ATTACHMENT

4.3.D. FHWA FINAL RULE ON EROSION AND SEDIMENT CONTROL ON HIGHWAY CONSTRUCTION PROJECTS
Erosion and Sediment Control

Date: September 14, 1994

Subject: 23 Code of Federal Regulations, Part 650 Final Rule

Harold J. Brown
Division Administrator
Albany, New York

Reply to
Attn. of: HEC-NY

To: Director, Design Quality Assurance Bureau
New York State Department of Transportation
Albany, New York

The July 26, 1994 Federal Register included a final rule revising our regulation on Erosion and Sediment Control. The following is a summary of some of the changes:

- State Highway agencies are recommended to develop specific standards and practices for the control of erosion, using either the American Association of State Highway and Transportation Officials Drainage Guidelines, or their own more stringent guidelines.

- The regulation and accompanying guidelines apply to Federal-aid projects, both on and off the National Highway System.

- Erosion and sediment control plans shall be included in the Plans, Specifications and Estimate for all applicable projects.

- Erosion and sediment control plans shall be developed by qualified personnel.

- It is not acceptable to provide a bid item for various erosion and sediment control items without including a corresponding plan indicating how and where these items shall be placed.

- It is no longer satisfactory to specify that the contractor is responsible for all damages resulting from the construction operation or to leave the development of erosion and sediment control plans to after the project has been awarded.

- For those States participating in the coastal zone management program, they should be utilizing the Environmental Protection Agency's "Guidance Specifying Management Measures for Sources of Nonpoint Source Pollution in Costal Waters" to control erosion and sedimentation on projects located in coastal zone management areas.
We have attached a copy of the final rule and of a September 2, 1994 transmittal memorandum from our Headquarters for your information.

\s\ GENE K. FONG
Gene K. Fong
Assistant Division Administrator

Attachments

cc: Director, Environmental Analysis Bureau, NYSDOT
On July 26, 1994, in Federal Register Volume 59, No. 142, 37935-37939, the Federal Highway Administration (FHWA) published a final rule revising 23 CFR 650, Subpart B, Erosion and Sediment Control on Highway Construction Projects. This revision formally adopts Volume III of the American Association of State Highway and Transportation Officials (AASHTO) Highway Drainage Guidelines 1992, as guidelines to be followed on all projects funded under Title 23, United States Code. The adoption of these guidelines fulfills the requirement of Section 1057 of the Intermodal Transportation Efficiency Act of 1991.

As part of this revision, a statement was included recommending that each State highway agency (SHA) apply either these guidelines, or their own more stringent guidelines, to develop specific standards and practices for the control of erosion. These specific standards and practices may reference available resources, such as the procedures presented in the AASHTO Model Drainage Manual, 1991.

One copy of the AASHTO Highway Drainage Guidelines is being provided to each region, division and Federal Lands office. However, due to cost considerations, the AASHTO Model Drainage Manual is being transmitted to the region offices only. The final rule as it was published in the Federal Register is attached for your information.

The FHWA is committed to ensuring that all highway construction projects are located, designed, constructed and maintained according to standards that will minimize erosion and control associated sedimentation. Volume III of the AASHTO Highway Drainage Guidelines provides excellent guidance concerning these factors. The following is a summary of some of the important issues.

- This regulation and the accompanying guidelines apply to all projects funded under 23 U.S.C. This includes projects on or off the National Highway System.
Erosion and sediment control plans shall be included in the PS&E for all applicable projects, not just larger or more complex projects. It is no longer satisfactory to specify that the contractor is responsible for all damages resulting from the construction operation or to leave the development of erosion and sediment control plans to the contractor or to project personnel after the project has been awarded.

Erosion and sediment control plans shall be developed by qualified personnel. This would normally be a hydraulic engineer.

As a minimum, erosion and sediment control plans should identify erosion and sediment sensitive areas and provide a mechanism for minimizing any adverse effects. It is not acceptable to provide a bid item for various erosion and sediment control items without including a corresponding plan indicating how and where these items shall be placed.

During construction, erosion and sediment control plans should be periodically evaluated to assess the effectiveness of the implemented management practices. Erosion and sediment control plans should be revised and updated as needed to ensure that the intended purpose is achieved.

For those States participating in the coastal zone management program, the SHA should be utilizing the Environmental Protection Agency document "Guidance Specifying Management Measures for Sources of Nonpoint Source Pollution in Coastal Waters" to control erosion and sedimentation on highway construction projects located in coastal zone management areas. While it would be advantageous to be aware of your State's involvement in the coastal zone management program, no effort beyond FHWA's normal activities will be required to implement or monitor the requirements of this program.

The FHWA Eastern Federal Lands Highway Division is developing a manual entitled, "Best Management Practices For Erosion and Sediment Control." This document will provide design and implementation guidance on specific erosion and sediment control management practices and procedures. It is expected that this document will be available by the end of the year. In addition, if sufficient SHA interest is indicated, an erosion and sediment control training course may be developed. If you have any questions or require further information contact Mr. Robin L. Schroeder, Construction and Maintenance Division, Materials Branch (HNG-23) at 202-366-1577.

William A. Weseman

Attachment
Subpart B Erosion and Sediment Control on Highway Construction Projects

Source: 39 FR 36332, Oct. 9, 1974, unless otherwise noted.

§ 650.201 Purpose.

FR Update

The purpose of this subpart is to prescribe policies and procedures for the control of erosion, abatement of water pollution, and prevention of damage by sediment deposition from all construction projects funded under title 23, United States Code.

§ 650.203 Policy.

It is the policy of the Federal Highway Administration (FHWA) that all highways funded in whole or in part under title 23, United States Code, shall be located, designed, constructed and operated according to standards that will minimize erosion and sediment damage to the highway and adjacent properties and abate pollution of surface and ground water resources. Guidance for the development of standards used to minimize erosion and sediment damage is referenced in § 650.211 of this part.

§ 650.205 Definitions.

Erosion control measures and practices are actions that are taken to inhibit the dislodging and transporting of soil particles by water or wind, including actions that limit the area of exposed soil and minimize the time the soil is exposed.

Permanent erosion and sediment control measures and practices are installations and design features of a construction project which remain in place and in service after completion of the project.

Pollutants are substances, including sediment, which cause deterioration of water quality when added to surface or ground waters in sufficient quantity.

Sediment control measures and practices are actions taken to control the deposition of sediments resulting from surface runoff.

Temporary erosion and sediment control measures and practices are actions taken on an interim basis during construction to minimize the disturbance, transportation, and unwanted deposition of sediment.
§ 650.207 Plans, specifications and estimates.

(a) Emphasis shall be placed on erosion control in the preparation of plans, specifications and estimates.

(b) All reasonable steps shall be taken to insure that highway project designs for the control of erosion and sedimentation and the protection of water quality comply with applicable standards and regulations of other agencies.

§ 650.209 Construction.

FR Update

(a) Permanent erosion and sediment control measures and practices shall be established and implemented at the earliest practicable time consistent with good construction and management practices.

(b) Implementation of temporary erosion and sediment control measures and practices shall be coordinated with permanent measures to assure economical, effective, and continuous control throughout construction.

(c) Erosion and sediment control measures and practices shall be monitored and maintained or revised to insure that they are fulfilling their intended function during the construction of the project.

(d) Federal-aid funds shall not be used in erosion and sediment control actions made necessary because of contractor oversight, carelessness, or failure to implement sufficient control measures.

(e) Pollutants used during highway construction or operation and material from sediment traps shall not be stockpiled or disposed of in a manner which makes them susceptible to being washed into any watercourse by runoff or high water. No pollutants shall be deposited or disposed of in watercourses.

§ 650.211 Guidelines.

(a) The FHWA adopts the AASHTO Highway Drainage Guidelines, Volume III, "Erosion and Sediment Control in Highway Construction," 1992,[1] as guidelines to be followed on all construction projects funded under title 23, United States Code. These guidelines are not intended to preempt any requirements made by or under State law if such requirements are more stringent.
(b) Each State highway agency should apply the guidelines referenced in paragraph (a) of this section or apply its own guidelines, if these guidelines are more stringent, to develop standards and practices for the control of erosion and sediment on Federal-aid construction projects. These specific standards and practices may reference available resources, such as the procedures presented in the AASHTO "Model Drainage Manual," 1991.

(c) Consistent with the requirements of section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (Pub. L. 101-508, 104 Stat. 1388-299), highway construction projects funded under title 23, United States Code, and located in the coastal zone management areas of States with coastal zone management programs approved by the United States Department of Commerce, National Oceanic and Atmospheric Administration, should utilize "Guidance Specifying Management Measures for Sources of Nonpoint Source Pollution in Coastal Waters," 84-B-92-002, U.S. EPA, January 1993. State highway agencies should refer to this Environmental Protection Agency guidance document for the design of projects within coastal zone management areas.

1994, Lawyers Cooperative Publishing
Federal Highway Administration
23 CFR Part 650
[FHWA Docket No. 93–6]
RIN 2125–AD08

Erosion and Sediment Control on Highway Construction Projects

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: Section 1057 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) requires the Secretary of Transportation to develop erosion control guidelines for States to follow when carrying out Federal-aid construction projects. Pursuant to this authority, the existing erosion and sediment control regulation, issued in 1974, is being updated and modified by the FHWA to reflect current state-of-the-art practices and management techniques. To fulfill the requirements of section 1057, the FHWA is adopting, as guidelines, the American Association of State Highway and Transportation Officials (AASHTO) publication Highway Drainage Guidelines, Volume III, "Erosion and Sediment Control in Highway Construction," 1992. Other minor editorial changes to 23 CFR 650 were also made to correct typographical errors and to change the wording to reflect current practice. A notice of proposed rulemaking (NPRM) proposing to revise 23 CFR 650, subpart B to reference this AASHTO publication was published in the Federal Register on March 1, 1993, at 58 FR 11814.

Comments To Docket

Nine comments were submitted to the docket. Eight comments were received from SHA’s and one comment from a Federal Government agency. The following is a summary of the comments and the FHWA responses:

Supportive of Change

The North Carolina Department of Transportation (DOT) supported FHWA's proposal to adopt the AASHTO guidelines.

The Connecticut Department of Transportation submitted a letter stating that they had no comment concerning the guidelines.

Existing Guidelines More Stringent

The California Department of Transportation (CALTRANS) did not object to the changes to 23 CFR 650 subpart B. CALTRANS stated that it has adopted requirements and guidelines for erosion control on construction projects that are equal to or more stringent than the guidelines set forth in the AASHTO publication.

National Pollutant Discharge Elimination System (NPDES) Requirements

The Hawaii Department of Transportation stated that the FHWA should adopt the AASHTO publication. It suggested, though, that the final rule reference the NPDES permit requirements in 23 CFR 650. The NPDES permits are issued under the authority of the Environmental Protection Agency (EPA) in compliance with the provisions of the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500.

The FHWA does not believe that it is necessary to specifically reference NPDES permit requirements in 23 CFR 650. There is a statement in 23 CFR 650.207(b) that the FHWA shall take all reasonable steps to insure that all of the project designs for control of erosion and sedimentation comply with applicable standards and regulations of other agencies. This would include the NPDES permit requirements as well as any other State or local regulations concerning the control of erosion and sedimentation.

Guidelines


The Nebraska Department of Roads (NDOR) questioned the use of a hydraulic engineer in the design and review of diversion dikes and ditches, and temporary slope drains. The NDOR believed that normal roadway design engineers would be adequate for most hydraulic designs. Hydraulic engineers, the NDOR argued, could be used for the design and review of complex sediment and erosion control systems.

While the FHWA agrees that a roadway design engineer may be capable of conducting an adequate hydraulic design, it is important that erosion and sediment control structures are designed properly. These structures should be sized and located based on flows resulting from the design year storm. Proper design of the project requires a working knowledge of hydraulic engineering. While it is not required that a hydraulic engineer conduct the design and review of the erosion and sediment control structures, the design must be conducted by someone competent in hydraulic design procedures. While the FHWA does not agree with the NDOR suggestion that the reference to a hydraulic engineer be removed from the guidance, it does agree that a person who is competent in hydraulic design could adequately fulfill the intent of the guidelines.

The Arkansas State Highway Department had no reservations about adopting the AASHTO guidelines, but suggested that a summary be added indicating that the level of effort dedicated to the planning of a project and the development of the erosion control plan should be commensurate with size and complexity of project. While the FHWA agrees that more complex projects or projects that may affect sensitive ecosystems such as wetlands, streams, rivers, or other water bodies will include detailed erosion and sediment control plans, every project should be planned, located, designed, and constructed with the intent of limiting the project's effects on the environment. Though projects may differ in the type and extent of the mitigation measures and practices that are implemented, the level of effort put forth to limit the environmental effects for smaller, less complex projects should be equal to that put forth on larger, more complex ones.

The Georgia Department of Transportation (GDOT) found the AASHTO document acceptable but had the following minor comments. The GDOT argued that detailed erosion and sediment control plans should not be required as part of the contract document in order to allow the contractor the necessary flexibility to develop those plans specific to each project. Instead the GDOT argued that the contract plans should include any extremely sensitive areas such as lakes, wetlands, and streams and sufficient quantities of erosion control devices should be provided as a bid item to mitigate possible erosion and sedimentation effects. According to the GDOT this would allow the contractor and the project engineer the flexibility to customize the erosion control measures employed to the contractor's approach to the work.

While the FHWA agrees erosion and sediment control plans should be flexible, both contractors and contracting agencies should be fully aware of the possible environmental effects of their projects. Therefore, all potential environmental impacts associated with erosion and sedimentation, not just those affecting sensitive areas, and the measures and practices required to mitigate these impacts, should be included in the plans, specifications, and special provisions. As previously mentioned, the effectiveness of many erosion and sediment control measures is dependent upon proper design and installation.

The FHWA believes it is inappropriate to delegate responsibility for the planning and design of erosion and sediment control measures to the contractor or the project engineer, who may or may not have sufficient design expertise in this area. However, erosion and sediment control plans should be flexible enough to properly fulfill their intended purpose. Accordingly, each erosion and sediment control plan should be periodically evaluated to insure that all necessary controls are being implemented correctly and that unnecessary or improperly installed controls are eliminated or revised. Additions, deletions, or revisions to the erosion and sediment control plans should be reviewed by someone competent in erosion and sediment control design.

The GDOT and the Michigan Department of Transportation had minor technical comments on specific design details contained in the AASHTO publication. While the FHWA may agree with some of these design-related comments, the agency emphasizes that the AASHTO publication is intended to provide guidance on the development and implementation of erosion and sediment control measures and practices. The design details that are included are provided as a basis for the development of more detailed project-specific designs. Each State should apply the AASHTO guidelines or its own guidelines if those guidelines are more stringent, to develop standards and practices for the control of erosion and sedimentation on Federal-aid construction projects. Although the AASHTO guidelines can be used for the development of a statewide implementation program for controlling erosion and sedimentation, each project
must be analyzed separately to assure
that the most appropriate and effective
erosion and sediment control measures
and practices are designed,
implemented, and maintained.

Revisions to Part 650
A comment concerning the revisions
to Part 650 was made by the EPA’s
Office of Wetlands, Oceans and
Watersheds. Although the EPA
supported the regulatory changes
proposed in the NPRM, it had two
specific comments. Both concerned the
requirement of the ISTE A that FHWA
erosion control guidelines be consistent
with nonpoint source management
programs under section 319 of the
FVPCA and coastal nonpoint pollution
control guidance issued by the EPA in
January 1993, under section 6217(g) of the
Coastal Zone Act of 1990.

Request to Add a New Paragraph
The EPA proposed that the FHWA
add a specific paragraph to 23 CFR Part
650 to cover a management measure contained in the section 6217(g) management measure guidance document (see footnote #1). The management measure at issue is in
Chapter 4.II.A., “New Development
Management Measure,” and concerns
reducing the amount of total suspended
solids (TSS) leaving the site after
construction has been completed and
the site is permanently stabilized. It
allows for two options to accomplish
this goal. Under the first option, after
construction, the average amount of TSS
(including sediment) leaving the project
site would be reduced by 80 percent.
The second option would limit the post-
development discharge of suspended
solids to an amount equal to or less than
pre-development conditions.

Guidance under section 6217(g)
specifies management measures for a
wide range of pollutant sources. These
include agricultural, forestry, urban
area, and marina and recreational
boating sources. The management
measure cited by the EPA is found
under Chapter 4: “Management
Measures for Urban Areas,” and
specifically under Section II, “Urban
Runoff.” It is intended to be applied by
States in areas within the designated
coastal zone, under the authority of the
Coastal Zone Management Act of 1972
(Pub. L. 92-588, 86 Stat. 1280, as
amended), to control urban runoff and
treat associated pollutants from new
development, redevelopment, and new
and relocated roads, highways, and
bridges.

This management measure deals with
the post construction control of erosion
and sedimentation. It applies to the
reduction of TSS after the project has
been fully stabilized. However, during
several meetings between the EPA and
the FHWA, the EPA emphasized that
this reduction can be accomplished
through design changes. In
other words, projects should be
designed, using the best available
technology, with the intent of reducing
or limiting TSS by the specified amount.
The intent was not to require the actual
measurement of the TSS leaving the
project site either before or after
construction but to establish guidance
relative to project design standards.

The section 6217(g) guidance does not
apply to storm water discharges covered
by the NPDES or Title 40, Part 122,
permit program. This includes all highway
construction projects disturbing five or
more acres of land. In addition, the
section 6217(g) guidance does not apply
to States without coastal zone
management programs approved by the
United States Department of Commerce.

The ability to limit or reduce the
amount of TSS leaving a specific site
depends on the treatment of the
management practice (BMP) selected.
Each BMP has its own strengths and
weaknesses, and no one BMP will be
applicable to every situation. The
effectiveness of the selected BMP can
also be highly variable. For example,
water ponds, which are one of the most
reliable and attractive BMPs that exist,
have a reported sediment removal rate
of between 50 to 90 percent.2 Extended
detention ponds, on the other hand,
have a sediment removal efficiency of
only 30 to 70 percent. Both of these BMPs
may need to be supplemented by other controls to
conform with the 6217(g) guidance.

Key design factors in determining the
effectiveness of particular BMPs include
size, configuration, retention time and
long term maintenance. The
effectiveness of a particular BMP is
influenced by a variety of locational
factors as well. For example, problems
will be encountered if wet ponds are
located in areas experiencing long
periods of dry weather and/or high
evaporation rates, or long periods of
cold weather when the pond is frozen.
In any case, many aspects related to
BMP performance are not well
understood and all BMP options will
requireful site assessment prior to
design.

The provisions of 23 CFR part 650,
subpart B, deal with erosion and
sediment control for all federally funded
construction projects nationwide. Their
objectives are to control erosion and
sedimentation during the construction
of highway projects and to assure that
highway projects are located, designed,
and operated to minimize erosion and
sediment damages. The AASHTO
guidelines that are being proposed for
adoption as guidance include three
objectives for erosion and sediment
control. These objectives are:
1. Limit off-site effects to acceptable
   levels.
2. Facilitate project construction and
   minimize overall cost, and
3. Comply with Federal, State, and
   local regulations.

As stated in the first objective, an
intention of these guidelines is not to
establish specific design standards but to
limit off-site effects to acceptable
levels. The determination of what
constitutes an undesirable effect is not
specified. The intent is to assess
possible adverse off-site effects and to
implement BMPs as appropriate to
minimize these effects.

The FHWA agrees with the EPA that
a goal of any highway construction
project would be to limit the amount of
erosion and resulting sedimentation
attributable to that project. The FHWA
also recognizes that within the coastal
terrestrial there may be water bodies that are
extremely sensitive to the deposition of
sedimentation. However, the FHWA
believes that it is inappropriate to set
specific design standards for all projects
nationwide. The FHWA is amending 23
CFR part 650 to add § 650.211 which
provides that projects located within
coastal zone management areas, as
specified by States with coastal zone
management programs approved by the
United States Department of Commerce,
National Oceanic and Atmospheric
Administration, utilize “Guidance
Specifying Management Measures for
Sources of Nonpoint Source Pollution in
Coastal Waters.”

Request to Incorporate Additional
Guidance
The EPA also requested that the
FHWA add a new paragraph to Part 650
that incorporates, by reference, certain
portions of the section 6217(g) guidance.
These other management measures,
found under Chapter 4:II, “Urban
Runoff,” would include management
measures in the areas of
planning, siting, and developing roads
and highways; bridges; construction
projects; construction site chemical
control; operation and maintenance; and
road, highway and bridge runoff
systems.

Section 1057 of the ISTE A requires
that the guidelines that are developed be
consistent with the section 6217(g) guidance. The AASHTO guidelines that the FHWA is now adopting deal primarily with erosion and sediment control during construction. However, the guidelines also state that “While much of the effort for control of erosion and sedimentation is expended during the construction phase of highway development, a successful program must address erosion and sediment control during the planning, location, design, and future maintenance phases as well.” The AASHTO guidelines provide comprehensive guidance concerning the establishment of criteria and controls for erosion and sedimentation. These guidelines provide detailed information that addresses and is consistent with the pertinent sections of the section 6217(g) guidance.

However, as previously stated, the FHWA is amending 23 CFR Part 650 to add § 650.211 which provides that highway construction projects covered under the provisions of the section 6217(g) guidance should utilize “Guidance Specifying Management Measures for Sources of Nonpoint Source Pollution in Coastal Waters.”

Additional Revisions

The language of § 650.209(c), dealing with monitoring erosion and sediment control measures and practices, has been revised from that proposed in the NPRM. As set forth in the NPRM, this section implied that if a problem in the effectiveness of the erosion and sediment control measure is indicated, revision of that measure would be required. The intent of this section is to ensure that erosion and sediment control measures are periodically reviewed to assure their effectiveness. This would include maintenance of the existing measures as well as revising those measures that are found to be less than fully effective. The language of § 650.209(c) has been revised to clarify this issue.

Rulemaking Analyses and Notices

Administrative Procedure Act

This final rule is made effective upon publication. The FHWA believes that this final rule is exempt from the 30-day delayed effective date requirement of 5 U.S.C. § 553(d) for the following reason. The FHWA finds that good cause exists to dispense with the 30-day delay because an earlier version of the AASHTO erosion and sediment control publication adopted by this action has already been adopted, as guidance “to provide valuable information in attaining good design” in highway construction projects. See 23 CFR 625.5. This final rule simply amends title 23, Code of Federal Regulations, to reference the updated AASHTO guidelines on this subject and it includes this reference under 23 CFR part 650, which specifically addresses erosion and sediment control on highway construction projects. Therefore, this final rule imposes no new requirements or mandates on State highway agencies. Instead, it simply cites the revised AASHTO guidelines with the aim of assisting States in assuring that highway projects are located, designed, and operated to minimize erosion and sediment damage.

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. The FHWA (at 23 CFR 650, Subpart B) and other Federal agencies currently have regulations regarding erosion and sediment control. Adapting the AASHTO guidelines would merely update and reinforce existing policy. Therefore, it is anticipated that the economic impact of this rulemaking will be minimal and a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. The FHWA concluded that it and other Federal agencies currently have regulations dealing with erosion and sediment control, and adopting the 1992 AASHTO guidelines would merely reinforce existing policy. Therefore, the FHWA hereby certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment.

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.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

National Environmental Policy Act

This rulemaking will provide guidance to State Highway Agencies when implementing or developing erosion and sediment control guidelines. This will aid in the control and prevention of nonpoint source pollutants. It does not constitute a major action having a significant effect on the environment, and therefore does not require the preparation of an environmental impact statement pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

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

Grant programs—transportation, Highways and roads, Soil conservation.

In consideration of the foregoing, the FHWA is amending this title 23, Code of Federal Regulations, part 650, subpart B as set forth below.

Issued on: July 18, 1994.
Rodney E. Slater,
Federal Highway Administrator.

PART 650—BRIDGES, STRUCTURES, AND HYdraulics [AMENDED]

1. The authority for part 650 is revised to read as follows:

Subpart B—Erosion and Sediment Control on Highway Construction Projects

2. Part 650 is amended by revising § 650.201, 650.203, 650.205 and 650.209 and by adding § 650.211 to read as follows:

§ 650.201 Purpose.

The purpose of this subpart is to prescribe policies and procedures for the control of erosion, abatement of water pollution, and prevention of damage by sediment deposition from all construction projects funded under title 23, United States Code.

§ 650.203 Policy.

It is the policy of the Federal Highway Administration (FHWA) that all highways funded in whole or in part under title 23, United States Code, shall be located, designed, constructed, and operated according to standards that will minimize erosion and sediment damage to the highway and adjacent properties and abate pollution of surface and ground water resources. Guidance for the development of standards used to minimize erosion and sediment damage is referenced in § 650.211 of this part.

§ 650.205 Definitions.

Erosion control measures and practices are actions that are taken to inhibit the dislodging and transporting of soil particles by water or wind, including actions that limit the area of exposed soil and minimize the time the soil is exposed.

Permanent erosion and sediment control measures and practices are installations and design features of a construction project which remain in place and in service after completion of the project.

Pollutants are substances, including sediment, which cause deterioration of water quality when added to surface or ground waters in sufficient quantity.

Sediment control measures and practices are actions taken to control the deposition of sediments resulting from surface runoff.

Temporary erosion and sediment control measures and practices are actions taken on an interim basis during construction to minimize the disturbance, transportation, and unwanted deposition of sediment.

§ 650.209 Construction.

(a) Permanent erosion and sediment control measures and practices shall be established and implemented at the earliest practicable time consistent with good construction and management practices.

(b) Implementation of temporary erosion and sediment control measures and practices shall be coordinated with permanent measures to assure economical, effective, and continuous control throughout construction.

(c) Erosion and sediment control measures and practices shall be monitored and maintained or revised to ensure that they are fulfilling their intended function during the construction of the project.

(d) Federal-aid funds shall not be used in erosion and sediment control actions made necessary because of contractor oversight, carelessness, or failure to implement sufficient control measures.

(e) Pollutants used during highway construction or operation and material from sediment traps shall not be stockpiled or disposed of in a manner which makes them susceptible to being washed into any watercourse by runoff or high water. No pollutants shall be deposited or disposed of in watercourses.

§ 650.211 Guidelines.

(a) The FHWA adopts the AASHTO Highway Drainage Guidelines, Volume III, "Erosion and Sediment Control in Highway Construction," 1992, as guidelines to be followed on all construction projects funded under title 23, United States Code. These guidelines are not intended to preempt any requirements made by or under State law if such requirements are more stringent.

(b) Each State highway agency should apply the guidelines referenced in paragraph (a) of this section or apply its own guidelines, if these guidelines are more stringent, to develop standards and practices for the control of erosion and sediment on Federal-aid construction projects. These specific standards and practices may reference available resources, such as the procedures presented in the AASHTO "Model Drainage Manual," 1991.

(c) Consistent with the requirements of section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (Pub. L. 101–508, 104 Stat. 1388–299), highway construction projects funded under title 23, United States Code, and located in the coastal zone management areas of States with coastal zone management programs approved by the United States Department of Commerce, National Oceanic and Atmospheric Administration, should utilize "Guidance Specifying Management Measures for Sources of Nonpoint Source Pollution in Coastal Waters," 84–B–92–002, U.S. EPA, January 1993. State highway agencies should refer to this Environmental Protection Agency guidance document for the design of projects within coastal zone management areas.