701 CMR: EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS

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

Section

7.01: Purpose, Scope, and Authority
7.02: Definitions
7.03: Tiers of Public Works Projects
7.04: Construction Zone Safety Plan
7.05: Use of Road Flaggers and Police Details
7.06: Authority of the Authorized Representative
7.07: Responsibility of Road Flaggers and Police Details
7.08: Administration
7.09: Miscellaneous

7.01: Purpose, Scope, and Authority

(1) Purpose. The purpose of 701 CMR 7.00 is to ensure the safety of pedestrians, motorists, bicyclists, and workers on, or near, Public Works Projects and to reduce overall costs through the effective use of Traffic Control Devices, Road Flaggers, and Police Details and through the efficient expenditure of public funds.

(2) Scope. 701 CMR 7.00 applies to any Public Works Project that is performed within the limits of, or that impacts traffic on, any Public Road.

(3) Municipal Limitation. When a Municipality is the Awarding Authority, the use of Road Flaggers, Police Details, and other Traffic Control Devices at the Construction Zone shall comply with these Regulations and any Road Flagger and Police Detail Guideline in all respects except to the extent that any provision is inconsistent with:
   (a) the ordinances or by-laws of the Municipality in which the Public Works Project is being undertaken; or
   (b) any applicable provisions of a collective bargaining agreement under chapter 150E of the General Laws, in which case the provisions of such ordinance, by-law, or collective bargaining agreement shall control.

(4) Authority. The Secretary of the Executive Office of Transportation and Public Works, in consultation with the Secretary of the Executive Office of Public Safety and Security, adopts 701 CMR 7.00 under the authority of St. 2008, c. 86, § 10. The Massachusetts Department of Highways may issue Road Flagger and Police Detail Guidelines to implement 701 CMR 7.00, provided that any such Guidelines shall not be inconsistent with 701 CMR 7.00 or with any provision of St. 2008, c. 86, § 10.

7.02: Definitions

Alternative Plan. A plan, or course of action, prepared as part of the Construction Zone Safety Plan to address situations where traffic control personnel are unavailable, or fail to arrive at the Construction Zone.

Authorized Representative(s). The person or persons designated by the Awarding Authority to implement and enforce 701 CMR 7.00 and Guidelines on behalf of the Awarding Authority and vested with authority over the safety and management of the Construction Zone. The Authorized Representative shall either be an employee of the Awarding Authority or an impartial third party, and shall be designated prior to bidding of a Public Works Project.

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

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

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

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

Construction Zone Safety Plan or the Plan. A plan prepared for the Public Works Project by or on behalf of the Awarding Authority to address traffic safety and control through the Construction Zone, including road detour plans, road closure plans, and plans to mitigate the impact on vehicular and pedestrian traffic outside of the Construction Zone subject to compliance with the requirements of St. 2008, c. 86, § 10, 701 CMR 7.00, and the applicable Road Flagger and Police Detail Guidelines. The Plan shall be included in the solicitation documents for the Public Works Project.

Design Plan. Plans and specifications detailing how the Public Works Project is to be constructed.

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

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

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

Municipality. Any city or town in the Commonwealth.

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

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

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

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

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

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

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

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

7.03: Tiers of Public Works Projects

Public Works Projects are classified into three tiers according to the type of Setup for the Construction Zone and the nature of the Public Road. Evaluation criteria used to categorize projects include public safety, time of day, legal speed limits (as may be revised on account of

the Public Works Project), ADT, roadway design, MUTCD standards, length and duration of the Setup, and limited or full access road designations on the Public Road.

(1) High Speed Roads. High Speed Roads are divided and undivided Public Roads with a legal speed limit greater than or equal to 45 miles per hour.

(2) Low Traffic High Speed Roads. Low Traffic High Speed Roads are High Speed Roads with volumes of traffic less than a maximum of 4000 vehicles per day.

(3) Low Speed Roads. Low Speed Roads are divided and undivided Public Roads with a legal speed limit less than 45 miles per hour.

7.04: Construction Zone Safety Plan

(1) Need for Construction Zone Safety Plan. Awarding Authorities shall complete a Construction Zone Safety Plan for all work in the Public Road requiring the preparation of Design Plans. The Awarding Authority may use or modify standard Construction Zone Safety Plans to accommodate projects that do not require the preparation of Design Plans and for emergency work.

(2) Consultation with Law Enforcement Personnel. All Construction Zone Safety Plans shall be prepared in consultation with the law enforcement agency or agencies having primary responsibility for the patrol and enforcement of vehicular and criminal law on the Public Road within which the Construction Zone is located. Such consultation shall take place as early as practicable.

(3) Compliance. All Construction Zone Safety Plans shall recognize the purposes of, and shall otherwise comply with the requirements of 701 CMR 7.00.

(4) Elements of the Plan. The Plan shall be comprised of the standard traffic control plans and work zone safety guidelines and shall include any traffic management plan or temporary traffic control plan including road detour plans, road closure plans, and plans to mitigate the impact of vehicular and pedestrian traffic outside of the Construction Zone. It also shall detail Construction Zone impact management strategies, including Alternative Plans, and how they will be implemented. When required by 701 CMR 7.05 or when the Awarding Authority has determined it is necessary and appropriate, the Plan shall require the use of personnel to ensure the safety of workers in the Construction Zone and the safety of the public, and, where Road Flaggers, Police Details or both are called for, the Plan shall include the number of Road Flaggers and Police Details required to be on site daily and the procedures, established in consultation with the appropriate law enforcement agency, to be followed if the designated personnel fail to arrive at the Construction Zone as agreed.

(5) Safety and Other Considerations. The Plan shall take into account particular aspects of the Public Road such as ADT, traffic patterns, roadway design, proximity to security sensitive areas such as airports and seaports, proximity to schools, hospitals, playgrounds,

and other youth activity locations, and areas with a history of traffic accidents, or a history of criminal and civil offenses committed in close proximity to the Construction Zone. The Plan shall also take into account the impact the Public Works Project will have on vehicular and pedestrian traffic and safety outside of the Construction Zone.

7.05: Use of Road Flaggers and Police Details.

(1) High Speed Roads. Except as otherwise provided in 701 CMR 7.05(1), the Construction Zone Safety Plan shall require that Police Details be used in all Construction Zones located on High Speed Roads. When the Awarding Authority, acting in accordance with 701 CMR 7.00, determines that it is appropriate under the Construction Zone Safety Plan and consistent with public safety to do so, it may call for the use of Road Flaggers on High Speed Roads where traffic flow has been separated from the Construction Zone through the use of continuous, connected barriers such as temporary concrete traffic barriers, crash walls, or other similar median barriers.

(2) Low Speed Roads and Low Traffic High Speed Roads. Except as otherwise provided in 701 CMR 7.05(2), the Construction Zone Safety Plan shall require that Road Flaggers be used in all Construction Zones located on all Low Speed Roads and on all Low Traffic High Speed Roads. When the Awarding Authority, acting in accordance with 701 CMR 7.00, determines that it is appropriate under the Construction Zone Safety Plan and consistent with public safety to do so, it may call for the use of Police Details on Low Speed Roads and Low Traffic High Speed Roads.

(3) Use of Neither Police Details nor Road Flaggers. Notwithstanding 701 CMR 7.05(1) and 7.05(2), in instances when it is appropriate under the Construction Zone Safety Plan, and possible to protect the Construction Zone from vehicular traffic and to ensure the public safety, the Authorized Representative shall have the authority to determine that neither Road Flaggers nor Police Details are needed on all or a portion of a Public Works Project.

7.06: Authority of the Authorized Representative

(1) Determination by the Authorized Representative. The Authorized Representative shall determine the number and placement of Road Flaggers and Police Details, if any, within the Construction Zone according to the Construction Zone Safety Plan, 701 CMR 7.00, and any Road Flagger and Police Detail Guidelines.

(2) Pre-Construction Conference. The Authorized Representative shall organize a conference with the law enforcement agency or agencies having primary responsibility for patrol of and enforcement of vehicular and criminal law on the Public Road within which the Construction Zone is located prior to the start of any Public Works Project. The purpose of the conference shall be to consult with the law enforcement organization to review the project, the Construction Zone Safety Plan, and the planned use or non-use of Road Flaggers and Police Details on the project. In instances where the Public Works Project is

minor, involves routine maintenance, or does not involve a Construction Zone Safety Plan, the conference need not be in person.

(3) Daily and Regular Contact with Law Enforcement. Whenever an Awarding Authority is conducting work on a Public Road that does not involve the use of Police Details, it shall call the law enforcement agency or agencies having primary responsibility for the patrol and enforcement of vehicular and criminal law on the Public Road within which the Construction Zone is located prior to the start of each work day, and shall provide such agency with contact information sufficient for the agency to be in contact with the Awarding Authority at all times.

(4) Final Authority. As authorized by St. 2008, c. 86, § 10, the Authorized Representative shall have the authority to make the final determination on the Setup and the use of Traffic Control Devices in the Construction Zone and the contents of the Construction Zone Safety Plan developed in accordance with 701 CMR 7.00, and shall have control and responsibility over the safety, security, and closure of the Construction Zone.

(5) Report of Non-Compliance. The Authorized Representative shall report to the Awarding Authority the facts and circumstances of any non-compliance with 701 CMR 7.00, with any Road Flagger and Police Detail Guideline, or with any final determination of the Authorized Representative.

(6) Alternative Plans. The Authorized Representative may implement the Alternative Plan to the Construction Zone Safety Plan or may use Road Flaggers in place of Police Details or Police Details in place of Road Flaggers when a scheduled Road Flagger or Police Detail is unavailable, fails to report to the Construction Zone, fails to comply with instructions, or otherwise fails to perform required duties outlined in 701 CMR 7.00 or in the Road Flagger and Police Detail Guidelines.

7.07: Responsibility of Road Flaggers and Police Details

(1) Instruction. It is the responsibility of the Authorized Representative to fully brief Road Flaggers and Police Details with respect to the Construction Zone Safety Plan and their duties and responsibilities.

(2) Training. Road Flaggers shall be at least eighteen years of age and shall receive training in construction zone safety, traffic control, first aid, and such other necessary safety programs as identified by the Awarding Authority. Road Flaggers must successfully complete the MassHighway approved certification program and carry a valid certification card at all times.

(3) Duration of Work and Compensation. Road Flaggers and Police Details shall remain at the Construction Zone for the hours scheduled by the Authorized Representative or the Awarding Authority, and shall perform required duties in accordance with the Guidelines. Except to the extent it conflicts with a collectively bargained agreement or local ordinance or by-law then in effect when a Municipality is the Awarding Authority,

Road Flaggers and Police Details shall be compensated only for the time spent performing their traffic control function at the Construction Zone. Road Flaggers or Police Details who arrive late, depart early, or are terminated from the Construction Zone by the Authorized Representative for noncompliance with 701 CMR 7.00 shall be compensated only for the time spent performing their traffic control function at the Construction Zone.

7.08: Administration

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

(2) Additional Police Details Requested By Municipalities. Police Details provided by a Municipality to any Commonwealth Entity shall be provided at the Commonwealth Entity's cost for the period of time requested by the Awarding Authority consistent with the Construction Zone Safety Plan. A Municipality may request in writing the placement of additional Police Details on a project awarded by a Commonwealth Entity or may request the payment of additional compensation above such approved rate; provided however, that in the event the use of such additional Police Details is deemed unnecessary by the Awarding Authority or is inconsistent with the Construction Zone Safety Plan, the Municipality shall supply the additional Police Details and shall be responsible for any additional compensation.

7.09: Miscellaneous

(1) Police Power and Commonwealth Jurisdiction. Nothing in 701 CMR 7.00 shall be interpreted to alter or otherwise limit the authority of any law enforcement agency with respect to police matters within the Construction Zone or the Public Way, or with respect to the extent of the Commonwealth's jurisdiction over certain Public Ways.

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

REGULATORY AUTHORITY

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