statement of policy in a new appendix to 49 CFR part 213. Finally, FRA would like comments about the guidelines themselves and their value as criteria in deciding whether stronger enforcement action on particular railroad bridges is warranted.

Comments received after the 30-day deadline will be considered if it is possible to do so without incurring additional delay or expense.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies

This interim statement of policy has been evaluated in accordance with existing regulatory policies. The regulatory document is considered to be a nonsignificant regulatory action under E.O. 12866 and is a nonsignificant rule under section 5(a)(4) of DOT Regulatory Policies and Procedures (44 FR. 11034. February 26, 1979) because it is advisory only and does not carry with it the force of law or regulation. For nonsignificant rules, the DOT Regulatory Policies and Procedures ordinarily require an economic evaluation to be placed in the public docket. This evaluation should include an analysis of the economic consequences of the rule, including (if possible) an estimation of the cost and benefits of the rule to the private sector, consumers, and all levels of government. However, such an evaluation is not required if the expected impact of a rule is deemed minimal. Because this interim statement of policy offers only guidelines to be followed and does not mandate any actions or establish any recordkeeping requirements, the need for a regulatory evaluation is not indicated.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires a review of rules to assess their impact on small entities. In reviewing the economic impact of this interim statement of policy, FRA concluded that it will not have any measurable impact on small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations. Therefore, it is certified that this rule will not have a significant economic impact on a very substantial number of small entities under the provisions of the Regulatory Flexibility Act

Paperwork Reduction Act

There are no information collection requirements contained in this interim statement of policy.

Environmental Impact

FRA has evaluated this interim statement of policy in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

Implementation of this interim statement of policy could result in a judicial determination that it constitutes FRA's occupation of the field of railroad bridge safety regulation. Under 49 U.S.C. 20106, a state may enforce its own statute or regulation related to railroad safety until the Secretary of Transportation issues an order or regulation "covering the subject matter" of the state's law. A state may adopt or enforce a more stringent law relevant to the subject matter as long as it "(1) is necessary to eliminate or reduce a local safety hazard; (2) is not incompatible with a law, regulation, or order of the United States Government; and (3) does not unreasonably burden interstate commerce."

At this time, FRA is aware of only one state that could be affected by a court's determination that the Secretary of Transportation, through FRA, has covered the subject matter of railroad bridge safety by issuing this policy statement. FRA has prepared a Federalism Assessment, pursuant to Executive Order 12612 and placed it in the docket reserved for this proceeding, to address the federalism implications this interim policy could have on that state or any other state seeking to regulate railroad bridge safety.

List of Subjects in 49 CFR Part 213

Penalties, Railroad safety, Railroads. Therefore, in consideration of the foregoing, the Federal Railroad Administration issues the following:

Interim Statement of Agency Policy on the Structural Integrity of Railroad Bridges

The structural integrity of bridges that carry railroad tracks is important to the safety of railroad employees and that the public. The responsibility for the safety of railroad bridges rests with the owner of the track carried by the bridge, together with any other party to whom that responsibility has been assigned by the track owner.

The capacity of a bridge to safely support its traffic can only be determined by intelligent application of engineering principles and the laws of physics. Bridge owners should use, as FRA will, those principles to assess the integrity of railroad bridges.

The long term ability of a structure to perform its function is an economic issue beyond the intent of this policy. In assessing a bridge's structural condition, FRA will focus on the present safety of the structure, rather than its appearance

or long term usefulness.

FRA inspectors will conduct regular evaluations of railroad bridge inspection and management practices. The objective of these evaluations will be to document the practices of the evaluated railroad and to disclose any program weaknesses that could affect the safety of the public. Should problems be disclosed, FRA will seek a cooperative resolution. If public safety is jeopardized by failure to resolve a problem, or by the incompetence or dishonorable intentions of any bridge owner, FRA will use available legal means, including issuance of emergency orders, to protect the safety of railroad employees and the public.

This policy statement addresses the integrity of bridges that carry railroad tracks. It does not address the integrity of other types of structures on railroad property, i.e., tunnels, or bridges carrying highways or other features over railroads, except to the extent that position and condition of these structures affects the safe passage of trains. Likewise, this policy statement extends its reach beyond the narrow issue of bridges carrying railroad tracks only where it is necessary to do so for the protection of highway users, pedestrians and others lawfully occupying the space under a railroad

bridge.

The guidelines published in this statement are advisory, rather than regulatory, in nature. They indicate those elements FRA deems essential to successful bridge management programs. FRA will use the guidelines when evaluating bridge inspection and management practices.

Guidelines

1. Responsibility for safety of bridges.
(a) Track owner. The owner of the track carried by a bridge is responsible for ensuring that the bridge will safely support the trains which operate over it and the loads imposed upon it.

(b) Operating railroad. The operating railroad that authorizes train movements over a bridge should take whatever steps are necessary to verify that the maintenance responsibility for the bridge is being fulfilled so as to safeguard trains operated under its authority.