



Federal Highway Administration

23 CFR Part 625

[Docket No. FHWA-2019-0030]

RIN 2125-AF88

Design Standards for Highways

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

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

SUMMARY: FHWA requests comments on a proposed revision to the design standards and standard specifications applicable to new construction, reconstruction, resurfacing (except for maintenance resurfacing), restoration, and rehabilitation projects on the National Highway System (NHS). The proposed rule would allow States to undertake resurfacing, restoration, and rehabilitation (RRR) projects on freeways, including Interstate highways. The proposed rule would incorporate by reference the latest versions of design standards and standard specifications previously adopted and incorporated by reference, and would remove the corresponding outdated or superseded versions of these standards and specifications.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Late comments will be considered to the extent practicable.

ADDRESSES: You may submit comments by any of the following methods:

- Fax: 1-202-493-2251;
- Mail: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590;

- Hand Delivery: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or
- Electronically through the Federal eRulemaking Portal:
<http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name, and docket number (FHWA-2017-001) or Regulatory Identification Number (RIN) for this rulemaking (2125-AF88). Note that all comments received will be posted without change to: <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Hilton, Office of Preconstruction, Construction and Pavements (HICP-10), (202) 924-8618, or via e-mail at Elizabeth.Hilton@dot.gov, or Mr. Lev Gabrilovich, Office of the Chief Counsel (HCC-30), (202) 366-3813, or via e-mail at Lev.Gabrilovich@dot.gov. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document may be viewed online under the docket number noted above through the Federal eRulemaking portal at: <http://www.regulations.gov>. Electronic submission and retrieval help and guidelines are available on the Web site. Please follow the online instructions.

An electronic copy of this document may also be downloaded from the Office of the Federal Register's Web site at: <http://www.archives.gov/federal-register> and the Government Publishing Office's Web site at: <http://www.gpo.gov/fdsys>. In accordance with 5 U.S.C. 553(c), FHWA solicits comments from the public to better inform its

rulemaking process. FHWA posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be viewed at: www.dot.gov/privacy.

Physical access to the docket is available at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, D.C. 20950, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Background and Legal Authority

Pursuant to 23 U.S.C. 315 and under the authority delegated to FHWA in 49 CFR 1.85, FHWA proposes to modify its regulations governing design standards for new construction, reconstruction, resurfacing (except for maintenance resurfacing), restoration, and rehabilitation projects on the NHS (including the Interstate System). This rulemaking is not expressly required by statute. However, this rulemaking is necessary to implement provisions of 23 U.S.C. 109 regarding design standards and criteria.

State departments of transportation (State DOTs) are tasked with preserving the safety and usability of a vast network of existing highways. FHWA's existing design standards require State DOTs to meet new construction standards on freeway RRR projects, unless a design exception is approved. Recent national research has provided a better understanding of the relationship between geometric design features and crash frequency and severity. Therefore, to improve the efficiency of developing RRR projects on existing freeways, FHWA proposes to allow State DOTs to adopt procedures or design criteria, as approved by FHWA, that would enable the State to undertake RRR projects on freeways, including Interstate highways, without utilizing design exceptions. FHWA also proposes to incorporate by reference updated versions of design standards and standard specifications previously adopted and incorporated by reference under

23 CFR part 625.4, and to remove the corresponding outdated or superseded versions of these standards and specifications.

Several of these design standards and standard specifications were established by the American Association of State Highway and Transportation Officials (AASHTO) and the American Welding Society (AWS) and were previously adopted by FHWA through rulemaking. (83 FR 54876; November 1, 2018). AASHTO is an organization that represents 52 State highway and transportation agencies (including the District of Columbia and Puerto Rico). Its members consist of the duly constituted heads and other chief officials of those agencies. The Secretary of Transportation is an ex-officio member, and DOT staff participates in various AASHTO activities as nonvoting representatives. Among other functions, AASHTO develops and issues standards, specifications, policies, guides, and related materials for use by the States for highway projects. FHWA has historically incorporated many AASHTO standards, policies, and standard specifications in 23 CFR part 625. AWS is a nonprofit organization known for its code and certification procedures, providing industry standards for welding, including in the transportation field. AWS reports about 66,000 members worldwide and develops updated materials for welding professionals and other interested parties, including those related to bridge welding and structural welding.

The new standards or specifications replace previous versions of these standards or specifications and represent the most recent refinements that professional organizations have formally accepted. After review of the various standards and specifications, FHWA proposes to adopt them for NHS projects.

The proposed revisions include adopting the 2018 edition of the AASHTO *A Policy on Geometric Design Highways and Streets* (Green Book); the 2016 second printing of the AWS D1.1/D1.1M:2015 *Structural Welding Code – Steel*; the 2018 Interim Revisions to the AASHTO *Load and Resistance Factor Design (LRFD) Movable*

Highway Bridge Design Specifications; the 2019 and 2020 Interim Revisions to the *AASHTO Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals*; and the 2019 and 2020 Interim Revisions to the *AASHTO LRFD Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals*. FHWA proposes to delete the incorporation by reference of the 2018 Interim Revisions to the AASHTO/AWS D1.5M/D1.5: 2015-AMD1, *Bridge Welding Code* and the *AASHTO Standard Specifications for Transportation Materials and Methods of Sampling and Testing*. Each of these standards is discussed in more detail below.

These proposed standards and specifications apply to all projects on the NHS (including the Interstate System). FHWA also encourages the use of flexibility and a context-sensitive approach to consider a full range of project and user needs and the impacts to the community and natural and human environment. These proposed design standards provide a range of acceptable values for highway features, allowing for flexibility that best suits the desires of the community while satisfying the purpose for the project and needs of its users.

State DOTs and local agencies should select design values based on factors including the context of the facility, needs of all the various project users, safety, mobility (i.e., traffic performance), human and natural environmental impacts, and project costs. For most situations, there is sufficient flexibility within the range of acceptable values to achieve a balanced design. However, when this is not possible, a design exception may be appropriate. Since 1985, FHWA has designated the criteria that have the most impact on roadway safety and operations as “controlling criteria.” (81 FR 27187; May 5, 2016). State and local agencies may consider designs that deviate from the design standards when warranted based on the conditions, context, and consequences of the proposed projects. FHWA encourages State DOTs and local agencies to document design

decisionmaking, particularly when standards cannot be met. Additional information on FHWA's adopted design standards and design exceptions is available at:

<http://www.fhwa.dot.gov/design/standards>.

Discussion under 1 CFR part 51

The documents that FHWA proposes to incorporate by reference are reasonably available to interested parties, primarily State DOTs and local agencies carrying out Federal-aid highway projects. These documents represent the most recent refinements that professional organizations have formally accepted and are currently in use by the transportation industry. The documents are also available for review at FHWA Headquarters or may be obtained from AASHTO or AWS. The specific standards are discussed in greater detail elsewhere in this preamble.

Section-by-Section Discussion of the Proposed Changes to 23 CFR part 625

FHWA proposes to revise 23 CFR 625.2(b), 625.3(a)(1), and 625.4(a)(3) to allow States to adopt procedures or design criteria, as approved by FHWA, that would enable the State to undertake RRR work on all NHS roadways without utilizing design exceptions. Under 23 U.S.C. 109(a), the Secretary must ensure proposed highway projects are designed and constructed in accordance with criteria best suited to serve adequately the existing and planned future traffic of the highway in a manner that is conducive to safety, durability, and economy of maintenance. More than 20 years ago, FHWA had opined that the application of standards other than those for new construction or reconstruction projects on freeway facilities might compromise safety and was not considered appropriate. (62 FR 15392; April 1, 1997). Since that time, national research has provided a better understanding of the relationship between geometric design features and crash frequency and severity. Much of this information is presented in the AASHTO *Highway Safety Manual* (www.highwaysafetymanual.org), which incorporates the findings of extensive research on various roadway types and issues. As a result, the

practice of roadway design is changing to a more performance-based, flexible approach, particularly for RRR projects. This performance-based approach has been advanced under several research projects conducted by the National Cooperative Highway Research Program (NCHRP) as documented in NCHRP Report 839: A Performance-Based Highway Geometric Design Process (<http://www.trb.org/Publications/Blurbs/175375.aspx>), NCHRP Report 785: Performance-Based Analysis of Geometric Design of Highways and Streets (<http://www.trb.org/Publications/Blurbs/171431.aspx>), and NCHRP Report 876: Guidelines for Integrating Safety and Cost-Effectiveness into Resurfacing, Restoration, and Rehabilitation (3R) Projects (<http://www.trb.org/Main/Blurbs/177914.aspx>). Rather than focusing solely on meeting dimensional design criteria, RRR projects can be developed based on project-specific conditions and existing and expected future roadway performance. State DOTs operating under constrained budgets can make the best use of limited resources by developing RRR projects on all classes of roadways, including freeways, to maximize the safety and operational benefit of the overall transportation network.

In § 625.3(a)(1), FHWA proposes revisions necessary to update the regulation in accordance with 23 U.S.C. 109(c)(1), as amended by section 1404(a) of the 2015 Fixing America's Surface Transportation (FAST) Act. Revisions include changing these factors from optional to mandatory consideration, and the addition of a new factor to consider – the cost savings that can be achieved by utilizing flexibility that exists in current design guidance and regulations.

FHWA proposes new paragraph (a)(3) to add to the regulation a long-standing exception to the Interstate design standards for Alaska and Puerto Rico, found in 23 U.S.C. 103(c)(1)(B)(ii).

FHWA proposes new paragraph (a)(4) to incorporate the provisions of FAST Act section 1404(b) that allow, if certain conditions are met, a local jurisdiction that is a direct recipient of Federal funds to design a project using a roadway design publication that is different from the roadway design publication used by the State in which the local jurisdiction resides. One of the statutory requirements is that the roadway design publication must be recognized by FHWA. For the purpose of implementing section 1404(b), the design publications that FHWA currently recognizes are those listed in either the FHWA Memorandum dated August 20, 2013, regarding Bicycle and Pedestrian Facility Design Flexibility (available at www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/design_flexibility.cfm) or the related Questions and Answers (Q&As) (available at www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/design_flexibility_qa.cfm).

In 23 CFR 625.3(f), FHWA proposes to establish, in paragraph (f)(2), as redesignated, a programmatic exception for the limited purpose of allowing States to use a more recent edition of a standard or specification adopted in § 625.4(d). This change will remove an administrative barrier to utilization of most recent refinements that professional organizations have formally accepted. FHWA intends to retain approval for such a programmatic exception at the appropriate Headquarters program office to ensure that the agency is satisfied that interim implementation of a new edition is in the public interest. In addition, FHWA proposes to revise § 625.3(f)(1)(i), as redesignated, to clarify that the provisions governing project exceptions only apply to projects on the NHS because States may develop their own standards for projects not on the NHS under § 625.3(a)(2) and 23 U.S.C. 109(o).

In § 625.4, FHWA proposes to incorporate by reference the updated versions of design standards and standard specifications previously adopted and incorporated by reference, and to remove the corresponding outdated or superseded versions of these

standards and specifications. In addition, FHWA proposes to delete two previously adopted specifications and add one new specification.

In § 625.4(a)(1), FHWA proposes to remove the edition and date from the AASHTO *A Policy on Geometric Design Highways and Streets* because the edition and date are more properly included in paragraph (d)(1)(i) of this section.

In § 625.4(a)(3), FHWA proposes to focus on statewide procedures and design criteria because under risk-based stewardship and oversight, design plans for individual RRR projects are typically delegated to the State. In addition, FHWA proposes to clarify that, if a State does not adopt design procedures or criteria for RRR projects as approved by FHWA, the standards listed in paragraphs (a)(1) and (a)(2) shall apply. This change is consistent with current practice.

In § 625.4(b)(7), FHWA proposes to insert “AASHTO” in front of the name of the two documents incorporated by reference for clarity.

In § 625.4(b)(9) and (d)(2)(ii), FHWA proposes to incorporate a new reference to the AWS D1.1/D1.1M:2015 *Structural Welding Code – Steel* because many projects require welding of miscellaneous metal components for items such as light poles, sign supports, and railings. FHWA adopts minimum design standards to ensure the safety of the transportation infrastructure by ensuring all fabrication and manufacturing processes are performed to an acceptable standard. For instance, the AASHTO/AWS D1.5/D1.5M Bridge Welding Code is a minimum standard to ensure all steel bridges are welded to a standard that covers welding consumables, welding procedure requirements, qualification requirements, personal requirements, inspection and acceptance criteria. However, numerous transportation products are not covered by the Bridge Welding Code including light poles, high mast towers, sign structures, guard rail systems, and even pedestrian bridges. Because these other product types are not covered by the Bridge Welding Code, and because they are in or over the right-of-way, they should be fabricated or

manufactured to a minimum design standard, and FHWA proposes the AWS D1.1/D1.1M:2015 Structural Welding Code-Steel. The Structural Welding Code-Steel provides many similar requirements in the Bridge Welding Code but is applicable to the other product types not covered specifically by the Bridge Welding Code.

In § 625.4(c)(2) and (d)(1)(x), FHWA proposes to delete the reference to the *AASHTO Standard Specifications for Transportation Materials and Methods of Sampling and Testing* (described as “Transportation Materials” in the existing text). This AASHTO publication covers a broad range of material specifications and testing procedures. While these standards represent effective, nationally recognized practices, adherence to these standards is not mandatory in all circumstances. Removal of these standards from the incorporation by reference is meant to clarify that use of these standards is not a mandatory requirement as a design standard for highways covered in this part. Some of these material specifications and testing procedures remain individually incorporated by reference in other parts of this title.

In § 625.4(d)(1)(i), FHWA proposes to adopt the 2018 edition of the AASHTO *Policy on Geometric Design Highways and Streets* (Green Book), replacing the 2011 edition. The Green Book provides geometric design guidance based on established practices that are supplemented by recent research. The 2018 edition of the Green Book incorporates the latest research and current industry practices, and is primarily applicable to new construction and reconstruction projects. It emphasizes the need to utilize a flexible design approach to balance the needs of all users and modes of travel. It expands project context categories from two to five—adding rural town, suburban, and urban core to the previous contexts of urban and rural. It incorporates a performance-based approach for considering the effects of geometric design decisions. It better describes the various types of projects—new construction, reconstruction, and projects on existing roads where the basic road type is unchanged—and provides design flexibility for each

project type. This third project type is similar to what has historically been referred to as RRR projects. FHWA continues to use the term RRR in this part to be consistent with language in title 23 of the U.S. Code. Although AASHTO does not define the phrase “change in basic road type,” FHWA generally interprets this phrase to include projects that change the general geometric character of a highway, such as widening to provide additional through motor vehicle lanes, widening to add a raised or depressed median where none currently exists, and projects that substantially modify horizontal or vertical alignments. Road changes that are accomplished with no, or only minimal, widening, such as lane reconfigurations (road diets), adding turn lanes, adding channelizing islands, or adding median curbs for access management are not considered a “change in the basic road type.” In addition, for the purposes of determining geometric design criteria when applying the 2018 Green Book, full-depth pavement replacement projects that retain existing geometrics are not considered a “change in the basic road type.” Under a performance-based design approach, the scope of geometric improvements for projects on existing roads that retain the existing basic road type should be driven by past safety and operational performance and predicted future performance. Consistent with 23 U.S.C. 109(n), RRR projects must preserve and extend the service life of the existing road and enhance highway safety.

In § 625.4(d)(1)(vi), FHWA proposes to add the 2018 Interim Revisions to the AASHTO *LRFD Movable Highway Bridge Design* Specifications. These standards are applicable to the design of bridge spans, mechanical systems (motors, hydraulics, etc.), electrical systems, and bridge protection systems for movable highway bridges. Changes in the 2018 Interim Revisions reflect the latest research, developments, and specifications promulgated by AASHTO and includes important updates to the provisions for the mechanical and structural design requirements for span lock devices.

In § 625.4(d)(1)(vii)(A), FHWA proposes to delete the 2018 Interim Revisions to the AASHTO/AWS D1.5M/D1.5: 2015-AMD1, *Bridge Welding Code*. This interim revision was provided by AASHTO to owners and fabricators for informational purposes only to alert them to proposed revisions to the AASHTO/AWS D1.5M/D1.5:2015 Bridge Welding Code. AASHTO will not officially revise the Bridge Welding Code until they have gone through the complete AWS consensus review and approval process and final changes are incorporated into the next published edition of the AASHTO/AWS D1.5M/D1.5 Bridge Welding Code. FHWA proposes to allow the use of the interim revisions, but not to adopt them as a minimum design standard.

In § 625.4(d)(1)(viii), FHWA proposes to add the 2019 and 2020 Interim Revisions to the AASHTO *Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals*. In § 625.4(d)(1)(ix), FHWA proposes to add the 2019 and 2020 Interim Revisions to the AASHTO *LRFD Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals*. These standards are applicable to the structural design of supports for highway signs, luminaires, and traffic signals. They are intended to serve as a standard and guide for the design, fabrication, and erection of these types of supports. Changes in the 2019 and 2020 Interim Revisions to both publications reflect the latest research, developments, and specifications promulgated by AASHTO and address items such as providing updated dimensional and detailing requirements for certain support connections to control fatigue and providing updated requirements on the testing of welds in certain connections.

Use of the updated standards will be required for all NHS projects authorized to proceed with design activities on or after 1 year following the effective date of the final rule, unless an extension is granted for unique or extenuating circumstances.

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, FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons may be interested in continuing to examine the docket for new material. A final rule may be published at any time after close of the comment period and after FHWA has had the opportunity to review the comments submitted.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FHWA has determined preliminarily that this action does not constitute a significant regulatory action within the meaning of Executive Order (EO) 12866 or within the meaning of DOT's regulatory policies and procedures. This action complies with EOs 12866, 13563, and 13771 to improve regulation. The proposed amendments would allow the development of RRR procedures or design criteria for projects on freeways and update several industry design standards and standard specifications adopted and incorporated by reference under 23 CFR part 625 and would remove the corresponding outdated or superseded versions of these standards and specifications.

After evaluating the costs and benefits of these proposed amendments, FHWA does not have the data to quantify anticipated cost savings but anticipates that the economic impact of this rulemaking would be minimal. Based on project data captured in FHWA's Fiscal Management Information System (FMIS) from October 2014 to September 2018, an average of 2,379 Interstate and freeway projects (totaling \$86 billion) on the NHS were authorized for construction each year. Of those projects, an

average of 261 projects per year were coded by the States as being reconstruction projects with no added capacity (FMIS Improvement Code 04) and 424 projects per year were coded as being restoration and rehabilitation projects (FMIS Improvement Code 06). Under this proposal, we estimate that all projects in both categories, an average of 685 projects (totaling \$18.5 billion) per year, would be eligible to be designed to State-specific RRR standards, rather than to new construction standards as currently required. However, existing regulations allow for States to seek design exceptions when the standards cannot be met. FHWA recognizes that, on many existing freeways, it is often not possible to widen the roadway and flatten curves to meet new construction standards due to context-specific considerations. Absent existing or anticipated safety or operational problems, FHWA expects that State DOTs generally pursue design exceptions to make the best use of limited resources.

FHWA does not have data to determine how many of the 685 projects per year do not meet the new construction standard through the implementation of design exceptions, nor does FHWA have data to demonstrate how many hours State DOTs spend developing design exception requests on freeway projects undertaken to perform RRR-type work (FMIS Improvement Codes 04 and 06). FHWA requests that State DOTs provide comments to the docket if they have any data that would be relevant to this analysis. Specifically, FHWA seeks data on (1) the percentage of RRR-type freeway projects developed by State DOTs that utilized a design exception because the project could not meet a new construction standard, (2) the average number of employee hours spent developing, reviewing, and approving each design exception, (3) the average hourly compensation of employees involved with these design exception activities, (4) reasons for requesting exceptions (operational, safety, resource constraint, innovation, etc.), and (5) cost savings associated with the proposed design exception.

Most State DOTs already have staff dedicated to developing RRR standards for non-freeway projects, and any additional staff time needed to develop RRR standards for freeways is anticipated to be minimal. The National Cooperative Highway Research Program recently released a pre-publication version of Research Report 876 entitled “Guidelines for Integrating Safety and Cost-Effectiveness into Resurfacing, Restoration, and Rehabilitation (3R) Projects,” which provides guidance and assistance to States for developing these standards. See <http://www.trb.org/NCHRP/Blurbs/177914.aspx>. Under this proposal, the resulting design of the freeway project is anticipated to be the same, but FHWA expects that net cost savings will be realized by allowing the States to develop their own standards and eliminate the need for many design exceptions.

FHWA does not anticipate any cost or safety impacts due to removing the *AASHTO Standard Specifications for Transportation Materials and Methods of Sampling and Testing* and the 2018 Interim Revisions to the AASHTO/AWS D1.5M/D1.5: 2015-AMD1, *Bridge Welding Code* from the list of standards incorporated by reference. Nor does FHWA anticipate any cost or safety impacts due to incorporating by reference the AWS D1.1/D1.1M: Structural Welding Code – Steel, as most States are already using this standard for the welding of miscellaneous structural steel items. FHWA anticipates that the economic impact of updating several industry design standards and standard specifications adopted and incorporated by reference would be minimal. These updated standards and specifications represent the most recent refinements that professional organizations have formally accepted and are widely used for projects off the NHS.

For these reasons, FHWA finds that the expected economic benefits of the proposed rule will outweigh the estimated costs of the proposed rule. The proposed changes are not anticipated to adversely affect, in any material way, any sector of the economy. In addition, these changes will 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. FHWA anticipates that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not necessary.

Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This proposed rule is not an EO 13771 regulatory action because it is not significant under EO 12866.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 601-612), FHWA has evaluated the effects of this proposed rule on small entities, such as local governments and businesses. Based on the evaluation, FHWA anticipates that this action would not have a significant economic impact on a substantial number of small entities. The proposed amendments would update several industry design standards and standard specifications adopted and incorporated by reference under 23 CFR part 625. FHWA believes the projected impact upon small entities that utilize Federal-aid highway program funding for the development of highway improvement projects on the NHS would be negligible. Therefore, FHWA certifies that the proposed action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

FHWA has determined that this NPRM would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). The actions proposed in this NPRM would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$155 million or more in any 1 year (when adjusted for inflation) in 2014 dollars for either State, local, and Tribal governments in the aggregate, or by the private sector. FHWA will publish a final analysis, including its response to public comments, when it publishes a final rule. In addition, the definition of "Federal Mandate" in the Unfunded Mandates

Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

FHWA has analyzed this proposed rule in accordance with the principles and criteria contained in EO 13132. FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. FHWA has also determined that this action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing EO 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. This EO applies because State and local governments would be directly affected by the proposed regulation, which is a condition on Federal highway funding. Local entities should refer to the Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction, for further information.

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. FHWA has determined that the proposed rule does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

FHWA has analyzed this proposed rule for the purposes of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*) and has determined that this action would not have any effect on the quality of the human and natural environment because it only would make technical changes and incorporate by reference the latest versions of design standards and standard specifications previously adopted and incorporated by reference under 23 CFR part 625 and would remove the corresponding outdated or superseded versions of these standards and specifications. The proposed rule qualifies as a categorical exclusion to NEPA under 23 CFR 771.117(c)(20).

Executive Order 13175 (Tribal Consultation)

FHWA has analyzed this proposed rule under EO 13175, 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. This proposed rule would not impose any direct compliance requirements on Indian Tribal governments nor would it have any economic or other impacts on the viability of Indian Tribes. Therefore, a Tribal summary impact statement is not required.

Regulation Identifier Number

A Regulation Identifier 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 the spring and fall of each year. The RIN number 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 625:

Design standards, Grant programs-transportation, Highways and roads, Incorporation by reference.

Issued under authority delegated in 49 CFR 1.85 on:

Nicole R. Nason,
Administrator,
Federal Highway Administration.

In consideration of the foregoing, FHWA proposes to amend 23 CFR part 625 as follows:

PART 625—DESIGN STANDARDS FOR HIGHWAYS

1. Revise the authority citation for part 625 to read as follows:

Authority: 23 U.S.C. 103, 109, 315, and 402; Sec. 1073 of Pub. L. 102-240, 105 Stat. 1914, 2012; Sec. 1404 of Pub. L. 114-94, 129 Stat. 1312; 49 CFR 1.85.

2. Amend § 625.2 by revising the first sentence of paragraph (b) to read as follows:

§ 625.2 Policy.

* * * * *

(b) Resurfacing, restoration, and rehabilitation (RRR) projects shall be constructed in accordance with standards that preserve and extend the service life of highways and enhance highway safety. * * *

* * * * *

3. Amend § 625.3 by:

- a. Revising paragraph (a)(1) introductory text and (a)(1)(ii) and (iii);
- b. Adding paragraphs (a)(1)(iv) and (a)(3) and (4); and
- c. Revising paragraphs (f)(1) and (2).

The revisions and additions read as follows:

§ 625.3 Application.

(a) * * *

(1) Design and construction standards for new construction, reconstruction, resurfacing (except for maintenance resurfacing), restoration, or rehabilitation of a highway on the NHS shall be those approved by the Secretary in cooperation with the State DOTs. These standards must consider, in addition to the criteria described in §625.2(a), the following:

* * * * *

(ii) The environmental, scenic, aesthetic, historic, community, and preservation impacts of the activity;

(iii) Cost savings by utilizing flexibility that exists in current design guidance and regulations; and

(iv) Access for other modes of transportation.

* * * * *

(3) Interstate highways located in Alaska and Puerto Rico shall be designed in accordance with such geometric and construction standards as are adequate for current and probable future traffic demands and the needs of the locality of the highway.

(4) A State may allow a local jurisdiction to design a project using a roadway design publication that is different from the roadway design publication used by the State in which the local jurisdiction resides if—

(i) The local jurisdiction is a direct recipient of Federal funds for the project;

(ii) The roadway design publication is adopted by the local jurisdiction and recognized by FHWA;

(iii) The design complies with all applicable Federal laws and regulations; and

(iv) The project is located on a roadway that is owned by the local jurisdiction and is not part of the Interstate system.

* * * * *

(f) * * *

(1) *Project exception.* (i) Approval within the delegated authority provided by FHWA Order M1100.1A may be given on a project basis to designs on the NHS which do not conform to the minimum criteria as set forth in the standards, policies, and standard specifications for:

(A) Experimental features on projects; and

(B) Projects where conditions warrant that exceptions be made.

(ii) The determination to approve a project design that does not conform to the minimum criteria is to be made only after due consideration is given to all project conditions such as maximum service and safety benefits for the dollar invested, compatibility with adjacent sections of roadway and the probable time before reconstruction of the section due to increased traffic demands or changed conditions.

(2) *Programmatic exception.* Approval within the delegated authority provided by FHWA Order M1100.1A may be given, on a programmatic basis, a more recent edition of any standard or specification incorporated by reference under §625.4(d).

4. Amend § 625.4 by;

a. Revising paragraphs (a)(1) and (3) and (b)(7);

b. Adding paragraph (b)(9);

c. Removing paragraph (c)(2) and redesignating paragraph (c)(3) as paragraph (c)(2);

d. Revising the last sentence in the paragraph (d) introductory text and paragraph (d)(1)(i);

e. Revising paragraphs (d)(1)(vi)(E) and (F) and adding paragraph (d)(1)(vi)(G);

f. Revising paragraphs (d)(1)(vii);

g. Revising paragraph (viii)(A) and adding paragraphs (d)(1)(viii)(B) and (C);

h. Revising paragraphs (d)(1)(ix)(A) and (B) and adding paragraphs (d)(1)(ix)(C) and (D);

i. Removing paragraph (d)(1)(x); and

j. Redesignating paragraph (d)(2)(i) as paragraph (d)(2)(ii), and adding new paragraph (d)(2)(i).

The revisions and additions read as follows:

§ 625.4 Standards, policies, and standard specifications.

(a) * * *

(1) A Policy on Geometric Design of Highways and Streets, AASHTO (paragraph (d) of this section).

* * * * *

(3) The geometric design standards for resurfacing, restoration, and rehabilitation (RRR) projects on NHS highways shall be the procedures or the design criteria established for individual projects, groups of projects, or all RRR projects in a State, and as approved by FHWA. The RRR design standards shall reflect the consideration of the traffic, safety, economic, physical, community, and environmental needs of the projects. If a State does not adopt design procedures or criteria for RRR projects as approved by FHWA, the standards listed in paragraphs (a)(1) and (2) of this section shall apply.

* * * * *

(b) * * *

(7) AASHTO Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, (paragraph (d) of this section); or AASHTO LRFD Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals (paragraph (d) of this section).

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(9) AWS D1.1/D1.1M Structural Welding Code – Steel (paragraph (d) of this section).

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(d) * * * For information on the availability of this material at NARA, email fedreg.legal@nara.gov or go to www.archives.gov/federal-register/cfr/ibr-locations.html.

(1) * * *

(i) A Policy on Geometric Design of Highways and Streets, 7th Edition, 2018.

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(vi) * * *

(E) Interim Revisions, 2014,

(F) Interim Revisions, 2015, and

(G) Interim Revisions, 2018.

(vii) AASHTO/AWS D1.5M/D1.5: 2015-AMD1, Bridge Welding Code,

Amendment: Second Printing December 12, 2016.

(viii) * * *

(A) AASHTO LTS-6-I1, 2015 Interim Revisions to Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, copyright 2014,

(B) AASHTO LTS-6-I2-OL, 2019 Interim Revisions to Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, copyright 2018, and

(C) AASHTO LTS-6-I3-OL, 2020 Interim Revisions to Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, copyright 2019.

(ix) * * *

(A) AASHTO LRFDLTS-1-I1-OL, 2017 Interim Revisions to LRFD Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, copyright 2016,

(B) AASHTO LRFDLTS-1-I2-OL, 2018 Interim Revisions to LRFD Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, copyright 2017,

(C) AASHTO LRFDLTS-1-I3-OL, 2019 Interim Revisions to LRFD Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, copyright 2018, and

(D) AASHTO LRFDLTS-1-I4-OL, 2020 Interim Revisions to LRFD Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, copyright 2019.

(2) * * *

(i) D1.1/D1.1M:2015 Structural Welding Code – Steel, Second printing, copyright 2016, and

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