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The Honorable Shailen P. Bhatt
Administrator
Federal Highways Administration
1200 New Jersey Ave SE
Washington, DC 20590

RE: Docket No. FHWA-2022-0017 - Work Zone Safety and Mobility and Temporary Traffic Control Devices

Dear Administrator Bhatt,

On behalf of the Associated General Contractors of America (AGC), I thank the Federal Highway Administration (FHWA) for soliciting input from the construction community regarding the proposed regulatory updates aimed at improving safety and mobility near work zones. AGC strongly supports FHWA's efforts to reduce work zone crashes while minimizing travel disruptions.

AGC is the nation's leading construction trade association. It dates to 1918, and it today represents more than 27,000 member firms including construction contractor firms both union and open-shop, suppliers, and service providers. Through a nationwide network of 89 chapters in all 50 states, D.C., and Puerto Rico, AGC contractors are engaged in the construction of the nation's highways, bridges, utilities, airports, transit systems, public and private buildings, water works facilities and multi-family housing units, among other things.

The Infrastructure Investment and Jobs Act (IIJA) represents the most significant infusion of investment in our infrastructure since the enactment of the Interstate Highway System in the mid-1950's. It provides certainty to construction companies to invest in their workers and equipment, but also to states to plan for long-term projects that repair our roads and bridges. AGC supports efforts to reduce disruptions to the traveling public, however, the safety of construction workers and the traveling public should continue to be the top priority.

Work zone safety continues to be one of the biggest concerns among highway contractors. In fact, 97 percent of contractors report that highway work zones are either as dangerous, or more dangerous, than they were a year ago.¹ As areas near work zones experience a concerning rise in crashes, injuries, and fatalities over the past few years, it is vital that we continue to make safety the number one priority. We appreciate the opportunity to provide feedback on the following proposed changes:

¹ 2023 AGC & HCSS Highway Work Zone Safety Survey, <https://www.agc.org/highway-work-zone-safety-survey>

- I. **Requirements for Work Zone Programmatic Reviews Should Emphasize Safety**
- II. **AGC Supports Engineering Studies as a Method to Encourage More Positive Protection Devices to Protect Construction Workers**
- III. **AGC Supports the Use of Positive Protection Devices in Work Zones with High Anticipated Operating Speeds But FHWA Should Avoid Being Overly Prescriptive**
- IV. **AGC Encourages a More Thorough Definition of “Safety”**

I. Requirements for Work Zone Programmatic Reviews Should Emphasize Safety

In general, AGC supports the proposed transition to programmatic reviews and the strengthening of associated requirements. However, there is a concern that doing so could compromise the safety of all highway workers, including, but not limited to, construction workers, state DOT employees, utility company employees, law enforcement, and FHWA inspectors etc. For example, an emphasis on reducing mobility disruptions could lead a state DOT to increase nighttime construction requirements for highway projects, potentially compromising the safety of workers in work zones. It could also lead to project delays because of challenges finding workers able to work such hours. Such a consequence could be detrimental to safety as several studies²³ have demonstrated that nighttime work zone crashes, although less frequent, tend to pose a greater risk compared to those that occur during the day.

In addition, according to a survey of AGC members, 47% of contractor firms have reported that they have experienced an increase in nighttime work zone crashes while their workers were on site.⁴

AGC recommends the inclusion of language in the Work Zone Programmatic Review requirements that clarify the safety of highway workers is a higher priority during the assessment of safety and mobility performances, as well as during the implementation phases of the actions to necessary areas found to be insufficient during the review process. Given the escalating frequency of work zone intrusion and accidents, it is imperative that any actions resulting from or during the programmatic reviews do not compromise the safety of both workers and the traveling public.

II. AGC Supports Engineering Studies as a Method to Encourage More Positive Protection Devices to Protect Construction Workers

AGC strongly supports FHWA including a comprehensive definition and details for engineering studies to inform the decision-making process for the deployment of positive protection devices, exposure control measures, and other traffic control measures at work zones. While prioritizing the enhancement of safety for both highway workers and drivers is of paramount concern, some of our members have reported that positive protection device requirements for projects vary greatly between states.

FHWA and Congress have clarified the eligibility of federal funding for positive protection devices. However, in a low-bid environment some of these positive protection devices can be cost

² Science Direct, Fatal accidents in nighttime vs. daytime highway construction work zones, <https://www.sciencedirect.com/science/article/abs/pii/S0022437507000758>

³ Science Direct, Does time of day matter at highway work zone crashes?, <https://www.sciencedirect.com/science/article/abs/pii/S0022437520300207>

⁴ 2023 AGC & HCSS Highway Work Zone Safety Survey, <https://www.agc.org/highway-work-zone-safety-survey>

prohibitive. For example, if a contractor were to include some of these measures that go above and beyond what is required in the Manual for Uniform Traffic Control Devices, they would be outbid by another contractor.

FHWA should encourage engineering studies that prescribe means and methods in a very targeted way, to protect workers in significant construction zones from errant public traffic entering the work zones, while maintaining fair and open competition.

One such strategy to achieve fair and open competition entails mandating a comprehensive engineering study that evaluate alternative approaches to ensuring the safety of workers. Implementing a 'maximum extent practicable' standard is recommended for determining the contractual obligations for the safety of highway workers involved in the project. These requirements should be pragmatic yet effective in achieving project objectives in a cost-efficient manner. Historically, leaving the determination of worker safety measures to the discretion of a low bid environment has led to fatal outcomes.

In circumstances where the use of cones and lane closures proves to be the most viable approach for managing public traffic near the work zone, it is imperative to incorporate items such as mobile attenuators into the project specifications. Explicit detailing in the bid documents regarding the quantity of attenuators or other measures encompassed in the project is crucial to preempt any potential attempts to circumvent safety protocols. If a contractor's means and methods are such that the agency engineer is satisfied with the plan to protect the job's workers, a contract change order can make the necessary adjustments in time and money.

Furthermore, stipulating within the contract that personnel employed by the contractor at the job site must possess formal classroom certification in traffic control and traffic handling represents an additional measure by which the state DOT can assert its commitment to safeguarding worker well-being within their jurisdiction.

The addition of a requirement for an engineering study along with the listing of "Impacts on project cost and duration" could also potentially mitigate the mentioned issues. Nevertheless, AGC strongly recommends a provision that clarifies all available funding to state DOTs for positive protection devices in highway work zones.

III. AGC Supports the Use of Positive Protection Devices in Work Zones with High Anticipated Operating Speeds But FHWA Should Avoid Being Overly Prescriptive

In general, AGC is supportive of the proposal to require the use of positive protection devices in work zones with high anticipated operating speeds that provide workers with no means of escape from motorized traffic intruding into the work zone. However, some work zones are highly mobile and could be overly burdened by such requirements. For example, in instances of painting lanes or paving asphalt, where the use of positive protection might become more of a hinderance as the work zone moves rapidly.

The proposed changes do acknowledge that an engineering study could constitute an exemption to this requirement. However, in order to alleviate and reduce burdens on the projects, AGC suggests that FHWA provide additional flexibility for states with specific work zone conditions prior to requiring engineering studies as the sole source for exemptions.

IV. AGC Encourages a More Thorough Definition of “Safety”

The proposed definition for “Safety” provides an example of the most commonly used performance measures for highway work zone safety which includes number of crashes, fatalities and injuries at a given location during a period of time. AGC believes the performance measures described for injuries and safety (the number of worker fatalities and injuries at a given location during a period of time and the rate of worker fatalities and injuries per hours of work activity) provided are insufficient and incomplete. The use of fatalities and injuries are a lagging indicator which do not actively address or prevent incidents from occurring because it does not capture “close calls” or instances where there are intrusions, and no one is hurt.

The data encompassed by this definition of safety does not allow for the accurate assessment of work zone safety. It neglects to consider instances of work zone intrusions occurring in the absence of active workers on-site, instances where injuries might have transpired had workers been present. Furthermore, it inadequately captures data regarding varying times of day. For instance, in a scenario where work is exclusively conducted during daylight hours, the data would fail to provide an accurate representation of the effectiveness of the safety measures if work zone intrusions only occurred at night.

In addition, AGC recommends that “near misses” should also be addressed in the definition of “Safety” in order to accumulate additional useful data on the safety of a work zone. Though it may prove challenging to meticulously document every near-miss incident, given the occasional absence of conclusive evidence for all occurrences, it is negligent to not record or acknowledge any of them because of that. Any recorded near misses provides valuable statistics toward learning and decision making and cameras and other monitoring technologies are available to assist in identifying and recording near misses in significant work zones.

AGC suggests that FHWA incorporate a more extensive array of parameters or data points to comprehensively gauge the safety performance of a work zone.

Conclusion

AGC appreciates FHWA’s dedication to the safety of our roads and work zones while attempting to avoid unnecessary disruptions for drivers. Our industry is dedicated to rebuilding our roads and bridges but needs it to be in the safest environment possible.

We need to first prioritize the safety of highway work zones, while having a secondary goal of minimizing traffic disruptions. The temporary inconvenience caused by increased safety measures is outweighed by the benefits of reducing accidents, maintaining a safe working environment, and ensuring that highway workers return to their families at the end of the workday. Thank you for the opportunity to comment on these important updates and additions.

Sincerely,



James V. Christianson