

remove the requirement that States are responsible for Federal bridges. This proposal would require Federal agencies to be directly responsible for inspection of bridges under their jurisdiction. The proposed rule language places emphasis on applicability of the standards pertaining exclusively to "highway" bridges that carry public roads.

This proposed revision would clearly delineate the responsibilities of a bridge inspection organization and define what can and cannot be delegated. This proposal would enhance and clarify the qualifications of personnel as well as inspection frequency. It proposes periodic refresher training for inspection personnel. It includes a provision for lengthening the underwater inspection interval from 60 months to 72 months under certain conditions with FHWA approval. The proposed revision would clearly define the interval for fracture critical member (FCM) inspections. The FHWA proposes to specifically address scour critical bridges, bridges vulnerable to seismic damage, and complex bridges. The FHWA proposes to establish quality control/quality assurance (QC/QA) requirements. The proposed rule also discusses procedures for follow-up on critical findings by the inspection program manager. Lastly, this action proposes to reaffirm inventory and reporting requirements including timeframes for submission of data by both the State and Federal agencies.

Section-by-Section Discussion of the Proposals

Proposed Section 650.301 Purpose

There were no comments on this topic.

The FHWA proposes to replace the section "Application of Standards" with "Purpose." The FHWA proposes to reiterate the purpose of the NBIS as stated in 23 U.S.C. 151 to address the proper safety inspection and evaluation of all highway bridges. The current bridge definition does not differentiate between the types of passageways carried; however, the term "highway" does. The FHWA proposes to re-emphasize that for purposes of the NBIS, a highway bridge is a bridge that carries a public road.

Proposed Section 650.303 Applicability

The FHWA proposes to replace the section "Inspection Procedures" with "Applicability." The FHWA proposes to clarify that the NBIS only applies to highway bridges that carry public roads.

The Minnesota DOT requested discussion about the responsibility of

private bridge owners to comply with the NBIS. Collins Engineers, Inc. indicated that the NBIS should be extended to all bridges whether publicly or privately owned.

The FHWA acknowledges that some confusion has existed about the applicability of the NBIS to privately owned highway bridges. While 23 U.S.C. 151 states that the NBIS are for all highway bridges, the FHWA has no legal authority to require privately owned bridge owners to inspect and maintain their bridges. While the FHWA does not have the authority to compel the States to inspect private bridges, the FHWA strongly encourages that private bridge owners follow the NBIS as the standard for inspecting privately owned bridges. Because of the seamless nature of the transportation infrastructure within many States, the motoring public does not know the difference between a privately owned and publicly owned highway bridge. This being the case, it is extremely important that privately owned highway bridges be inspected to a nationally recognized standard. Private bridge owners that do not inspect their highway bridges to the NBIS can open themselves to liability for deaths or injuries because of possible highway bridge failure. State transportation departments that do not cause private bridge owners to inspect their highway bridges to the NBIS can open themselves to liability for deaths or injuries because of possible highway bridge failure. States and Federal Agencies should encourage owners of privately-owned highway bridges to inspect their bridges in accordance with these NBIS or reroute any public highways away from such bridges if NBIS inspections are not conducted.

The National Bridge Inventory (NBI) lists roughly 2,200 privately owned highway bridges in some 41 States and Puerto Rico. However, the total number of privately owned bridges is unknown because the States are not required to report them to the FHWA. Many privately owned bridges can be assumed to carry public roads, some of which are significant highways. The FHWA does not know if privately owned bridges are inspected using the NBIS or other standard and the FHWA does not know the level to which privately owned bridges are maintained. As a result, the FHWA cannot determine whether the public may be at risk when crossing a privately owned bridge.

Public authorities, must follow the NBIS for all highway bridges located on all public roads. The term "public road" is defined in 23 U.S.C. 101(a)(27) as "any road or street under the jurisdiction of and maintained by a

public authority and open to public travel." The NBIS applies to seasonally or periodically opened public roads and to limited access public access roads.

Highway bridges owned by Indian tribes are in a separate category. Indian tribes as sovereign nations, have a unique government-to-government relationship with the Federal government. There is no explicit requirement in 23 U.S.C. 144 that requires inventory of tribally owned bridges. Likewise, there is no explicit requirement in 23 U.S.C. 151 that requires inspection of tribally owned bridges. Absent such clear language, the FHWA has no legal authority to require federally recognized Indian tribes to inventory tribally owned bridges or to comply with the NBIS. While the FHWA does not have the authority to compel the federally recognized Indian tribes to inspect tribally owned bridges, the FHWA strongly encourages that Indian tribes follow the NBIS (23 U.S.C. 151), as the standard for inspecting tribally owned bridges, particularly those open to public travel. Indian tribes that do not inspect their bridges to the NBIS can open themselves to liability for deaths or injuries because of bridge failure.

The FHWA recognizes that the NBIS does not apply to federally owned bridges on roads that are used only by public employees and not open to the general public. These bridges and administratively used roads support behind-the-scenes operations, are used by public employees engaged in official business, and are not open to the general public. While the NBIS does not apply to such bridges, these bridges need to be periodically inspected to assure the safety of public employees, contractors, official visitors and the motoring public which may inadvertently use these facilities. The public looks at the transportation infrastructure as seamless and may not know that they have driven on an administratively used road. Furthermore, public authorities could be liable for injuries or death resulting from the use of bridges that are not properly and systematically inspected and maintained.

The Michigan DOT and Collins Engineers, Inc. were concerned about the applicability of the NBIS to railroad and pedestrian bridges over public roads. The Wisconsin DOT thought sign support structures, high mast lighting, retaining walls, and noise barrier structures should be addressed, in the NBIS. Collins Engineers, Inc. thought railroad bridges and overhead traffic signs should be addressed in the NBIS.