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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. FHWA-2001-9182]

RIN 2125-AE75

Highway Bridge Replacement and Rehabilitation Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: The FHWA is seeking comments regarding improvements that can be made to its regulation outlining the highway bridge replacement and rehabilitation program (HBRRP). In addition, the FHWA is considering the inclusion and/or modification of existing policies so that the States and local governments can better manage their bridge assets. Over the years, the FHWA has established policies in many areas for the proper use of bridge funds. The FHWA may need to eliminate some of these policies and incorporate others into the regulation. The FHWA seeks comments from the public, State and local governments, and other Federal agencies on the best means to improve the program.

DATES: Comments must be received on or before December 26, 2001.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at <http://dmses.dot.gov/submit>. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond McCormick, Office of Bridge Technology, HIBT-30, (202) 366-4675; or Mr. Robert Black, Office of the Chief Counsel, HCC-31, (202) 366-1359, Federal Highway Administration, 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:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: <http://dmses.dot.gov/submit>. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. 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 by 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 also reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's web page at: <http://www.access.gpo.gov/nara>.

Background

The Highway Bridge Replacement and Rehabilitation Program (HBRRP) was established in accordance with section 124 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599, 92 Stat. 2689, 2702). It was established to assist the States in the replacement and rehabilitation of bridges declared unsafe because of structural deficiencies, physical deterioration, or functional obsolescence. The FHWA published regulations to provide guidance and establish procedures for administering the HBRRP at 44 FR 15665 on March 15, 1979. The regulation for administering the HBRRP is contained in 23 CFR part 650, subpart D. Over the years, the FHWA has incorporated many policy and administrative changes into the HBRRP. In addition, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240, 105 Stat. 1914) and the Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107 (1998)) provided considerable flexibility to the States

with regards to the Federal-aid program. In recognition of these facts, the FHWA is seeking input into the revision of the regulations so that they better meet the needs of the State and local governments while, at the same time, meeting the national goals of improving the condition of the Nation's bridges.

In the National Bridge Inventory (NBI) (see 23 CFR 650.311) there are approximately 587,598 bridges nationwide, of which 170,130 are classified as being either structurally deficient or functionally obsolete. The HBRRP funding is available for replacement or rehabilitation of these deficient structures, with the terms "replacement" and "rehabilitation" as defined under 23 CFR 650.405(b), and summarized below. There remain an additional 417,468 bridges that would benefit from increased service life with sufficient maintenance and preservation work. The current regulations do not address the use of the HBRRP funds for system preservation activities that would extend the service life of the structures. The status of the Nation's infrastructure is changing. In the past, there was a greater need to construct new bridges on new alignments. In the present, perhaps a more cost-effective approach would be to systematically extend the service life of our structures using data from the bridge management system.

Currently, a bridge is eligible for HBRRP funding if it is undergoing major reconstruction. "Major reconstruction" is interpreted to mean rehabilitation or replacement under 23 CFR 650.405(b). To summarize:

1. Rehabilitation

Conduct of major work to restore the structural integrity of a bridge as well as work necessary to correct major safety defects. The bridge needing rehabilitation, both on and off the Federal-aid system, must conform to the provisions of 23 CFR part 625, Design Standards for Federal-aid Highways for the class of highway on which the bridge is a part. The standards that apply for a bridge on the National Highway System (NHS) would be the American Association of State Highway and Transportation Officials (AASHTO) standards, and for a Federal-aid bridge off the NHS, the States' standards.

2. Replacement

Conduct of work to replace a structurally deficient or functionally obsolete bridge with a new facility constructed in the same general traffic corridor. The new structure must meet the current geometric, construction, and structural standards required for the

type and volume of projected traffic on the facility over its design life.

In our effort to facilitate review of the Highway Bridge Replacement and Rehabilitation Program regulations, the FHWA seeks comments on the following questions:

1. A bridge is eligible for HBRRP funding if it is undergoing major reconstruction as defined under § 650.405. Is the current definition for major reconstruction adequate? If not, how should it be modified?
2. Section 309 of National Highway System Designation Act of 1995 (NHS Act) (Pub. L. 104–59, 109 Stat 634, November 28, 1995) added subsection (d) to section 116 of title 23. Subsection (d) now includes preventive maintenance as an activity that shall be eligible for Federal assistance if the State demonstrates that the activity is a cost-effective means of extending the useful life of a Federal-aid highway. In light of the changes made to title 23 by the NHS Act, should the definition of what constitutes rehabilitation be expanded? Work on a bridge that would protect the structural integrity and/or extend its useful service life might be included in the definition of rehabilitation.
3. The FHWA intends to make the HBRRP an effective program, which provides funds for upgrading the Nation's bridges to provide for increasingly safe structures for the traveling public. What flexibility should be provided in this program in order to reach this goal?
4. The standards that govern eligibility for rehabilitation and replacement are the AASHTO or the States' standards depending on the classification of the highway system. Should there be consistency nationwide on the appropriate standard(s) to be followed on all bridges that are insensitive to highway classification? The FHWA requests ideas on how to achieve this and manage it on a national level.
5. The following examples of work are not considered major reconstruction, and are therefore not eligible for HBRRP funds.
 - Safety feature replacement or upgrading (bridge rail, approach rail or impact attenuators).
 - Overlay of bridge deck if part of a larger highway-surfacing project.
 - Utility work.
 - Emergency repair to restore structural integrity to the previous status following an accident.
 - Retrofitting to correct a deficiency, which does not substantially alter physical geometry or increase the load-carrying capacity.

- Work performed to keep a bridge operational while plans for complete rehabilitation or replacement are under preparation.

- Cost of long approach fills, causeways, connecting roadways, interchanges, ramps and other extensive earth structures, when constructed beyond the attainable touchdown point. (A nominal amount of approach work, sufficient to connect the new facility to the existing roadway or to return the grade line to an attainable touchdown point in accordance with good design practice is eligible).

Should the definition of major reconstruction project include some or all of these types of projects? Should these types of projects be eligible for HBRRP funds?

7. The FHWA uses the sufficiency rating as a basis for establishing eligibility and priority for HBRRP funding. Through this process a list of eligible bridges is established. The States then may choose any bridge project on this list for replacement or rehabilitation. Should this process be changed? If so, what method would be most effective in eliminating deficient bridges?

8. The apportionment factors are based on bridge construction unit costs sent annually by the States to the FHWA. The FHWA uses 3-year averages of these costs as replacement costs. The FHWA is seeking comments on this process and on improving the accuracy of the cost data received.

9. Section 650.411 sets procedures for bridge replacement and rehabilitation projects for submission and approval. Should any of this be modified? If so, how? *Related Rulemakings and Notices:* The FHWA is also in the process of reviewing 23 CFR part 650, subpart C, National Bridge Inspection Standards. The FHWA will soon publish an advanced notice of proposed rulemaking for this program. Additionally, the FHWA will soon publish a notice of proposed rulemaking for 23 CFR part 650, subpart G, Discretionary Bridge Candidate Rating Factor.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after

the comment period closing date, and interested persons should continue to examine the docket for new material. An NPRM may be issued at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that the contemplated rule would not be a significant regulatory action within the meaning of Executive Order 12866 and would not be significant within the meaning of U. S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this action would be minimal. Changes to the HBRRP would increase the number of bridges eligible under the program. However, if the total amount of funding for the program remains the same, the impact on the economy would be minimal. Further, if the FHWA extends eligibility to include maintenance and preservation in the long run this would have a positive impact by increasing the service life of existing bridges, and therefore would offset any initial increase in the number of eligible bridges. Any proposed changes should not likely interfere with any action taken or planned by another agency.

Based upon the information received in response to this ANPRM, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of any proposed recommendation for changes to the HBRRP.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), and based upon the information received in response to this ANPRM, the FHWA will evaluate the effects of any action proposed on small entities. The FHWA anticipates that any action proposed would not have a significant economic impact on a substantial number of small entities. The FHWA encourages commenters to evaluate any options addressed here with regard to the potential for impact, and to formulate their comments accordingly.

Unfunded Mandates Reform Act of 1995

The actions being considered under this ANPRM would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Public. Law. 104–4, March 22, 1995,

109 Stat. 48). The actions being considered under this ANPRM would not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the affects on State, local, and tribal governments and the private sector.

Executive Order 13132 (Federalism)

Any action that might be proposed in subsequent stages of this proceeding will be analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA anticipates that any action contemplated will not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA also anticipates that any action taken will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. We encourage commenters to consider these issues, however, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

Executive Order 13175 (Tribal Consultation)

Any action that might be proposed in subsequent stages of this proceeding will be analyzed under Executive Order 13175, dated November 6, 2000. The FHWA believes that any proposal 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, the FHWA anticipates that a tribal summary impact statement will not be 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.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation,

eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

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 (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this ANPRM does not contain a collection of information requirement for purposes of the PRA.

National Environmental Policy Act

The agency also will analyze any action that might be proposed for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) to assess whether there would be any effect on the quality of the environment.

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 650

Bridges, Grant programs—transportation, Highways and roads.

Authority: 23 U.S.C. 144 and 315; 49 CFR 1.48.

Issued on: September 19, 2001.

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Deputy Executive Director.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. FHWA–2001–8954]

RIN 2125–AE86

National Bridge Inspection Standards

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: The FHWA is soliciting comments on whether to revise its regulation on National Bridge Inspection Standards (NBIS) to incorporate current, state-of-the-art bridge inspection practices that public authorities may be using. It has been 14 years since the NBIS regulations were updated. The experience, material, and technology changes over time dictate that the FHWA take a fresh look at these regulations. The FHWA has received some unsolicited comments from engineers, inspectors, transportation planners, and others recommending a number of changes to the FHWA's NBIS regulations. In revising these regulations the FHWA is considering incorporating a number of the FHWA policy memorandums and technical advisories into the regulation. In this ANPRM, the FHWA is soliciting comments on whether to amend its NBIS regulations to incorporate changes in technology and enforcement mechanisms. Additionally, the FHWA intends to update the rule to comply with current state-of-the-art bridge inspection techniques.

DATES: Comments must be received on or before December 26, 2001.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at <http://dmses.dot.gov/submit>. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.