

minimum of three points, and one segment of the flight consisting of a straight-line distance of at least 50 nautical miles between the takeoff and landing locations.

(2) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

(d) *For a combined private pilot certification and instrument rating course involving a powered-life:* Five hours of flying solo in a powered-lift on the appropriate areas of operation in paragraph (d)(4) of section 4 of this appendix that includes at least—

(1) One solo cross-country flight of at least 100 nautical miles with landings at a minimum of three points, and one segment of the flight consisting of a straight-line distance of at least 50 nautical miles between the takeoff and landing locations.

(2) Three takeoffs and three landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

6. *Stage checks and end-of-course tests.*

(a) Each student enrolled in a private pilot course must satisfactorily accomplish the stage checks and end-of-course tests in accordance with the school's approved training course that consists of the approved areas of operation listed in paragraph (d) of section 4 of this appendix that are appropriate to the aircraft category and class rating for which the course applies.

(b) Each student must demonstrate satisfactory proficiency prior to receiving an endorsement to operate an aircraft in solo flight.

Issued in Washington, DC, on August 3, 2009.

**John M. Allen,**

*Director, Flight Standards Service.*

[FR Doc. E9-20957 Filed 8-28-09; 8:45 am]

BILLING CODE 4910-13-P

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 650

[FHWA Docket No. FHWA-2009-0074]

RIN 2125-AF33

#### National Bridge Inspection Standards

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The American Association of State Highway and Transportation Officials (AASHTO) Manual for Condition Evaluation of Bridges, 1994, second edition (also referred to as "the Manual"), together with the 2001 and 2003 Interim Revisions, is incorporated by reference in 23 CFR part 650, subpart E, approved by the Federal Highway

Administration, and recognized as a national standard for bridge inspections and load rating. The purpose of this notice is to update the incorporation by reference language to incorporate the most recent version of the AASHTO Manual, now known as The Manual for Bridge Evaluation, First Edition, 2008.

**DATES:** Comments must be received on or before September 30, 2009.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, 1200 New Jersey Avenue, SE., Washington, DC 20590, or submit electronically at <http://www.regulations.gov> or fax comments to (202) 493-2251. 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 may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Page 19477-78) or you may visit <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Everett, Office of Bridge Technology, (202) 366-4675; or Mr. Robert Black, Office of the Chief Counsel (202) 366-1359, 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 and Filing**

You may submit or retrieve comments 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. It is available 24 hours each day, 365 days each 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> and the Government Printing Office's

Web page at: <http://www.access.gpo.gov/nara>.

**Background**

This NPRM is being issued to provide an opportunity for public comment on the proposed revision to the incorporation by reference of the AASHTO Manual in the National Bridge Inspection Standards (NBIS).

The Manual for Bridge Evaluation, First Edition (MBE) was adopted by the AASHTO Highways Subcommittee on Bridges and Structures in 2005. The MBE combines The Manual for Condition Evaluation of Bridges, Second Edition, and its 2001 and 2003 Interim Revisions with the Guide Manual for Condition Evaluation and Load and Resistance Factor Rating (LRFR) of Highway Bridges, First Edition, and its 2005 Interim Revisions. Revisions based on approved agenda items from annual AASHTO Subcommittee meetings in 2007 and 2008 are also incorporated into the MBE.

The MBE, First Edition, 2008, supersedes The Manual for Condition Evaluation of Bridges, Second Edition, and the 2001 and 2003 Interim Revisions, which are currently incorporated by reference at 23 CFR 650.317. The MBE offers assistance to bridge owners at all phases of bridge inspection and evaluation. The Manual serves as a standard and provides uniformity in the procedures and policies for determining the physical condition, maintenance needs, and load capacity of the Nation's highway bridges.

Because the information incorporated by reference at 23 CFR 650.317 has been superseded, the FHWA desires to update the NBIS regulation to reflect the latest information contained in the AASHTO documents. The FHWA also proposes to update the definition for "AASHTO Manual" to reflect the updated document.

**Rulemaking Analysis and Notices**

*Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures*

The FHWA has determined that this action would not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. These changes are not anticipated to adversely affect, in any material way, any sector of the economy. The FHWA believes that the incorporation of the MBE within the NBIS regulation will greatly improve consistency and uniformity in the

application of bridge inspection and load rating procedures. In addition, these changes would 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. 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 these changes on small entities and has determined preliminarily that this action would not have a significant economic impact on a substantial number of small entities.

#### *Unfunded Mandates Reform Act of 1995*

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48, March 22, 1995). This action would 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 (2 U.S.C. 1532).

#### *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 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.

#### *Executive Order 13175 (Tribal Consultation)*

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it would not have substantial direct effects on one or more Indian Tribes; would not impose substantial direct compliance costs on Indian Tribal governments; and would not preempt Tribal law. Therefore, a Tribal summary impact statement is not required.

#### *Executive Order 13211 (Energy Effects)*

The FHWA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it 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 collection information requirements for 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, eliminate ambiguity, and 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. The FHWA certifies that this action would not concern an environmental risk to health or safety that may disproportionately affect children.

#### *Executive Order 12630 (Taking of Private Property)*

The FHWA does not anticipate that this action would 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. 4321-4347) and has determined that it would not have 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, Incorporation by reference, Reporting and recordkeeping requirements.

Issued on: August 19, 2009.

#### **Victor M. Mendez,**

*Federal Highway Administrator.*

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations part 650 as follows:

#### **PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS**

##### **Subpart C—National Bridge Inspection Standards**

1. The authority citation for part 650 continues to read as follows:

**Authority:** 23 U.S.C. 109(a) and (h), 144, 151, 315, and 319; 33 U.S.C. 401, 491 *et seq.*; 511 *et seq.*; sec. 4(b) of Pub. L. 97-134, 95 Stat. 1699 (1981); sec. 161 of Pub. L. 97-424, 96 Stat. 2097, at 3135 (1983); sec. 1311 of Pub. L. 105-178, as added by Pub. L. 105-206, 112 Stat. 842 (1998); 23 CFR 1.32; 49 CFR 1.48(b); E.O. 11988 (3 CFR, 1977 Comp., p. 117); Department of Transportation Order 5650.2, dated April 23, 1979 (44 FR 24678).

2. Amend § 650.305 by revising the definition of "American Association of State Highway and Transportation Officials (AASHTO) Manual" to read as follows:

#### **§ 650.305 Definitions.**

\* \* \* \* \*

*American Association of State Highway and Transportation Officials (AASHTO) Manual.* "The Manual for Bridge Evaluation," First Edition, 2008, published by the American Association of State Highway and Transportation Officials (incorporated by reference, see § 650.317).

\* \* \* \* \*

3. Revise § 650.317(b) to read as follows:

#### **§ 650.317 Reference manuals.**

\* \* \* \* \*

(b) The Manual for Bridge Evaluation, First Edition, 2008, AASHTO, incorporated by reference approved for §§ 650.305 and 650.313, is available for purchase from the American Association of State Highway and Transportation Officials, Suite 249, 444 N. Capitol Street, NW., Washington, DC

20001. The materials may also be ordered via the AASHTO bookstore located at the following URL: <http://www.aashto.org/aashto/home.nsf/FrontPage>.

[FR Doc. E9-20713 Filed 8-28-09; 8:45 am]  
BILLING CODE 4910-22-P

## DEPARTMENT OF LABOR

### Office of the Secretary

#### 29 CFR Part 2

RIN 1290-AA23

#### Requirements for DOL Agencies' Assessment of Occupational Health Risks

**AGENCY:** Office of the Secretary; Office of the Assistant Secretary for Policy.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The Department of Labor ("Department" or "DOL") is withdrawing its proposed rule governing DOL agencies' assessment of occupational health risks. The proposed rule sought to compile Department procedures related to risk assessment into a single regulation and included new requirements aimed at establishing consistent procedures intended to promote greater public input and awareness of the Department's health rulemakings.

**DATES:** This withdrawal is effective on August 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Franks, Office of Regulatory and Programmatic Policy, Office of the Assistant Secretary for Policy, U.S. Department of Labor, (202) 693-5959. This is not a toll-free number. Individuals with hearing or speech impairments may access the number above via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On August 29, 2008, the Department published in the *Federal Register* (73 FR 50909 Aug. 29, 2008) a notice of proposed rulemaking (NPRM) to codify DOL's internal risk assessment procedures for health standard rulemakings that address workplace exposure to toxic substances and hazardous chemicals. The NPRM stated that it summarized and would codify DOL agencies' existing risk assessment paradigm and requested public comment on two specific procedural requirements: A new requirement that DOL agencies issue an Advance Notice

of Proposed Rulemaking (ANPRM) as a first step whenever developing a health standard that would regulate workplace exposure to toxic substances or hazardous chemicals; and a requirement that DOL agencies electronically post all documents relied upon to develop such health standards within fourteen days of each regulatory step. Because the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA) are the only two agencies within the Department that issue health standards related to toxic substances and hazardous chemicals, it was anticipated that the proposed rule would affect only those agencies.

The Department accepted public comment on the NPRM for a period of 30 days. While some interested parties, including members of Congress, urged DOL to extend the public comment period and requested that the Department hold public hearings on the proposal, the Department declined these requests due to its desire to adhere to the originally published timeframe for completion of this rulemaking.

The Department received comments in response to the NPRM from a variety of sources, including members of Congress, private citizens, labor unions, worker advocacy organizations, industry associations, employer groups, and risk assessment experts. The majority of the commenters were opposed to the rulemaking.<sup>1</sup>

##### II. Reasons for Withdrawal of Proposed Rule

After careful review of the comments and upon reconsideration of the issues involved in this rulemaking, the Department has decided to withdraw the proposed rule. As described below, the two proposed requirements are unnecessary. Moreover, given the nature of the issues, the Department believes that it is more useful to continue describing its internal risk assessment policies through guidance rather than through promulgation of a regulation.

**Proposed ANPRM Requirement.** The proposal would have required DOL agencies to issue an ANPRM in every rulemaking for a health standard involving toxic substances or hazardous chemicals, apart from emergency temporary standards. Many commenters were opposed to this new requirement. *See, e.g.,* Exs. 7.1; 16.1; 42.1; and 48.1.<sup>2</sup> Some commenters, including members

of Congress and Senators, employer groups, and worker advocacy organizations claimed that an ANPRM is not always useful and that imposing an ANPRM requirement in a health standard rulemaking when it was not necessary would unduly delay the rulemaking. *See, e.g.,* Exs. 32.1; 37.1; and 42.1. They argued that this in turn could harm workers by unnecessarily delaying the introduction of the health protections required by the standard. Labor unions and worker advocacy organizations also claimed that requiring an unnecessary ANPRM would divert agency resources from other rulemaking efforts. *See, e.g.,* Exs. 45.1 and 48.1.

The current policy of both OSHA and MSHA is to publish an ANPRM only if the agency believes it will be beneficial to the rulemaking. This decision is made on a case-by-case basis. In light of the comments to the proposal and after reconsideration of the proposed ANPRM requirement, the Department has determined that OSHA and MSHA should continue to follow their current ANPRM policy.

The Department believes that an ANPRM can be a valuable part of the rulemaking process in the right circumstances, but that an inflexible requirement would not fit the varied circumstances in which rulemakings are conducted and could cause unnecessary delays. When an agency lacks important information needed to develop an effective proposed rule, an ANPRM provides one means of attempting to obtain that information. However, there are times when an agency has sufficient information to issue a successful proposed rule without taking that step. Avoiding an ANPRM in these situations allows the agency to more effectively use its rulemaking resources. There are also many other ways in which OSHA and MSHA can obtain needed information without using an ANPRM, such as holding stakeholder meetings, conducting surveys, consulting advisory committees, doing site visits, issuing Requests for Information, conducting peer reviews, and, in the case of OSHA, obtaining small entity (including small business) input through procedures required by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 609(b)). By allowing the agency to decide whether or not to use an ANPRM for a rulemaking, the agency retains flexibility to choose the information gathering methods that it has determined will best fit each individual situation.

**Proposed Electronic Posting Requirement.** The proposal would have required the Department to make

<sup>1</sup> Comments are available for review at <http://www.regulations.gov>. Reference Docket Number: DOL-2008-0002.

<sup>2</sup> "Ex." Refers to exhibits included in the rulemaking docket, which can be referenced using the URL provided in Footnote 1, *supra*.