be to so yield,~~ to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

For the purpose of this Section, a school day shall begin at seven ante meridian and shall conclude at four post

meridian.

This Section shall not be applicable unless appropriate signs are posted in accordance with Section 11-605.

(b) A first violation of this Section is a petty offense with a minimum fine of $150. A second or subsequent violation of this Section is a petty offense with a minimum fine of $300.

(c) When a fine for a violation of subsection (a) is $150 or greater, the person who violates subsection (a) shall be charged an additional $50 to be paid to the unit school district where the violation occurred for school safety purposes. If the violation occurred in a dual school district, $25 of the surcharge shall be paid to the elementary school district for school safety purposes and $25 of the surcharge shall be paid to the high school district for school safety purposes. Notwithstanding any other provision of law, the entire $50 surcharge shall be paid to the appropriate school district or districts.

For purposes of this subsection (c), "school safety purposes" has the meaning ascribed to that term in Section 11-605.

(Source: P.A. 95-302, eff. 1-1-08.)

Section 99. Effective date. This Act takes effect upon becoming law.

Support:

10 Figure 2A-3 shows examples of some typical placements of STOP signs and YIELD signs.

11 Section 2A.16 contains additional information about separate and combined mounting of other signs with STOP or YIELD signs.

Guidance:

12 *Stop lines that are used to supplement a STOP sign should be located as described in Section 3B.16. Yield lines that are used to supplement a YIELD sign should be located as described in Section 3B.16.*

13 *Where there is a marked crosswalk at the intersection, the STOP sign should be installed in advance of the crosswalk line nearest to the approaching traffic.*

14 *Except at roundabouts, where there is a marked crosswalk at the intersection, the YIELD sign should be installed in advance of the crosswalk line nearest to the approaching traffic.*

15 *Where two roads intersect at an acute angle, the STOP or YIELD sign should be positioned at an angle, or shielded, so that the legend is out of view of traffic to which it does not apply.*

16 *If a raised splitter island is available on the left-hand side of a multi-lane roundabout approach, an additional YIELD sign should be placed on the left-hand side of the approach.*

Option:

17 If a raised splitter island is available on the left-hand side of a single lane roundabout approach, an additional YIELD sign may be placed on the left-hand side of the approach.

18 At wide-throat intersections or where two or more approach lanes of traffic exist on the signed approach, observance of the right-of-way control may be improved by the installation of an additional STOP or YIELD sign on the left-hand side of the road and/or the use of a stop or yield line. At channelized intersections or at divided roadways separated by a median, the additional STOP or YIELD sign may be placed on a channelizing island or in the median. An additional STOP or YIELD sign may also be placed overhead facing the approach at the intersection to improve observance of the right-of-way control.

Standard:

19 **More than one STOP sign or more than one YIELD sign shall not be placed on the same support facing in the same direction.**

Option:

20 For a yield-controlled channelized right-turn movement onto a roadway without an acceleration lane and for an entrance ramp onto a freeway or expressway without an acceleration lane, a NO MERGE AREA (W4-5P) supplemental plaque (see Section 2C.40) may be mounted below a Yield Ahead (W3-2) sign and/or below a YIELD (R1-2) sign when engineering judgment indicates that road users would expect an acceleration lane to be present.

Section 2B.11 Yield Here To Pedestrians Signs and Stop Here For Pedestrians Signs (R1-5 Series)

Standard:

01 **Yield Here To (Stop Here For) Pedestrians (R1-5, R1-5a, R1-5b, or R1-5c) signs (see Figure 2B-2) shall be used if yield (stop) lines are used in advance of a marked crosswalk that crosses an uncontrolled multi-lane approach. The Stop Here for Pedestrians signs shall only be used where the law specifically requires that a driver must stop for a pedestrian in a crosswalk. The legend STATE LAW may be displayed at the top of the R1-5, R1-5a, R1-5b, and R1-5c signs, if applicable.**

Guidance:

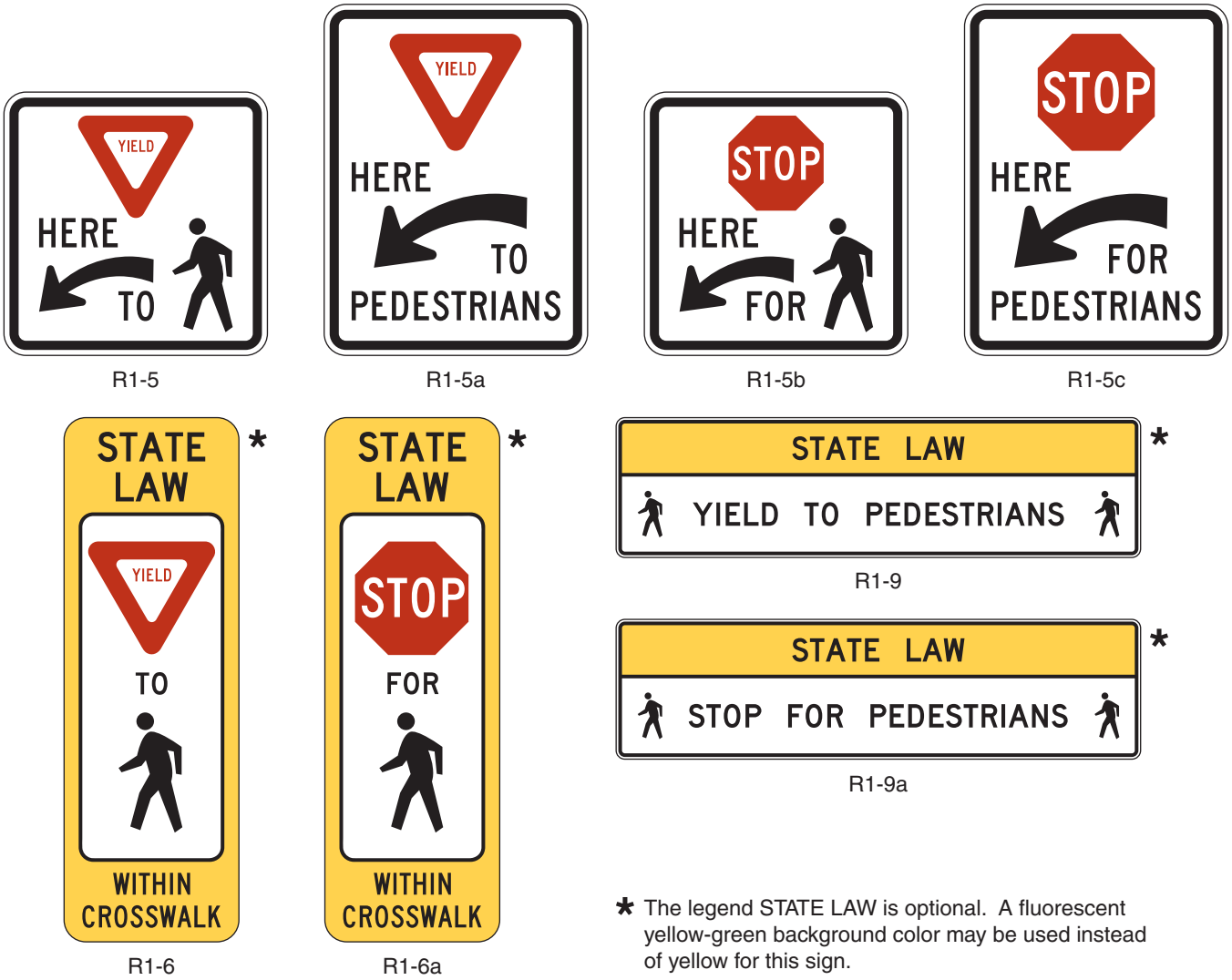
02 *If yield (stop) lines and Yield Here To (Stop Here For) Pedestrians signs are used in advance of a crosswalk that crosses an uncontrolled multi-lane approach, they should be placed 20 to 50 feet in advance of the nearest crosswalk line (see Section 3B.16 and Figure 3B-17), and parking should be prohibited in the area between the yield (stop) line and the crosswalk.*

03 *Yield (stop) lines and Yield Here To (Stop Here For) Pedestrians signs should not be used in advance of crosswalks that cross an approach to or departure from a roundabout.*

Option:

04 Yield Here To (Stop Here For) Pedestrians signs may be used in advance of a crosswalk that crosses an uncontrolled multi-lane approach to indicate to road users where to yield (stop) even if yield (stop) lines are not used.

Figure 2B-2. Unsignalized Pedestrian Crosswalk Signs



05 A Pedestrian Crossing (W11-2) warning sign may be placed overhead or may be post-mounted with a diagonal downward pointing arrow (W16-7P) plaque at the crosswalk location where Yield Here To (Stop Here For) Pedestrians signs have been installed in advance of the crosswalk.

Standard:

06 **If a W11-2 sign has been post-mounted at the crosswalk location where a Yield Here To (Stop Here For) Pedestrians sign is used on the approach, the Yield Here To (Stop Here For) Pedestrians sign shall not be placed on the same post as or block the road user's view of the W11-2 sign.**

Option:

07 An advance Pedestrian Crossing (W11-2) warning sign with an AHEAD or a distance supplemental plaque may be used in conjunction with a Yield Here To (Stop Here For) Pedestrians sign on the approach to the same crosswalk.

08 In-Street Pedestrian Crossing signs and Yield Here To (Stop Here For) Pedestrians signs may be used together at the same crosswalk.

Section 2B.12 <u>In-Street and Overhead Pedestrian Crossing Signs (R1-6, R1-6a, R1-9, and R1-9a)</u>

Option:

01 The In-Street Pedestrian Crossing (R1-6 or R1-6a) sign (see Figure 2B-2) or the Overhead Pedestrian Crossing (R1-9 or R1-9a) sign (see Figure 2B-2) may be used to remind road users of laws regarding right-of-way at an unsignalized pedestrian crosswalk. The legend STATE LAW may be displayed at the top of the R1-6, R1-6a, R1-9, and R1-9a signs, if applicable. On the R1-6 and R1-6a signs, the legends STOP or YIELD may be used instead of the appropriate STOP sign or YIELD sign symbol.

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2011-01

SUBJECT: PAVEMENT MAINTENANCE, REHABILITATION AND DESIGN POLICIES

ISSUED DATE: November 23, 2011

EFFECTIVE DATE: January 1, 2012

This memorandum:
- Revises Sections 14-1.02;
- Moves Section 33-4 into a new Chapter as Section 46-3, Sections 37-1 through 37-7 into a new chapter as Sections 44-1 through 44-7, Section 37-8 into a new chapter as Section 46-4, and Section 37-9 into a new chapter as Section 44-8;
- Deletes Section 33-5 and 33-6; and
- Creates Section 46-5, 46-6, and 46-7

In 2010, the Bureau of Local Roads & Streets in cooperation with local agencies, consultants, and industry conducted a review of the various pavement policies contained in the Bureau of Local Roads & Streets (BLRS) Manual. Based on this review several sections of the BLRS Manual have been revised.

All pavement maintenance, rehabilitation, and construction projects will need to comply with accessibility standards. Resurfacing projects are considered alterations for curb ramp accessibility; therefore, curb ramps shall be reviewed for compliance with accessibility standards whenever resurfacing projects under Chapter 14, 44, or 46 are performed. Non-compliant curb ramps shall be addressed as part of the project unless the agency's transition plan provides for an alternative.

Following is a summary of changes:

Chapter 14

- Maintenance with Hot-Mix Asphalt (HMA) was revised to allow a maximum 2 inch overlay for all surface types. Warm Mix Asphalt (WMA) was also included. If pavement is milled, milled thickness plus 2 inches of HMA/WMA may be placed as a maintenance project. Allows single lane width HMA/WMA maintenance projects. Clarified drainage improvements that are allowed under HMA/WMA maintenance projects.

Chapter 33

- Section 33-4 LAPP Policy was moved to Section 46-3. The LAPP Policy has been re-titled as Local Agency Function Overlay (LAFO) Policy since the policy did not adequately cover existing pavement preservation concepts. Form BLR 33410 has been re-numbered as BLR 46300 and has been revised to accommodate additional projects (see attached).
- Section 33-5 Special Maintenance was deleted due to lack of use and additional flexibility allowed under HMA/WMA Maintenance in Chapter 14.
- Section 33-6 was a place holder for intermittent resurfacing policy. The concepts of intermittent resurfacing were included into HMA/WMA Maintenance in Chapter 14.

Chapter 37

- Chapter 37 was split between Chapter 44 Pavement Design and Chapter 46 Pavement Rehabilitation; therefore, Chapter 37 is now reserved for future use.

Chapter 44

- Chapter 44 Pavement Design incorporates Section 37-1 through Section 37-7 and Section 37-9 into the new chapter.
- Traffic factors for 73,280 pound designs have been eliminated due to changes in state law that made 80,000 pound weight limit the legal load for all highways in Illinois.
- PG Binder selection tables were modified slightly to provide better information on PG Binder selection impact on pavement design.
- Traffic factors and design algorithms will be reviewed this winter to update the design procedures.

Chapter 46

- Section 46-2 incorporates Sections 37-8.01 through 37-8.04.
- Section 46-3 incorporates Section 33-4 LAPP Policy as the new Local Agency Function Overlay (LAFO) Policy. LAFO allows maximum HMA lift thickness of 3.75 inches. Projects may receive multiple LAFO treatments if certain geometric conditions are met.
- Section 46-4 incorporates Sections 37-8.06 through 37-8.09.
- Section 46-5 establishes the design policy for PCC Inlay/Overlay on Existing HMA Surfaces. This design is based on Illinois Center for Transportation research project R27-3 “Design and Concrete Material Requirements for Ultra-Thin Whitetopping Procedures”.

- Section 46-6.02 establishes the policy for Hot In-Place Recycling (HIR). HIR has three different methods:
  - HIR - Surface Recycling is also known as Heater Scarification. This process requires an HMA/WMA Overlay. LR400-3 should be used for this process (see attached).
  - HIR – Remixing and HIR – Repaving are new concepts that will require experimental features.
- Section 46-6.03 establishes the policy for Cold In-Place Recycling (CIR) and Section 46-6.04 establishes the policy for Full Depth Reclamation (FDR). Designs and specifications are being developed based on Illinois Center for Transportation research project R27-12 "Cold In-Place Recycling with Asphalt Products (CIRwAP)". Until designs and specifications are finalized agencies should continue to coordinate projects with the District BLRS using criteria documented in the research report.
- Section 46-7 refers to the Rubblization section in the Bureau of Design & Environment Manual.

Please contact the Local Policy & Technology Unit at dot.LocalPolicy@illinois.gov with any questions.

Darrell Lewis

Acting Engineer of Local Roads and Streets

Attachments

KB/kb

Illinois Department of Transportation

Local Agency Pavement Preservation or Functional Overlay Approval

County _____
Local Agency _____
Section Number _____
Project Number _____
Funding Type _____

Route/Location (attach location map) _____
Termini Description _____

Project Length _____ Number of Lanes _____ Cost Estimate _____
Current ADT _____ DHV _____ Truck % _____

Pavement: Existing Type _____ Existing Width _____ Proposed Type _____
Shoulder: Existing Type _____ Shoulder Width/C&G Type _____ Proposed Type _____

☐ LAFO: HMA Overlay Thickness (including level binder) _____ or
Cold Mix/ Aggregate Base Course Thickness _____

☐ LAPP: Treatment Type _____ Condition Rating _____
Primary Distress _____ Secondary Distress _____

If Yes is checked for any of the following, attachment may be necessary for explanation:

Yes	No		Yes	No	
☐	☐	Variances (attach justification)	☐	☐	Roto Milling of Old Surface Proposed
☐	☐	Curb Repairs at Intersections	☐	☐	Curb Repairs / Replacement
☐	☐	Storm Sewer Inlets Repaired / Replaced	☐	☐	Handicap Ramps Proposed
☐	☐	Overlay of Structure Proposed	☐	☐	Sidewalk Construction or Maintenance Proposed
☐	☐	Existing Parking Lanes	☐	☐	Reflective Crack Control Proposed
☐	☐	Pavement Flooding Exists	☐	☐	Drainage Problems Exist

Estimated % Patching _____ Estimated % Base Repair _____
Number of intersections that may require improvements within 8 years _____
The following structures are within the project termini (attach current sufficiency rating and inspection report):

_____

_____
Appropriate Local Official Date

☐ Categorical Exclusion Concurrence
☐ Design Approval

_____
Regional Engineer Date

☐ Design Variance Approval

_____
Bureau of Local Roads and Streets Date

☐ Bridge Deck Resurfacing Approval

_____
Bureau of Bridges and Structures Date

State of Illinois
DEPARTMENT OF TRANSPORTATION
Bureau of Local Roads & Streets

SPECIAL PROVISION
FOR
HOT IN-PLACE RECYCLING (HIR) – SURFACE RECYCLING

Effective: January 1, 2012

All references to Sections and Articles in this Special Provision shall be construed to mean specific Sections and Articles in the Standard Specifications for Road and Bridge Construction adopted by the Department of Transportation.

Description. This work shall consist of in-place rehabilitation of hot-mix asphalt (HMA) pavement by heating, scarifying, rejuvenating, and reshaping the surface followed by the addition of a new HMA surface course according to the thickness specified on the plans.

Materials. Materials shall be according to the following.

Item	Article/Section
(a) Rejuvenating Agent (Note 1)	
(b) Hot-Mix Asphalt	1030

Note 1. The rejuvenating agent shall have a minimum Aged Penetration Retention of 90% when tested according to the following test procedure:

a. Determine the penetration[1] of an unaged standard PG 58-22 asphalt binder.
b. Age[2] the asphalt binder in the Rolling Thin Film Oven (RTFO).
c. Determine the penetration[1] of the aged binder (A).
d. Add the rejuvenating agent or rejuvenating agent residue[3] at the percentage recommended by the manufacturer (maximum 20% by weight) to the aged binder. Blend uniformly.
e. Determine the penetration[1] of the rejuvenating agent / aged binder mixture. The penetration of this mixture shall be essentially equivalent to the penetration of the unaged PG 58-22.
f. Age[2] the rejuvenating agent / aged binder mixture in the RTFO.
g. Determine the penetration[1] of the aged rejuvenating agent / aged binder mixture (B).
h. Determine the Aged Penetration Retention according to the following formula:

Aged Penetration Retention, % = (B/A)x100

[1] *AASHTO T 49 at 77°F (25°C).*
[2] *AASHTO T 240 aged for 5 hours at 325°F (163°C).*
[3] *If the rejuvenating agent is an emulsion, obtain the residue according to the test procedure "Emulsified Asphalt Residue by Evaporation" located in AASHTO T 59.*

Equipment. Equipment shall be according to the following.

Item	Article/Section
(a) Rollers	1101.01
(b) Pre-heater (Note 1)	
(c) Heater-Scarifier (Note 2)	

Note 1. The pre-heater shall be a separate independently self-propelled heating unit.

Note 2. The heater-scarifier shall be self-contained, power propelled unit capable of heating, scarifying, adding rejuvenating agent, mixing, and screeding the scarified asphalt surface.

The heating system shall use propane, fuel oil, or butane as fuel, capable of being turned on or off instantly and have a range of width to heat 4-inches beyond each side of the lane width. Heating of the asphalt pavement surface shall be accomplished in such a manner that adequate heat penetration is provided without excessive oxidation, or direct flame contact with the asphalt street. The heaters shall have an enclosed or shielded hood and allow for the pavement to be scarified to the specified depth with the surface temperature of the old pavement not exceeding 375°F (190°C). The machine shall be equipped with a minimum of two rows of spring-mounted scarification teeth. Teeth shall be evenly spaced with the rows offset by an amount equal to one-half of the tooth spacing. Teeth shall be capable of vertical movement, such that the rows of the teeth will follow any contours in the street profile to scarify to the required depth regardless of depression or high areas. Self-regulating controls shall be used to exert pressure from the weight of the machine onto the tooth mounting system, and to control the depth of scarification. The aggregate shall be dislodged, but not fractured, to the specified depth.

The machine shall be capable of adding rejuvenating agent uniformly over the area to be scarified at a uniform rate per distance traveled.

The machine shall be capable of lateral movement of the scarified materials as required, by using a reversible auger and/or adjustable blades. This system shall be capable of maintaining a uniform supply of scarified material distributed as required across the face if the spreader screed.

The heater-scarifier shall be equipped with an automatic electronic grade control device. The device shall be effective in leveling depressions. The device shall be capable of controlling the elevation of the screed relative to either a preset grade control string line or a grade reference device traveling on the adjacent pavement surface. The traveling grade reference device shall be not less than 30 ft (9 m) in length.

The screed or strike off assembly shall effectively produce a finished surface of the required evenness and texture without tearing, shoving or gouging the mixture.

CONSTRUCTION REQUIREMENTS

General. The entire surface to be rehabilitated shall be free of water, soil, vegetation, and foreign material. All base failures shall be repaired prior to the heating scarifying process according to Section 358. Rehabilitation work shall be performed only when the air temperature in the shade is at least 45 °F (7 °C) and the forecast is for rising temperatures.

The surface of the existing pavement shall be heated with a continuously moving heater to allow the pavement to be scarified to a 0.75 to 1.5 in (20 to 38 mm) average depth with the surface temperature of the old pavement not to exceed 375 °F (190 °C). Heat shall be applied under an enclosed or shielded hood and shall extend at least 4 in. (100 mm) beyond the width of scarification on both sides. Scarifying shall be accomplished with pressure scarifiers. The scarifying unit shall be equipped to scarify and move material away from the gutter flags for a depth of 1/2 in. (13 mm) by 4 in. (100 mm) wide. The heating-scarifying operation shall not exceed 30 ft (10 m) per minute. When a repaving pass is being made adjacent to a previously placed mat, the longitudinal repaving seam shall extend at least 2 in. (50 mm) into the previously placed mat.

Immediately after the scarifying operation, the rejuvenating agent shall be applied at the maximum rate of 0.20 gal/sq yd (0.5 L/sq m). The actual rate will be determined by the Contractor based on pavement condition, rejuvenating agent, and pavement samples. The Contractor will provide the Engineer with the application rate prior to construction. The application rate should not vary by more than ± 0.03 gal/sq yd (± 0.1 L/sq m) unless existing pavement conditions change. Any modification of the application rate shall be approved by the Engineer. The surface shall then be leveled by distributing the heated, scarified and treated (HST) material over the width being processed so as to produce a uniform cross section. The minimum temperature of the HST material after leveling shall be 175 °F (80 °C). The HST material shall be compacted before the temperature of the mix drops below 150 °F (65 °C).

Compaction shall be accomplished by performing a growth curve within the first half mile of production. If an adjustment is made to the rejuvenating agent's application rate, the Engineer reserves the right to request an additional growth curve. The growth curve, consisting of a plot of lb/cu ft (kg/cu m) vs. number of passes with the project breakdown roller, shall be developed. Roller speed during the growth curve testing shall be the same as the normal paving operation. This curve shall be established by use of a nuclear gauge. Tests shall be taken after each pass until the highest lb/cu ft (kg/cu m) is obtained. This value shall be the target density.

A new growth curve is required if the breakdown roller used on the growth curve is replaced with a new roller during production. The target density shall apply only to the specific gauge used. If additional gauges are to be used to determine density specification compliance, the Contractor shall establish a unique minimum allowable target density from the growth curve location for each gauge.

TABLE 1 - MINIMUM ROLLER REQUIREMENTS FOR HIR – SURFACE RECYCLING			
Breakdown Roller (one of the following)[1]	Intermediate Roller	Final Roller (one or more of the following)[1]	Density Requirement
V_D, P	--	V_S, T_B, T_F	95 - 102 percent of the target density obtained on the growth curve

[1/] Equipment definitions in Table 1 of Article 406.07.

Within 48 hours of the HST operation, a HMA surface course specified in the plans shall be placed according to Section 406.

Method of Measurement.

(a) Contract Quantities. The requirement for use of contract quantities shall be according to Article 202.07(a).

(b) Measured Quantities. The hot in-place recycling – surface recycling will be measured for payment in place and the area computed in square yards (square meters). The rejuvenating agent will be measured for payment in gallons (liters) according to Article 1032.02. The HMA surface will be measured for payment in tons (metric tons) according to Article 406.13.

Basis of Payment. This work will be paid for at the contract unit price per square yard (square meter) for HOT IN-PLACE RECYCLING – SURFACE RECYCLING, and per gallon (liter) for REJUVENATING AGENT.

The HMA surface will be paid for according to Article 406.14

If provided as a pay item, the preparation of the base will be paid for according to Article 358.07. If not provided as a pay item, preparation of the base, including additional material required, shall be considered as included in the contract unit price bid for hot in-place recycling, and no additional compensation will be allowed.

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2011-02

SUBJECT: LOCAL AGENCY PAVEMENT PRESERVATION POLICY

ISSUED DATE: November 23, 2011

EFFECTIVE DATE: January 1, 2012

This memorandum creates Chapter 45 of the Bureau of Local Roads & Streets Manual.

The Local Agency Pavement Preservation Policy has been issued to allow local agencies to implement a pavement preservation program using federal, state, and/or motor fuel tax funds. For all roads being considered for pavement preservation, an agency shall have a pavement management system, condition rating, and 10-year pavement preservation program. All treatments should use standard specifications or department approved special provisions. Some treatments may still need to follow the experimental feature process.

The District Local Roads Engineer and Central Engineer of Local Roads & Streets shall approve an agency to participate in pavement preservation. Form BLR 45300 should be used to request approval to participate in pavement preservation. The District Local Roads Engineer shall approve the multi-year pavement preservation program. Form BLR 45310 should be used to request approval of the multi-year pavement preservation estimate.

Individual project submittal should follow the approval procedures for the funding type used. Form BLR 46300 should be used for individual pavement preservation project approval. All projects performed under a pavement preservation program should use the PP section number.

Please contact the Local Policy & Technology Unit at dot.LocalPolicy@illinois.gov with any questions.

Darrell W. Lewis
Acting Engineer of Local Roads and Streets

Attachments

KB/kb

Illinois Department of Transportation

Pavement Preservation Program Participation

County _____

Local Agency _____

Proposed Pavement Management System _____

Proposed Condition Rating System _____

Rating Scale _____ (poor) to _____ (excellent)

Proposed Pavement Rating Inspection Cycle ☐ 1 year ☐ 2 years ☐ 3 years ☐ Other

☐ Attached is a location map with the roadway inventory from the agency's pavement management system.
☐ Attached is a location map for the roadway inventory listed in the table below.

Inventory Number	Route	Section Limits		Mileage	Existing Pavement Type	Pavement Age
		From	To			

Prepared By: _____ Name _____ Title _____ Date

Submitted By: _____ Name _____ Title _____ Date

Approved By: _____ District Local Roads Engineer _____ Date

Approved By: _____ Engineer of Local Roads _____ Date

Submit 4 originals to District

Illinois Department of Transportation

Estimate of Pavement Preservation Costs Approval

County _____

Local Agency _____

Pavement Management System Used _____

Condition Rating System Used _____

Rating Scale _____ (poor) to _____ (excellent)

Program Estimate Start Date _____

Program Estimate End Date _____

Attached is a location map showing project locations for year 1 and year 2, estimated pavement preservation project costs planned for year 1 and year 2 of the pavement preservation program, one site photo showing typical pavement condition for each type of pavement for year 1 and year 2, and estimated annual treatment cost for year 3 to year 10 of the pavement preservation program.

☐ Estimates are provided on BLR 45320.
☐ Estimates are provided on a report from the pavement management system.

Prepared by: _____ Name _____ Title _____ Date

Submitted by: _____ Name _____ Title _____ Date

Approved by: _____ District Local Roads Engineer _____ Date

Submit 3 originals to the District

Illinois Department of Transportation

Estimate of Pavement Preservation Costs

County _____

Local Agency _____

Program Year 1

Inventory Number	Pavement Age	AADT	Condition Rating		Predominant Distress Type		Treatment Type	Estimated Cost
			Value	Year of Rating	Primary	Secondary		
Total Estimated Pavement Preservation Cost for Year 1								$ 0.00
Total Estimated Pavement Preservation Cost by Funding Source for Year 1								
						MFT		
						Federal		
						State		
						Other		

Program Year 2

Inventory Number	Pavement Age	AADT	Condition Rating		Predominant Distress Type		Treatment Type	Estimated Cost
			Value	Year of Rating	Primary	Secondary		

Program Year 3 to Program Year 10

Program Year	Treatment Type	Total Mileage	Estimated Cost

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2011-03

SUBJECT: HIGHWAY SIGNING

ISSUED DATE: November 28, 2011

EFFECTIVE DATE: December 1, 2012

This memorandum revises Chapter 39 of the Bureau of Local Roads & Streets Manual.

The Department adopted the 2009 National Manual on Uniform Traffic Control Devices (MUTCD) along with the Illinois Supplement as the official manual for traffic control devices for use in the state on all roads open to public travel on March 10, 2011. The MUTCD and the Illinois Supplement are available on the IDOT Internet Site (www.dot.il.gov/mutcd/utcdmanual.html). Due to changes in the 2009 MUTCD and recent Illinois legislation impacting highway signs, the following revisions have been made to Chapter 39.

Stop Signs

- ALL WAY (R1-3P) Supplemental Plaque shall be mounted below each STOP (R1-1) sign at intersections where all approaches are controlled by a STOP sign.
- Supplemental warning plaques (W4-4aP or W4-4bP) should be used at intersections where STOP signs control all but one approach to the intersection.

Horizontal Alignment Signs

- Incorporated Table 2C-5 from the MUTCD.
- Revised language to mirror MUTCD.

School Area Signs

- Incorporated new MUTCD requirements
- Provide guidance on CELL PHONE USE PROHIBITED (R2-I110) sign based on Public Act 096-131.

Park Zone Signs

- Revised to comply with 2009 MUTCD requirements for REDUCED SPEED LIMIT AHEAD (W3-5) sign.

Street Name Signs

- Revised to limit sign background color per the 2009 MUTCD.
- Revised to require mixed case lettering.

Tourist Oriented Directional Signs

- Updated to reference Illinois Administrative Code for state maintained highways that are outside the urban areas.

Non-Highway Vehicle Signs

- Incorporated sign policy for non-highway vehicles per 625 ILCS 5/11-1426.1.
- Authorized by ordinance or resolution on all local highways.
- Sign not required

Low-Speed Vehicle Signs

- Incorporated sign policy for low-speed vehicles per 625 ILCS 5/11-1426.2.
- Allowed unless prohibited on highways where the posted speed limit is 30 mph or less.
- R5-I107 sign shall be installed if prohibiting.
- Authorized by ordinance or resolution on highways where the posted speed limit is more than 30 mph but not greater than 35 mph.

Community Wayfinding Signs

- Incorporates guidance from Section 2D.50 of the MUTCD
- Establishes the District Operations Manager as the primary contact for installation of these signs on state highways.

Please contact the Local Policy Unit at dot.LocalPolicy@illinois.gov with any questions.

Darrell W. Lewis
Acting Engineer of Local Roads and Streets

Attachments

KB/kb

AN ACT concerning transportation.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Vehicle Code is amended by changing Section 12-610.1 as follows:

(625 ILCS 5/12-610.1)

Sec. 12-610.1. Wireless telephones.

(a) As used in this Section, "wireless telephone" means a device that is capable of transmitting or receiving telephonic communications without a wire connecting the device to the telephone network.

(b) A person under the age of 19 years who holds an instruction permit issued under Section 6-105 or 6-107.1, or a person under the age of 19 years who holds a graduated license issued under Section 6-107, may not drive a vehicle on a roadway while using a wireless phone.

(c) This Section does not apply to a person under the age of 19 years using a wireless telephone for emergency purposes, including, but not limited to, an emergency call to a law enforcement agency, health care provider, fire department, or other emergency services agency or entity.

(d) If a graduated driver's license holder over the age of 18 committed an offense against traffic regulations governing

the movement of vehicles or any violation of Section 6-107 or Section 12-603.1 of this Code in the 6 months prior to the graduated driver's license holder's 18th birthday, and was subsequently convicted of the violation, the provisions of paragraph (b) shall continue to apply until such time as a period of 6 consecutive months has elapsed without an additional violation and subsequent conviction of an offense against traffic regulations governing the movement of vehicles or any violation of Section 6-107 or Section 12-603.1 of this Code.

(e) A person, regardless of age, may not use a wireless telephone at any time while operating a motor vehicle on a roadway in a school speed zone established under Section 11-605, or on a highway in a construction or maintenance speed zone established under Section 11-605.1. This subsection (e) does not apply to (i) a person engaged in a highway construction or maintenance project for which a construction or maintenance speed zone has been established under Section 11-605.1, (ii) a person using a wireless telephone for emergency purposes, including, but not limited to, law enforcement agency, health care provider, fire department, or other emergency services agency or entity, (iii) a law enforcement officer or operator of an emergency vehicle when performing the officer's or operator's official duties, or (iv) to a person using a wireless telephone in voice-activated mode.

(Source: P.A. 94-240, eff. 7-15-05; 95-310, eff. 1-1-08;

95-338, eff. 1-1-08; 95-876, eff. 8-21-08.)

(625 ILCS 5/11-1426.1)

Sec. 11-1426.1. Operation of non-highway vehicles on streets, roads, and highways.

(a) As used in this Section, "non-highway vehicle" means a motor vehicle not specifically designed to be used on a public highway, including:

(1) an all-terrain vehicle, as defined by Section 1-101.8 of this Code;

(2) a golf cart, as defined by Section 1-123.9;

(3) an off-highway motorcycle, as defined by Section 1-153.1; and

(4) a recreational off-highway vehicle, as defined by Section 1-168.8.

(b) Except as otherwise provided in this Section, it is unlawful for any person to drive or operate a non-highway vehicle upon any street, highway, or roadway in this State. If the operation of a non-highway vehicle is authorized under subsection (d), the non-highway vehicle may be operated only on streets where the posted speed limit is 35 miles per hour or less. This subsection (b) does not prohibit a non-highway vehicle from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.

(b-5) A person may not operate a non-highway vehicle upon any street, highway, or roadway in this State unless he or she has a valid driver's license issued in his or her name by the Secretary of State or by a foreign jurisdiction.

(c) Except as otherwise provided in subsection (c-5), no person operating a non-highway vehicle shall make a direct crossing upon or across any highway under the jurisdiction of the State, tollroad, interstate highway, or controlled access highway in this State.

(c-5) A person may make a direct crossing at an intersection controlled by a traffic light or 4-way stop sign upon or across a highway under the jurisdiction of the State if the speed limit on the highway is 35 miles per hour or less at the place of crossing.

(d) A municipality, township, county, or other unit of local government may authorize, by ordinance or resolution, the operation of non-highway vehicles on roadways under its jurisdiction if the unit of local government determines that the public safety will not be jeopardized. The Department may authorize the operation of non-highway vehicles on the roadways under its jurisdiction if the Department determines that the public safety will not be jeopardized. The unit of local government or the Department may restrict the types of non-highway vehicles that are authorized to be used on its streets.

Before permitting the operation of non-highway vehicles on its roadways, a municipality, township, county, other unit of local government, or the Department must consider the volume,

speed, and character of traffic on the roadway and determine whether non–highway vehicles may safely travel on or cross the roadway. Upon determining that non–highway vehicles may safely operate on a roadway and the adoption of an ordinance or resolution by a municipality, township, county, or other unit of local government, or authorization by the Department, appropriate signs shall be posted.

If a roadway is under the jurisdiction of more than one unit of government, non–highway vehicles may not be operated on the roadway unless each unit of government agrees and takes action as provided in this subsection.

(e) No non–highway vehicle may be operated on a roadway unless, at a minimum, it has the following: brakes, a steering apparatus, tires, a rearview mirror, red reflectorized warning devices in the front and rear, a slow moving emblem (as required of other vehicles in Section 12–709 of this Code) on the rear of the non–highway vehicle, a headlight that emits a white light visible from a distance of 500 feet to the front, a tail lamp that emits a red light visible from at least 100 feet from the rear, brake lights, and turn signals. When operated on a roadway, a non–highway vehicle shall have its headlight and tail lamps lighted as required by Section 12–201 of this Code.

(f) A person who drives or is in actual physical control of a non–highway vehicle on a roadway while under the influence is subject to Sections 11–500 through 11–502 of this Code.

(g) Any person who operates a non–highway vehicle on a street, highway, or roadway shall be subject to the mandatory insurance requirements under Article VI of Chapter 7 of this Code.

(h) It shall not be unlawful for any person to drive or operate a non–highway vehicle, as defined in paragraphs (1) and (4) of subsection (a) of this Section, on a county roadway or township roadway for the purpose of conducting farming operations to and from the home, farm, farm buildings, and any adjacent or nearby farm land.

Non–highway vehicles, as used in this subsection (h), shall not be subject to subsections (e) and (g) of this Section. However, if the non–highway vehicle, as used in this Section, is not covered under a motor vehicle insurance policy pursuant to subsection (g) of this Section, the vehicle must be covered under a farm, home, or non–highway vehicle insurance policy issued with coverage amounts no less than the minimum amounts set for bodily injury or death and for destruction of property under Section 7–203 of this Code. Non–highway vehicles operated on a county or township roadway at any time between one–half hour before sunset and one–half hour after sunrise must be equipped with head lamps and tail lamps, and the head lamps and tail lamps must be lighted.

Non–highway vehicles, as used in this subsection (h), shall not make a direct crossing upon or across any tollroad, interstate highway, or controlled access highway in this

State.

Non–highway vehicles, as used in this subsection (h), shall be allowed to cross a State highway, municipal street, county highway, or road district highway if the operator of the non–highway vehicle makes a direct crossing provided:

(1) the crossing is made at an angle of approximately 90 degrees to the direction of the street, road or highway and at a place where no obstruction prevents a quick and safe crossing;

(2) the non–highway vehicle is brought to a complete stop before attempting a crossing;

(3) the operator of the non–highway vehicle yields the right of way to all pedestrian and vehicular traffic which constitutes a hazard; and

(4) that when crossing a divided highway, the crossing is made only at an intersection of the highway with another public street, road, or highway.

(i) No action taken by a unit of local government under this Section designates the operation of a non–highway vehicle as an intended or permitted use of property with respect to Section 3–102 of the Local Governmental and Governmental Employees Tort Immunity Act.

(Source: P.A. 96–279, eff. 1–1–10; 96–1434, eff. 8–11–10; 97–144, eff. 7–14–11.)

625 ILCS 5/11-1426.2)

Sec. 11-1426.2. Operation of low-speed vehicles on streets.

(a) Except as otherwise provided in this Section, it is lawful for any person to drive or operate a low-speed vehicle upon any street in this State where the posted speed limit is 30 miles per hour or less.

(b) Low-speed vehicles may cross a street at an intersection where the street being crossed has a posted speed limit of not more than 45 miles per hour. Low-speed vehicles may not cross a street with a speed limit in excess of 45 miles per hour unless the crossing is at an intersection controlled by a traffic light or 4-way stop sign.

(c) The Department of Transportation or a municipality, township, county, or other unit of local government may prohibit, by regulation, ordinance, or resolution, the operation of low-speed vehicles on streets under its jurisdiction where the posted speed limit is 30 miles per hour or less if the Department of Transportation or unit of local government determines that the public safety would be jeopardized.

(d) Upon determining that low-speed vehicles may not safely operate on a street, and upon the adoption of an ordinance or resolution by a unit of local government, or regulation by the Department of Transportation, the operation of low-speed vehicles may be prohibited. The unit of local government or the Department of Transportation may prohibit the operation of low-speed vehicles on any and all streets under its jurisdiction. Appropriate signs shall be posted in conformance with the State Manual on Uniform Traffic Control Devices adopted pursuant to Section 11-301 of this Code.

(e) If a street is under the jurisdiction of more than one unit of local government, or under the jurisdiction of the Department of Transportation and one or more units of local government, low-speed vehicles may be operated on the street unless each unit of local government and the Department of Transportation agree and take action to prohibit such operation as provided in this Section.

(e-5) A unit of local government may, by ordinance or resolution, authorize the operation of low-speed vehicles on one or more streets under its jurisdiction that have a speed limit of more than 30 miles per hour but not greater than 35 miles per hour.

Before authorizing the operation of low-speed vehicles on any street under this subsection (e-5), the unit of local government must consider the volume, speed, and character of traffic on the street and determine whether low-speed vehicles may travel safely on that street.

If a street is under the jurisdiction of more than one unit of government, low-speed vehicles may not be operated on the street under this subsection (e-5) unless each unit of government agrees and takes action as provided in this subsection.

Upon the adoption of an ordinance authorizing low–speed vehicles under this subsection (e–5), appropriate signs shall be posted.

(f) No low–speed vehicle may be operated on any street unless, at a minimum, it has the following: brakes, a steering apparatus, tires, a rearview mirror, red reflectorized warning devices in the front and rear, a headlight that emits a white light visible from a distance of 500 feet to the front, a tail lamp that emits a red light visible from at least 100 feet from the rear, brake lights, and turn signals. When operated on a street, a low–speed vehicle shall have its headlight and tail lamps lighted as required by Section 12–201 of this Code.

(g) A person may not operate a low–speed vehicle upon any street in this State unless he or she has a valid driver's license issued in his or her name by the Secretary of State or a foreign jurisdiction.

(h) The operation of a low–speed vehicle upon any street is subject to the provisions of Chapter 11 of this Code concerning the Rules of the Road, and applicable local ordinances.

(i) Every owner of a low–speed vehicle is subject to the mandatory insurance requirements specified in Article VI of Chapter 7 of this Code.

(j) Any person engaged in the retail sale of low–speed vehicles are required to comply with the motor vehicle dealer licensing, registration, and bonding laws of this State, as specified in Sections 5–101 and 5–102 of this Code.

(k) No action taken by a unit of local government under this Section designates the operation of a low–speed vehicle as an intended or permitted use of property with respect to Section 3–102 of the Local Governmental and Governmental Employees Tort Immunity Act.

(Source: P.A. 96–653, eff. 1–1–10; 96–1434, eff. 8–11–10; 97–144, eff. 7–14–11.)

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2011-04

SUBJECT: MAINTENANCE GROUPS

ISSUED DATE: November 28, 2011

EFFECTIVE DATE: January 1, 2012

This memorandum revises Section 5-5 and Section 14-2 of the Bureau of Local Roads & Streets Manual.

The Bureau of Local Roads & Streets has clarified the group definitions for maintenance with Motor Fuel Tax (MFT) funds and has modified the engineering fees associated with hiring consultants for preliminary and construction engineering services on MFT maintenance projects.

The value of the maintenance program for engineering base fee has been increased to $20,000 to align with the current bidding threshold for municipalities and townships. Therefore, the base fee allowed for maintenance engineering has also been increased to $1,250. An engineering inspection fee for Group IIA items will be allowed at a maximum of 1% for maintenance items in this group that require inspection and/or acceptance.

Please contact the Local Policy Unit at dot.LocalPolicy@illinois.gov with any questions.

Darrell Lewis

Darrell W. Lewis
Acting Engineer of Local Roads and Streets

Attachments

KB/kb

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2012-01

SUBJECT: CONSTRUCTION SUPERVISION FOR FEDERAL AID PROJECTS

ISSUED DATE: January 6, 2012

EFFECTIVE DATE: April 1, 2012

This memorandum revises Section 25-1.02(c) of the Bureau of Local Roads & Streets Manual dated January 2006.

According to 23 CFR 635.105, the state transportation department (STD) has responsibility for the construction of all Federal-aid projects, and is not relieved of such responsibility by authorizing performance of the work by a local public agency (LPA) or other Federal agency. When a project is located on a street or highway over which the STD does not have legal jurisdiction, or when special conditions warrant, the STD, while not relieved of overall project responsibility, may arrange for the LPA having jurisdiction over such street or highway to perform the work with its own forces or by contract; provided certain conditions are met and the Federal Highways' Division Administrator approves the arrangements in advance.

For all federally funded LPA projects let after April 1, 2012, the LPA will provide a full time LPA employee to be in responsible charge of the project. The full time LPA employee in responsible charge does not need to be an engineer. This requirement applies even when consultants are providing construction engineering services. This LPA employee in responsible charge should be expected to be able to perform the following duties and functions:

- Administers inherently governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
- Maintains familiarity of day to day project operations, including project safety issues;
- Makes or participates in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visits and reviews the project on a frequency that is commensurate with the magnitude and complexity of the project;
- Reviews financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse;
- Directs project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and

- Is aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The selection and Regional Engineer approval of the resident construction supervisor and/or the full-time LPA employee to be in responsible charge of the project will be completed prior to the start of construction. During the pre-construction meeting, the local public agency should identify the resident construction supervisor and the full-time LPA employee to be in responsible charge of the project according to the following:

- Preferably, if the county engineer, municipal engineer, or a full-time publicly employed registered professional engineer is named the resident construction supervisor for the project and will be in responsible charge, the minutes of the pre-construction meeting should reflect the name and position of the resident construction supervisor.
- If this is not possible, the LPA should name a qualified full-time publicly-employed individual to serve as resident construction supervisor and to be in responsible charge. The approved Form BC 775 will be included as an attachment to the pre-construction meeting minutes.
- In those instances where a LPA elects to use a consultant engineering firm employee as a resident construction supervisor, the consultant engineering firm shall be prequalified in Construction Inspection and the consultant engineering firm's employee shall be Documentation of Contract Quantities certified. A full time LPA employee will remain in responsible charge. The approved Form BC 775 will be included as an attachment to the pre-construction meeting minutes.

The resident construction supervisor (and employee in responsible charge if resident construction supervisor is a consultant) will approve any construction inspector on Form BC 776. All consultants approved on Form BC 776 shall be Documentation of Contract Quantities certified. The LPA will attach approved Form BC 775 and/or Form BC 776 to the appropriate local agency/consultant agreement form.

Please contact the Local Policy Unit at dot.LocalPolicy@illinois.gov with any questions.

Darrell Lewis
Acting Engineer of Local Roads and Streets

Michael T. Renn
Acting Engineer of Construction

KB/kb

Attachment

minor components of the overall contract.

State transportation department (STD) means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term ''State'' should be considered equivalent to ''State transportation department'' if the context so implies.

Workday means a calendar day during which construction operations could proceed for a major part of a shift, normally excluding Saturdays, Sundays, and State-recognized legal holidays.

[62 FR 6873, Feb. 14, 1997, as amended at 67 FR 75924, Dec. 10, 2002]

§ 635.103 Applicability.

The policies, requirements, and procedures prescribed in this subpart shall apply to all Federal-aid highway projects.

[69 FR 7118, Feb. 13, 2004]

§ 635.104 Method of construction.

(a) Actual construction work shall be performed by contract awarded by competitive bidding; unless, as provided in § 635.104(b), the STD demonstrates to the satisfaction of the Division Administrator that some other method is more cost effective or that an emergency exists. The STD shall assure opportunity for free, open, and competitive bidding, including adequate publicity of the advertisements or calls for bids. The advertising or calling for bids and the award of contracts shall comply with the procedures and requirements set forth in §§ 635.112 and 635.114.

(b) Approval by the Division Administrator for construction by a method other than competitive bidding shall be requested by the State in accordance with subpart B of part 635 of this chapter. Before such finding is made, the STD shall determine that the organization to undertake the work is so staffed and equipped as to perform such work satisfactorily and cost effectively.

(c) In the case of a design-build project, the requirements of 23 CFR part 636 and the appropriate provisions pertaining to design-build contracting in this part will apply. However, no justification of cost effectiveness is necessary in selecting projects for the design-build delivery method.

[56 FR 37004, Aug. 2, 1991, as amended at 67 FR 75925, Dec. 10, 2002]

§ 635.105 Supervising agency.

(a) The STD has responsibility for the construction of all Federal-aid projects, and is not relieved of such responsibility by authorizing performance of the work by a local public agency or other Federal agency. The STD shall be responsible for insuring that such projects receive adequate supervision and inspection to insure that projects are completed in conformance with approved plans and specifications.

(b) Although the STD may employ a consultant to provide construction engineering services, such as inspection or survey work on a project, the STD shall provide a full-time employed State engineer to be in responsible charge of the project.

(c) When a project is located on a street or highway over which the STD does not have legal jurisdiction, or when special conditions warrant, the STD, while not relieved of overall project responsibility, may arrange for the local public agency having jurisdiction over such street or highway to perform the work with its own forces or by contract; provided the following conditions are met and the Division Administrator approves the arrangements in advance.

(1) In the case of force account work, there is full compliance with subpart B of this part.

(2) When the work is to be performed under a contract awarded by a local public agency, all Federal requirements including those prescribed in this subpart shall be met.

(3) The local public agency is adequately staffed and suitably equipped to undertake and satisfactorily complete the work; and

(4) In those instances where a local public agency elects to use consultants for construction engineering services, the local public agency shall provide a full-time employee of the agency to be in responsible charge of the project.

U.S. Department of Transportation
Federal Highway Administration

Memorandum

Subject: **INFORMATION:** "Responsible Charge"

Date: August 4, 2011

From: David A. Nicol
Director, Office of Program Administration

In Reply Refer To:
HIPA-10

To: Director of Field-Service
Federal Lands Highway Division Engineers
Division Administrators

The issue of "responsible charge" of Federal-aid construction projects has been raised on several occasions; most recently as it relates to Federal-aid projects that are administered by local public agencies. The following attachment provides guidance on the requirements and duties of the person designated to be in "responsible charge".

If you have any questions about the memorandum and attachment, please contact Mr. Bob Wright as Robert.wright@dot.gov.

Attachment

Attachment

Defining “Responsible Charge” in the Federal-aid Highway Program

Regulation:

The key regulatory provision, 23 CFR 635.105 – *Supervising Agency*, provides that the State Transportation Agency (STA) is responsible for construction of Federal-aid projects, whether it or a local public agency (LPA) performs the work. The regulation provides that the STA and LPA must provide a full time employee to be in “responsible charge” of the project.

Requirements of Position:

For projects administered by the STA, the regulation requires that the person in “responsible charge” be a full-time employed state engineer. This requirement applies even when consultants are providing construction engineering services.

For locally administered projects, the regulation requires that the person in “responsible charge” be a full time employee of the LPA. The regulation is silent about engineering credentials. Thus, the person in “responsible charge” of LPA administered projects need not be an engineer. This requirement applies even when consultants are providing construction engineering services.

Duties:

Regardless of whether the project is administered by the STA or another agency, the person designated as being in "responsible charge" is expected to be a public employee who is accountable for a project. This person should be expected to be able to perform the following duties and functions:

- Administers inherently governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
- Maintains familiarity of day to day project operations, including project safety issues;
- Makes or participates in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visits and reviews the project on a frequency that is commensurate with the magnitude and complexity of the project;
- Reviews financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse; and
- Directs project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation.
- Is aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The regulations do not restrict an agency’s organizational authority over the person designated in “responsible charge," and the regulations do not preclude sharing of these

duties and functions among a number of public agency employees. The regulations also do not preclude one employee from having responsible charge of several projects and directing project managers assigned to specific projects.

Affect on Laws Regulating Licensure:

The term “responsible charge” is used here in the context intended by the above regulation. It may or may not correspond to its usage in state laws regulating licensure of professional engineers.

Illinois Department of Transportation

Local Public Agency Resident Construction Supervisor/ In Responsible Charge

Deputy Director Division of Highways
Regional Engineer
Department of Transportation

, Illinois

County _____
Municipality _____
Section _____
Route _____
Contract No. _____
Job No. _____
Project _____

☐ I recommend the following individual as a local public agency employee qualified to be resident construction supervisor and to be in responsible charge of this construction project.

☐ I certify that I am in responsible charge as defined by the department of this construction project. Since the local public agency does not have a local public agency employee qualified to be the resident construction supervisor, I am recommending a consulting engineer to serve as resident construction supervisor.

Date _____ Signature and Title (for the Local Public Agency) _____

Applicants Name (Type or Print) _____

The following describes my educational background, experience and other qualifications to be resident construction supervisor of this construction project for the Local Public Agency.

For Consultants: I certify that my firm is prequalified in Construction Inspection and my Documentation of Contract Quantities certificate number is _____.

Date _____ Signature of Applicant _____ Job Title of Applicant _____

Based on the above information and my knowledge of the applicant's experience and training, it is my opinion that the applicant is qualified to serve as the resident construction supervisor on this construction project.

Approved _____ Date _____ Deputy Director Division of Highways Regional Engineer

cc: Engineer of Local Roads and Streets, Central Bureau of Local Roads and Streets
Engineer of Construction, Central Bureau of Construction
Resident Construction Supervisor
Local Public Agency

Instructions for Preparation of Form BC 775

23 CFR 635.105 requires that the state transportation department (STD) has responsibility for the construction of all Federal-aid projects, and is not relieved of such responsibility by authorizing performance of the work by a local public agency or other Federal agency.

When a project is located on a street or highway over which the STD does not have legal jurisdiction, or when special conditions warrant, the STD, while not relieved of overall project responsibility, may arrange for the local public agency having jurisdiction over such street or highway to perform the work with its own forces or by contract. In those instances where a local public agency elects to use consultants for construction engineering services, the local public agency shall provide a full-time employee of the agency to be in responsible charge of the project.

The full-time local public agency employee in responsible charge of the project shall perform the following duties and functions:

- Administer inherently governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of projects;
- Maintain familiarity of day to day project operations, including project safety issues;
- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project on a frequency that is commensurate with the magnitude and complexity of the project;
- Review financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse;
- Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The Department of Transportation, in accordance with the requirements, requires the local public agency to identify the local public agency employee who will be in responsible charge of each Federal-Aid project which will be constructed under the supervision of the county, municipality or other public agency. County Engineers, Municipal Engineers, and full-time local public agency employees registered as a professional engineer should be identified in the pre-construction meeting minutes. All other resident construction supervisors must submit their qualifications on this form for approval by the department. Resident construction supervisors who are consultants shall be certified in Documentation of Contract Quantities and their firm shall be prequalified in Construction Inspection.

This form will be completed by the applicant, endorsed by a representative of the local public agency, and submitted to the Deputy Director Division of Highways, Regional Engineer prior to the start of construction. This signatory for the local public agency should be the County Superintendent of Highways or Municipal Engineer, as applicable. In the event a municipality does not have a Municipal Engineer, the applicant will be recommended by the appropriate municipal authority.

If a consultant is named on this form, the approved form will be included as an attachment to the appropriate construction engineering consultant agreement.

This document should be discussed as part of the preconstruction conference and, when required, a copy of the approved form retained with the preconstruction meeting minutes.

Illinois Department of Transportation

Local Public Agency Construction Inspector

Deputy Director Division of Highways
Regional Engineer
Department of Transportation

, Illinois

County _____
Municipality _____
Section _____
Route _____
Contract No. _____
Job No. _____
Project _____

I consider the following individual to be qualified as a local public agency construction inspector. In addition, I certify that adequate instruction has been given this individual concerning the requirements of the contract, specifications and construction manual which pertain to the work which he/she will inspect. This individual has been instructed on the proper procedures for any necessary tests. Furthermore, if a consultant, this individual has a valid Documentation of Contract Quantities certification.

Approved _____ _____
Date — Signature and Title of Resident Construction Supervisor

_____
Applicants Name (Type or Print)

The following describes the educational background, experience and other qualifications of the named applicant to serve as an inspector on this project.
For Consultants Employees: Documentation of Contract Quantities certificate number is _____.

If the Resident from BC-775 is a consultant, the local public agency employee in responsible charge must also approve this individual.

Approved _____ _____
Date — Signature and Title of In Responsible Charge from BC-775

Instructions for Preparation of Form BC 776

23 CFR 635.105 requires that the state transportation department (STD) has responsibility for the construction of all Federal-aid projects, and is not relieved of such responsibility by authorizing performance of the work by a local public agency or other Federal agency.

A consultant may be utilized for periodic examination and consultation or for full-time technical inspection of construction. However, the prime responsibility for general supervision of the construction must remain with the state. The state (or county or municipality under agreement with the state) cannot be relieved of its responsibility to ensure that the work is performed in accordance with the approved project plans, specifications and estimate.

Therefore, the Department of Transportation requires the local public agency to submit the qualifications of all personnel who will be assigned to construction layout and inspection duties on each Federal-Aid project which will be constructed under the supervision of the county, municipality or other local public agency. This form will be approved by the resident construction supervisor. If the resident construction supervisor is a consultant, this form will also be approved by the local public agency employee in responsible charge.

If a consultant is named on this form, the approved form will be included as an attachment to the construction engineering consultant agreement.

The approved form will be submitted to the Deputy Director Division of Highways, Regional Engineer prior to the start of construction. This form should be discussed as part of the preconstruction conference and, when required, a copy of the approved form retained with the preconstruction meeting minutes.

Municipality	LOCAL AGENCY	Illinois Department of Transportation	CONSULTANT	Name
Township		**Preliminary/Construction Engineering Services Agreement For Motor Fuel Tax Funds**		Address
County				City
Section				State

THIS AGREEMENT is made and entered into this _____ day of _____ , _____ between the above Local Agency (LA) and Consultant (ENGINEER) and covers certain professional engineering services in connection with the improvement of the above PROJECT. Motor Fuel Tax Funds, allotted to the LA by the State of Illinois under the general supervision of the State Department of Transportation, hereinafter called the "DEPARTMENT", will be used entirely or in part to finance ENGINEERING services as described under AGREEMENT PROVISIONS.

WHEREVER IN THIS AGREEMENT or attached exhibits the following terms are used, they shall be interpreted to mean:

Regional Engineer	Deputy Director Division of Highways, Regional Engineer, Department of Transportation
Resident Construction Supervisor	Authorized representative of the LA in immediate charge of the engineering details of the PROJECT
Contractor	Company or Companies to which the construction contract was awarded

Section Description

Name _____ Route _____ Length _____miles Structure No. _____

Termini _____

Description

Agreement Provisions

The Engineer Agrees,

1. To perform or be responsible for the performance of the following engineering services for the LA in connection with the proposed improvement herein before described, and checked below:

   a. ☐ Make such detailed surveys as are necessary for the preparation of detailed roadway plans.

   b. ☐ Make stream and flood plain hydraulic surveys and gather high water data and flood histories for the preparation of detailed bridge plans.

   c. ☐ Make or cause to be made such soil surveys or subsurface investigations including borings and soil profiles and analyses thereof as may be required to furnish sufficient data for the design of the proposed improvement. Such investigations are to be made in accordance with the current requirements of the DEPARTMENT.

   d. ☐ Make or cause to be made such traffic studies and counts and special intersection studies as may be required to furnish sufficient data for the design of the proposed improvement.

e. ☐ Prepare Army Corps of Engineers Permit, Division of Water Resources Permit, Bridge waterway sketch and/or Channel Change sketch, Utility plan and locations and Railroad Crossing work agreements.

f. ☐ Prepare Preliminary Bridge Design and Hydraulic Report, (including economic analysis of bridge or culvert types) and high water effects on roadway overflows and bridge approaches.

NOTE Four copies to be submitted to the Regional Engineer

g. ☐ Make complete general and detailed plans, special provisions, proposals and estimates of cost and furnish the LA with five (5) copies of the plans, special provisions, proposals and estimates. Additional copies of any or all documents, if required shall be furnished to the LA by the ENGINEER at his actual cost for reproduction.

h. ☐ Furnish the LA with survey and drafts in quadruplicate of all necessary right-of-way dedications, construction easements and borrow pit and channel change agreements including prints of the corresponding plats and staking as required.

i. ☐ Assist the LA in the receipt and evaluation of proposals and the awarding of the construction contract.

j. ☐ Furnish or cause to be furnished:

(1) Proportioning and testing of concrete mixtures in accordance with the "Manual of Instructions for Concrete Proportioning and Testing" issued by the Bureau of Materials and Physical Research, of the DEPARTMENT and promptly submit reports on forms prepared by said Bureau.
(2) Proportioning and testing of bituminous mixtures (including extracting test) in accordance with the "Manual of Instructions for Bituminous Proportioning and Testing" issued by the Bureau of Materials and Physical Research, of the DEPARTMENT, and promptly submit reports on forms prepared by said Bureau.
(3) All compaction tests as required by the specifications and report promptly the same on forms prepared by the Bureau of Materials and Physical Research.
(4) Quality and sieve analyses on local aggregates to see that they comply with the specifications contained in the contract.
(5) Inspection of all materials when inspection is not provided at the sources by the Bureau of Materials and Physical Research, of the DEPARTMENT and submit inspection reports to the LA and the DEPARTMENT in accordance with the policies of the said DEPARTMENT.

k. ☐ Furnish or cause to be furnished

(1) A resident construction supervisor, inspectors, and other technical personnel to perform the following work: (The number of such inspectors and other technical personnel required shall be subject to the approval of the LA.)
   a. Continuous observation of the work and the contractor's operations for compliance with the plans and specifications as construction proceeds, but the ENGINEER does not guarantee the performance of the contract by the contractor.
   b. Establishment and setting of lines and grades.
   c. Maintain a daily record of the contractor's activities throughout construction including sufficient information to permit verification of the nature and cost of changes in plans and authorized extra work.
   d. Supervision of inspectors, proportioning engineers and other technical personnel and the taking and submitting of material samples.
   e. Revision of contract drawings to reflect as built conditions.
   f. Preparation and submission to the LA in the required form and number of copies, all partial and final payment estimates, change orders, records and reports required by the LA and the DEPARTMENT.

NOTE: ***When Federal funds are used for construction and the ENGINEER or the ENGINEER's assigned staff is named as resident construction supervisor, the ENGINEER is required to be prequalified with the STATE in Construction Inspection. The onsite resident construction supervisor and project inspectors shall possess valid Documentation of Contract Quantities certification***.

2. That all reports, plans, plats and special provisions to be furnished by the ENGINEER pursuant to this agreement will be in accordance with the current standard specifications and policies of the DEPARTMENT, it being understood that all such reports, plats, plans and drafts shall before being finally accepted, be subject to approval by the LA and the said DEPARTMENT.
3. To attend conferences at any reasonable time when requested to do so by the LA or representatives of the DEPARTMENT.
4. In the event plans, surveys or construction staking are found to be in error during the construction of the PROJECT and revisions of the plans or survey or construction staking corrections are necessary, the ENGINEER agrees that he will perform such work without expense to the LA, even though final payment has been received by him. He shall give immediate attention to these changes so there will be a minimum delay to the contractor.
5. The basic survey notes and sketches, charts, computations and other data prepared or obtained by the ENGINEER pursuant to this agreement will be made available upon request to the LA or the DEPARTMENT without cost and without restriction or limitations as to their use.
6. To make such changes in working plans, including all necessary preliminary surveys and investigations, as may be required after the award of the construction contract and during the construction of the improvement.
7. That all plans and other documents furnished by the ENGINEER pursuant to the AGREEMENT will be endorsed by him and will show his professional seal where such is required by law.
8. To submit, upon request by the LA or the DEPARTMENT a list of the personnel and the equipment he/she proposes to use in fulfilling the requirements of this AGREEMENT.

The LA Agrees,

1. To pay the Engineer as compensation for all services performed as stipulated in paragraphs 1a, 1g, 1i, 2, 3, 5 and 6 in accordance with one of the following methods indicated by a check mark:

   a ☐ A sum of money equal to _____ percent of the awarded contract cost of the proposed improvement as approved by the DEPARTMENT.

   b. ☐ A sum of money equal to the percentage of the awarded contract cost for the proposed improvement as approved by the DEPARTMENT based on the following schedule:

   Schedule for Percentages Based on Awarded Contract Cost

Awarded Cost	Percentage Fees
Under $50,000	_____ (see note)
	_____ %
	_____ %
	_____ %
	_____ %
	_____ %

   Note: Not necessarily a percentage. Could use per diem, cost-plus or lump sum.

2. To pay for services stipulated in paragraphs 1b, 1c, 1d, 1e, 1f, 1h, 1j and 1k of THE ENGINEER AGREES at the hourly rates stipulated below for personnel assigned to this PROJECT as payment in full to the ENGINEER for the actual time spent in providing these services the hourly rates to include profit, overhead, readiness to serve, insurance, social security and retirement deductions. Traveling and other out-of-pocket expenses will be reimbursed to the ENGINEER at his actual cost. Subject to the approval of the LA, the ENGINEER may sublet all or part of the services provided under paragraphs 1b, 1c, 1d, 1e, 1f, 1j and 1k of THE ENGINEER AGREES. If the ENGINEER sublets all or a part of this work, the LA will pay the cost to the ENGINEER plus a five (5) percent service charge. “Cost to ENGINEER” to be verified by furnishing the LA and the DEPARTMENT copies of invoices from the party doing the work. The classifications of the employees used in the work should be consistent with the employee classifications for the services performed. If the personnel of the firm including the Principal Engineer perform routine services that should normally be performed by lesser-salaried personnel, the wage rate billed for such services shall be commensurate with the work performed.

Grade Classification of Employee	Hourly Rate
Principal Engineer	_____
Resident Construction Supervisor	_____
Chief of Party	_____
Instrument Man	_____
Rodmen	_____
Inspectors	_____
_____	_____
_____	_____
_____	_____
_____	_____
	_____

The hourly rates itemized above shall be effective the date the parties, hereunto entering this AGREEMENT, have affixed their hands and seals and shall remain in effect until _____ . In event the services of the ENGINEER extend beyond _____ , the hourly rates will be adjusted yearly by addendum to this AGREEMENT to compensate for increases or decreases in the salary structure of the ENGINEER that are in effect at that time.

3. That payments due the ENGINEER for services rendered pursuant to this AGREEMENT will be made as soon as practicable after the services have been performed, in accordance with the following schedule:

   a. Upon completion of detailed plans, special provisions, proposals and estimate of cost - being the work required by paragraphs 1a through 1g under THE ENGINEER AGREES - to the satisfaction of the LA and their approval by the DEPARTMENT, 90 percent of the total fee based on the above fee schedule and the approved estimate of cost.
   b. Upon award of the contract for the improvement by the LA and its approval by the DEPARTMENT, 100 percent of the total fee (excluding any fees paragraphs 1j and 1k of the ENGINEER AGREES), based on the above fee schedule and the awarded contract cost, less any previous payment.
   c. Upon completion of the construction of the improvement, 90 percent of the fee due for services stipulated in paragraphs 1j and 1k.
   d. Upon completion of all final reports required by the LA and the DEPARTMENT and acceptance of the improvement by the DEPARTMENT, 100 percent of the total fees due under this AGREEMENT, less any amounts previously paid.

   By mutual agreement, partial payments, not to exceed 90 percent of the amount earned, may be made from time to time as the work progresses.

4. That should the improvements be abandoned at any time after the ENGINEER has performed any part of the services provided for in paragraphs 1a and 1g, and prior to the completion of such services the LA shall reimburse the ENGINEER
   for his actual costs plus _____ percent incurred up to the time he is notified in writing of such abandonment "actual cost" being defined as material costs plus actual payrolls, insurance, social security and retirement deductions. Traveling and other out-of-pocket expenses will be reimbursed to the ENGINEER at his actual cost.

5. That should the LA require changes in any of the detailed plans, specifications or estimates (except for those required pursuant to paragraph 4 of THE ENGINEER AGREES) after they have been approved by the DEPARTMENT, the LA will pay the ENGINEER for such changes on the basis of actual cost plus _____ percent to cover profit, overhead and readiness to serve - "actual cost" being defined as in paragraph 4 above. It is understood that "changes" as used in this paragraph shall in no way relieve the ENGINEER of his responsibility to prepare a complete and adequate set of plans.

6. That should the LA extend completion of the improvement beyond the time limit given in the contract, the LA will pay the ENGINEER, in addition to the fees provided herein, his actual cost incurred beyond such time limit - "actual cost" being defined as in paragraph 4 above.

7. To submit approved forms BC 775 and BC 776 with this AGREEMENT when federal funds are used for construction.

It is Mutually Agreed,

1. That any difference between the ENGINEER and the LA concerning the interpretation of the provisions of this AGREEMENT shall be referred to a committee of disinterested parties consisting of one member appointed by the

ENGINEER one member appointed by the LA and a third member appointed by the two other members for disposition and that the committee's decision shall be final.

2. This AGREEMENT may be terminated by the LA upon giving notice in writing to the ENGINEER at his last known post office address. Upon such termination, the ENGINEER shall cause to be delivered to the LA all drawings, specifications, partial and completed estimates and data if any from traffic studies and soil survey and subsurface investigations with the understanding that all such material becomes the property of the LA. The ENGINEER shall be paid for any services completed and any services partially completed in accordance with Section 4 of THE LA AGREES.

3. That if the contract for construction has not been awarded one year after the acceptance of the plans by the LA and their approval by the DEPARTMENT, the LA will pay the ENGINEER the balance of the engineering fee due to make 100 percent of the total fees due under the AGREEMENT, based on the estimate of cost as prepared by the ENGINEER and approved by the LA and the DEPARTMENT.

4. That the ENGINEER warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the ENGINEER, to solicit or secure this contract and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the ENGINEER, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty the LA shall have the right to annul this contract without liability.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed in quadruplicate counterparts, each of which shall be considered as an original by their duly authorized offices.

Executed by the LA:

_____ of the
(Municipality/Township/County)

ATTEST:

By _____

_____ Clerk

(Seal)

State of Illinois, acting by and through its

_____ ,

By _____

Title:

Executed by the ENGINEER:

_____

_____

ATTEST:

_____

By _____

_____

Title:

Title:

Approved

_____
Date
Department of Transportation

_____
Regional Engineer

Local Agency	LOCAL AGENCY	Illinois Department of Transportation **Construction Engineering Services Agreement For Federal Participation**	CONSULTANT	Consultant
County				Address
Section				City
Project No.				State
Job No.				Zip Code
Contact Name/Phone/E-mail Address				Contact Name/Phone/E-mail Address

THIS AGREEMENT is made and entered into this _____ day of _____ , _____ between the above Local Agency (LA) and Consultant (ENGINEER) and covers certain professional engineering services in connection with the PROJECT described herein. Federal-aid funds allotted to the LA by the state of Illinois under the general supervision of the Illinois Department of Transportation (STATE) will be used entirely or in part to finance engineering services as described under AGREEMENT PROVISIONS.

WHEREVER IN THIS AGREEMENT or attached exhibits the following terms are used, they shall be interpreted to mean:

Regional Engineer	Deputy Director Division of Highways, Regional Engineer, Department of Transportation
Resident Construction Supervisor	Authorized representative of the LA in immediate charge of the engineering details of the PROJECT
In Responsible Charge	A full time LA employee authorized to administer inherently governmental PROJECT activities
Contractor	Company or Companies to which the construction contract was awarded

Project Description

Name _____ Route _____ Length _____ Structure No. _____

Termini _____

Description:

Agreement Provisions

I. THE ENGINEER AGREES,

1. To perform or be responsible for the performance of the engineering services for the LA, in connection with the PROJECT hereinbefore described and checked below:

   ☐ a. Proportion concrete according to applicable STATE Bureau of Materials and Physical Research (BMPR) Quality Control/Quality Assurance (QC/QA) training documents or contract requirements and obtain samples and perform testing as noted below.

   ☐ b. Proportion hot mix asphalt according to applicable STATE BMPR QC/QA training documents and obtain samples and perform testing as noted below.

   ☐ c. For soils, to obtain samples and perform testing as noted below.

   ☐ d. For aggregates, to obtain samples and perform testing as noted below.

   NOTE: For 1a. through 1d. the ENGINEER is to obtain samples for testing according to the STATE BMPR "Project Procedures Guide", or as indicated in the specifications, or as attached herein by the LA; test according to the STATE BMPR "Manual of Test Procedures for Materials", submit STATE BMPR inspection reports; and verify compliance with contract specifications.

☐ e. Inspection of all materials when inspection is not provided at the sources by the STATE BMPR, and submit inspection reports to the LA and the STATE in accordance with the STATE BMPR "Project Procedures Guide" and the policies of the STATE.

☐ f. For Quality Assurance services, provide personnel who have completed the appropriate STATE BMPR QC/QA trained technician classes.

☐ g. Inspect, document and inform the LA employee In Responsible Charge of the adequacy of the establishment and maintenance of the traffic control.

☐ h. Geometric control including all construction staking and construction layouts.

☐ i. Quality control of the construction work in progress and the enforcement of the contract provisions in accordance with the STATE Construction Manual.

☐ j. Measurement and computation of pay items.

☐ k. Maintain a daily record of the contractor's activities throughout construction including sufficient information to permit verification of the nature and cost of changes in plans and authorized extra work.

☐ l. Preparation and submission to the LA by the required form and number of copies, all partial and final payment estimates, change orders, records, documentation and reports required by the LA and the STATE.

☐ m. Revision of contract drawings to reflect as built conditions.

☐ n. Act as resident construction supervisor and coordinate with the LA employee In Responsible Charge.

2. Engineering services shall include all equipment, instruments, supplies, transportation and personnel required to perform the duties of the ENGINEER in connection with the AGREEMENT.

3. To furnish the services as required herein within twenty-four hours of notification by the LA employee In Responsible Charge.

4. To attend meetings and visit the site of the work at any reasonable time when requested to do so by representatives of the LA or STATE.

5. That none of the services to be furnished by the ENGINEER shall be sublet, assigned or transferred to any other party or parties without the written consent of the LA. The consent to sublet, assign or otherwise transfer any portion of the services to be furnished by the ENGINEER shall not be construed to relieve the ENGINEER of any responsibility for the fulfillment of this AGREEMENT.

6. The ENGINEER shall submit invoices, based on the ENGINEER's progress reports, to the LA employee In Responsible Charge, no more than once a month for partial payment on account for the ENGINEER's work completed to date. Such invoices shall represent the value, to the LA of the partially completed work, based on the sum of the actual costs incurred, plus a percentage (equal to the percentage of the construction engineering completed) of the fixed fee for the fully completed work.

7. That the ENGINEER is qualified technically and is entirely conversant with the design standards and policies applicable to improvement of the SECTION; and that the ENGINEER has sufficient properly trained, organized and experienced personnel to perform the services enumerated herein.

8. That the ENGINEER shall be responsible for the accuracy of the ENGINEER's work and correction of any errors, omissions or ambiguities due to the ENGINEER'S negligence which may occur either during prosecution or after acceptance by the LA. Should any damage to persons or property result from the ENGINEER's error, omission or negligent act, the ENGINEER shall indemnify the LA, the STATE and their employees from all accrued claims or liability and assume all restitution and repair costs arising from such negligence. The ENGINEER shall give immediate attention to any remedial changes so there will be minimal delay to the contractor and prepare such data as necessary to effectuate corrections, in consultation with and without further compensation from the LA.

9. That the ENGINEER will comply with applicable federal statutes, state of Illinois statutes, and local laws or ordinances of the LA.

10. The undersigned certifies neither the ENGINEER nor I have:

    a) employed or retained for commission, percentage, brokerage, contingent fee or other considerations, any firm or person (other than a bona fide employee working solely for me or the above ENGINEER) to solicit or secure this AGREEMENT;

b) agreed, as an express or implied condition for obtaining this AGREEMENT, to employ or retain the services of any firm or person in connection with carrying out the AGREEMENT or

c) paid, or agreed to pay any firm, organization or person (other than a bona fide employee working solely for me or the above ENGINEER) any fee, contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the AGREEMENT.

d) are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;

e) have not within a three-year period preceding the AGREEMENT been convicted of or had a civil judgment rendered against them for commission of fraud or criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

f) are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (e) of this certification; and

g) have not within a three-year period preceding this AGREEMENT had one or more public transactions (Federal, State or local) terminated for cause or default.

11. To pay its subconsultants for satisfactory performance no later than 30 days from receipt of each payment from the LA.

12. To submit all invoices to the LA within one year of the completion of the work called for in this AGREEMENT or any subsequent Amendment or Supplement.

13. To submit BLR 05613, Engineering Payment Report, to the STATE upon completion of the work called for in the AGREEMENT.

14. To be prequalified with the STATE in Construction Inspection when the ENGINEER or the ENGINEER's assigned staff is named as resident construction supervisor. The onsite resident construction supervisor shall have a valid Documentation of Contract Quantities certification.

15. Will provide, as required, project inspectors that have a valid Documentation of Contract Quantities certification.

II. THE LA AGREES,

1. To furnish a full time LA employee to be In Responsible Charge authorized to administer inherently governmental PROJECT activities.

2. To furnish the necessary plans and specifications.

3. To notify the ENGINEER at least 24 hours in advance of the need for personnel or services.

4. To pay the ENGINEER as compensation for all services rendered in accordance with this AGREEMENT, on the basis of the following compensation formulas:

Cost Plus Fixed Fee Formulas

☐ FF = 14.5%[DL + R(DL) + OH(DL) + IHDC], or
☐ FF = 14.5%[(2.3 + R)DL + IHDC]

Where:
DL = Direct Labor
IHDC = In House Direct Costs
OH = Consultant Firm's Actual Overhead Factor
R = Complexity Factor
FF=Fixed Fee
SBO = Services by Others

Total Compensation = DL +IHDC+OH+FF+SBO

Specific Rate ☐ (Pay per element)

Lump Sum ☐ _____

5. To pay the ENGINEER using one of the following methods as required by 49 CFR part 26 and 605 ILCS 5/5-409:

☐ With Retainage

a) **For the first 50% of completed work**, and upon receipt of monthly invoices from the ENGINEER and the approval thereof by the LA, monthly payments for the work performed shall be due and payable to the ENGINEER, such payments to be equal to 90% of the value of the partially completed work minus all previous partial payments made to the ENGINEER.
b) **After 50% of the work is completed**, and upon receipt of monthly invoices from the ENGINEER and the approval thereof by the LA, monthly payments covering work performed shall be due and payable to the ENGINEER, such payments to be equal to 95% of the value of the partially completed work minus all previous partial payments made to the ENGINEER.
c) **Final Payment** – Upon approval of the work by the LA but not later than 60 days after the work is completed and reports have been made and accepted by the LA and the STATE, a sum of money equal to the basic fee as determined in this AGREEMENT less the total of the amounts of partial payments previously paid to the ENGINEER shall be due and payable to the ENGINEER.

☐ Without Retainage

a) **For progressive payments** – Upon receipt of monthly invoices from the ENGINEER and the approval thereof by the LA, monthly payments for the work performed shall be due and payable to the ENGINEER, such payments to be equal to the value of the partially completed work minus all previous partial payments made to the ENGINEER.
b) **Final Payment** – Upon approval of the work by the LA but not later than 60 days after the work is completed and reports have been made and accepted by the LA and STATE, a sum of money equal to the basic fee as determined in this AGREEMENT less the total of the amounts of partial payments previously paid to the ENGINEER shall be due and payable to the ENGINEER.

6. The recipient shall not discriminate on the basis on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31U.S.C. 3801 et seq.).

7. To submit approved form BC 775 (Exhibit C) and BC 776 (Exhibit D) with this AGREEMENT.

III. It is Mutually Agreed,

1. That the ENGINEER and the ENGINEER's subcontractors will maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred and to make such materials available at their respective offices at all reasonable times during the AGREEMENT period and for three years from the date of final payment under this AGREEMENT, for inspection by the STATE, Federal Highway Administration or any authorized representatives of the federal government and copies thereof shall be furnished if requested.

2. That all services are to be furnished as required by construction progress and as determined by the LA employee In Responsible Charge. The ENGINEER shall complete all services specified herein within a time considered reasonable to the LA, after the CONTRACTOR has completed the construction contract.

3. That all field notes, test records and reports shall be turned over to and become the property of the LA and that during the performance of the engineering services herein provided for, the ENGINEER shall be responsible for any loss or damage to the documents herein enumerated while they are in the ENGINEER's possession and any such loss or damage shall be restored at the ENGINEER's expense.

4. That this AGREEMENT may be terminated by the LA upon written notice to the ENGINEER, at the ENGINEER's last known address, with the understanding that should the AGREEMENT be terminated by the LA, the ENGINEER shall be paid for any services completed and any services partially completed. The percentage of the total services which have been rendered by the ENGINEER shall be mutually agreed by the parties hereto. The fixed fee stipulated in numbered paragraph 4d of Section II shall be multiplied by this percentage and added to the ENGINEER's actual costs to obtain the earned value of work performed. All field notes, test records and reports completed or partially completed at the time of termination shall become the property of, and be delivered to, the LA.

5. That any differences between the ENGINEER and the LA concerning the interpretation of the provisions of this AGREEMENT shall be referred to a committee of disinterested parties consisting of one member appointed by the ENGINEER, one member appointed by the LA, and a third member appointed by the two other members for disposition and that the committee's decision shall be final.

6. That in the event the engineering and inspection services to be furnished and performed by the LA (including personnel furnished by the ENGINEER) shall, in the opinion of the STATE be incompetent or inadequate, the STATE shall have the right to supplement the engineering and inspection force or to replace the engineers or inspectors employed on such work at the expense of the LA.

7. That the ENGINEER has not been retained or compensated to provide design and construction review services relating to the contractor's safety precautions, except as provided in numbered paragraph 1f of Section I.

8. This certification is required by the Drug Free Workplace Act (30ILCS 580). The Drug Free Workplace Act requires that no grantee or contractor shall receive a grant or be considered for the purpose of being awarded a contract for the procurement of any property or service from the State unless that grantee or contractor will provide a drug free workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract or grant payments, termination of a contract or grant and debarment of contracting or grant opportunities with the State for at least one (1) year but no more than five (5) years.

   For the purpose of this certification, "grantee" or "contractor" means a corporation, partnership or other entity with twenty-five (25) or more employees at the time of issuing the grant, or a department, division or other unit thereof, directly responsible for the specific performance under a contract or grant of $5,000 or more from the State, as defined in the Act.

   The contractor/grantee certifies and agrees that it will provide a drug free workplace by:

   (a) Publishing a statement:

      (1) Notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance, including cannabis, is prohibited in the grantee's or contractor's workplace.

      (2) Specifying the actions that will be taken against employees for violations of such prohibition.

      (3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will:

         (A) abide by the terms of the statement; and

         (B) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

   (b) Establishing a drug free awareness program to inform employees about:

      (1) the dangers of drug abuse in the workplace;

      (2) the grantee's or contractor's policy of maintaining a drug free workplace;

      (3) any available drug counseling, rehabilitation and employee assistance program; and

      (4) the penalties that may be imposed upon an employee for drug violations.

   (c) Providing a copy of the statement required by subparagraph (a) to each employee engaged in the performance of the contract or grant and to post the statement in a prominent place in the workplace.

   (d) Notifying the contracting or granting agency within ten (10) days after receiving notice under part (B) of paragraph (3) of subsection (a) above from an employee or otherwise receiving actual notice of such conviction.

   (e) Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by section S of the Drug Free Workplace Act.

   (f) Assisting employees in selecting a course of action in the event drug counseling, treatment and rehabilitation is required and indicating that a trained referral team is in place.

   (g) Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

9. The ENGINEER or subconsultant shall not discriminate on the basis of race, color, national origin or sex in the performance of this AGREEMENT. The ENGINEER shall carry out applicable requirements of 49 CFR part 26 in the administration of DOT-assisted contracts. Failure by the ENGINEER to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination this AGREEMENT or such other remedy as the LA deems appropriate.

Agreement Summary

Prime Consultant:	TIN Number	Agreement Amount

Sub-Consultants:	TIN Number	Agreement Amount
	Sub-Consultant Total:	
	Prime Consultant Total:	
	Total for all Work:	

Executed by the LA: _____
(Municipality/Township/County)

ATTEST:

By: _____ By: _____

_____ Clerk Title: _____

(SEAL)

Executed by the ENGINEER:

_____

ATTEST:

By: _____ By: _____

Title: _____ Title: _____

Exhibit A - Construction Engineering

Route: _____
Local _____
(Municipality/Township/County)
Section: _____
Project: _____
Job No.: _____

*Firm's **approved rates** on file with Bureau of Accounting and Auditing:

Overhead Rate (OH) 0.00 %
Complexity Factor (R) 0.00
Calendar Days _____

Cost Plus Fixed Fee Methods of Compensation:

Fixed Fee 1 ☐ 14.5%[DL + R(DL) + OH(DL) + IHDC]
Fixed Fee 2 ☐ 14.5%[(2.3 + R)DL + IHDC]
Specific Rate ☐
Lump Sum ☐

Cost Estimate of Consultant's Services in Dollars

Element of Work	Employee Classification	Man-Hours	Payroll Rate	Payroll Costs (DL)	Overhead (OH*DL)	Services by Others (SBO)	In-House Direct Costs (IHDC)	Fixed Fee (FF)	Total
Totals		0.00							$1,260.78

Exhibit B

Illinois Department of Transportation

Engineering Payment Report

Prime Consultant

Name _____
Address _____
Telephone _____
TIN Number _____

Project Information

Local Agency _____
Section Number _____
Project Number _____
Job Number _____

This form is to verify the amount paid to the Sub-consultant on the above captioned contract. Under penalty of law for perjury or falsification, the undersigned certifies that work was executed by the Sub-consultant for the amount listed below.

Sub-Consultant Name	TIN Number	Actual Payment from Prime
	Sub-Consultant Total:	
	Prime Consultant Total:	
	Total for all Work Completed:	

_____ Signature and title of Prime Consultant

_____ Date

Note: The Department of Transportation is requesting disclosure of information that is necessary to accomplish the statutory purpose as outlined under state and federal law. Disclosure of this information is REQUIRED and shall be deemed as concurring with the payment amount specified above.

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2012-02

SUBJECT: COLD IN-PLACE RECYCLING AND FULL DEPTH RECLAMATION

ISSUED DATE: March 30, 2012

EFFECTIVE DATE: April 1, 2012

This memorandum revises Section 46-6 of the Bureau of Local Roads & Streets Manual issued effective January 2012.

The Bureau of Local Roads & Streets in cooperation with local agencies, consultants, academia, and industry has established policies and specifications for cold in-place recycling (CIR) and full depth reclamation (FDR) to be used by local agency highway departments. Designs and specifications were developed based on Illinois Center for Transportation research project R27-12 "Cold In-Place Recycling with Asphalt Products (CIRwAP)" (research report available at http://ict.illinois.edu/publications/). These projects are eligible for Federal, State, and Motor Fuel Tax funding.

CIR is an on-site, in-place rehabilitation method which consists of cold milling or pulverizing, mixing with emulsified asphalt or foamed asphalt, placing, and compacting 2 to 6 in of the existing bituminous pavement layer(s). Either LR400-5 or LR400-6 should be used depending on bituminous material selected for stabilization. LR1000-1 establishes the mix design procedures for the contractor to follow. These special provisions are attached to this procedure memorandum.

FDR is an on-site, in-place rehabilitation method which consists of uniformly pulverizing, mixing with emulsified asphalt or foamed asphalt, placing, and compacting the full thickness (maximum depth of 10 in) of the existing bituminous pavement and/or underlying granular. Either LR400-4 or LR400-7 should be used depending on bituminous material selected for stabilization. LR1000-2 establishes the mix design procedures for the contractor to follow. Please contact the Local Policy & Technology Unit for copies of these special provisions.

Both CIR and FDR projects require a surface course (hot-mix asphalt overlay or surface treatment) to be applied. If the surface course thickness is less than or equal to 1.5 in, LR403-1 may be used to improve ride quality of final surface. This special provision is attached to this procedure memorandum.

Please contact the Local Policy & Technology Unit at dot.LocalPolicy@illinois.gov with any questions.

Darrell Lewis

Acting Engineer of Local Roads and Streets

Attachments

KB/kb

cc: Dave Lippert Attn: Amy Schutzbach
Norm Stoner Attn: Brian Pfeifer

State of Illinois
Department of Transportation
Bureau of Local Roads and Streets

SPECIAL PROVISION
FOR
FULL DEPTH RECLAMATION (FDR) WITH EMULSIFIED ASPHALT

Effective: April 1, 2012

All references to Divisions, Sections and Articles in this Special Provision shall be construed to mean specific Divisions, Sections and Articles in the Standard Specifications for Road and Bridge Construction adopted by the Department of Transportation.

Description. This work shall consist of cold milling and pulverizing all of the existing bituminous layers and/or portions of the aggregate base material to a specified depth and maximum size, mixing an emulsified asphalt, water and additives with the reclaimed material, and spreading and compacting the mixture.

Materials. Materials shall be according to the following Articles of Division 1000 – Materials:

	Item	Article/Section
(a)	Portland Cement (Note 1)	1001
(b)	Water	1002
(c)	Fine Aggregate (Note 2)	1003
(d)	Coarse Aggregate (Note 2)	1004
(e)	Fly Ash (Note 1)	1010.02
(f)	Lime Slurry (Note 1)	1012.04
(g)	Reclaimed Asphalt Pavement (Note 3)	1031
(h)	Emulsified Asphalt (Note 4)	1032.06
(i)	Cold Pulverized Material (Note 5)	
(j)	Mix Design (Note 6)	

Note 1 If necessary, the mix design may require additional additives to increase fines in the mix. The type and allowable usage percentage will be described in the mix design.

Note 2. The mix design will specify gradation and quality of any additional aggregate. Any additional fine aggregate shall meet Class B quality as a minimum. Any additional coarse aggregate shall meet Class C quality as a minimum.

Note 3. The Engineer may allow reclaimed asphalt pavement (RAP) from Conglomerate “D” Quality or better RAP stockpiles as specified in Article 1031.02 or from millings of the existing highway. The RAP material shall not exceed the maximum size requirement of the cold pulverized material, and when blended with the cold pulverized material shall produce a product which meets the specifications of the mix design.

Note 4. The CIR-FDR emulsified asphalt shall be selected for the project by the emulsified asphalt supplier based on the Contractor's mixture design. The penetration of the supplied emulsified asphalt shall be within ± 25% of the penetration of the design emulsified asphalt. A representative from the emulsified asphalt supplier will be on the job site at the beginning of the project to monitor the characteristics and performance of the emulsified asphalt. Throughout the job, the representative will be available to check on the project and make adjustments to the emulsified asphalt formulation as required. The emulsified asphalt shall be received on the job site at a temperature no greater than 120ºF.

The CIR-FDR emulsified asphalt shall meet the following requirements:

CIR-FDR EMULSIFIED ASPHALT MATERIAL SPECIFICATION			
Test	Procedure	Minimum	Maximum
Viscosity, Saybolt Furol, at 77°F (25°C), SFS	AASHTO T 59	20	100
Sieve Test, No. 20 (850 µm), retained on sieve, %	AASHTO T 59		0.10
Storage Stability Test, 24 hr, %	AASHTO T 59		1.0
Distillation Test, Residue from distillation to 177°C, %	AASHTO T 59 [1]	64.0	
Oil distillate by volume, %	AASHTO T 59		1.0
Penetration, 25°C, 100 g, 5 s, dmm	AASHTO T 49	75	200

Note: 1. Modified AASHTO T 59 procedure – distillation temperature of 177°C with a 20 minute hold.

Note 5. Prior to the addition of the emulsified asphalt, the gradation of the cold pulverized material shall meet the following:

COLD PULVERIZED MATERIAL GRADATIONS		
Grad No.	Sieve Size and Percent Passing	
	1 ¼ in (31.5 mm)	1 in (25 mm)
PM 1	100	
PM 2		100

PM 2 should only be used when a finer gradation of RAP is required by the mix design.

Note 6. A mix design for each distinct section shall be submitted to the Department prior to construction using actual materials (in-situ sampled by the Contractor and new materials from the Contractor's material suppliers) proposed for the project. The job mix formula shall meet the following criteria and be approved by the Engineer.

FDR with EMULSIFIED ASPHALT MIX DESIGN REQUIREMENTS			
Test Method	FDR Type 1 [1]	FDR Type 2 [1]	Test Purpose
Gradation for Design Millings, AASHTO T 27	Report	Report	
Sand Equivalent, ASTM D2419, Method B	Report	Report	
Modified Proctor, ASTM D1557, Method C	Report	Report	Optimum Moisture Content for Density and Compaction
Design Moisture Content	Report	Report	Dispersion of Emulsion
Superpave Gyratory Compaction, 1.25° angle, 600 kPa	30 gyrations at 6 in (150 mm)	30 gyrations at 6 in (150 mm)	Laboratory Density Indicator
Short Term Strength (STS), ASTM D 1560, Part 13, 175 g/25 mm of width	175 minimum	150 minimum	Stability Indicator
Bulk Specific Gravity (Density), ASTM D 6752 or ASTM D2726	Report	Report	Laboratory Density Indicator
Rice (Maximum Theoretical) Specific Gravity, ASTM D2041	Report	Report	Laboratory Density Indicator
Air Voids, Modified	Report	Report	Laboratory Density Indicator
Indirect Tensile Strength, ASTM D 4867, psi	40 minimum	35 minimum	Strength Indicator
Conditioned Indirect Tensile Strength, ASTM D 4867, psi	25 minimum	20 minimum	
Additional Additive(s) [2]			
Coarse Aggregate	Report	Report	
Fine Aggregate	Report	Report	
RAP	Report	Report	
Fly Ash	Report	Report	
Cement	1.0% maximum	1.0% maximum	
Emulsified Asphalt [2]			
Distillation Residue, %	Report	Report	
Residue Penetration, dmm	Report	Report	
Optimum Emulsion Content, %	Report	Report	
Residual Asphalt to Cement Content Ratio	3:1 minimum	3:1 minimum	

Notes: 1. *FDR Type 1 mixtures contain < 8% passing No. 200. FDR Type 2 mixtures contain ≥ 8% passing No. 200 or for all granular mixtures.*

2. *Report shall include type/gradation and producer/supplier.*

Equipment. Equipment shall be according to the following Articles of Division 1100 – Equipment:

(a) Self-Propelled Pneumatic-Tired Rollers (Note 1) ..... 1101.01(c)
(b) Vibratory Roller (Note 2) ..... 1101.01(g)
(c) Mechanical Sweeper 1101.03
(d) Motor Grader 1101.05
(e) Self-Propelled Milling Machine ..... 1101.16(a)
(f) Self-Propelled Vibratory Padfoot Roller (Note 3)
(g) Self-Propelled Reclaimer (Note 4)
(h) Water Truck (Note 5)

Note 1. The self-propelled pneumatic-tired roller shall have a gross weight (mass) of not less than 25 tons (23 metric tons).

Note 2. The double drum vibratory steel roller shall weigh a minimum of 10 tons (9 metric tons).

Note 3. The self-propelled vibratory pad foot roller shall have 84 in (2133 mm) wide drums and weigh a minimum of 10 tons (9 metric tons). A front mounted blade is recommended for back-dragging. A self-propelled vibratory pad foot roller shall be required for each self-propelled reclaimer.

Note 4. The self-propelled reclaimer shall be capable of fully pulverizing the existing pavement to the depth required, incorporate the emulsified asphalt and water, and mix the materials to produce a homogeneous material. The minimum power of the self-propelled reclaimer shall be 500 hp (373 kW). The self-propelled reclaimer shall be capable of reclaiming not less than 8 ft (2.4 m) wide and up to 12 in (305 mm) deep in each pass. The self-propelled reclaimer shall have a system for adding emulsified asphalt with a full width spray bar consisting of a positive displacement pump interlocked to the self-propelled reclaimer's ground speed so that the amount of emulsion being added is automatically adjusted with changes to the self-propelled reclaimer's ground speed. The additive system shall be capable of incorporating up to 7 gal/yd^2 (31.7 L/m^2) of emulsified asphalt. Individual valves on the spray bar shall be capable of being turned off as necessary to minimize emulsion overlap on subsequent passes.

Note 5. Water trucks shall be set up for a controlled spray.

CONSTRUCTION REQUIREMENTS

Weather Limitations. This work shall be performed when atmospheric temperature in the shade and away from artificial heat is 50°F (10°C) and rising. Also, the weather shall not be foggy or rainy. The weather forecast shall not call for freezing temperature within 7 days with after placement of any portion of the project and the annual average low temperature within 7 days of the end of the project shall be greater than 32°F (0°C). The Engineer may restrict work when the heat index is greater than 100°F (38°C).

Pre-pulverization and Initial Shaping. The existing pavement shall be pre-pulverized by the self-propelled reclaimer and/or shaped by the motor grader to correct for profile, crown, and contour, according to the plans, before the addition of the emulsified asphalt. Water, coarse aggregate, RAP Material, or other additives required may be added during this operation. The pre-pulverized and shaped material shall be compacted with a vibratory roller in static mode to support equipment and/or traffic and to provide depth control during processing. Depth of pre-pulverization and shaping shall be 1 in (25 mm) to 2 in (50 mm) less than the depth of final processing.

Processing. Moisture content shall be within ± 1.0% from the mix design. If the moisture content is too low, water shall be added directly to the mixing chamber of the reclaimer by a water truck connected to the reclaimer. The emulsified asphalt shall be applied at the percentage recommended in the mix design. The required depth of reclamation shall be monitored regularly. Prior to spreading and compacting, the processed material shall have a gradation meeting the mix design.

Compaction. The reclaimed material shall be compacted according to the following:

(a) Growth Curve. Compaction shall be accomplished by performing a growth curve within the first half mile of production. If an adjustment is made to the emulsified asphalt application rate or recycled depth, the Engineer reserves the right to request an additional growth curve. The growth curve, consisting of a plot of lb/cu ft (kg/cu m) vs. number of passes with the project breakdown roller, shall be developed. Roller speed during the growth curve testing shall be the same as the normal paving operation. This curve shall be established by use of a nuclear gauge. Tests shall be taken after each pass until the highest lb/cu ft (kg/cu m) is obtained. This value shall be the target density.

A new growth curve is required if the rollers used on the growth curve are replaced with a new roller during production. The target density shall apply only to the specific gauge used. If additional gauges are to be used to determine density specification compliance, the Contractor shall establish a unique minimum allowable target density from the growth curve location for each gauge.

(b) Rollers. Immediately after processing and final shaping the reclaimed material shall be compacted with equipment meeting the following requirements:

MINIMUM ROLLER REQUIREMENTS FOR FDR			
Breakdown Roller (one of the following)	Intermediate Roller[1]	Final Roller (one or more of the following)[1]	Density Requirement
P[1], PF[2]	P, V_D	P, V_S	95 - 102 percent of the target density obtained on the growth curve

1/ Equipment definitions in Table 1 of Article 406.07.
2/ PF - Self-propelled vibratory padfoot roller for breakdown rolling.

(c) Rolling. The breakdown roller shall be 500 ft (152 m) or less behind all self-propelled reclaimer units. The reclaimed material shall be compacted by the padfoot roller, applying high amplitude and low frequency, or the pneumatic roller. Breakdown rolling shall be performed until the breakdown roller walks out of the material. Walking out for the padfoot roller is defined as light being clearly evident between all of the pads at the material–padfoot drum interface and being no more than 3/16 inch deep. Walking out for the pneumatic roller is defined as no significant wheel impressions being left on the surface.

After the completion of breakdown rolling, the motor grader shall be used to cut the reclaimed material no deeper than necessary to remove breakdown roller marks from the initial compaction and to achieve desired cross slope.

The bladed reclaimed material shall be compacted by the intermediate and final rollers. The number of passes and order of rollers may be altered to meet compaction requirements. Finish rolling shall not be done in vibratory mode. Water may be lightly sprayed by a water truck to aid in improving final density and appearance. A second water truck is required if water is also being added at the reclaimer. After the first day of the emulsion addition, the reclaimed base shall not be shaped as chunking may result.

Opening to Traffic. The compacted reclaimed pavement shall be proof rolled with the type of truck traffic expected on the road. If permanent deformation does not occur, moving truck traffic may be allowed on the reclaimed pavement. If permanent deformation greater than 0.25 in (6 mm) occurs, truck traffic shall be kept off until the reclaimed pavement is firm enough to support expected traffic with minimal deformation.

Curing. Before placing any surfacing, the reclaimed pavement shall be allowed to cure until the moisture content of the reclaimed pavement is less than 2.5% or less than 50% of the optimum moisture content as determined during the mix design process, or at the discretion of the Engineer. The reclaimed pavement shall be surfaced before November 1.

Surface Test. The completed reclaimed pavement will be tested for smoothness in the wheel paths with a 16 ft (5 m) straightedge.

For each variation in the reclaimed pavement that exceeds 3/8 in (10 mm), the entire area affected shall be corrected by a self-propelled milling machine. The reclaimed pavement shall be swept by a mechanical broom to remove all loose material from the reclaimed pavement before opening to traffic.

The Contractor shall furnish a 16 ft (5 m) straightedge and shall provide for its jobsite transportation at no additional cost to the Department.

Quality Control/ Quality Assurance (QC/QA).

(a) Quality Control by the Contractor. The Contractor shall perform or have performed the inspection and tests required to assure conformance to contract requirements. Control includes the recognition of obvious defects and their immediate correction. This may require increased testing, communication of test results to the job site, modification of operations, suspension of the work, or other actions as appropriate.

The Engineer shall be immediately notified of any failing tests and subsequent remedial action. Passing tests shall be reported to the Engineer no later than the start of the next work day.

(b) Quality Assurance by the Engineer. The Engineer will conduct independent assurance tests on split samples taken by the Contractor for quality control testing. In addition, the Engineer will witness the sampling and splitting of these samples and will immediately retain witnessed split samples for quality assurance testing.

(c) Tests Methods and Frequency.

(1) Depth of Pulverization (Milling). The nominal depth at the centerline shall be required. Anytime depth changes are made or equipment is idle, a depth check is will be taken.

(2) Pulverized Material Sizing and Gradation. A sample shall be obtained before emulsified asphalt addition and screened using a 1.5 in. (37.5mm) sieve (or smaller sieve if required) to determine if meeting the maximum particle size requirement. Gradations shall be performed each day on the moist millings using the following sieves: 1.5 inch, 1.0 inch, ¾ inch, ½ inch, 3/8 inch, No.4, No.8, No.16, and No.30. The resulting gradation shall be compared to the mix design gradations to determine any necessary changes to emulsion content.

Sampling procedures shall generally be in accordance with ASTM D979 or AASHTO T168. When the Engineer determines the location for a gradation sample, the contractor will be notified to turn off the emulsified asphalt and mark the location continuing to pulverize the existing pavement until the Engineer is satisfied with the length of material pulverized without the addition of the emulsified asphalt. The maximum length of pulverization without the addition of the emulsified asphalt shall not exceed 100 feet. After the Contractor collects the gradation sample, the machine will be backed up to the location where the emulsified asphalt was turned off then re-pulverize this material adding the required amount of emulsified asphalt to the pulverized material.

(3) Emulsified Asphalt Content. The Engineer shall be notified any time emulsified asphalt content is changed. The emulsified asphalt content shall be checked and recorded for each segment in which the percentage is changed. Emulsified asphalt content changes shall be made based upon mix design recommendations, which are based upon different mix designs for road segments of varying construction. The emulsified asphalt content shall be checked from the belt scale totalizer or asphalt pump totalizer.

(4) Water Content. The Engineer shall be notified any time the water content is changed. Water content at the milling head shall be checked and recorded for each segment in which the percentage is changed. This information shall be gathered from the water metering device, which can be checked from the belt scale totalizer to verify daily quantities used. Water content changes shall be made based on mixture consistency, coating, and dispersion of the recycled materials.

(5) Compacted Density. A wet density shall be determined using a nuclear moisture-density gauge generally following the procedures for ASTM D2950, backscatter measurement. This measurement shall be compared to the target density obtained by the growth curve.

(6) Frequency. The following table provides the minimum frequency for tests; however, the Engineer may increase the testing frequency if the construction process is experiencing problems or unknown conditions are encountered.

QC/QA TESTING FREQUENCY		
Test	QC Frequency [1]	QA Frequency [1]
Depth of Pulverization	1 per 500 feet	1 per 1000 feet
Pulverized Material Gradation	1 per ½ day production	1 per day
Emulsified Asphalt Content	1 per 500 ft	1 per 1000 ft
Water Content	1 per 500 ft	1 per 1000 ft
Compacted Density	1 per ¼ mile	1 per mile

Note(s): 1. The Contractor shall perform all quality control tests within the first 500 ft (75 m) after startup or any change in the mix. The Department will also run the split samples at these locations.

Method of Measurement.

Bituminous materials will be measured for payment as specified in Section 1032.

Coarse aggregate will be measured by the square yard (square meter).

Full-depth reclamation will be measured by the square yard (square meter) of the recycled pavement.

Basis of Payment.

The bituminous material will be paid for at the contract unit price per gallon (liter) for CIR-FDR EMULSIFIED ASPHALT.

The coarse aggregate will be paid for at the contract unit price per sq yd (meter) for ADD ROCK.

The full-depth reclamation will be paid at the contract unit price per square yard (square meter) for FULL-DEPTH RECLAMATION, of the thickness specified.

State of Illinois
Department of Transportation
Bureau of Local Roads and Streets

SPECIAL PROVISION
FOR
COLD IN-PLACE RECYCLING (CIR) WITH EMULSIFIED ASPHALT

Effective: April 1, 2012

All references to Divisions, Sections and Articles in this Special Provision shall be construed to mean specific Divisions, Sections and Articles in the Standard Specifications for Road and Bridge Construction adopted by the Department of Transportation.

Description. This work shall consist of cold milling and pulverizing existing bituminous layers to a specified depth and maximum size, mixing an emulsified asphalt, water and additives with the recycled material, and spreading and compacting the mixture.

Materials. Materials shall be according to the following Articles of Division 1000 – Materials:

Item	Article/Section
(a) Portland Cement (Note 1)	1001
(b) Water	1002
(c) Fine Aggregate (Note 2)	1003
(d) Coarse Aggregate (Note 2)	1004
(e) Fly Ash (Note 1)	1010.02
(f) Lime Slurry (Note 1)	1012.04
(g) Reclaimed Asphalt Pavement (Note 3)	1031
(h) Emulsified Asphalt (Note 4)	1032.06
(i) Cold Pulverized Material (Note 5)	
(j) Mix Design (Note 6)	

Note 1. If necessary, the mix design may require additional additives to increase fines in the mix. The type and allowable usage percentage will be described in the mix design.

Note 2. The mix design will specify gradation and quality of any additional aggregate. Any additional fine aggregate shall meet Class B quality as a minimum. Any additional coarse aggregate shall meet Class C quality as a minimum.

Note 3. The Engineer may allow reclaimed asphalt pavement (RAP) from Conglomerate “D” Quality or better RAP stockpiles as specified in Article 1031.02 or from millings of the existing highway. The RAP material shall not exceed the maximum size requirement of the cold pulverized material, and when blended with the cold pulverized material shall produce a product which meets the specifications of the mix design.

Note 4. The CIR-FDR emulsified asphalt shall be selected for the project by the emulsified asphalt supplier based on the Contractor's mixture design. The penetration of the supplied emulsified asphalt shall be within ± 25% of the penetration of the design emulsified asphalt. A representative from the emulsified asphalt supplier will be on the job site at the beginning of the project to monitor the characteristics and performance of the emulsified asphalt. Throughout the job, the representative will be available to check on the project and make adjustments to the emulsified asphalt formulation as required. The emulsified asphalt shall be received on the job site at a temperature no greater than 120ºF.

The CIR-FDR emulsified asphalt shall meet the following requirements:

CIR-FDR EMULSIFIED ASPHALT MATERIAL SPECIFICATION			
Test	Procedure	Minimum	Maximum
Viscosity, Saybolt Furol, at 77°F (25°C), SFS	AASHTO T 59	20	100
Sieve Test, No. 20 (850 µm), retained on sieve, %	AASHTO T 59		0.10
Storage Stability Test, 24 hr, %	AASHTO T 59		1.0
Distillation Test, Residue from distillation to 177°C, %	AASHTO T 59 [1]	64.0	
Oil distillate by volume, %	AASHTO T 59		1.0
Penetration, 25°C, 100 g, 5 s, dmm	AASHTO T 49	75	200

Note: 1. Modified AASHTO T 59 procedure – distillation temperature of 177°C with a 20 minute hold.

Note 5. Prior to the addition of the emulsified asphalt, the gradation of the cold pulverized material shall meet the following:

COLD PULVERIZED MATERIAL GRADATIONS		
Grad No.	Sieve Size and Percent Passing	
	1 ½ in (37.5 mm)	1 in (25 mm)
PM 1	100	
PM 2 [1]		100

PM 2 should only be used when a finer gradation of RAP is required by the mix design.

Note 6. A mix design for each distinct section shall be submitted to the Department prior to construction using actual materials (in-situ sampled by the Contractor and new materials from the Contractor's material suppliers) proposed for the project. The job mix formula shall meet the following criteria and be approved by the Engineer.

CIR with EMULSIFIED ASPHALT MIX DESIGN REQUIREMENTS		
Test Method	CIR	Test Purpose
Gradation for Design Millings, AASHTO T 27	Report	
Design Moisture Content	Report	Dispersion of Emulsion
Superpave Gyratory Compaction, 1.25° angle, 600 kPa	30 gyrations at 4 in (100 mm) [1]	Laboratory Density Indicator
Bulk Specific Gravity (Density), ASTM D 6752 or ASTM D2726	Report	Laboratory Density Indicator
Rice (Maximum Theoretical) Specific Gravity, ASTM D2041	Report	Laboratory Density Indicator
Air Voids	Report	Laboratory Density Indicator
Marshall Stability, ASTM D 1559, lbs	1,250 minimum [1]	Stability Indicator
Retained Stability	70% minimum	Moisture Damage Resistance
Raveling Test, 10ºC and 50% humidity	2% maximum	Raveling Resistance
Additional Additive(s) [2] Coarse Aggregate Fine Aggregate RAP Fly Ash Cement	 Report Report Report Report 1.0% maximum	
Emulsified Asphalt [2] Distillation Residue, % Residue Penetration, dmm Optimum Emulsion Content, % Residual Asphalt to Cement Content Ratio	 Report Report Report 3:1 minimum	

Notes: 1. *6 in (150 mm) samples may be used; however, if 6 in (150 mm) samples are used, the Marshall Stability is required to be 2,500 lbs minimum.*

2. *Report shall include type/gradation and producer/supplier.*

Equipment. Equipment shall be according to the following Articles of Division 1100 – Equipment:

	Item	Article/Section
(a)	Self-Propelled Pneumatic-Tired Rollers (Note 1)	1101.01(c)
(b)	Steel Wheel Tandem Rollers	1101.01(e)
(c)	Vibratory Roller (Note 2)	1101.01(g)
(d)	Mechanical Sweeper	1101.03
(e)	Self-Propelled Milling Machine	1101.16(a)
(f)	Spreading and Finishing Machine	1102.03
(g)	Multi-unit Recycling Train (Note 3, 5)	
(h)	Single-unit Recycler (Note 4, 5)	
(i)	Pick Up Machine (Note 6)	

Note 1. The self-propelled pneumatic-tired roller shall have a gross weight (mass) of not less than 25 tons (23 metric tons).

Note 2. The double drum vibratory rollers shall have a gross operating weight of not less than 10 tons (9 metric tons) and a width of 78 in (1980 mm).

Note 3. The multi-unit recycling train shall contain:

a. A self-propelled cold milling machine that is capable of pulverizing the existing bituminous material in a single pass to the depth shown on the plans and to a minimum width of not less than 12.5 feet (3.8 m). The machine shall have automatic depth controls to maintain the cutting depth to within ± ¼ in (6 mm) of that shown on the plans, and shall have a positive means for controlling cross slope elevations. The use of a heating device to soften the pavement will not be permitted.

b. A material sizing unit having screening and crushing capabilities to reduce the cold pulverized material to the appropriate size. The screening and crushing unit shall have a closed circuit system capable of continuously returning oversized material to the crusher. All of the pulverized material (100%) shall be processed to the maximum size requirements as specified.

c. A mixing unit equipped with a belt scale for the continuous weighing of the pulverized and sized bituminous material and a coupled/interlocked computer controlled liquid metering device. The mixing unit shall be an on-board completely self-contained pugmill. The liquid metering device shall be capable of automatically adjusting the flow of emulsified asphalt to compensate for any variation in the weight of pulverized material coming into the mixer. The metering device shall deliver the amount of emulsified asphalt to within ± 0.2 percent of the required amount by weight of pulverized bituminous material (for example, if the design requires 3.0 percent, the metering device shall maintain between 2.8 percent to 3.2 percent). The emulsified asphalt pump should be of sufficient capacity to allow emulsion contents up to 3.5% by weight of pulverized bituminous material. Also, automatic digital readings will be displayed for both the flow rate and total amount of pulverized bituminous material and emulsified asphalt in appropriate units of weight and time.

Note 4. The single unit recycler shall be a self-propelled cold milling machine/cold recycling machine with a down cutting cutter head capable of pulverizing and recycling the existing hot-mix asphalt pavement to a maximum depth of 5 in (125 mm), incorporate the emulsified asphalt and water, and mix the materials to produce a homogeneous material. The minimum power of this machine is 900 hp. The machine shall be capable of pulverizing and recycling not less than 12.5 ft (3.8 m) wide in each pass. The machine shall have two systems for adding emulsified asphalt and water with each system having a full width spray bar with a positive displacement pump interlocked to the machine's ground speed to insure that the amount of emulsified asphalt and water being added is automatically adjusted with changes to the machine's ground speed. Each additive system shall have its own spray bar equipped with 2 nozzles per foot of spray bar and be capable of incorporating up to 7 gallons per square yard of emulsified asphalt and/or water. Individual valves on the spray bar shall be capable of being turned off as necessary to minimize emulsion and water overlap on subsequent passes.

Note 5. Any additives such as water, lime slurry, etc. added by the recycling equipment at the mill head or mixing unit shall be controlled through liquid metering devices capable of automatically adjusting for the variation in the weight of the pulverized material going into the mixing unit. The metering devices shall be capable of delivering the amount of additive to within ± 0.2 percent of the required amount by weight of the pulverized bituminous material. A capability of adding up to 5% water by weight of the pulverized bituminous material, if necessary based on environmental and material requirements, is mandatory. It will not be required to meter the water added at the milling machine to control dust in the screens, belts, or crusher/material sizing unit.

Note 6. The pick-up machine shall be capable of removing the entire windrow down to the remaining underlying material.

CONSTRUCTION REQUIREMENTS

Weather Limitations. This work shall be performed when atmospheric temperature in the shade and away from artificial heat is 50°F (10°C) and rising. Also, the weather shall not be foggy or rainy. The weather forecast shall not call for freezing temperature within 48 hours after placement of any portion of the project. The Engineer may restrict work when the heat index is greater than 100°F (38°C).

Preparation of Existing Pavement. Grass and other vegetation shall be removed from the edge of the existing pavement to prevent contamination of the pulverized bituminous material during the milling operation.

The existing pavement shall be milled to the required depth and width as indicated on the plans. Recycling shall be in a manner that does not disturb the underlying material in the existing roadway. The milling operation shall be conducted so that the amount of fines occurring along the vertical faces of the cut will not prevent bonding of the cold recycled materials. The pulverized bituminous material shall be processed to the required gradation specified. When a paving fabric is encountered during the CIR operation, the Contractor shall make the necessary adjustments in equipment or operations so that at least ninety percent (90%) of the shredded fabric in the recycled material is no more that 5 in^2 (3200 mm^2). Additionally, no fabric piece shall have any dimension exceeding a length of 4 inches (100 mm). These changes may include, but not be limited to, adjusting the milling rate or screens in order to obtain a specification recycled material. The Contractor shall be required to waste material containing over-sized pieces of paving fabric as directed by the Engineer. When the Contractor is aware that paving fabric exists, such as indicated on the plans, the Contractor will not receive additional payment. However, if the Contractor is not made aware of the paving fabric, than the Contractor shall receive additional payment for any necessary adjustments in equipment and operations.

Mixing Operation. The pulverized material shall be produced through a mixing unit capable of processing the pulverized material, emulsified asphalt and any additives to a homogeneous recycled mixture. The emulsified asphalt shall be incorporated into the pulverized bituminous material at the initial rate determined by the mix design(s) and approved by the Engineer. Sampling and mix design may determine different levels of emulsified asphalt at various portions of the project.

Spreading and Finishing. The recycled material shall be spread using a self-propelled paver. A pick-up machine shall be used to transfer the windrowed recycled material into the spreading and finishing machine. The pickup machine must be within 150 feet (45 m) of the mixing unit. The recycled material shall be spread by a spreading and finishing machine in one continuous pass, without segregation and to the lines and grades established by the Engineer.

Compaction. The compacted recycled material shall be at a thickness 2.5 to 5.0 in (63 to 127 mm). The recycled material shall be compacted according to the following:

(a) Growth Curve. Compaction shall be accomplished by performing a growth curve within the first half mile of production. If an adjustment is made to the emulsified asphalt application rate or recycled depth, the Engineer reserves the right to request an additional growth curve. The growth curve, consisting of a plot of lb/cu ft (kg/cu m) vs. number of passes with the project breakdown roller, shall be developed. Roller speed during the growth curve testing shall be the same as the normal paving operation. This curve shall be established by use of a nuclear gauge. Tests shall be taken after each pass until the highest lb/cu ft (kg/cu m) is obtained. This value shall be the target density.

A new growth curve is required if the rollers used on the growth curve are replaced with a new roller during production. The target density shall apply only to the specific gauge used. If additional gauges are to be used to determine density specification compliance, the Contractor shall establish a unique minimum allowable target density from the growth curve location for each gauge.

(b) Rollers. Immediately after processing and final shaping the reclaimed material shall be compacted with equipment meeting the following requirements:

MINIMUM ROLLER REQUIREMENTS FOR CIR			
Breakdown Roller (one of the following)[1]	Intermediate Roller	Final Roller (one or more of the following)[1]	Density Requirement
V_s, V_D	P	V_S, T_F	95 - 102 percent of the target density obtained on the growth curve

Note(s): 1. Equipment definitions in Table 1 of Article 406.07.

(c) Rolling. Breakdown rolling shall be achieved by using a vibratory roller either operating in a static or vibratory mode. Vibratory mode should only be used if it is shown to not damage the pavement. Intermediate rolling shall be completed by a self-propelled pneumatic roller(s) until no displacement is occurring or until the pneumatic roller(s) is walking out of the mixture. Final rolling to eliminate pneumatic tire marks and to achieve density shall be done by a separate double drum steel roller(s) operating in static mode.

Rolling shall start no more than 30 minutes behind the paver. Finish rolling shall be completed no more than one hour after milling is completed. When possible, rolling shall not be started or stopped on uncompacted material but with rolling patterns established so that they begin or end on previously compacted material or the existing pavement.

Opening to Traffic. After the completion of compaction of the recycled material, no traffic, including that of the contractor, shall be permitted on the completed recycled material for at least two (2) hours. After two hours rolling traffic may be permitted on the recycled material. This time may be adjusted by the Engineer to allow establishment of sufficient cure so traffic will not initiate raveling or permanent deformation. All loose particles that may develop on the pavement surface shall be removed by power brooming.

After opening to traffic, the surface of the recycled pavement shall be maintained in a condition suitable for the safe movement of traffic.

Maintenance. The contractor shall maintain the recycled pavement in a manner satisfactory to the Engineer until the wearing course has been constructed. Maintenance related to contractor construction procedures or quality of work, shall not be paid for separately.

Curing. Before placing the specified wearing course, the recycled pavement shall be allowed to cure until the moisture of the material is reduced to 2.0 percent or less, or approval of the Engineer. Unless otherwise directed by the Engineer, the specified wearing course shall be placed with 2 weeks of the recycled pavement final cure; however, shall be completed by November 1.

Surface Tests. The completed reclaimed pavement will be tested for smoothness in the wheel paths with a 16 ft (5 m) straightedge.

For each variation in the reclaimed pavement that exceeds ⅜ in (10 mm), the entire area affected shall be corrected by a self-propelled milling machine. The reclaimed pavement shall be swept by a mechanical broom to remove all loose material from the reclaimed pavement before opening to traffic.

The Contractor shall furnish a 16 ft (5 m) straightedge and shall provide for its jobsite transportation at no additional cost to the Department.

Quality Assurance/ Quality Control (QC/QA).

(a) Quality Control by the Contractor. The Contractor shall perform or have performed the inspection and tests required to assure conformance to contract requirements. Control includes the recognition of obvious defects and their immediate correction. This may require increased testing, communication of test results to the job site, modification of operations, suspension of the work, or other actions as appropriate.

The Engineer shall be immediately notified of any failing tests and subsequent remedial action. Passing tests shall be reported to the Engineer no later than the start of the next work day.

(b) Quality Assurance by the Engineer. The Engineer will conduct independent assurance tests on split samples taken by the Contractor for quality control testing. In addition, the Engineer will witness the sampling and splitting of these samples and will immediately retain witnessed split samples for quality assurance testing.

(c) Tests Methods and Frequency.

(1) Depth of Pulverization (Milling). The nominal depth at the centerline shall be required. Anytime depth changes are made or equipment is idle, a depth check is will be taken.

(2) Pulverized Material Sizing and Gradation. A sample shall be obtained before emulsified asphalt addition and screened using a 1.5 in. (37.5mm) sieve (or smaller sieve if required) to determine if meeting the maximum particle size requirement. Gradations shall be performed each day on the moist millings using the following sieves: 1.5 in, 1.0 in, ¾ in, ½ in, ⅜ in, No.4, No.8, No.16, and No.30. The resulting gradation shall be compared to the mix design gradations to determine any necessary changes to emulsion content.

Sampling procedures shall generally be in accordance with ASTM D979 or AASHTO T168. When the Engineer determines the location for a gradation sample, the contractor will be notified to turn off the emulsified asphalt and mark the location continuing to pulverize the hot-mix asphalt pavement until the Engineer is satisfied with the length of material pulverized without the addition of the emulsified asphalt. The maximum length of pulverization without the addition of the emulsified asphalt shall not exceed 100 ft (30 m). After the Contractor collects the gradation sample, the machine will be backed up to the location where the emulsified asphalt was turned off then re-pulverize this material adding the required amount of emulsified asphalt to the pulverized material.

(3) Emulsified Asphalt Content. The Engineer shall be notified any time emulsified asphalt content is changed. The emulsified asphalt content shall be checked and recorded for each segment in which the percentage is changed. Emulsified asphalt content changes shall be made based upon mix design recommendations, which are based upon different mix designs for road segments of varying construction. The emulsified asphalt content shall be checked from the belt scale totalizer or asphalt pump totalizer.

(4) Water Content. The Engineer shall be notified any time the water content is changed. Water content at the milling head shall be checked and recorded for each segment in which the percentage is changed. This information shall be gathered from the water metering device, which can be checked from the belt scale totalizer to verify daily quantities used. Water content changes shall be made based on mixture consistency, coating, and dispersion of the recycled materials.

(5) Compacted Density. A wet density shall be determined using a nuclear moisture-density gauge generally following the procedures for ASTM D2950, backscatter measurement. This measurement shall be compared to the target density obtained by the growth curve.

(6) Frequency. The following table provides the minimum frequency for tests; however, the Engineer may increase the testing frequency if the construction process is experiencing problems or unknown conditions are encountered.

QC/QA TESTING FREQUENCY		
Test	QC Frequency [1]	QA Frequency [1]
Depth of Pulverization	1 per 500 feet	1 per 1000 feet
Pulverized Material Sizing and Gradation	1 per ½ day production	1 per day
Emulsified Asphalt Content	1 per 500 ft	1 per 1000 ft
Water Content	1 per 500 ft	1 per 1000 ft
Compacted Density	1 per ¼ mile	1 per mile

Note(s): 1. The Contractor shall perform all quality control tests within the first 500 ft (75 m) after startup or any change in the mix. The Department will also run the split samples at these locations.

Method of Measurement.

Bituminous materials will be measured for payment as specified in Section 1032.

Coarse aggregate will be measured by the square yard (square meter).

The cold in-place recycling will be measured by the square yard (square meter) of the recycled pavement.

Basis of Payment.

The bituminous material will be paid for at the contract unit price per gallon (liter) for CIR-FDR EMULSIFIED ASPHALT.

The coarse aggregate will be paid for at the contract unit price per sq yd (meter) for ADD ROCK.

The cold in-place recycling will be paid for at the contract unit price per square yard (square meter) for COLD IN-PLACE RECYCLING, of the thickness specified.

State of Illinois
Department of Transportation
Bureau of Local Roads and Streets

SPECIAL PROVISION FOR SURFACE PROFILE MILLING OF EXISTING, RECYCLED OR RECLAIMED FLEXIBLE PAVEMENT

Effective: April 1, 2012

All references to Divisions, Sections and Articles in this Special Provision shall be construed to mean specific Divisions, Sections and Articles in the Standard Specifications for Road and Bridge Construction adopted by the Department of Transportation.

Description. This work shall consist of surface profile milling existing, recycled or reclaimed flexible pavement prior to application of a surface treatment less than or equal to 1.5 in (37 mm) thick.

Equipment. Equipment shall be according to the following Articles of Division 1100 – Equipment:

(a) Self-Propelled Milling Machine (Note 1) 1101.16

Note 1. The self-propelled milling machine shall be capable of milling an entire lane width in a single pass and have the capability of loading the millings into a truck.

The cutting drum and teeth shall be designed to produce the required surface texture. Each tooth on the cutting drum shall produce a series of discontinuous longitudinal striations. There shall be 16 to 20 striations (tooth marks) for each tooth for each 6 ft (1.8 m) in the longitudinal dimension, and each striation shall be 1.7 ± 0.2 in (43 ± 5 mm) in length after the area in planed by the moldboard. The planed length between each pair of striations shall be 2.3 ± 0.2 in (58 ± 5 mm). There shall be 80 to 96 rows of discontinuous longitudinal striations for each 5 ft (1.5 m) in the transverse dimension. The pattern of striations shall be such that a line connecting striations in adjacent rows shall form approximately a 70 degree skew angle with the roadway centerline. The areas between the striations in both the longitudinal and transverse shall be flat-topped and coplanar.

The milling machine shall be capable of accurately and automatically establishing grades by use of an automatic grade control device on one side of the machine with an automatic slope control device controlling the opposite side. It shall be equipped with a traveling grade reference (averaging ski) which shall not be less than 30 feet (9 m) in length.

CONSTRUCTION REQUIREMENTS

Surface Test. The completed recycled or reclaimed pavement will be tested for smoothness in the wheel paths with a 16 ft (5 m) straightedge.

For each variation in the recycled or reclaimed pavement that exceeds 3/16 in (5 mm), the entire area affected shall be corrected by surface profile milling. The self-propelled milling machine shall be used for surface profile milling. At any time the surface profile milling fails to produce a flat plane interspersed with the specified uniform pattern of discontinuous longitudinal striations, the surface profile milling shall be stopped until corrections are made to the equipment. The surface profile milling speed shall be limited to 60 ft/min (18 m/ft). If the Contractor demonstrates that the desired striations and ride specifications are obtained at a greater speed, the Engineer may permit the Contractor to operate at an increased speed.

After surface profile milling, the recycled or reclaimed pavement shall be swept by a mechanical broom to remove all loose material from the recycled or reclaimed pavement before opening to traffic.

The Contractor shall furnish a 16 ft (5 m) straightedge and shall provide for its jobsite transportation at no additional cost to the Department.

Method of Measurement.

The surface profile milling will be by the square yard (square meter).

Basis of Payment.

The surface profile milling will be paid for at the contract unit price per square yard (square meter) for SURFACE PROFILE MILLING.

State of Illinois
Department of Transportation
Bureau of Local Roads and Streets

SPECIAL PROVISION
FOR
COLD IN-PLACE RECYCLING (CIR) AND FULL DEPTH RECLAMATION (FDR) WITH EMULSIFIED ASPHALT MIX DESIGN PROCEDURES

Effective: April 1, 2012

All references to Divisions, Sections and Articles in this Special Provision shall be construed to mean specific Divisions, Sections and Articles in the Standard Specifications for Road and Bridge Construction adopted by the Department of Transportation.

Sampling and Processing

A minimum sample size of 350 lb (160 kg) is needed for each mix design. Bulk samples of the recycled layer thickness shall be obtained from either test pits or cores. Each layer shall be examined to confirm thickness and material.

The bituminous layers shall be crushed. The crushed bituminous layer(s)' washed gradation (AASHTO T27) shall be performed and reported and meet the following requirement(s):

CIR Crushed Bituminous Layer Gradation			
Sieve	Fine	Medium	Coarse
1.25"	100	100	100
1.0"	100	100	85-100
¾"	95-100	85-96	75-92
No. 4	55-75	40-55	30-45
No. 30	15-35	4-14	1-7
No. 200	1-7	0.6-3	0.1-3

FDR Crushed Bituminous Layer Gradation	
Sieve	% Passing
1.25"	100
1.0"	100
¾"	95-100
No. 4	55-75
No. 30	15-35
No. 200	1-7

Washed gradation (AASHTO T27) and sand equivalent (ASTM D2419, Method B) shall be performed and reported for any granular layer. The washed gradation (AASHTO T27) of combined layers shall be performed and reported. If combined layers include aggregate layer, the sand equivalent (ASTM D2419, Method B) shall be performed and reported.

All washed gradations shall be dried at no greater than 104 °F (40 °C).

Mixing and Compaction

1. FDR with Emulsified Asphalt. Perform Modified Proctor compaction according to ASTM D 1557, Method C to determine optimum moisture content (OMC) at peak dry density. OMC shall be defined by a best-fit curve from a minimum of four points. Material containing 20% or more passing No. 200 shall be mixed with target moisture, sealed, and set aside a minimum of 12 hours. All other material shall be set aside a minimum of 3 hours. If a material contains less than 4 percent passing No. 200, then this testing is not required.

   Select the water content of specimens, not including water in the emulsion, based on average annual rainfall. Sand equivalent value (SE) is from the combined materials.

   For average annual rainfall ≥ 20 in:

   - 60 to 75 percent of OMC if SE ≤ 30
   - 45 to 65 percent of OMC if SE > 30

   For average annual rainfall < 20 in:

   - 50 to 75 percent of OMC if SE ≤ 30
   - 40 to 65 percent of OMC if SE > 30

   If a material contains less than 4 percent passing No. 200 or if no peak develops with the OMC curve, then fix the moisture content between 2 and 3 percent.

   Specimens shall be mixed with the required amount of water before the addition of emulsion. Specimens shall be mixed with the appropriate amount of water and allowed to sit sealed according to the same guidelines as used for Modified Proctor specimens.

   Samples shall have a weight before addition of water and emulsion to produce 2.75 in to 3.25 in (70 mm to 80 mm) tall compacted specimens.

   Choose four emulsion contents that will bracket the design emulsion content. Recommended emulsion contents: 1.5%, 2.0%, 2.5%, 3.0%, 3.5%, 4.0%. The following specimens shall be created:

   - A minimum of two specimens at each of four emulsion contents shall be produced for short-term strength testing.
   - Four specimens at each of four emulsion contents shall be produced for the strength and retained strength tests.
   - Two specimens shall be produced for maximum specific gravity.

   A mechanical mixer shall be used that has a bowl with a diameter of 10 to 12 in (255 to 305 mm). It shall rotate on its axis at 50 to 75 revolutions per minute. A mixing paddle which makes contact with the bottom and side of the bowl shall rotate on its axis at twice the bowl rotation rate and in the opposite rotation direction as the bowl.

   Aggregate material and emulsion shall be mixed at a temperature of 68 to 79 °F (20 to 26 °C). Water shall be mixed for 60 seconds. Emulsion shall be mixed for 60 seconds.

If other materials are added, such as lime or cement, then they shall be introduced in a similar manner as they will be on the project. For example, if lime is incorporated a day or more before emulsion addition, then it shall be added to the wet aggregate a day or more before mixing with emulsion. If lime is incorporated as a slurry, then it shall be incorporated as a slurry in the laboratory.

Loose specimens shall be cured individually in plastic containers of 4 to 7 in (100 to 180 mm) height and 6 in (150 mm) diameter. Specimens shall be cured at 104 °F (40 °C) for 30 ± 3 minutes. No further mixing or aeration shall occur during this time.

Specimens shall be compacted in a Superpave gyratory compactor (SGC) at a vertical pressure of 87 psi (600 kPa), an angle of 1.25°, and a mold of 6 in (150 mm) diameter for 30 gyrations. After the last gyration, 87 psi (600 kPa) pressure shall be applied for 10 seconds. The mold shall not be heated.

2. CIR with Emulsified Asphalt. The specimen size shall be the amount that will produce a 2.4 in to 2.6 in (61.0 mm to 66.0 mm) tall specimen.

   Choose three emulsion contents that bracket the estimated recommended emulsion content. Recommended emulsion contents: 1.5%, 2.0%, 2.5%, 3.0%, 3.5%, 4.0%. The following specimens shall be created:

   - Four per emulsion content for a total of 6 for long-term stability and 6 for moisture testing for 3 emulsion contents.
   - Two specimens are required for Rice specific gravity; test at the highest emulsion content in the design and back calculate for the lower emulsion contents.

   Add moisture that is expected to be added at the milling head, typically 1.5 to 2.5 percent.

   If any additives are in the mixture, introduce the additives in a similar manner that they will be added during field production.

   Mixing of test specimens shall be performed with a mechanical bucket mixer. Mix the CIR-RAP millings thoroughly with water first, then mix with emulsion. Mixing shall occur at ambient temperature. One specimen shall be mixed at a time. Mixing time with emulsion should not exceed 60 seconds.

   Specimens shall be compacted immediately after mixing. Place paper disks on the top and bottom of the specimen before compaction.

   Specimens shall be compacted with a Superpave gyratory compactor (SGC) in a 100 mm mold at 1.25° angle, 600 kPa ram pressure, and 30 gyrations. The mold shall not be heated.

Curing after Compaction

1. FDR with Emulsified Asphalt. Specimens (except STS specimens) shall be cured for 72 hours at 104 °F (40 °C). The bottom of the specimens shall rest on racks with slots or holes for air circulation. After curing, specimens for moisture conditioning shall be cooled at ambient temperature a maximum of 24 hours; specimens for dry strength shall cool at ambient temperature or 77 °F (25 °C) and be tested at the same time as moisture-conditioned specimens.

Specimens for Rice (maximum theoretical) specific gravity shall be cured at the same conditions as the compacted specimens, except they can be tested after cooling a maximum of 24 hours.

2. CIR with Emulsified Asphalt. Extrude specimens from molds immediately after compaction. Carefully remove paper disks.

   Place specimens in 60°C forced draft oven with ventilation on sides and top. Place each specimen in a small container to account for material loss from the specimens.

   Specimens for Rice (maximum theoretical) specific gravity should be dried to constant weight (less than 0.05% weight loss in 2 hours). Care should be taken not to over-dry the specimens.

   Cure compacted specimens to constant weight but no more than 48 hours and no less than 16 hours. Constant weight is defined here as 0.05% change in weight in 2 hours. After curing, cool specimens at ambient temperature a minimum of 12 hours and a maximum of 24 hours.

Short-Term Strength (STS) Test (FDR with Emulsified Asphalt Only)

A modified Hveem cohesiometer apparatus shall be used to test early strength (1 hour). This apparatus and procedure generally conforms to ASTM D 1560 Section 13 with the following exceptions:

- It shall have the capability of testing 6 in (150 mm) diameter specimens.
- It shall have a shot flow rate of 5.95 ± 0.11 lb/min (2700 ± 50 g/min).
- Specimens shall be cured before compaction according to Section 5, and cure each specimen at each emulsion content for 60 ± 5 min at 77 °F (25 °C) and 10 to 70 percent humidity after compaction and before testing.

The following calibrations shall be made:

- The counter balance should be positioned exactly so that the hinged plate just barely remains horizontal when the top brackets and empty bucket are in place. This ensures that there is no force on the sample until shot begins to flow into the bucket.
- The gap between the bars of the switch that turns off the flow of shot should have a gap of ¾" (18 mm) when there is 3000 g of shot in the bucket. During this adjustment the locking bolt that prevents the plate from moving is in place.

Cohesion shall be tested as follows:

1. Tare the balance with the empty bucket weight.
2. Center the specimen on the unit.
3. Place plates on top of sample and press down while adjusting the outer lower nuts up until they just contact the bottom of the plate.
4. Use a torque wrench or torque-meter to tighten the nuts on the specimen to 20 inch-pounds (maximum).
5. Gently support the bar so the unit does not move when the pin is pulled releasing the hinged plate.
6. Pull pin and push open valve to start the flow of shot.

7. After the unit shuts off the flow of shot, immediately put the locking pin in place and then record the weight of shot.
8. Loosen top nuts to remove plates and rotate specimen 90°.
9. Repeat procedure on the other axis of the specimen.
10. Calculate short-term strength as follows:

$$STS = \frac{SW}{15(0.031h + 0.0027h^2}$$

Where:
SW = *Shot Weight in grams*
h = *height in cm*

11. A total of two results will be obtained for each specimen at each emulsion content, and a total of four results will be obtained at each emulsion content.

Volumetric Measurements

Determine bulk specific gravity (ASTM D 6752) of the specimens. Keep specimens in bags until testing or vacuum saturation is performed. ASTM D 2726 may be used to determine bulk specific gravity if specimens' absorption is less than or equal to 2% of water by volume.

Determine Rice (maximum theoretical) specific gravity (ASTM 2041) except as noted in the Mixing, Compaction, and Curing after Compaction sections.

Determine air voids at all emulsion contents used in the design.

Mechanical Measurements

1. FDR with Emulsified Asphalt. Perform ITS testing according to ASTM D 4867. Specimens shall be conditioned at 77 °F (25 °C) for two hours before testing.
   - For average annual rainfall greater than or equal to 20 in (508 mm) per year, vacuum saturate half the specimens at each emulsion content to a minimum 55 percent of the voids filled with water. Soak for 24 hours at 77 °F (25 °C) before testing.
   - For average annual rainfall less than 20 in (508 mm) per year, soak half the specimens at all emulsion contents used in the design for 24 hours at 77 °F (25 °C) before retained strength testing.
2. CIR with Emulsified Asphalt. Determine corrected Marshall Stability (ASTM D1559) at 40°C after 2 hour temperature conditioning in a forced draft oven. This testing shall be performed at the same time that the moisture conditioned specimens are tested.

   Perform same conditioning and volumetric measurements on moisture-conditioned specimens as on other specimens. Vacuum saturate to 55% to 75%; and soak in a 25°C water bath for 23 hours, followed by a one hour soak at 40°C. Determine corrected Marshall Stability. The average moisture conditioned specimen strength divided by the average dry specimen strength is referred to as retained stability.

Raveling Test (CIR with Emulsified Asphalt Only)

The apparatus used for the raveling test is a modified A-120 Hobart mixer and abrasion head (including hose) used in the Wet Track Abrasion of Slurry Surfaces Test (ISSA TB-100). The

rotation speed for the raveling test is not modified from ISSA TB-100. The ring weight is removed from the abrasion head for the raveling test below. The weight of the abrasion head and hose in contact with the specimen should be 600 g ± 15 g. The prepared sample must be able to be secured under the abrasion head, and centered for accurate result, allowing for free movement vertically of the abrasion head. The device used for securing and centering the sample must allow a minimum of 10 mm of the sample to be available for abrasion. The Hobart mixer will need to be modified to allow the sample to fit properly for abrasion. The modification may be accomplished by adjusting the abrasion head height, or the height of the secured sample. The Hobart C-100 and N-50 Models are not acceptable for this test procedure due to differences in size and speed of rotation.

1. Split out two recycled asphalt samples from the medium gradation, or field sample, to a quantity of 2700 g in mass. The 2700 g is an approximate weight to give 70 mm ± 5 mm of height after compaction.
2. The recycled asphalt sample should be placed in a container of adequate size for mixing.
3. Field or design moisture contents should be added to each of the recycled asphalt samples and mixed for 60 seconds.
4. The design emulsion content shall be added to each of the recycled asphalt samples and mixed for 60 seconds.
5. The samples shall be placed immediately into a 150 mm gyratory compaction mold and compacted to 20 gyrations. If the sample height is not 70 mm ± 5 mm, the recycled asphalt weight should be adjusted.
6. After compaction, the samples shall be removed from the compaction mold and placed on a flat pan to cure at the specified temperature and humidity (if required) for 240 minutes ± 5 minutes. The temperature shall be maintained at ± 2ºC from the temperature specified and the humidity (if required) shall be maintained at ± 10% from the number specified.
7. The specimens shall be weighed after the curing, just prior to testing.
8. The specimens shall be placed on the raveling test apparatus. Care should be taken that the specimen is centered and well supported. The area of the hose in contact with the specimen should not have been previously used. It is allowable to rotate the hose to an unworn section for testing. The abrasion head (with hose) shall be free to move vertically downward a minimum of 5mm if abrasion allows.
9. The samples shall be abraded for 15 minutes and immediately weighed.
10. The Percent Raveling Loss shall be determined as follows:

    $$PRL = 100 \times \frac{W_P - W_A}{W_p}$$

    Where: PRL = Percent Raveling Loss
    W_P = Weight of Sample Prior to Testing
    W_A = Weight of Sample After Testing

11. The average of the two specimens shall be reported as the Percent Raveling Loss. If there is a difference of > 0.5% raveling loss between the two test specimens, the Raveling Test shall be repeated. If both of the test specimens have a Percent Raveling Loss of > 10%, the two test results shall be averaged and the maximum 0.5% difference between test specimens shall not be required.

Note: If field mix samples are taken, steps 2, 3, and 4 shall be omitted.

Emulsion Content Selection

The emulsion content selected shall result in the mixture meeting the mix design requirements of the FDR or CIR special provision.

Report

All mix design test results shall be reported to the Department. All additional additives and bituminous material shall be reported to the Department.

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2012-03

SUBJECT: CHANGES IN FUNCTIONAL CLASSIFICATION TERMINOLOGY

ISSUED DATE: August 27, 2012

EFFECTIVE DATE: September 1, 2012

This memorandum revises Section 27-3 of the Bureau of Local Roads & Streets Manual issued January 2006.

The rural and urban designation in the Functional Classification terminology has been consolidated due to Federal Highway Administration's Interim Guidance on Highway Functional Classification as a result of the 2010 Highway Performance Monitoring System Reassessment. Functional classification will be assigned based on functional criteria, rather than the location of an urban/rural boundary.

The Office of Planning & Programming (OP&P) has modified the Illinois Road Inventory System (IRIS) to handle functional classification designations. OP&P has converted former functional classification codes used in IRIS to the new functional codes; however, the urban area code will continue to be in IRIS to determine whether a highway is in a rural or urban area.

OP&P has changed documentation in IRIS to show the seven functional classes and to remove any direct relationship between the key route type and the functional classification code. OP&P has discontinued the use of the two digit functional classification code and descriptions in order to utilize the new functional classification categories in department systems, publications, GIS, internet applications, and maps.

James K. Klein

Acting Engineer of Local Roads and Streets

Attachments

cc: Rob Robinson
Travis Lobmaster
Andrew Gossrow

Guidance for the Functional Classification of Highways (Updated)

U.S. Department of Transportation
Federal Highway Administration

Memorandum

Subject: INFORMATION: Updated Guidance for the Functional Classification of Highways

Date: October 14, 2008

From: (Original signed by)
Mary B. Phillips
Associate Administrator for Policy and Governmental Affairs (HPL)

Reply to Attn of: HPPI-20

To: Division Administrators
Resource Center Directors

Introduction

The Highway Performance Monitoring System (HPMS) Reassessment 2010+ resulted in recommendations for the revision of highway functional classifications. Some of the recommended revisions will require additional study in order to provide fully validated, revised functional classification guidance.

The purpose of this memorandum and attachment is to provide interim guidance which may be used in association with *Highway Functional Classification: Concepts, Criteria and Procedures*, available online at: http://www.fhwa.dot.gov/planning/fctoc.htm. *Highway Functional Classification* may be considered reference material, to be superseded by this memorandum and attachment where applicable. Following completion of additional studies, a complete revision of *Highway Functional Classification* will be prepared and released.

The conversion of functional classification from the existing schema to the new schema described in Section 2 of the guidance and the coding changes for ramps described in Section 5 are both due in the reporting of 2009 data submitted to Federal Highway Administration (FHWA) in 2010. The adjustment of functional classifications and urban/urbanized boundaries following the 2010 Census should be included in the reporting of 2012 HPMS data reported in 2013. Any functional classification changes resulting from the revision/rewrite of the functional classification guidance would be included in data reported in 2013 and optional for any earlier HPMS submittals.

We recognized that in many States or Metropolitan Planning Offices (MPOs), the process of updating highway functional classification is an ongoing process, with some States just now completing the updates to urban boundaries and functional classification triggered by the 2000 Census. The hope is that by 2012 the 2010 Decennial Census data will be available, and States will use this updated information as they undertake a thorough update of their highway functional classification.

The intended users of this guidance are the State Department of Transportation coordinators, planners and technicians in the areas of functional classification and HPMS, as well as appropriate FHWA staff.

Background

The functional classification of the nation's highways, roads and streets provides important inputs into the HPMS program and into the apportionment of federal funds, such as for the National Highway System (NHS) and Surface Transportation Program (STP). However, functional classification is also used for many other transportation planning and public policy purposes within the States, MPOs, and local communities.

The focus of this interim guidance is on functional classification as it is related to HPMS data reporting requirements and the apportionment process. Other aspects of functional classification will be considered in any future update of *Highway Functional Classification*. States are expected to report functional classification data consistent with HPMS data requirements. As always, States and local communities may continue to use functional classification as needed according to their specific requirements provided they do not conflict with the HPMS requirements.

HPMS Reassessment Project: Results for Highway Functional Classification

The following subjects are considered in the attachment.

1. Routes Crossing Between Rural and Urban Areas

2. Consolidation of Rural and Urban Designations in Functional Classifications
3. Extent Analysis (mileage and vehicle-miles traveled (VMT) percentage ranges)
4. Clarification: "Future Year" and "Future Route"
5. Ramps and Other Non-mainline Roadways

If you have any comments or need additional information, please contact Paul Svercl at 202-366-5036.

Attachment

INTERIM GUIDANCE
Highway Functional Classification: Concepts, Criteria and Procedures
Revisions as a Result of the 2010 HPMS Reassessment Project

The following subjects are considered in turn.

1. Routes Crossing Between Rural and Urban Areas
2. Consolidation of Rural and Urban Designations in Functional Classifications
3. Extent Analysis (mileage and vehicle-miles traveled (VMT) percentage ranges)
4. Clarification: "Future Year" and "Future Route"
5. Ramps and Other Non-mainline Roadways

The conversion of functional classification from the existing schema to the new schema described in Section 2 and the coding changes for ramps described in Section 5 are both due in the reporting of 2009 data submitted to FHWA in 2010. The adjustment of functional classifications and urban/urbanized boundaries following the 2010 Census should be included in the reporting of 2012 HPMS data reported in 2013. Any functional classification changes resulting from the revision/rewrite of the functional classification guidance would be included in data reported in 2013 and optional for any earlier HPMS submittals.

1. Routes crossing between Rural and Urban Areas

Functional classification should not automatically change at the rural/urban boundary. In consolidating the rural and urban designations within functional classification, the urban boundary itself will remain. 23 USC 101(a)(36)-(37) provides for urban boundaries "to be fixed by responsible State and local officials in cooperation with each other." However, one of the goals of this interim guidance is to de-emphasize the urban boundary as being determinative of functional classification. That is, functional classifications should be assigned based on actual functional criteria, rather than the location of an urban/rural boundary.

States should follow the guidance provided in the 1991 Addendum of *Highway Functional Classification* wherever possible, which states:

> The *Highway Functional Classification* provides for rural routes (other than Principal Arterials) to be upgraded to a higher classification level when they cross an urban boundary. Although the principle is sound, rigid application has presented difficulties for some States. Accordingly, this addendum [1991] to the guidelines is intended to provide greater flexibility for deciding on an appropriate place for changing the functional classification when rural routes cross an urban boundary, taking into account changes in traffic conditions, the degree of urban development and other factors. Instead of automatically upgrading the functional classification of a rural route that crosses an urban boundary, the rural classification may be continued inside the urban boundary until there is a more logical and acceptable place for a change.

As of this interim guidance, the practice of automatically upgrading the functional classification of a rural route that crosses an urban boundary should be phased out and eliminated. Upgrading due to actual change in function should be the operative criteria.

Census and Adjusted Urbanized/Small Urban Boundary

Once routes have been assigned the appropriate "rural/urban neutral" functional classification, urbanized and small urban boundaries may be determined in a separate process. States have the option of using Census-defined boundaries only, or they may *adjust* the Census-defined boundaries to be more consistent with transportation planning requirements. The adjusted urbanized/small urban boundaries should be "smoothed" to include areas which are urban in nature but lacking in population density (such as airports, industrial parks,

regional shopping centers and other urban attractions).

2. Consolidation of Rural and Urban Designations in Functional Classifications

Existing guidance in *Highway Functional Classification* makes distinctions in all respects – concepts, criteria, and procedures – between rural and urban classifications. As of this interim guidance, the continuity and connectivity of the basic functional systems is retained and emphasized. However, through HPMS reassessment, there is a reduced emphasis on the rural/urban distinction as exemplified in the functional classification name changes (e.g., Interstate, in place of rural Interstate and urban Interstate). The review and update of urban boundaries will continue to take place, but as a separate, Census-based process (see Section 1).

The differences in the nature and intensity of development between rural and urban areas will cause roads with the same classification to have characteristics that are somewhat different, depending on whether they are in rural, small urban or urbanized areas. Thus, the qualitative narrative in *Highway Functional Classification* is useful and valid.

The consolidation of rural and urban designations means that some functional classifications that previously existed in only one area-type will now be recognized as valid in all area-types.

a. Other Freeways and Expressways were previously identified in small urban or urbanized areas only. As of this interim guidance, this classification can be extended into rural areas, where facilities of these functional and design characteristics exist. Beginning in 2010, all existing Other Freeways and Expressways (Principal Arterials) as of December 31, 2009, should be identified and reported by the States. Additional study is needed to determine if the States are consistent in their identification of Other Freeways and Expressways and whether and how greater consistency could be achieved.

b. Major and Minor Collectors were previously identified in rural areas only, while in small urban and urbanized areas, the corresponding classification was simply, Collectors (urban Collectors). As of this interim guidance, States may continue to classify Major and Minor Collectors in rural areas in the same manner as they have in the past. Beginning in 2010, all existing urban Collectors as of December 31, 2009 are to be reported in HPMS as Major Collectors. At their option, States may identify Minor Collectors within small urban or urbanized areas from this "pool" of existing Major Collectors*. Additional study is needed to determine what qualitative similarities and differences exist between Minor Collectors in rural areas and those in small urban or urbanized areas.

c. Information [23 CFR 1.5 and 1.7] about whether the route is in a rural or small urban or urbanized area shall be reported separately in HPMS with a rural-urban designation as well as geo-spatially.

Based on these changes to functional classification, the following revised functional classification codes should be used beginning with the 2009 data, reported in 2010.

Revised HPMS Functional Classification Codes:

1 = Interstate
2 = Other Freeways and Expressways
3 = Other Principal Arterial
4 = Minor Arterial
5 = Major Collector
6 = Minor Collector
7 = Local

* The, definition of Federal-Aid Highways in 23 USC 101(a)(5) is unchanged by this revision to functional classification labels. Rural Minor Collectors (or Minor Collectors located in rural areas) will remain excluded by the definition of Federal-Aid Highways (unless on the National Highway System (NHS)), while urban Minor Collectors (or Minor Collectors located in small urban or urbanized areas) will be included in the definition of Federal-Aid Highways. See Section 1 for information as to how rural and urban data will continue to be maintained.

3. Extent analysis (mileage and VMT percentage ranges)

The consolidation of rural and urban designations in functional classifications impacts the validity of the information provided in *Highway Functional Classification* about the extent of functional systems, both in terms of mileage and VMT. While these percentages were guidelines, additional study is needed to determine how valid the existing extent guidance may be, how it may be adapted to the rural/urban neutral "world," and what, if any, different extent guidance should be provided in the future. Until additional study is completed, States should adhere to the simplified extent guidance, below, that affects the lane mileage and VMT apportionment factors:

Related to the apportionments on the Surface Transportation Program (STP) and Highway Safety Improvement Programs (HSIP):

All Arterials and Collectors combined – maximum of 35 percent of statewide route mileage. (Rural Minor Collector mileage and VMT does not contribute, but it is included here as "Collectors" because the existing extent guidance does not break out any separate guidance for them.)

All Arterials and Collectors combined – between 70 percent and80 percent of statewide VMT.

Related to NHS apportionment:

Rural Principal Arterials – maximum of 4 percent of statewide route mileage and between 30 percent and 55 percent of statewide VMT.

Urban Principal Arterials – maximum of 10 percent of statewide route mileage and between 40 percent and 65 percent of statewide VMT.

Although rural and urban Principal Arterials will be consolidated into Principal Arterials, rural and urban data will continue to be created in the HPMS database by combining functional class and rural/urban designation codes.

Note that the extent guidance in *Highway Functional Classification* is intended to be applied on a **statewide** basis, rather than by county, or by individual urbanized or small urban area. Any future extent guidance resulting from additional study will also be provided on the premise that it is for statewide application.

4. Clarification: "Future Year" and "Future Route"

Future Year

The existing guidance, *Highway Functional Classification*, contains over 30 references to the phrase, "future year." In none of these instances does the guidance provide a range of years out to which States may project "future year" classifications, except to say that, "The base for a "future year" population should be the most recent Decennial Census" (page III-2) (or special Census). In practice, most States have used the current year for designating functional classifications. Other States have projected "future year" classifications three to five years out; some have projected out considerably longer.

A wide variability in the use of the "future year" concept has implications for HPMS data consistency across the nation, as well as for federal funding opportunities (mileage eligible for federal assistance and included in the apportionment formulas). In order to improve consistency in this area, it is recommended that States assign functional classification according to the current year.

Future Route

One of the references to a "future year" functional classification plan in *Highway Functional Classification* includes the following: "it will include, in addition to existing facilities, such projected totally new facilities as will be needed to serve "future year" land use and travel. Some of this new mileage will consist of new streets in expanding urban areas." (Page III-1) This is a reference to "future routes." The "future route" is an individual, unbuilt facility, planned to function at a specific level once built. The 1991 Addendum to *Highway Functional Classification* recognized that additional guidance was needed for "future routes," as distinct from "future year" functional classifications. As stated in the 1991 Addendum to *Highway Functional Classification*:

The manual discusses procedures for conducting a functional classification based on projected facilities and usage for some "future year"; however, the manual does not provide criteria for including future or proposed routes into a functional classification of existing facilities. Because the functional classification will support the designation of the NHS which is expected to include some

> future routes, this addendum establishes criteria for determining which future routes should be included in the functional classification of existing routes. Future routes should be functionally classified with the existing system if they are included in an approved short range improvement program and there is a good probability that the route will be under construction in the reasonably near future (up to 6 years). Where applicable, the same classification should be given to the future route and to the existing route that it will replace until the future route is constructed.

The "up to 6 years" timeframe given in the preceding paragraph mentions "an approved short range improvement program" but does not specify the Statewide Transportation Improvement Program (STIP). As of this interim guidance, the timeframe in which the "future route" is expected to be under construction should generally be consistent with the STIP timeframe of 4 years or less.

Note that the mileage of a "future route" should not be included in public road mileage or lane-miles or vehicle-miles traveled for apportionment purposes until it is built and open to traffic. In addition, for HPMS reporting purposes, only data about a "future route" which is to become part of the NHS should be reported. At their option, States may propose other "future routes" to be part of their functional classification system, i.e., routes which will be eligible for STP rather than NHS. If using this option, States would be in compliance with the above guidance.

5. Ramps and Other Non-mainline Roadways

Beginning with the reporting of 2009 HPMS data in 2010, data for ramps and other non-mainline roadways **should be reported** for those meeting the ramp criteria described below. As noted, data for these roadways should include functional classification. Additional data requirements for ramps will be specified in the final HPMS Reassessment Report and revised *HPMS Field Manual*.

Ramps

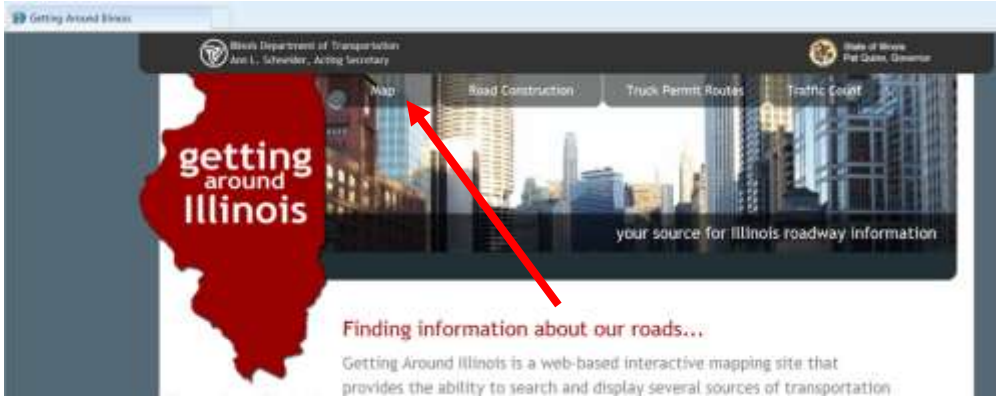
- Associated with grade-separated interchanges
- Turning movement facility that moves traffic between two or more (functionally classified) facilities; may include collector-distributor (CD) roads
- Assigned same functional classification as the highest facility served within the interchange

Note that at this time, there is no change to the status of ramps with respect to public road mileage or lane mileage or vehicle-miles traveled for apportionment purposes; they are not considered mainline and are not included in those public road mileage inventories.

Other Non-mainline Roadways

At their option, States may collect data and assign functional classifications to other kinds of non-mainline roadways. These may include other collector-distributor roads, other turning movement facilities not associated with a grade-separated interchange, and other auxiliary roadways. In general, such roadways within the interchanges should be assigned the same functional classification as the highest facility served. However, since many configurations exist, States may assign the functional classification as they deem appropriate. While data for other non-mainline roadways is not required for HPMS, States have the option of reporting it beginning with the 2009 HPMS data reported in 2010.

From the Getting Around Illinois site http://www.gettingaroundillinois.com/
click a tab to get to the map.



Click the "Map Type" and then click "Roadway Functional Class"

Zoom into an area to check the Functional Classification of a roadway using the wheel of your mouse or the tools on the left side of the application. The Local Road classification is not color banded.

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2012-04

SUBJECT: 2010 HIGHWAY CAPACITY MANUAL

ISSUED DATE: October 24, 2012

EFFECTIVE DATE: October 24, 2012

This memorandum revises Section 27-6 of the Bureau of Local Roads & Streets Manual issued January 2006.

The fifth edition of the *Highway Capacity Manual (HCM2010)* will significantly enhance how engineers and planners assess the traffic and environmental effects of highway projects. Section 27-6 has been updated to provide a basic overview of the concepts contained in the *HCM2010*.

This four-volume format was developed to provide information at several levels of detail, to help HCM users more easily apply and understand the concepts, methodologies, and potential applications presented in the manual.

- Volume 1 - Concepts;
- Volume 2 - Uninterrupted Flow;
- Volume 3 - Interrupted Flow; and
- Volume 4 - Applications Guide (electronic only)

Volume 4 is an electronic-only volume that registered HCM users will be able to access via the Internet. This volume includes four types of content: supplemental chapters on methodological details and emerging issues; interpretations, clarifications, and corrections; comprehensive case studies; and a technical reference library.

Copies of the *HCM2010* may be purchased from the Transportation Research Board's book store at http://books.trbbookstore.org/hcm10.aspx.

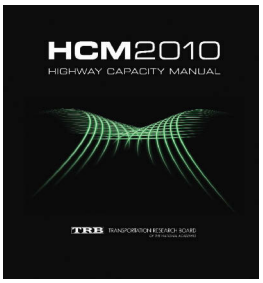
Please contact the Local Policy & Technology Unit at DOT.LocalPolicy@illinois.gov with any questions.

James K. Klein

Acting Engineer of Local Roads and Streets

Attachments

NEW TRB PUBLICATION



Highway Capacity Manual 2010

PAUL RYUS, MARK VANDEHEY, LILY ELEFTERIADOU, RICHARD G. DOWLING, AND BARBARA K. OSTROM

Ryus is Associate Engineer, Kittelson & Associates, Inc., Svendborg, Denmark; Vandehey is Managing Principal, Kittelson & Associates, Inc., Portland, Oregon; Elefteriadou is Professor of Civil Engineering and Director of the Transportation Research Center, University of Florida, Gainesville; Dowling is President, Dowling Associates, Inc., Oakland, California; and Ostrom is Principal Engineer, MACTEC Engineering and Consulting, Beltsville, Maryland.

The fifth edition of the *Highway Capacity Manual* (HCM 2010), recently released by the Transportation Research Board (TRB), incorporates results from more than $5 million of research completed since the publication of the HCM 2000. This latest edition significantly updates the methodologies that engineers and planners use to assess the traffic and environmental effects of highway projects.

HCM 2010 introduces several firsts, including

- An **integrated multimodal approach** to the analysis and evaluation of urban streets from the points of view of automobile drivers, transit passengers, bicyclists, and pedestrians;
- Guidance on the proper **application of microsimulation analysis** and the evaluation of those results;
- The presentation of **active traffic management** in relation to demand and capacity; and
- **Generalized service volume tables** to assist planners in sizing roadway facilities.

Key Changes

Following are some of the key changes in the HCM 2010:

- The **signalized intersections** procedure models the operation of an actuated controller. A new incremental queue accumulation (IQA) method calculates the delay term d_1 and the length term Q_1. Although equivalent to the HCM 2000 method for the idealized case, the IQA method is more flexible and can accommodate nonideal cases, such as coordinated arrivals and multiple green periods with differing saturation flow rates, which can occur with protected-plus-permitted left turns. A check procedure for left-turn lane overflow also has been added.
- **Unsignalized intersections**, previously a single chapter, now are described in three chapters, covering two-way STOP-controlled (TWSC) intersections, all-way STOP-controlled (AWSC) intersections, and roundabouts. The TWSC method in the HCM 2010 can analyze intersections along six-lane streets, and the AWSC method now includes a queue-estimation procedure. The roundabout material is completely updated, based on the work of National Cooperative Highway Research Program (NCHRP) Project 3-65,[1] which developed a comprehensive database of U.S. roundabout operations and established new methodologies for evaluating roundabout performance. The chapter adds a level-of-service (LOS) table for roundabouts.
- The **interchange ramp terminals** chapter has

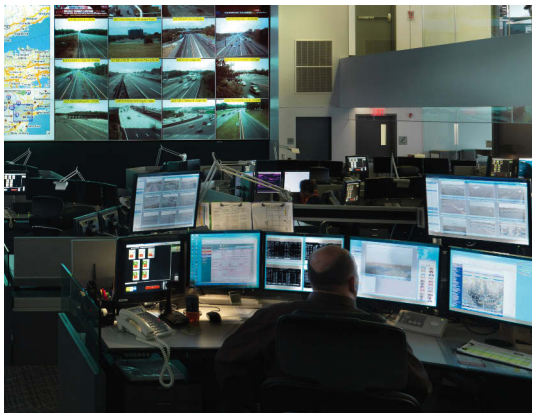


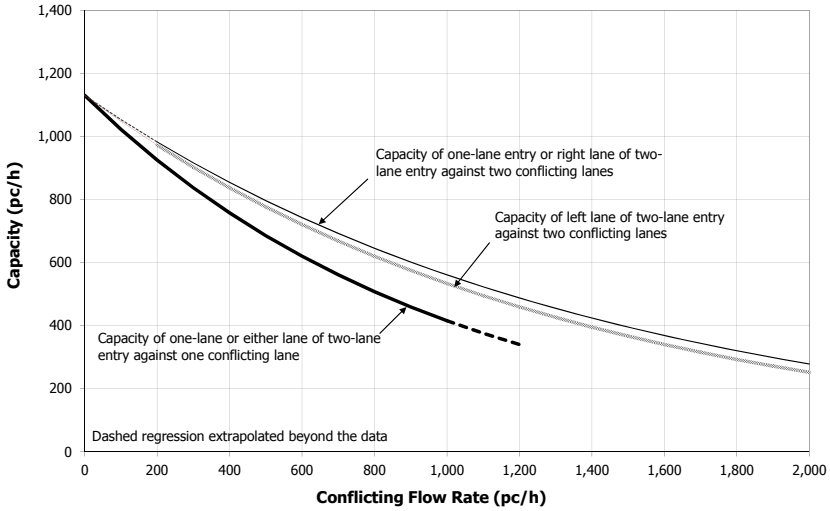
Photo: New Jersey Turnpike Authority

HCM 2010 features findings on active traffic management, which strategically deploys an array of measures to relieve congestion.

Photo: Minnesota DOT

Among the new features of HCM 2010 is updated material on the impact of weather and work zones on freeway capacity.

[1] For titles of the NCHRP projects cited in this article, see the sidebar on page 48.



Capacity of roundabout entries, from Chapter 21; the roundabout material in HCM 2010 is completely updated and includes new methodologies for evaluating performance.

been completely updated with findings from the work of NCHRP Projects 3-60 and 3-60A. The chapter describes a new method for conducting operational analyses and obtaining the LOS for a full range of service interchange types—diamond, partial cloverleaf, and the single-point urban interchange. The chapter includes a methodology for assessing the operational performance of various types of interchanges and making an appropriate selection.

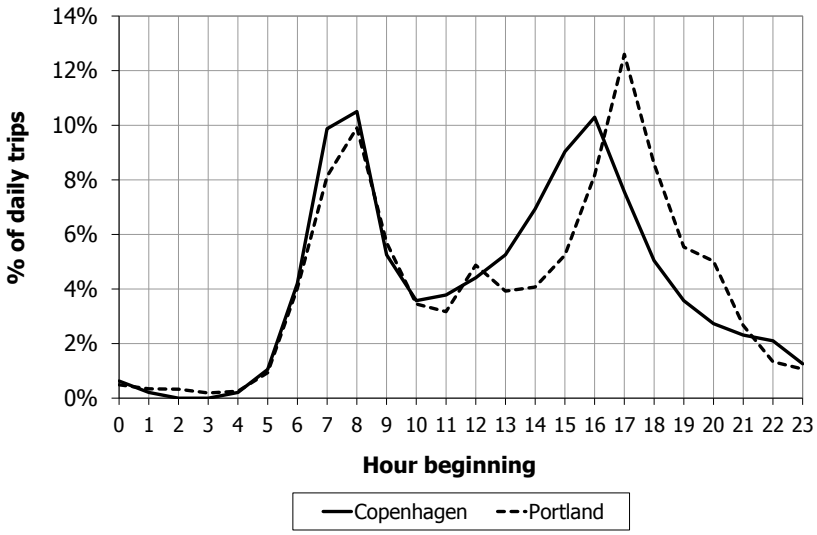
◆ The **urban street segments** chapter has been rewritten, incorporating the work of NCHRP Project 3-79. The chapter presents improved methods for estimating urban street free-flow speeds and running times, as well as a new method for estimating the stop rate along an urban street. In addition, NCHRP Project 3-70 has provided a methodology for evaluating tradeoffs in allocating urban street right-of-way among the modes.

◆ A new **urban street facilities** chapter traces out a methodology for aggregating results from the segment and point levels of analysis into a facility assessment. Information is provided on the impact of active traffic management measures on urban street performance.

◆ The **freeway facilities** chapter introduces a table for LOS based on density. Other updates include material on the impact of weather and work zones on freeway facility capacity, plus new information on the impact of active traffic management measures on freeway operations.

◆ The **freeway weaving** chapter has been completely updated with findings from NCHRP Project 3-75. Although the general process for analyzing weaving segments is similar to that given in HCM 2000, the HCM 2010 models derive from an up-to-date set of weaving data. The two major differences in applying the methodology are (*a*) a single algorithm for predicting weaving speeds and a single algorithm for predicting nonweaving speeds, regardless of the weaving configuration, and (*b*) the threshold for LOS F has changed.

Hourly variations in bicycle volumes for two cities that have invested in infrastructure and programs: Copenhagen, Denmark, and Portland, Oregon; from HCM 2010, Chapter 3.



New Approaches

A new chapter on **active traffic management**, based on research produced and compiled by the Federal Highway Administration (FHWA), describes various strategies to relieve highway congestion; the mechanisms affecting demand, capacity, and performance; and general guidance on evaluating active traffic management techniques. Strategies discussed include roadway metering, congestion pricing, traveler information systems, managed lanes, traffic signal control, and speed harmonization.

The HCM 2010 examines the use of **alternative tools** in conjunction with techniques presented, applying research conducted under NCHRP Project 3-85. Chapter 6 describes typical applications of HCM and alternative analysis tools, and Chapter 7 offers guidance on interpreting the results from alternative tools. In addition, each methodological chapter contains specific guidance on the application of the tools in analyzing a facility. Several examples illustrate the use of alternative tools in conjunction with the HCM 2010.

To encourage HCM users to consider all travelers, the HCM 2010 incorporates tools for **multimodal analysis** along highway facilities. This is the first edition of the HCM that takes into account the effects of cars on bicyclists and pedestrians. The stand-alone chapters for the bicycle, pedestrian, and transit modes have been eliminated—instead, the methods applicable to bicycles, pedestrians, and transit have been incorporated into the analyses of the various roadway facilities. For methodologies specific to the operation of transit vehicles on urban streets, readers can con-

Photo: Dan Burden, Pedestrian and Bicycle Information Center

A shared pedestrian–bicycle path in San Luis Obispo, California. HCM 2010 updates off-street shared-use path procedures.

sult *TCRP Report 100: Transit Capacity and Quality of Service Manual*.

To assist planners in sizing highway facilities, the HCM 2010 includes **generalized service volume tables** that show the maximum demand volumes for a given LOS under a specified set of conditions. The HCM 2010 also provides **computational engines** to assist users in applying some of the intensive methods.

Additional Changes

Smaller changes have been implemented throughout the manual. For example, the speed–flow curves in the chapter on **basic freeway segments** have been updated with an expanded database. Small changes in the ramps and ramp junctions material—now called **freeway merges and diverges**—check and correct for unreasonable lane distributions. The **two-lane highways** chapter now provides only a one-directional methodology, and several key tables and curves have been updated. Finally, the **off-street shared-use path** procedures have been updated with U.S. data.

Multivolume Format

The new manual has retained many of the stylistic elements introduced in the HCM 2000, such as the page layout formats. The HCM 2010 content, however, is organized into four volumes—Concepts, Uninterrupted Flow, Interrupted Flow, and Applications Guide. The first three volumes are issued as a slipcased set of three looseleaf volumes; Volume 4 is electronic only. The four-volume structure delivers information at several levels of detail, to help HCM users apply and understand the concepts, methodologies, and potential applications.

Volume 1: Concepts presents the basic information that an analyst should master before performing analyses of highway capacity or quality of service. The chapters cover the organization of the HCM 2010; the kinds of applications that can be performed; modal characteristics; traffic flow, capacity, and quality-of-service concepts; the range of tools available to perform an analysis; guidance on interpreting and presenting analysis results; and the terms and symbols used in the HCM 2010. Chapter 8, HCM Primer, offers an executive summary for decision makers.

Volume 2: Uninterrupted Flow contains methodological chapters relating to system elements, as well as the materials and resources needed to analyze these elements. The description of the process thoroughly conveys the steps involved, including the scope and limitations of the methodology, the specific default values, the LOS thresholds, the handling of special cases, and the application of alternative tools.

The freeway chapters are presented first, arranged from the facility level to the segment level; the chapters on multilane and two-lane highways follow. Volume 2 incorporates the Part III uninterrupted-flow chapters of the HCM 2000, along with material from the corresponding Part II chapters—such as specific default values and LOS thresholds—used directly in an analysis. The chapter on interchange ramp terminals, which appeared with the uninterrupted-flow chapters in the HCM 2000, appears in Volume 3 of the HCM 2010 with the interrupted-flow chapters.

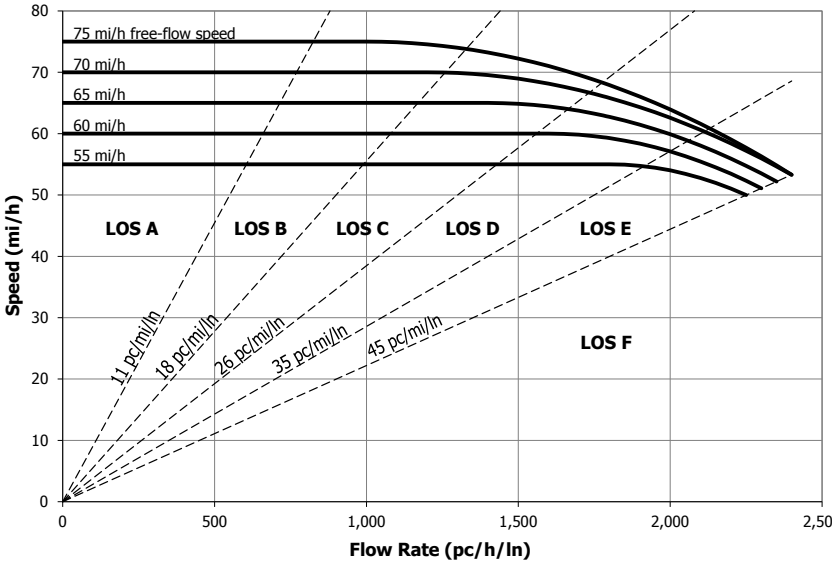
The methodological chapters of **Volume 3: Interrupted Flow** reflect an approach similar to that of Volume 2, starting with a chapter on urban street facilities, followed by urban street segments, the various intersections, and off-street pedestrian and bicycle facilities. The chapters on urban street facilities and segments provide the highest level of multimodal evaluation, presenting methods to determine LOS for motorists, pedestrians, bicyclists, and transit users.

Web Volume

Volume 4: Applications Guide is an electronic-only volume accessible exclusively to registered HCM

HCM 2010 consists of four volumes—three looseleaf volumes in a slipcased set and one electronic-only volume. To order, visit the TRB online bookstore, http://books.trbbookstore.org/hcm10.aspx.

Freeway speed–flow curves, from HCM 2010, Chapter 11 (LOS = level of service; pc = passenger car; ln = lane).



HCM 2010 Research Resources

The following research projects contributed to the development of the HCM 2010:

- NCHRP Project 3-60, Capacity and Quality of Service of Interchange Ramp Terminals;
- NCHRP 3-60A, Validation and Enhancement of the *Highway Capacity Manual*'s Interchange Ramp Terminal Methodology;
- NCHRP Project 3-64, *Highway Capacity Manual* Applications Guide;
- NCHRP Project 3-65, Applying Roundabouts in the United States;
- NCHRP Project 3-70, Multimodal Level of Service Analysis for Urban Streets;
- NCHRP Project 3-75, Analysis of Freeway Weaving Sections;
- NCHRP Project 3-79, Measuring and Predicting the Performance of Automobile Traffic on Urban Streets;
- NCHRP Project 3-82, Default Values for Capacity and Quality of Service Analyses;
- NCHRP Project 3-85, Guidance for the Use of Alternative Traffic Analysis Tools in Highway Capacity Analyses;
- NCHRP Project 3-92, Production of the 2010 *Highway Capacity Manual*; and
- Two FHWA projects: Evaluation of Safety, Design, and Operation of Shared-Use Paths; and Active Traffic Management Measures for Increasing Capacity and Improving Performance.

users via the Internet. This volume includes four types of content: supplemental chapters on methodological details and emerging issues; interpretations, clarifications, and corrections; comprehensive case studies; and a technical reference library.

Chapters 24 through 34 in Volume 4 supplement chapters in Volumes 1, 2, and 3 with

- More detailed descriptions of selected computational methodologies, written for users who seek a greater depth of understanding or who plan to develop HCM implementation software;
- Example applications of alternative tools to situations not addressed by the methodologies in the chapters of Volumes 2 and 3;
- Descriptions of the computational engines for selected methodologies; and
- Additional example problems and calculation results.

In addition, Chapter 35 in Volume 4 provides a first-generation chapter on the impact of active traffic management techniques on roadway operations. As new research is completed, this chapter will be updated, and chapters may be added to address other emerging issues, such as travel time reliability.

The methodological interpretations section also will continue to develop, as users apply the HCM 2010 and pose questions about particular methodologies to the TRB Highway Capacity and Quality of Service (HCQS) Committee. Clarifications and interpretations of the HCM, as well as corrections, officially approved by the committee will be posted in the interpretations section of Volume 4.

The comprehensive case studies illustrate how to use the HCM to perform common types of analyses. The case studies focus on the analysis process in applying the HCM and alternative tools, not on the step-by-step details of performing calculations—calculations are addressed in the example problems in each methodological chapter and in selected supplemental chapters. Case Studies 1 through 5 derive from the web-based *HCM Applications Guidebook* developed after publication of the HCM 2000, and Case Study 6 was developed in conjunction with NCHRP Project 3-85.

Finally, the Technical Reference Library contains a selection of papers, technical reports, and companion documents cited in the HCM.

Community Collaboration

As the HCM has grown in the decades since its debut in 1951, the content has long since ceased to be the product of a few highly competent experts or of a single technical committee. The HCM 2010 has benefited from the extensive involvement of the professional community to an extent that far surpasses that of previous editions.

A series of practitioner focus groups conducted through NCHRP Project 3-92 and the HCQS Committee supplied valuable insights on the HCM content and organization. More than 300 professionals—many new to TRB—along with members of the HCQS Committee and participants in the manual development process contributed to the year-long review of the chapters.

Four committees from the TRB Technical Activities Operations Section provided reviews and comments on drafts of the manual. Finally, the HCQS Committee's joint summer meetings with local Institute of Transportation Engineers (ITE) sections during the development of the manual, along with focus groups sponsored by ITE, were informative and productive.

The HCQS Committee has invited users of the manual who are interested in improving the profession's understanding of highway capacity and quality of service analysis to participate in the committee deliberations and to provide feedback about the HCM 2010 methods. The committee website, www.AHB40.org, will be available for these interactions.

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2012-05

SUBJECT: MUTCD REVISIONS

ISSUED DATE: October 24, 2012

EFFECTIVE DATE: October 24, 2012

This memorandum revises Section 39-2 of the BLRS Manual dated December 2011.

On May 14, 2012 final rules adopting Revisions 1 and 2 of the 2009 Manual on Uniform Traffic Control Devices (MUTCD) were published in the Federal Register with an effective date of June 13, 2012.

Revision 1 of the 2009 edition of the MUTCD restores certain language contained in the 2003 MUTCD edition. The restoration of such language will continue FHWA's current practice under Official Interpretation 1(09)–1(I) which states that in limited, specific cases, deviation from a STANDARD is allowed at a location or other locations with the same conditions, provided that an agency or other official having jurisdiction fully documents the engineering reason for the deviation. The Illinois Supplement to the MUTCD incorporated the FHWA Official Interpretation when issued; therefore, Revision 1 should not impact Illinois highway agencies.

Revision 2 of the 2009 edition of the MUTCD 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.

Even though the compliance date for meeting the minimum retroreflectivity for street name signs has been eliminated, street name signs and overhead guide signs are still required to meet the minimum retroreflectivity requirements contained in the MUTCD. Therefore, the department recommends using the original compliance date of January 22, 2018 as a target date for complying with the retroreflectivity requirements for these signs. These signs should also be covered in the assessment or management method selected for regulatory and warning signs.

Section 39-2.07 Dimensions was also added to the BLRS Manual to clarify that engineering judgment may be used to adjust sign size requirements contained in the conventional road column in the various sign size tables in the MUTCD.

Please contact the Local Policy & Technology Unit at DOT.LocalPolicy@illinois.gov with any questions.

James K. Klein

Acting Engineer of Local Roads and Streets

Attachments

FEDERAL REGISTER

Vol. 77 Monday,

No. 93 May 14, 2012

Part IV

Department of Transportation

Federal Highway Administration

23 CFR Part 655

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

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–2010–0170]

RIN 2125–AF41

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

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

ACTION: Final rule.

SUMMARY: The MUTCD is incorporated in the FHWA 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 definitions and guidance relating to traffic control devices in Part 1 (General) of the MUTCD. The changes will clarify the definition of Standard statements in the MUTCD and clarify the use of engineering judgment and studies in the application of traffic control devices.

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://www.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 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). In the 2009 edition of the MUTCD, the FHWA made clarifying revisions to the 2003 edition of the MUTCD to remove conflicting language and provide consistency in the intended use of engineering judgment and engineering studies. After issuance of the Final Rule for the 2009 MUTCD, FHWA received correspondence from several entities indicating that the clarifying revisions had the effect of removing highway agencies' flexibility to address field conditions. This was not FHWA's intention. Thus, on August 2, 2011 the FHWA published a Notice of Proposed Amendment (NPA) proposing revisions to the MUTCD to address these concerns.

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

In consideration of the comments received in response to the NPA, this Final Rule restores certain language contained in the 2003 MUTCD edition. The restoration of such language will continue FHWA's current practice under Official Interpretation 1(09)–1 (I) which states that in limited, specific cases, deviation from a STANDARD is allowed at a location or other locations with the same conditions, provided that an agency or other official having jurisdiction fully documents the engineering reason for the deviation. The MUTCD, with these changes incorporated, is being designated as Revision 1 of the 2009 edition of the MUTCD.

III. Costs and Benefits

The changes in the MUTCD will provide additional clarification, guidance, and flexibility in the application of traffic control devices. The FHWA believes that the uniform application of traffic control devices will greatly improve the traffic operations efficiency and roadway safety. The standards, guidance, and support are also used to create uniformity and to enhance safety and mobility at little additional expense to public agencies or the motoring public. These changes are not anticipated to adversely affect, in any material way, any sector of the economy. In addition, these changes will not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Although FHWA did not quantify the costs, we believe they will be minimal. One benefit of this rule is reduced expenditures for locations with identical conditions. For example, when a deviation is found to be warranted and can be justified, these locations will not have to spend funds on repetitive or duplicative engineering studies. In addition, since the rule restores language from the 2003 edition of the MUTCD, agencies would not have to expend resources to modify their existing operating procedures.

Background

On August 2, 2011, at 76 FR 46213, the FHWA published an NPA proposing revisions to the MUTCD. Interested persons were invited to submit comments to the FHWA Docket Number FHWA–2010–0170. 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 1 of the 2009 edition of the MUTCD.

The text of Revision 1 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 Revision 1 of the 2009 edition of the MUTCD, with these final rule changes incorporated, is available on the FHWA's MUTCD Web site at: *http://mutcd.fhwa.dot.gov.* The original 2009 edition of the MUTCD and the 2003 edition of the MUTCD with Revisions 1 and 2 incorporated are also available on this Web site. Revision 1 of the 2009 edition of the MUTCD supersedes all previous editions and revisions of the MUTCD.

Summary of Comments

The FHWA received, reviewed, and analyzed the 51 letters submitted to the docket, which contain more than 125 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), State departments of transportation (DOTs), city and county government agencies, other associations, transportation consultants, and

individual private citizens submitted comments.

The AASHTO generally supported FHWA's proposal to remove the last sentence in the definition of STANDARD in Section 1A.13; however, it expressed that the value of such a change would be minimized by the proposed language in Section 1A.09 regarding the use of engineering judgment and engineering studies. The AASHTO asserted that FHWA's proposed language in Section 1A.09 was insufficient because it did not include additional sentences from the 2003 edition of the MUTCD GUIDANCE statement that emphasized the importance of using engineering judgment in the placement of traffic control devices. The AASHTO also disagreed with the OPTION statement proposed for Section 1A.09 in the NPA, contending that it limited the application of engineering judgment or an engineering study to a specific site. The AASHTO submitted a second letter recommending a new sentence that would allow programmatic deviations from a STANDARD based on an engineering study. The NCUTCD, APWA, NACE, 23 State DOTs, 4 local agencies, and 1 transportation consultant submitted comments similar to AASHTO's first letter.

The ATSSA and the Association of American Railroads supported the NPA in its entirety and specifically disagreed with AASHTO's comments regarding Section 1A.09. Three transportation consultants asserted that the definition of STANDARD and the 2009 edition of the MUTCD's text on the application of engineering judgment and studies are appropriate and do not need to be revised. These comments, including those raised by AASHTO that are identified above, are discussed in more detail in the section-by-section discussions below for both 1A.13 and 1A.09.

Comments Outside the Scope of the Rulemaking

In addition to commenting on the proposed changes, AASHTO and four State DOTs suggested that the FHWA use this rulemaking process to address the issue of ''substantial conformance'' of State MUTCDs, as defined in the Code of Federal Regulations (CFR). Specifically, AASHTO suggested that FHWA issue interim final rules to revise 23 CFR 655.602 and 655.603 so that States could apply engineering judgment and studies to delete STANDARDS from their State MUTCDs and still have their State MUTCDs accepted by FHWA as being in substantial conformance with the national MUTCD. The meaning of ''substantial conformance'' was considered and established through a final rule published in the **Federal Register** on December 14, 2006 at 74 FR 75111. Because the NPA for this rulemaking did not propose any changes to this meaning and did not solicit public comments about this topic, this issue is outside the scope of this rulemaking and will not be addressed in this final rule.

Three States also expressed concern with compliance dates, suggesting that compliance dates the States viewed as unessential be removed or delayed. One State also suggested that FHWA address systematic upgrading of traffic control devices in this rulemaking. Comments related to the issue of compliance dates listed in the MUTCD are currently being considered in response to an NPA published in the **Federal Register** on August 31, 2011 at 76 FR 54156. Because the NPA for this rulemaking did not propose any changes to the compliance dates or to the meaning of ''systematic upgrading of traffic control devices'' and did not solicit public comments about these topics, these issues are outside the scope of this rulemaking and will not be addressed in this final rule.

Discussion of Comments by Section

1. In the MUTCD Section 1A.13, Definitions of Headings, Words, and Phrases, the FHWA proposed in the NPA to delete the last sentence in the definition of the heading STANDARD. This sentence, which was added in the 2009 edition of the MUTCD, stated:

> Standard statements shall not be modified or compromised based on engineering judgment or engineering study.

The majority of commenters, including AASHTO, NCUTCD, APWA, NACE, State DOTs, and local agencies, supported removing this sentence. Two States suggested adding language to the definition of STANDARD to help clarify that site-specific conditions may make it impossible or impractical for an agency to comply with a STANDARD. The FHWA believes that such a change is not necessary because restoration of certain GUIDANCE statements from the 2003 MUTCD will provide for deviation from a STANDARD in limited, specific cases at a location, or other locations with the same conditions, provided that an agency or other official having jurisdiction fully documents the engineering reason for the deviation. Therefore, the FHWA adopts the removal of this sentence from the definition of STANDARD in Section 1A.13, as proposed in the NPA.

The NCUTCD, APWA, and NACE also suggested that the definitions for ''engineering judgment'' and ''engineering study'' in Section 1A.13 should be restored to the text found in the 2003 edition of the MUTCD. Specifically, these commenters reasoned that because this rulemaking pertains to exercising engineering judgment and using engineering studies to make traffic control device decisions, it is appropriate to restore the definitions of these terms to the ones contained in the 2003 edition of the MUTCD. The FHWA did not propose any changes to the definitions of ''engineering judgment'' or ''engineering study,'' which are contained within a STANDARD statement in Section 1A.13, and thus any changes to these definitions are outside the scope of this rulemaking. The FHWA might give consideration to proposing revisions to these definitions in conjunction with a future NPA for the next edition of the MUTCD.

2. In Section 1A.09, Engineering Study and Engineering Judgment, FHWA proposed in the NPA to add a GUIDANCE paragraph stating that the decision to use a particular device at a particular location should be made on the basis of either an engineering study or the application of engineering judgment. The FHWA proposed this change in order to reinstate one of the three GUIDANCE sentences in the 2003 edition of the MUTCD that had been removed in the 2009 edition of the MUTCD. The AASHTO, NCUTCD, APWA, NACE, and the majority of the State and local agencies supported FHWA's proposal, but felt that it was insufficient because it did not include restoration of the two other sentences from the 2003 edition of the MUTCD GUIDANCE statement. Those second and third sentences stated:

> Thus, while this Manual provides Standards, Guidance, and Options for design and applications of traffic control devices, this Manual should not be considered a substitute for engineering judgment. Engineering judgment should be exercised in the selection and application of traffic control devices, as well as in the location and design of roads and streets that the devices complement.

Specifically, AASHTO stated that the exclusion of the second sentence from the 2003 edition of the MUTCD GUIDANCE statement, coupled with FHWA's proposal, would not adequately support the reinstatement of engineering judgment into the application of traffic control devices. The NCUTCD, NACE, and APWA suggested that only the second sentence from the 2003 edition of the GUIDANCE statement should be restored. Two State

DOTs agreed with the NPA as proposed. Three transportation consultants disagreed with the proposed GUIDANCE in the NPA, asserting that the application of engineering judgment and studies as described in the 2009 edition of the MUTCD is appropriate and does not need to be revised.

In a second letter to the docket, AASHTO also recommended adding a new, fourth sentence to the GUIDANCE that would state:

> An engineering study is required for programmatic deviations from Standards contained within this Manual.

Such language effectively would allow agencies to deviate from a STANDARD on a programmatic basis, rather than based on impracticality at a specific site supported by engineering judgment or study. As noted in the NPA, it is not and has never been the intention of the FHWA to authorize a highway agency to adopt or implement broad policies or practices that deviate from a STANDARD on a blanket or programmatic basis jurisdictionwide, regionwide, on all highways of a particular class, or using similar criteria. Therefore, FHWA believes adding a fourth sentence of GUIDANCE as suggested by AASHTO's second letter is not appropriate.

In the NPA, FHWA proposed to add a new OPTION paragraph stating that when an engineering study or the application of engineering judgment determines that unusual site-specific conditions at a particular location make compliance with a STANDARD statement impossible or impractical, an agency may deviate from that STANDARD statement at that location. The AASHTO, NCUTCD, APWA, NACE, and 20 State DOTs disagreed and suggested that this language be removed because such an application would be overly restrictive and financially burdensome on agencies. Specifically, these commenters stated that such language would require jurisdictions to study each site individually, even where multiple locations with the same or similar conditions make a particular deviation necessary. Additionally, several State agencies indicated that the proposed OPTION statement did not reflect the intent of FHWA's Official Interpretation number 1(09)–1 (I),[1] dated October 1, 2010, which states that in limited, specific cases, deviation from a STANDARD is allowed at a location or other locations with the same conditions, provided that an agency or other official having jurisdiction fully documents the engineering reason for the deviation. We would note that FHWA did not intend for the proposed OPTION language to trigger studies for each location with similar conditions. Nevertheless, FHWA has determined that the OPTION paragraph proposed in the NPA is not needed because the topic is adequately addressed by Official Interpretation 1(09)–1 (I), which is still in effect.

In consideration of the comments received and our determination that the OPTION language in the NPA is not needed, we have decided, instead, to restore the three 2003 MUTCD GUIDANCE sentences that were subsequently removed in the 2009 MUTCD edition. The inclusion of such language will continue our current practice under Official Interpretation 1(09)–1 (I) to allow deviations from a STANDARD only on the basis of either an engineering study or the application of engineering judgment. Thus, the GUIDANCE language in Section 1A.09 will now read as follows:

> The decision to use a particular device at a particular location should be made on the basis of either an engineering study or the application of engineering judgment. Thus, while this Manual provides Standards, Guidance, and Options for design and applications of traffic control devices, this Manual should not be considered a substitute for engineering judgment. Engineering judgment should be exercised in the selection and application of traffic control devices, as well as in the location and design of roads and streets that the devices complement.

The FHWA will continue to consider matters raised by this rulemaking to inform future decisions regarding the MUTCD.

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 is a significant regulatory action within the meaning of Executive Order 12866 and within the meaning of U.S. Department of Transportation regulatory policies and procedures because of the significant public interest in the MUTCD. Additionally, this action complies with the principles of Executive Order 13563. The changes in the MUTCD will provide additional clarification, guidance, and flexibility in the application of traffic control devices. The FHWA believes that the uniform application of traffic control devices will greatly improve the traffic operations efficiency and roadway safety. The standards, guidance, and support are also used to create uniformity and to enhance safety and mobility at little additional expense to public agencies or the motoring public. These changes are not anticipated to adversely affect, in any material way, any sector of the economy. In addition, these changes will not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

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 of this action on small entities, including small governments. The FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities. This rule will provide clarification and additional flexibility.

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 action will 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 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, and changes made by this rule are directed at enhancing safety. To the extent that these amendments may 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 does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995). The changes provide additional

[1] This Official Interpretation of the MUTCD can be viewed at the following Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/1_09_1.htm.*

guidance, flexibility, and clarification and will 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, Pavement Markings, 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]

[FR Doc. 2012–11712 Filed 5–10–12; 4:15 pm]

BILLING CODE 4910–22–P

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:

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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]

[FR Doc. 2012–11710 Filed 5–10–12; 4:15 pm]

BILLING CODE 4910–22–P

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2012-06

SUBJECT: CONSULTANT AGREEMENTS

ISSUED DATE: November 15, 2012

EFFECTIVE DATE: February 1, 2013

This memorandum combines Section 5-5 and 5-6 of the BLRS Manual dated January 2012 and July 2006.

On November 30, 2005, Public Law 109-115, HR 3058 amended 23 CFR 112(b)(2) relating to the award of consultant services when using federal-aid funding. This amendment eliminated existing provisions of the law allowing alternative State procedures to select and procure consultant services on other than small purchases less than $150,000. The Code of Federal Regulations (CFR) has not yet been amended based on this public law. The Illinois Division of the Federal Highway Administration (FHWA) made the Central Bureau of Local Roads & Streets (BLRS) aware of this issue on February 15, 2012 and requested that Section 5-6 of the BLRS Manual be updated accordingly.

The FHWA has developed the *Federal-Aid Essentials for Local Public Agencies* website that provides a series of short videos. Please go to www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=14 to watch the video and review documents concerning Consultant Services Overview.

Also, starting in 2012, the Central BLRS, with cooperation from American Council of Engineering Companies - Illinois (ACEC-IL), began developing a single consultant agreement form for preliminary engineering and construction engineering using Federal-aid (FA), state, Motor Fuel Tax (MFT), or Township Bridge Program (TBP) funding. Form BLR 05510 will be revised to incorporate Forms BLR 05511, BLR 05512, BLR 05610, and BLR 5611. The following forms will be renumbered: Form BLR 05612 will be BLR 05530; Form BLR 05613 will be BLR 05535; and Form BLR 05620 will be BLR 05540.

BLRS Manual Sections 5-5 and 5-6 have been combined to a single section covering all engineering services agreements. Revision marks are not shown since the new Section 5-5 has been entirely revised and reorganized. The following describes major changes:

- Existing relationships with a professional design firm or a sole proprietorship may not be used to meet the Qualification Based Selection (QBS) requirement on any federal-aid funded engineering services contract that exceeds $150,000 and is executed on or after February 1, 2013.
- Master Task Orders – these types of engineering services contracts will allow agencies to define a specific scope of work (i.e. Construction Supervision) that is not tied to a specific project. Task orders will be issued once the consultant is needed.
- Length of Services – the department has established 10 years as a reasonable maximum contract length including any extensions. The local public agency shall comply with any statutory or local ordinance imposing a shorter contract length.
- Conflict of Interests – a new section was developed to identify common conflict of interests that are not allowed. There may be other situations involving conflict of interest not contained in the manual.
- QBS Requirements – the manual has been revised to identify when QBS is required for each funding type.
- Lump Sum – the maximum dollar amount for using lump sum has been increased to $20,000.
- Cost Plus Fixed Fee (CPFF) – the variables contained in this formula have been better defined.
- Direct Labor Multiplier (DLM) – this compensation formula is no longer allowed on federal-aid engineering services contracts.

All engineering services contracts executed on or after February 1, 2013 with FA, state, MFT, or TBP funding shall follow the revised policies established in Section 5-5. The department does not have oversight over contracts for engineering services funded entirely with local funds. However, it is recommended the QBS procedures contained in Section 5-5 be followed. The procurement method used for selection of engineering services will not impact funding for the construction of a project.

Contact the Local Policy & Technology Unit at DOT.LocalPolicy@illinois.gov with any questions.

James K. Klein

Acting Engineer of Local Roads and Streets

Attachments

cc: Norm Stoner, FHWA
Dave Kennedy, ACEC - Illinois

U.S. Department of Transportation
Federal Highway Administration

MEMORANDUM

Subject: **INFORMATION:** Awarding Engineering and Design Services Contracts Based on Brooks Act Requirements

Date: December 12, 2005

From: /s/ Original signed by:
Dwight A. Horne
Director of Program Administration

Refer To: HIPA-20

To: Division Administrators

On November 30, 2005 the President signed into law the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (119 Stat. 2396; Public Law 109- 115, HR 3058 ("the FY 2006 Appropriations Act"). Section 174 of this Act, amends 23 U.S.C. §112(b)(2) relating to the award of engineering and design services (A&E) contracts that are directly related to a construction project and use Federal- aid highway funding. This amendment strikes existing provisions of law and requires that these contracts shall be awarded in the same manner as a contract for architectural and engineering services is negotiated under the "Brooks Act" provisions contained in chapter 11 of 40 U.S.C. (copy attached).

The Brooks Act requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications for the type of engineering and design services being procured, and at a fair and reasonable price. Engineering and design related services are defined in 23 U.S.C. §112 (b)(2)(A) and 23 C.F.R. §172.3 to include program management, construction management, feasibility studies, preliminary engineering, design engineering, surveying, mapping, or other related services. These other services may include professional engineering related services, or incidental services that may be performed by a professional engineer, or individuals working under their direction, who may logically or justifiably perform these services.

The changes resulting from this amendment in Federal law are effective immediately. Effective with the enactment of the FY 2006 Act, §112(b)(2) of title 23 reads as follows:

"(2) Contracting for Engineering and Design Services.- -

A. General Rule.- - Subject to paragraph (3), each contract for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping or architectural related services with respect to a project subject to the provisions of subsection(a) of this section shall be awarded in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40.
B. Performance and Audits- Any contract or subcontract awarded in accordance with subparagraph (A), whether funded in whole or in part with Federal- aid highway funds, shall be performed and audited in compliance with the cost principles contained in the Federal Acquisition Regulations of part 31 of title 48, Code of Federal Regulations
C. Indirect Cost Rates.- Instead of performing its own audits, a recipient of funds under a contract or subcontract awarded in accordance with subparagraph (A) shall accept indirect cost rates established in accordance with the Federal Acquisition Regulations for 1- year applicable accounting periods by a cognizant Federal or state government agency, if such rates are not currently under dispute.
D. Application of Rates.- Once a firm's indirect cost rates are accepted under this paragraph, the recipient of the funds shall apply such rates for the purpose of contract estimation, negotiation, administration, reporting, and contract payment and shall not be limited by administrative or defacto ceilings of any kind.
E. Prenotification; Confidentiality of Data.- A recipient of funds requesting or using the cost and rate data described in subparagraph (D) shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided, in whole or in part, to another firm or another government agency which is not part of the group of agencies sharing cost data under this paragraph, except for written permission of the audited firm. If prohibited by law, such cost and rate data, shall not be disclosed under any circumstances.

F. Subparagraphs (B),(C),(D), and (E) herein shall not apply to the States of West Virginia or Minnesota.

As a result, State and local agencies are no longer entitled to procure engineering and design related service contracts (directly relating to construction) with Federal- aid highway funding using either "alternative" or "equivalent" Brooks Act procedures that were permitted prior to this amendment. State and local agencies will also be required to use the indirect cost rates established by a cognizant agency audit (23 C.F.R. §172.7) based on the cost principles contained in 48 C.F.R. Part 31 for the consultant, eliminating the placing of caps on indirect cost rates.

West Virginia and Minnesota are granted exceptions from the requirements relating to audits, indirect cost rates, pre- notification and confidentiality of data. However these States must also follow the Brooks Act requirements when procuring engineering and design services using Federal- aid highway funding.

We are currently reviewing the Federal Regulations (23 C.F.R. Part 172) pertaining to the administration of engineering and design related services contracts to determine the modifications that may be required to our existing regulations. We are also reviewing the implementing guidance that supports administering engineering and design related service contracts (http://www.fhwa.dot.gov/programadmin/172qa.cfm) to determine what specific changes need to be made to implement Brooks Act procurement policies.

The laws, policies, procedures, and practices that State and local agencies follow in procuring engineering and design related service using Federal- aid highway funding need to comply with the amendments to §112(b)(2) that are contained in Section 174 of the FY 2006 Appropriations Act. Pursuant to the Secretary's authority under 23 U.S.C §315 all requests for proposals (RFPs) issued on or after December 1, 2005 for engineering and design related service contracts directly related to a construction project using Federal- aid highway funding are required to comply with these new requirements. As a result, to ensure compliance with this amendment the Division offices need to review these requirements with their state DOT partners and advise the States of the necessity to revise, as appropriate all requests for proposals that conflict with the Brooks Act requirements that were not authorized on or prior to November 30, 2005.

In the interim, to facilitate the provision of immediate guidance on implementing this amendment to the State DOTs, the Brooks Act provisions and the FAR regulations implementing these requirements are attached. If you have any questions pertaining to the implementation of §174 of the FY 2006 Appropriations Act, please contact Mr. Jon Obenberger (jon.obenberger@fhwa.dot.gov) in my Office, or Mr. Steve Rochlis (steve.rochlis@fhwa.dot.gov) of the Chief Counsel's office.

Procurement, Management, and Administration of Engineering and Design Related Services - Questions and Answers

Last Updated March 2, 2012
Update History (.pdf, 31 kb)

Introduction

This web page provides guidance that supplements Federal laws and regulations relating to the procurement, management, and administration of engineering and design related services using Federal-aid highway program (FAHP) funding. As Federal laws and regulations governing these service contracts are complex, the purpose of the guidance is to clarify the statutory and regulatory requirements of the Federal Highway Administration (FHWA) associated with the use of engineering and design related consultant services.

Definitions

Unless indicated otherwise, the questions and answers pertain to engineering and design related service contracts (as defined in 23 U.S.C. 112(b)(2)(A) and 23 CFR 172.3) using FAHP funding and directly related to an ultimate construction project. Unless otherwise specified, the definition of the terms provided within the definition section of the referenced Federal laws and regulations (23 U.S.C. 101, 40 U.S.C. 1102, 23 CFR 172.3, and 48 CFR 31.001) are applicable to these questions and answers.

While several regulatory requirements and policies contained within these questions and answers are applicable to design-build, public private partnerships, and other innovative project-delivery methods, this guidance is not intended to address these methods. For additional information regarding design-build contracting, please visit the FHWA Design Build web site at: http://www.fhwa.dot.gov/construction/cqit/desbuild.cfm. Information on other innovative contracting methods may be obtained at: http://www.fhwa.dot.gov/construction/cqit/sep14.cfm.

Acronyms

AASHTO - American Association of State Highway and Transportation Officials
CASB - Cost Accounting Standards Board
CE - Categorical Exclusion
CFR - Code of Federal Regulations
CPA - Certified Public Accountant
DBE - Disadvantaged Business Enterprise
DOT - Department of Transportation (or equivalent State highway agency)
FAHP - Federal-aid highway program
FAR - Federal Acquisition Regulation
FHWA - Federal Highway Administration
FONSI - Finding of No Significant Impact
GAGAS - Generally Accepted Government Auditing Standards
NEPA - National Environmental Policy Act
ROD - Record of Decision
U.S.C. - United States Code

Questions and Answers

The guidance is provided in the form of questions and answers that have been categorized as noted below. The statutory and regulatory bases, as well as references to other resource material, are provided where appropriate within each specific question and answer. The references to related questions and answers, statutory and regulatory provisions, and supporting information contained in each response are intended to enhance understanding and provide further clarification of Federal requirements and FHWA policies associated with the use of engineering and design related consultant services.

Select a category to access the available questions and answers.

I. Competitive Negotiation/Qualifications Based Selection Procurement Procedure

II. Other Procurement Procedures
III. Indirect Cost Rates and Audits
IV. Compensation (Payment) Methods
V. Contract Negotiation
VI. Contract Administration
VII. Disadvantaged Business Enterprise (DBE) Considerations
VIII. Conflicts of Interest
IX. Other Considerations

Complete Set of Questions and Answers (.pdf, 0.2 mb)

- "Consultant Services Requirements & Updated Q&A Guidance" Web Conference 03/27/2012
  Recording of web conference conducted on March 27, 2012, to provide a discussion of key Federal requirements and the clarifying guidance provided within the available questions and answers.

Federal-aid Program Overview
Consultant Services

Consultant Services Overview

Certain Federal requirements apply to engineering and design-related consultant services contracts

Companion Resource (PDF, 232 KB) : Includes the printable script for this video

Web Resources: Includes Web links to related Code of Federal Regulations and other links appropriate to this video module.

- Information on FHWA's consultant services policy and guidance
- Additional regulation on administration of engineering and design-related service contracts
- Federal regulations on administration of engineering and design-related service contracts
- Information on consultant services in Q & A format

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To view PDF files, you can use the Acrobat® Reader®.

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2012-07

SUBJECT: ASH TREE REMOVAL DUE TO EMERALD ASH BORER

ISSUED DATE: November 26, 2012

EFFECTIVE DATE: November 26, 2012

This memorandum revises Section 14-1 dated January 2012 of the Bureau of Local Roads & Streets Manual.

The Emerald Ash Borer (EAB), *Agrilus planipennis* Fairmaire, is an exotic beetle that was discovered in southeastern Michigan near Detroit in the summer of 2002. The adult beetles nibble on ash foliage but cause little damage. The larvae (the immature stage) feed on the inner bark of ash trees, disrupting the tree's ability to transport water and nutrients. EAB probably arrived in the United States on solid wood packing material carried in cargo ships or airplanes originating in its native Asia. EAB is also established in Windsor, Ontario, was found in Ohio in 2003, northern Indiana in 2004, northern Illinois and Maryland in 2006, western Pennsylvania and West Virginia in 2007, Wisconsin, Missouri and Virginia in the summer of 2008, Minnesota, New York, Kentucky in the spring of 2009, Iowa in the spring of 2010, Tennessee in the summer of 2010, and Connecticut, Kansas, and Massachusetts in the summer of 2012. Since its discovery, EAB has:

- Killed tens of millions of ash trees;
- Caused regulatory agencies and the USDA to enforce quarantines and fines to prevent potentially infested ash trees, logs or hardwood firewood from moving out of areas where EAB occurs.
- Cost governmental agencies, property owners, nursery operators and forest products industries tens of millions of dollars.

EAB infestation may be controlled or managed by using a combination of methods (biological, chemical, systematic removal, or complete removal). For detailed information and management resources, visit the Emerald Ash Borer website at www.emeraldashborer.info.

The Illinois Department of Agriculture (IDOA) has established a web site to assist and educate individuals about EAB. For the most recent information about confirmed locations, please visit www.agr.state.il.us/eab/.

A Local Public Agency (LPA) may use Motor Fuel Tax (MFT) funds under the general maintenance program for the systematic or complete removal of Ash trees if the following criteria are met:

- LPA is located in the Emerald Ash Borer quarantined zone published by the Illinois Department of Agriculture;
- the Ash trees are located on the public right-of-way or are a potential hazard to vehicle travel;
- the Ash trees to be removed are shown in a detailed inventory; and
- MFT funds are not used to plant replacement trees.

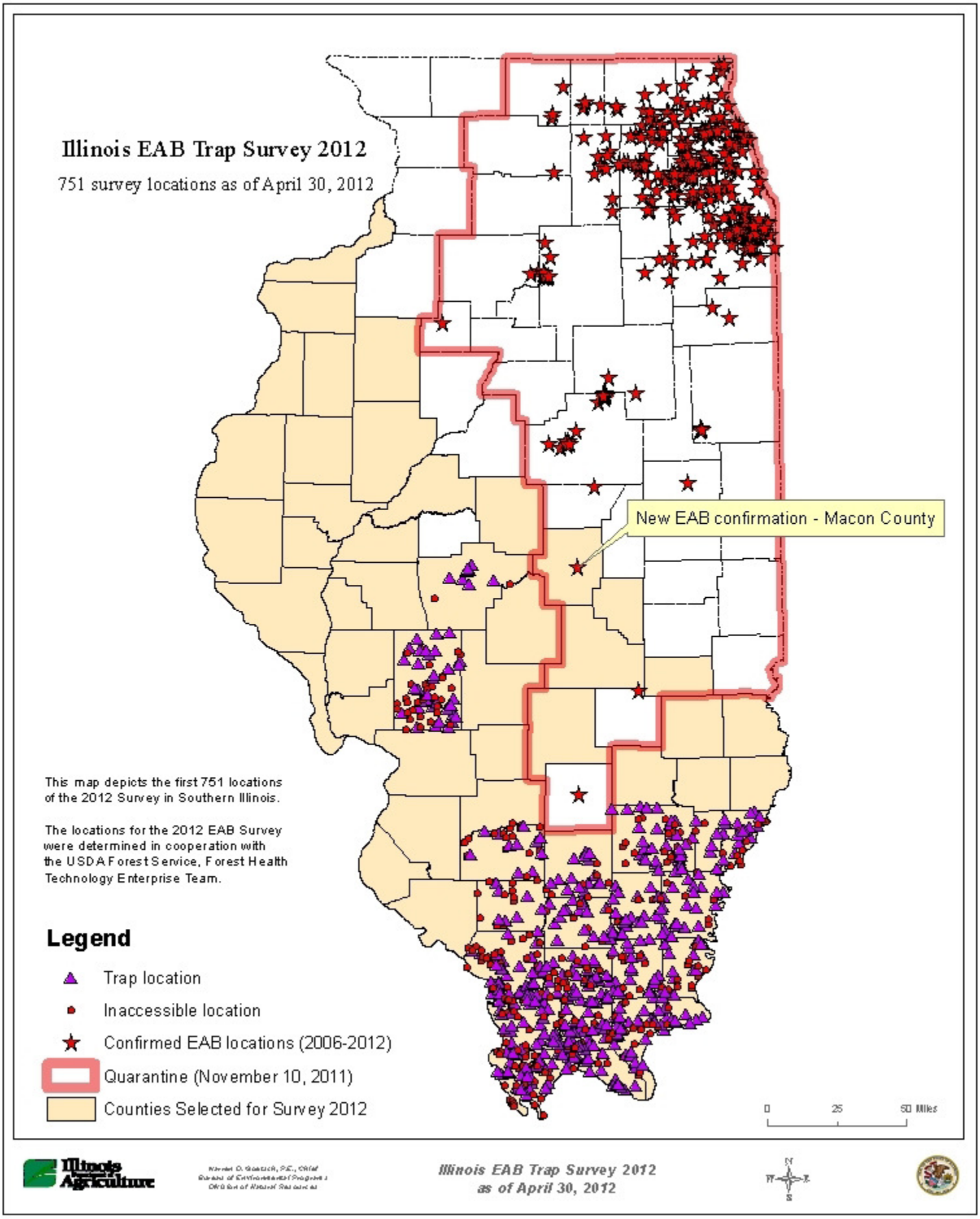
Contact the Local Policy & Technology Unit at IDOT.LocalPolicy@illinois.gov with any questions.

James K. Klein

Acting Engineer of Local Roads and Streets

KB/kb

Attachments


Illinois EAB Trap Survey 2012
751 survey locations as of April 30, 2012
New EAB confirmation - Macon County
This map depicts the first 751 locations of the 2012 Survey in Southern Illinois.
The locations for the 2012 EAB Survey were determined in cooperation with the USDA Forest Service, Forest Health Technology Enterprise Team.
Legend
Trap location
Inaccessible location
Confirmed EAB locations (2006-2012)
Quarantine (November 10, 2011)
Counties Selected for Survey 2012
0
25
50 Miles
Illinois Agriculture
Illinois EAB Trap Survey 2012
as of April 30, 2012

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Economic Impact	Ash Tree Genetics and Ecology	

Test/Research Results

- **Factors affecting the survival of ash (*Fraxinus* spp.) trees infested by emerald ash borer (*Agrilus planipennis*)**
  2012 - Kathleen S. Knight, John P. Brown and Robert P. Long
  The article is on the survival analysis of ash trees in Ohio. According to Kathleen Knight, the main take-home message was that ash trees actually died slightly faster in stands with lower densities of ash, the opposite of what the authors thought would happen. This is just the speed of mortality, not the % mortality (almost all the ash trees die eventually no matter what).

- **Historical Accumulation of Nonindigenous Forest Pests in the Continental United States**
  December 2010 - American Institute of Biological Sciences
  AIBS Press Release
  Nonindigenous insects and pathogens continue to become established in US forests with regularity despite regulations intended to prevent this, according to a study published in the December 2010 issue of BioScience. The study, by a team led by Juliann E. Aukema, of the National Center for Ecological Analysis and Synthesis in Santa Barbara, California, (including MSU's Deb McCullough), found that nonindigenous insects are being newly detected in US forests at a rate of about 2.5 per year, and high-impact insects and pathogens that cause significant effects in forests, including tree death, are being newly detected every 2 to 2.5 years. The rate of detection of harmful forest invaders seems to have increased in the past two decades.

- **Risk Assessment of the Movement of Firewood within the United States** (PDF, 3,315 KB)
  May 2010 - USDA APHIS
  Exotic and native forest pests such as *Agrilus planipennis* (emerald ash borer), Anoplophora glabripennis (Asian longhorned beetle), and others cause serious damage to urban and natural forests in the United States. These pests and many others disperse various distances through multiple pathways including movement of nursery stock and firewood. Firewood is a raw forest product that is widely utilized and moved throughout the United States with relatively limited consideration of the potential pests within or the associated risks. We conducted an assessment and examined factors that may affect the risk associated with the movement of firewood such as users, movement, insects and diseases, potential impact to natural and urban forests, and trends in firewood use.

- **Geographic Origin of North America's Emerald Ash Borer** (PDF, 0.08MB)
  Jim Smith, Michigan State University - This research is looking for the origins of EAB found in North America by looking at the genetic similarities in samples of EAB populations from Asia and comparing them to North American populations.

- **Studies to Develop an Emerald Ash Borer Survey Trap** (PDF, 0.09MB)
  Jason B. Oliver, Joe Francese, Vic Mastro, Ivich Fraser, Dave Lance, Nadeer Youssef - Studies to develop an emerald ash borer survey trap through trap location, seedling tree damage, trap design evaluation.

- **Developing a Fast, Inexpensive Method to Extract and Analyze Imidacloprid Residue in Plant Tissue** (PDF, 0.06MB)
  Phil Lewis and Deborah G. McCullough - A cheap, rapid method to analyze chemical residue in treated trees is necessary in order to best assess efficacy of different treatments.

- **Genetic Analysis of Emerald Ash Borer** (PDF, 0.02MB)
  Jim Smith, Bob Haack and Leah Bauer - estimate the geographic origin of emerald ash borer populations in Asia that gave rise to EAB in North America

- **Exploration for Emerald Ash Borer in China** (PDF, 0.03MB)
  Houping Liu, Toby R. Petrice, Leah S. Bauer, Robert A. Haack, Ruitong Gao, and Tonghai Zhao - research on the study of the natural enemy complex of EAB in China

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Insecticide Research

Research on methods to control EAB began in 2002. Research is ongoing, and as methods are developed, more information will be available.

- **"Slow Ash Mortality" – SLAM Pilot Project**
  Description: The SLAM project is a collaborative effort involving Michigan State University, the USDA Forest Service, USDA Animal and Plant Health Inspection Service (APHIS), Michigan Technological University (MTU), the Michigan Dept. of Agriculture and Rural Development (MDARD), the Michigan Dept. of Natural Resources (MDNR), and Michigan Conservation Districts in Michigan's Upper Peninsula. The goal of the SL.A.M. pilot project in Michigan's Upper Peninsula is to delay and slow the expansion of ash mortality by reducing populations of the beetle in newly-infested sites, outside of known EAB infestations.
- **Frequently Asked Questions Regarding Potential Side Effects of EAB Insecticides** (PDF, 311KB)
  February 2011
  Research and Extension Specialists from Michigan State University, the Ohio State University OARDC and Extension, and University of Minnesota Extension have put together a comprehensive publication that addresses questions and concerns regarding insecticide use to control emerald ash borer.
- **Control of Emerald Ash Borer with Microbial Insecticides** (PDF, 0.05MB)
  Revised 4/14/04
  Leah S. Bauer, Houping Liu, and Deborah L. Miller - studying the efficacy of registered microbial insecticides for EAB control in environmentally sensitive habitats
- **Evaluation of Perma Guard D-20 and Imidacloprid to Control Emerald Ash Borer** (PDF, 0.02MB)
  Robert A. Haack and Toby R. Petrice - This study tested the effectiveness D-20 by Perma Guard (Albuquerque, NM) in controlling emerald ash borer
- Research abstracts and other information addressing the EAB problem in North America.
  - **2009**
  - **2007**
  - **2006** (PDF, 4.78MB)
  - **2005**
  - **2004**
  - **2003**

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Survey Research

- **Evaluation of Different Trap Types and Lures for Capturing Emerald Ash Borer Adults in Low Density Populations**
  Therese M. Poland, Deborah G. McCullough, Andrew J. Storer, Jordan M. Marshall, and Ivich Fraser (from Proceedings of the 22nd U.S. Department of Agriculture Interagency Research Forum on Invasive Species 2011)
- **Utilizing Girdled Ash Trees for Optimal Detection, Delimitation and Survey of Low Density Emerald Ash Borer Populations**
  Nathan W. Siegert, Nicholas J. Gooch, Deborah G. McCullough, Therese M. Poland, and Robert L. Heyd (from Proceedings of the 22nd U.S. Department of Agriculture Interagency Research Forum on Invasive Species 2011)
- **Optimization of Trap Color for Emerald Ash Borer (Coleoptera: Buprestidae)**
  By Joseph A. Francese, Damon J. Crook, Ivich Fraser, David R. Lance, Alan J. Sawyer, and Victor C. Mastro (from Journal of Economic Entomology 103(4):1235-1241. 2010)
- **Effects of Trap Type, Placement and Ash Distribution on Emerald Ash Borer Captures in a Low Density Site**
  By Deborah G. McCullough, Nathan W. Siegert, Therese M. Poland, Steven J. Pierce, and Su Zie Ahn (from Environmental Entomology 40(5):1239-1252. 2011)
- **"Slow Ash Mortality" – SLAM Pilot Project**
  Description: The SLAM project is a collaborative effort involving Michigan State University, the USDA Forest Service, USDA Animal and Plant Health Inspection Service (APHIS), Michigan Technological University (MTU), the Michigan Dept. of Agriculture and Rural Development (MDARD), the Michigan Dept. of Natural Resources (MDNR), and Michigan Conservation Districts in Michigan's Upper Peninsula. The goal of the SL.A.M. pilot project in Michigan's Upper Peninsula is to delay and slow the expansion of ash mortality by reducing populations of the beetle in newly-infested sites, outside of known EAB infestations.
- **Using Double-Decker Traps to Detect Emerald Ash Borer** (PDF, 496KB)
  April 2009
  Deborah G. McCullough and Therese Poland - Detecting or monitoring populations of emerald ash borer

(*Agrilus planipennis* Fairmaire) is very difficult when infestations are relatively new or when densities of this invasive pest are low. The Double-Decker (DD) trap is designed to integrate several visual and olfactory cues that are likely to attract EAB beetles. The DD traps are designed to be highly apparent to beetles. The vertical silhouette of the DD trap somewhat mimics the silhouette of an open-grown tree. The trap includes two purple panels, partly because beetles respond positively to that particular shade of purple. The two panels help to mimic the shape of a tree "canopy." In addition, they increase the surface area available for trapping beetles.

- **Using Girdled Trap Trees Effectively For EAB Detection, Delimination & Survey** (PDF, 407KB)
  July 2007 - Dr. Deborah G. McCullough and Dr. Nathan W. Siegert
- **Characteristics and distribution of potential ash tree hosts for Emerald Ash Borer** (PDF, 0.07MB)
  David W. MacFarlane and Shawna Patterson Meyer - This report highlights some potential risk factors related to ash host characteristics and spatial distribution to potential risk from EAB.
- **Improving Survey Methodology for Emerald Ash Borer** (PDF, 0.03MB)
  2004 - David W. MacFarlane - Ongoing research to improve survey methodologies for detecting emerald ash borer and establish baseline data for estimating risk of spread and establishment across Michigan.
- **Ash dieback survey slides**
  (power point presentation) David Smitley - comparison of ash dieback for 2003 and 2004

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Survival of EAB

- **Risk Assessment of the Movement of Firewood within the United States** (PDF, 3,315 KB)
  May 2010 - USDA APHIS
  Exotic and native forest pests such as *Agrilus planipennis* (emerald ash borer), Anoplophora glabripennis (Asian longhorned beetle), and others cause serious damage to urban and natural forests in the United States. These pests and many others disperse various distances through multiple pathways including movement of nursery stock and firewood. Firewood is a raw forest product that is widely utilized and moved throughout the United States with relatively limited consideration of the potential pests within or the associated risks. We conducted an assessment and examined factors that may affect the risk associated with the movement of firewood such as users, movement, insects and diseases, potential impact to natural and urban forests, and trends in firewood use.
- **Emerald Ash Borer Survival in Firewood** (PDF, 0.03MB)
  2003 - Robert A. Haack and Toby R. Petrice - This study looked at firewood infested with emerald ash borer, to determine the survival rate.
- **Survival of Emerald Ash Borer in Chips** (PDF, 0.02MB)
  2003 - Deborah G. McCullough, Therese M. Poland and David Cappaert - This study was to determine survival of EAB in chips of different sizes.

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Biosurveillance

- ***Cerceris fumipennis?*** (PDF, 2MB)
  2009 - A Biosurveillance Tool for Emerald Ash Borer. Canadian Food Inspection Agency

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Dispersal Information

- **Factors affecting the survival of ash (*Fraxinus* spp.) trees infested by emerald ash borer (*Agrilus planipennis*)**
  2012 - Kathleen S. Knight, John P. Brown and Robert P. Long
  The article is on the survival analysis of ash trees in Ohio. According to Kathleen Knight, the main take-home message was that ash trees actually died slightly faster in stands with lower densities of ash, the opposite of what the authors thought would happen. This is just the speed of mortality, not the % mortality (almost all the ash trees die eventually no matter what).
- **Emerald Ash Borer Flight Estimates Revised** (PDF, 200 KB)
  2007 - Robin A. J. Taylor, Therese M. Poland, Leah S. Bauer, Neith N. Windell, and James L. Kautz
- **Is Emerald Ash Borer an Obligate Migrant?** (PDF, 59 KB)
  2006 - Robin A. J. Taylor, Therese M. Poland, Leah S. Bauer, and Robert Haack
- **Emerald Ash Borer Flight Potential** (PDF, 16 KB)
  2005 - Robin A. J. Taylor, Leah S. Bauer, Deborah L. Miller, and Robert Haack
- **Flight Potential of the Emerald Ash Borer** (PDF, 774 KB)
  2004 - Leah S. Bauer, Deborah L. Miller, Robin A. J. Taylor, and Robert Haack

- **Dispersal of Emerald Ash Borer: A Case Study at Tipton, Michigan** (PDF, 20 KB)
  2003 - Deborah G. McCullough, Therese Poland and David Cappaert - assess dispersal of one generation of emerald ash borer adults in a rural area
- **Emerald Ash Borer Adult Dispersal** (PDF, 23 KB)
  Robert A. Haack, Toby R. Petrice - This study evaluated emerald ash borer, adult dispersal at two Michigan sites in early summer 2003.

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Host Range Information

- **Host Range of Emerald Ash Borer** (PDF, 0.02MB)
  Robert A. Haack, Toby R. Petrice, Deborah L. Miller, Leah S. Bauer and Nathan M. Schiff - In 2003, foliage of several trees and shrubs as food for emerald ash borer (EAB), *Agrilus planipennis* Fairmaire, adults were evaluated in a series of no-choice and choice tests that were conducted indoors in Michigan
- **Host Range and Host Preference of Emerald Ash Borer** (PDF, 0.02MB)
  2003 - Deborah G. McCullough, Andrea Agius, David Cappaert, Therese Poland, Debbie Miller and Leah Bauer - Our first objective is to evaluate alternate species of concern to determine whether they are acceptable to ovipositing adult beetles and whether they are suitable for larval development. We also assessed alternate hosts with a series of field tests.

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Economic Impact

- **EAB Economic Impact (OSU)** (PDF, 0.10MB)
  January 2007 - Matt Bumgardner, Drew Todd and Davis Syndor, the Ohio State University - Outlines the potential economic impacts of EAB on Ohio, U.S., and communities.

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Ash Tree Genetics and Ecology

- **Ecological and Genetic Isolation of *Fraxinus***
  1972 - By Sylvia May Obenauf Taylor
  Scan (PDF, 0.13MB) | **Scan** (JPG, 1.84MB)

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Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2013-01

SUBJECT: ECOLOGICAL COMPLIANCE ASSESSMENT TOOL (EcoCAT)

ISSUED DATE: July 12, 2013

EFFECTIVE DATE: July 1, 2013

This memorandum supersedes Section 10-1 dated October 2008, Section 20-2 dated October 2008, Section 20-8 dated October 2008, and Section 20-9 dated October 2008 of the Bureau of Local Roads & Streets Manual.

The *Illinois Natural Areas Preservation Act* (525 ILCS 30/17), Section 11b of the *Illinois Endangered Species Protection Act* (520 ILCS 10/11), and the implementing rules (17 Ill. Adm. Code 1075) require consultation with the Illinois Department of Natural Resources (IDNR) on all construction, land management, or other activities that are authorized, funded, or performed in whole or in part by agencies of State and local public agencies (LPA) and that will result in a change to the existing environmental conditions, or may affect listed threatened or endangered species or their essential habitat or Natural Areas.

The *Interagency Wetland Policy Act of 1989* (20 ILCS 830/1 et seq.) and the *Implementation Procedures for the Interagency Wetland Policy Act* (17 Ill. Admin. Code 1090) require consultation with IDNR on all state and state pass-through funded construction projects.

The Illinois Department of Transportation (IDOT) and the Illinois Department of Natural Resources (IDNR) recently updated the Memorandum of Understanding (MOU) outlining the roles and responsibilities of each agency to comply with State biological and cultural regulations. The updated MOU now includes not only Federally funded LPA projects, but also those funded with State, Motor Fuel Tax (MFT), or Township Bridge Program (TBP) funds, and any locally funded project requiring IDOT review and approval (such as non-municipal structures greater than 30 feet not funded with federal, state, MFT, or TBP funds). Therefore, the Ecological Compliance Assessment Tool (EcoCAT) shall no longer be used by the LPA for these types of projects. Cultural and biological clearances will be processed the same as federally funded projects according to Section 20-8 and 20-9 by using the Environmental Survey Request. Form BLR 10100 may continue to be used to document environmental review. However, this form will not be required to be submitted to the District prior to advertisement.

For locally funded projects without department review and approval, the LPA must still use EcoCAT and pay any fee established by IDNR. Copies of the consultation termination letter or consultation closed report from EcoCAT shall be submitted to the District BLRS with Form BLR10100 prior to the optional advertisement in IDOT's *Notice to Contractors Bulletin*. The District will acknowledge receipt of Form BLR 10100 by signature and return the signed copy for the project file.

Contact the Local Policy & Technology Unit at IDOT.LocalPolicy@illinois.gov with any questions.

James K. Klein

Acting Engineer of
Local Roads and Streets

KB/kb

Attachments

cc: John Baranzelli, Bureau of Design & Environment
Steve Hamer, Illinois Department of Natural Resources

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2013-02

SUBJECT: SPECIAL WASTE

ISSUED DATE: July 12, 2013

EFFECTIVE DATE: July 15, 2013

This memorandum supersedes Section 20-2 dated October 2008 and Section 20-12 dated October 2008 of the Bureau of Local Roads & Streets Manual.

Regulated substances, as defined in Federal and State statutes, are subject to controls variously affecting their generation, storage, transport, and disposal, and associated record-keeping. “Special waste” refers to industrial or pollution control waste and hazardous waste. Local public agencies responsible for development and implementation of highway projects shall consider regulated substances in project development and shall comply with applicable controls. These considerations, compliance actions, and related coordination shall be appropriately documented in project files and project review documents.

Due care shall be exercised to determine whether regulated substances may be present on or located adjacent to property being considered for use for highway project purposes. Acquisition of an interest in a site determined to contain regulated substances shall be avoided unless the risks and liabilities of such acquisition can be justified. The BLRS Manual has been revised to define terminology, to update the screening process, and to clarify the procedures required when LPA projects affect State property.

Contact the Local Policy & Technology Unit at IDOT.LocalPolicy@illinois.gov with any questions.

James K. Klein

Acting Engineer of Local Roads and Streets

KB/kb

Attachment

cc: John Baranzelli, Bureau of Design & Environment

The ESR must be fully completed. BDE Manual Chapter 27 (Section 3) requires 6-months for completion of a Preliminary Environmental Site Assessment (PESA) and 6-months for completion of a Preliminary Site Investigation (PSI). Thus, the letting date should be 12-months or more from the time the ESR is initially submitted to allow for successful completion of Special Waste environmental survey work, plus time to execute land acquisition, prior to letting.

A local roads project involving state road jurisdiction, even a small portion, must follow BDE Chapter 27 (Section 3) and must be coordinated with the District Special Waste Coordinator (aka, Environmental Manager). The time frames for completion of the PESA (6-months) and PSI (6-months) also applies to the state road portion of a local roads project.

On the ESR, include the following information for DOH and BLRS special waste projects:

PMA ESR Section	Item	Notes
A	Survey Target Date (STD)	>= 6-months from ESR submittal date
A	Anticipated Design Approval	Optional. Should be >= 6-months out
F	Env. Contact	Section F (bottom): Should be the District Special Waste Coordinator
PESA tab	Anticipated Letting date	If known, should be 12-months out
Add'l Info	Additional notes	Any supporting information
Add'l Info	Reference previous PESAs	
Attachments	Site location map	
Attachments	Survey limit figure	

Additionally, for local roads projects, the following information is also required:

PMA ESR Section	Item	Notes
F	Contact Person	Section F (top): Should be the BLRS contact person
F	Local Contact Person	Name of Local Public Agency contact or LPA consultant
Attachments	State jurisdiction figure	Show state jurisdiction on a figure and also describe it in the additional notes., i.e., which portion of the project is on state route and which is non-state
Attachments	Survey limits for Phase I PESA	Clearly identify which portion of project that ISGS will complete PESA (following BDE Chapter 27) and which portion the LPA will conduct their own PESA (following BLRS Chapter 20)

See ESR example and attachments on the following pages

Prepared by Jim Curtis, November 9, 2012; updated June 26, 2013
Call with any questions. 217-558-4653, IDOT Central Office, Geologic & Waste Assessment Unit

EXAMPLE

Attention: Central Office BD&E
Environment Section
Room 330

Environmental Survey Request

A. Project Information ☑ Bio ☑ Cultural ☐ Wetlands ☑ Special Waste

Submittal Date: 10/10/2012 Se
District: 1 Requesting
Contract #:
Counties: Cook
Route:
Street: Austin Avenue
Municipality(ies) Villages of Morton G
FromTo (At): Lincoln Avenue to Oakt treet
Quadrangle: Park Ridge
Project No:
Marked:
Section: 12-00106-00-PV
Project Length: 1.561 km 0.97 miles
Township Range Section: T41N R13E S20 and S29
Survey Target Date: 09/01/2013
Anticipated Design Approval: 11/01/2013

Survey Target Date is at least six months out from submittal date

B. Reason for Submittal: (Check all that apply)

☑ Acquisition of additional ROW or easement 4.04685 ha/ 10 acres
☐ In-Stream Work Stream Name:
☐ Other:

C. Project Description: The roadway impro partial reconstruction and partial curb and gut Austin Ave and Oakton Street intersection movements.

Proposed Work: ☑ Highway ☐ Bridge

DOH district Environmental Coordinator

D. Tree Removal?: No Number? ha/ ac
? No
ed? No
ormed by: BDE
Historic Buildings Involved? Do
Section 6(f) Lands Involved? No
End. Species Consultation performed

BLRS contact person

LPA contact or LPA consultant. (should also include the Title/Company)

E. Funding: Federal State TBP MFT ☑ Local Non-MFT
404 Permit Required Anticipated Processing: CE

F. Contact Person: Gerardo Fierro
Telephone #: (847) 705-4236 ext.
Env.Contact: Sam Mead
Telephone #: 8477054101

Local Contact Person: Mark Johnson
Telephone #: (773) 775-4009 ext.
E-Mail: mjohnson@ciorba.com
Title/Company:

☐ Field Sign Off (Bio & Cultural Only) ☑ Received in CO 10/18/2012 ☑ SW Received 10/25/2012

Sequence No: 17548

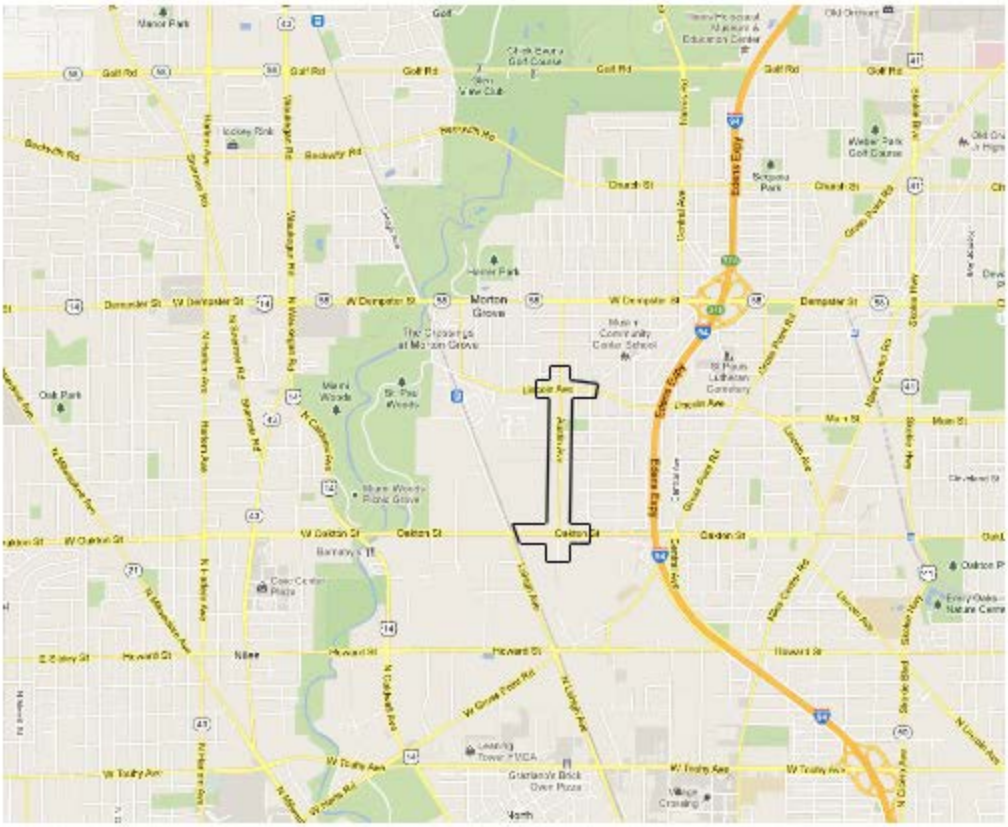
Memo Date: 10/25/2012 Memo By: Sam Mead
Memo: ISGS will perform a PESA for BDE on the portion of the project on Oakton Street, plus Austin Ave south of Oakton Street. See revised figure showing limits. The LPA will conduct a PESA on the remaining portion of the project.

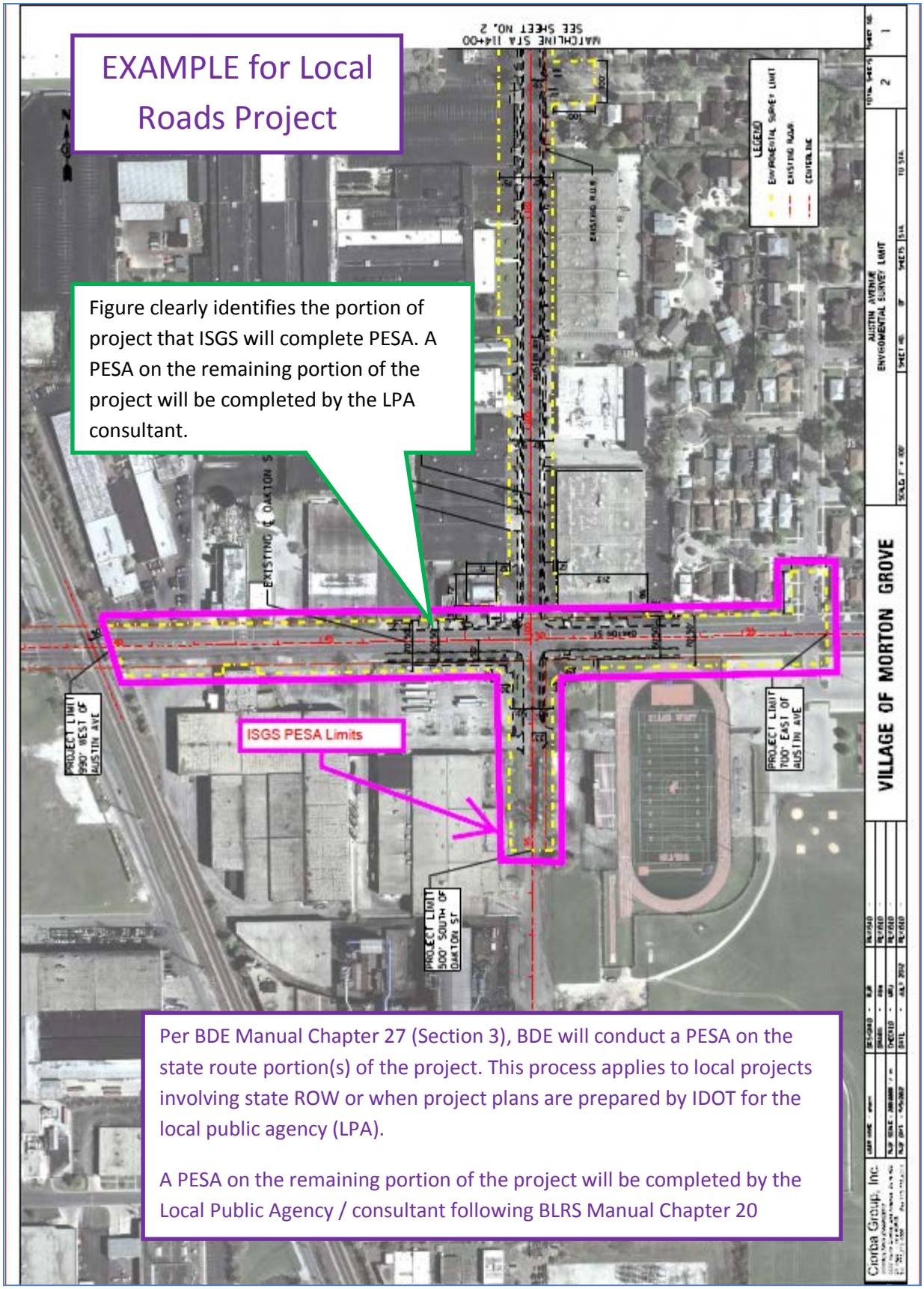
Memo Date: 10/10/2012 Memo By: Gerardo Fierro
Memo: IDOT will need to perform the special w sis for Oakton Street.

There are proposed storm sewer improv stin Ave between Oakton Street and Cleveland Street. Oakton Street is a State route. A Lincoln Ave are municipal routes.

For a Local Roads project, additional comment states what portion of the project is on state route.

Morton Grove, IL Austin Ave Location Map




EXAMPLE for Local Roads Project
Figure clearly identifies the portion of project that ISGS will complete PESA. A PESA on the remaining portion of the project will be completed by the LPA consultant.
ISGS PESA Limits
PROJECT LIMIT 990' WEST OF AUSTIN AVE
PROJECT LIMIT 500' SOUTH OF OAKTON ST
PROJECT LIMIT 700' EAST OF AUSTIN AVE
EXISTING ℄ OAKTON ST
MATCHLINE STA 114+00
SEE SHEET NO. 2
LEGEND
ENVIRONMENTAL SURVEY LIMIT
EXISTING ROW
CENTERLINE
AUSTIN AVENUE
ENVIRONMENTAL SURVEY LIMIT
VILLAGE OF MORTON GROVE
Cronba Group, Inc.
Per BDE Manual Chapter 27 (Section 3), BDE will conduct a PESA on the state route portion(s) of the project. This process applies to local projects involving state ROW or when project plans are prepared by IDOT for the local public agency (LPA).
A PESA on the remaining portion of the project will be completed by the Local Public Agency / consultant following BLRS Manual Chapter 20

Q: How do I know when Special Waste should be involved in a Local Roads project? That is, for a Local Roads project, when should I check the Special Waste box in PMA?

A: The Project Monitoring Application (PMA) for Special Waste is used to track DOH projects and the DOH segment of a Local Roads project. BDE Manual Chapter 27 (and BLRS Manual Chapter 20) describes the circumstances when a special waste survey should be conducted.

Step 1 – Does BDE Chapter 27-3 (Special Waste Procedures) apply to my project?

The procedures in Section 27-3 are applicable to all of the following types of projects:

1. State highway project;
2. Local project when the project plans are prepared by IDOT for a local public agency (LPA);
3. Local project affecting State right-of-way or a road under State jurisdiction;
4. Local project acquiring right-of-way in the name of the State;
5. Local project involving temporary or permanent easements in the name of the State;
6. Other transportation project (e.g., railroad or aeronautics project) affecting State right-of-way or roads under State jurisdiction, or when plans are prepared by IDOT.

If your project is any one of these, check the Special Waste box in PMA. Specifically, if your project is #1 or #2, then follow Chapter 27 for the entire project. If your project is #3 - #6, then follow BDE Chapter 27 for the portion of the project involving State ROW, and follow BLRS Chapter 20 for the remaining portion of the project. Go to Step 2. If NO to all of these, then BDE Chapter 27 does not apply; do not check the special waste box.

Note: This process applies to all transportation projects meeting one or more of the criterion regardless of funding source.

Step 2 – Is Special Waste involved?

A PESA is required for all applicable projects, as determined in Step 1, with some exceptions. Per Section 27-3.20(a) [Level 1 Screening], determine whether a PESA is necessary. Does the project involve any of these three situations?

- Acquisition of additional right-of-way or easements (temporary or permanent)
- Railroad right-of-way (other than a rural single rail with no maintenance facilities)
- Excavation[i] or subsurface utility relocation (see definition of "excavation")

If any of these situations is present, then the project must include special waste consideration and a PESA is required. If none are present, then the project can be screened-out for special waste and a PESA is not required.

Step 3 – Coordination

If your project involves Special Waste, per steps #1 and #2 above, then do the following:

- In PMA, fully complete the ESR and click the Special Waste box (in the "A/B" tab).
- Clearly identify the portion(s) of the project where ISGS should complete the PESA for BDE, delineate this area on a figure, explain in text, and include with the ESR submittal.
- The ISGS PESA should cover the state portion(s) of the project. The LPA should determine if they should conduct their own PESA on the non-state portion(s) of the project (using BLRS Chapter 20 criteria). How a project is divided between BDE and BLRS should be determined on a case-by-case basis by the District Special Waste Coordinator and BDE using the information supplied by BLRS and LPA). In general, the project is divided along jurisdiction lines.
- Alert the District (Highways) Special Waste Coordinator who is responsible for ensuring that BDE Manual Chapter 27 is followed for the portion of the project affecting State jurisdiction.

You may contact your District Special Waste Coordinator or Jim Curtis with any questions regarding this process.

Prepared October 31, 2012, revised 06/27/2013 by Jim Curtis
Chief, Geologic & Waste Assessment Unit

Illinois Department of Transportation
Bureau of Design & Environment, Room 330
2300 South Dirksen Pkwy, Springfield, IL 62764
direct: 217.558-4653 james.r.curtis@illinois.gov

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[i] **Excavation.** For the purposes of BDE Chapter 27 (updated July 2012), excavation is the digging or grading of any soil or fill material, including underground utility works such as installation of fiber optic cabling, with the exception of aggregate fills which are not considered a soil or fill material of concern. The following types of maintenance projects are not considered excavation when the excavated material is left on, or incorporated within, the IDOT ROW for that project:

- ☐ bridge maintenance
- ☐ ditch cleaning
- ☐ working within the sub base or pavement
- ☐ removal and replacement of shoulders, curb and gutter, or sidewalk ramps

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2013-03

SUBJECT: EVALUATION OF FARMLAND CONVERSION IMPACTS

ISSUED DATE: July 12, 2013

EFFECTIVE DATE: July 15, 2013

This memorandum supersedes Section 10-1 dated October 2008 and Section 20-10 dated January 2006 of the Bureau of Local Roads & Streets Manual.

In the development of a project, consideration must be given to the impacts that the action will cause in the conversion of farmland to non-farm uses. Under certain circumstances, coordination must be initiated with the US Department of Agriculture, Natural Resources Conservation Service (NRCS) and/or the Illinois Department of Agriculture (IDOA) to evaluate the impacts on farmland and obtain the views of those agencies on alternatives to the proposed action.

The exemption for projects within the official 1.5 mile (2.4 km) planning area of an incorporated municipality is no longer allowed.

Contact the Local Policy & Technology Unit at IDOT.LocalPolicy@illinois.gov with any questions.

James K. Klein

Acting Engineer of Local Roads and Streets

KB/kb

Attachment

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2013-04

SUBJECT: WORK ZONE TRANSPORTATION MANAGEMENT PLANS

ISSUED DATE: July 25, 2013

EFFECTIVE DATE: July 31, 2013

This memorandum supersedes Section 10-2 dated July 2008 and Section 22-2 dated February 2009 of the Bureau of Local Roads & Streets Manual.

Per Safety Engineering Procedure Memorandum 3-07 effective October 12, 2007, the Work Zone Safety and Mobility Rule (23 CFR 630 Subpart J) applies to all state projects and federal aid funded local highway projects. A well-planned method for maintaining traffic flow is critical for meeting the Department's mobility goals, minimizing complaints from the traveling public, residents, and businesses, and reducing unnecessary capital costs. Therefore, any local public agency (LPA) project, regardless of funding, that impacts a State highway will need to comply with these requirements as well.

Contact the Local Policy & Technology Unit at IDOT.LocalPolicy@illinois.gov with any questions.

James K. Klein

Acting Engineer of Local Roads and Streets

KB/kb

Attachment

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

Safety Engineering Policy Memorandum

SAFETY 3-07
Work Zone Safety and Mobility Rule
Effective October 12, 2007

POLICY

This policy supersedes Traffic Departmental Policy TRA-1, Traffic Control through Construction and Maintenance Work Zones, April 1, 1981.

The Federal Highway Administration (FHWA) has updated the work zone regulations at 23 CFR 630 Subpart J. The updated rule is referred to as the Work Zone Safety and Mobility Rule (Rule). The Rule applies to all state projects and federal aid funded local highway projects and requires compliance with these provisions by October 12, 2007. The changes made to the regulations broaden the former rule to better address the work zone issues of today and the future.

During construction, maintenance, and all other activities including engineering contracts, railroad crossings, and utility projects on Illinois highways, it shall be the policy of the department to provide a high level of safety for workers and the public, to provide mobility, minimize congestion and adverse community impacts, and to provide greater public satisfaction. This policy outlines IDOT's activities necessary to implement the requirements and intent of the Rule.

PURPOSE

Work Zone Safety is an identified emphasis area of the Illinois Comprehensive Highway Safety Plan (ICHSP). Developing and implementing a work zone safety and mobility policy as required by the Rule provides an additional strategy to further the goals of the ICHSP.

VISION

The overall goal of this policy is to reduce and eliminate crashes and fatalities, and to mitigate congestion due to work zones.

GOALS

SAFETY

1. Zero worker fatalities for traffic-related work zone crashes.
2. Reduce the number of motorist fatalities in traffic-related work zone crashes by 10% each year with the eventual goal of eliminating all of these fatalities. Eliminate crashes and resulting fatalities and serious injuries caused by queuing.
3. Reduce the number of work zone crashes by 5% from each prior year.

MOBILITY

Mobility shall be defined as moving road users efficiently through or around a work zone area (site specific or regionally) with a minimum delay compared to baseline travel when no work zone is present while not compromising safety. The following goals are thresholds for traffic mobility on projects which impact traffic flow:

1) Delays caused by work zones should not exceed more than five (5) minutes per mile of project length with a maximum of thirty (30) minutes above the normal recurring traffic delay; and,
2) Queues caused by work zones should be no more than 1.5 miles beyond pre-existing queues.

GUIDELINES FOR IMPLEMENTATION

PROJECT GUIDELINES

To facilitate the implementation of this policy the following items have been developed:

1) Work Zone Safety and Mobility Process Flow Chart (Appendix A). This flow chart represents the process flow to determine the level of significance of a project and the necessary steps and requirements to implement the Rule.

2) Significant Route Location Maps (Appendix B). These statewide and district maps show those state routes where a lane closure on the roadway is expected to cause sustained work zone impacts that are not considered tolerable based on the goals and objectives of this policy or public opinion and, thus, are considered Significant Routes. Roadways marked in red are considered as Significant Routes. Roadways marked in yellow are approaching Significant Route designation and should be evaluated for potential impacts. These maps will be revised as additional information becomes available through process reviews and district feedback.

These two items should be used together to determine if a project is considered Non-Significant, Significant – Short Term (Less Than Three (3) Days), or Significant – Long Term.

NON-SIGNIFICANT PROJECTS

If the proposed project is on a roadway that is not considered a Significant Route, then it is a Non-Significant Project and work impacts the traveling public to a small degree. Traffic volumes are low; public interest is low; and, duration is short to moderate. For Non-Significant Projects**,** an Impact Analysis is not required. The final design may proceed with a Traffic Management Plan (TMP) that consists of only a Traffic Control Plan (TCP). However, appropriate Transportation Operations Plan (TOP) and Public Information Plan (PIP) strategies are encouraged to be considered as well. Further details of a full TMP are described under Significant Projects – Long Term.

SIGNIFICANT PROJECTS – SHORT TERM (LESS THAN THREE (3) DAYS): OPERATIONS, PERMIT, UTILITY WORK AND OTHER SHORT TERM WORK

Roadway segments identified on the Significant Route Location Maps involving work of three (3) days or less shall be considered as Significant Projects – Short Term. A Permitted Lane Closure Map/List (PLCM) shall be developed by the district, based on Appendix B and district knowledge and should be updated as traffic conditions warrant. The PLCM map will define the allowable times a lane(s) may be closed on Significant Routes within each district to assist in meeting the goals of this Policy. This is to allow minor short time work to be accomplished with as little impact to the motorist as possible. If the goals of this policy cannot be met, work shall be planned in advance minimizing the impacts and only emergency repairs or work would be allowed. The operations may proceed with a TMP that consists of only a TCP. However, appropriate TOP and PIP strategies are encouraged to be considered as well. Further details of a full TMP are described under Significant Projects – Long Term.

SIGNIFICANT PROJECTS – LONG TERM

Routes identified on the Significant Route Location Maps involving work greater than three (3) days shall be considered as Significant Projects – Long Term. Work zones for these projects have a much greater impact long term on motorists. Every reasonable effort to mitigate these impacts shall be considered. Significant Projects shall be identified as early as possible in the development process to help allocate resources more effectively to projects that are likely to have greater impacts. A Significant Project – Long Term requires an Impact Analysis be performed. This Impact Analysis will involve a process of understanding the safety and mobility impacts of a road

construction/maintenance project. The use of hourly volume maps, district knowledge and experience, site reviews, and/or computer simulation programs, such as QUEWZ, TSIS-CORSIM, Quick Zone or other modeling programs would be considered acceptable. Where queues are normally present even without lane closures, the analysis shall compare existing queues to expected queues based on the resulting mitigation and strategies used to reduce the impacts of lane closures, construction or other work would have on a project.

During the planning and design phase of a Significant Project, various TMP strategies and the resulting impacts to delays and queuing shall be considered and analyzed to determine which are acceptable or unacceptable based on the goals of this policy.

Developing a TMP is a process that involves identifying applicable strategies to manage the impacts of the work zone and budgeting costs to ensure that funding is available. A full TMP is required for Significant Projects – Long Term and lays out a set of coordinated transportation management strategies and describes how they will be used to manage the work zone impacts of a road project. As the project evolves, it is important to reassess the TMP including the management strategies to be sure the work zone impacts are mitigated and the necessary budget for the project is available. Incident management and emergency services shall be considered. Refer to BDE Manual Chapters 13 and 55.

A full TMP shall include the following three Plans:

1. **Traffic Control Plan (TCP).** A plan to safely guide traffic through a construction project through the use of traffic control devices and project coordination.

2. **Transportation Operations Plan (TOP).** A plan that consists of strategies which mitigate work zone impacts through the use of improved transportation operations and management of the transportation system.

3. **Public Information Plan (PIP).** A plan that consists of strategies to inform those affected road users including the surrounding community of the expected impact of a project, of changing conditions, and available travel options.

To assist in the development of a full TMP, a TMP Components Checklist (Appendix C) has been included in this policy. Federal guidelines have been developed and should be utilized when developing the TMP. These include:

- Implementing the Rule on Work Zone Safety and Mobility
- Developing and Implementing Transportation Management Plans for Work Zones
- Work Zone Impacts Assessment: An Approach to Assess and Manage Work Zone Safety and Mobility Impacts of Road Projects

- Work Zone Public Information and Outreach Strategies

Electronic copies of these resources can be found at the following link: <http://www.ops.fhwa.dot.gov/wz/resources/final_rule.htm>. Hard copies of these publications will be provided with this policy to the IDOT District Offices and Central Highways Bureaus as a Tool Box. These are attached as Appendix E.

Once the impacts have been analyzed and a preliminary full TMP has been prepared, it should be determined if the goals of this policy have been met. If they have not, additional TMP strategies should be further analyzed and considered.

IMPACTS MEET GOALS

Once it is determined that the prepared TMP would meet the goals of this policy it should be presented for approval at the bi-monthly coordination meeting. Once the TMP is approved, it shall be included in the Phase I Report and incorporated into plan development.

IMPACTS DO NOT MEET GOALS

Once all reasonable and cost-effective TMP strategies have been evaluated and incorporated into the project and the goals of this policy still cannot be met, then the District shall request an exception to this policy. The District shall submit an "Exception to Compliance Request" which shall include all strategies considered as well as the ones included in the full TMP for the project. This request shall include an explanation why it is not feasible to meet the goals of this policy. This shall be submitted to the Bureau of Safety Engineering and then to the appropriate bureau for approval (i.e., Bureau of Design and Environment, Bureau of Local Roads, Bureau of Operations), and FHWA for approval. Upon approval, final development of the TMP would proceed, be included in the Phase I Report, and be incorporated into plan development.

SIGNIFICANT PROJECTS NEAR PLANS, SPECIFICATIONS AND ESTIMATES (PS&E) DATE

Significant Projects that are in the later stages of development or near implementation of this policy may be considered for an "Exception to Compliance Request." This would apply if it is determined that the completion of the PS&E would be significantly impacted as a result of the provisions in this Policy.

Items to be included in the exception request include:

- Project location and description;
- Status of project letting date; and,
- Justification for why the project's PS&E would be affected and why the exception is requested.

The "Exception to Compliance Request" shall be submitted to the Bureau of Safety Engineering and routed to the bureaus for approval, i.e., Bureau of Design and Environment, Bureau of Local Roads or Bureau of Operations, and FHWA for approval. FHWA has final approval in these cases.

PROCESS GUIDELINES

TRAFFIC CONTROL SUPERVISOR

A technical position referred to as the District Traffic Control Supervisor shall be maintained in each District Bureau of Operations/Traffic with the primary function of traffic control planning and inspection.

TRAINING

Personnel involved in the development, design, implementation, operation, inspection, and enforcement of work zone related transportation management and traffic control are to be trained appropriate to the job decisions each individual is required to make. Existing training classes that are available are shown on Exhibit D. To ensure the maximum attainable degree of safety and mobility, a program of training, including updating of classes and providing new classes to keep up with current practices will continue.

IMPLEMENTATION OF THE TCP

A TCP shall be developed for all projects and be included in the contract plans and specifications. The plans and any revisions to these plans, for all construction, maintenance, or permit work let to contract shall be reviewed and signed by the District Traffic Operations Engineer to indicate concurrence of the proposed TCP.

For all State-awarded construction contracts, the TCP shall be reviewed at a conference preceding the start of any work on the project. Conference participants should include, as appropriate, representatives of the Contractor, utility company, local government agency, and District bureaus directly involved. Prior to any field activity covered by this policy, Form OPER 725,

Traffic Control Authorization Request, shall be submitted to and approved by the District Traffic Operations Engineer.

For highways under State jurisdiction, the District Traffic Control Supervisor or other designated District personnel shall notify the Department Communications Center (Station One) at least ten (10) days in advance of action as per current Departmental Policy when any of the following conditions apply. If any of these conditions involve major activities, a public notice shall be provided:

- Route closures lasting more than one day;
- Rerouting of traffic over a detour or temporary road if it limits oversize or overweight permit moves, 21 days prior;
- Other restrictions limiting or prohibiting oversize or overweight permit moves, 21 days prior;
- Rerouting of traffic over a new or temporary bridge;
- Reopening of sites previously restricted;
- Opening to traffic of new sections or new bridges;
- Introduction of new or revised vertical clearance restrictions, such as those created by erection of the first beam of a new overpass, a new overhead signal, or resurfacing under a structure;
- Emergency conditions requiring a route closure or restriction; and/or,
- Interstate, freeway and multilane state highway lane closures.

For projects that will affect traffic for more than five (5) days, an initial inspection of the traffic control installation and any subsequent major changes during construction should be conducted as soon as practicable but no later than five (5) days after the time it is put into effect. Follow-up inspections should be made approximately once per week thereafter, either day or night, as appropriate. The follow-up inspections may be increased or decreased to give priority attention to projects that are subject to congestion, are complex, have a more serious impact on traffic or have been found to have numerous and/or significant deficiencies. If the District Traffic Control Supervisor determines the traffic control for a full closure of a local road with an ADT of less than 400 is adequate, follow-up inspections will not be required.

Inspections of State-awarded construction contracts on highways under State jurisdiction shall be conducted by the District Traffic Control Supervisor utilizing Form OPER 726 Traffic Control Inspection Report. In Districts 2 through 9, this will include both the initial and follow-up inspections. In District 1, the follow-up inspections may be made by the FAUS Engineers in the District Bureau of Construction. The District Traffic Control Supervisor shall also conduct inspections of the following types of work zones as workload permits:

- State-awarded construction contracts on local agency streets and highways;
- Utility work on State highways being done under permit;

- Railroad crossing work on State highways being done under agreement;
- Maintenance work on State highways;
- Traffic work on State highways; and,
- Consultant work done on state highways.

The Regional Deputy Director may assign these types of inspections to other District personnel. Such assigned responsibilities must be clearly defined. The TCP for each contract shall indicate that both the responsible person at the project level and the person assigned to make the inspections will be designated at the preconstruction conference. Unusual problems encountered during routine inspections shall be referred to the District Traffic Control Supervisor.

Form OPER 726 Traffic Control Inspection Report shall be utilized to record the Traffic Control Supervisor's inspections. The records should be adequate to indicate date and time of inspection, general condition of traffic control devices, and whether or not traffic operations are satisfactory.

If the Traffic Control Supervisor reveals minor variations from acceptable standards, equipment, or procedures, these variations should be called to the attention of the responsible person for the project. If in the judgment of the District Traffic Control Supervisor, the traffic control in place does not provide adequate protection for the motorists, pedestrians and workers, s/he shall discuss the necessary corrections with the person responsible for the project. The Traffic Control Supervisor shall request the necessary revisions be initiated before s/he leaves the jobsite and also complete Form OPER 726, which shall include the action taken. One copy of the completed form shall be retained in the files of the District Bureau of Operations/Traffic. One copy shall be provided to the individual primarily responsible for traffic control at the project site. Whenever two consecutive inspections at the same site indicate adequate protection is not being provided; additional copies of the report shall be forwarded to the Regional Deputy Director and the appropriate Bureau Chief.

All technical personnel of the Central Bureaus of Safety Engineering, Operations, and Construction shall give particular attention to these traffic control measures during their routine travels throughout the State. Major deviations from proper traffic control practices shall be brought to the attention of the appropriate District Traffic Operations Engineer/Bureau Chief of Traffic.

WORK ZONE REVIEWS

Work Zone Safety and Mobility Policy Process Review

This process review shall be performed by the Central Office every other year to assess the effectiveness of IDOT's work zone standards, specifications, policies, procedures, TCPs, PIPs, TOPs, TMPs, Significant Projects, and the

level of mobility and safety afforded the traveling public. All types of projects shall be reviewed. These shall include day work and night work, all types of traffic characteristics, and the various management strategies that are being utilized. The process review team should consist of personnel who represent the project development stages and the different offices of IDOT who participate in project development and implementation. Bureau of Safety Engineering shall be the lead agency, and the FHWA Office shall be invited.

Work Zone Traffic Control Project Review

These project reviews shall be performed by the Central Office every two (2) years, on the opposite years of the Work Zone Safety and Mobility Policy Process Review. This review will consist of a drive-through to inspect the traffic control of construction projects. A random selection of projects will be selected for review. The project review team should consist of personnel who represent the project development stages and the different offices of IDOT who participate in project development and implementation. Bureau of Safety Engineering shall be the lead agency and the FHWA Office shall be invited. The findings of these reviews shall be documented and presented to the District in a closeout meeting.

TMP PERFORMANCE ASSESSMENT

Safety

If a fatal crash occurs within the project limits, the Resident Engineer or person in charge of any project/ encroachment on state highway shall submit a Work Zone Crash Summary Report within ten (10) days to the Bureau of Safety Engineering. This Work Zone Crash Summary Report shall provide the following information:

- Summary of the type of construction;
- Description of the traffic control in place at the time of the crash;
- Description of the traffic conditions at the time of the crash;
- Description of the Contractor's operations at the time of the crash;
- Description of the weather conditions, pavement conditions, and time of day;
- Description of changes made to the traffic control as a result of the crash;
- Recommendations for change to IDOT's Standards, Specifications, policies, or procedures that should be considered as a result of the crash; and,
- Photos of the traffic control throughout the project before (if available) and after the crash.

Mobility

Upon completion of the construction contract on Significant Projects – Long Term, the Resident Engineer shall develop and submit a Work Zone TMP Summary Report to the Bureau of Safety Engineering within thirty (30) days after the essential completion of the project. The Work Zone TMP Summary Report shall provide the following information:

- Project description, staging, and traffic control utilized;
- Summary of TMP strategies utilized including successes or failures;
- Description of the traffic operations due to work zone, such as were there backups, duration of the delays, length of queues, etc.;
- Description of changes made to the TMP;
- Description of changes made to the traffic control due to crashes occurring within the project limits; and,
- Recommendations for change to IDOT's Standards, Specifications, policies, or procedures that should be considered.

These reports are to be prepared in accordance with the Illinois Vehicle Code at 625 ILCS 5/11-408(c), and these reports shall be for the privileged use of the Department and held confidential, and shall not be used in any trial, civil or criminal.

The Bureau of Safety Engineering shall review all Work Zone Crash Summary Reports and Work Zone TMP Summary Reports and evaluate all recommended changes. Changes shall be made to Standards, Specifications, policies, and procedures as deemed appropriate to resolve issues resulting from these reports.

RESPONSIBILITIES

The Bureau of Safety Engineering is responsible for preparing and maintaining this policy. All Districts and Central Bureaus are responsible for implementing the portions of this policy that affect their operations. The District Traffic Control Supervisor or other designated District personnel shall have the traffic control inspection responsibilities. The Resident Engineer/Technician for a construction project, the construction supervisor for a day labor project, the Operations Field Engineer for either a maintenance or traffic project, or a company representative for a consulting firm or a utility project shall have the primary responsibility for ensuring that the traffic control is established in accordance with the approved plan, adequately maintained and revised, if necessary.

The Regional Deputy Director has the primary responsibility to ensure that this policy is carried out within his/her jurisdiction.

ACCESSIBILITY

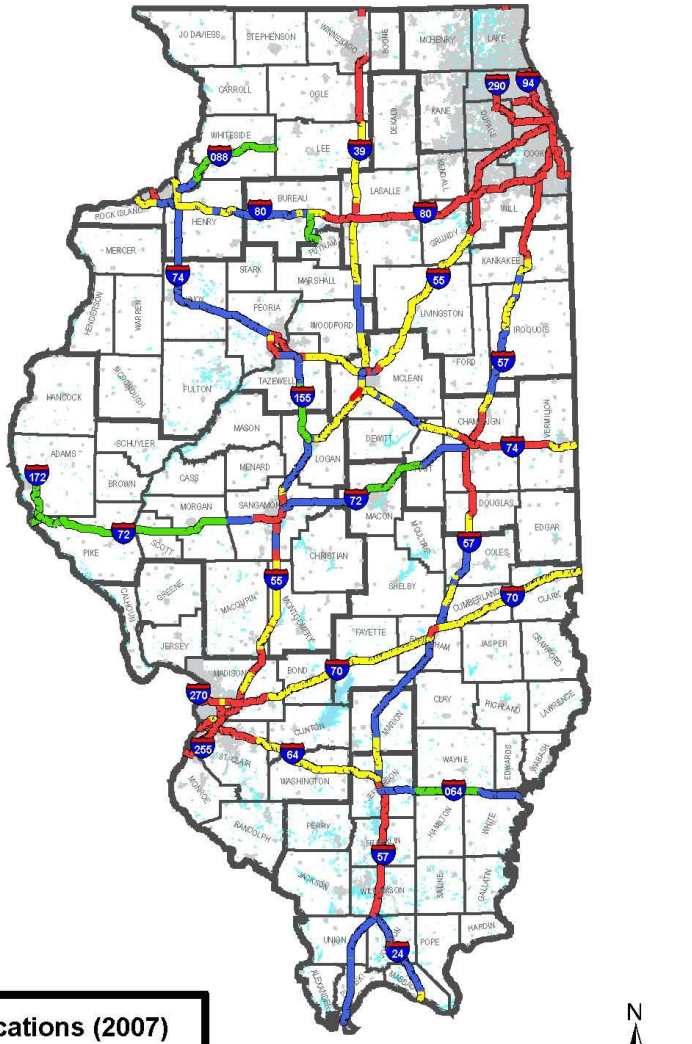
Copies of this Policy may be obtained either from the department's website or from the Bureau of Safety Engineering in the Harry R. Hanley Building. This Policy may be examined in the Hanley Building library and in each of the nine Division of Highways' district offices.

Priscilla A. Tobias, PE
State Safety Engineer

Appendix A, Work Zone Mobility and Safety Process Flow Chart
Appendix B, Significant Route Locations Maps
Appendix C, TMP Components Checklist
Appendix D, Current Training Classes
Appendix E, Federal Guideline Publications (Districts and Central Office Only)

ILLINOIS INTERSTATES

SIGNIFICANT ROUTE LOCATIONS



Significant Locations (2007)

- Free Flow under Most Conditions.
- Normal Free Flow with Limited Congestion.
- Approaching Significant Route Designation.
- Consider as a Significate Route.

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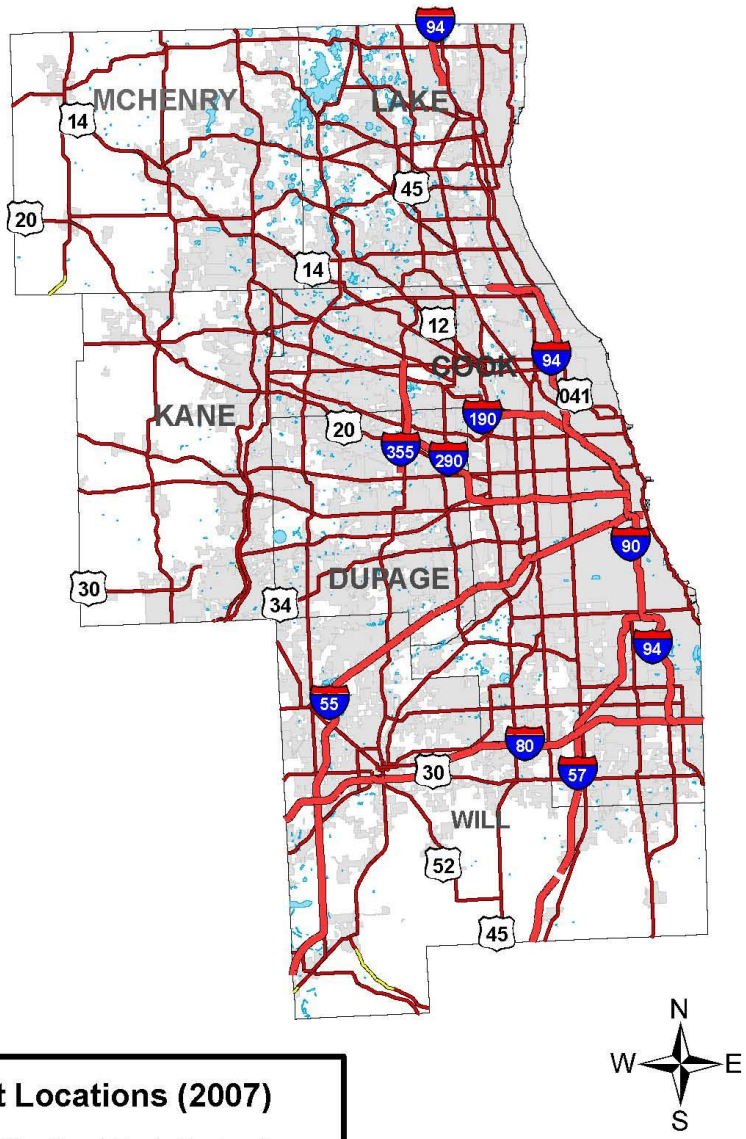
Appendix B
9/6/2007

IDOT DISTRICT 1

SIGNIFICANT ROUTE LOCATIONS



Significant Locations (2007)

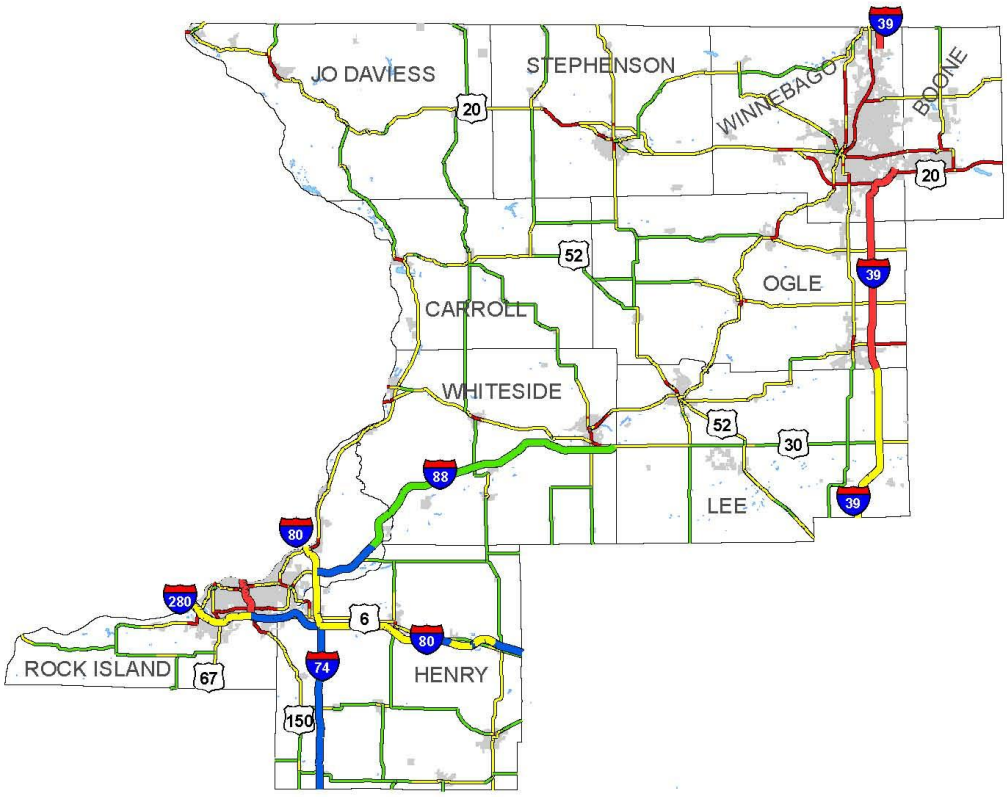
Approaching Significant Route Designation.

Consider as a Significant Route.

Appendix B
9/10/2007

IDOT DISTRICT 2

SIGNIFICANT ROUTE LOCATIONS



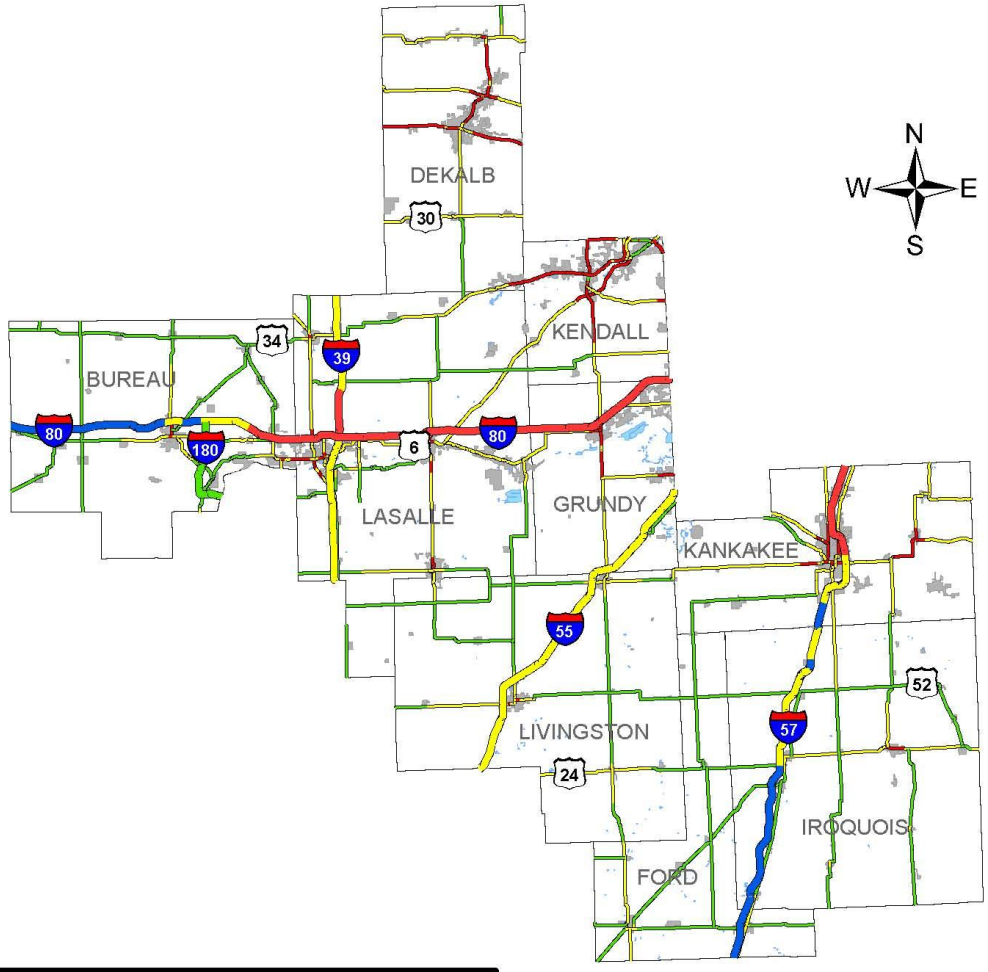
Significant Locations (2007)

- Free Flow under Most Conditions.
- Normal Free Flow with Limited Congestion.
- Approaching Significant Route Designation.
- Consider as a Significant Route.

Appendix B
9/8/2007

IDOT DISTRICT 3

SIGNIFICANT ROUTE LOCATIONS



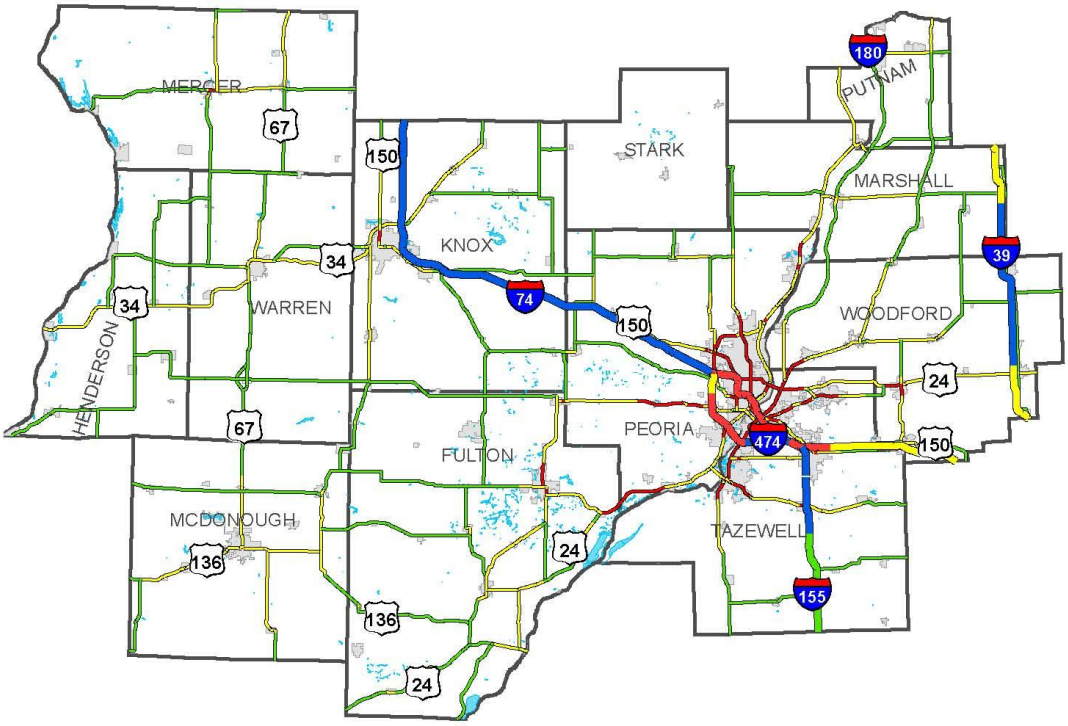
Significant Locations (2007)

- Free Flow under Most Conditions.
- Normal Free Flow with Limited Congestion.
- Approaching Significant Route Designation.
- Consider as a Significant Route.

Appendix B
9/8/2007

IDOT DISTRICT 4

SIGNIFICANT ROUTE LOCATIONS



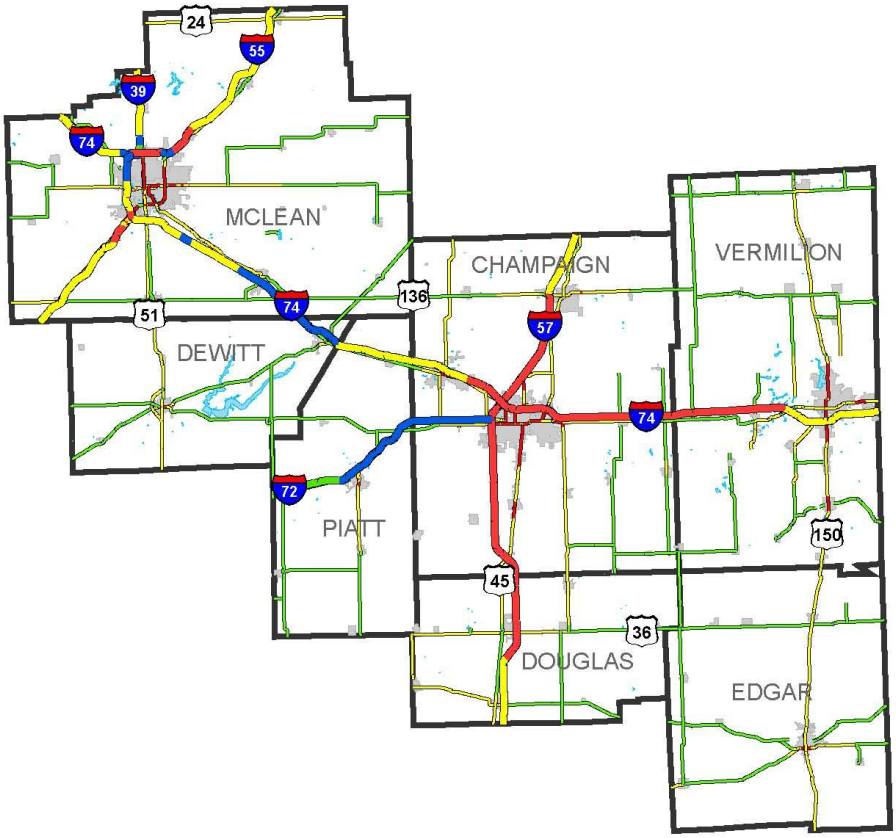
Significant Locations (2007)

- Free Flow under Most Conditions.
- Normal Free Flow with Limited Congestion.
- Approaching Significant Route Designation.
- Consider as a Significant Route.

Appendix B
9/8/2007

IDOT DISTRICT 5

SIGNIFICANT ROUTE LOCATIONS



Significant Locations (2007)

- Free Flow under Most Conditions.
- Normal Free Flow with Limited Congestion.
- Approaching Significant Route Designation.
- Consider as a Significant Route.

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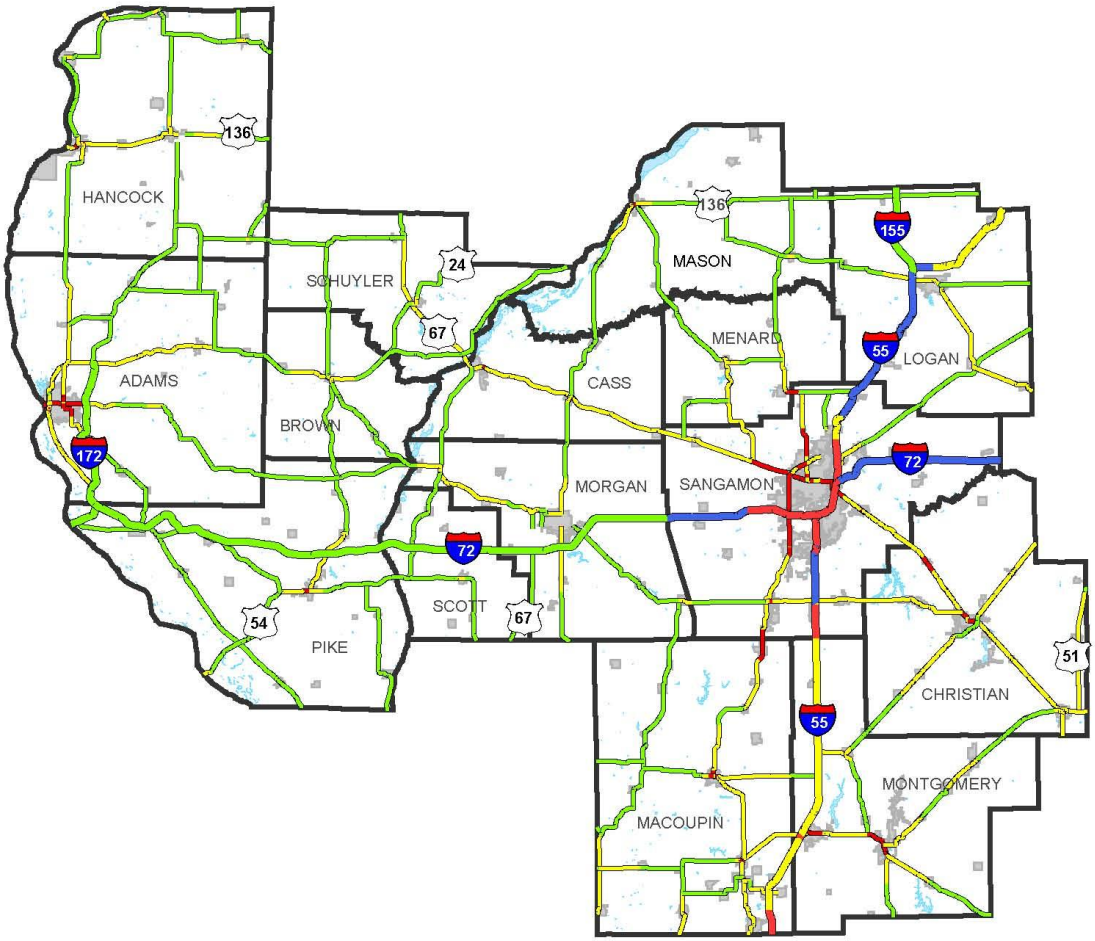
Appendix B
9/8/2007

IDOT DISTRICT 6

SIGNIFICANT ROUTE LOCATIONS



SIGNIFICANT ROUTES (2007)

- Free Flow under Most Conditions.
- Normal Free Flow with Limited Congestion.
- Approaching Significant Route Designation.
- Consider as a Significant Route.

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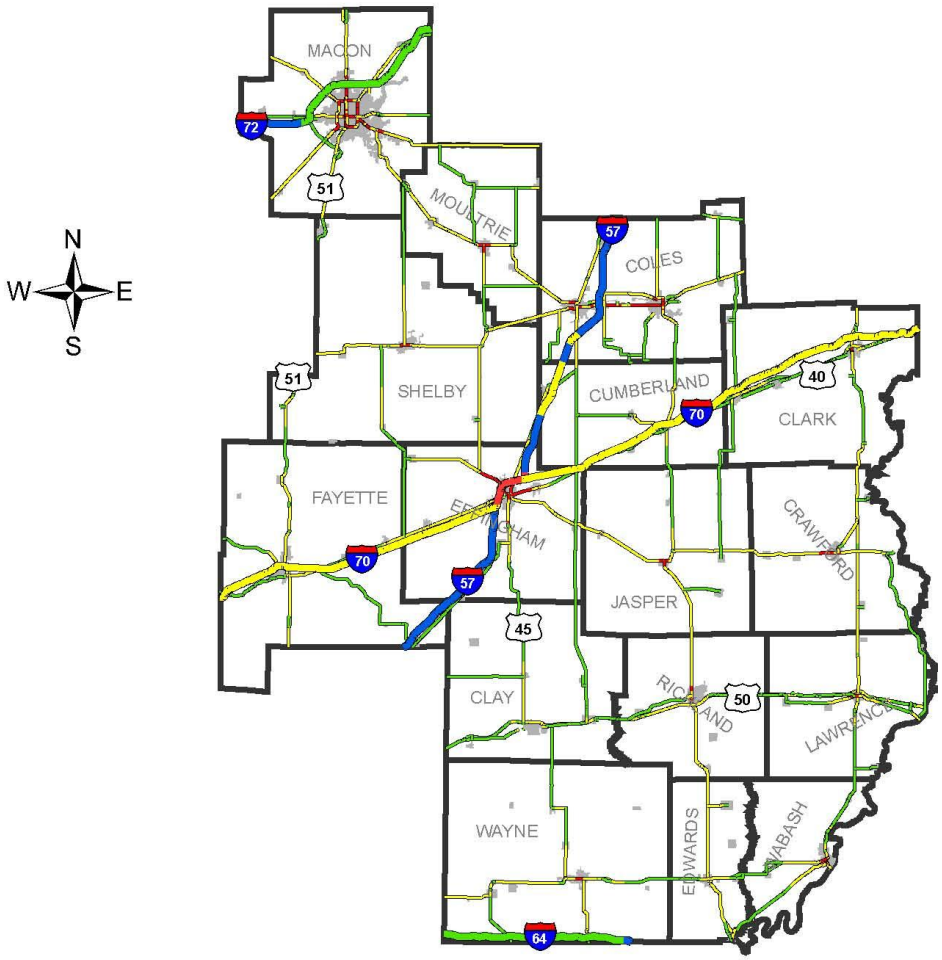
Appendix B
9/6/2007

IDOT DISTRICT 7

SIGNIFICANT ROUTE LOCATIONS



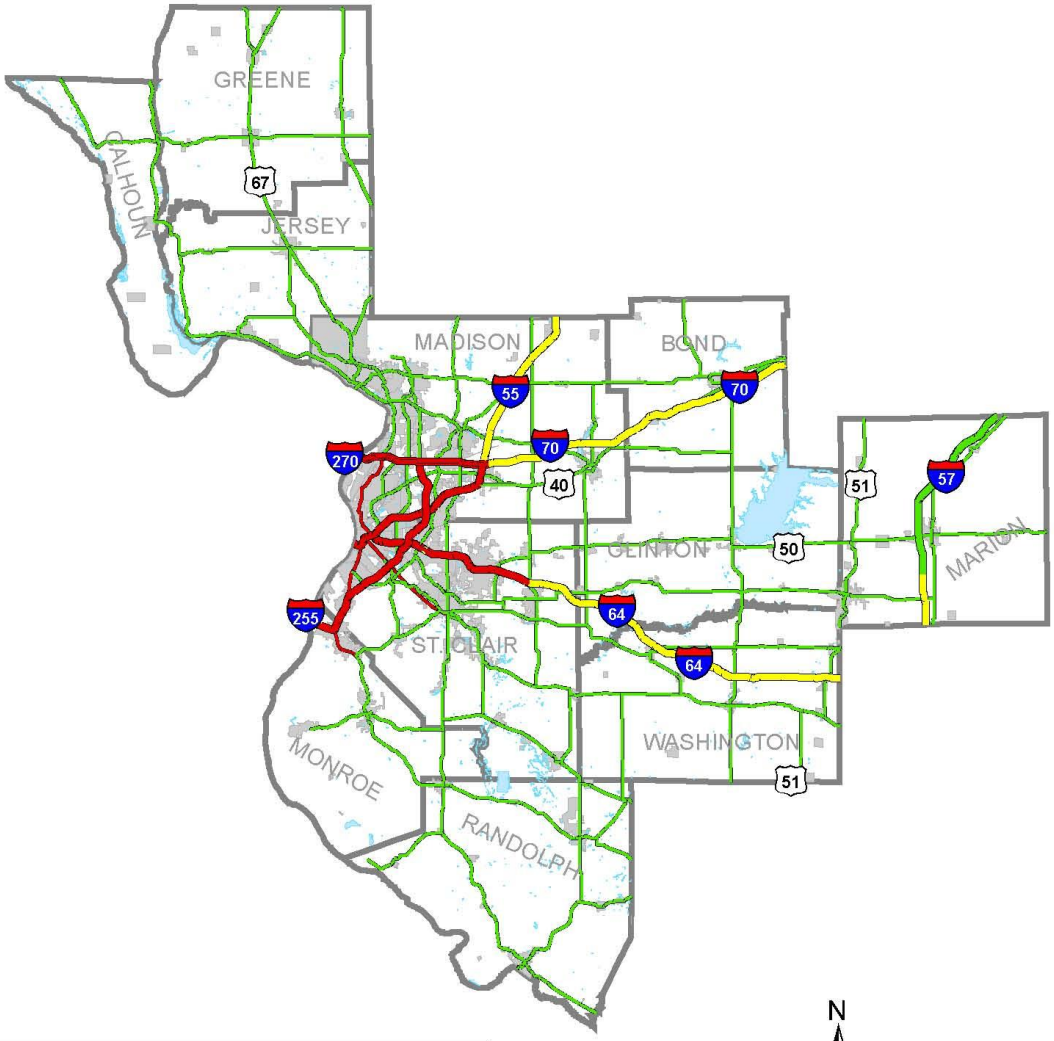
Significant Locations (2007)

- Free Flow under Most Conditions.
- Normal Free Flow with Limited Congestion.
- Approaching Significant Route Designation.
- Consider as a Significant Route.

Appendix B
9/7/07

IDOT DISTRICT 8

SIGNIFICANT ROUTE LOCATIONS



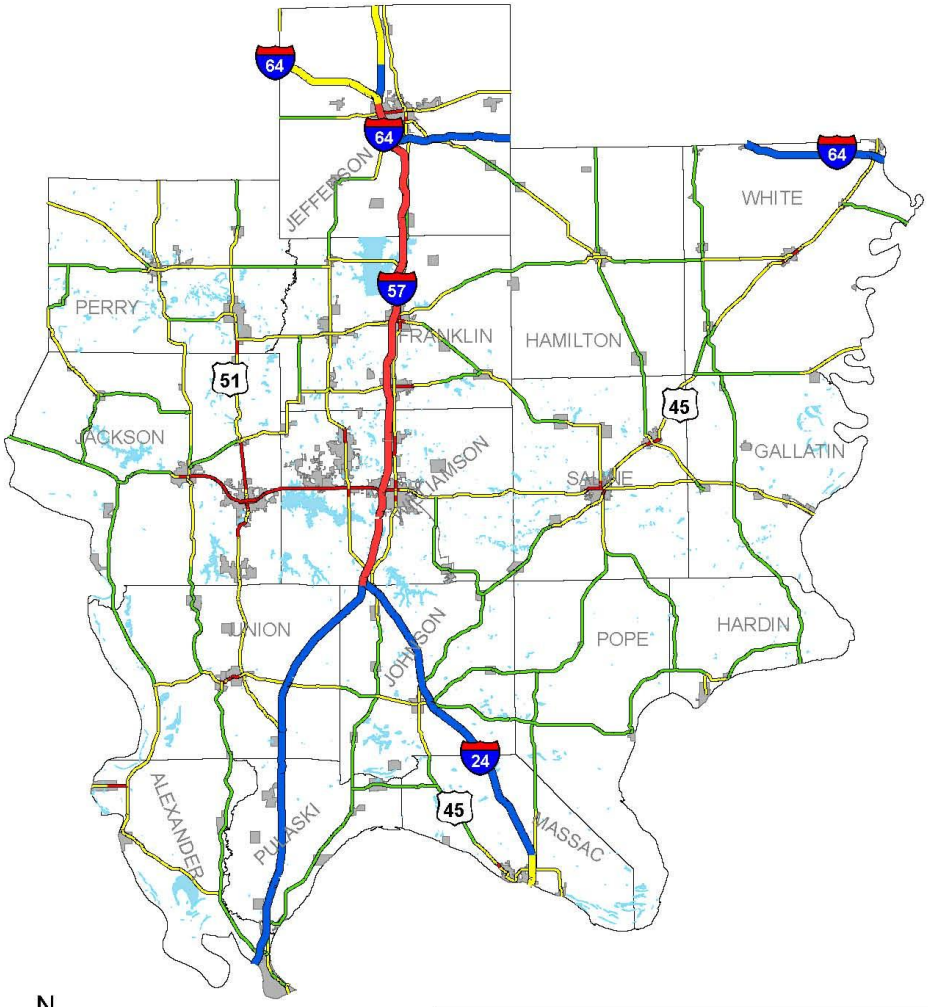
Significant Locations (2007)

- Free Flow Under Most Conditions.
- Approaching Significant Route Designation.
- Consider As A Significant Route.

Appendix B
10/12/2007

IDOT DISTRICT 9

SIGNIFICANT ROUTE LOCATIONS



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Significant Locations (2007)

- Free Flow under Most Conditions.
- Normal Free Flow with Limited Congestion.
- Approaching Significant Route Designation.
- Consider as a Significant Route.

Appendix B
9/8/2007

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2013-05

SUBJECT: COMPLETE STREETS

ISSUED DATE: July 25, 2013

EFFECTIVE DATE: July 31, 2013

This memorandum supersedes Section 10-2 dated July 2008 and Section 22-2 dated February 2009 of the Bureau of Local Roads & Streets Manual.

605 ILCS 5/4-220 requires the Department to give bicycle and pedestrian ways full consideration in the planning and development of transportation facilities. This is commonly referred to as Complete Streets. Therefore, any local public agency (LPA) project, regardless of funding, that impacts a State highway will need to comply with the Complete Streets requirements on the State highway.

Contact the Local Policy & Technology Unit at IDOT.LocalPolicy@illinois.gov with any questions.

James K. Klein

Acting Engineer of Local Roads and Streets

KB/kb

Attachment

(605 ILCS 5/4-220)

Sec. 4-220. Bicycle and pedestrian ways.

(a) Bicycle and pedestrian ways shall be given full consideration in the planning and development of transportation facilities, including the incorporation of such ways into State plans and programs.

(b) In or within one mile of an urban area, bicycle and pedestrian ways shall be established in conjunction with the construction, reconstruction, or other change of any State transportation facility except:

(1) in pavement resurfacing projects that do not widen the existing traveled way or do not provide stabilized shoulders; or

(2) where approved by the Secretary of Transportation based upon documented safety issues, excessive cost or absence of need.

(c) Bicycle and pedestrian ways may be included in pavement resurfacing projects when local support is evident or bicycling and walking accommodations can be added within the overall scope of the original roadwork.

(d) The Department shall establish design and construction standards for bicycle and pedestrian ways. Beginning July 1, 2007, this Section shall apply to planning and training purposes only. Beginning July 1, 2008, this Section shall apply to construction projects.

(Source: P.A. 95-665, eff. 10-10-07.)

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2013-06

SUBJECT: NOISE ANALYSIS

ISSUED DATE: July 25, 2013

EFFECTIVE DATE: August 31, 2013

This memorandum supersedes Section 20-6 dated January 2006 of the Bureau of Local Roads & Streets Manual.

The FHWA developed the noise regulation as required by section 136 of the Federal-Aid Highway Act of 1970 (codified at 23 U.S.C. 109(i)). The regulation applies to highway construction projects where a State department of transportation has requested Federal funding for participation in the project. The FHWA noise regulation, found at 23 CFR 772, requires a highway agency to investigate traffic noise impacts for projects considered Type I Projects. Type I projects are defined as:

- The construction of a highway on a new location;
- The physical alteration of an existing highway where there is either a substantial horizontal or vertical alteration;
- The addition of a through traffic lane(s). This includes the addition of a through-lane that functions as a HOV lane, High-occupancy Toll (HOT) lane, bus lane, or truck climbing lane;
- The addition of an auxiliary lane, except for when the auxiliary lane is a turn lane;
- The addition or relocation of interchange lanes or ramps added to a quadrant to complete an existing partial interchange;
- Restriping existing pavement for the purpose of adding a through-traffic lane or an auxiliary lane; or
- The addition of a new or substantial alteration of a weigh station, rest stop, ride-share lot or toll plaza.

If a project is determined to be a Type I project under these definitions, the entire project area as defined in the NEPA environmental document is then a Type I project. If the highway agency identifies impacts, it must consider abatement. The highway agency must incorporate all feasible and reasonable noise abatement into the project design.

On July 13, 2010, the FHWA published a final rule updating 23 CFR 772. This final rule amends sections 772.1, 772.5 to 772.17, and Table 1--Noise Abatement Criteria. Sections 772.3 and 772.19 are not amended by this final rule. The final rule also eliminated the use of the TNM Lookup Tables in either form (hard copy table or executable program) to predict noise levels on Federal or Federal-aid projects. The final rule required each State DOT to revise its noise policy to be in accordance with this final rule. FHWA approved IDOT's Noise Policy on April 1, 2011 with an effective date of June 29, 2011. IDOT's Noise Policy is contained in Section 26-6 of the BDE Manual. IDOT has also released the Highway Traffic Noise Assessment Manual, which is found at www.dot.il.gov/environment/HTNAManual.pdf.

Contact the Local Policy & Technology Unit at IDOT.LocalPolicy@illinois.gov with any questions.

James K. Klein

Acting Engineer of Local Roads and Streets

KB/kb

Attachments

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2013-07

SUBJECT: MOTOR FUEL TAX USAGE

ISSUED DATE: October 15, 2013

EFFECTIVE DATE: October 15, 2013

This memorandum supersedes Section 4-3 dated November 2012 and Section 14-1 dated November 2012 of the Bureau of Local Roads & Streets Manual.

The Department has clarified the following eligible uses of Motor Fuel Tax (MFT) funds.

Salary & Expenses. MFT funds may be used to pay for the County Engineer's Salary and expenses provided that the duties being performed by the County Engineer are related to functions of the County Engineer established by the Illinois Highway Code or the Department.

Non-Dedicated Subdivision Roads Established Prior to July 23, 1959. MFT Funds may be used to perform construction or maintenance on these roads provided the residents provide a proportional share of funding.

Investments & Deposits. MFT funds may be invested or deposited according to the requirements of the Public Investment Act and the Investment of Municipal Funds Act. Any loss of principal will require MFT funds to be reimbursed with other local funds.

Joint Improvements. MFT funds may be used by an local public agency to perform construction or maintenance on public highways not under its jurisdiction provided there is a written contract approved by the Department, or a negotiated agreement.

Traffic Control Device Maintenance. MFT funds may be used to purchase required software for maintenance of traffic signals.

Please contact the Bureau's Local Policy & Technology Unit at IDOT.LocalPolicy@illinois.gov with any questions.

James K. Klein

Acting Engineer of Local Roads and Streets

KB/kb

Attachments

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

January 31, 1996

FILE NO. 96-008

COUNTIES:
Use of Motor Fuel Tax
Funds for Nondedicated
Subdivision Roads

Honorable Gary W. Pack
State's Attorney, McHenry County
McHenry County Government Center
2200 North Seminary Avenue
Woodstock, Illinois 60098

Dear Mr. Pack:

I have your letter wherein you inquire regarding the meaning of the term "nondedicated subdivision roads", for purposes of section 5-701.15 of the Illinois Highway Code (605 ILCS 5/5-701.15 (West 1994)). For the reasons hereinafter stated, it is my opinion that the term "nondedicated subdivision roads" in section 5-701.15 refers only to those roads which were denoted as such on a subdivision plat filed prior to July 23, 1959, which have not been dedicated to the public.

Section 5-701.15 of the Illinois Highway Code provides:

> "The formula allocation for counties for the distribution of motor fuel tax funds, provided for in Section 8 in the "Motor Fuel Tax Law", may be used by the county board for

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100 West Randolph Street, Chicago, Illinois 60601 (312) 814-3000 • TDD: (312) 814-3374 • FAX: (312) 814-3806

> the maintenance or improvement of nondedicated subdivision roads established prior to July 23, 1959. Any such improved road becomes, by operation of law, a part of the township or district road system in accordance with Section 6-325 of this Code. The county board shall condition its approval, as required by this Section, upon proportional matching contributions, whether in cash, kind, services or otherwise, by property owners in the subdivision where such a road is situated. No more than the amount of the increase in allocation of such funds allocated under the formula as provided in Section 8 in the "Motor Fuel Tax Law" which is attributable to this amendatory Act of 1979 and any subsequent amendatory Act and subsequently approved as provided in this Section, may be expended on eligible nondedicated subdivision roads."

Based upon its plain language, section 5-701.15 is applicable only to roads that are part of a "subdivision", that are "nondedicated", and that were "established" prior to July 23, 1959.

The primary purpose of statutory construction is to ascertain and give effect to legislative intent. (People v. Zaremba (1994), 158 Ill. 2d 36). To that end, the history of legislation and the course it has taken are proper matters to be considered. (Acme Fireworks Corp. v. Bibb (1955), 6 Ill. 2d 112.) Further, it is proper to consider statutes on related subjects, although not strictly in pari materia. Scofield v. Board of Education of Community Consol. School Dist. No. 181 (1952), 411 Ill. 11.

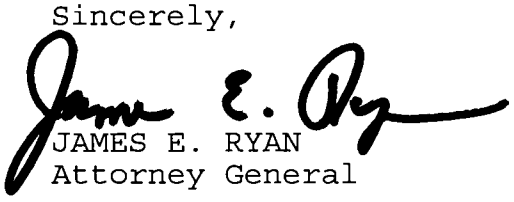
Section 5-701.15 was added to the Highway Code by Public Act 81-3 (Second Special Session), effective September 19, 1979. During the course of the legislative debate regarding the amendment which became section 5-701.5, Representative Skinner, its sponsor, explained that it was made applicable only to subdivisions that were platted before July 23, 1959, because after that date counties were not allowed to plat subdivisions that did not have decent roads. (Remarks of Rep. Skinner, September 5, 1979, House Debate on Senate Bill 889, pp. 203-207.) The date of July 23, 1959, appears to refer to an Act approved on that date which added a section to the statute governing counties, requiring that counties served by the Northeastern Illinois Metropolitan Planning Commission adopt rules for the approval of plats, including minimum standards for streets. (Laws 1959, p. 2134) The counties referred to by Representative Skinner during debate are in the area to which that Act was applicable. Essentially the same provision now appears at section 5-1042 of the Counties Code (55 ILCS 5/5-1042 (West 1994)). Section 2 of the Plat Act (765 ILCS 205/2 (West 1994)) also permits counties to establish requirements for the approval of plats.

Generally, the Plat Act (765 ILCS 205/0.01 et seq. (West 1994)), which has been in effect for more than 100 years, requires that when land is subdivided into parts of less than 5 acres, a survey must be made and a plat prepared and recorded.

The filing or recording of a plat, and the acceptance by public authorities of streets, alleys, or other public grounds marked thereon, results in transfer of title to the public authority and dedication of those streets, alleys or other grounds. (765 ILCS 205/3 (West 1994).) However, no rights are transferred, and no dedication made, absent acceptance, either express or implied, by the public authority. (LaSalle National Bank v. City of Chicago (1974), 19 Ill. App. 3d 883, 886). Therefore, subdivisions, and the streets within them, are generally established by plats which are filed or recorded. Streets within subdivisions may be dedicated or nondedicated depending upon whether they are so marked on the plat and whether they are accepted by the appropriate public authority.

Based upon the legislative history of section 5-701.15 and its relationship to the provisions of the Plat Act, it is my opinion that the term "nondedicated subdivision roads" in section 5-701.15 refers only to nondedicated roads in subdivisions concerning which a plat was filed or recorded prior to July 23, 1959.

Sincerely,



JAMES E. RYAN
Attorney General

Information maintained by the Legislative Reference Bureau
Updating the database of the Illinois Compiled Statutes (ILCS) is an ongoing process. Recent laws may not yet be included in the ILCS database, but they are found on this site as Public Acts soon after they become law. For information concerning the relationship between statutes and Public Acts, refer to the Guide.

Because the statute database is maintained primarily for legislative drafting purposes, statutory changes are sometimes included in the statute database before they take effect. If the source note at the end of a Section of the statutes includes a Public Act that has not yet taken effect, the version of the law that is currently in effect may have already been removed from the database and you should refer to that Public Act to see the changes made to the current law.

FINANCE
(30 ILCS 235/) Public Funds Investment Act.

(30 ILCS 235/0.01) (from Ch. 85, par. 900)
Sec. 0.01. Short title. This Act may be cited as the Public Funds Investment Act.
(Source: P.A. 86-1324.)

(30 ILCS 235/1) (from Ch. 85, par. 901)
Sec. 1. The words "public funds", as used in this Act, mean current operating funds, special funds, interest and sinking funds, and funds of any kind or character belonging to or in the custody of any public agency.

The words "public agency", as used in this Act, mean the State of Illinois, the various counties, townships, cities, towns, villages, school districts, educational service regions, special road districts, public water supply districts, fire protection districts, drainage districts, levee districts, sewer districts, housing authorities, the Illinois Bank Examiners' Education Foundation, the Chicago Park District, and all other political corporations or subdivisions of the State of Illinois, now or hereafter created, whether herein specifically mentioned or not. This Act does not apply to the Illinois Prepaid Tuition Trust Fund, private funds collected by the Illinois Conservation Foundation, or pension funds or retirement systems established under the Illinois Pension Code, except as otherwise provided in that Code.

The words "governmental unit", as used in this Act, have the same meaning as in the Local Government Debt Reform Act.
(Source: P.A. 98-297, eff. 1-1-14.)

(30 ILCS 235/2) (from Ch. 85, par. 902)
(Text of Section from P.A. 98-297)
Sec. 2. Authorized investments.

(a) Any public agency may invest any public funds as follows:

(1) in bonds, notes, certificates of indebtedness, treasury bills or other securities now or hereafter issued, which are guaranteed by the full faith and credit of the United States of America as to principal and interest;

(2) in bonds, notes, debentures, or other similar obligations of the United States of America, its agencies, and its instrumentalities;

(3) in interest-bearing savings accounts, interest-bearing certificates of deposit or interest-bearing time deposits or any other investments

constituting direct obligations of any bank as defined by the Illinois Banking Act;

(4) in short term obligations of corporations organized in the United States with assets exceeding $500,000,000 if (i) such obligations are rated at the time of purchase at one of the 3 highest classifications established by at least 2 standard rating services and which mature not later than 270 days from the date of purchase, (ii) such purchases do not exceed 10% of the corporation's outstanding obligations and (iii) no more than one-third of the public agency's funds may be invested in short term obligations of corporations; or

(5) in money market mutual funds registered under the Investment Company Act of 1940, provided that the portfolio of any such money market mutual fund is limited to obligations described in paragraph (1) or (2) of this subsection and to agreements to repurchase such obligations.

(a-1) In addition to any other investments authorized under this Act, a municipality, county, or other governmental unit may invest its public funds in interest bearing bonds of any county, township, city, village, incorporated town, municipal corporation, or school district, of the State of Illinois, of any other state, or of any political subdivision or agency of the State of Illinois or of any other state, whether the interest earned thereon is taxable or tax-exempt under federal law. The bonds shall be registered in the name of the municipality, county, or other governmental unit, or held under a custodial agreement at a bank. The bonds shall be rated at the time of purchase within the 4 highest general classifications established by a rating service of nationally recognized expertise in rating bonds of states and their political subdivisions.

(b) Investments may be made only in banks which are insured by the Federal Deposit Insurance Corporation. Any public agency may invest any public funds in short term discount obligations of the Federal National Mortgage Association or in shares or other forms of securities legally issuable by savings banks or savings and loan associations incorporated under the laws of this State or any other state or under the laws of the United States. Investments may be made only in those savings banks or savings and loan associations the shares, or investment certificates of which are insured by the Federal Deposit Insurance Corporation. Any such securities may be purchased at the offering or market price thereof at the time of such purchase. All such securities so purchased shall mature or be redeemable on a date or dates prior to the time when, in the judgment of such governing authority, the public funds so invested will be required for expenditure by such public agency or its governing authority. The expressed judgment of any such governing authority as to the time when any public funds will be required for expenditure or be redeemable is final and conclusive. Any public agency may invest any public funds in dividend-bearing share accounts, share certificate accounts or class of share accounts of a credit union chartered under the laws of this State or the laws of the United States; provided, however, the principal office of any such credit union must be located within the State of Illinois. Investments may be made only in those credit unions the accounts of which are insured

by applicable law.

(c) For purposes of this Section, the term "agencies of the United States of America" includes: (i) the federal land banks, federal intermediate credit banks, banks for cooperative, federal farm credit banks, or any other entity authorized to issue debt obligations under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and Acts amendatory thereto; (ii) the federal home loan banks and the federal home loan mortgage corporation; and (iii) any other agency created by Act of Congress.

(d) Except for pecuniary interests permitted under subsection (f) of Section 3-14-4 of the Illinois Municipal Code or under Section 3.2 of the Public Officer Prohibited Practices Act, no person acting as treasurer or financial officer or who is employed in any similar capacity by or for a public agency may do any of the following:

(1) have any interest, directly or indirectly, in any investments in which the agency is authorized to invest.

(2) have any interest, directly or indirectly, in the sellers, sponsors, or managers of those investments.

(3) receive, in any manner, compensation of any kind from any investments in which the agency is authorized to invest.

(e) Any public agency may also invest any public funds in a Public Treasurers' Investment Pool created under Section 17 of the State Treasurer Act. Any public agency may also invest any public funds in a fund managed, operated, and administered by a bank, subsidiary of a bank, or subsidiary of a bank holding company or use the services of such an entity to hold and invest or advise regarding the investment of any public funds.

(f) To the extent a public agency has custody of funds not owned by it or another public agency and does not otherwise have authority to invest such funds, the public agency may invest such funds as if they were its own. Such funds must be released to the appropriate person at the earliest reasonable time, but in no case exceeding 31 days, after the private person becomes entitled to the receipt of them. All earnings accruing on any investments or deposits made pursuant to the provisions of this Act shall be credited to the public agency by or for which such investments or deposits were made, except as provided otherwise in Section 4.1 of the State Finance Act or the Local Governmental Tax Collection Act, and except where by specific statutory provisions such earnings are directed to be credited to and paid to a particular fund.

(g) A public agency may purchase or invest in repurchase agreements of government securities having the meaning set out in the Government Securities Act of 1986, as now or hereafter amended or succeeded, subject to the provisions of said Act and the regulations issued thereunder. The government securities, unless registered or inscribed in the name of the public agency, shall be purchased through banks or trust companies authorized to do business in the State of Illinois.

(h) Except for repurchase agreements of government securities which are subject to the Government Securities Act of 1986, as now or hereafter amended or succeeded, no public agency may purchase or invest in instruments which constitute repurchase agreements, and no financial institution may enter into such an agreement with or on behalf of any public agency unless the instrument and the transaction meet the following

requirements:

(1) The securities, unless registered or inscribed in the name of the public agency, are purchased through banks or trust companies authorized to do business in the State of Illinois.

(2) An authorized public officer after ascertaining which firm will give the most favorable rate of interest, directs the custodial bank to "purchase" specified securities from a designated institution. The "custodial bank" is the bank or trust company, or agency of government, which acts for the public agency in connection with repurchase agreements involving the investment of funds by the public agency. The State Treasurer may act as custodial bank for public agencies executing repurchase agreements. To the extent the Treasurer acts in this capacity, he is hereby authorized to pass through to such public agencies any charges assessed by the Federal Reserve Bank.

(3) A custodial bank must be a member bank of the Federal Reserve System or maintain accounts with member banks. All transfers of book-entry securities must be accomplished on a Reserve Bank's computer records through a member bank of the Federal Reserve System. These securities must be credited to the public agency on the records of the custodial bank and the transaction must be confirmed in writing to the public agency by the custodial bank.

(4) Trading partners shall be limited to banks or trust companies authorized to do business in the State of Illinois or to registered primary reporting dealers.

(5) The security interest must be perfected.

(6) The public agency enters into a written master repurchase agreement which outlines the basic responsibilities and liabilities of both buyer and seller.

(7) Agreements shall be for periods of 330 days or less.

(8) The authorized public officer of the public agency informs the custodial bank in writing of the maturity details of the repurchase agreement.

(9) The custodial bank must take delivery of and maintain the securities in its custody for the account of the public agency and confirm the transaction in writing to the public agency. The Custodial Undertaking shall provide that the custodian takes possession of the securities exclusively for the public agency; that the securities are free of any claims against the trading partner; and any claims by the custodian are subordinate to the public agency's claims to rights to those securities.

(10) The obligations purchased by a public agency may only be sold or presented for redemption or payment by the fiscal agent bank or trust company holding the obligations upon the written instruction of the public agency or officer authorized to make such investments.

(11) The custodial bank shall be liable to the public agency for any monetary loss suffered by the public agency due to the failure of the custodial bank to take and maintain possession of such securities.

(i) Notwithstanding the foregoing restrictions on investment in instruments constituting repurchase agreements

the Illinois Housing Development Authority may invest in, and any financial institution with capital of at least $250,000,000 may act as custodian for, instruments that constitute repurchase agreements, provided that the Illinois Housing Development Authority, in making each such investment, complies with the safety and soundness guidelines for engaging in repurchase transactions applicable to federally insured banks, savings banks, savings and loan associations or other depository institutions as set forth in the Federal Financial Institutions Examination Council Policy Statement Regarding Repurchase Agreements and any regulations issued, or which may be issued by the supervisory federal authority pertaining thereto and any amendments thereto; provided further that the securities shall be either (i) direct general obligations of, or obligations the payment of the principal of and/or interest on which are unconditionally guaranteed by, the United States of America or (ii) any obligations of any agency, corporation or subsidiary thereof controlled or supervised by and acting as an instrumentality of the United States Government pursuant to authority granted by the Congress of the United States and provided further that the security interest must be perfected by either the Illinois Housing Development Authority, its custodian or its agent receiving possession of the securities either physically or transferred through a nationally recognized book entry system.

(j) In addition to all other investments authorized under this Section, a community college district may invest public funds in any mutual funds that invest primarily in corporate investment grade or global government short term bonds. Purchases of mutual funds that invest primarily in global government short term bonds shall be limited to funds with assets of at least $100 million and that are rated at the time of purchase as one of the 10 highest classifications established by a recognized rating service. The investments shall be subject to approval by the local community college board of trustees. Each community college board of trustees shall develop a policy regarding the percentage of the college's investment portfolio that can be invested in such funds.

Nothing in this Section shall be construed to authorize an intergovernmental risk management entity to accept the deposit of public funds except for risk management purposes.

(Source: P.A. 97-129, eff. 7-14-11; 98-297, eff. 1-1-14.)

(Text of Section from P.A. 98-390)

Sec. 2. Authorized investments.

(a) Any public agency may invest any public funds as follows:

(1) in bonds, notes, certificates of indebtedness, treasury bills or other securities now or hereafter issued, which are guaranteed by the full faith and credit of the United States of America as to principal and interest;

(2) in bonds, notes, debentures, or other similar obligations of the United States of America, its agencies, and its instrumentalities;

(3) in interest-bearing savings accounts, interest-bearing certificates of deposit or interest-bearing time deposits or any other investments constituting direct obligations of any bank as defined by

the Illinois Banking Act;

(4) in short term obligations of corporations organized in the United States with assets exceeding $500,000,000 if (i) such obligations are rated at the time of purchase at one of the 3 highest classifications established by at least 2 standard rating services and which mature not later than 270 days from the date of purchase, (ii) such purchases do not exceed 10% of the corporation's outstanding obligations and (iii) no more than one-third of the public agency's funds may be invested in short term obligations of corporations; or

(5) in money market mutual funds registered under the Investment Company Act of 1940, provided that the portfolio of any such money market mutual fund is limited to obligations described in paragraph (1) or (2) of this subsection and to agreements to repurchase such obligations.

(a-1) In addition to any other investments authorized under this Act, a municipality, park district, forest preserve district, conservation district, or a county may invest its public funds in interest bearing bonds of any county, township, city, village, incorporated town, municipal corporation, or school district, of the State of Illinois, of any other state, or of any political subdivision or agency of the State of Illinois or of any other state, whether the interest earned thereon is taxable or tax-exempt under federal law. The bonds shall be registered in the name of the municipality, park district, forest preserve district, conservation district, or county or held under a custodial agreement at a bank. The bonds shall be rated at the time of purchase within the 4 highest general classifications established by a rating service of nationally recognized expertise in rating bonds of states and their political subdivisions.

(b) Investments may be made only in banks which are insured by the Federal Deposit Insurance Corporation. Any public agency may invest any public funds in short term discount obligations of the Federal National Mortgage Association or in shares or other forms of securities legally issuable by savings banks or savings and loan associations incorporated under the laws of this State or any other state or under the laws of the United States. Investments may be made only in those savings banks or savings and loan associations the shares, or investment certificates of which are insured by the Federal Deposit Insurance Corporation. Any such securities may be purchased at the offering or market price thereof at the time of such purchase. All such securities so purchased shall mature or be redeemable on a date or dates prior to the time when, in the judgment of such governing authority, the public funds so invested will be required for expenditure by such public agency or its governing authority. The expressed judgment of any such governing authority as to the time when any public funds will be required for expenditure or be redeemable is final and conclusive. Any public agency may invest any public funds in dividend-bearing share accounts, share certificate accounts or class of share accounts of a credit union chartered under the laws of this State or the laws of the United States; provided, however, the principal office of any such credit union must be located within the State of Illinois. Investments may be made

only in those credit unions the accounts of which are insured by applicable law.

(c) For purposes of this Section, the term "agencies of the United States of America" includes: (i) the federal land banks, federal intermediate credit banks, banks for cooperative, federal farm credit banks, or any other entity authorized to issue debt obligations under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and Acts amendatory thereto; (ii) the federal home loan banks and the federal home loan mortgage corporation; and (iii) any other agency created by Act of Congress.

(d) Except for pecuniary interests permitted under subsection (f) of Section 3-14-4 of the Illinois Municipal Code or under Section 3.2 of the Public Officer Prohibited Practices Act, no person acting as treasurer or financial officer or who is employed in any similar capacity by or for a public agency may do any of the following:

(1) have any interest, directly or indirectly, in any investments in which the agency is authorized to invest.

(2) have any interest, directly or indirectly, in the sellers, sponsors, or managers of those investments.

(3) receive, in any manner, compensation of any kind from any investments in which the agency is authorized to invest.

(e) Any public agency may also invest any public funds in a Public Treasurers' Investment Pool created under Section 17 of the State Treasurer Act. Any public agency may also invest any public funds in a fund managed, operated, and administered by a bank, subsidiary of a bank, or subsidiary of a bank holding company or use the services of such an entity to hold and invest or advise regarding the investment of any public funds.

(f) To the extent a public agency has custody of funds not owned by it or another public agency and does not otherwise have authority to invest such funds, the public agency may invest such funds as if they were its own. Such funds must be released to the appropriate person at the earliest reasonable time, but in no case exceeding 31 days, after the private person becomes entitled to the receipt of them. All earnings accruing on any investments or deposits made pursuant to the provisions of this Act shall be credited to the public agency by or for which such investments or deposits were made, except as provided otherwise in Section 4.1 of the State Finance Act or the Local Governmental Tax Collection Act, and except where by specific statutory provisions such earnings are directed to be credited to and paid to a particular fund.

(g) A public agency may purchase or invest in repurchase agreements of government securities having the meaning set out in the Government Securities Act of 1986, as now or hereafter amended or succeeded, subject to the provisions of said Act and the regulations issued thereunder. The government securities, unless registered or inscribed in the name of the public agency, shall be purchased through banks or trust companies authorized to do business in the State of Illinois.

(h) Except for repurchase agreements of government securities which are subject to the Government Securities Act of 1986, as now or hereafter amended or succeeded, no public agency may purchase or invest in instruments which constitute repurchase agreements, and no financial institution may enter into such an agreement with or on behalf of any public agency

unless the instrument and the transaction meet the following requirements:

(1) The securities, unless registered or inscribed in the name of the public agency, are purchased through banks or trust companies authorized to do business in the State of Illinois.

(2) An authorized public officer after ascertaining which firm will give the most favorable rate of interest, directs the custodial bank to "purchase" specified securities from a designated institution. The "custodial bank" is the bank or trust company, or agency of government, which acts for the public agency in connection with repurchase agreements involving the investment of funds by the public agency. The State Treasurer may act as custodial bank for public agencies executing repurchase agreements. To the extent the Treasurer acts in this capacity, he is hereby authorized to pass through to such public agencies any charges assessed by the Federal Reserve Bank.

(3) A custodial bank must be a member bank of the Federal Reserve System or maintain accounts with member banks. All transfers of book-entry securities must be accomplished on a Reserve Bank's computer records through a member bank of the Federal Reserve System. These securities must be credited to the public agency on the records of the custodial bank and the transaction must be confirmed in writing to the public agency by the custodial bank.

(4) Trading partners shall be limited to banks or trust companies authorized to do business in the State of Illinois or to registered primary reporting dealers.

(5) The security interest must be perfected.

(6) The public agency enters into a written master repurchase agreement which outlines the basic responsibilities and liabilities of both buyer and seller.

(7) Agreements shall be for periods of 330 days or less.

(8) The authorized public officer of the public agency informs the custodial bank in writing of the maturity details of the repurchase agreement.

(9) The custodial bank must take delivery of and maintain the securities in its custody for the account of the public agency and confirm the transaction in writing to the public agency. The Custodial Undertaking shall provide that the custodian takes possession of the securities exclusively for the public agency; that the securities are free of any claims against the trading partner; and any claims by the custodian are subordinate to the public agency's claims to rights to those securities.

(10) The obligations purchased by a public agency may only be sold or presented for redemption or payment by the fiscal agent bank or trust company holding the obligations upon the written instruction of the public agency or officer authorized to make such investments.

(11) The custodial bank shall be liable to the public agency for any monetary loss suffered by the public agency due to the failure of the custodial bank to take and maintain possession of such securities.

(i) Notwithstanding the foregoing restrictions on

investment in instruments constituting repurchase agreements the Illinois Housing Development Authority may invest in, and any financial institution with capital of at least $250,000,000 may act as custodian for, instruments that constitute repurchase agreements, provided that the Illinois Housing Development Authority, in making each such investment, complies with the safety and soundness guidelines for engaging in repurchase transactions applicable to federally insured banks, savings banks, savings and loan associations or other depository institutions as set forth in the Federal Financial Institutions Examination Council Policy Statement Regarding Repurchase Agreements and any regulations issued, or which may be issued by the supervisory federal authority pertaining thereto and any amendments thereto; provided further that the securities shall be either (i) direct general obligations of, or obligations the payment of the principal of and/or interest on which are unconditionally guaranteed by, the United States of America or (ii) any obligations of any agency, corporation or subsidiary thereof controlled or supervised by and acting as an instrumentality of the United States Government pursuant to authority granted by the Congress of the United States and provided further that the security interest must be perfected by either the Illinois Housing Development Authority, its custodian or its agent receiving possession of the securities either physically or transferred through a nationally recognized book entry system.

(j) In addition to all other investments authorized under this Section, a community college district may invest public funds in any mutual funds that invest primarily in corporate investment grade or global government short term bonds. Purchases of mutual funds that invest primarily in global government short term bonds shall be limited to funds with assets of at least $100 million and that are rated at the time of purchase as one of the 10 highest classifications established by a recognized rating service. The investments shall be subject to approval by the local community college board of trustees. Each community college board of trustees shall develop a policy regarding the percentage of the college's investment portfolio that can be invested in such funds.

Nothing in this Section shall be construed to authorize an intergovernmental risk management entity to accept the deposit of public funds except for risk management purposes.

(Source: P.A. 97-129, eff. 7-14-11; 98-390, eff. 8-16-13.)

(30 ILCS 235/2.5)

Sec. 2.5. Investment policy.

(a) Investment of public funds by a public agency shall be governed by a written investment policy adopted by the public agency. The level of detail and complexity of the investment policy shall be appropriate to the nature of the funds, the purpose for the funds, and the amount of the public funds within the investment portfolio. The policy shall address safety of principal, liquidity of funds, and return on investment and shall require that the investment portfolio be structured in such manner as to provide sufficient liquidity to pay obligations as they come due. In addition, the investment policy shall include or address the following:

(1) a listing of authorized investments;

(2) a rule, such as the "prudent person rule",

establishing the standard of care that must be maintained by the persons investing the public funds;

(3) investment guidelines that are appropriate to the nature of the funds, the purpose for the funds, and the amount of the public funds within the investment portfolio;

(4) a policy regarding diversification of the investment portfolio that is appropriate to the nature of the funds, the purpose for the funds, and the amount of the public funds within the investment portfolio;

(5) guidelines regarding collateral requirements, if any, for the deposit of public funds in a financial institution made pursuant to this Act, and, if applicable, guidelines for contractual arrangements for the custody and safekeeping of that collateral;

(6) a policy regarding the establishment of a system of internal controls and written operational procedures designed to prevent losses of funds that might arise from fraud, employee error, misrepresentation by third parties, or imprudent actions by employees of the entity;

(7) identification of the chief investment officer who is responsible for establishing the internal controls and written procedures for the operation of the investment program;

(8) performance measures that are appropriate to the nature of the funds, the purpose for the funds, and the amount of the public funds within the investment portfolio;

(9) a policy regarding appropriate periodic review of the investment portfolio, its effectiveness in meeting the public agency's needs for safety, liquidity, rate of return, and diversification, and its general performance;

(10) a policy establishing at least quarterly written reports of investment activities by the public agency's chief financial officer for submission to the governing body and chief executive officer of the public agency. The reports shall include information regarding securities in the portfolio by class or type, book value, income earned, and market value as of the report date;

(11) a policy regarding the selection of investment advisors, money managers, and financial institutions; and

(12) a policy regarding ethics and conflicts of interest.

(b) For purposes of the State or a county, the investment policy shall be adopted by the elected treasurer and presented to the chief executive officer and the governing body. For purposes of any other public agency, the investment policy shall be adopted by the governing body of the public agency.

(c) The investment policy shall be made available to the public at the main administrative office of the public agency.

(d) The written investment policy required under this Section shall be developed and implemented by January 1, 2000.

(Source: P.A. 90-688, eff. 7-31-98.)

(30 ILCS 235/2.10)

Sec. 2.10. Unit of local government; deposit at reduced rate of interest. The treasurer of a unit of local government may, in his or her discretion, deposit public moneys of that unit of local government in a financial institution pursuant to an agreement that provides for a reduced rate of interest,

provided that the institution agrees to expend an amount of money equal to the amount of the reduction for senior centers.
(Source: P.A. 93-246, eff. 7-22-03.)

(30 ILCS 235/3)(from Ch. 85, par. 903)
Sec. 3. If any securities, purchased under authority of Section 2 hereof, are issuable to a designated payee or to the order of a designated payee, then the public agency shall be so designated, and further, if such securities are purchased with money taken from a particular fund of a public agency, the name of such fund shall be added to that of such public agency. If any such securities are registerable, either as to principal or interest, or both, then such securities shall be so registered in the name of the public agency, and in the name of the fund to which they are to be credited.
(Source: Laws 1943, vol. 1, p. 951.)

(30 ILCS 235/4)(from Ch. 85, par. 904)
Sec. 4. All securities purchased under the authority of this Act shall be held for the benefit of the public agency which purchased them, and if purchased with money taken from a particular fund, such securities shall be credited to and deemed to be a part of such fund, and shall be held for the benefit thereof. All securities so purchased shall be deposited and held in a safe place by the person or persons having custody of the fund to which they are credited, and such person or persons are responsible upon his or their official bond or bonds for the safekeeping of all such securities. Any securities purchased by any such public agency under authority of this Act, may be sold at any time, at the then current market price thereof, by the governing authority of such public agency. Except as provided in Section 4.1 of "An Act in relation to State finance", all payments received as principal or interest, or otherwise, derived from any such securities shall be credited to the public agency and to the fund by or for which such securities were purchased.
(Source: P.A. 84-1378.)

(30 ILCS 235/5)(from Ch. 85, par. 905)
Sec. 5. This Act, without reference to any other statute, shall be deemed full and complete authority for the investment of public funds, as hereinabove provided, and shall be construed as an additional and alternative method therefor.
(Source: Laws 1943, vol. 1, p. 951.)

(30 ILCS 235/6)(from Ch. 85, par. 906)
Sec. 6. Report of financial institutions.
(a) No bank shall receive any public funds unless it has furnished the corporate authorities of a public agency submitting a deposit with copies of the last two sworn statements of resources and liabilities which the bank is required to furnish to the Commissioner of Banks and Real Estate or to the Comptroller of the Currency. Each bank designated as a depository for public funds shall, while acting as such depository, furnish the corporate authorities of a public agency with a copy of all statements of resources and liabilities which it is required to furnish to the Commissioner of Banks and Real Estate or to the Comptroller of the Currency; provided, that if such funds or moneys are

deposited in a bank, the amount of all such deposits not collateralized or insured by an agency of the federal government shall not exceed 75% of the capital stock and surplus of such bank, and the corporate authorities of a public agency submitting a deposit shall not be discharged from responsibility for any funds or moneys deposited in any bank in excess of such limitation.

(b) No savings bank or savings and loan association shall receive public funds unless it has furnished the corporate authorities of a public agency submitting a deposit with copies of the last 2 sworn statements of resources and liabilities which the savings bank or savings and loan association is required to furnish to the Commissioner of Banks and Real Estate or the Federal Deposit Insurance Corporation. Each savings bank or savings and loan association designated as a depository for public funds shall, while acting as such depository, furnish the corporate authorities of a public agency with a copy of all statements of resources and liabilities which it is required to furnish to the Commissioner of Banks and Real Estate or the Federal Deposit Insurance Corporation; provided, that if such funds or moneys are deposited in a savings bank or savings and loan association, the amount of all such deposits not collateralized or insured by an agency of the federal government shall not exceed 75% of the net worth of such savings bank or savings and loan association as defined by the Federal Deposit Insurance Corporation, and the corporate authorities of a public agency submitting a deposit shall not be discharged from responsibility for any funds or moneys deposited in any savings bank or savings and loan association in excess of such limitation.

(c) No credit union shall receive public funds unless it has furnished the corporate authorities of a public agency submitting a share deposit with copies of the last two reports of examination prepared by or submitted to the Illinois Department of Financial Institutions or the National Credit Union Administration. Each credit union designated as a depository for public funds shall, while acting as such depository, furnish the corporate authorities of a public agency with a copy of all reports of examination prepared by or furnished to the Illinois Department of Financial Institutions or the National Credit Union Administration; provided that if such funds or moneys are invested in a credit union account, the amount of all such investments not collateralized or insured by an agency of the federal government or other approved share insurer shall not exceed 50% of the unimpaired capital and surplus of such credit union, which shall include shares, reserves and undivided earnings and the corporate authorities of a public agency making an investment shall not be discharged from responsibility for any funds or moneys invested in a credit union in excess of such limitation.

(d) Whenever a public agency deposits any public funds in a financial institution, the public agency may enter into an agreement with the financial institution requiring any funds not insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration or other approved share insurer to be collateralized by any of the following classes of securities, provided there has been no default in the payment of principal or interest thereon:

(1) Bonds, notes, or other securities constituting direct and general obligations of the United States, the bonds, notes, or other securities constituting the direct and general obligation of any agency or instrumentality of the United States, the interest and principal of which is unconditionally guaranteed by the United States, and bonds, notes, or other securities or evidence of indebtedness constituting the obligation of a U.S. agency or instrumentality.

(2) Direct and general obligation bonds of the State of Illinois or of any other state of the United States.

(3) Revenue bonds of this State or any authority, board, commission, or similar agency thereof.

(4) Direct and general obligation bonds of any city, town, county, school district, or other taxing body of any state, the debt service of which is payable from general ad valorem taxes.

(5) Revenue bonds of any city, town, county, or school district of the State of Illinois.

(6) Obligations issued, assumed, or guaranteed by the International Finance Corporation, the principal of which is not amortized during the life of the obligation, but no such obligation shall be accepted at more than 90% of its market value.

(7) Illinois Affordable Housing Program Trust Fund Bonds or Notes as defined in and issued pursuant to the Illinois Housing Development Act.

(8) In an amount equal to at least market value of that amount of funds deposited exceeding the insurance limitation provided by the Federal Deposit Insurance Corporation or the National Credit Union Administration or other approved share insurer: (i) securities, (ii) mortgages, (iii) letters of credit issued by a Federal Home Loan Bank, or (iv) loans covered by a State Guarantee under the Illinois Farm Development Act, if that guarantee has been assumed by the Illinois Finance Authority under Section 845-75 of the Illinois Finance Authority Act, and loans covered by a State Guarantee under Article 830 of the Illinois Finance Authority Act.

(9) Certificates of deposit or share certificates issued to the depository institution pledging them as security. The public agency may require security in the amount of 125% of the value of the public agency deposit. Such certificate of deposit or share certificate shall:

(i) be fully insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Share Insurance Fund or issued by a depository institution which is rated within the 3 highest classifications established by at least one of the 2 standard rating services;

(ii) be issued by a financial institution having assets of $15,000,000 or more; and

(iii) be issued by either a savings and loan association having a capital to asset ratio of at least 2%, by a bank having a capital to asset ratio of at least 6% or by a credit union having a capital to asset ratio of at least 4%.

The depository institution shall effect the assignment of the certificate of deposit or share certificate to the public

agency and shall agree that, in the event the issuer of the certificate fails to maintain the capital to asset ratio required by this Section, such certificate of deposit or share certificate shall be replaced by additional suitable security.

(e) The public agency may accept a system established by the State Treasurer to aggregate permissible securities received as collateral from financial institutions in a collateral pool to secure public deposits of the institutions that have pledged securities to the pool.

(f) The public agency may at any time declare any particular security ineligible to qualify as collateral when, in the public agency's judgment, it is deemed desirable to do so.

(g) Notwithstanding any other provision of this Section, as security a public agency may, at its discretion, accept a bond, executed by a company authorized to transact the kinds of business described in clause (g) of Section 4 of the Illinois Insurance Code, in an amount not less than the amount of the deposits required by this Section to be secured, payable to the public agency for the benefit of the People of the unit of government, in a form that is acceptable to the public agency.

(h) Paragraphs (a), (b), (c), (d), (e), (f), and (g) of this Section do not apply to the University of Illinois, Southern Illinois University, Chicago State University, Eastern Illinois University, Governors State University, Illinois State University, Northeastern Illinois University, Northern Illinois University, Western Illinois University, the Cooperative Computer Center and public community colleges.
(Source: P.A. 95-331, eff. 8-21-07.)

(30 ILCS 235/6.5)

Sec. 6.5. Federally insured deposits at Illinois financial institutions.

(a) Notwithstanding any other provision of this Act or any other statute, whenever a public agency invests public funds in an interest-bearing savings account, interest-bearing certificate of deposit, or interest-bearing time deposit under Section 2 of this Act, the provisions of Section 6 of this Act and any other statutory requirements pertaining to the eligibility of a bank to receive or hold public deposits or to the pledging of collateral by a bank to secure public deposits do not apply to any bank receiving or holding all or part of the invested public funds if (i) the public agency initiates the investment at or through a bank located in Illinois and (ii) the invested public funds are at all time fully insured by an agency or instrumentality of the federal government.

(b) Nothing in this Section is intended to:

(1) prohibit a public agency from requiring the bank at or through which the investment of public funds is initiated to provide the public agency with the information otherwise required by subsections (a), (b), or (c) of Section 6 of this Act as a condition of investing the public funds at or through that bank; or

(2) permit a bank to receive or hold public deposits if that bank is prohibited from doing so by any rule, sanction, or order issued by a regulatory agency or by a court.

(c) For purposes of this Section, the term "bank" includes any person doing a banking business whether subject to the

laws of this or any other jurisdiction.
(Source: P.A. 93-756, eff. 7-16-04.)

(30 ILCS 235/7)(from Ch. 85, par. 907)

Sec. 7. When investing or depositing public funds, each custodian shall, to the extent permitted by this Act and by the lawful and reasonable performance of his custodial duties, invest or deposit such funds with or in minority-owned financial institutions within this State.
(Source: P.A. 84-754.)

(30 ILCS 235/8)

Sec. 8. Consideration of financial institution's commitment to its community.

(a) In addition to any other requirements of this Act, a public agency is authorized to consider the financial institution's record and current level of financial commitment to its local community when deciding whether to deposit public funds in that financial institution. The public agency may consider factors including, but not necessarily limited to:

(1) for financial institutions subject to the federal Community Reinvestment Act of 1977, the current and historical ratings that the financial institution has received, to the extent that those ratings are publicly available, under the federal Community Reinvestment Act of 1977;

(2) any changes in ownership, management, policies, or practices of the financial institution that may affect the level of the financial institution's commitment to its community;

(3) the financial impact that the withdrawal or denial of deposits of public funds might have on the financial institution;

(4) the financial impact to the public agency as a result of withdrawing public funds or refusing to deposit additional public funds in the financial institution; and

(5) any additional burden on the resources of the public agency that might result from ceasing to maintain deposits of public funds at the financial institution under consideration.

(b) Nothing in this Section shall be construed as authorizing the public agency to conduct an examination or investigation of a financial institution or to receive information that is not publicly available and the disclosure of which is otherwise prohibited by law.
(Source: P.A. 93-251, eff. 7-1-04.)

Information maintained by the Legislative Reference Bureau
Updating the database of the Illinois Compiled Statutes (ILCS) is an ongoing process. Recent laws may not yet be included in the ILCS database, but they are found on this site as Public Acts soon after they become law. For information concerning the relationship between statutes and Public Acts, refer to the Guide.

Because the statute database is maintained primarily for legislative drafting purposes, statutory changes are sometimes included in the statute database before they take effect. If the source note at the end of a Section of the statutes includes a Public Act that has not yet taken effect, the version of the law that is currently in effect may have already been removed from the database and you should refer to that Public Act to see the changes made to the current law.

LOCAL GOVERNMENT
(50 ILCS 340/) Investment of Municipal Funds Act.

(50 ILCS 340/0.01) (from Ch. 146 1/2, par. 3.01)
Sec. 0.01. Short title. This Act may be cited as the Investment of Municipal Funds Act.
(Source: P.A. 86-1324.)

(50 ILCS 340/1) (from Ch. 146 1/2, par. 3.1)
Sec. 1. Every county, park district, sanitary district, or other municipal corporation, holding in its treasury funds which are set aside for use for particular purposes, including any funds that are disbursed to a county or municipality as their share of the taxes collected under the "Motor Fuel Tax Law", but which are not immediately necessary for those purposes, by ordinance, may use those funds, or any of them, in the purchase of tax anticipation warrants issued by the county, park district, sanitary district, or other municipal corporation possessing the funds against taxes levied by that county, park district, sanitary district, or other municipal corporation. These warrants shall bear interest not to exceed four percent annually. All interest upon these warrants, and all money paid in redemption of these warrants, or received from the resale thereof, shall at once be credited to and placed in the particular fund used to purchase the specified warrants. Likewise, every county, park district, sanitary district, or other municipal corporation, by resolution or ordinance may use the money in the specified funds in the purchase of municipal bonds issued by the county, park district, sanitary district, or other municipal corporation, possessing the funds and representing an obligation and pledging the credit of that county, park district, sanitary district, or other municipal corporation, or bonds and other interest bearing obligations of the United States, of the State of Illinois, or of any other state or of any political subdivision or agency of the State of Illinois or of any other state, whether the interest earned thereon is taxable or tax-exempt under federal law, including savings accounts and savings certificates of deposit of any State or National Bank if such accounts and certificates are fully insured by the Federal Deposit Insurance Corporation, withdrawable capital accounts or deposits of State or federal chartered savings and loan associations which are fully insured by the Federal Savings and Loan Insurance Corporation, or treasury notes and other securities issued by agencies of the United States. All interest upon these bonds or obligations and all money paid in redemption of these bonds or obligations or realized from the sale thereof, if afterwards sold, shall at once be credited to

and placed in the particular fund used to purchase the specified bonds or obligations.

No bank or savings and loan association shall receive public funds as permitted by this Section, unless it has complied with the requirements established pursuant to Section 6 of "An Act relating to certain investments of public funds by public agencies", approved July 23, 1943, as now or hereafter amended.

This amendatory Act of 1975 is not a limit on any home rule unit.

(Source: P.A. 93-360, eff. 7-24-03.)

(50 ILCS 340/2)(from Ch. 146 1/2, par. 3.2)

Sec. 2. If at any time it is deemed expedient to convert into money any tax anticipation warrants theretofore issued and purchased with public funds pursuant to the provisions of Section 1 of this Act, before receipt of the taxes in anticipation of which the warrants were issued, the governing body of the county, park district, sanitary district, or other municipal corporation, by ordinance or resolution, may authorize a resale of such warrants and adjust the interest rate thereon or may authorize the issuance and sale of a like principal amount of any warrants for the same purpose and in anticipation of the same taxes as the original warrants were issued. These new warrants may have any date subsequent to the date of the original tax anticipation warrants. The new tax anticipation warrants shall be of the denomination and shall bear interest at the rate, not to exceed the statutory rate, that is authorized by the ordinance or resolution specified in this section.

Simultaneously with the delivery of these new tax anticipation warrants a like principal amount of the original warrants that were issued against the same tax that is anticipated by the new warrants shall be paid and cancelled. The proceeds of the sale of these new tax anticipation warrants shall be used first to restore to the fund or funds so invested in the original tax anticipation warrants, money equivalent to the par value and accrued interest of the original tax anticipation warrants and the balance, if any, shall revert to the fund for the creation of which the tax so anticipated was levied.

When tax anticipation warrants are reissued they shall bear the index numerical designation of the original warrants and shall be subnumbered consecutively in the order of reissuance, and shall be paid in the direct order of reissuance, beginning with the earliest subnumber.

In determining the priority of payment of more than one series of tax anticipation warrants against the collection of the same tax the various series shall be treated as having been issued on the date of the original issue of each series of warrants. The series prior in point of time as thus determined shall be paid first.

This Act shall not apply to cities, villages, and incorporated towns.

(Source: Laws 1941, vol. 2, p. 473.)

(605 ILCS 5/9-101) (from Ch. 121, par. 9-101)

Sec. 9-101. Nothing in this Code shall prevent the execution of cooperative agreements among governmental agencies.

Any municipality may negotiate an agreement with the Department whereby the municipality may use such funds as are available to it for that purpose for the construction or maintenance of a State highway within its boundaries or with the corporate authority of a county or road district for the construction or maintenance of a highway on the county highway system or township or district road system outside of its municipal boundaries.

The county board may negotiate an agreement with the Department whereby the county may use such funds as are available to it for that purpose for the construction or maintenance of a highway on the State highway system or with a municipality for the construction or maintenance of streets on the municipal street system of such municipality.

(Source: Laws 1959, p. 196.)

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2013-08

SUBJECT: BICYCLE FACILITIES

ISSUED DATE: October 23, 2013

EFFECTIVE DATE: October 25, 2013

This memorandum supersedes Chapter 42 dated January 2006 of the Bureau of Local Roads & Streets Manual.

The Department has updated Chapter 42, Bicycle Facilities, to use design recommendations contained in AASHTO's *Guide for the Development of Bicycle Facilities, 4th edition, 2012* when bicycle accommodations are provided. No changes have been made as to when bicycle accommodations are required except when a local agency project impacts a state highway the design policies in Chapter 17 of the Bureau of Design & Environment will apply.

The Federal Highway Administration has also recommended the use of the National Association of City Transportation Officials' *Urban Bikeway Design Guide* and the Institute of Transportation Engineers' *Designing Urban Walkable Thoroughfares* for the development of bikeways in urban areas.

Please contact the Bureau's Local Policy & Technology Unit at IDOT.LocalPolicy@illinois.gov with any questions.

James K. Klein

Acting Engineer of Local Roads and Streets

KB/kb

Attachments

U.S. Department of Transportation
Federal Highway Administration

Memorandum

SENT BY ELECTRONIC MAIL

Subject: **GUIDANCE:** Bicycle and Pedestrian Facility Design Flexibility Date: August 20, 2013

From: Gloria M. Shepherd
Associate Administrator for Planning, Environment and Realty

In Reply Refer To:
HEPH-10

Walter C. (Butch) Waidelich, Jr.
Associate Administrator for Infrastructure

Jeffrey A. Lindley for
Associate Administrator for Operations

Tony T. Furst
Associate Administrator for Safety

To: Division Administrators
cc: Directors of Field Services

This memorandum expresses the Federal Highway Administration's (FHWA) support for taking a flexible approach to bicycle and pedestrian facility design. The American Association of State Highway and Transportation Officials (AASHTO) bicycle and pedestrian design guides are the primary national resources for planning, designing, and operating bicycle and pedestrian facilities. The National Association of City Transportation Officials (NACTO) *Urban Bikeway Design Guide* and the Institute of Transportation Engineers (ITE) *Designing Urban Walkable Thoroughfares* guide builds upon the flexibilities provided in the AASHTO guides, which can help communities plan and design safe and convenient facilities for pedestrian and bicyclists. FHWA supports the use of these resources to further develop nonmotorized transportation networks, particularly in urban areas.

AASHTO Guides

AASHTO publishes two guides that address pedestrian and bicycle facilities:

- *Guide for the Planning, Design, and Operation of Pedestrian Facilities*, July 2004, (AASHTO Pedestrian Guide) provides guidelines for the planning, design, operation, and maintenance of pedestrian facilities, including signals and signing. The guide recommends methods for accommodating pedestrians, which vary among roadway and facility types, and addresses the effects of land use planning and site design on pedestrian mobility.

- *Guide for the Development of Bicycle Facilities 2012, Fourth Edition* (AASHTO Bike Guide) provides detailed planning and design guidelines on how to accommodate bicycle travel and operation in most riding environments. It covers the planning, design, operation,

maintenance, and safety of on-road facilities, shared use paths, and parking facilities. Flexibility is provided through ranges in design values to encourage facilities that are sensitive to local context and incorporate the needs of bicyclists, pedestrians, and motorists.

NACTO Guide

NACTO first released the *Urban Bikeway Design Guide* (NACTO Guide) in 2010 to address more recently developed bicycle design treatments and techniques. It provides options that can help create "complete streets" that better accommodate bicyclists. While not directly referenced in the AASHTO Bike Guide, many of the treatments in the NACTO Guide are compatible with the AASHTO Bike Guide and demonstrate new and innovative solutions for the varied urban settings across the country.

The vast majority of treatments illustrated in the NACTO Guide are either allowed or not precluded by the Manual on Uniform Traffic Control Devices (MUTCD). In addition, non-compliant traffic control devices may be piloted through the MUTCD experimentation process. That process is described in Section 1A.10 of the MUTCD and a table on the FHWA's bicycle and pedestrian design guidance Web page is regularly updated (FHWA Bicycle and Pedestrian Design Guidance), and explains what bicycle facilities, signs, and markings are allowed in accordance with the MUTCD. Other elements of the NACTO Guide's new and revised provisions will be considered in the rulemaking cycle for the next edition of the MUTCD.

ITE Guide

In 2010, FHWA supported production of the ITE Guide *Designing Walkable Urban Thoroughfares: A Context Sensitive Approach*. This guide is useful in gaining an understanding of the flexibility that is inherent in the AASHTO "Green Book," *A Policy on Geometric Design of Highways and Streets*. The chapters emphasize thoroughfares in "walkable communities" – compact, pedestrian-scaled villages, neighborhoods, town centers, urban centers, urban cores and other areas where walking, bicycling and transit are encouraged. It describes the relationship, compatibility and trade-offs that may be appropriate when balancing the needs of all users, adjoining land uses, environment and community interests when making decisions in the project development process.

Summary

FHWA encourages agencies to appropriately use these guides and other resources to help fulfill the aims of the *2010 US DOT Policy Statement on Bicycle and Pedestrian Accommodation Regulations and Recommendations* – "...DOT encourages transportation agencies to go beyond the minimum requirements, and proactively provide convenient, safe, and context-sensitive facilities that foster increased use by bicyclists and pedestrians of all ages and abilities, and utilize universal design characteristics when appropriate."

Accompanying this memo are the latest versions of the: 1) AASHTO Bike Guide, 2) NACTO Bike Guide; and 3) the ITE *Designing Walkable Urban Thoroughfares* Guide.

The attachments provide two examples that demonstrate the use of treatments illustrated in the NACTO Guide (i.e., buffered bike lanes and green colored pavement for bicycle lanes) by State or local DOTs, and a list of FHWA staff that can help with questions about pedestrian and bicycle design issues.

Attachments

Attachment 1 – Example 1 & 2

Example 1: Michigan DOT's Buffered Bike Lanes

One of the innovative bicycle facilities discussed in the NACTO *Urban Bikeway Design Guide* is buffered bike lanes. Buffered bike lanes create more space between motor vehicles and bicycles by delineating extra space between the bike lane and parked cars and/or a motor vehicle lane. Buffered bike lanes can be implemented if the pavement markings and channelizing devices are compliant with the MUTCD (see Bicycle Facilities and the Manual on Uniform Traffic Control Devices). Michigan DOT developed a video that describes their efforts to install buffered bike lanes in Oakland County (see Northwestern Highway Bicycle Lane: A Safer Place to Ride). Michigan DOT also developed a brochure that explains buffered bike lanes to the public (see What Every Michigan Driver Should Know About Bike Lanes).

Example 2: Missoula's Colored Bike Lanes

MUTCD experimentation is a methodology that analyzes innovative traffic control devices through field deployment for the purpose of testing or evaluating its application or manner of use. An approved request to experiment numbered and titled as Official Ruling "3(09)-3(E) – Colored Bike Lanes – Missoula, MT" illustrates a successful experiment. The City of Missoula submitted a request to experiment in January 2010 in accordance with all Items in Paragraph 11 of Section 1A.10 in the 2009 MUTCD.

The experiment was conducted for one year and revealed that approximately 70 percent of motorists noticed the color conspicuity enhancement to the bike lane. This was interpreted as an increased awareness by motorists of the potential presence of bicyclists at intersections where those motorists would be making a right turn.

The City also reported ancillary findings that were not anticipated in the original Evaluation Plan of the request to experiment. This included psychological discomfort of the cyclist with the lateral locations of the colored bicycle lane with respect to door zones in parallel parking corridors. In addition, the experiment revealed an unintended design weakness where colored bike lanes that achieve high compliance of little or no occupation of motorized vehicles can also be attractive to pedestrians who wish to use them to facilitate their travel in lieu of crowded sidewalks or to patronize parking meters. For these reasons, a successful experiment can reveal unanticipated findings, further demonstrating the value of official experimentation.

This particular experiment provided two conclusions that supported FHWA's decision to issue Interim Approval for green colored pavement for bicycle lanes in April 2011.

For more information see http://mutcd.fhwa.dot.gov/reqdetails.asp?id=1135.

Attachment 2

FHWA Bicycle and Pedestrian Staff Resources

Human Environment —Livability and Bicycle and Pedestrian Programs

- Shana Baker, Livability Team Leader, 202-366-4649, shana.baker@dot.gov: Livability, Context Sensitive Solutions
- Christopher Douwes, Trails and Enhancements Program Manager 202-366-5013, christopher.douwes@dot.gov: Transportation Alternatives Program/Enhancement Activities; Recreational Trails Program related activities; Bicycle and pedestrian policy and guidance
- Daniel Goodman, Transportation Specialist, 202-366-9064, daniel.goodman@dot.gov: Bicycle and pedestrian activities; Livability
- Wesley Blount, Program Manager, 202-366-0799, wesley.blount@dot.gov: Safe Routes to School, Discretionary programs

Planning

- Brian Gardner, 202-366-4061, brian.gardner@dot.gov: Modeling
- Jeremy Raw, 202-366-0986, jeremy.raw@dot.gov: Modeling
- Harlan Miller, 202-366-0847, harlan.miller@dot.gov: Planning Oversight
- Kenneth Petty, 202-366-6654 kenneth.petty@dot.gov: Planning Capacity Building

Policy

- Steven Jessberger, 202-366-5052, steven.jessberger@dot.gov, Traffic Monitoring Guide

Infrastructure — Design (including accessible design)

- Michael Matzke, 202-366-4658, michael.matzke@dot.gov

Resource Center— Design (including accessible design)

- Brooke Struve, Safety and Design Team, 720-963-3270, brooke.struve@dot.gov
- Peter Eun, Safety and Design Team, 360-753-9551, peter.eun@dot.gov

Operations — Manual on Uniform Traffic Control Devices

- Kevin Dunn, Transportation Specialist, 202-366-6054, kevin.dunn@dot.gov: MUTCD Team

Pedestrian and Bicycle Safety

- Gabe Rousseau, Safety Operations Team Leader, 202-366-8044, gabe.rousseau@dot.gov: Bicycle and pedestrian safety programs
- Tamara Redmon, Pedestrian Safety Program Manager, 202-366-4077, tamara.redmon@dot.gov: Pedestrian safety

Pedestrian and Bicyclist Safety Research

- Ann Do, 202-493-3319, ann.do@dot.gov
- Jim Shurbutt, 202-493-3420, jimmy.shurbutt@dot.gov

Civil Rights — Accessibility Policy and Compliance

- Patrick Gomez, Resource Center Civil Rights Team, 720-963-3269, patrick.gomez@dot.gov
- Candace Groudine, Director of External Civil Rights Programs, 202-366-4634, candace.groudine@dot.gov

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2013-09

SUBJECT: SPEED HUMPS AND SPEED TABLES

ISSUED DATE: October 29, 2013

EFFECTIVE DATE: October 29, 2013

This memorandum creates a new Section 41-12 of the Bureau of Local Roads & Streets Manual.

Speed humps and speed tables are raised sections of pavement that are placed across the entire width of a highway to reduce vehicle speeds and enhance pedestrian safety. These traffic calming designs are eligible for federal, state, and motor fuel tax funds provided that they are designed according to guidelines.

Speed humps and speed tables may be controversial in some localities due to their appearance, jarring effects on vehicles and passengers, and impact to emergency response vehicles. Furthermore, speed humps and speed tables may create drainage problems.

Please contact the Bureau's Local Policy & Technology Unit at IDOT.LocalPolicy@illinois.gov with any questions.

James K. Klein

Acting Engineer of Local Roads and Streets

KB/kb

Attachments

Traffic Calming Measures - Speed Hump

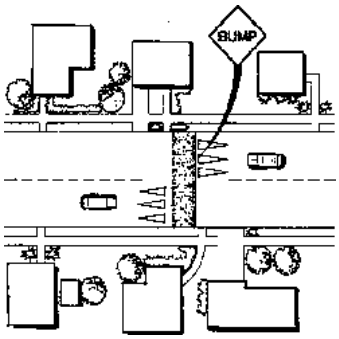
SOLVE the PUZZLE

Description:

- rounded raised areas of pavement typically 12 to 14 feet in length
- often placed in a series (typically spaced 300 to 600 feet apart)
- sometimes called road humps or undulations

Applications:

- residential streets
- not typically used on major roads, bus routes, or primary emergency response routes
- midblock placement, not at an intersection
- not on grades greater than 8 percent
- work well with curb extensions



Design/Installation Issues:

- typically 12 to 14 feet in length; other lengths (10, 22, and 30 feet) reported in practice in U.S.
- speed hump shapes include parabolic, circular, and sinusoidal
- hump heights range between 3 and 4 inches with trend toward 3 - 3 ½ inches maximum
- difficult to construct precisely; may need to specify a construction tolerance (e.g. ± 1/8 inch) on height
- often have signage (advance warning sign before first hump in series and warning sign or object marker at hump)
- typically have pavement marking (zigzag, shark's tooth, chevron, zebra)
- taper edge near curb to allow gap for drainage
- some have speed advisories
- bicyclists prefer that it not cover or cross a bike lane

Potential Impacts:

- no effect on non-emergency access
- speeds determined by height and spacing; speeds between humps have been observed to be reduced between 20 and 25 percent on average
- based on a limited sample of sites, typical crossing speeds (85th percentile) of 19 mph have been measured for 3½ inch high, 12 foot humps and of 21 mph for 3 inch high, 14 foot humps; speeds have been observed to rise to 27 mph within 200 feet downstream
- speeds typically increase approximately 0.5 mph midway between humps for each 100 feet of separation
- studies indicate that traffic volumes have been reduced on average by 18 percent depending on alternative routes available
- studies indicate that collisions have been reduced on average by 13 percent on treated streets (not adjusted for traffic diversion)
- most communities limit height to 3-3½ inches, partly because of harsh ride over 4-inch high humps
- possible increase in traffic noise from braking and acceleration of vehicles, particularly buses and trucks

Emergency Response Issues:

- Concern over jarring of emergency rescue vehicles
- Approximate delay of between 3 and 5 seconds per hump for fire trucks and up to 10 seconds for ambulance with patient

Typical Cost:

- Approximately $2,000 (1997 dollars)

For additional detail, refer to ITE's Recommended Practice entitled *Guidelines for the Design and Application of Speed Humps.* Visit the ITE Bookstore for more information about this publication.

U.S. Department of Transportation
Federal Highway Administration

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SPEED HUMP | SPEED TABLE | RAISED INTERSECTION | CLOSURE | NEIGHBORHOOD TRAFFIC CIRCLE | CHICANE | CHOKER | CENTER ISLAND NARROWING

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Traffic Calming Measures - Speed Table

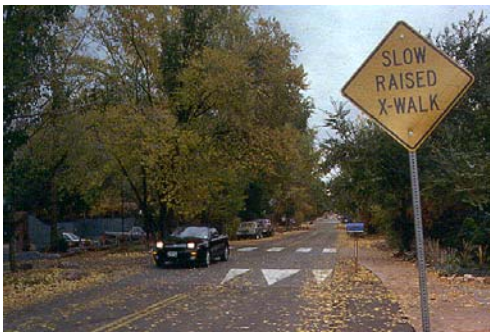
SOLVE the PUZZLE

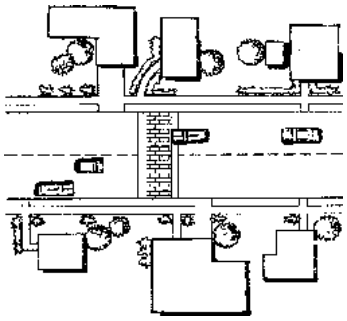
Description:

- long raised speed humps with a flat section in the middle and ramps on the ends; sometimes constructed with brick or other textured materials on the flat section
- **sometimes called flat top speed humps, trapezoidal humps, speed platforms, raised crosswalks, or raised crossings**

Applications:

- **local and collector streets**
- **main roads through small communities**
- **typically long enough for the entire wheelbase of a passenger car to rest on top**
- **work well in combination with textured crosswalks, curb extensions, and curb radius reductions**
- **can include a crosswalk**





Design/Installation Issues:

- typically 22 feet in the direction of travel with 6 foot ramps on each end and a 10 foot flat section in the middle; other lengths (32 and 48 feet) reported in U.S. practice
- most common height is between 3 and 4 inches (and reported as high as 6 inches)
- ramps are typically 6 feet long (reported up to 10 feet long) and are either parabolic or linear
- careful design is needed for drainage

Potential Impacts:

- **no effect on access**
- **speeds are reduced, but usually to a higher crossing speed than at speed humps (typically between 25 and 27 miles per hour)**
- **traffic volumes have been reduced on average by 12 percent depending on alternative routes available**
- **collisions have been reduced on average by 45 percent on treated streets (not adjusted for traffic diversion)**
- **reported to increase pedestrian visibility and likelihood that driver yields to pedestrian**

Emergency Response Issues:

- **typically preferred by fire departments over 12 to 14-foot speed humps**
- **generally less than 3 seconds of delay per hump for fire trucks**

Typical Cost:

- **approximately $2,500 (in 1997 dollars) for asphalt tables; higher for brickwork, stamped asphalt, concrete ramps and other enhancements sometimes used at pedestrian crossings**

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9.2 Speed Control Measures

Two types of traffic calming measures that control the speed of vehicles on streets and impact pedestrian access are (Institute of Transportation Engineers, 1999):

- Vertical measures, which rely on forces of vertical rise acceleration to discourage speeding; and
- Horizontal measures, which rely on forces of lateral shift acceleration to discourage speeding.

A third form of speed control is a narrowing measure, which relies on a psycho-perceptive sense of enclosure to discourage speeding. Installing a tree canopy to create a sense of enclosure is an example of a narrowing measure. This type of traffic calming does not impact pedestrian access if a sidewalk is provided. A 915 mm (36 in) clear space on both sides of the street allows for bicyclists to travel through. The general benefits of slower motorist speeds benefits all pedestrians.

Figure 9-8. Speed humps are a common vertical measure for controlling the speed of motorists in residential neighborhoods.

Vertical speed control measures that will be evaluated in the following sections include:

- Speed humps;
- Speed tables;
- Raised crosswalks;
- Raised intersections; and
- Textured pavement.

Horizontal measures that will be evaluated in the following sections include:

- Roundabouts;
- Neighborhood traffic circles;
- Chicanes, lateral shifts, and chokers;
- Curb extensions; and,
- Center island narrowings.

9.2.1 Speed humps

Speed humps are raised sections of pavement that are placed across the street to force motorists to travel at reduced speeds. Speed humps have a more gradual slope than traditional speed bumps, which are often found in parking lots. Speed humps are more effective at slowing traffic than speed bumps because the driver actually benefits from traveling at slower speeds. Speed bumps typically jar the motorist regardless of speed. The best speed hump designs employ a very gradual slope, such as a 3.66 m (12 ft) long speed

hump with a 101 mm (4 in) vertical elevation change, to reduce jarring and potential vehicle damage. Speed humps are effective in reducing traffic speeds and are a low cost tool. However, speed humps may be controversial in some localities due to their appearance and jarring effects on vehicles and passengers.

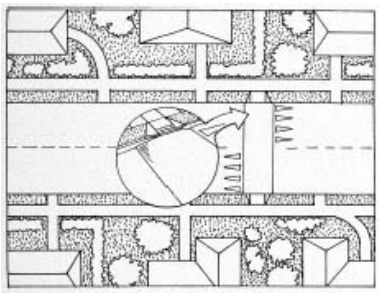


Figure 9-9. A 3.66 m (12 ft) long speed hump with a 101 mm (4 in) vertical elevation change minimizes the jarring effect and potential vehicle damage experienced with traditionally designed speed bumps.

9.2.1.1 Impact on pedestrian access

In general, speed humps effectively slow traffic and benefit all pedestrians including people with disabilities. However, people with mobility impairments may experience problems on speed humps. For example, people with back or neck problems may experience pain or discomfort caused by the jarring effect when traveling over speed humps in an automobile. This is further complicated if the person relies on para or public transit and does not have control over the speed of the vehicle.

9.2.1.2 Design recommendations speed humps

The following recommendations are intended to enhance pedestrian access at speed humps:

- Design speed humps with gradual slopes and minimal changes in elevation to limit jarring; and
- Do not install speed humps in the path of a pedestrian crossing or curb ramp.

9.2.2 Speed tables and raised crosswalks

Speed tables are similar to speed humps; however, they include a flat section on top. Oftentimes, the top of the speed table is constructed with a decorative surface material. When marked as a pedestrian crossing, speed tables are called raised crosswalks. The length of speed tables or raised crosswalks allow all four wheels of a vehicle to rest on the raised section at the same time. Combined with gently sloped ramps, speed tables permit slightly higher motorist speeds and smoother transitions than speed humps. Additional information about raised crosswalks is contained in Sections 6.3 and 8.5.

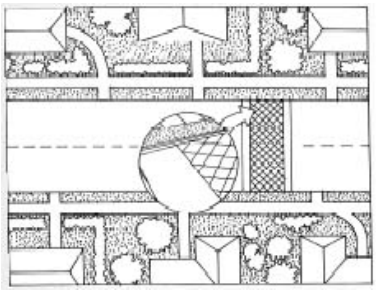


Figure 9-10. Speed tables and raised crosswalks are flush with the curb and do not provide a clear distinction for people with vision impairments unless detectable warnings are installed.

9.2.2.1 Impact on pedestrian access

Speed tables resolve some of the access problems for people with mobility impairments. However, they can be problematic for people with vision impairments if their needs are not considered. Speed tables impact pedestrian access as follows:

Negative impacts

- People with back and neck problems may experience pain or discomfort when traveling over speed tables in motor vehicles (though less jarring than traveling over speed humps); and
- When used as a crosswalk, unless detectable warnings are provided, there is no distinction between the sidewalk and the street for people with vision impairments.

Note: When used as a crosswalk, there is no negative impact on pedestrians with visual impairments when detectable warnings are installed.

Positive impacts

- Speed tables used as raised crosswalks increase pedestrian visibility; and
- Speed tables used as crosswalks eliminate the need for a curb ramp, which improves access for people with mobility impairments and increases the sidewalk area available to pedestrians waiting to cross the street.

9.2.2.2 Design recommendations for speed tables

The following recommendations are intended to enhance pedestrian access at speed tables and raised crosswalks:

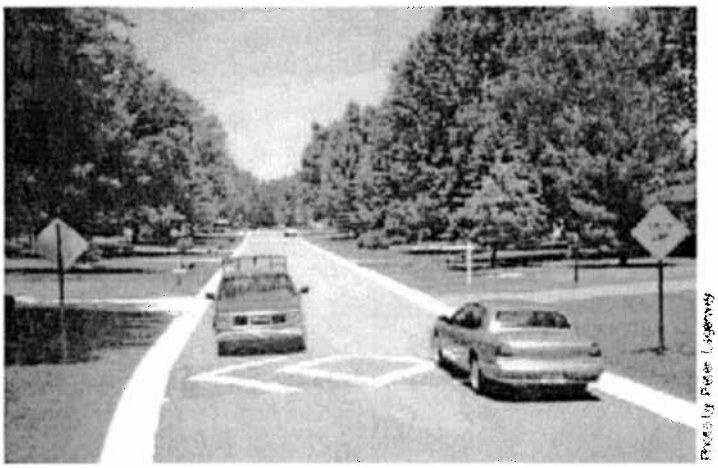
- Install detectable warnings whenever speed tables are used as raised crosswalks to identify the transition between the sidewalk and the street; and
- Select colored asphalt rather than brick or other decorative surface materials to enhance rollibility for people with mobility impairments. Brick trim may be used in outlining the pedestrian travel path, but not in the pathway. (See Section 4.3.1.4).

Traffic Calming

28. Speed Hump / Table

Speed humps are paved (usually asphalt) and approximately 3-4 inches high at their center, and extend the full width of the street. Speed humps should not be confused with a speed "bump" that is often found in mall parking lots. There are several designs for speed humps. The traditional 12-foot hump has a design speed of 15 to 20 mph, a 14-foot one a few mph higher, and a 22-foot table, of 25 to 30 mph. The longer humps are much gentler for larger vehicles.

A speed table is a term used to describe a very long and broad speed hump, or for a flat-topped speed hump, where sometimes a pedestrian crossing is provided in the flat portion of the speed table. The speed table can either be parabolic, making it more like a speed hump, or trapezoidal, which is used more frequently in Europe. Speed tables can be used in combination with curb extensions where parking exists.



Speed humps are frequently used on residential streets to reduce speeds. However, they can create unwanted noise if they are too severe, or cause motorists to slow down more than is necessary.

Purpose:

- Reduces vehicle speeds. Raised measures tend to have the most predictable speed reduction impacts.
- Enhances the pedestrian environment and pedestrian crossings.

Considerations:

- Do not use if sight distance is limited and/or if the street is on a steep grade.
- If the street is a bus route or primary emergency route, design must be coordinated with operators. Usually some devices are acceptable if used prudently - one device may be appropriate and may serve the primary need, e.g. if there is a particular location along a street that is most in need of slowing traffic and improving pedestrian conditions.
- The aesthetics of speed humps and speed tables can be improved through the use of color and specialized paving materials.
- Noise may increase particularly if trucks use the route regularly.

- May create drainage problems on some streets.

Estimated cost

The cost for each speed hump is approximately $2,000. Speed tables are $5,000–$15,000, again depending on drainage conditions and materials used.

Close | Print

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2013-10

SUBJECT: PUBLIC RIGHTS-OF-WAY ACCESSIBILITY GUIDELINES (PROWAG)

ISSUED DATE: October 31, 2013

EFFECTIVE DATE: January 1, 2014

This memorandum replaces Chapter 8 dated April 2005 and supersedes Section 41-6 dated October 2008 of the Bureau of Local Roads & Streets Manual.

Local public agencies (LPA) are required to comply with Title II of the Americans with Disabilities Act (ADA). The 2010 ADA accessibility guidelines (ADAAG) specify the minimum level of accessibility in new construction and alteration projects and serve as the basis for enforceable standards. However, ADAAG does not adequately address many features common on the public rights-of-way. Various constraints posed by space limitations at sidewalks, roadway design practices, slope, and terrain raise valid questions on how and to what extent access may be achieved. Accessibility for individuals with disabilities at street crossings and on sidewalks is typical of the issues for which additional guidance is needed.

Therefore, on November 23, 2005, the United States Access Board (US Access Board) published rulemaking with revised draft guidelines to cover access to sidewalks and streets, including crosswalks, curb ramps, street furnishings, parking, and other components of public rights-of-way [Public Rights-of-Way Accessibility Guidelines (PROWAG)]. On January 23, 2006, the Federal Highway Administration issued a memorandum recognizing that PROWAG “are the currently recommended best practices, and can be considered the state of the practice that could be followed for areas not fully addressed by the present ADAAG standards.” Then, on July 26, 2011, the US Access Board published proposed final PROWAG rulemaking. The comment period closed on February 2, 2012. The final rule is expected to be published in the Federal Register in the near future.

The Bureau of Local Roads & Streets based on discussion with the Office of Illinois Attorney General Disability Rights Bureau and the Federal Highway Administration Illinois Division is recommending using the 2011 proposed final PROWAG for compliance with ADA on LPA projects funded with federal, state, or motor fuel tax funds. Since all new facilities (and altered facilities to the maximum extent practical) must be designed and constructed to be accessible to and useable by people with disabilities, LPAs should consider using these PROWAG for all projects on the public rights of way regardless of funding.

Please contact the Bureau's Local Policy & Technology Unit at IDOT.LocalPolicy@illinois.gov with any questions.

James K. Klein

Acting Engineer of Local Roads and Streets

KB/kb

Attachments

cc: Catherine (Kay) Batey, FHWA
Vickie Simpson, Office of the Illinois Attorney General

About the Rulemaking on Public Rights-of-Way

Sidewalks, street crossings, and other elements in the public right-of-way can pose challenges to accessibility. The Board's ADA and ABA Accessibility Guidelines focus mainly on facilities on sites. While they address certain features common to public sidewalks, such as curb ramps, further guidance is necessary to address conditions and constraints unique to public rights-of-way.

The Board is developing new guidelines for public rights-of-way that will address various issues, including access for blind pedestrians at street crossings, wheelchair access to on-street parking, and various constraints posed by space limitations, roadway design practices, slope, and terrain. The new guidelines will cover pedestrian access to sidewalks and streets, including crosswalks, curb ramps, street furnishings, pedestrian signals, parking, and other components of public rights-of-way. The Board's aim in developing these guidelines is to ensure that access for persons with disabilities is provided wherever a pedestrian way is newly built or altered, and that the same degree of convenience, connection, and safety afforded the public generally is available to pedestrians with disabilities. Once these guidelines are adopted by the Department of Justice, they will become enforceable standards under title II of the ADA.

PUBLIC RIGHTS-OF-WAY

- About this Rulemaking
- Proposed Guidelines (2011)
- Public Comments
- Guidance and Research
- Background
- Other Resources

EMAIL UPDATES

Sign up for updates on Streets & Sidewalks:

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TECHNICAL ASSISTANCE:

(800) 872-2253
TTY: (800) 993-2822
Fax: (202) 272-0081
row@access-board.gov

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2013-11

SUBJECT: LOCAL LETTINGS

ISSUED DATE: December 31, 2013

EFFECTIVE DATE: January 1, 2014

This memorandum replaces Chapter 12 dated December 2009 of the Bureau of Local Roads & Streets Manual.

The Department has updated Chapter 12, "Letting and Contract Award," of the Bureau of Local Roads & Streets Manual due to several Public Acts passed by the 98th General Assembly. Summaries of the major changes are outlined below.

Invitation for Bid Contents: The BLR Forms for a local letting have been streamlined into two forms for Formal Contract Proposals. Forms BLR 12200 and 12200a replace Forms BLR 12210, 12220, 12221, 12222, and 12223. Also, the BLR forms for a local material proposal and deliver & install proposal have been combined into Form BLR 12240. Finally, Form BLR 12320 has been updated to include a cover sheet.

The BLR forms that have been replaced will still be accepted until March 31, 2014 for existing projects that have utilized them and will proceed to letting in the near future.

Wage Rates: Public Acts 98-0328 and 98-0482 amended the Illinois Prevailing Wage Act to include additional reporting requirements by the Contractor on monthly certified payroll documents. These acts also increased the required retention period of these certified payroll documents by the public body responsible for the contract.

LPA Ordinances / Resolutions: The Local Public Agency (LPA) may include language within their contracts requiring bidders to comply with regulations established by local ordinances or resolutions. If this language is found to be in conflict with federal or state regulations, the Federal, State, or MFT funding used for the project may be jeopardized.

Prequalification of Bidders: The LPA is responsible to ensure that the prequalification requirement is advertised in the Notice to Contractor's Bulletin where applicable. In addition, Public Act 97-0369 requires the bidder to sign an affidavit stating that they will maintain an Illinois office as the primary place of employment for persons employed as part of the contract. Form BLR 12326 "Affidavit of Illinois Business Office" was created to accommodate this legislation.

Conflict of Interest: The Public Officer Prohibited Activities Act (50 ILCS 105/3) indicates that no appointed or elected official may be in direct or indirect conflict of interest with the performance of any work in the making or letting of a contract in which the officer may be called to act or vote.

Award with Two Low Bidders: In the event that two or more bidders submit equal bids, the LPA should consult with the District BLRS on how to proceed. The LPA may conduct a tie breaker of their choice, so long as the low bidders are given the opportunity to be present when the tie breaker is conducted.

Contract Bond for Formal Contracts, Material Proposals, and Deliver & Install Proposals: Public Act 98-0216 amended the Public Construction Bond Act to indicate that every Contractor shall supply and deliver a performance and payment bond to the LPA for any public works costing more than $50,000.

Local Letting Complaints or Protests: A bid complaint that concerns compliance with the Apprenticeship and Training Certification program may be filed with the Department. The Department will resolve bid complaints. A bid protest that concerns fraud, corruption, or illegal acts with the contract procurement process may be filed with the LPA. The LPA will resolve bid protests.

Contractor or Subcontractor Suspension: The Chief Procurement Officer (CPO) of the Department may suspend a contractor or subcontractor from participation on any contract or subcontract awarded by or requiring approval or concurrence of the Department upon a determination by the CPO based upon adequate evidence that the contractor or subcontractor has engaged in conduct proscribed in Section 6.520 of Subpart I of the Illinois Administrative Code.

Please contact the Bureau's Local Policy & Technology Unit at DOT.LocalPolicy@illinois.gov with any questions.

James K. Klein

Acting Engineer of Local Roads and Streets

TW/tw

Attachments

RETURN WITH BID

Illinois Department of Transportation

Local Public Agency Formal Contract Proposal

PROPOSAL SUBMITTED BY		
Contractor's Name		
Street		P.O. Box
City	State	Zip Code

STATE OF ILLINOIS

COUNTY OF _____

_____
(Name of City, Village, Town or Road District)

FOR THE IMPROVEMENT OF

STREET NAME OR ROUTE NO. _____

SECTION NO. _____

TYPES OF FUNDS _____

☐ SPECIFICATIONS (required) ☐ PLANS (required)

For Municipal Projects

Submitted/Approved/Passed

_____
☐ Mayor ☐ President of Board of Trustees ☐ Municipal Official

Date

Department of Transportation

☐ Released for bid based on limited review

_____
Regional Engineer

Date

For County and Road District Projects

Submitted/Approved

_____
Highway Commissioner

_____
Date

Submitted/Approved

_____
County Engineer/Superintendent of Highways

_____
Date

Note: All proposal documents, including Proposal Guaranty Checks or Proposal Bid Bonds, should be stapled together to prevent loss when bids are processed.

RETURN WITH BID

County _____
Local Public Agency _____
Section Number _____
Route _____

NOTICE TO BIDDERS

Sealed proposals for the improvement described below will be received at the office of _____, _____
_____ until _____ on _____
Address Time Date

Sealed proposals will be opened and read publicly at the office of _____
_____ at _____ on _____
Address Time Date

DESCRIPTION OF WORK

Name _____ Length: _____ feet (_____ miles)
Location _____
Proposed Improvement _____
_____

1. Plans and proposal forms will be available in the office of _____
_____
Address

2. ☐ Prequalification
   If checked, the 2 low bidders must file within 24 hours after the letting an "Affidavit of Availability" (Form BC 57), in duplicate, showing all uncompleted contracts awarded to them and all low bids pending award for Federal, State, County, Municipal and private work. One original shall be filed with the Awarding Authority and one original with the IDOT District Office.

3. The Awarding Authority reserves the right to waive technicalities and to reject any or all proposals as provided in BLRS Special Provision for Bidding Requirements and Conditions for Contract Proposals.

4. The following BLR Forms shall be returned by the bidder to the Awarding Authority:
   a. BLR 12200: Local Public Agency Formal Contract Proposal
   b. BLR 12200a Schedule of Prices
   c. BLR 12230: Proposal Bid Bond (if applicable)
   d. BLR 12325: Apprenticeship or Training Program Certification (**do not use for federally funded projects**)
   e. BLR 12326: Affidavit of Illinois Business Office

5. The quantities appearing in the bid schedule are approximate and are prepared for the comparison of bids. Payment to the Contractor will be made only for the actual quantities of work performed and accepted or materials furnished according to the contract. The scheduled quantities of work to be done and materials to be furnished may be increased, decreased or omitted as hereinafter provided.

6. Submission of a bid shall be conclusive assurance and warranty the bidder has examined the plans and understands all requirements for the performance of work. The bidder will be responsible for all errors in the proposal resulting from failure or neglect to conduct an in depth examination. The Awarding Authority will, in no case be responsible for any costs, expenses, losses or changes in anticipated profits resulting from such failure or neglect of the bidder.

7. The bidder shall take no advantage of any error or omission in the proposal and advertised contract.

8. If a special envelope is supplied by the Awarding Authority, each proposal should be submitted in that envelope furnished by the Awarding Agency and the blank spaces on the envelope shall be filled in correctly to clearly indicate its contents. When an envelope other than the special one furnished by the Awarding Authority is used, it shall be marked to clearly indicate its contents. When sent by mail, the sealed proposal shall be addressed to the Awarding Authority at the address and in care of the official in whose office the bids are to be received. All proposals shall be filed prior to the time and at the place specified in the Notice to Bidders. Proposals received after the time specified will be returned to the bidder unopened.

9. Permission will be given to a bidder to withdraw a proposal if the bidder makes the request in writing or in person before the time for opening proposals.

RETURN WITH BID

County _____
Local Public Agency _____
Section Number _____
Route _____

PROPOSAL

1. Proposal of _____

_____

for the improvement of the above section by the construction of _____

_____

_____

_____

a total distance of _____ feet, of which a distance of _____ feet, (miles) are to be improved.

2. The plans for the proposed work are those prepared by _____
and approved by the Department of Transportation on _____

3. The specifications referred to herein are those prepared by the Department of Transportation and designated as "Standard Specifications for Road and Bridge Construction" and the "Supplemental Specifications and Recurring Special Provisions" thereto, adopted and in effect on the date of invitation for bids.

4. The undersigned agrees to accept, as part of the contract, the applicable Special Provisions indicated on the "Check Sheet for Recurring Special Provisions" contained in this proposal.

5. The undersigned agrees to complete the work within _____ working days or by _____ unless additional time is granted in accordance with the specifications.

6. A proposal guaranty in the proper amount, as specified in BLRS Special Provision for Bidding Requirements and Conditions for Contract Proposals, will be required. Bid Bonds _____ be allowed as a proposal guaranty. Accompanying this proposal is either a bid bond if allowed, on Department form BLR 12230 or a proposal guaranty check, complying with the specifications, made payable to:

_____ Treasurer of _____

The amount of the check is _____ (_____).

7. In the event that one proposal guaranty check is intended to cover two or more proposals, the amount must be equal to the sum of the proposal guaranties, which would be required for each individual proposal. If the proposal guaranty check is placed in another proposal, it will be found in the proposal for: Section Number _____.

8. The successful bidder at the time of execution of the contract _____ be required to deposit a contract bond for the full amount of the award. When a contract bond is not required, the proposal guaranty check will be held in lieu thereof. If this proposal is accepted and the undersigned fails to execute a contract and contract bond as required, it is hereby agreed that the Bid Bond or check shall be forfeited to the Awarding Authority.

9. Each pay item should have a unit price and a total price. If no total price is shown or if there is a discrepancy between the product of the unit price multiplied by the quantity, the unit price shall govern. If a unit price is omitted, the total price will be divided by the quantity in order to establish a unit price.

10. A bid will be declared unacceptable if neither a unit price nor a total price is shown.

11. The undersigned submits herewith the schedule of prices on BLR 12200a covering the work to be performed under this contract.

12. The undersigned further agrees that if awarded the contract for the sections contained in the combinations on BLR 12200a, the work shall be in accordance with the requirements of each individual proposal for the multiple bid specified in the Schedule for Multiple Bids below.

(REPLACE THIS PAGE WITH FORM BLR 12200a)

CONTRACTOR CERTIFICATIONS

County _____
Local Public Agency _____
Section Number _____
Route _____

The certifications hereinafter made by the bidder are each a material representation of fact upon which reliance is placed should the Department enter into the contract with the bidder.

1. **Debt Deliquency.** The bidder or contractor or subcontractor, respectively, certifies that it is not delinquent in the payment of any tax administered by the Department of Revenue unless the individual or other entity is contesting, in accordance with the procedures established by the appropriate revenue Act, its liability for the tax or the amount of tax. Making a false statement voids the contract and allows the Department to recover all amounts paid to the individual or entity under the contract in a civil action.

2. **Bid-Rigging or Bid Rotating.** The bidder or contractor or subcontractor, respectively, certifies that it is not barred from contracting with the Department by reason of a violation of either 720 ILCS 5/33E-3 or 720 ILCS 5/33E-4.

   A violation of Section 33E-3 would be represented by a conviction of the crime of bid-rigging which, in addition to Class 3 felony sentencing, provides that any person convicted of this offense or any similar offense of any state or the United States which contains the same elements as this offense shall be barred for 5 years from the date of conviction from contracting with any unit of State or local government. No corporation shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and: (1) it has been finally adjudicated not guilty or (2) if it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer or a high managerial agent in behalf of the corporation.

   A violation of Section 33E-4 would be represented by a conviction of the crime of bid-rotating which, in addition to Class 2 felony sentencing, provides that any person convicted of this offense or any similar offense of any state or the United States which contains the same elements as this offense shall be permanently barred from contracting with any unit of State or local government. No corporation shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and: (1) it has been finally adjudicated not guilty or (2) if it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer or a high managerial agent in behalf of the corporation.

3. **Bribery.** The bidder or contractor or subcontractor, respectively, certifies that it has not been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois or any unit of local government, nor has the firm made an admission of guilt of such conduct which is a matter of record, nor has an official, agent, or employee of the firm committed bribery or attempted bribery on behalf of the firm and pursuant to the direction or authorization of a responsible official of the firm.

4. **Interim Suspension or Suspension.** The bidder or contractor or subcontractor, respectively, certifies that it is not currently under a suspension as defined in Subpart I of Title 44 Subtitle A Chapter III Part 6 of the Illinois Administrative Code. Furthermore, if suspended prior to completion of this work, the contract or contracts executed for the completion of this work may be cancelled.

County _____
Local Public Agency _____
Section Number _____
Route _____

SIGNATURES

(If an individual)

Signature of Bidder _____

Business Address _____
_____

(If a partnership)

Firm Name _____

Signed By _____

Business Address _____
_____

Inset Names and Addressed of All Partners
_____
_____
_____
_____

(If a corporation)

Corporate Name _____

Signed By _____
President

Business Address _____
_____

Insert Names of Officers
President _____
Secretary _____
Treasurer _____

Attest: _____
Secretary

RETURN WITH BID

Illinois Department of Transportation

SCHEDULE OF PRICES

County _____
Local Public Agency _____
Section _____
Route _____

Schedule for Multiple Bids

Combination Letter	Sections Included in Combinations	Total

Schedule for Single Bid

(For complete information covering these items, see plans and specifications)

Bidder's Proposal for making Entire Improvements	

Item No.	Items	Unit	Quantity	Unit Price	Total

RETURN WITH BID

Bidder's Proposal for making Entire Improvements	

Item No.	Items	Unit	Quantity	Unit Price	Total

RETURN WITH BID

Bidder's Proposal for making Entire Improvements	

Item No.	Items	Unit	Quantity	Unit Price	Total

RETURN WITH BID

Illinois Department of Transportation

Local Public Agency Material Proposal or Deliver & Install Proposal

PROPOSAL SUBMITTED BY		
Contractor's Name		
Street		P.O. Box
City	State	Zip Code

STATE OF ILLINOIS

COUNTY OF _____

_____
(Name of City, Village, Town or Road District)

FOR THE IMPROVEMENT OF

STREET NAME OR ROUTE NO. _____

SECTION NO. _____

TYPES OF FUNDS _____

☐ MATERIAL PROPOSAL ☐ DELIVER & INSTALL PROPOSAL

☐ SPECIFICATIONS (required) ☐ PLANS (if applicable)

For Municipal Projects

Submitted/Approved/Passed

_____
☐ Mayor ☐ President of Board of Trustees ☐ Municipal Official

Date

Department of Transportation

☐ Released for bid based on limited review

_____
Regional Engineer

_____
Date

For County and Road District Projects

Submitted/Approved

_____
Highway Commissioner

_____
Date

Submitted/Approved

_____
County Engineer/Superintendent of Highways

_____
Date

Note: All proposal documents, including Proposal Guaranty Checks or Proposal Bid Bonds, should be stapled together to prevent loss when bids are processed.

RETURN WITH BID

County _____
Local Public Agency _____
Section Number _____
Route _____

NOTICE TO BIDDERS

Sealed proposals for the furnishing or delivering & installing materials required in the construction/maintenance of the above Section will be received and at that time publicly opened and read at the office of _____, _____ until _____ on _____
Address Time Date

1. Plans and proposal forms will be available in the office of _____
_____
Address
2. ☐ Prequalification. If checked, the 2 low bidders must file within 24 hours after the letting an "Affidavit of Availability" (Form BC 57), in duplicate, showing all uncompleted contracts awarded to them and all low bids pending award for Federal, State, County, Municipal and private work.
3. The Awarding Authority reserves the right to waive technicalities and to reject any or all proposals as provided in BLRS Special Provision for Bidding Requirements and Conditions for Material Proposals.
4. A proposal guaranty in the proper amount, as specified in BLRS Special Provision for Bidding Requirements and Conditions for Material Proposals, will be required. Bid Bonds _____ be allowed as a proposal guaranty.
5. The successful bidder at the time of execution of the contract _____ be required to deposit a contract bond for the full amount of the award. When a contract bond is not required, the proposal guaranty check will be held in lieu thereof. Failure on the part of the contractor to deliver the material within the time specified or to do the work specified herein will be considered just cause to forfeit his surety as provided in Article 108.10 of the Standard Specifications.
6. Proposals shall be submitted on forms furnished by the Awarding Authority and shall be enclosed in an envelope endorsed "Material Proposal, Section __-_____-__-__".

By Order of _____ _____ _____
(Awarding Authority) Date (County Engineer/Superintendent of Highways/Municipal Clerk)

Material Proposal or Deliver & Install Proposal

To _____
(Awarding Authority)

If this bid is accepted within 45 days from date of opening, the undersigned agrees to furnish or to deliver & install any or all of the materials, at the quoted unit prices, subject to the following:

1. It is understood and agreed that the "Standard Specifications for Road and Bridge Construction", adopted _____, and the "Supplemental Specifications and Recurring Special Provisions", adopted _____, prepared by the Department of Transportation, shall govern insofar as they may be applied and insofar as they do not conflict with the special provisions and supplemental specifications attached hereto.
2. It is understood that quantities listed are approximate only and that they may be increased or decreased as may be needed to properly complete the improvement within its present limits or extensions thereto, at the unit price stated and that bids will be compared on the basis of the total price bid for each group.
3. Delivery in total or partial shipments as ordered shall be made within the time specified in the special provisions or by the acceptance at the point and in the manner specified in the "Schedule of Prices". If delivery on the job site is specified, it shall mean any place or places on the road designated by the awarding authority or its authorized representative.
4. The contractor and/or local agency performing the actual material placement operations shall be responsible for providing work zone traffic control, unless otherwise specified in this proposal. Such devices shall meet the requirements of and be installed in accordance with applicable provisions of the "Illinois Manual on Uniform Traffic Control Devices" and any referenced Illinois Highway Standards.
5. Each pay item should have a unit price and a total price. If no total price is shown or if there is a discrepancy between the product of the unit price multiplied by the quantity, the unit price shall govern. If a unit price is omitted, the total price will be divided by the quantity in order to establish a unit price. A bid will be declared unacceptable if neither a unit price nor a total price is shown.

Discounts will be allowed for payment as follows: _____% _____ calendar days: _____% _____ calendar days.

Discounts will not be considered in determining the low bidder.

Bidder _____ By _____
(Signature)

Address _____ Title _____

Illinois Department of Transportation

Local Public Agency Formal Contract

PROPOSAL SUBMITTED BY		
Contractor's Name		
Street		P.O. Box
City	State	Zip Code

STATE OF ILLINOIS

COUNTY _____

_____
(Name of City, Village, Town or Road District)

FOR THE IMPROVEMENT OF

STREET NAME OR ROUTE _____

SECTION NO. _____

TYPES OF FUNDS _____

☐ SPECIFICATIONS (required) ☐ PLANS (required) ☐ CONTRACT BOND (when required)

For Municipal Projects

Submitted/Approved/Passed

_____
☐ Mayor ☐ President of Board of Trustees ☐ Municipal Official

Date

Department of Transportation

☐ Concurrence in approval of award

_____
Regional Engineer

Date

For County and Road District Projects

Submitted/Approved

_____
Highway Commissioner

_____
Date

Submitted/Approved

_____
County Engineer/Superintendent of Highways

_____
Date

County _____

Local Public Agency _____

Section Number _____

Route _____

1. THIS AGREEMENT, made and concluded the _____ day of _____ ,
   Month and Year

   between the _____ of _____

   acting by and through its _____ known as the party of the first part, and

   _____ his/their executors, administrators, successors or assigns,

   known as the party of the second part.

2. Witnesseth: That for and in consideration of the payments and agreements mentioned in the Proposal hereto attached, to be made and performed by the party of the first part, and according to the terms expressed in the Bond referring to these presents, the party of the second part agrees with said party of the first part at his/their own proper cost and expense to do all the work, furnish all materials and all labor necessary to complete the work in accordance with the plans and specifications hereinafter described, and in full compliance with all of the terms of this agreement and the requirements of the Engineer under it.

3. And it is also understood and agreed that the LPA Formal Contract Proposal, Special Provisions, Affidavit of Illinois Business Office, Apprenticeship or Training Program Certification, and Contract Bond hereto attached, and the Plans for Section _____ , in _____ ,

   approved by the Illinois Department of Transportation on _____ , are essential documents of this
   Date

   contract and are a part hereof.

4. IN WITNESS WHEREOF, The said parties have executed these presents on the date above mentioned.

Attest:

_____ Clerk

(Seal)

The _____ of _____

By _____
Party of the First Part

(If a Corporation)

Corporate Name _____

By _____
President Party of the Second Part

(If a Co-Partnership)

Attest:

_____

_____
Secretary

_____

Partners doing Business under the firm name of

_____
Party of the Second Part

(If an individual)

_____
Party of the Second Part

RETURN WITH BID

Illinois Department of Transportation

Affidavit of Illinois Business Office

County _____
Local Public Agency _____
Section Number _____
Route _____

State of _____)
) ss.
County of _____)

I, _____ of _____ , _____ ,
(Name of Affiant) (City of Affiant) (State of Affiant

being first duly sworn upon oath, states as follows:

1. That I am the _____ of _____ .
   officer or position bidder
2. That I have personal knowledge of the facts herein stated.
3. That, if selected under this proposal, _____ , will maintain a
   (bidder)

   business office in the State of Illinois which will be located in _____ County, Illinois.
4. That this business office will serve as the primary place of employment for any persons employed in the construction contemplated by this proposal.
5. That this Affidavit is given as a requirement of state law as provided in Section 30-22(8) of the Illinois Procurement Code.

_____
(Signature)

_____
(Print Name of Affiant)

This instrument was acknowledged before me on the day of _____ , _____ .

(SEAL)

_____
(Signature of Notary Public)

AN ACT concerning finance.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Procurement Code is amended by changing Section 30-22 as follows:

(30 ILCS 500/30-22)

Sec. 30-22. Construction contracts; responsible bidder requirements. To be considered a responsible bidder on a construction contract for purposes of this Code, a bidder must comply with all of the following requirements and must present satisfactory evidence of that compliance to the appropriate construction agency:

(1) The bidder must comply with all applicable laws concerning the bidder's entitlement to conduct business in Illinois.

(2) The bidder must comply with all applicable provisions of the Prevailing Wage Act.

(3) The bidder must comply with Subchapter VI ("Equal Employment Opportunities") of Chapter 21 of Title 42 of the United States Code (42 U.S.C. 2000e and following) and with Federal Executive Order No. 11246 as amended by Executive Order No. 11375.

(4) The bidder must have a valid Federal Employer

Identification Number or, if an individual, a valid Social Security Number.

(5) The bidder must have a valid certificate of insurance showing the following coverages: general liability, professional liability, product liability, workers' compensation, completed operations, hazardous occupation, and automobile.

(6) The bidder and all bidder's subcontractors must participate in applicable apprenticeship and training programs approved by and registered with the United States Department of Labor's Bureau of Apprenticeship and Training.

(7) For contracts with the Illinois Power Agency, the Director of the Illinois Power Agency may establish additional requirements for responsible bidders. These additional requirements, if established, shall be set forth together with the other criteria contained in the invitation for bids, and shall appear in the appropriate volume of the Illinois Procurement Bulletin.

(8) The bidder must submit a signed affidavit stating that the bidder will maintain an Illinois office as the primary place of employment for persons employed in the construction authorized by the contract.

The provisions of this Section shall not apply to federally funded construction projects if such application would jeopardize the receipt or use of federal funds in support of

such a project.

(Source: P.A. 95-431, eff. 8-28-07.)

Section 99. Effective date. This Act takes effect upon becoming law.

AN ACT concerning finance.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Public Construction Bond Act is amended by changing Section 1 as follows:

(30 ILCS 550/1) (from Ch. 29, par. 15)

Sec. 1. Except as otherwise provided by this Act, all officials, boards, commissions, or agents of this State, or of any political subdivision thereof, in making contracts for public work of any kind costing over $50,000 to be performed for the State, or of any political subdivision thereof, ~~and all officials, boards, commissions, or agents of any political subdivision of this State in making contracts for public work of any kind costing over $5,000 to be performed for the political subdivision,~~ shall require every contractor for the work to furnish, supply and deliver a bond to the State, or to the political subdivision thereof entering into the contract, as the case may be, with good and sufficient sureties. The amount of the bond shall be fixed by the officials, boards, commissions, commissioners or agents, and the bond, among other conditions, shall be conditioned for the completion of the contract, for the payment of material used in the work and for all labor performed in the work, whether by subcontractor or

otherwise.

If the contract is for emergency repairs as provided in the Illinois Procurement Code, proof of payment for all labor, materials, apparatus, fixtures, and machinery may be furnished in lieu of the bond required by this Section.

Each such bond is deemed to contain the following provisions whether such provisions are inserted in such bond or not:

"The principal and sureties on this bond agree that all the undertakings, covenants, terms, conditions and agreements of the contract or contracts entered into between the principal and the State or any political subdivision thereof will be performed and fulfilled and to pay all persons, firms and corporations having contracts with the principal or with subcontractors, all just claims due them under the provisions of such contracts for labor performed or materials furnished in the performance of the contract on account of which this bond is given, when such claims are not satisfied out of the contract price of the contract on account of which this bond is given, after final settlement between the officer, board, commission or agent of the State or of any political subdivision thereof and the principal has been made.".

Each bond securing contracts between the Capital Development Board or any board of a public institution of higher education and a contractor shall contain the following provisions, whether the provisions are inserted in the bond or

not:

"Upon the default of the principal with respect to undertakings, covenants, terms, conditions, and agreements, the termination of the contractor's right to proceed with the work, and written notice of that default and termination by the State or any political subdivision to the surety ("Notice"), the surety shall promptly remedy the default by taking one of the following actions:

(1) The surety shall complete the work pursuant to a written takeover agreement, using a completing contractor jointly selected by the surety and the State or any political subdivision; or

(2) The surety shall pay a sum of money to the obligee, up to the penal sum of the bond, that represents the reasonable cost to complete the work that exceeds the unpaid balance of the contract sum.

The surety shall respond to the Notice within 15 working days of receipt indicating the course of action that it intends to take or advising that it requires more time to investigate the default and select a course of action. If the surety requires more than 15 working days to investigate the default and select a course of action or if the surety elects to complete the work with a completing contractor that is not prepared to commence performance within 15 working days after receipt of Notice, and if the State or any political subdivision determines it is in the best interest of the State

to maintain the progress of the work, the State or any political subdivision may continue to work until the completing contractor is prepared to commence performance. Unless otherwise agreed to by the procuring agency, in no case may the surety take longer than 30 working days to advise the State or political subdivision on the course of action it intends to take. The surety shall be liable for reasonable costs incurred by the State or any political subdivision to maintain the progress to the extent the costs exceed the unpaid balance of the contract sum, subject to the penal sum of the bond.".

The surety bond required by this Section may be acquired from the company, agent or broker of the contractor's choice. The bond and sureties shall be subject to the right of reasonable approval or disapproval, including suspension, by the State or political subdivision thereof concerned. In the case of State construction contracts, a contractor shall not be required to post a cash bond or letter of credit in addition to or as a substitute for the surety bond required by this Section.

When other than motor fuel tax funds, federal-aid funds, or other funds received from the State are used, a political subdivision may allow the contractor to provide a non-diminishing irrevocable bank letter of credit, in lieu of the bond required by this Section, on contracts under $100,000 to comply with the requirements of this Section. Any such bank letter of credit shall contain all provisions required for

bonds by this Section.

(Source: P.A. 95-1011, eff. 12-15-08; 96-1000, eff. 7-2-10.)

Section 99. Effective date. This Act takes effect upon becoming law.

AN ACT concerning employment.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Prevailing Wage Act is amended by changing Sections 5 and 11 as follows:

(820 ILCS 130/5) (from Ch. 48, par. 39s-5)

Sec. 5. Certified payroll.

(a) Any contractor and each subcontractor who participates in public works shall:

(1) make and keep, for a period of not less than 3 years from the date of the last payment made before the effective date of this amendatory Act of the 98th General Assembly and for a period of 5 years from the date of the last payment made on or after the effective date of this amendatory Act of the 98th General Assembly on a contract or subcontract for public works, records of all laborers, mechanics, and other workers employed by them on the project; the records shall include each worker's name, address, telephone number when available, social security number, classification or classifications, the hourly wages paid in each pay period, the number of hours worked each day, and the starting and ending times of work each day; and

(2) no later than the tenth day of each calendar month file a certified payroll for the immediately preceding month with the public body in charge of the project. A certified payroll must be filed for only those calendar months during which construction on a public works project has occurred. The certified payroll shall consist of a complete copy of the records identified in paragraph (1) of this subsection (a), but may exclude the starting and ending times of work each day. The certified payroll shall be accompanied by a statement signed by the contractor or subcontractor or an officer, employee, or agent of the contractor or subcontractor which avers that: (i) he or she has examined the certified payroll records required to be submitted by the Act and such records are true and accurate; (ii) the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required by this Act; and (iii) the contractor or subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class A misdemeanor. A general contractor is not prohibited from relying on the certification of a lower tier subcontractor, provided the general contractor does not knowingly rely upon a subcontractor's false certification. Any contractor or subcontractor subject to this Act and any officer, employee, or agent of such contractor or subcontractor whose duty as such officer, employee, or agent it is to

file such certified payroll who willfully fails to file such a certified payroll on or before the date such certified payroll is required by this paragraph to be filed and any person who willfully files a false certified payroll that is false as to any material fact is in violation of this Act and guilty of a Class A misdemeanor. The public body in charge of the project shall keep the records submitted in accordance with this paragraph (2) of subsection (a) before the effective date of this amendatory Act of the 98th General Assembly for a period of not less than 3 years, and the records submitted in accordance with this paragraph (2) of subsection (a) on or after the effective date of this amendatory Act of the 98th General Assembly for a period of 5 years, from the date of the last payment for work on a contract or subcontract for public works. The records submitted in accordance with this paragraph (2) of subsection (a) shall be considered public records, except an employee's address, telephone number, and social security number, and made available in accordance with the Freedom of Information Act. The public body shall accept any reasonable submissions by the contractor that meet the requirements of this Section.

A contractor, subcontractor, or public body may retain records required under this Section in paper or electronic format.

(b) Upon 7 business days' notice, the contractor and each

subcontractor shall make available for inspection and copying at a location within this State during reasonable hours, the records identified in paragraph (1) of subsection (a) of this Section to the public body in charge of the project, its officers and agents, the Director of Labor and his deputies and agents, and to federal, State, or local law enforcement agencies and prosecutors.

(Source: P.A. 97-571, eff. 1-1-12.)

(820 ILCS 130/11) (from Ch. 48, par. 39s-11)

Sec. 11. No public works project shall be instituted unless the provisions of this Act have been complied with. The provisions of this Act shall not be applicable to Federal construction projects which require a prevailing wage determination by the United States Secretary of Labor. The Illinois Department of Labor represented by the Attorney General is empowered to sue for injunctive relief against the awarding of any contract or the continuation of work under any contract for public works at a time when the prevailing wage prerequisites have not been met. Any contract for public works awarded at a time when the prevailing wage prerequisites had not been met shall be void as against public policy and the contractor is prohibited from recovering any damages for the voiding of the contract or pursuant to the terms of the contract. The contractor is limited to a claim for amounts actually paid for labor and materials supplied to the public

body. Where objections to a determination of the prevailing rate of wages or a court action relative thereto is pending, the public body shall not continue work on the project unless sufficient funds are available to pay increased wages if such are finally determined or unless the Department of Labor certifies such determination of the prevailing rate of wages as correct.

Any laborer, worker or mechanic employed by the contractor or by any sub-contractor under him who is paid for his services in a sum less than the stipulated rates for work done under such contract, shall have a right of action for whatever difference there may be between the amount so paid, and the rates provided by the contract together with costs and such reasonable attorney's fees as shall be allowed by the court. Such contractor or subcontractor shall also be liable to the Department of Labor for 20% of such underpayments and shall be additionally liable to the laborer, worker or mechanic for punitive damages in the amount of 2% of the amount of any such penalty to the State for underpayments for each month following the date of payment during which such underpayments remain unpaid. Where a second or subsequent action to recover underpayments is brought against a contractor or subcontractor and the contractor or subcontractor is found liable for underpayments to any laborer, worker, or mechanic, the contractor or subcontractor shall also be liable to the Department of Labor for 50% of the underpayments payable as a

result of the second or subsequent action, and shall be additionally liable for 5 of the amount of any such penalty to the State for underpayments for each month following the date of payment during which the underpayments remain unpaid. The Department shall also have a right of action on behalf of any individual who has a right of action under this Section. An action brought to recover same shall be deemed to be a suit for wages, and any and all judgments entered therein shall have the same force and effect as other judgments for wages. The action shall be brought within 5 years from the date of the failure to pay the wages or compensation. At the request of any laborer, workman or mechanic employed by the contractor or by any subcontractor under him who is paid less than the prevailing wage rate required by this Act, the Department of Labor may take an assignment of such wage claim in trust for the assigning laborer, workman or mechanic and may bring any legal action necessary to collect such claim, and the contractor or subcontractor shall be required to pay the costs incurred in collecting such claim.

(Source: P.A. 94-488, eff. 1-1-06.)

AN ACT concerning wages.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Prevailing Wage Act is amended by changing Sections 2 and 5 and by adding Section 5.1 as follows:

(820 ILCS 130/2) (from Ch. 48, par. 39s-2)

Sec. 2. This Act applies to the wages of laborers, mechanics and other workers employed in any public works, as hereinafter defined, by any public body and to anyone under contracts for public works. This includes any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented.

As used in this Act, unless the context indicates otherwise:

"Public works" means all fixed works constructed or demolished by any public body, or paid for wholly or in part out of public funds. "Public works" as defined herein includes all projects financed in whole or in part with bonds, grants, loans, or other funds made available by or through the State or any of its political subdivisions, including but not limited to: bonds issued under the Industrial Project Revenue Bond Act (Article 11, Division 74 of the Illinois Municipal Code), the Industrial Building Revenue Bond Act, the Illinois Finance

Authority Act, the Illinois Sports Facilities Authority Act, or the Build Illinois Bond Act; loans or other funds made available pursuant to the Build Illinois Act; or funds from the Fund for Illinois' Future under Section 6z-47 of the State Finance Act, funds for school construction under Section 5 of the General Obligation Bond Act, funds authorized under Section 3 of the School Construction Bond Act, funds for school infrastructure under Section 6z-45 of the State Finance Act, and funds for transportation purposes under Section 4 of the General Obligation Bond Act. "Public works" also includes (i) all projects financed in whole or in part with funds from the Department of Commerce and Economic Opportunity under the Illinois Renewable Fuels Development Program Act for which there is no project labor agreement; (ii) all work performed pursuant to a public private agreement under the Public Private Agreements for the Illiana Expressway Act; and (iii) all projects undertaken under a public-private agreement under the Public-Private Partnerships for Transportation Act. "Public works" also includes all projects at leased facility property used for airport purposes under Section 35 of the Local Government Facility Lease Act. "Public works" also includes the construction of a new wind power facility by a business designated as a High Impact Business under Section 5.5(a)(3)(E) of the Illinois Enterprise Zone Act. "Public works" does not include work done directly by any public utility company, whether or not done under public supervision or direction, or

paid for wholly or in part out of public funds. "Public works" does not include projects undertaken by the owner at an owner-occupied single-family residence or at an owner-occupied unit of a multi-family residence.

"Construction" means all work on public works involving laborers, workers or mechanics. This includes any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented.

"Locality" means the county where the physical work upon public works is performed, except (1) that if there is not available in the county a sufficient number of competent skilled laborers, workers and mechanics to construct the public works efficiently and properly, "locality" includes any other county nearest the one in which the work or construction is to be performed and from which such persons may be obtained in sufficient numbers to perform the work and (2) that, with respect to contracts for highway work with the Department of Transportation of this State, "locality" may at the discretion of the Secretary of the Department of Transportation be construed to include two or more adjacent counties from which workers may be accessible for work on such construction.

"Public body" means the State or any officer, board or commission of the State or any political subdivision or department thereof, or any institution supported in whole or in part by public funds, and includes every county, city, town, village, township, school district, irrigation, utility,

reclamation improvement or other district and every other political subdivision, district or municipality of the state whether such political subdivision, municipality or district operates under a special charter or not.

The terms "general prevailing rate of hourly wages", "general prevailing rate of wages" or "prevailing rate of wages" when used in this Act mean the hourly cash wages plus annualized fringe benefits for training and apprenticeship programs approved by the U.S. Department of Labor, Bureau of Apprenticeship and Training, health and welfare, insurance, vacations and pensions paid generally, in the locality in which the work is being performed, to employees engaged in work of a similar character on public works.

(Source: P.A. 96-28, eff. 7-1-09; 96-58, eff. 1-1-10; 96-186, eff. 1-1-10; 96-913, eff. 6-9-10; 96-1000, eff. 7-2-10; 97-502, eff. 8-23-11.)

(820 ILCS 130/5) (from Ch. 48, par. 39s-5)

Sec. 5. Certified payroll.

(a) Any contractor and each subcontractor who participates in public works shall:

(1) make and keep, for a period of not less than 3 years from the date of the last payment on a contract or subcontract for public works, records of all laborers, mechanics, and other workers employed by them on the project; the records shall include (i) the ~~each~~ worker's

name, (ii) the worker's address, (iii) the worker's telephone number when available, (iv) the worker's social security number, (v) the worker's classification or classifications, (vi) the worker's gross and net ~~the hourly~~ wages paid in each pay period, (vii) the worker's number of hours worked each day, (viii) the worker's starting and ending times of work each day, (ix) the worker's hourly wage rate, (x) the worker's hourly overtime wage rate, (xi) the worker's hourly fringe benefit rates, (xii) the name and address of each fringe benefit fund, (xiii) the plan sponsor of each fringe benefit, if applicable, and (xiv) the plan administrator of each fringe benefit, if applicable ~~and the starting and ending times of work each day~~; and

(2) no later than the 15th ~~tenth~~ day of each calendar month file a certified payroll for the immediately preceding month with the public body in charge of the project. A certified payroll must be filed for only those calendar months during which construction on a public works project has occurred. The certified payroll shall consist of a complete copy of the records identified in paragraph (1) of this subsection (a), but may exclude the starting and ending times of work each day. The certified payroll shall be accompanied by a statement signed by the contractor or subcontractor or an officer, employee, or agent of the contractor or subcontractor which avers that:

(i) he or she has examined the certified payroll records required to be submitted by the Act and such records are true and accurate; (ii) the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required by this Act; and (iii) the contractor or subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class A misdemeanor. A general contractor is not prohibited from relying on the certification of a lower tier subcontractor, provided the general contractor does not knowingly rely upon a subcontractor's false certification. Any contractor or subcontractor subject to this Act and any officer, employee, or agent of such contractor or subcontractor whose duty as such officer, employee, or agent it is to file such certified payroll who willfully fails to file such a certified payroll on or before the date such certified payroll is required by this paragraph to be filed and any person who willfully files a false certified payroll that is false as to any material fact is in violation of this Act and guilty of a Class A misdemeanor. The public body in charge of the project shall keep the records submitted in accordance with this paragraph (2) of subsection (a) for a period of not less than 3 years from the date of the last payment for work on a contract or subcontract for public works. The records submitted in accordance with this paragraph (2) of subsection (a) shall

be considered public records, except an employee's address, telephone number, and social security number, and made available in accordance with the Freedom of Information Act. The public body shall accept any reasonable submissions by the contractor that meet the requirements of this Section.

(b) Upon 7 business days' notice, the contractor and each subcontractor shall make available for inspection and copying at a location within this State during reasonable hours, the records identified in paragraph (1) of subsection (a) of this Section to the public body in charge of the project, its officers and agents, the Director of Labor and his deputies and agents, and to federal, State, or local law enforcement agencies and prosecutors.

(c) A contractor or subcontractor who remits contributions to fringe benefit funds that are jointly maintained and jointly governed by one or more employers and one or more labor organizations in accordance with the federal Labor Management Relations Act shall make and keep certified payroll records that include the information required under items (i) through (viii) of paragraph (1) of subsection (a) only. However, the information required under items (ix) through (xiv) of paragraph (1) of subsection (a) shall be required for any contractor or subcontractor who remits contributions to a fringe benefit fund that is not jointly maintained and jointly governed by one or more employers and one or more labor

organizations in accordance with the federal Labor Management Relations Act.

(Source: P.A. 97-571, eff. 1-1-12.)

(820 ILCS 130/5.1 new)

Sec. 5.1. Electronic database. Subject to appropriation, the Department shall develop and maintain an electronic database capable of accepting and retaining certified payrolls submitted under this Act. The database shall accept certified payroll forms provided by the Department that are fillable and designed to accept electronic signatures.

INTEREST IN CONTRACTS

105/3. Prohibited interest in contracts

§ 3. Prohibited interest in contracts.

(a) No person holding any office, either by election or appointment under the laws or Constitution of this State, may be in any manner financially interested directly in his own name or indirectly in the name of any other person, association, trust, or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. No such officer may represent, either as agent or otherwise, any person, association, trust, or corporation, with respect to any application or bid for any contract or work in regard to which such officer may be called upon to vote. Nor may any such officer take or receive, or offer to take or receive, either directly or indirectly, any money or other thing of value as a gift or bribe or means of influencing his vote or action in his official character. Any contract made and procured in violation hereof is void. This Section shall not apply to any person serving on an advisory panel or commission, to any director serving on a hospital district board as provided under subsection (a-5) of Section 13 of the Hospital District Law,[1] or to any person serving as both a contractual employee and as a member of a public hospital board as provided under Article 11 of the Illinois Municipal Code in a municipality with a population between 13,000 and 16,000 that is located in a county with a population between 50,000 and 70,000.

(b) However, any elected or appointed member of the governing body may provide materials, merchandise, property, services, or labor, subject to the following provisions under either paragraph (1) or (2):

(1) If:

A. the contract is with a person, firm, partnership, association, corporation, or cooperative association in which such interested member of the governing body of the municipality has less than a 7 ½% share in the ownership; and

B. such interested member publicly discloses the nature and extent of his interest prior to or during deliberations concerning the proposed award of the contract; and

C. such interested member abstains from voting on the award of the contract, though he shall be considered present for the purposes of establishing a quorum; and

D. such contract is approved by a majority vote of those members presently holding office; and

E. the contract is awarded after sealed bids to the lowest responsible bidder if the amount of the contract exceeds $1500, or awarded without bidding if the amount of the contract is less than $1500; and

F. the award of the contract would not cause the aggregate amount of all such contracts so awarded to the same person, firm, association, partnership, corporation, or cooperative association in the same fiscal year to exceed $25,000.

(2) If:

A. the award of the contract is approved by a majority vote of the governing body of the municipality provided that any such interested member shall abstain from voting; and

B. the amount of the contract does not exceed $2,000; and

C. the award of the contract would not cause the aggregate amount of all such contracts so awarded to the same person, firm, association, partnership, corporation, or cooperative association in the same fiscal year to exceed $4,000; and

D. such interested member publicly discloses the nature and extent of his interest prior to or during deliberations concerning the proposed award of the contract; and

E. such interested member abstains from voting on the award of the contract, though he shall be considered present for the purposes of establishing a quorum.

(b-5) In addition to the above exemptions, any elected or appointed member of the governing body may provide materials, merchandise, property, services, or labor if:

A. the contract is with a person, firm, partnership, association, corporation, or cooperative association in which the interested member of the governing body of the municipality, advisory panel, or commission has less than a 1% share in the ownership; and

B. the award of the contract is approved by a majority vote of the governing body of the municipality provided that any such interested member shall abstain from voting; and

C. such interested member publicly discloses the nature and extent of his interest before or during deliberations concerning the proposed award of the contract; and

D. such interested member abstains from voting on the award of the contract, though he shall be considered present for the purposes of establishing a quorum.

(c) A contract for the procurement of public utility services by a public entity with a public utility company is not barred by this Section by one or more members of the governing body of the public entity being an officer or employee of the public utility company or holding an ownership interest of no more than 7 ½% in the public utility company, or holding an ownership interest of any size if the public entity is a municipality with a population of less than 7,500 and the public utility's rates are approved by the Illinois Commerce Commission. An elected or appointed member of the governing body of the public entity having such an interest shall be deemed not to have a prohibited interest under this Section.

(d) Notwithstanding any other provision of this Section or any other law to the contrary, until January 1, 1994, a member of the city council of a municipality with a population under 20,000 may purchase real estate from the municipality, at a price of not less than 100% of the value of the real estate as determined by a written MAI certified appraisal or by a written certified appraisal of a State certified or licensed real estate appraiser, if the purchase is approved by a unanimous vote of the city council members then holding office (except for the member desiring to purchase the real estate, who shall not vote on the question).

(e) For the purposes of this Section only, a municipal officer shall not be deemed interested if the officer is an employee of a company or owns or holds an interest of 1% or less in the municipal officer's individual name in a company, or both, that company is involved in the transaction of business with the municipality, and that company's stock is traded on a nationally recognized securities market, provided the interested member: (i) publicly discloses the fact that he or she is an employee or holds an interest of 1% or less in a company before deliberation of the proposed award of the contract; (ii) refrains from evaluating, recommending, approving, deliberating, or otherwise participating in negotia-

tion, approval, or both, of the contract, work, or business; (iii) abstains from voting on the award of the contract though he or she shall be considered present for purposes of establishing a quorum; and (iv) the contract is approved by a majority vote of those members currently holding office.

A municipal officer shall not be deemed interested if the officer owns or holds an interest of 1% or less, not in the officer's individual name but through a mutual fund or exchange traded fund, in a company, that company is involved in the transaction of business with the municipality, and that company's stock is traded on a nationally recognized securities market.

(f) Under either of the following circumstances, a municipal officer may hold a position on the board of a not-for-profit corporation that is interested in a contract, work, or business of the municipality:

(1) If the municipal officer is appointed by the governing body of the municipality to represent the interests of the municipality on a not-for-profit corporation's board, then the municipal officer may actively vote on matters involving either that board or the municipality, at any time, so long as the membership on the not-for-profit board is not a paid position, except that the municipal officer may be reimbursed by the non-for-profit board for expenses incurred as the result of membership on the non-for-profit board.

(2) If the municipal officer is not appointed to the governing body of a not-for-profit corporation by the governing body of the municipality, then the municipal officer may continue to serve; however, the municipal officer shall abstain from voting on any proposition before the municipal governing body directly involving the not-for-profit corporation and, for those matters, shall not be counted as present for the purposes of a quorum of the municipal governing body.

Laws 1871-72, p. 612, § 3, eff. July 1, 1872. Amended by Laws 1949, p. 1162, § 1, eff. July 1, 1949; P.A. 80-938, § 2, eff. July 1, 1978; P.A. 80-1086, § 2, eff. July 1, 1978; P.A. 81-291, § 2, eff. Aug. 28, 1979; P.A. 82-399, § 2, eff. Sept. 4, 1981; P.A. 87-855, § 4, eff. July 1, 1992; P.A. 87-1197, Art. 1, § 2, eff. Sept. 25, 1992; P.A. 90-197, § 5, eff. Jan. 1, 1998; P.A. 90-364, § 5, eff. Jan. 1, 1998; P.A. 90-655, § 50, eff. July 30, 1998; P.A. 96-277, § 5, eff. Jan. 1, 2010; P.A. 96-1058, § 5, eff. July 14, 2010; P.A. 97-520, § 5, eff. Aug. 23, 2011.

Formerly Ill.Rev.Stat.1991, ch. 102, ¶ 3.

[1] 70 ILCS 910/13.

105/3.1. Disclosure of identity of owners, beneficiaries, members, shareholders and partners; written disclosure; letter of direction; construction

§ 3.1. Before any contract relating to the ownership or use of real property is entered into by and between the State or any local governmental unit or any agency of either the identity of every owner and beneficiary having any interest, real or personal, in such property, and every member, shareholder, limited partner, or general partner entitled to receive more than 7½% of the total distributable income of any limited liability company, corporation, or limited partnership having any interest, real or personal, in such property must be disclosed. The disclosure shall be in writing and shall be subscribed by a member, an owner, authorized trustee, corporate official, general partner, or managing agent, or his or her authorized attorney, under oath. However, if the interest, stock, or shares in a limited liability company, corporation, or general partnership is publicly traded and there is no readily known individual having greater than a 7½% interest, then a statement to that effect, subscribed to under oath by a member, officer of the corporation, general partner, or managing agent, or his or her authorized attorney, shall fulfill the disclosure statement requirement of this Section. As a condition of contracts entered into on or after the effective date of this amendatory Act of 1995, the beneficiaries of a lease shall furnish the trustee of a trust subject to disclosure under this Section with a binding non-revocable letter of direction authorizing the trustee to provide the State with an up-to-date disclosure whenever requested by the State. The letter of direction shall be binding on beneficiaries' heirs, successors, and assigns during the term of the contract. This Section shall be liberally construed to accomplish the purpose of requiring the identification of the actual parties benefiting from any transaction with a governmental unit or agency involving the procurement of the ownership or use of real property thereby.

For any entity that is wholly or partially owned by another entity, the names of the owners of the wholly or partially owning entity shall be disclosed under this Section, as well as the names of the owners of the wholly or partially owned entity.

Laws 1871-72, p. 612, § 3.1, added by P.A. 76-1613, § 1, eff. Sept. 30, 1969. Amended by P.A. 80-1495, § 41, eff. Jan. 8, 1979; P.A. 83-257, § 1, eff. Jan. 1, 1984; P.A. 89-91, § 5, eff. June 30, 1995; P.A. 91-361, § 5, eff. July 29, 1999.

Formerly Ill.Rev.Stat.1991, ch. 102, ¶ 3.1.

105/3.2. Pecuniary interest allowed in contracts of deposit and financial service with local banks and savings and loan associations

§ 3.2. Pecuniary interest allowed in contracts of deposit and financial service with local banks and savings and loan associations. Nothing contained in this Act, including the restrictions set forth in subsections (b), (c), and (d) of Section 3, shall preclude a contract of deposit of monies, loans, or other financial services by a unit of local government, school district, community college district, State university, or a police or firefighter's pension fund established under Article 3 or 4 of the Illinois Pension Code[1] with a local bank or local savings and loan association, regardless of whether a member or members of the governing body of the unit (including any director serving on a hospital district board as provided under subsection (a-5) of Section 13 of the Hospital District Law)[2] are interested in the bank or savings and loan association as a director, an officer, employee, or holder of less than 7½% of the total ownership interest. A member or members holding such an interest in such a contract shall not be deemed to be holding a prohibited interest for purposes of this Act. The interested member or members of the governing body must publicly state the nature and extent of their interest during deliberations concerning the proposed award of such a contract, but shall not participate in any further deliberations concerning the proposed award. The interested member or members shall not vote on such a proposed award. Any member or members abstaining from participation in deliberations and voting under this Section may be considered present for purposes of establishing a quorum. Award of such a contract shall require approval by a majority vote of those members presently holding office. Consideration and award of any such contract in which a member or members are interested may only be made at a regularly

scheduled public meeting of the governing body of the unit or district.

Laws 1871-72, p. 612, § 3.2, added by P.A. 80-376, § 2, eff. Oct. 1, 1977. Amended by P.A. 80-1086, § 2, eff. July 1, 1978; P.A. 81-291, § 2, eff. Aug. 28, 1979; P.A. 86-1179, § 3, eff. Aug. 17, 1990; P.A. 87-1096, § 1, eff. Sept. 15, 1992; P.A. 90-197, § 5, eff. Jan. 1, 1998.

Formerly Ill.Rev.Stat.1991, ch. 102, ¶ 3.2.

[1] 10 ILCS 5/3-101 et seq. or 10 ILCS 5/4-101 et seq.

[2] 70 ILCS 910/13.

PENALTIES

105/4. Violations

§ 4. Any alderman, member of a board of trustees, supervisor or county commissioner, or other person holding any office, either by election or appointment under the laws or constitution of this state, who violates any provision of the preceding sections, is guilty of a Class 4 felony and in addition thereto, any office or official position held by any person so convicted shall become vacant, and shall be so declared as part of the judgment of court.

Laws 1871-72, p. 612, § 4, eff. July 1, 1872. Amended by Laws 1949, p. 1162, § 1, eff. July 1, 1949; P.A. 77-2721, § 1, eff. Jan. 1, 1973.

Formerly Ill.Rev.Stat.1991, ch. 102, ¶ 4.

105/4.5. False verification; perjury

§ 4.5. False verification; perjury. A person is guilty of perjury who:

(1) In swearing on oath or otherwise affirming a statement in writing as required under this Act, knowingly makes a false statement as to, or knowingly omits a material fact relating to, the identification of an individual or entity that has an ownership interest in real property, or that is material to an issue or point in question in the written disclosure pertaining to a contract for the ownership or use of real property.

(2) Having taken a lawful oath or made affirmation, testifies willfully and falsely as to any of those matters for the purpose of inducing the State or any local governmental unit or any agency of either to enter into a contract for the ownership or use of real property.

(3) Suborns any other person to so swear, affirm, or testify.

Upon conviction of perjury, a person shall be sentenced as provided in Section 32-2 or 32-3, respectively, of the Criminal Code of 2012 [1] for those offenses.

This Section applies to written statements made or testimony given on or after the effective date of this amendatory Act of 1995.

Laws 1871-72, p. 612, § 4.5, added by P.A. 89-91, § 5, eff. June 30, 1995. Amended by P.A. 97-1150, § 170, eff. Jan. 25, 2013.

[1] 720 ILCS 5/32-2 or 5/32-3.

ACT 110. PUBLIC OFFICER SIMULTANEOUS TENURE ACT

110/2. Simultaneous tenure declared to be lawful

§ 2. Simultaneous tenure declared to be lawful. It is lawful for any person to hold the office of county board member and township supervisor, and in counties of less than 100,000 population the office of county board member and township trustee, simultaneously. It is lawful for any person to hold the office of county board member and the office of township assessor or town clerk, simultaneously, in counties of less than 300,000 population.

P.A. 79-457, § 2, eff. Oct. 1, 1975. Amended by P.A. 80-1424, § 1, eff. Sept. 8, 1978; P.A. 82-554, § 4, eff. Sept. 17, 1981; P.A. 82-948, § 1, eff. Aug. 19, 1982; P.A. 90-718, § 10, eff. Aug. 14, 1998.

Formerly Ill.Rev.Stat.1991, ch. 102, ¶ 4.11.

FINANCES

ACT 340. INVESTMENT OF MUNICIPAL FUNDS ACT

340/0.01. Short title

§ 0.01. Short title. This Act may be cited as the Investment of Municipal Funds Act.

Laws 1941, vol. 2, p. 473, § 0.01, added by P.A. 86-1324, § 1184, eff. Sept. 6, 1990.

Formerly Ill.Rev.Stat.1991, ch. 146 ½, ¶ 3.01.

340/1. Surplus funds of counties, park districts, sanitary districts or other municipal corporations; purchase of tax anticipation warrants or municipal bonds

§ 1. Every county, park district, sanitary district, or other municipal corporation, holding in its treasury funds which are set aside for use for particular purposes, including any funds that are disbursed to a county or municipality as their share of the taxes collected under the "Motor Fuel Tax Law",[1] but which are not immediately necessary for those purposes, by ordinance, may use those funds, or any of them, in the purchase of tax anticipation warrants issued by the county, park district, sanitary district, or other municipal corporation possessing the funds against taxes levied by that county, park district, sanitary district, or other municipal corporation. These warrants shall bear interest not to exceed four percent annually. All interest upon these warrants, and all money paid in redemption of these warrants, or received from the resale thereof, shall at once be credited to and placed in the particular fund used to purchase the specified warrants. Likewise, every county, park district, sanitary district, or other municipal corporation, by resolution or ordinance may use the money in the specified funds in the purchase of municipal bonds issued by the county, park district, sanitary district, or other municipal corporation, possessing the funds and representing an obligation and pledging the credit of that county, park district, sanitary district, or other municipal corporation, or bonds and other interest bearing obligations of the United States, of the State of Illinois, or of any other state or of any political subdivision or agency of the State of Illinois or of any other state, whether the interest earned thereon is taxable or tax exempt under federal law, including savings accounts and savings certificates of deposit of any State or National Bank if such accounts and certificates are fully insured by the Federal Deposit Insurance Corporation, withdrawable capital accounts or deposits of State or federal chartered savings and loan associations which are fully insured by the Federal Savings and Loan Insurance Corporation, or treasury notes and other securities issued by agencies of the United States. All interest upon these bonds or obligations and all money

Joint Committee on Administrative Rules

ADMINISTRATIVE CODE

TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY MANAGEMENT
SUBTITLE A: PROCUREMENT AND CONTRACT PROVISIONS
CHAPTER III: CHIEF PROCUREMENT OFFICER FOR THE DEPARTMENT OF TRANSPORTATION
PART 6 CHIEF PROCUREMENT OFFICER FOR THE DEPARTMENT OF TRANSPORTATION - CONTRACT PROCUREMENT
SECTION 6.520 CAUSES FOR SUSPENSION OR DEBARMENT

Section 6.520 Causes for Suspension or Debarment

A contractor or subcontractor may be suspended or debarred from participation due to acts or omissions that indicate that the contractor or subcontractor lacks integrity and honesty in the conduct of business or the performance of contracts. Acts or omissions that indicate the lack of business integrity and honesty include but are not limited to:

a) fraud, bribery, embezzlement, theft, collusion, conspiracy, anti-competitive activity or other misconduct and offenses prohibited by law whether or not any such misconduct or offense is in connection with a Department contract or subcontract or any contract or subcontract requiring Department approval;

b) making a material false statement in an application for prequalification or any forms or affidavits required as part of a prequalification process;

c) materially violating any rule or procurement procedure or making a material false statement in connection with any rules or procurement procedures of the Department;

d) making a material false statement, representation, claim or report respecting the character, quality, quantity, or cost of any work performed or materials furnished in connection with a contract or subcontract administered or supervised by the Department;

e) doing business with a suspended contractor or subcontractor in connection with a contract or subcontract of the Department or subject to approval of the Department during the period of suspension; or

f) being debarred or suspended by another agency of this State or the United States.

(Source: Amended at 35 Ill. Reg. 16518, effective September 30, 2011)

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2014-01

SUBJECT: LOCAL LETTINGS

ISSUED DATE: April 25, 2014

EFFECTIVE DATE: April 25, 2014

This memorandum supersedes portions of PM2013-11 dated December 31, 2013, and Sections 12-2.01(b), 12-3.04(a), 12-3.06(b), 12-3.07, and 12-3.08(a) dated December 2013 of the Bureau of Local Roads & Streets Manual.

The Department has updated sections of Chapter 12, "Letting and Contract Award," of the Bureau of Local Roads & Streets Manual for clarification on the requirements for Contract Bonds and the Affidavit of Illinois Business Office.

Contract Bonds will be required for public construction work costing over $50,000 on Deliver & Install Proposals and Formal Contracts. Contract Bonds will not be required on Material Proposals.

The Affidavit of Illinois Business Office will be required on all Deliver & Install Proposals and Formal Contracts that include information on the Apprenticeship and Training Certification in the contract documents. The Affidavit of Illinois Business Office will not be required on Material Proposals.

Please contact the Bureau's Local Policy & Technology Unit at DOT.LocalPolicy@illinois.gov with any questions.

James K. Klein

Acting Engineer of Local Roads and Streets

TW/tw

Attachments

AN ACT concerning finance.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Public Construction Bond Act is amended by changing Section 1 as follows:

(30 ILCS 550/1) (from Ch. 29, par. 15)

Sec. 1. Except as otherwise provided by this Act, all officials, boards, commissions, or agents of this State, or of any political subdivision thereof, in making contracts for public work of any kind costing over $50,000 to be performed for the State, or of any political subdivision thereof, ~~and all officials, boards, commissions, or agents of any political subdivision of this State in making contracts for public work of any kind costing over $5,000 to be performed for the political subdivision,~~ shall require every contractor for the work to furnish, supply and deliver a bond to the State, or to the political subdivision thereof entering into the contract, as the case may be, with good and sufficient sureties. The amount of the bond shall be fixed by the officials, boards, commissions, commissioners or agents, and the bond, among other conditions, shall be conditioned for the completion of the contract, for the payment of material used in the work and for all labor performed in the work, whether by subcontractor or

otherwise.

If the contract is for emergency repairs as provided in the Illinois Procurement Code, proof of payment for all labor, materials, apparatus, fixtures, and machinery may be furnished in lieu of the bond required by this Section.

Each such bond is deemed to contain the following provisions whether such provisions are inserted in such bond or not:

"The principal and sureties on this bond agree that all the undertakings, covenants, terms, conditions and agreements of the contract or contracts entered into between the principal and the State or any political subdivision thereof will be performed and fulfilled and to pay all persons, firms and corporations having contracts with the principal or with subcontractors, all just claims due them under the provisions of such contracts for labor performed or materials furnished in the performance of the contract on account of which this bond is given, when such claims are not satisfied out of the contract price of the contract on account of which this bond is given, after final settlement between the officer, board, commission or agent of the State or of any political subdivision thereof and the principal has been made.".

Each bond securing contracts between the Capital Development Board or any board of a public institution of higher education and a contractor shall contain the following provisions, whether the provisions are inserted in the bond or

not:

"Upon the default of the principal with respect to undertakings, covenants, terms, conditions, and agreements, the termination of the contractor's right to proceed with the work, and written notice of that default and termination by the State or any political subdivision to the surety ("Notice"), the surety shall promptly remedy the default by taking one of the following actions:

(1) The surety shall complete the work pursuant to a written takeover agreement, using a completing contractor jointly selected by the surety and the State or any political subdivision; or

(2) The surety shall pay a sum of money to the obligee, up to the penal sum of the bond, that represents the reasonable cost to complete the work that exceeds the unpaid balance of the contract sum.

The surety shall respond to the Notice within 15 working days of receipt indicating the course of action that it intends to take or advising that it requires more time to investigate the default and select a course of action. If the surety requires more than 15 working days to investigate the default and select a course of action or if the surety elects to complete the work with a completing contractor that is not prepared to commence performance within 15 working days after receipt of Notice, and if the State or any political subdivision determines it is in the best interest of the State

to maintain the progress of the work, the State or any political subdivision may continue to work until the completing contractor is prepared to commence performance. Unless otherwise agreed to by the procuring agency, in no case may the surety take longer than 30 working days to advise the State or political subdivision on the course of action it intends to take. The surety shall be liable for reasonable costs incurred by the State or any political subdivision to maintain the progress to the extent the costs exceed the unpaid balance of the contract sum, subject to the penal sum of the bond.".

The surety bond required by this Section may be acquired from the company, agent or broker of the contractor's choice. The bond and sureties shall be subject to the right of reasonable approval or disapproval, including suspension, by the State or political subdivision thereof concerned. In the case of State construction contracts, a contractor shall not be required to post a cash bond or letter of credit in addition to or as a substitute for the surety bond required by this Section.

When other than motor fuel tax funds, federal-aid funds, or other funds received from the State are used, a political subdivision may allow the contractor to provide a non-diminishing irrevocable bank letter of credit, in lieu of the bond required by this Section, on contracts under $100,000 to comply with the requirements of this Section. Any such bank letter of credit shall contain all provisions required for

bonds by this Section.

(Source: P.A. 95-1011, eff. 12-15-08; 96-1000, eff. 7-2-10.)

Section 99. Effective date. This Act takes effect upon becoming law.

AN ACT concerning finance.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Procurement Code is amended by changing Section 30-22 as follows:

(30 ILCS 500/30-22)

Sec. 30-22. Construction contracts; responsible bidder requirements. To be considered a responsible bidder on a construction contract for purposes of this Code, a bidder must comply with all of the following requirements and must present satisfactory evidence of that compliance to the appropriate construction agency:

(1) The bidder must comply with all applicable laws concerning the bidder's entitlement to conduct business in Illinois.

(2) The bidder must comply with all applicable provisions of the Prevailing Wage Act.

(3) The bidder must comply with Subchapter VI ("Equal Employment Opportunities") of Chapter 21 of Title 42 of the United States Code (42 U.S.C. 2000e and following) and with Federal Executive Order No. 11246 as amended by Executive Order No. 11375.

(4) The bidder must have a valid Federal Employer

Identification Number or, if an individual, a valid Social Security Number.

(5) The bidder must have a valid certificate of insurance showing the following coverages: general liability, professional liability, product liability, workers' compensation, completed operations, hazardous occupation, and automobile.

(6) The bidder and all bidder's subcontractors must participate in applicable apprenticeship and training programs approved by and registered with the United States Department of Labor's Bureau of Apprenticeship and Training.

(7) For contracts with the Illinois Power Agency, the Director of the Illinois Power Agency may establish additional requirements for responsible bidders. These additional requirements, if established, shall be set forth together with the other criteria contained in the invitation for bids, and shall appear in the appropriate volume of the Illinois Procurement Bulletin.

(8) The bidder must submit a signed affidavit stating that the bidder will maintain an Illinois office as the primary place of employment for persons employed in the construction authorized by the contract.

The provisions of this Section shall not apply to federally funded construction projects if such application would jeopardize the receipt or use of federal funds in support of

such a project.

(Source: P.A. 95-481, eff. 8-28-07.)

Section 99. Effective date. This Act takes effect upon becoming law.

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2014-02

SUBJECT: TREATMENT OR REMOVAL OF ASH TREES DUE TO EMERALD ASH BORER

ISSUED DATE: May 23, 2014

EFFECTIVE DATE: May 23, 2014

This memorandum supersedes Procedure Memorandum 2012-07 dated November 26, 2012 and revises Section 14-1 dated October 2013 of the Bureau of Local Roads & Streets Manual.

The Emerald Ash Borer (EAB), *Agrilus planipennis* Fairmaire, is an exotic beetle that was discovered in southeastern Michigan near Detroit in the summer of 2002. The adult beetles nibble on ash foliage but cause little damage. The larvae (the immature stage) feed on the inner bark of ash trees, disrupting the tree's ability to transport water and nutrients. EAB probably arrived in the United States on solid wood packing material carried in cargo ships or airplanes originating in its native Asia. EAB is also established in Windsor, Ontario, was found in Ohio in 2003, northern Indiana in 2004, northern Illinois and Maryland in 2006, western Pennsylvania and West Virginia in 2007, Wisconsin, Missouri and Virginia in the summer of 2008, Minnesota, New York, Kentucky in the spring of 2009, Iowa in the spring of 2010, Tennessee in the summer of 2010, and Connecticut, Kansas, and Massachusetts in the summer of 2012. Since its discovery, EAB has:

- Killed tens of millions of ash trees;
- Caused regulatory agencies and the USDA to enforce quarantines and fines to prevent potentially infested ash trees, logs or hardwood firewood from moving out of areas where EAB occurs.
- Cost governmental agencies, property owners, nursery operators and forest products industries tens of millions of dollars.

EAB infestation may be controlled or managed by using a combination of methods (biological, chemical, systematic removal, or complete removal). For detailed information and management resources, visit the Emerald Ash Borer website at www.emeraldashborer.info.

The Illinois Department of Agriculture (IDOA) has established a web site to assist and educate individuals about EAB. For the most recent information about confirmed locations, please visit www.agr.state.il.us/eab/.

If a Local Public Agency (LPA) endeavors to treat ash trees for EAB, we recommend the LPA visit the above websites and seek the assistance of experts to determine if treatment will be a cost effective measure.

A (LPA) may use Motor Fuel Tax (MFT) funds under the general maintenance program for the treatment and systematic or complete removal of Ash trees if the following criteria are met:

- LPA is located in the Emerald Ash Borer quarantined zone published by the Illinois Department of Agriculture;
- the Ash trees are located on the public right-of-way or are a potential hazard to vehicle travel;
- the Ash trees to be treated or removed are shown in a detailed inventory; and
- MFT funds are not used to plant replacement trees.

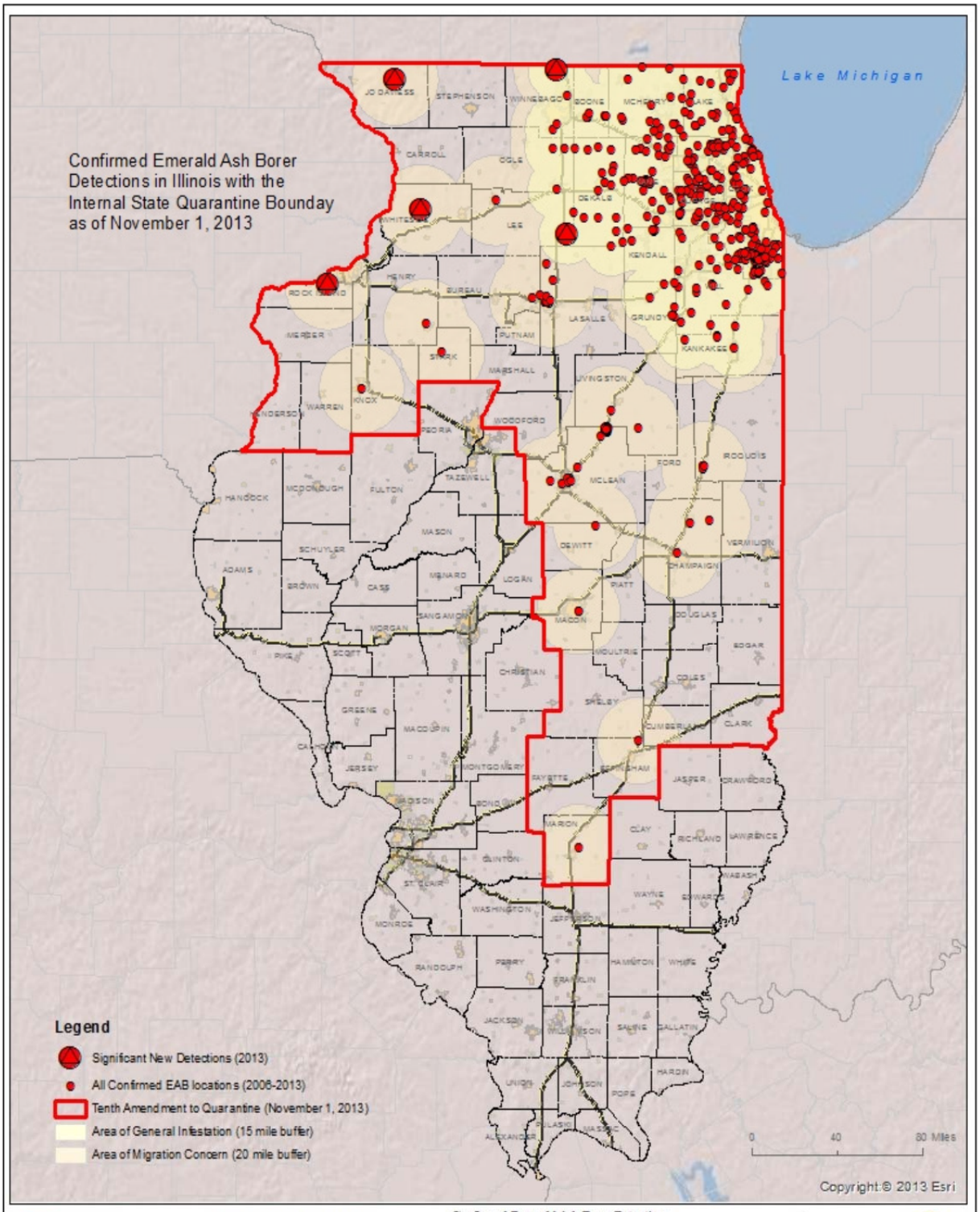
Contact the Local Policy & Technology Unit at IDOT.LocalPolicy@illinois.gov with any questions.

James K. Klein

Acting Engineer of Local Roads and Streets

TW/

Attachments



Illinois Department of Agriculture

Warren D. Goetsch, P.E., Chief
Bureau of Environmental Programs
Division of Natural Resources

Confirmed Emerald Ash Borer Detections in Illinois with the Internal State Quarantine Boundary as of November 1, 2013

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"In Defense of Urban Forestry" in Indiana; see the recorded webinar by Lindsey Purcell of Purdue Univ.: emeraldashborer.info/eab_university… #ashtrees

City of Guelph (Ontario) Formulates Plan To Deal With Emerald Ash Borer - goo.gl/alerts/mvut #GoogleAlerts #EAB #ashtrees

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Test/Research Results

- **Factors affecting the survival of ash (*Fraxinus* spp.) trees infested by emerald ash borer (*Agrilus planipennis*)**
  2012 - Kathleen S. Knight, John P. Brown and Robert P. Long
  The article is on the survival analysis of ash trees in Ohio. According to Kathleen Knight, the main take-home message was that ash trees actually died slightly faster in stands with lower densities of ash, the opposite of what the authors thought would happen. This is just the speed of mortality, not the % mortality (almost all the ash trees die eventually no matter what).

- **Historical Accumulation of Nonindigenous Forest Pests in the Continental United States**
  December 2010 - American Institute of Biological Sciences
  Link to this publication will be available mid-January 2014
  Nonindigenous insects and pathogens continue to become established in US forests with regularity despite regulations intended to prevent this, according to a study published in the December 2010 issue of BioScience. The study, by a team led by Juliann E. Aukema, of the National Center for Ecological Analysis and Synthesis in Santa Barbara, California, (including MSU's Deb McCullough), found that nonindigenous insects are being newly detected in US forests at a rate of about 2.5 per year, and high-impact insects and pathogens that cause significant effects in forests, including tree death, are being newly detected every 2 to 2.5 years. The rate of detection of harmful forest invaders seems to have increased in the past two decades.

- **Risk Assessment of the Movement of Firewood within the United States** (PDF, 3,315 KB)
  May 2010 - USDA APHIS
  Exotic and native forest pests such as *Agrilus planipennis* (emerald ash borer), Anoplophora glabripennis (Asian longhorned beetle), and others cause serious damage to urban and natural forests in the United States. These pests and many others disperse various distances through multiple pathways including movement of nursery stock and firewood. Firewood is a raw forest product that is widely utilized and moved throughout the United States with relatively limited consideration of the potential pests within or the associated risks. We conducted an assessment and examined factors that may affect the risk associated with the movement of firewood such as users, movement, insects and diseases, potential impact to natural and urban forests, and trends in firewood use.

- **Geographic Origin of North America's Emerald Ash Borer** (PDF, 0.08MB)
  Jim Smith, Michigan State University - This research is looking for the origins of EAB found in North America by looking at the genetic similarities in samples of EAB populations from Asia and comparing them to North American populations.

- **Studies to Develop an Emerald Ash Borer Survey Trap** (PDF, 0.09MB)
  Jason B. Oliver, Joe Francese, Vic Mastro, Ivich Fraser, Dave Lance, Nadeer Youssef - Studies to develop an emerald ash borer survey trap through trap location, seedling tree damage, trap design evaluation.

- **Developing a Fast, Inexpensive Method to Extract and Analyze Imidacloprid Residue in Plant Tissue** (PDF, 0.06MB)
  Phil Lewis and Deborah G. McCullough - A cheap, rapid method to analyze chemical residue in treated trees is necessary in order to best assess efficacy of different treatments.

- **Genetic Analysis of Emerald Ash Borer** (PDF, 0.02MB)
  Jim Smith, Bob Haack and Leah Bauer - estimate the geographic origin of emerald ash borer populations in Asia that gave rise to EAB in North America

- **Exploration for Emerald Ash Borer in China** (PDF, 0.03MB)
  Houping Liu, Toby R. Petrice, Leah S. Bauer, Robert A. Haack, Ruitong Gao, and Tonghai Zhao - research on the study of the natural enemy complex of EAB in China

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Insecticide Research

Research on methods to control EAB began in 2002. Research is ongoing, and as methods are developed, more information will be available.

- **"Slow Ash Mortality" – SLAM Pilot Project**
  Description: The SLAM project is a collaborative effort involving Michigan State University, the USDA Forest Service, USDA Animal and Plant Health Inspection Service (APHIS), Michigan Technological University (MTU), the Michigan Dept. of Agriculture and Rural Development (MDARD), the Michigan Dept. of Natural Resources (MDNR), and Michigan Conservation Districts in Michigan's Upper Peninsula. The goal of the SL.A.M. pilot project in Michigan's Upper Peninsula is to delay and slow the expansion of ash mortality by reducing populations of the beetle in newly-infested sites, outside of known EAB infestations.
- **Frequently Asked Questions Regarding Potential Side Effects of EAB Insecticides** (PDF, 311KB)
  February 2011
  Research and Extension Specialists from Michigan State University, the Ohio State University OARDC and Extension, and University of Minnesota Extension have put together a comprehensive publication that addresses questions and concerns regarding insecticide use to control emerald ash borer.
- **Control of Emerald Ash Borer with Microbial Insecticides** (PDF, 0.05MB)
  Revised 4/14/04
  Leah S. Bauer, Houping Liu, and Deborah L. Miller - studying the efficacy of registered microbial insecticides for EAB control in environmentally sensitive habitats
- **Evaluation of Perma Guard D-20 and Imidacloprid to Control Emerald Ash Borer** (PDF, 0.02MB)
  Robert A. Haack and Toby R. Petrice - This study tested the effectiveness D-20 by Perma Guard (Albuquerque, NM) in controlling emerald ash borer
- Research abstracts and other information addressing the EAB problem in North America.
  - **2009**
  - **2007**
  - **2006** (PDF, 4.78MB)
  - **2005**
  - **2004**
  - **2003**

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Survey Research

- **Evaluation of Different Trap Types and Lures for Capturing Emerald Ash Borer Adults in Low Density Populations**
  Therese M. Poland, Deborah G. McCullough, Andrew J. Storer, Jordan M. Marshall, and Ivich Fraser (from Proceedings of the 22nd U.S. Department of Agriculture Interagency Research Forum on Invasive Species 2011)
- **Utilizing Girdled Ash Trees for Optimal Detection, Delimitation and Survey of Low Density Emerald Ash Borer Populations**
  Nathan W. Siegert, Nicholas J. Gooch, Deborah G. McCullough, Therese M. Poland, and Robert L. Heyd (from Proceedings of the 22nd U.S. Department of Agriculture Interagency Research Forum on Invasive Species 2011)
- **Optimization of Trap Color for Emerald Ash Borer (Coleoptera: Buprestidae)**
  By Joseph A. Francese, Damon J. Crook, Ivich Fraser, David R. Lance, Alan J. Sawyer, and Victor C. Mastro (from Journal of Economic Entomology 103(4):1235-1241. 2010)
- **Effects of Trap Type, Placement and Ash Distribution on Emerald Ash Borer Captures in a Low Density Site**
  By Deborah G. McCullough, Nathan W. Siegert, Therese M. Poland, Steven J. Pierce, and Su Zie Ahn (from Environmental Entomology 40(5):1239-1252. 2011)
- **"Slow Ash Mortality" – SLAM Pilot Project**
  Description: The SLAM project is a collaborative effort involving Michigan State University, the USDA Forest Service, USDA Animal and Plant Health Inspection Service (APHIS), Michigan Technological University (MTU), the Michigan Dept. of Agriculture and Rural Development (MDARD), the Michigan Dept. of Natural Resources (MDNR), and Michigan Conservation Districts in Michigan's Upper Peninsula. The goal of the SL.A.M. pilot project in Michigan's Upper Peninsula is to delay and slow the expansion of ash mortality by reducing populations of the beetle in newly-infested sites, outside of known EAB infestations.
- **Using Double-Decker Traps to Detect Emerald Ash Borer** (PDF, 496KB)
  April 2009
  Deborah G. McCullough and Therese Poland - Detecting or monitoring populations of emerald ash borer (*Agrilus planipennis* Fairmaire) is very difficult when infestations are relatively new or when densities of this invasive pest are low. The Double-Decker (DD) trap is designed to integrate several visual and olfactory cues

that are likely to attract EAB beetles. The DD traps are designed to be highly apparent to beetles. The vertical silhouette of the DD trap somewhat mimics the silhouette of an open-grown tree. The trap includes two purple panels, partly because beetles respond positively to that particular shade of purple. The two panels help to mimic the shape of a tree "canopy." In addition, they increase the surface area available for trapping beetles.

- **Using Girdled Trap Trees Effectively For EAB Detection, Delimination & Survey** (PDF, 407KB)
  July 2007 - Dr. Deborah G. McCullough and Dr. Nathan W. Siegert
- **Characteristics and distribution of potential ash tree hosts for Emerald Ash Borer** (PDF, 0.07MB)
  David W. MacFarlane and Shawna Patterson Meyer - This report highlights some potential risk factors related to ash host characteristics and spatial distribution to potential risk from EAB.
- **Improving Survey Methodology for Emerald Ash Borer** (PDF, 0.03MB)
  2004 - David W. MacFarlane - Ongoing research to improve survey methodologies for detecting emerald ash borer and establish baseline data for estimating risk of spread and establishment across Michigan.
- **Ash dieback survey slides**
  (power point presentation) David Smitley - comparison of ash dieback for 2003 and 2004

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Survival of EAB

- **Risk Assessment of the Movement of Firewood within the United States** (PDF, 3,315 KB)
  May 2010 - USDA APHIS
  Exotic and native forest pests such as *Agrilus planipennis* (emerald ash borer), Anoplophora glabripennis (Asian longhorned beetle), and others cause serious damage to urban and natural forests in the United States. These pests and many others disperse various distances through multiple pathways including movement of nursery stock and firewood. Firewood is a raw forest product that is widely utilized and moved throughout the United States with relatively limited consideration of the potential pests within or the associated risks. We conducted an assessment and examined factors that may affect the risk associated with the movement of firewood such as users, movement, insects and diseases, potential impact to natural and urban forests, and trends in firewood use.
- **Emerald Ash Borer Survival in Firewood** (PDF, 0.03MB)
  2003 - Robert A. Haack and Toby R. Petrice - This study looked at firewood infested with emerald ash borer, to determine the survival rate.
- **Survival of Emerald Ash Borer in Chips** (PDF, 0.02MB)
  2003 - Deborah G. McCullough, Therese M. Poland and David Cappaert - This study was to determine survival of EAB in chips of different sizes.

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Biosurveillance

- ***Cerceris fumipennis?*** (PDF, 2MB)
  2009 - A Biosurveillance Tool for Emerald Ash Borer. Canadian Food Inspection Agency

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Dispersal Information

- **Factors affecting the survival of ash (*Fraxinus* spp.) trees infested by emerald ash borer (*Agrilus planipennis*)**
  2012 - Kathleen S. Knight, John P. Brown and Robert P. Long
  The article is on the survival analysis of ash trees in Ohio. According to Kathleen Knight, the main take-home message was that ash trees actually died slightly faster in stands with lower densities of ash, the opposite of what the authors thought would happen. This is just the speed of mortality, not the % mortality (almost all the ash trees die eventually no matter what).
- **Emerald Ash Borer Flight Estimates Revised** (PDF, 200 KB)
  2007 - Robin A. J. Taylor, Therese M. Poland, Leah S. Bauer, Neith N. Windell, and James L. Kautz
- **Is Emerald Ash Borer an Obligate Migrant?** (PDF, 59 KB)
  2006 - Robin A. J. Taylor, Therese M. Poland, Leah S. Bauer, and Robert Haack
- **Emerald Ash Borer Flight Potential** (PDF, 16 KB)
  2005 - Robin A. J. Taylor, Leah S. Bauer, Deborah L. Miller, and Robert Haack
- **Flight Potential of the Emerald Ash Borer** (PDF, 774 KB)
  2004 - Leah S. Bauer, Deborah L. Miller, Robin A. J. Taylor, and Robert Haack
- **Dispersal of Emerald Ash Borer: A Case Study at Tipton, Michigan** (PDF, 20 KB)
  2003 - Deborah G. McCullough, Therese Poland and David Cappaert - assess dispersal of one generation of emerald ash borer adults in a rural area

- **Emerald Ash Borer Adult Dispersal** (PDF, 23 KB)
  Robert A. Haack, Toby R. Petrice - This study evaluated emerald ash borer, adult dispersal at two Michigan sites in early summer 2003.

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Host Range Information

- **Host Range of Emerald Ash Borer** (PDF, 0.02MB)
  Robert A. Haack, Toby R. Petrice, Deborah L. Miller, Leah S. Bauer and Nathan M. Schiff - In 2003, foliage of several trees and shrubs as food for emerald ash borer (EAB), *Agrilus planipennis* Fairmaire, adults were evaluated in a series of no-choice and choice tests that were conducted indoors in Michigan
- **Host Range and Host Preference of Emerald Ash Borer** (PDF, 0.02MB)
  2003 - Deborah G. McCullough, Andrea Agius, David Cappaert, Therese Poland, Debbie Miller and Leah Bauer - Our first objective is to evaluate alternate species of concern to determine whether they are acceptable to ovipositing adult beetles and whether they are suitable for larval development. We also assessed alternate hosts with a series of field tests.

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Economic Impact

- **Economic Impacts of Non-Native Forest Insects in the Continental United States** (PDF, 245KB)
  January 2013 - Juliann E. Aukema, et. al. - The article examines how they developed a novel modeling approach that maximizes the use of available data, accounts for multiple sources of uncertainty, and provides cost estimates for three major feeding guilds of non-native forest insects. For each guild, they calculated the economic damages for five cost categories and estimated the probability of future introductions of damaging pests.
- **EAB Economic Impact (OSU)** (PDF, 0.10MB)
  January 2007 - Matt Bumgardner, Drew Todd and Davis Syndor, the Ohio State University - Outlines the potential economic impacts of EAB on Ohio, U.S., and communities.

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Ash Tree Genetics and Ecology

- **Ecological and Genetic Isolation of *Fraxinus***
  1972 - By Sylvia May Obenauf Taylor
  Scan (PDF, 0.13MB) | **Scan** (JPG, 1.84MB)

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Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: 2014-03

SUBJECT: BRIDGE INVENTORY AND INSPECTIONS

ISSUED DATE: June 27, 2014

EFFECTIVE DATE: June 30, 2014

This memorandum supersedes Chapter 6 of the Bureau of Local Roads and Streets Manual dated January 2006 and revised February 2008.

The proper weigh limit posting and closure of bridges is a vital component of highway safety. Existing weight limits cannot be enforced by law enforcement agencies without appropriate posting and closure signage. The Department has worked to establish effective procedures to ensure compliance with the requirements of bridge posting and closure in accordance with the Illinois Compiled Statues, Chapter 625, Section 15-317.

Recognizing the need for a uniform methodology for the Annual Posting and Closure Review, the Department initiated study and review of the criteria for this annual process, and in doing so found other areas requiring improvement. Additionally, conformance with the National Bridge Inspection Standards (NBIS) 23 Metrics requires improvement to the expedient compliance and review of required bridge posting and closures. An outline and discussion of significant modifications are contained herein.

Sections of the BLRS Manual have been eliminated and now reference Section 3 of the Structural Services Manual maintained by the Bureau of Bridges and Structures.

BRIDGE POSTING AND CLOSURE REVIEW. Posting and Closure Form BBS PCR (04/01/14) has been developed to standardize, and provide a comprehensive and consistent method for, posting and closure reviews. This form must be used for the annual Posting and Closure Review. Photographs, preferably digital, are to be taken during the review to document and verify conditions. A copy of BBS PCR is attached, and in the future may also be obtained at the IDOT website.

The district must advise the Bureau of Bridges and Structures' Bridge Management Unit regarding the start date of the review. Recorded documentation and photographs should adequately describe the posting / closure compliance or deficiencies. The form also may be generated in SIMS - County using the Bridge Posting Closure Review report.

BRIDGE POSTINGS. Attached is a new document illustrating measures for "Bridge Posting Traffic Control". This is now included in Chapter 6 of the BLRS Manual, and will be in the "Signing of Road District and Township Highways" booklet. We expect this document will be incorporated into future versions of the Structural Services Manual and the Bureau of Operations' Traffic Policies and Procedures Manual.

PERMANENT BRIDGE CLOSURE TRAFFIC CONTROL. Attached, please find the new document illustrating measures for "Permanent Bridge Closure Traffic Control." This is now included in Chapter 6 of the BLRS Manual, and will be in the "Signing of Road District and Township Highways" booklet as revised Figure IV-7 "Long Term Bridge Closure." We expect this document will also be incorporated into future versions of the Structural Services Manual and the Bureau of Operations' Traffic Policies and Procedures Manual.

Please note that object markers, used in conjunction with permanent road closures, adjacent to the "Road Ends" sign are now required to be red. The use of orange object markers for permanent closures is no longer acceptable. All new signs shall be red, and existing orange signs should be replaced with red as soon as practical.

Contact the Local Policy & Technology Unit at DOT.LocalPolicy@illinois.gov with any questions.

Sincerely,

D. Carl Puzey, P.E., S.E.
Acting Engineer of
Bridges and Structures

James K. Klein, P.E., S.E.
Acting Bureau Chief of
Local Roads and Streets

JKK/tw

Attachments

Illinois Department of Transportation

Bridge Posting / Closure Review

SN:		District:		County:		Muni:	
Township:						Location:	
Facility Carried:						Feature Crossed:	

Bridge Status:		Posting	70A	70B	70C	70D
Note: Ensure Bridge Status is either 2, 3, or 4		Required:				
		Actual:				

Review Date:						
IDOT Representative:						
Local Agency Representative:			Local Agency Title:			
		North / East			South / West	
Are signs mounted on approach?		☐ Yes	☐ No		☐ Yes	☐ No
Remarks:						
Are signs in good repair?		☐ Yes	☐ No		☐ Yes	☐ No
Remarks:						
Are signs at a proper distance?		☐ Yes	☐ No		☐ Yes	☐ No
Remarks:						
Is signage visibility blocked by foliage?		☐ Yes	☐ No		☐ Yes	☐ No
Remarks:						
Are signs correct (Per Illinois MUTCD)?		☐ Yes	☐ No		☐ Yes	☐ No
Remarks:						
Are barricades in good condition (if applicable)?		☐ Yes	☐ No		☐ Yes	☐ No
Remarks:						
Photographs taken of approaches?		☐ Yes	☐ No		☐ Yes	☐ No
Remarks:						

General Remarks:	

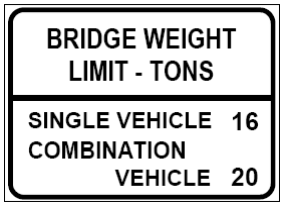
	Signature	Date
Local Agency Representative:		
IDOT Representative:		

SIGNS FOR BRIDGE POSTINGS

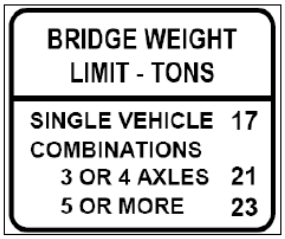
FOR SINGLE GROSS WEIGHT LIMIT

FOR SINGLE AXLE WEIGHT LIMIT

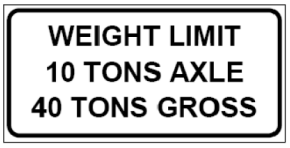
MAY BE PLACED BELOW WEIGHT LIMIT SIGN TO PROVIDE ADVANCE NOTICE



FOR TWO SEPARATE WEIGHT LIMITS



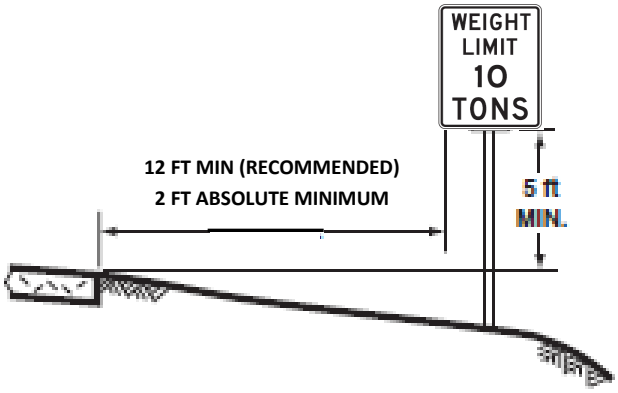
FOR THREE SEPARATE WEIGHT LIMITS



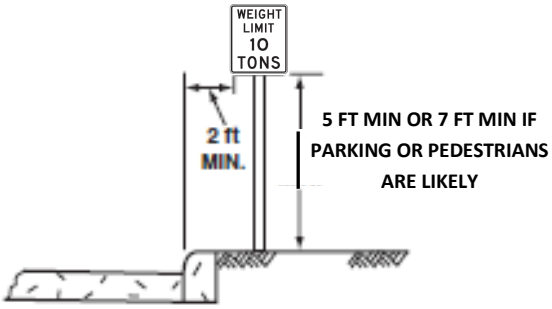
FOR LEGAL LOAD ONLY WEIGHT LIMITS

SIGN HEIGHT AND OFFSET REQUIREMENTS

RURAL LOCATIONS



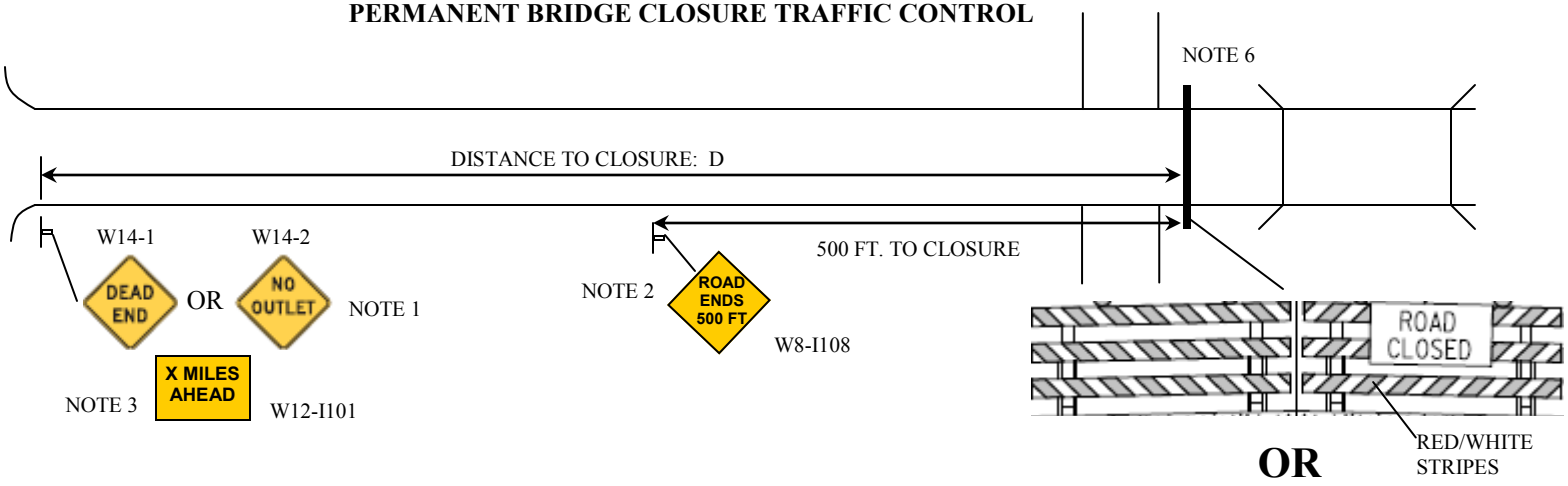
BUSINESS, COMMERCIAL, OR RESIDENTIAL LOCATIONS



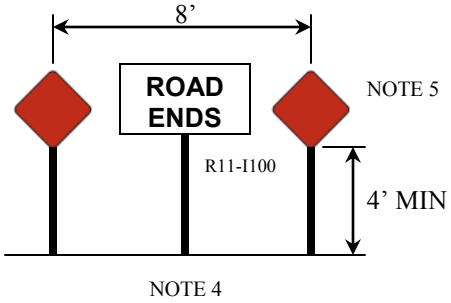
SIGN PLACEMENT REQUIREMENTS

- 'SINGLE WEIGHT LIMIT' SIGNS SHALL BE LOCATED IMMEDIATLEY IN ADVANCE OF THE BRIDGE.
- 'MULTIPLE WEIGHT LIMIT' SIGNS SHALL BE LOCATED WITHIN 500 FT IN ADVANCE OF THE BRIDGE.
- ADDITIONAL WEIGHT LIMIT SIGNS MAY BE INSTALLED IN ADVANCE OF THE RESTRICTION WITH AN 'X MILES AHEAD' PLAQUE TO PROVIDE ADVANCE NOTICE. ADVANCED SIGNS SHOULD BE INSTALLED NEAR JUNCTIONS WHERE A DRIVER COULD CHOOSE AN ALTERNATE ROUTE WITH A MINIMUM OF INCONVENIENCE.
- LEGAL LOAD ONLY SIGNS SHALL BE LOCATED IMMEDIATELY IN ADVANCE OF THE BRIDGE.

PERMANENT BRIDGE CLOSURE TRAFFIC CONTROL



OR



NOTES:

1. SEE SECTION 2C.26 OF THE MUTCD. MULTI-LANE ROADS SHALL HAVE W14 SERIES SIGNS WITH A MINIMUM SIZE OF 36" X 36". SINGLE LANE ROADS MAY HAVE SIGNS OF 30" X 30".

2. USE WHERE 'D' EXCEEDS 1500 FT. OR WHERE SIGHT DISTANCE TO THE CLOSURE IS LESS THAN 500 FT.

3. WHERE THE POINT OF CLOSURE IS OVER 1 MILE FROM THE LAST CROSS ROAD, AN 'X MILES AHEAD' PLAQUE (W12-I101) MAY BE USED.

4. BARRICADES OR A ROAD ENDS SIGN WITH RED OBJECT MARKERS SHALL BE USED AT THE POINT OF CLOSURE. GUARDRAIL MAY BE USED IN CONJUNCTION WITH BARRICADES OR 'ROAD ENDS' SIGN. IF USED, BARRICADES SHALL BE RETRO-REFLECTORIZED RED/WHITE AND PERMANENTLY INSTALLED INTO THE PAVEMENT. ANY BARRIERS USED SHALL EXTEND BEYOND THE EDGE OF SHOULDER. IF PRACTICAL, OLD PAVEMENT SHOULD BE REMOVED BEYOND THE CLOSURE POINT OR COVERED WITH DIRT/ROCKS TO MINIMIZE THE ILLUSION OF THE ROAD CONTINUING. BARRICADES OR 'ROAD ENDS' SIGN SHOULD BE INSTALLED AT LEAST 100 FT. IN ADVANCE OF BROKEN PAVEMENT OR DIRT/ ROCKS.

5. OBJECT MARKERS USED IN CONJUNCTION WITH A 'ROAD ENDS' SIGN SHALL BE RED AND CONFORM WITH SECTION 2C.66 OF THE MUTCD.

6. IF A CROSS ROAD OR ENTRANCE IS LOCATED NEAR THE ROAD CLOSURE, THE CLOSURE DEVICES SHALL BE OUTSIDE THE CLEAR ZONE OF THE CROSSROAD OR ENTRANCE.

7. IF THE BRIDGE IS UNDER ACTIVE CONSTRUCTION, TRAFFIC CONTROL SHALL BE IN ACCORDANCE WITH PART 6 OF THE MUTCD.

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2015-01

SUBJECT: JOINT FUNDING AGREEMENTS

ISSUED DATE: September 1, 2015

EFFECTIVE DATE: September 1, 2015

This memorandum adds requirements to Sections 5-3.01(b) of the Bureau of Local Roads & Streets Manual, and revises BLR forms 05310 and BLR 05311.

The Department has updated Chapter 5, Section 3.01(b) of the Bureau of Local Roads & Streets Manual to include requirements for a Local Public Agency (LPA) appropriation resolution covering the local share of the project cost. This resolution shall be included as an addendum to Forms BLR 05310 and BLR 05311 on State-let construction projects. A sample appropriation resolution is attached for reference. This sample resolution is not intended to replace the LPA's normal format, but is included to highlight information required for inclusion in the appropriation resolution.

With this Procedure Memorandum, we are emphasizing the need to submit locally executed agreements in accordance with the due dates required by the respective District Bureau of Local Roads office. Submittals, with attachments and resolutions as appropriate, should be complete and accurate. Failure to meet the agreement deadline may result in the project's removal from the proposed letting advertisement.

Revisions to the agreement Forms BLR 05310 and BLR 05311 were necessitated by changes to federal policies. The current version of these forms found on the IDOT website shall be utilized on all federally funded projects. Revisions to the agreement forms are summarized below:

LPA Reference – Revised the local agency reference to "LPA".

HSIP number – Added the HSIP number to the ITEP / SRTS box.

Inactive Projects - The federal Financial Integrity Review and Evaluation (FIRE) program defines project inactivity as the absence of expenditures within a twelve (12) month period. To comply with the requirements of this regulation and to verify project activity, agreement language was modified to require LPAs to invoice at intervals not to exceed six (6) months.

Additionally, if the joint agreement fails to be authorized by the FHWA in a twelve (12) month period beyond the execution of the joint agreement by the Department, the agreement will become null and void.

Invoicing – Additional information was added to define the required supporting documentation for reimbursement requests, and places a time limit of twelve (12) months for the submittal of the final invoice.

Single Audit – Several federal Office of Management and Budget (OMB) Circulars were recently combined into 2 CFR 200, commonly referred to as the "Supercircular". Single audits are now required to be completed when a LPA expends $750,000 or more of federal funds (from any source) in a year. This limit was increased from $500,000. Additional clarification was also inserted to help LPA auditors define when funds from the Department should be included in the LPA's single audit.

Final Closeout – Based on the FIRE program and Supercircular requirements, LPAs must provide the final closeout report to the Department within twelve (12) months of the physical completion of the project (typically corresponds with submission of the engineers final pay estimate). If the LPA is unable to meet this deadline, a written justification with the new anticipated date of completion will be required.

Record Retention – Language was changed to clarify when the record retention period begins. LPAs must retain records three (3) years from the point the Department finals out the project (initiation of the State Job Completion Notice).

DUNS number – A Dun and Bradstreet (DUNS) number is required for execution of the agreement. Instructions on obtaining a number are now included for information.

Buy America – For emphasis on construction projects, reference to the federal Buy America provisions were added to the agreement.

Please contact the Bureau of Local Roads and Streets, Local Policy & Technology Unit, at DOT.LocalPolicy@illinois.gov with any questions.

Acting Engineer of Local Roads and Streets

GSL/tjw

Attachments

COUNTY/CITY/VILLAGE of _____
Location: _____
Section No.: _____
Project No.: _____
Job No.: _____

SAMPLE RESOLUTION

WHEREAS, the [*County/City/Village*] of _____ endeavors to improve a segment of _____from _____ to _____ that is approximately _____miles in length and known to the Illinois Department of Transportation as MFT Section Number _____ and State Job Number _____.

WHEREAS, the cost of said improvement has necessitated the use of federal funds.

WHEREAS, the federal fund source requires a match of local funds.

WHEREAS, the use of federal funds requires a joint funding agreement (AGREEMENT) with the Department of Transportation.

NOW THEREFORE, BE IT RESOLVED that the [*County/City/Village*] of _____ authorizes _____ dollars, (**$**_____,) or as much of such sum as may be needed to match federal funds in the completion of the aforementioned project known as MFT Section Number _____.

BE IT FURTHER RESOLVED that the [*Chairman/Mayor/President*] **is** hereby authorized and directed to execute the above-mentioned AGREEMENT and any other such documents related to advancement and completion of said project.

Certificate:

I, _____, Clerk in and for said [*County/City/Village*] in the State of Illinois, and keeper of the records and files thereof, as provided by statute, do hereby certify the foregoing to be a true, perfect, and complete copy of a Resolution adopted by the [*County/City/Village*] [*Board/Council*] at its meeting held on _____, 20____.

In testimony whereof, I have hereunto set my hand and affixed the seal of said [*County/City/Village*] at my office in _____, in [*County*], this _____ day of _____, 20____.

(SEAL)

_____

Clerk

SAMPLE

Illinois Department of Transportation	Local Public Agency	State Contract	Day Labor	Local Contract	RR Force Account
Local Public Agency Agreement for Federal Participation	Section	Fund Type		ITEP, SRTS, or HSIP Number(s)	

Construction		Engineering		Right-of-Way	
Job Number	Project Number	Job Number	Project Number	Job Number	Project Number

This Agreement is made and entered into between the above local public agency, hereinafter referred to as the "**LPA**", and the State of Illinois, acting by and through its Department of Transportation, hereinafter referred to as "**STATE**". The **STATE** and **LPA** jointly propose to improve the designated location as described below. The improvement shall be constructed in accordance with plans prepared by, or on behalf of the **LPA**, approved by the **STATE** and the **STATE**'s policies and procedures approved and/or required by the Federal Highway Administration, hereinafter referred to as "**FHWA**".

Location

Local Name _____ Route _____ Length _____

Termini _____

_____

Current Jurisdiction _____ TIP Number _____ Existing Structure No _____

Project Description

_____

Division of Cost

Type of Work		**%**		**%**	**LPA**	**%**	**Total**
Participating Construction		( )		( )		( )	
Non-Participating Construction		( )		( )		( )	
Preliminary Engineering		( )		( )		( )	
Construction Engineering		( )		( )		( )	
Right of Way		( )		( )		( )	
Railroads		( )		( )		( )	
Utilities		( )		( )		( )	
Materials							
TOTAL	$		$		$		$

_____

_____

NOTE: The costs shown in the Division of Cost table are approximate and subject to change. The final **LPA** share is dependent on the final Federal and State participation. The actual costs will be used in the final division of cost for billing and reimbursment.

If funding is not a percentage of the total, place an asterisk in the space provided for the percentage and explain above.

Local Public Agency Appropriation

By execution of this Agreement, the **LPA** attests that sufficient moneys have been appropriated or reserved by resolution or ordinance to fund the **LPA** share of project costs. A copy of the authorizing resolution or ordinance is attached as an addendum (**required for State-let contracts only**)

Method of Financing (State Contract Work Only)

METHOD A---Lump Sum (80% of **LPA** Obligation) _____

METHOD B--- _____ Monthly Payments of _____ due by the _____ of each successive month.

METHOD C---**LPA**'s Share _____ divided by estimated total cost multiplied by actual progress payment.

(See page two for details of the above methods and the financing of Day Labor and Local Contracts)

Agreement Provisions

THE LPA AGREES:

(1) To acquire in its name, or in the name of the **STATE** if on the **STATE** highway system, all right-of-way necessary for this project in accordance with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and established State policies and procedures. Prior to advertising for bids, the **LPA** shall certify to the **STATE** that all requirements of Titles II and III of said Uniform Act have been satisfied. The disposition of encroachments, if any, will be cooperatively determined by representatives of the **LPA**, and the **STATE** and the **FHWA**, if required.

(2) To provide for all utility adjustments, and to regulate the use of the right-of-way of this improvement by utilities, public and private, in accordance with the current Utility Accommodation Policy for Local Agency Highway and Street Systems.

(3) To provide for surveys and the preparation of plans for the proposed improvement and engineering supervision during construction of the proposed improvement.

(4) To retain jurisdiction of the completed improvement unless specified otherwise by addendum (addendum should be accompanied by a location map). If the improvement location is currently under road district jurisdiction, an addendum is required.

(5) To maintain or cause to be maintained, in a manner satisfactory to the **STATE** and the **FHWA**, the completed improvement, or that portion of the completed improvement within its jurisdiction as established by addendum referred to in item 4 above.

(6) To comply with all applicable Executive Orders and Federal Highway Acts pursuant to the Equal Employment Opportunity and Nondiscrimination Regulations required by the U.S. Department of Transportation.

(7) To maintain, for a minimum of 3 years after final project close-out by the **STATE**, adequate books, records and supporting documents to verify the amounts, recipients and uses of all disbursements of funds passing in conjunction with the contract; the contract and all books, records and supporting documents related to the contract shall be available for review and audit by the Auditor General and the department; and the **LPA** agrees to cooperate fully with any audit conducted by the Auditor General and the **STATE**; and to provide full access to all relevant materials. Failure to maintain the books, records and supporting documents required by this section shall establish a presumption in favor of the **STATE** for the recovery of any funds paid by the **STATE** under the contract for which adequate books, records and supporting documentation are not available to support their purported disbursement.

(8) To provide if required, for the improvement of any railroad-highway grade crossing and rail crossing protection within the limits of the proposed improvement.

(9) To comply with Federal requirements or possibly lose (partial or total) Federal participation as determined by the **FHWA**.

(10) (State Contracts Only) That the method of payment designated on page one will be as follows:

Method A - Lump Sum Payment. Upon award of the contract for this improvement, the **LPA** will pay to the **STATE** within thirty (30) calendar days of billing, in lump sum, an amount equal to 80% of the **LPA**'s estimated obligation incurred under this Agreement. The **LPA** will pay to the **STATE** the remainder of the **LPA**'s obligation (including any nonparticipating costs) within thirty (30) calendar days of billing in a lump sum, upon completion of the project based on final costs.

Method B - Monthly Payments. Upon award of the contract for this improvement, the **LPA** will pay to the **STATE**, a specified amount each month for an estimated period of months, or until 80% of the **LPA**'s estimated obligation under the provisions of the Agreement has been paid, and will pay to the **STATE** the remainder of the **LPA**'s obligation (including any nonparticipating costs) in a lump sum, upon completion of the project based upon final costs.

Method C - Progress Payments. Upon receipt of the contractor's first and subsequent progressive bills for this improvement, the **LPA** will pay to the **STATE** within thirty (30) calendar days of receipt, an amount equal to the **LPA**'s share of the construction cost divided by the estimated total cost, multiplied by the actual payment (appropriately adjusted for nonparticipating costs) made to the contractor until the entire obligation incurred under this Agreement has been paid.

Failure to remit the payment(s) in a timely manner as required under Methods A, B, or C, shall allow the **STATE** to internally offset, reduce, or deduct the arrearage from any payment or reimbursement due or about to become due and payable from the **STATE** to **LPA** on this or any other contract. The **STATE**, at its sole option, upon notice to the **LPA**, may place the debt into the Illinois Comptroller's Offset System (15 ILCS 405/10.05) or take such other and further action as my be required to recover the debt.

(11) (Local Contracts or Day Labor) To provide or cause to be provided all of the initial funding, equipment, labor, material and services necessary to construct the complete project.

(12) (Preliminary Engineering) In the event that right-of-way acquisition for, or actual construction of, the project for which this preliminary engineering is undertaken with Federal participation is not started by the close of the tenth fiscal year following the fiscal year in which the project is federally authorized, the **LPA** will repay the **STATE** any Federal funds received under the terms of this Agreement.

(13) (Right-of-Way Acquisition) In the event that the actual construction of the project on this right-of-way is not undertaken by the close of the twentieth fiscal year following the fiscal year in which the project is federally authorized, the **LPA** will repay the **STATE** any Federal Funds received under the terms of this Agreement.

(14) (Railroad Related Work Only) The estimates and general layout plans for at-grade crossing improvements should be forwarded to the Rail Safety and Project Engineer, Room 204, Illinois Department of Transportation, 2300 South Dirksen Parkway, Springfield, Illinois, 62764. Approval of the estimates and general layout plans should be obtained prior to the commencement of railroad related work. All railroad related work is also subject to approval be the Illinois Commerce Commission (ICC). Final inspection for railroad related work should be coordinated through appropriate IDOT District Bureau of Local Roads and Streets office.

Plans and preemption times for signal related work that will be interconnected with traffic signals shall be submitted to the ICC for review and approval prior to the commencement of work. Signal related work involving interconnects with state maintained traffic signals should also be coordinated with the IDOT's District Bureau of Operations.

The **LPA** is responsible for the payment of the railroad related expenses in accordance with the **LPA**/railroad agreement prior to requesting reimbursement from IDOT. Requests for reimbursement should be sent to the appropriate IDOT District Bureau of Local Roads and Streets office.

Engineer's Payment Estimates shall be in accordance with the Division of Cost on page one.

(15) And certifies to the best of its knowledge and belief its officials:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;

(b) have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements receiving stolen property;

(c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, local) with commission of any of the offenses enumerated in item (b) of this certification; and

(d) have not within a three-year period preceding the Agreement had one or more public transactions (Federal, State, local) terminated for cause or default.

(16) To include the certifications, listed in item 15 above, and all other certifications required by State statutes, in every contract, including procurement of materials and leases of equipment.

(17) (State Contracts) That execution of this agreement constitutes the **LPA**'s concurrence in the award of the construction contract to the responsible low bidder as determined by the **STATE**.

(18) That for agreements exceeding $100,000 in federal funds, execution of this Agreement constitutes the **LPA**'s certification that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress, in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions;

(c) The **LPA** shall require that the language of this certification be included in the award documents for all subawards at all ties (including subcontracts, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

(19) To regulate parking and traffic in accordance with the approved project report.

(20) To regulate encroachments on public right-of-way in accordance with current Illinois Compiled Statutes.

(21) To regulate the discharge of sanitary sewage into any storm water drainage system constructed with this improvement in accordance with current Illinois Compiled Statutes.

(22) To complete this phase of the project within three (3) years from the date this agreement is approved by the **STATE** if this portion of the project described in the Project Description does not exceed $1,000,000 (five years if the project costs exceed $1,000,000).

(23) To comply with the federal Financial Integrity Review and Evaluation (FIRE) program, which requires States and subrecipients to justify continued federal funding on inactive projects. 23 CFR 630.106(a)(5) defines an inactive project as a project which no expenditures have been charged against Federal funds for the past twelve (12) months.

To keep projects active, invoicing must occur a minimum of one time within any given twelve (12) month period. However, to ensure adequate processing time, the first invoice shall be submitted to the **STATE** within six (6) months of the federal authorization date. Subsequent invoices will be submitted in intervals not to exceed six (6) months.

(24) The **LPA** will submit supporting documentation with each request for reimbursement from the **STATE**. Supporting documentation is defined as verification of payment, certified time sheets or summaries, vendor invoices, vendor receipts, cost plus fix fee invoice, progress report, and personnel and direct cost summaries.and other documentation supporting the requested reimbursement amount (Form BLRS 05621 should be used for consultant invoicing purposes). **LPA** invoice requests to the **STATE** will be submitted with sequential invoice numbers by project.

The **LPA** will submit to the **STATE** a complete and detailed final invoice with applicable supporting documentation of all incurred costs, less previous payments, no later than twelve (12) months from the date of completion of this phase of the improvement or from the date of the previous invoice, which ever occurs first. If a final invoice is not received within this time frame, the most recent invoice may be considered the final invoice and the obligation of the funds closed.

(25) The **LPA** shall provide the final report to the appropriate **STATE** district within twelve months of the physical completion date of the project so that the report may be audited and approved for payment. If the deadline cannot be met, a written explanation must be provided to the district prior to the end of the twelve months documenting the reason and the new anticipated date of completion. If the extended deadline is not met, this process must be repeated until the project is closed. Failure to follow this process may result in the immediate close-out of the project and loss of further funding.

(26) (Single Audit Requirements) That if the **LPA** expends $750,000 or more a year in federal financial assistance they shall have an audit made in accordance with 2 CFR 200. **LPA**s expending less than $750,000 a year shall be exempt from compliance. A copy of the audit report must be submitted to the **STATE** (Office of Finance and Administration, Audit Coordination Section, 2300 South Dirksen Parkway, Springfield, Illinois, 62764), within 30 days after the completion of the audit, but no later than one year after the end of the **LPA**'s fiscal year. The CFDA number for all highway planning and construction activities is 20.205.

Federal funds utilized for constructon activities on projects let and awarded by the **STATE** (denoted by an "X" in the State Contract field at the top of page 1) are not included in a **LPA**'s calculation of federal funds expended by the **LPA** for Single Audit purposes.

(27) That the **LPA** is required to register with the System for Award Management or SAM (formerly Central Contractor Registration (CCR)), which is a web-enabled government-wide application that collects, validates, stores, and disseminates business information about the federal government's trading partners in support of the contract award and the electronic payment processes. To register or renew, please use the following website: https://www.sam.gov/portal/public/SAM/#1.

The **LPA** is also required to obtain a Dun & Bradstreet (D&B) D-U-N-S Number. This is a unique nine digit number required to identify subrecipients of federal funding. A D-U-N-S number can be obtained at the following website: http://fedgov.dnb.com/webform.

THE STATE AGREES:

(1) To provide such guidance, assistance and supervision and to monitor and perform audits to the extent necessary to assure validity of the **LPA**'s certification of compliance with Titles II and III requirements.

(2) (State Contracts) To receive bids for the construction of the proposed improvement when the plans have been approved by the **STATE** (and **FHWA**, if required) and to award a contract for construction of the proposed improvement, after receipt of a satisfactory bid.

(3) (Day Labor) To authorize the **LPA** to proceed with the construction of the improvement when Agreed Unit Prices are approved, and to reimburse the **LPA** for that portion of the cost payable from Federal and/or State funds based on the Agreed Unit Prices and Engineer's Payment Estimates in accordance with the Division of Cost on page one.

(4) (Local Contracts) For agreements with Federal and/or State funds in engineering, right-of-way, utility work and/or construction work:

(a) To reimburse the **LPA** for the Federal and/or State share on the basis of periodic billings, provided said billings contain sufficient cost information and show evidence of payment by the **LPA**;

(b) To provide independent assurance sampling, to furnish off-site material inspection and testing at sources normally visited by **STATE** inspectors of steel, cement, aggregate, structural steel and other materials customarily tested by the **STATE**.

IT IS MUTUALLY AGREED:

(1) Construction of the project will utilize domestic steel as required by Section 106.01 of the current edition of the Standard Specifications for Road and Bridge Construction and federal Buy America provisions.

(2) That this Agreement and the covenants contained herein shall become null and void in the event that the **FHWA** does not approve the proposed improvement for Federal-aid participation within one (1) year of the date of execution of this Agreement.

(3) This Agreement shall be binding upon the parties, their successors and assigns.

(4) For contracts awarded by the **LPA**, the **LPA** shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any USDOT – assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The **LPA** shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of USDOT – assisted contracts. The **LPA**'s DBE program, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this Agreement. Upon notification to the recipient of its failure to carry out its approved program, the **STATE** may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for

enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31U.S.C. 3801 et seq.). In the absence of a USDOT – approved **LPA** DBE Program or on State awarded contracts, this Agreement shall be administered under the provisions of the **STATE**'s USDOT approved Disadvantaged Business Enterprise Program.

(5) In cases where the **STATE** is reimbursing the **LPA**, obligations of the **STATE** shall cease immediately without penalty or further payment being required if, in any fiscal year, the Illinois General Assembly or applicable Federal Funding source fails to appropriate or otherwise make available funds for the work contemplated herein.

(6) All projects for the construction of fixed works which are financed in whole or in part with funds provided by this Agreement and/or amendment shall be subject to the Prevailing Wage Act (820 ILCS 130/0.01 et seq.) unless the provisions of that Act exempt its application.

ADDENDA

Additional information and/or stipulations are hereby attached and identified below as being a part of this Agreement.

Number 1- Location Map, *Number 2 – LPA Appropriation Resolution*

(Insert Addendum numbers and titles as applicable)

The **LPA** further agrees, as a condition of payment, that it accepts and will comply with the applicable provisions set forth in this Agreement and all Addenda indicated above.

APPROVED

Local Public Agency

Name of Official (Print or Type Name)

Title (County Board Chairperson/Mayor/Village President/etc.)

(Signature) Date

The above signature certifies the agency's TIN number is _____ conducting business as a Governmental Entity.

DUNS Number _____

APPROVED

State of Illinois
Department of Transportation

Randall S. Blankenhorn, Secretary Date

By:

Aaron A. Weatherholt, Deputy Director of Highways Date

Omer Osman, Director of Highways/Chief Engineer Date

William M. Barnes, Chief Counsel Date

Jim Ofcarcik, Acting Chief Fiscal Officer (CFO) Date

NOTE: If the LPA signature is by an APPOINTED official, a resolution authorizing said appointed official to execute this agreement is required.

Illinois Department of Transportation	Local Public Agency	State Contract ☐	Day Labor ☐	Local Contract ☐	RR Force Account ☐
Local Public Agency Amendment # **for Federal Participation**	Section:	Fund Type:		ITEP / SRTS / HSIP Number(s)	

Construction		Engineering		Right-of-Way	
Job Number	Project Number	Job Number	Project Number	Job Number	Project Number

This Amendment is made and entered into between the above local public agency, hereinafter referred to as the "**LPA**", and the state of Illinois, acting by and through its Department of Transportation, hereinafter referred to as "**STATE**". The **STATE** and **LPA** have jointly proposed to improve the designated location as described below and agree to the changes outlined in this Amendment. The improvement shall be constructed in accordance with plans approved by the **STATE** and the **STATE**'s policies and procedures approved and/or required by the Federal Highway Administration, hereinafter referred to as "**FHWA**".

Location

Location _____ Route _____ Length _____

Termini _____

_____

Current Jurisdiction _____ TIP Number _____ Existing Structure No _____

Amended Division of Cost

Type of Work	**%**	**%**	**LPA**	**%**	**Total**
Participating Construction	( )	( )		( )	
Non-Participating Construction	( )	( )		( )	
Preliminary Engineering	( )	( )		( )	
Construction Engineering	( )	( )		( )	
Right of Way	( )	( )		( )	
Railroads	( )	( )		( )	
Utilities	( )	( )		( )	
Materials					
TOTAL	$	$	$	$	

NOTE:

The costs shown in the Division of Cost table are approximate and subject to change. The final **LPA** share is dependent on the final Federal and State participation. The actual costs will be used in the final division of cost for billing and reimbursment.

If funding is not a percentage of the total, place an asterisk in the space provided for the percentage and explain above.

Local Public Agency Appropriation

For Amendments Increasing the LPA share: By execution of this Amendment, the **LPA** attests that additional moneys have been appropriated or reserved by resolution or ordinance to fund the aditional share of **LPA** project costs. A copy of the resolution or ordinance is attached as an addendum(**required for increases to state-let contracts only**).

ADDENDA

Additional information, changes, and/or stipulations to the original Agreement are hereby attached and identified below as being a part of this Amendment.

_____

(Insert addendum numbers and titles as applicable)

BE IT MUTUALLY AGREED that all remaining provisions of the original agreement not altered by this Amendment shall remain in full force and effect and the Amendment shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

The **LPA** further agrees, as a condition of payment, that it accepts and will comply with the applicable provisions set forth in this Amendment and all Addenda.

APPROVED

Local Public Agency

_____
Name of Official (Print or Type Name)

_____
Title (County Board Chairperson/Mayor/Village President/etc.)

_____
(Signature) Date

The above signature certifies the agency's TIN number _____ conducting business as a Governmental Entity.

DUNS Number _____

APPROVED

State of Illinois
Department of Transportation

_____
Randall S. Blankenhorn, Secretary Date

By:
_____
Aaron A. Weatherholt, Deputy Director of Highways Date

_____
Omer Osman, Director of Highways/Chief Engineer Date

_____
William M. Barnes, Chief Counsel Date

_____
Jim Ofcarcik, Acting Chief Fiscal Officer (CFO) Date

<u>NOTE</u>: If the LPA signature is by an APPOINTED official, a resolution authorizing said appointed official to execute this agreement is required.

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2016-01

SUBJECT: CATEGORICAL EXCLUSIONS

ISSUED DATE: July 7, 2016

EFFECTIVE DATE: July 7, 2016

This memorandum replaces Chapter 19 of the Bureau of Local Roads & Streets Manual dated February 2009 and Chapter 22 of the Bureau of Local Roads & Streets Manual dated January 2006 with revisions dated July 2013.

The Department has updated Chapters 19 and 22 of the Bureau of Local Roads & Streets Manual to include revisions based upon the new programmatic agreement for categorical exclusions signed between the Federal Highway Administration (FHWA) and IDOT.

The new programmatic agreement allows more latitude for IDOT to determine the level of categorical exclusion. The agreement also updates the nomenclature for the two different types of categorical exclusions; now referring to them as a State Approved CE or Federal Approved CE versus a CE 1 or CE 2.

Chapter 19 of the manual has been updated to include the new 16 criteria for determining unusual project circumstances versus the 11 in the prior programmatic agreement. The Environmental Class of Action Determination (ECAD) was deleted as this type of environmental processing is no longer used. Revisions were made to the categorical exclusion project processing done by IDOT and the FHWA based upon the new programmatic agreement. Finally, a new section of common acronyms was added to the end of the chapter.

Chapter 22 of the manual was updated to the new nomenclature for federal approved and state approved categorical exclusions. The terminology of design variance was also updated to design exception. Modifications were also made to the list of addenda required for a project development report (PDR) when significant changes are made to the PDR during the design engineering process. Finally, a new section of common acronyms and a new section of references were added to the end of the chapter.

Please contact the Bureau of Local Roads and Streets, Local Policy & Technology Unit, at DOT.LocalPolicy@illinois.gov with any questions.

Salmon O. Danmole, P.E.
Acting Engineer of Local Roads and Streets

TJW/

Attachments

Illinois Department of Transportation
2300 South Dirksen Parkway / Springfield, Illinois / 62764

BLRS PROCEDURE MEMORANDUM

NUMBER: PM2016-02

SUBJECT: BLRS POLICY MANUAL REWRITE

ISSUED DATE: July 29, 2016

EFFECTIVE DATE: August 1, 2016

This memorandum replaces Chapters 27 through 33 of the Bureau of Local Roads & Streets Policy Manual.

The Department has updated and revised Chapters 27 through 33 of the Bureau of Local Roads & Streets (BLRS) Policy Manual through a joint committee of representatives from IDOT, the Federal Highway Administration, the Illinois Association of County Engineers, the Illinois Municipal League, the American Council of Engineering Companies of Illinois, the Illinois Road and Transportation Builders Association, and comments from the public at large.

The remaining chapters of the BLRS Policy Manual are still under review and will be released as they are completed. Please contact the BLRS Local Policy & Technology Unit, at DOT.LocalPolicy@illinois.gov with any questions.

Salmon O. Danmole, P.E.
Acting Engineer of Local Roads and Streets

TJW/

Attachments