



U.S. Department
of Transportation
Federal Highway
Administration

Memorandum

Subject: **INFORMATION**: Bridge Inspection Program
Responsibility of the States

Date: June 13, 2011

From: /s/ *Original Signed by*
King W. Gee
Associate Administrator for Infrastructure

In Reply Refer To:
HIBT-30

To: Directors of Field Services
Director of Technical Services
Division Administrators

The purpose of this memorandum is to provide clarification of the responsibilities of State Departments of Transportation (DOTs) for locally owned highway bridges under the National Bridge Inspection Program (NBIP).

Background

Some State DOTs have claimed that individual public authorities and/or bridge owners should be responsible for compliance with the National Bridge Inspection Standards (NBIS) and not the State. In several States, the majority of county and city bridges are inspected by their individual owners. In other situations, the State inspects locally owned bridges and provides the results to the owner. There are instances where the State advises the local owners of NBIS compliance issues, such as the need to close or place load restrictions on bridges, but the local owners fail to follow the advice from the State. States often take action to withhold Federal-aid project approvals from within the non-compliant locality. Many times, approval of State-funded projects are also withheld from non-responsive locals, and the necessary closure or posting action is still not taken. At this point, some States indicate that they have no other actions that they can take.

The Federal Highway Administration (FHWA) disagrees with this position. Further action can and should be taken to maintain the safety of the travelling public. The basis for the FHWA position is explained in the following two questions and answers.



Question 1: Are the States responsible for ensuring NBIS compliance for locally owned bridges?

FHWA response: Yes. It is clear from the language of 23 U.S.C. 151 that a State is ultimately responsible for the inspection of all public highway bridges within the State, except for those that are federally or tribally owned. Subsection (a) of Section 151 directs the Secretary, “in consultation with the State DOTs and interested and knowledgeable private organizations,” to establish the bridge inspection standards for “all highway bridges.” In Subsection (b) the Congress mandates that the standards shall, at a minimum, “specify, in detail, the method by which such inspections shall be carried out by the States.” The FHWA, the Agency charged with implementing Section 151, promulgated rules that require State DOTs “to inspect, or cause to be inspected, all highway bridges located on public roads.” See 23 CFR 650.307(a). The State may delegate bridge inspection policies and procedures, quality assurance and quality control, preparation and maintenance of a bridge inventory, bridge inspections, reports, load ratings and other requirements of these standards to smaller units of the State like a city or county. However, such delegation does not relieve the State transportation department of any of its responsibilities under the NBIS. Because of the fundamental relationship established in Title 23 of the U.S. Code between the FHWA and a State, if the inspections by a city or county were not done in accordance with the NBIS, the FHWA could take action against the State for failure to comply with Federal laws and regulations.

Question 2: If the State has discovered an NBIS noncompliance issue involving a locality (i.e., locally owned bridge(s)), was unable to resolve the issue through alternate means, and therefore took action by withholding project approvals for that locality, is that sufficient from FHWA’s perspective to avoid noncompliance actions by FHWA against the State?

FHWA response: This situation often arises when locally owned bridges have been inspected and determined to need closing or posting with reduced load limits as a result of the inspection. The NBIS was established under Title 23 in order to preserve the safety of the travelling public as they cross all highway bridges, not just those directly under State jurisdiction. If the bridge is on Federal land or is privately owned, the State would not be expected to ensure NBIS compliance. For all other bridges on public highways, however, States *must* establish the necessary authority to take whatever action is needed to ensure that the intentions of Congress and the expectations of the public are executed to their fullest extent. State DOTs are required to have adequate powers to discharge the duties required by Title 23 (see 23 U.S.C. 302 and 23 CFR 1.3).

The law provides FHWA with wide discretion in taking action when non-compliance with the regulations is encountered. Section 1.36 of 23 CFR has been used to withhold project approvals or Federal-aid highway funds from States in various instances, and the courts have recognized it as giving FHWA legal authority to do so. When the issues cannot be resolved through cooperative discussions and negotiations, more aggressive action is needed. Under the Federal-aid highway program, aggressive action generally equates to suspending project approvals; however, not every NBIS non-compliance situation warrants the suspension of all Federal-aid project approvals. There are many variations of issues that can be encountered and strategies that can be employed to gain compliance. As a general rule,

the actions can be applied to any jurisdiction within a State, i.e. city, county, district, region, or the entire State. The selection of the action and sanction level should be made based on an evaluation of the likelihood for prompt resolution.

Issues involving failure to close or post load restrictions on bridges in need of these measures are potentially very serious and warrant the highest degree of action by the States and FHWA. If suspension of project approvals does not generate the appropriate response by the local bridge owner, FHWA field offices should coordinate with the FHWA Office of Bridge Technology to assist in the development of options for more aggressive actions. The actions to be taken will be coordinated with FHWA leadership. Ideally, States that do not currently have the authority to post or close a local bridge will take action to gain that authority in the interest of safety to the travelling public without the need for aggressive action by FHWA.

Please share this clarification with your State partners and take the steps necessary to address the issue as applicable in your State. A suggested list of talking points is attached for your use in discussions with your State staff. Assistance is available from the Office of Bridge Technology as needed.

Please direct any questions you may have to M. Myint Lwin, Director, Office of Bridge Technology.

Attachment

Talking Points for NBIS Responsibility – State versus Local

- States are responsible for insuring all public highway bridges within the State are inspected in accordance with the National Bridge Inspection Standards (NBIS), including those owned by local Agencies or other public authorities (23 USC 151 and 23 CFR 650, Subpart C). A State is not responsible for bridges owned by Federal agencies, tribes or private entities.
- A State may delegate functions of the NBIS to local agencies or public authorities; however, the State is ultimately responsible for ensuring that the requirements of the NBIS are followed.
- The NBIS were established under Title 23 in order to preserve the safety of the travelling public as they cross all highway bridges, not just those directly under State jurisdiction.
- When a bridge is due to be inspected, or when structural deficiencies require a bridge be posted or closed, FHWA expects the State to have a process in place to insure these actions are taken in an expeditious manner.
- When locally owned bridges need to be inspected, posted, or closed, and the local Agency does not take such action, FHWA expects the State to intervene as necessary to get the bridges inspected or restricted. The identified range, or progression, of actions should include withholding Federal and State project authorizations, or any other inducement or intervention considered necessary and effective.
- A State which currently lacks the necessary statutory authority to ensure that locally owned bridges are inspected or physically posted or closed, and the local owner is unwilling to do so, should pursue such authority to insure compliance with the NBIS.
- The States must ensure that the intentions of Congress and the expectations of the public regarding safe bridges are executed to their fullest extent. State DOTs are required to have adequate powers to discharge the duties required by Title 23 (see 23 U.S.C. 302 and 23 CFR 1.3).
- Ultimately, if the locally owned bridge is not inspected or appropriately posted or closed to insure safety, FHWA will hold the State DOTs responsible, and subject to potential withholding of Federal-aid authorizations.