



DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket no. FHWA-2023-0023]

National Bridge Inspection Program Compliance Review Manual

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

ACTION: Notice; request for comments.

SUMMARY: This notice requests comments on the Performance Year (PY) 2024 Interim National Bridge Inspection Program (NBIP) Compliance Review Manual outlining the procedures FHWA Division Bridge Engineers will follow during calendar year 2023 when performing compliance reviews of State department of transportation bridge safety inspection programs. The PY 2024 Interim NBIP Compliance Review Manual incorporates revised provisions of the National Bridge Inspection Standards (NBIS), which came into effect June 6, 2022. The FHWA will consider all comments received during the comment period in developing subsequent versions of the NBIP Compliance Review Manual. However, please note that the PY 2024 Interim NBIP Compliance Review Manual is currently in effect and will be utilized by FHWA Division Bridge Engineers for the calendar year 2023 reviews.

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

ADDRESSES:

To ensure that you do not duplicate your docket submissions, please submit all comments by only one of the following means:

- Federal eRulemaking Portal: Go to www.regulations.gov and follow the online

instructions for submitting comments.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.
- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366-9329.
- Instructions: You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to www.regulations.gov, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, contact Ms. Samantha Lubkin, Safety Inspection Team Leader, FHWA Office of Bridges and Structures, (202) 366-1575, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, or via email at samantha.lubkin@dot.gov. For legal questions, please contact Mr. William Winne, Attorney Advisor, FHWA Office of the Chief Counsel, (202) 366-1397, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, or via email at william.winne@dot.gov. Business hours for the FHWA 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

A copy of the PY 2024 Interim NBIP Compliance Review Manual is available for download and public inspection under the docket number noted above at the Federal eRulemaking portal at: www.regulations.gov. You may submit or retrieve comments online through the Federal eRulemaking portal at: www.regulations.gov. The Website 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 Website.

An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: www.federalregister.gov and the Government Printing Office's Webpage at: www.GovInfo.gov. Late comments will be considered to the extent practicable.

Background

For more than 45 years, FHWA has annually assessed each State's bridge inspection program to evaluate compliance with the NBIS as codified at 23 CFR 650, subpart C. Historically, the depth and scope of the reviews varied based upon FHWA's knowledge of the State's inspection program and the experience of FHWA staff. In 2009, the Office of Inspector General (OIG) issued an audit report National Bridge Inspection Program: Assessment of FHWA's Implementation of Data-Driven, Risk-Based Oversight¹ that summarized its review of FHWA oversight of the NBIP. One of the five OIG recommendations from this audit was for FHWA to develop and implement minimum requirements for a data-driven, risk-based process for Division Bridge Engineers to use for their annual NBIP compliance reviews. Senate Report 110-418² supported the OIG recommendations and the need for prompt action by FHWA. In addition, Conference Report 111-366,³ directed FHWA to improve its oversight of bridge safety and conditions.

In response to the OIG recommendations and congressional direction, FHWA developed a new systematic, data-driven, risk-based oversight process for monitoring State compliance with the NBIS. In 2010, FHWA initiated a pilot program using the new process in nine States. The FHWA made adjustments following the pilot in preparation

¹ Report MH-2009-013; Link to OIG Report

² Senate Report 110-418; Link to Report

³ House of Representatives Conference Report 111-366; Link to Report

for nationwide implementation in February 2011. After the nationwide implementation, in the fall of 2011, FHWA and the American Association of State Highway and Transportation Officials (AASHTO) established a joint task force to further identify possible modifications or improvements to the assessment process. As a first step, the joint task force gathered information from all States and interested Federal Agencies, including their input and feedback on the assessment process. The FHWA collected information from internal staff, and AASHTO gathered information from the States. The joint task force used the information collected to help identify and prioritize improvements to the process. The joint task force efforts resulted in FHWA implementing several improvements in April 2012.

Section 1111 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141, 126 Stat. 405) amended 23 U.S.C. 144(h)(3)(A)(i) to include provisions for the Secretary to establish, in consultation with the States, Federal Agencies, and interested and knowledgeable private organizations and individuals, procedures to conduct reviews of State compliance with the NBIS. The MAP-21 also amended 23 U.S.C. 144(h)(5) to establish a penalty for States determined to be in noncompliance with the NBIS.

The FHWA developed and implemented the current review process to evaluate a State's bridge inspection program for compliance with the NBIS prior to the requirements of MAP-21, section 1111. The development of the review process included consultation with stakeholders through the pilot project, the joint FHWA/AASHTO task force, as well as with individual States and Federal Agencies during the initial implementation of the process in 2011. The FHWA continued to use the risk-based, data-driven review process that was implemented in 2011 to evaluate State compliance with the NBIS as required by 23 U.S.C. 144(h)(4)(A).

On June 7, 2013, at 78 FR 34424, FHWA published a notice requesting comment on the process FHWA uses to conduct reviews of State compliance with the NBIS and the associated penalty process for findings of noncompliance. The FHWA responded to comments received and implemented the compliance review procedures and the penalty provisions in 23 U.S.C. 144(h)(5). The FHWA later documented the process in FHWA's NBIP Compliance Review Manual.

On May 6, 2022, at 87 FR 27396, FHWA published a final rule updating the NBIS regulations as required by MAP-21. The NBIS regulations were revised to address MAP-21 requirements, incorporate technological advancements, and address ambiguities identified since the last update of the NBIS. The rule became effective June 6, 2022. Most of the revised requirements were also effective on that date, but some provisions will become effective 24 months later, June 6, 2024. In addition, some provisions of the rule relating to data submissions in accordance with the Specifications for the National Bridge Inventory will not be able to be implemented until the States have the necessary data collection and management systems in place. The timeline for the data submissions in the new format is expected to commence with the States' March 2026 data submissions.

Under 23 U.S.C. 144(h), FHWA is required to revise the compliance review criteria to address the recent changes to the NBIS. The PY 2024 Interim NBIP Compliance Review Manual incorporates the revised provisions of the NBIS, 23 CFR part 650, subpart C, that are currently in effect. The PY 2024 Interim Compliance Review Manual designates new criteria and review procedures that will be evaluated for compliance in calendar year 2023 in a bold and underlined text format. A blue and italicized font is used to indicate criteria that will be assessed for compliance beginning in the PY 2025 reviews. The intent of including the PY 2025 information is to give the States a preview of next year's criteria to aid in the States' preparation. It is anticipated

that the NBIP Compliance Review Manual will need to be slightly modified in successive years to reflect changes resulting from full implementation of the updated NBIS and provisions that became effective after June 6, 2022.

The FHWA welcomes comments on the PY 2024 Interim NBIP Compliance Review Manual from any interested party, including Federal, State, and local agencies; industry groups; and the public. A copy of the PY 2024 Interim NBIP Compliance Review Manual is available for download and public inspection under the docket number noted above at the Federal eRulemaking portal at: www.regulations.gov. The FHWA requests that commenters cite the page number of the manual for which each specific comment to the docket is concerned, to help make the FHWA's docket comment review process more efficient. The FHWA will consider all comments received during the comment period in developing subsequent versions of the NBIP Compliance Review Manual. However, please note that the PY 2024 Interim NBIP Compliance Review Manual is currently in effect and will be utilized for calendar year 2023 reviews.

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