

Applicability: Model BAe 146 and Avro 146-RJ series airplanes, certificated in any category, as listed in BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21-155, dated February 15, 2002.

Compliance: Required as indicated, unless accomplished previously.

To prevent the installation of incorrect pressurization discharge valves and cabin pressure controllers, which could subject the airframe to excess stress and adversely affect the airframe fatigue life, accomplish the following:

Restatement of Certain Requirements of AD 2001-15-23

Part Identification

(a) As specified in paragraph (a)(1) or (a)(2) of this AD, as applicable: Identify the part numbers of the pressurization discharge valves and cabin pressure controllers to determine if any installed part is incorrect, as defined by and in accordance with BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21-148, Revision 1, dated February 6, 2001; or BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21-155, dated February 15, 2002. As of the effective date of this AD, only BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21-155 may be used.

(1) For airplanes post-Modification HCM50258A: Identify the part numbers within 30 days after September 10, 2001 (the effective date of AD 2001-15-23, amendment 39-12358); and, if any part is incorrect, limit the airplane ceiling to 31,000 feet until the incorrect part is replaced, as specified by paragraph (c) of this AD.

(2) For airplanes pre-Modification HCM50258A: Identify the part numbers within 6 months after September 10, 2001.

New Requirements of This AD

Part Identification

(b) For airplanes on which the requirements of BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21-148, dated Revision 1, dated February 6, 2001, were accomplished: At the times specified in paragraph (b)(1) or (b)(2) of this AD, as applicable, identify the part number of the cabin pressure controller calibrated in inches of mercury to determine if any installed part is incorrect, in accordance with the Accomplishment Instructions of BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21-155, dated February 15, 2002.

(1) For airplanes post-Modification HCM50258A: Identify the part numbers within 30 days after the effective date of this AD; and, if any part is incorrect, limit the airplane ceiling to 31,000 feet until the incorrect part is replaced as specified by paragraph (c) of this AD.

(2) For airplanes pre-Modification HCM50258A: Identify the part numbers within 6 months after the effective date of this AD.

Corrective Action

(c) For any incorrect part identified in accordance with paragraphs (a) or (b) of this

AD: Within 500 flight cycles after identification of the part number, replace the part with a new, correct part, in accordance with the Accomplishment Instructions of BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21-148, Revision 1, dated February 6, 2001; or BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21-155, dated February 15, 2002. As of the effective date of this AD, only BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21-155 may be used. After installation of a correct part, prior to further flight, do a structural inspection and accomplish any applicable corrective actions, in accordance with a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority (CAA) (or its delegated agent).

Credit for Accomplishment of Previous Actions

(d) Accomplishment of the actions specified in this AD in accordance with BAe Systems (Operations) Limited Inspection Service Bulletin ISB.21-148, dated November 17, 2000, is acceptable for compliance with the corresponding actions required by this AD.

Submission of Inspection Results and Parts Not Required

(e) Although the service bulletins referenced in this AD specify to submit information to the manufacturer, and to return certain parts to the part manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(f)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM-116, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously in accordance with AD 2001-15-23, amendment 39-12358, are approved as alternative methods of compliance with the applicable actions in this AD.

Note 1: The subject of this AD is addressed in British airworthiness directive 004-02-2002.

Issued in Renton, Washington, on June 9, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04-13916 Filed 6-18-04; 8:45 am]

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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 Program

AGENCY: Federal Highway Administration (FHWA), DOT.

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

SUMMARY: The FHWA is requesting comments on proposed revisions to its regulation governing the highway bridge replacement and rehabilitation program (HBRRP). This proposed action is necessary to incorporate program flexibility provided by the Intermodal Surface Transportation Efficiency Act of 1991 and the Transportation Equity Act for the 21st Century; incorporate FHWA policies implemented since inception of the HBRRP; provide further clarification of issues that have proven to be vague or ambiguous; and make the regulation easier to read and understand. The intent is to revise the regulation so that it better meets the need of State and local bridge owners while also meeting national goals for improving the condition of the Nation's bridges.

DATES: Comments must be received on or before August 20, 2004.

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>, or fax comments to (202) 493-2251. Alternatively, comments may be submitted via the Federal eRulemaking Portal at <http://www.regulations.gov> (follow the on-line instructions for submitting comments). 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. 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, Pages 19477-78) or you may visit <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Everett, Federal Highway Administration, Office of Bridge Technology, HIBT-30, 400 Seventh Street, SW., Washington, DC 20590-0001 or Mr. Robert Black, Office of the Chief Counsel, HCC-30, (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 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.archives.gov> and the Government Printing Office's Web page at: <http://www.access.gpo.gov/nara>.

Background

Section 204 of the Federal-aid Highway Act of 1970 (Public Law 91-605, 84 Stat. 1713, Dec. 31, 1970) established the Special Bridge Replacement Program (SBRP). Under this program codified in 23 U.S.C. 144, structurally inadequate or functionally obsolete bridges on the Federal-aid system were eligible for replacement or rehabilitation. Section 124 of the Surface Transportation Assistance Act of 1978 (Public Law 95-599, 92 Stat. 2689, 2702, Nov. 6, 1978) amended and retitled 23 U.S.C. 144, relative to the SBRP, to create the Highway Bridge Replacement and Rehabilitation Program (HBRRP). The HBRRP was applicable to on-system and off-system bridges. The purpose of the program was 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. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Public Law 102-240, 105 Stat. 1914, Dec. 18, 1991) and the Transportation Equity Act for the 21st Century (TEA-21) (Public Law 105-178, 112 Stat. 107 (1998)) provided considerable flexibility to the States with regard to the overall Federal-aid program.

The FHWA recognizes that the current regulation needs to be revised to incorporate and clarify past policies as well as accommodate the flexibility allowed by law to enable State and local governments to manage their bridge assets in the most effective manner. Accordingly, the FHWA published an advanced notice of proposed rulemaking (ANPRM) on September 26, 2001 (66 FR 49152), requesting public comments on the current regulation.

Discussion of Comments Received to the Advance Notice of Proposed Rulemaking (ANPRM)

On September 26, 2001 (66 FR 49152), the FHWA published an ANPRM to solicit comments on whether to revise the HBRRP regulation. Forty-one sets of comments were submitted to the docket representing 31 State Departments of Transportation, 1 Federal agency, 3 counties, 1 private citizen, 2 trade associations and 1 public interest group. In summary, the majority of the commenters believed the HBRRP regulation should be revised.

The FHWA posed eight questions in the ANPRM. A general discussion of the questions and docket comments is provided in the next few paragraphs. A detailed discussion of comments is provided in the Section-by-Section Analysis.

The first two questions dealt with the definition of major reconstruction and rehabilitation. Currently, a bridge is eligible for HBRRP funding if it is undergoing major reconstruction. Although "major reconstruction" is not specifically defined in 23 CFR part 650, it is interpreted to mean rehabilitation or replacement as defined under 23 CFR 650.405(b). In the ANPRM, the FHWA solicited suggestions for modifications to the definitions. The majority of commenters recommended either the addition of preventive maintenance to

the reconstruction definition or inclusion of the term as a stand-alone definition in 23 CFR part 650. Several commenters identified specific activities that they would like to see eligible for funding under the HBRRP regardless of a bridge's eligibility status. These comments will be summarized in the response to question 5 under this heading.

The third question requested suggestions for increased flexibility within the regulation that would improve the effectiveness of the bridge program. In general, the majority of commenters encouraged the FHWA to expand the types of eligible work activities and/or allow bridge owners greater latitude in the selection of work activities and associated bridges.

The fourth question asked if there should be national consistency on the appropriate standard(s) to be followed on all bridges that are not dependent upon highway classification.

Commenters were divided on this issue. Question five provided a list of activities that are not currently considered eligible for HBRRP funding, and asked if the definition of major reconstruction should be adjusted to include some or all of the listed items. The majority of commenters provided specific recommendations for items that should be considered eligible for funding. In addition, many commenters offered additional suggestions for eligible work activities, either in response to question five or one of the previous questions.

The ANPRM did not include a question six.

With respect to question seven regarding use of the sufficiency rating for establishing eligibility and priority for HBRRP funding, comments ranged from supporting continued use of the sufficiency rating and revising the current sufficiency rating formula, to the need for an alternate process.

The eighth question related to the current process of using three-year averages of bridge construction unit costs for determining apportionment factors. The FHWA also requested ideas for improving the accuracy of the unit cost data. A few commenters supported the current process while others identified weaknesses in the process. Eighteen commenters did not provide a specific response to this question.

The ninth question requested suggestions for modifications, as deemed necessary, to current § 650.411 provisions. Section 650.411 outlines the procedures for bridge replacement and rehabilitation projects. Nearly half of the commenters recommended no change to the current procedures. Eleven

commenters did not provide a specific response to this question.

Summary of the Proposed Revisions to the HBRRP

The proposed revisions to the HBRRP are based in part on comments received to ANPRM. The FHWA proposes to change the name of the program under Subpart D from Highway Bridge Replacement and Rehabilitation Program to Highway Bridge Program. By removing the terms replacement and rehabilitation from the title, the proposed name change recognizes the importance and benefits of preventive maintenance activities that are identified and undertaken on a systematic basis. The title change also reflects the inclusion of other activities that are eligible for funding under this program in addition to replacement and rehabilitation. The Highway Bridge Program title is more general and thus inclusive of many eligible activities, such as the funding of bridge inspection programs, which do not specifically fall under rehabilitation or replacement.

We have proposed to add several definitions to address ambiguous areas in the current regulation as well as to describe terminology used in the proposed changes. The FHWA proposes to clarify existing program procedures and add flexibility to the regulation by incorporating alternative program procedures for selecting eligible work activities based on the use of a bridge management system. The FHWA also proposes to clarify the types of eligible and ineligible work. The proposed regulation also eliminates language that simply repeats provisions of 23 U.S.C. 144, Highway Bridge Replacement and Rehabilitation Program.

Section-by-Section Discussion of the Proposals

Proposed Section 650.401 Purpose

The FHWA proposes to change the name of the program from "Highway Bridge Replacement and Rehabilitation Program" to "Highway Bridge Program." This change would recognize the importance and benefits of preventive maintenance activities that are identified and undertaken on a systematic basis. The title change would also reflect the inclusion of other activities that are eligible for funding under this program in addition to replacement and rehabilitation.

Proposed Section 650.403 Definitions

The Michigan, New Jersey, Delaware, Wyoming, Arkansas, New York, Utah, and Alcona County DOT (Michigan) commenters believe that the current

definition of major reconstruction is adequate. The FHWA proposes to leave the definitions of replacement and rehabilitation essentially unchanged and to add a separate definition for preventive maintenance. However, to address a comment from Iowa, the FHWA proposes to modify the rehabilitation definition by adding a sentence that provides example categories of major safety defects. This proposed change would address comments by both the Bureau of Indian Affairs and the New Hampshire DOT that recommended including bridge widening in the definition of rehabilitation.

Furthermore, the FHWA proposes that the definition for rehabilitation be expanded to include "the major work required to extend the useful life of bridge." This addition should address the opinions of twenty-two commenters who indicated they would like to see preventive maintenance activities added to the major reconstruction definition. This expanded definition would also address the comment of the Florida DOT that the installation of cathodic protection systems be included in the definition of rehabilitation.

Several commenters also indicated that they would prefer to see preventive maintenance added as a separate category rather than incorporating it into the definition of major reconstruction. These comments are also addressed through the proposed change that would allow preventive maintenance activities identified through an approved systematic process to be an eligible activity on all highway bridges. In addition, further flexibility would be permitted under the Alternate Program described in proposed § 650.411.

The FHWA proposes to add definitions for the following terms in order to address past ambiguities and explain terms related to the alternate program procedures proposed in § 650.411: approved, eligible highway bridge, Federal-aid highways, bridge management system, bridge performance goals, bridge performance plan, preventive maintenance, safety improvements, and systematic process.

Proposed Section 650.405 Eligible and Ineligible Activities

The FHWA proposes to change the section title from "Eligible projects" to "Eligible and Ineligible Activities." The proposed title distinguishes between projects and activities. "Project" is defined in 23 CFR 1.2 for undertaking highway construction work or activities to carry out the provisions of Federal law for administration of Federal aid for

highways. Section 106 of title 23, U.S.C., requires the States to enter into an agreement with FHWA for each Federal-aid highway project. This formal agreement defines the scope of work and project related commitments and constitutes the Federal obligation to pay its share of the project costs. Although "activity" is a broad term relative to Federal-aid projects, for the purpose of this rulemaking, it describes the types of work eligible for Federal participation under this program. Federal participation in these activities is limited to costs directly attributable and properly allocable to specific projects. The FHWA proposes to focus on eligible and ineligible activities within the regulation.

As discussed in the "*Proposed Section 650.403 Definitions*," twenty-two commenters indicated that they would like to see preventive maintenance activities added to the major reconstruction definition. Therefore, the FHWA proposes to expand the definition for "rehabilitation" to include "the major work required to extend the useful life of a bridge." In addition, the FHWA proposes to allow for "preventive maintenance activities identified through an approved systematic process" to be eligible on all highway bridges on public roads. This would also be available in proposed § 650.407.

Seventeen commenters encouraged the FHWA to expand the types of eligible work activities and/or allow bridge owners greater flexibility in the selection of work activities and associated bridges. This proposed section, along with proposed § 650.407, does address these comments by proposing to expand the list of activities that may be eligible for funding under the Highway Bridge Program as well as proposing to expand the list of bridges on which many of these activities may be performed.

Several commenters identified specific activities that they would like to see eligible for funding under the HBRRP regardless of a bridge's eligibility status. For example, twenty-three commenters were in favor of including safety feature replacement or upgrading and twenty-two commenters were in favor of including emergency repair to restore structural integrity following an accident.

With respect to use of HBRRP funds for emergency related work activities, the Bureau of Indian Affairs recommended that eligibility be limited to those emergencies that are not covered by Federal Emergency Relief funding.

Twenty-one commenters were in favor of including bridge deck overlays. The Maine, Oregon, South Dakota, Colorado, and Kansas DOT's stated that they were in favor of protective or structural overlays only.

Seventeen commenters were in favor of including retrofitting to correct deficiencies, without significantly altering physical geometry or increasing load capacity.

Seventeen commenters were in favor of including work performed to keep a bridge operational while plans for complete rehabilitation or replacement are under preparation.

The majority of commenters were either opposed to, or silent on, the inclusion of utility work and the cost of long approach fills, causeways, connecting roadways, interchanges, ramps, and other extensive earth structures.

The Arizona, California, Connecticut, Alaska, New York, and Washington DOT's, along with a private citizen, would like installation of scour countermeasures added as an eligible activity for all bridges.

The Arizona, California, New York, and Oregon DOT's, along with a private citizen, would like seismic retrofit added as an eligible activity for all bridges.

The Delaware, Washington, California, New York, Iowa, and Oregon DOT's would like painting added as an eligible activity for all bridges.

The Bureau of Indian Affairs, New Jersey DOT, and Anderson County in South Carolina recommended considering any work activity that protects the structural integrity of a bridge as eligible for funding under the HBRRP.

The Oregon DOT recommended that historic non-deficient structures be considered eligible for HBRRP funding.

The New York DOT recommended retrofit of fatigue prone details as an eligible activity for all bridges.

The Wyoming DOT recommended that the work required to accommodate traffic during construction be considered eligible for HBRRP funding.

In response to these suggestions, the FHWA proposes to provide a list of eligible work activities. The list would include many of the activities recommended by the commenters such as installation of scour countermeasures, seismic retrofit, preventive maintenance activities identified through an approved systematic process, and safety improvements on all bridges on public roads. Application of these activities to specific bridges is addressed in proposed §§ 650.407 and 650.411. The

inclusion of preventive maintenance as an eligible activity and the proposed alternative approach in § 650.411 would give the States the flexibility to perform safety and preventive maintenance activities on bridges identified through a systematic process, as part of a rehabilitation project, or in their bridge management system (BMS). All bridges, including historic bridges, would be eligible for preventive maintenance activities; additional flexibility may be available under the proposed alternate program.

Similarly, the FHWA proposes to address ineligible work activities in § 650.405(b). The FHWA concurs with the commenters who indicated that the cost of utility work and long approach fills, causeways, connecting roadways, interchanges, ramps, and other extensive earth structures, when constructed beyond attainable touchdown points, should be considered ineligible for HBRRP funding. Twenty-two commenters expressed a concern favoring the inclusion of emergency structural repairs as an eligible HBR activity following accidental damage to a bridge. Federal funds may participate in emergency situations with Emergency Relief funds following a declared emergency¹ or through the force account provisions² available in 23 CFR 635.204, as applicable, but these provisions do not lend themselves to the lesser emergencies resulting from typical accidental bridge damage. The use of Federal highway funding implies that a Federal-aid construction project is developed including planning, programming, environmental clearance, and competitive bidding, which is a lengthy process not suitable for most emergency work. This process is abbreviated only as specified in the regulations cited above and for this reason leaves most emergency work as the responsibility of the bridge owner.

The FHWA does not agree with the seventeen entities that recommended that work performed to keep a bridge operational while plans for rehabilitation or replacement are being prepared should be an eligible HBP activity. Funds available under this Highway Bridge Program should focus on the removal of deficiencies, or on activities that prevent future

deficiencies, rather than on temporary measures that do not completely address bridge deficiencies. This position does not eliminate the eligibility of work planned as an initial stage of construction or work performed as preventive maintenance through a Federal-aid construction project.

Proposed Section 650.407 Applicability

There were no specific comments on this topic.

The FHWA proposes to change the section title from "Application for bridge replacement or rehabilitation" to "Applicability" to address changes in other sections of the regulation.

The FHWA proposes to relocate and revise, or delete information contained in the current § 650.407. Specifically, we propose to revise and relocate paragraphs (a) and (b) to proposed § 650.409, Program procedures and requirements. The proposed revisions will be discussed later. We propose to remove paragraph (c) because it is a repeat of a requirement in 23 CFR 650, Subpart C, National Bridge Inspection Standards.

In proposed § 650.407, the FHWA intends to clarify the bridges on which the work activities described in proposed § 650.405 may be undertaken. A distinction would be made between activities that may be performed on all bridges on public roads versus eligible highway bridges on public roads. The FHWA proposes a definition of an "eligible highway bridge" for inclusion in § 650.403.

Proposed Section 650.409 Program Procedures and Requirements

The FHWA proposes to change the section title from "Evaluation of bridge inventory" to "Program procedures and requirements." The proposed section would combine provisions from the current §§ 650.407, 650.409, and 650.411 into an orderly format that follows the project development process.

As stated in the current regulation, the FHWA has used a sufficiency rating as a basis for establishing eligibility and priority for replacement or rehabilitation of bridges; in general, the lower the rating, the higher the priority. The formula for calculating the sufficiency rating was established by the FHWA, through consultation with the American Association of State Highway Transportation Officials (AASHTO), shortly after passage of the Federal-aid Highway Act of 1970. The formula provides a composite rating based on bridge data collected and reported in accordance with the "Recording and

¹ See 23 U.S.C. 120 and 125.

² Force account means the direct performance of highway construction work by a State, county, railroad, or public utility company by use of labor, equipment, materials and supplies furnished by them and used under their direct control. Under the emergency provisions of 23 CFR 635.204, the FHWA may approve a federally financed highway construction project by the force account methods.

Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges", Report No. FHWA-PD-96-001.³ Four separate factors are used to obtain an overall numeric value, ranging from 0 to 100, which is indicative of bridge sufficiency to remain in service. The four factors considered are structural adequacy and safety, serviceability and functional obsolescence, essentiality for public use, and special reductions for items such as detour length and substandard safety features. The formula does not appear in regulations; however, it is published in appendix B of the "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges". Only minor modifications have been made to the formula since its inception.

Twelve commenters recommended no change to the use of a sufficiency rating; however, seven of these commenters noted weaknesses or limitations in the current process such as incorrect parameters in the sufficiency rating formula and that the current process is good for identifying replacement needs, but not rehabilitation or preventive maintenance.

The North Dakota, Massachusetts, and Oregon DOTs noted that they do not currently use the sufficiency rating for prioritization of bridges.

Ten commenters indicated that the use of a sufficiency rating was acceptable for eligibility and/or apportionment determinations; however, individual States should have the flexibility to prioritize their work on all bridges.

Twenty-three commenters recommended significant changes to the current process, or alternate processes for determining eligibility and priorities.

The FHWA recognizes that the sufficiency rating is a suitable and effective means for determining eligibility and an initial prioritization of needs for many bridge owners. The FHWA also recognizes that through the implementation and advancement of bridge management systems, many bridge owners now have improved processes for evaluating bridge needs and prioritizing those needs. Accordingly, the FHWA is proposing to offer more flexibility to determine bridge eligibility as follows:

1. Bridge owners can continue to use the selection list for their bridge replacement and rehabilitation program with provisions that allow painting,

seismic retrofit, installation of scour countermeasures, and application of anti-icing and de-icing technology on all bridges. They can further enhance this program to perform safety and preventive maintenance activities identified through approved systematic processes.

2. Bridge owners can employ an approved Bridge Management System to determine eligible projects and activities on all bridges.

Regardless of the option the bridge owner selects, Federal-aid projects and activities must ultimately be programmed through the intermodal statewide transportation planning process outlined in 23 CFR 450, subpart B. This process involves the development of a statewide transportation improvement program that defines a staged, multi-year, intermodal program of transportation projects.

It is our intent that approvals of systematic processes would include the development of goals and measures for the types of activities included in the systematic process and annual reports on progress. Owners that choose the BMS approach will develop goals and measures for their entire bridge inventory covered under their BMS and report annually to the FHWA on their progress. The FHWA proposes to retain the sufficiency rating and the method of distributing HBRRP funds for the new HBP program. Since the sufficiency rating formula is not part of the regulation, comments regarding weaknesses in the current formula can be considered and addressed by the FHWA without requiring a change in the regulation.

Currently, the FHWA uses three-year averages of bridge construction unit costs for determining apportionment factors. Eighteen commenters did not comment on this process. The Delaware, California, Oregon, South Dakota, Missouri, Kansas, and Oklahoma DOTs, along with the commenter from Alcona County, Michigan, indicated that the current process was acceptable.

The New Jersey, Wyoming, Alaska, New Hampshire, and New York DOTs, as well as the American Road and Transportation Builders Association (ARTBA) commenter, indicated that the current unit cost does not adequately consider other significant project costs such as mobilization and environmental mitigation.

Commenters from Arizona and Nevada DOTs indicated that the unit cost process did not affect them since they received minimum allocations. Several commenters offered alternate

methods for determining apportionment factors.

On an annual basis, the FHWA issues, via a Memorandum from our Headquarters Office of Bridge Technology, a call for the collection of bridge construction unit cost data. The memorandum includes specific instructions for reporting the data. The most recent call was issued on December 30, 2003.⁴ The FHWA proposes to continue the annual collection of bridge construction unit cost data and use this data for the determination of apportionment factors. The process has been well understood and used for a number of years and there is no compelling reason to change at this time. Comments regarding weaknesses in the current calculation can be considered and addressed by the FHWA without requiring a change in the regulation.

Seventeen commenters stated that the current procedures for evaluation of the bridge inventory, as described in § 650.411, should not be changed. The North Dakota, Delaware, Kansas, and Washington DOTs recommended that the FHWA provide additional flexibility in project type and selection.

Two county commenters, Alcona in Michigan and Siskiyou in South Carolina, recommended that the FHWA streamline the environmental review process. Alcona County, Michigan, and the National Association of County Engineers requested additional flexibility in the selection of design guidelines. The Alaska DOT asked that National Bridge Inventory data be accepted in English units of measure. The Utah DOT would like to see responsibility for ensuring future maintenance as described in § 650.411(c)(1) shifted to the local governments since the State has no authority over requiring the local governments to maintain their bridges.

Seventeen commenters were opposed to establishing national standards that are not dependent upon highway classification. Ten commenters were in favor of national standards. Of these ten, Alcona County, Oklahoma, Illinois, and the National Association of County Engineers were in favor of a national standard for determining eligibility, but not for design purposes.

The FHWA agrees with the majority of commenters who were not in favor of requiring national consistency on appropriate standards that are not dependent upon highway classification. The FHWA proposes to retain the

³ This document is available at: <http://www.fhwa.dot.gov/bridge/mtguide.pdf> and may be inspected and copied as prescribed at 49 CFR part 7.

⁴ The most recent memorandum requesting this information is available at the following URL: <http://www.fhwa.dot.gov/bridge/123003.htm>.

requirement that all bridge program activities must conform to 23 CFR 625, Design Standards for Highways. States that choose to perform safety improvements or preventive maintenance activities are encouraged to work with the FHWA Division Administrator in their State to determine the applicability of the design standards in 23 CFR 625 to those activities as discussed in § 625.3(e).

Currently, 23 CFR 650.407(a) requires Federal agencies to submit their bridge inspection data to the appropriate State agency for review and processing. On January 4, 1995, the FHWA issued a policy memorandum⁵ enabling Federal agencies to annually submit their data directly to the FHWA. The purpose of this change was to ensure timeliness and uniformity in data submission. The data is processed into the National Bridge Inventory by FHWA and is uniquely identified as data for bridges owned by Federal agencies. After processing, a copy of each State's portion of this data is extracted and sent through organizational channels to the various State highway agencies, thereby enabling the States to comply with the National Bridge Inspection Standards of 23 CFR 650 while also relieving them of the obligation of collecting and submitting data from various Federal agencies. The FHWA proposes to change the wording in the regulation to reflect the direction outlined in the January 4, 1995 memorandum.

Proposed Section 650.411 Alternate Program

Seventeen commenters encouraged the FHWA to expand the types of eligible work activities and/or allow bridge owners greater flexibility in the selection of work activities and associated bridges.

The Delaware, North Carolina, Pennsylvania, Alaska, South Carolina, Colorado, Kansas, Oklahoma, and Florida DOTs specifically recommended that bridge owners be allowed to select bridges and work activities based on output from their bridge management systems.

The Advocates for Highway and Auto Safety (AHAS) noted that the HBRRP has worked well and should not be changed to allow for the diversion of HBRRP funds, which are intended for rehabilitation and reconstruction, to routine maintenance activities.

The American Road and Transportation Builders Association

(ARTBA) noted that significant changes to the HBRRP regulation that could affect funding levels should not be undertaken; however, ARTBA is in favor of changes that provide the States more flexibility in the selection of bridges for funding.

The FHWA recognizes that the effective use of a comprehensive bridge management system necessitates flexibility in the selection of work activities and associated bridges. Furthermore, the use of bridge management systems has increased over the past decade, and computer bridge management tools have seen significant improvements in functionality and modeling capabilities. In recognition of these technological and program management advances, as well as the strong desire of bridge owners for increased flexibility, the FHWA proposes to add an alternate planning and programming approach to the regulation. Proposed § 650.411 Alternate Program would allow those States with an approved BMS and bridge performance goals to use Federal bridge program funds for the type of work activities identified in proposed § 650.405(a) on all public road highway bridges that are included in the BMS, regardless of a bridge's eligibility status. Use of the alternate approach requires development and periodic review of a bridge performance plan, outlining performance goals and measures that demonstrate an overall reduction in bridge deficiencies. The FHWA will identify key attributes of a BMS and bridge performance plan that will serve as guidance for approval of these items by FHWA Division Administrators.

The FHWA does not consider this flexibility to be a diversion of funds from reconstruction and rehabilitation, but rather a more effective use of limited funds. The primary goal of the program is still to ensure that bridges most in need of repair or replacement receive priority. The FHWA recognizes and acknowledges the advantages offered by prioritizing needs and selecting work activities through an effective and systematic BMS as currently employed in several States. Comprehensive bridge management systems have proven effective for evaluating the long-term effects of programming decisions as well as maintaining safe condition levels on all bridges. Additionally, the FHWA recognizes that the identification and implementation of cost-effective preventive maintenance activities on a systematic basis is critically important to protect our investment and reduce future major reconstruction and replacement needs.

In summary, we are proposing several changes that recognize that importance of preserving our bridge inventory while still ensuring a safe condition level through replacement and rehabilitation of those bridges that have become deficient. We are proposing to incorporate additional flexibility in the selection of activities and bridges by the owners to take advantage of improved cost-effective decision-making tools. Finally, we have proposed several revisions that serve to clarify terms and policies that have been ambiguous in the past.

Related Rulemakings and Notices

The FHWA is in the process of reviewing 23 CFR 650, Subpart C, National Bridge Inspection Standards (NBIS), and published a notice of proposed rulemaking for the NBIS on September 9, 2003, at 68 FR 53063.

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. A final rule may be published at any time after close of the comment period.

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

The FHWA has determined preliminarily that this action would not be a significant regulatory action within the meaning of Executive Order 12866 and would not be significant within the meaning of the U.S. Department of Transportation regulatory policies and procedures. The proposed regulatory changes increase the decision-making flexibility of the States and extend eligibility to include activities that preserve bridges and prevent further deterioration, thereby extending the useful service life of existing bridges. While the proposed changes have the potential to change the number of bridges eligible for funding under the program, the method for distributing total program funds remains the same. Accordingly, it is anticipated that the economic impact of this rulemaking would be minimal.

⁵ This memorandum, subject "Federal Bridges in the National Bridge Inventory," is available at the following URL: <http://www.fhwa.dot.gov/bridge/010495.htm>.

These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, 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 this proposed action on small entities. These proposed changes are primarily directed at States, which are not considered small entities for the purposes of the Regulatory Flexibility Act. Therefore, the FHWA is able to preliminarily certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FHWA welcomes comments on this analysis.

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, March 22, 1995, 109 Stat. 48). This proposed rule will 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). Additionally, 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 12988 (Civil Justice Reform)

This proposed 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 proposal under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed 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 proposal will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this proposed action would not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. The FHWA has also determined that this proposed action would 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 proposal under Executive Order 13175, dated November 6, 2000. The FHWA believes that this 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, a tribal summary impact statement 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. Accordingly, the FHWA solicits comment on this issue.

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 regulation described in this notice of proposed rulemaking would enable bridge owning agencies to select eligible structures for Highway Bridge Program funds by either using the current processes or an alternative process based on bridge management system approaches. The current process is based on a currently OMB approved information collection, Structure

Inventory and Appraisal (SI&A) Sheet, OMB control number 2125–0501 scheduled to expire on July 31, 2004.

If a bridge owning agency chooses to use the proposed alternative process, reports would be required to document the agency’s goals and assess its performance toward achieving the goals. The FHWA intends to request OMB approval under the PRA of the information collection associated with the alternative process proposed in this NPRM. The information required under the proposed alternative process would fall under a new information collection that the FHWA intends to request approval of this new collection from OMB.

A paperwork reduction act submission has been completed for the collection associated with the proposed alternate process collection and will be submitted to OMB. Primary affected public agencies include State, local or Tribal governments with secondary application to Federal agencies. The number of respondents is expected to be below 52 with a total of 208 burden hours annually for these agencies. Costs would be constrained to annualized Operation and Maintenance Costs estimated at \$10,400 or less nationally, depending on the number of agencies electing to use the alternative program. Recordkeeping would be required for programming planning and management and for program evaluation and would be required annually. Statistical methods would not be required and all information could be submitted in electronic form. Moreover, information would be submitted in the format chosen by the bridge owning agency.

Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) Whether the collection of information would be necessary for the performance of the functions of the FHWA, including whether the information would have practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collection of information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this proposed action would not have any effect on the quality of the environment.

Executive Order 13211 (Energy Effects)

We have analyzed this proposed rule 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 although it is not a significant regulatory action under Executive Order 12866 and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a statement of energy effects under Executive Order 13211.

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, Reporting and recordkeeping requirements.

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

Issued on: June 14, 2004.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend, title 23, Code of Federal Regulations, part 650, subpart D, as set forth below:

PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS

1. Revise the authority citation for part 650 to read as follows:

Authority: 23 U.S.C. 109(a) and (h), 116(d), 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. Revise subpart D to read as follows:

Subpart D—Highway Bridge Program

Sec.

650.401 Purpose.

650.403 Definitions.

650.405 Eligible and ineligible activities.

650.407 Applicability.

650.409 Program procedures and requirements.

650.411 Alternate Program.

§ 650.401 Purpose.

The purpose of this subpart is to prescribe policies and outline procedures for administering the Highway Bridge Program (HBP) in accordance with 23 U.S.C. 144.

§ 650.403 Definitions.

Terms used in this regulation are defined as follows:

Approved. As used in this regulation, the term “approved” means the FHWA acceptance of the specified document, bridge management system, or systematic process proposed by the State.

Bridge. A structure, including supports, erected over a depression or an obstruction, such as water, a highway, or a railway, having a track or passageway for carrying vehicular traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of the openings for multiple boxes; it may also include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening.

Bridge Management System (BMS). A systematic process, approved by FHWA, used for analyzing bridge data to make forecasts and recommendations, and to provide the means by which bridge maintenance, rehabilitation, and replacement programs and policies may be efficiently considered as outlined in 23 CFR 500.107.

Bridge performance goals. Established target goals that define the performance level at which the State intends to maintain its bridges.

Bridge performance plan. A document, prepared by the State for approval by FHWA, that includes baseline reference data and clearly defined performance goals and measures that address an overall reduction of bridge deficiencies.

Eligible highway bridge. A bridge on the current selection list or otherwise approved by FHWA to be eligible for Highway Bridge Program funding.

Federal-aid highways. Refer to 23 CFR 470.103.

Preventive maintenance. Activities performed on bridges or their elements to prevent, delay, or reduce deterioration.

Rehabilitation. The major work required to restore the structural integrity and extend the useful life of a bridge as well as work necessary to correct major safety defects, which include substandard vertical clearance,

approach roadway alignment, and bridge widths.

Replacement. Total replacement of an eligible bridge with a new facility constructed in the same general traffic corridor.

Safety improvements. Improvements to bridges that reduce the number or severity of vehicular crashes.

Selection list. A list of bridges within each State that are eligible for the Highway Bridge Program. The list is generated by the FHWA annually using bridge inventory data.

Sufficiency rating. The numerical rating of a bridge based on its structural adequacy and safety, essentiality for public use, and its serviceability and functional obsolescence.

Systematic process. A methodology for identifying and prioritizing cost-effective work activities applied to a network or subset of bridges.

§ 650.405 Eligible and ineligible activities.

(a) The following types of work are eligible for participation under the HBP, subject to the applicability provisions of § 650.407:

(1) Replacement, including a nominal amount of approach work, sufficient to connect the new facility to the existing roadway or to return the gradeline to a reasonable and attainable touchdown point in accordance with good design practice.

(2) Rehabilitation.

(3) Application of calcium magnesium acetate, sodium acetate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions.

(4) Installation of scour countermeasures.

(5) Purchase and installation of the initial set of load posting signs immediately adjacent to the bridge.

(6) Safety Improvements and preventive maintenance activities identified through an approved systematic process.

(7) Seismic retrofit.

(8) Bridge safety inspections and related activities (includes load rating and analysis).

(9) Bridge Management System development and implementation.

(10) Historic Bridge work as identified in Title 23, United States Code, Section 144(o).

(11) Inventory bridges for historic significance.

(12) Painting.

(b) The following types of work are ineligible under the HBP:

(1) Costs of long approach fills, causeways, connecting roadways, interchanges, ramps, and other extensive earth structures, when

constructed beyond the attainable touchdown point.

(2) Utility work not associated with any other bridge activities.

(3) Other activities deemed ineligible by FHWA on a case-by-case basis.

§ 650.407 Applicability.

HBP funding may be used for Federal aid projects including:

(a) The types of work activities identified in § 650.405(a)(1), (a)(2), (a)(5) and (a)(10) on eligible highway bridges on public roads.

(b) The types of work activities identified in § 650.405(a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9), (a)(11), and (a)(12) on all bridges on public roads.

§ 650.409 Program procedures and requirements.

(a) State agencies participate in the HBP by conducting bridge inspections and submitting Structure Inventory and Appraisal (SI&A) inspection data to the FHWA. Local governments supply SI&A data to the State agency for review and processing. The State is responsible for submitting all public road SI&A bridge information, except for those bridges under Federal jurisdiction, to the FHWA for processing annually or upon request from the FHWA. Federal agencies will supply SI&A data directly to the FHWA. Requirements for data submission are prescribed in 23 CFR 650, the National Bridge Inspection Standards.

(b) States are responsible for collecting bridge construction unit cost data for State and Local Government bridges and annually submitting data summaries to the FHWA for processing.

(c) Inventory and bridge construction unit cost data may be submitted as available and must be submitted at such additional times as the FHWA may request.

(d) Upon receipt and evaluation of the bridge inventory, a sufficiency rating will be assigned to each bridge by the Secretary in accordance with the FHWA sufficiency rating formula. The sufficiency rating will be used as a basis for establishing eligibility and may be used for determining priority for replacement or rehabilitation of bridges.

(e) After evaluation of the inventory and assignment of sufficiency ratings, the Secretary will provide the States with selection lists of bridges that are eligible for the HBP. Eligible types of work may be selected for bridges that are on the list. Funding for work on bridges that are not on the current selection list must be approved by the FHWA.

(f) HBP projects must be submitted by the State to the Secretary in accordance with 23 CFR 630, Subpart A, Project Authorization and Agreements.

(g) Each approved project will be designed, constructed, and inspected for acceptance in the same manner as other projects on the system of which the project is a part. Design standards for all HBP activities must conform to the provisions of 23 CFR 625, Design Standards for Highways.

(h) Whenever an eligible bridge is replaced or its deficiency alleviated by a new bridge under the bridge program, the eligible bridge must either be dismantled or demolished or its use limited to the type and volume of traffic the structure can safely service over its remaining life. For example, if the only deficiency of the existing structure is an inadequate roadway width and the combination of the new and existing structure can be made to meet current standards for the volume of traffic the facility will carry over its design life, the existing bridge may remain in place and be incorporated into the system.

§ 650.411 Alternate Program.

The Alternate Program provides an alternative to the applicability, procedures, and requirements of §§ 650.407 and 650.409(e).

(a) In those States with an approved Bridge Management System (BMS) and a Bridge Performance Plan, HBP funding may be used for the types of work identified in § 650.405(a) on all highway bridges on public roads that are included in a BMS regardless of a bridge's eligibility status.

(b) A State's systematic process for planning and programming may supplement the BMS and will be used for unusual or new needs that cannot be addressed through the BMS.

(c) States using the provisions of this alternate program are responsible for developing and implementing a Bridge Performance Plan approved by the FHWA. States are responsible for submitting an Annual Report to the FHWA over the plan's period, or at such additional times as the FHWA may request. The report will address the progress made in relation to the established bridge performance goals.

(d) If the report cited in § 650.411(c) indicates that a State is not meeting or making progress towards its established performance goals, then the report shall identify revised or additional strategies that should result in attainment of the goals. Failure of a State to identify and obtain approval for such strategies will disqualify such State from continuing to select projects using the alternate program in § 650.411.

[FR Doc. 04-13839 Filed 6-18-04; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-166012-02]

RIN 1545-BB82

National Principal Contracts; Contingent Nonperiodic Payments; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a correction notice for proposed regulations.

SUMMARY: This document contains a correction to a correction notice for proposed regulations that were published in the **Federal Register** on March 23, 2004 (69 FR 13498) relating to the inclusion into income or deduction of a contingent nonperiodic payment provided for under a notional principal contract (NPC).

FOR FURTHER INFORMATION CONTACT: Kate Sleeth, (202) 622-3920 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 446 of the Internal Revenue Code.

Need for Correction

As published, the correction notice (REG-166012-02), contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the correction notice (REG-166012-02), which was the subject of FR Doc. 04-6468, is corrected as follows:

On page 13498, columns 1 and 2, under the paragraph heading "Correction of Publication", number 1 is corrected to read as follows:

1. On page 8886, column 1, in the heading, the subject line "National Principal Contracts; Contingent Nonperiodic Payments" is corrected to read "Notional Principal Contracts; Contingent Nonperiodic Payments".

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures and Administration).

[FR Doc. 04-13954 Filed 6-18-04; 8:45 am]

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