

Damage that occurred during the Nisqually Earthquake of February 2001 has been repaired, but the bridge is increasingly vulnerable to future seismic events. The proposed project is necessary in order to implement a long-term solution to the deteriorated condition and the seismic vulnerability of the bridge. Specific alternatives for this project have not yet been developed. However, it is anticipated that approximately four build alternatives will be developed for analysis in the EIS, in addition to the no action alternative. The build alternatives may include: (1) Restoration of the existing bridge, (2) a movable span replacement bridge, and (3) a fixed span replacement bridge. The exact alignment and other significant design features may vary for each of these build alternatives, and variations may be different enough to warrant consideration as separate alternatives. Details regarding the number and character of these alternatives will be established through an extensive process of resource agency consultation and public involvement.

Scoping meetings will be held for the public and resource agencies during late February or early March 2002. A Project Advisory Committee (PAC) will be established to provide ongoing input from relevant government agencies and tribes. A Citizen Advisory Group (CAG) will be formed to provide additional involvement for representatives from neighborhood and business groups, as well as the public at large. A public hearing to gather public comments will be held after the draft EIS is issued and made available for public and agency review. The time and location of public meetings, when determined, will be announced in the local news media and public mailings.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or King County at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 31, 2002.

Elizabeth Healy,

*Transportation and Environmental Engineer,
Olympia, Washington.*

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

Revised Guidance for Implementing the March 1999 Circuit Court Decision Affecting Transportation Conformity

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice; issuance of revised guidance.

SUMMARY: The Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) have issued revised guidance for implementing a March 1999 Circuit Court decision affecting transportation conformity. In previous guidance issued on June 18, 1999, the FHWA and FTA indicated that projects that had received funding commitments for construction prior to the conformity lapse could proceed during a lapse. However, project development activities such as right-of-way (ROW) acquisition and design that had received funding commitments prior to the conformity lapse could not proceed. After reviewing the implementation and effectiveness of the previous guidance, the FHWA and FTA decided to supplant the previous guidance and allow completion of all project phases during a conformity lapse, if such activities were approved prior to the lapse. The FHWA and FTA believe the revision is necessary for consistency and will help in streamlining the transportation planning and development process.

DATES: This revised guidance was effective on January 2, 2002.

FOR FURTHER INFORMATION CONTACT: For FHWA: Ms. Cecilia Ho, Office of Natural Environment (HEPN), (202) 366-9862; Mr. Gary Jensen, Office of Natural Environment (HEPN), (202) 366-2048; or Mr. Reid Alsop, Office of the Chief Counsel (HCC-30), (202) 366-1371. For FTA: Mr. Abbe Marner, Office of Planning (TPL-30), (202) 366-4317; or Mr. Scott Biehl, Office of the Chief Counsel (TCC-30), (202) 366-0748. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590. 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

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office

Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at <http://www.nara.gov/fedreg> and the Government Printing Office's Web page at <http://www.access.gpo.gov/nara>. A copy of this guidance can be obtained by accessing the FHWA Web site at http://www.fhwa.dot.gov/environment/conformity/con_mdash;guid.htm.

March 2, 1999, Court Decision

Under section 176 of the Clean Air Act (CAA) as amended, the U.S. Department of Transportation (U.S. DOT) cannot approve or fund any activity that does not conform to the State implementation plan (SIP) in nonattainment and maintenance areas. The CAA provides that conformity to an implementation plan means conformity to a SIP's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards. Conformity to an implementation plan also means that such activities will not cause or contribute to any new violation of any standard in any area; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. The FHWA and FTA funded activities must come from a transportation plan and transportation improvement program (TIP) that have been found to conform.

On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued a decision on the Environmental Protection Agency's (EPA) August 1997 transportation conformity amendments in response to a case brought by the Environmental Defense Fund (EDF) (*EDF v. EPA*, 167 F.3d 641 (DC Cir. 1999)). The court ruled that CAA Section 176(c)(2)(C) prohibits the U.S. DOT from approving or funding new projects in the absence of a conforming plan and TIP. The decision also held that, among other things, projects that had previously been found to conform and had completed the National Environmental Policy Act (NEPA) process ("grandfathered" projects) may not be advanced (that is, such projects should not be approved or funded) in a nonattainment or maintenance area if there is no currently conforming transportation plan and TIP for the area. The court did not rule on the issue of how active right-of-way (ROW) acquisition and design projects

should be treated during a conformity lapse.

Previous Guidance From the FHWA and FTA Concerning the March 2, 1999, Court Decision

On March 31, 1999, the FHWA and FTA issued interim guidance¹ implementing this court decision, which was supplemented by additional guidance² on May 7, 1999. On June 18, 1999, the FHWA and FTA issued an additional memorandum³ that replaced the previously issued guidance. In the June 18, 1999, guidance, the FHWA and FTA indicated that projects that received funding commitments for construction prior to the conformity lapse could proceed during a lapse.

For the FHWA, a funding commitment means there is a project agreement, which is a contractual obligation by the Federal Government to reimburse the Federal share of expenses on a Federal-aid highway project. A project agreement includes approval of plans, specifications, and estimates. For the FTA, a funding commitment means there is a full funding grant agreement (FFGA). For transit projects not covered by FFGAs, the construction commitment occurs after the FTA grant is made and a local contract for construction or vehicle purchase has been approved.

The June 18, 1999, guidance also stated that the FHWA could not continue to reimburse with Federal funds active highway design and ROW acquisition activities, except for exempt projects, during a conformity lapse, even though these activities were approved before the conformity lapse. Likewise, funding for active transit design and land acquisition activities, except for exempt projects, which received a grant, other than a FFGA, could not continue unless: (1) The FTA approved the grant before the conformity lapse; and (2) the grantee had awarded a contract for construction

or for vehicle acquisition like procurement of rolling stock before the lapse.

Since the release of the June 18, 1999, guidance, the FHWA and FTA have had the opportunity to review the implementation and effectiveness of that guidance. As a result of our review, the FHWA and FTA decided to revise the guidance concerning the March 2, 1999, court decision to allow completion of a project development activity during a conformity lapse, if that activity was approved prior to the lapse (e.g., final design or ROW acquisition). We consulted with the EPA in the development of the following revised guidance.

The revised guidance does not allow new ROW acquisition or final design approvals to occur during a conformity lapse. The revisions only allow ROW acquisition and design activities that had received approvals and funding commitments before a lapse to be federally reimbursed during a lapse. We believe this is a reasonable interpretation that is consistent with the March 2, 1999, court decision.

Reasons for Revising the June 19, 1999, Guidance

The FHWA and FTA believe that we can and should provide flexibility and consistency, by allowing Federal reimbursement of previously authorized ROW acquisition and design activities, as well as previously authorized construction activities, to proceed during a conformity lapse. There are several reasons for this revision.

First, our June 18, 1999, guidance provides that when the CAA says that the U.S. DOT cannot "fund" a project unless it conforms, "fund" actually means the point at which the U.S. DOT commits to funding the project. For the FHWA, this point is the project agreement and for the FTA, it is the FFGA or equivalent authorization.

The June 18, 1999, guidance made a distinction between the construction phase and ROW acquisition and design activities phases. According to the June 18, 1999, guidance, projects that received funding commitments for construction prior to the conformity lapse could proceed during the conformity lapse. However, reimbursements for previously authorized ROW acquisition and design activities could not proceed during a conformity lapse. In other words, the Federal Government had to suspend its previously authorized commitment to these activities.

The FHWA and FTA have concluded that guidance concerning Federal authorizations should be consistent,

regardless of whether our authorization is for construction, ROW acquisition, or design activities. By treating each phase of a project similarly in the revised guidance, we consistently apply the principle that "fund" actually means the point at which the U.S. DOT commits to funding a phase of the project, not just the point the U.S. DOT commits to funding the construction of the project.

Second, streamlining transportation planning and development processes continues to be a priority of the U.S. DOT. Suspending Federal reimbursement of active ROW acquisition and design activities is an onerous process that can be time and resource intensive for the project sponsor, and, as discussed, was not directly addressed by the court in its March 2, 1999, decision.

Third, although the FHWA and FTA discouraged it, under the June 18, 1999, guidance these activities could be continued using State or local funds. Also, projects using design-build contracting could proceed with all project phases that were included in the design-build contract, which the FHWA authorized before the lapse.

Finally, ROW acquisition and design activities will not affect regional motor vehicle emissions until such time as the project is constructed and completed. The construction of non-exempt projects utilizing such acquired ROW or designs cannot be authorized until a new conformity analysis and conforming plan and TIP are adopted and the conformity lapse has ended. Therefore, this revised guidance will not lessen the air quality protection afforded by the transportation conformity provisions of the CAA.

Other Information Regarding Revised Guidance

The June 18, 1999, guidance contained a detailed discussion on how the court decision affected areas that relied on submitted, but not yet approved, motor vehicle emission budgets for their most recent conformity determination. This discussion is no longer needed, as all areas, except one where conformity has remained suspended, have now determined conformity based on budgets that have been found adequate or approved by EPA, or based on the appropriate emissions reductions test(s). For guidance on the process EPA currently uses to review and decide whether motor vehicle emissions budgets are adequate and can be used for conformity, refer to EPA's May 14, 1999, "Conformity Guidance on Implementation of March 2, 1999

¹ The March 31, 1999, interim guidance entitled "Interim Guidance for the Implementation of the Circuit Court Decision Affecting Transportation Conformity" may be obtained by contacting Mr. Gary Jensen, Office of Natural Environment (HEPN), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2048.

² The May 7, 1999, supplemental guidance entitled "Supplemental Guidance for the Implementation of the Circuit Court Decision Affecting Transportation Conformity" is available at the following URL: <http://www.fhwa.dot.gov/environment/gdad-int.htm>.

³ The June 18, 1999, supplemental additional guidance entitled "Additional Supplemental Guidance for the Implementation of the Circuit Court Decision Affecting Transportation Conformity" is available at the following URL: <http://www.fhwa.dot.gov/environment/gdad-add.htm>.

Conformity Court Decision" which is available at the following URL: <http://www.epa.gov/otaq/transp/conform/epaguidf.pdf>.

Authority: 23 U.S.C. 106; 23 U.S.C. 134; 42 U.S.C. 7506; 23 U.S.C. 315; and 49 CFR 1.48.

Issued on: January 31, 2002.

Mary E. Peters,

Federal Highway Administrator.

Jennifer L. Dorn,

Federal Transit Administrator.

The text of the revised guidance for implementing the March 1999 Circuit Court decision affecting transportation conformity and dated January 2, 2002 reads as follows:

Information

Revised Guidance for Implementing the March 1999 Circuit Court Decision Affecting Transportation Conformity, HEPN-10

Mary E. Peters, Administrator, FHWA
Jennifer L. Dorn, Administrator, FTA
FHWA Division Administrators
Federal Lands Highway Division
Engineers

FTA Regional Administrators

On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued a decision on EPA's August 1997 transportation conformity amendments in response to a case brought by the Environmental Defense Fund. The EPA will be providing revised conformity regulations that implement this ruling in the near future. This memorandum supersedes and replaces all previous FHWA and FTA guidance implementing this ruling, including the Additional Supplemental Guidance issued on June 18, 1999. The FHWA and FTA consulted with EPA on the development of this guidance. This guidance does not supersede any existing settlement agreements that address this subject. In addition, guidance on other issues addressed by the March 1999 court decision can be found in EPA's "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision," published on May 14, 1999 (<http://www.epa.gov/otaq/transp/conform/epaguidf.pdf>).

Projects That Can Proceed During a Conformity Lapse

The court decision held that projects that had previously been found to conform and had completed the National Environmental Policy Act (NEPA) process ("grandfathered" projects) may not be advanced (that is, such projects should not be approved) in nonattainment and maintenance areas which do not have a currently conforming transportation plan and

transportation improvement program (TIP). Thus, in such areas, no new approvals or grants for further development of projects (*i.e.*, NEPA, final design, right-of-way acquisition, or construction) should be made. The only projects which can receive further approvals or grants during a plan and TIP conformity lapse are: (1) Projects exempt from the conformity process; and (2) transportation control measures (TCMs) which are included in an approved State implementation plan (SIP).

A non-exempt project is any project that is not listed as exempt in the transportation conformity rule at 40 CFR 93.126 or 93.127, or the project is not a TCM in an approved SIP.

For FHWA-funded projects, project phases (*i.e.*, design, right-of-way acquisition, or construction) that received funding commitments or an equivalent approval or authorization prior to a conformity lapse may continue during the lapse. The execution of a project agreement (which includes Federal approval of the plans, specifications, and estimates) indicates funding commitment.

For FTA, the largest projects are handled with a full funding grant agreement (FFGA). If the FFGA was executed prior to a conformity lapse, the project can continue to utilize Federal funding during the lapse. If the FFGA was not completed by the date of the lapse, the project sponsor may only complete the current stage of project development (*e.g.*, final design or land acquisition), but may not use Federal funds to proceed further. Transit projects not handled with FFGAs may proceed during a lapse if, prior to the lapse, FTA approved a grant and the project sponsor awarded a contract for construction or vehicle acquisition. If a local contract was not approved by the date of the lapse, the project sponsor may only complete the current stage of project development with Federal funds.

Subsequent phases of a project for which FHWA or FTA has not taken an approval action or awarded a grant may not proceed in the absence of conformity. For transportation project phases not requiring a project specific project agreement/authorization approval, the State or local transportation agency should not take any action committing the State or local agency to proceed with the project phase during a lapse unless the project phase had already received full approval or authorization for funding before the lapse.

Preliminary engineering for project development activities that are

necessary to assess social, economic, and environmental effects of the proposed action or alternatives as part of the NEPA process for a non-exempt project may continue during the lapse, according to 40 CFR 93.126. However, FHWA or FTA cannot approve a categorical exclusion, finding of no significant impact, final environmental impact statement, or a record of decision for a non-exempt project during a conformity lapse. The NEPA process can be completed for exempt projects and TCMs in an approved SIP during a conformity lapse.

When a community is facing a conformity lapse within 6 months, FHWA, FTA, and EPA will meet and jointly evaluate the potential consequences of the lapse and assess any concerns. The FHWA, FTA, and EPA will meet at least 90 days before a conformity lapse to determine which projects could receive funding commitments before the lapse, and which projects could potentially be delayed, and the actions that would be necessary to correct the lapse. In preparation for these discussions, FHWA and FTA offices, in consultation with project sponsors, should review the current TIP to identify the current status of development of non-exempt projects being advanced in the nonattainment or maintenance area. As you know, some nonattainment areas include more than one metropolitan planning organization (MPO).

When a conformity lapse is imminent, FHWA Division Administrators and FTA Regional Administrators shall notify the Governor or the Governor's designee immediately to inform him/her of the consequences, and potential solutions to minimize disruptions to the transportation programs in the respective nonattainment and maintenance areas. The FHWA and FTA will consult with EPA regional offices before notifying the Governor or the Governor's designee of conformity consequences and solutions.

Coordination between FHWA, FTA and EPA prior to a conformity lapse is detailed in the April 19, 2000, National Memorandum of Understanding (MOU) Between the U.S. DOT and the U.S. EPA (<http://www.fhwa.dot.gov/environment/cnfmou.htm>). Appendix A of the MOU also discusses how to meet the transportation planning requirements during a lapse in order to continue funding exempt projects and TCMs until conformity is reestablished. Therefore, in the event of a conformity lapse, an MPO must create an interim plan and TIP for any projects that can be federally-funded and approved during the lapse, including exempt projects and

TCMs in an approved SIP. Please see the MOU for more information regarding the requirements for including projects in an interim plan and TIP.

Other Issues

To address other issues related to the Court ruling, on May 14, 1999, EPA issued "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision" which provides more details about using submitted budgets, projects requiring Federal approval, non-Federal projects, SIP disapprovals, and reallocation of a SIPs safety margin. Areas should reference this guidance for specific information on these other issues. The EPA, in coordination with DOT, will be working to formalize the guidance through the rulemaking process to amend the conformity regulation.

If you have questions on this guidance, please contact Ms. Cecilia Ho (202) 366-9862 or Mr. Gary Jensen (202) 366-2048 of FHWA, or Mr. Abbe Marner (202) 366-4317 of FTA.

cc: Directors of Field Services

[FR Doc. 02-2957 Filed 2-6-02; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS-7-90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS-7-90 (TD 8461), Nuclear Decommissioning Fund Qualification Requirements (§ 1.468A-3).

DATES: Written comments should be received on or before April 8, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622-3945, or through the internet (CAROL.A.SAVAGE@irs.gov.), Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Nuclear Decommissioning Fund Qualification Requirements.

OMB Number: 1545-1269.

Regulation Project Number: PS-7-90.

Abstract: If a taxpayer requests, in connection with a request for a schedule of ruling amounts, a ruling as to the classification of certain unincorporated organizations, the taxpayer is required to submit a copy of the documents establishing or governing the organization.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection

techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 1, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02-2993 Filed 2-6-02; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8697

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8697, Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.

DATES: Written comments should be received on or before April 8, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to George Freeland, Internal Revenue Service, room 5575, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622-6665 or through the internet (Allan.M.Hopkins@irs.gov), Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.

OMB Number: 1545-1031.

Form Number: Form 8697.

Abstract: Taxpayers who are required to account for all or part of any long-term contract entered into after February 28, 1986, under the percentage of completion method must use Form 8697 to compute and report interest due or to be refunded under Internal Revenue