

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****[FHWA Docket No. FHWA–2012–0075]****Draft Program Comment for Common Post-1945 Concrete and Steel Bridges****AGENCIES:** Federal Highway Administration (FHWA), DOT.**ACTION:** Notice of Intent to issue Program Comment for Common Post-1945 Concrete and Steel Bridges; request for comments.**SUMMARY:** The Advisory Council on Historic Preservation (ACHP) is considering issuing a Program Comment at the request of the Federal Highway Administration setting forth the way in which FHWA will comply with Section 106 of the National Historic Preservation Act with regard to the effects of undertakings on common post-1945 concrete and steel bridges. The FHWA is requesting comments on the proposed Program Comment.**DATES:** Submit comments on or before September 26, 2012.**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, 1200 New Jersey Avenue SE., Washington, DC 20590, or submit electronically at www.regulations.gov or fax comments to (202) 493–2251. 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 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, Page 19477–78) or you may visit <http://dms.dot.gov>.**FOR FURTHER INFORMATION CONTACT:** MaryAnn Naber, FHWA Office of Planning, Environment, and Realty, (202) 366–2060, maryann.naber@dot.gov or Carol Legard, ACHP Office of Federal Permitting, Licensing, and Assistance, (202) 606–8522, clegard@achp.gov. Forlegal questions contact Diane Mobley, FHWA Office of the Chief Counsel, (202) 366–1366, diane.mobley@dot.gov. Office hours for the FHWA are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.**SUPPLEMENTARY INFORMATION:****Electronic Access**

This document may be viewed online through the Federal eRulemaking portal at: <http://www.regulations.gov> under docket ID FHWA–2012–0075. Electronic submission and retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 366 days this year. Please follow the instructions. It is also available on FHWA's Web site at: <http://www.fhwa.dot.gov>. In addition, a hard copy may be viewed and copied at the U.S. Department of Transportation, Dockets Management Facility, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, 20590.

Background

Section 106 of the National Historic Preservation Act requires Federal agencies to consider the effects of their undertakings on historic properties and to provide ACHP a reasonable opportunity to comment with regard to such undertakings. The ACHP has issued the regulations that set forth the process through which Federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 (Section 106 regulations).

Under Section 800.14(e) of those regulations, agencies can request ACHP to provide a "Program Comment" on a particular category of undertakings in lieu of conducting individual reviews of each individual undertaking under such category, as set forth in 36 CFR 800.4 through 800.7. An agency can meet its Section 106 responsibilities with regard to the effects of particular aspects of those undertakings by taking into account ACHP's Program Comment and following the steps set forth in that comment.

The ACHP is now considering issuing a Program Comment at the request of FHWA that would streamline the way in which FHWA and other agencies may comply with Section 106 of the National Historic Preservation Act with regard to common post-1945 concrete and steel bridges.

The FHWA is taking steps to inform the public and historic preservation organizations about this proposed Program Comment and to solicit their views. These efforts include an email distribution to all FHWA Division offices, State transportation agencies, the Historic Bridge Foundation, the

Historic Bridge Alliance, the National Register of Historic Places, the National Trust for Historic Preservation, State Historic Preservation Offices (SHPOs) and others. In addition, FHWA will post the proposed Program Comment on the agency Web site.

As explained in the Program Comment itself, every year FHWA funds the rehabilitation and replacement of hundreds of bridges, many of which are of common types constructed by State transportation agencies after 1945, using reinforced concrete or steel beams and designs that quickly became standardized. These common bridge types are generally undistinguished, have little value for preservation in place, and are rarely viable candidates for relocation.

The FHWA proposes the following Program Comment in accordance with 36 CFR 800.14(e) in order to waive case-by-case Section 106 review of common post-1945 bridges. This program comment would apply to effects of undertakings on common concrete and steel bridges lacking distinctive treatments, of little value for preservation in place, and not located within or adjacent to historic districts.

Under the Program Comment, for undertakings affecting the specified common bridge types, FHWA or another Federal agency official would have the option of following the requirements of the Program Comment in lieu of case-by-case consultation with regard to the effects of proposed work on that bridge. However, the Program Comment would not be a waiver from Section 106 for Federal undertakings that may affect common bridges. For bridges which meet any of the considerations designated in Section IV of the Program Comment, individual consultation would continue to be required. In addition, Federal agency officials would still have to complete Section 106 review and consider effects of the undertaking on historic properties other than the bridge itself.

The Program Comment proposes two types of programmatic mitigation to resolve potential adverse effects: Historic American Engineering Record documentation of at least one example of each of the common post-1945 bridge types included in the Program Comment, and encouragement of State departments of transportation to carry out bridge inventories. The ACHP is specifically requesting that commenters propose any additional ideas they may have for appropriate programmatic mitigation measures.

Public comments on this proposed Program Comment will be accepted on or before September 26, 2012. Once the

public comments resulting from this notice are considered, and edits are incorporated as deemed appropriate, the ACHP will decide whether to issue the Program Comment.

Authority: 23 CFR 800.14

Issued on: August 15, 2012.

Victor M. Mendez,
Administrator.

Text of the proposed Program Comment

The following is the text of the proposed Program Comment:

Program Comment for Common Post-1945 Concrete and Steel Bridges

I. Introduction

Every year, the Federal Highway Administration (FHWA) funds the rehabilitation and replacement of hundreds of bridges under the Federal-aid program administered across the U.S. by State departments of transportation (DOT) and the Federal Lands Highway program. Other Federal agencies are also involved with projects affecting bridges through Federal assistance, approvals, or permits. Many of the bridges affected by these programs are of common types constructed by State transportation agencies after 1945, using reinforced concrete or steel beams and designs that quickly became standardized. These common bridge types are generally undistinguished, have little value for preservation in place and are rarely viable candidates for relocation. Yet, all federally funded or permitted projects affecting these bridges require review and consultation pursuant to Section 106 of the National Historic Preservation Act (16 USC 470f) to assess whether the bridge is eligible for inclusion in the National Register and, if so, to resolve potential effects. Regulations developed by the ACHP and codified at 36 CFR Part 800 describe the procedures Federal agencies must follow to meet this obligation.

Alternate compliance methods, provided by the Section 106 regulations allow agencies to meet these Section 106 obligations, but tailor the process to their mission and needs. Section 800.14(e) of the regulations provides that any agency may request a "Program Comment" from the ACHP in lieu of case-by-case review. The benefit of a Program Comment is that it allows a Federal agency to comply with Section 106 in a single action for a class of undertakings rather than addressing each undertaking as a separate action. The FHWA proposes the following Program Comment in accordance with 36 CFR 800.14(e) in order to waive case-by-case Section 106 consideration of

effects on common post-1945 bridges. This Program Comment would be available for use by all Federal agencies. It would relieve Federal agencies from the need, under Section 106, to individually consider the effects of undertakings on the bridges described in Section V of this Program Comment, with the exceptions noted on Section IV, since such bridges lack distinctive treatments, are of little value for preservation in place, and are not located within or adjacent to historic districts.

II. Background

To develop this proposed Program Comment, FHWA met with individuals from the ACHP staff, the National Conference of State Historic Preservation Offices, the American Association of State Highway and Transportation Officials (AASHTO), and the National Trust for Historic Preservation. Participants in the meetings all have expertise on considering historic bridges in the Section 106 review process. At the meetings, the group members provided FHWA with individual advice and information. Members of the group identified bridge replacement projects as a category of undertakings that could be streamlined with regard to effects to common post-1945 reinforced concrete or steel bridges. Individuals within the group further recommended that of the alternatives to standard Section 106 review available, a Program Comment would be the most appropriate way to modify the review process to meet the needs of FHWA as well as other Federal agencies. To identify the types of bridges that could be addressed in a single comment from ACHP, FHWA referred to a national context for common historic bridges and the National Bridge Inventory.

In October 2005, the National Cooperative Highway Research Program published "A Context for Common Historic Bridge Types." That context revealed that a great many of the structures built after 1935, and especially since 1946, are strictly utilitarian and lacking in distinctive engineering or architectural qualities. Increasing standardization associated with highway design as a result of growing Federal funding and the evolving standards of AASHTO both contributed to the uniformity of design in bridges of certain types.

Information about America's bridges, including their age and condition, is readily available in FHWA's National Bridge Inventory (NBI). The NBI is a collection of information (database) covering just under 600,000 of the

Nation's bridges located on public roads, including Interstate Highways, U.S. highways, State and county roads, as well as publicly accessible bridges on Federal lands. It presents a State by State summary analysis of the number, location, and general condition of highway bridges within each State. This database contains detailed technical and engineering information about hundreds of thousands of bridges in the United States, including year built, bridge type, condition and many other fields. Some 45,000 bridges in the NBI are rated as structurally deficient, meaning that portions of the bridge may be in poor condition. Approximately 61,680 are identified as functionally obsolete, meaning that the design of the bridge does not meet current guidelines for its use, such as lack of safety shoulders or the inability to handle certain traffic volume, speed, size, or weight. Bridges in these categories are frequent candidates for replacement. This Program Comment is intended to dispense with the routine administrative burden of considering the effects of replacement on these bridges on a case-by-case basis and make delivery of these critical projects more efficient without affecting the preservation outcome for the vast majority of common post-1945 bridges.

III. Applicability

The proposed Program Comment relieves Federal agencies from the need to individually consider the effects of undertakings on the bridge types identified in Section V, except for those subject to the considerations noted on Section IV, in the course of compliance with Section 106.

Undertakings include those that involve applications from State transportation agencies or local governments for Federal permits, approvals, or assistance that will result in alteration, replacement, or demolition of one or more of the common bridges or culverts listed in Section V below (hereafter, "common bridges"). All Federal agencies may take advantage of the streamlining provided by this Program Comment when it is adopted by the ACHP. Data from the NBI or existing State surveys may be used to support the determination that a particular bridge is eligible to be considered under the provisions of this Program Comment in terms of its age and type of construction. However, if data from the NBI is used, that information must be verified in the field by a qualified engineer or cultural resource professional to ensure that the date and type have been correctly recorded and that the bridge does not

meet any of the other considerations under Section IV that would render it ineligible for this Program Comment.

The Program Comment is intended to apply to effects on common bridges, regardless of ownership, except for those located on Indian tribal lands¹. For undertakings affecting common bridge types identified in Section V, FHWA or another Federal agency official may follow the requirements of this Program Comment in lieu of case-by-case consultation with regard to the effects of proposed work on that bridge. This Program Comment is not a waiver from Section 106 for Federal undertakings that may affect common bridges as described in Section V. Federal agency officials must still complete Section 106 review and consider effects of the undertaking on historic properties other than the bridge itself. Such effects to other historic properties may be direct or indirect, and must be considered by the Federal agency official whether or not the Program Comment is applicable to the subject bridge. For example, bridge replacement projects may have the following types of effects to non-bridge historic properties that would need to be considered:

- disturbance to archeological sites as a result of construction-related ground disturbing activities;
- change in physical features within the setting that contribute to historic significance of a historic property, including alterations that a new bridge may have on the historic setting and feeling of an adjacent historic district;
- change in traffic patterns that may affect the setting, feel, and association of a historic district; or
- effects to other historic properties based on the need for temporary construction, detours, or right-of-way.

IV. Considerations

Prior to utilizing this Program Comment for an undertaking that may affect a common bridge, a qualified cultural resource specialist must complete a review to determine if the following considerations apply. If the Federal agency official, or a State official delegated the responsibility by statute or a Programmatic Agreement executed under the provisions of Section 106, determines that the bridge in question meets any of the following, an agency may not utilize this Program Comment with regard to that bridge:

A. The bridge is listed in or has previously been determined eligible for the National Register of Historic Places or is located adjacent to or within a National Register listed or eligible historic district, including linear historic districts such as a parkway, historic road, or canal.

B. In consultation among the Federal agency, State Historic Preservation Office (SHPO), and any applicants for assistance, the bridge is identified as a very early or particularly important example of its type in a State or the Nation, has distinctive engineering or architectural features that depart from standard designs, such as an aesthetic railing or balustrade, includes spans of exceptional length or complexity, or displays other elements that were engineered to respond to a unique environmental context. [See: <http://www.environment.fhwa.dot.gov/histpres/index.asp> for examples]

C. The bridge in question is or includes spans of the following types: arch bridges, truss bridges, movable spans, suspension bridges, or covered bridges.

States will have until December 31, 2012, to develop a list of any exceptional bridges which should be considered as meeting the considerations above. The FHWA Division shall organize a meeting of the SHPO, DOT, and other interested parties to determine which, if any, post-1945 bridges within the State meet the considerations above and therefore would NOT fall under the terms of this Program Comment. Where States already have a current (within the last 5 years) Programmatic Agreement, inventory, or management plan for historic bridges that identifies bridges meeting any of the listed considerations, the data included in those Programmatic Agreements, inventories, or management plans may suffice to make those determinations. States with existing Programmatic Agreements may apply the terms of such agreements in lieu of this consultation to identify particularly significant examples of a common type.

The intent of this section is not to require a statewide survey or context to be developed where none exists, but to exclude readily recognizable exceptional bridges from the Program Comment much in the same way that was done for the Interstate Highway exemption. It is understood that some bridges that fall into the types specified in Section V may be eligible for the National Register under local or State significance. Consequently some may be overlooked as not being exceptional; however, it is doubtful that any of these would warrant individual consideration under Section 106 even if they were to be determined National Register eligible. Accordingly, this Program Comment would effectively waive all

subsequent requirements for consideration of effects under Section 106 regarding bridges which fall into one of the common types and do not meet any of the considerations above.

V. Bridge Types for Which No Individual Consideration Under Section 106 is Required

Based on the historic bridge context, the NBI, information developed in statewide bridge inventories across the U.S., and consultation with the National Conference of SHPOs and other stakeholders, the following common bridge types are well-documented standardized designs that lack individual distinction.² Provided none of the considerations specified in Section IV above apply, Federal agencies do not have to consider the effects of undertakings on the bridges that fall into the following categories under Section 106:

- A. Reinforced concrete slab bridges
 - (i) Reinforced concrete cast-in-place slabs
 - (ii) Reinforced concrete pre-cast slabs
 - (iii) Pre-stressed concrete
- B. Reinforced concrete beam and girder bridges
 - (i) Reinforced concrete T-Beams
 - (ii) Reinforced concrete channel beams
 - (iii) Reinforced concrete girders
 - (iv) Reinforced concrete rigid frames
 - (v) Pre-stressed concrete I-Beams
 - (vi) Pre-stressed concrete box beams
- C. Multi-Beam or Multi-Girder bridges
 - (i) Metal-rolled multi-beams
 - (ii) Metal fabricated (built up) girders
 - (iii) Metal rigid frames

VI. Programmatic Mitigation

A. If a suitable example from at least one State is not already included in the collection, one set of Historic American Engineering Record (HAER) documentation, including at least narrative history and photographs, for each bridge type in Section V shall be prepared and submitted by FHWA for acceptance by HAER. The FHWA will coordinate with HAER to determine which, if any, of these types are not yet represented in the HAER collection and will work with the FHWA Division offices and State DOTs to identify a candidate for each type not already represented. The FHWA will complete recordation to HAER standards of at least one example for each type not already represented in the HAER collection and will submit such documentation to HAER before December 31, 2013.

B. The FHWA will encourage States that have not done so within the last 5 years to update inventories of historic bridges in their States to better ensure that bridges meeting the considerations in Section IV above are

¹ Indian tribes wishing to use the streamlining measures in this Program Comment for common bridges on lands under their jurisdiction are encouraged to enter into program alternatives pursuant to 36 CFR 800.14.

² Descriptions and examples of these common bridge types can be found in A Context for Common Historic Bridge Types. NCHRP Project 25–25, task 15, October 2005 (http://onlinepubs.trb.org/onlinepubs/archive/NotesDocs/25-25%2815%29_FR.pdf).

identified and considered early in the Section 106 review process.

VII. Definitions

If not specifically addressed below, terms used within this Program Comment shall be defined consistent with the definitions provided in 36 CFR part 800.

Common Bridge is, for purposes of this Program Comment, a common post-1945 bridge or culvert of a type identified in Section V.

Program Comment is an alternative to Section 106 review that allows a Federal agency to request the ACHP to comment on a category of undertakings in lieu of conducting individual reviews under Sections 800.4 through 800.6 of the regulations (36 CFR Part 800).

Qualified cultural resource specialist means an individual meeting the Secretary of the Interior's professional qualifications for historian or architectural historian by virtue of education and experience to carry out historic preservation work.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. FD 35654]

Genesee & Wyoming Inc.—Control—RailAmerica, Inc., et al.

AGENCY: Surface Transportation Board.

ACTION: Decision No. 2 in Docket No. FD 35654; Notice of acceptance of application; issuance of procedural schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the application filed August 6, 2012, by Genesee and Wyoming Inc. (GWI) and RailAmerica, Inc. (RailAmerica). The application seeks Board approval under 49 U.S.C. 11323–11325 of the acquisition of control of RailAmerica, a noncarrier holding company, by GWI, a noncarrier holding company. This proposal is referred to as the Transaction, and GWI and RailAmerica are referred to collectively as Applicants.

The Board finds that the application is complete and that the Transaction is a minor transaction upon the preliminary determination that the Transaction clearly will not have any anticompetitive effects. 49 CFR 1180.2(b)(1), (c). The Board makes this determination based solely on the evidence presented in the application. The Board stresses that this is not a final

determination, and its finding may be rebutted by filings and evidence submitted into the record for this proceeding. The Board will give careful consideration to any claims that the Transaction would have anticompetitive effects that are not apparent from the application itself.

DATES: The effective date of this decision is September 5, 2012. Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than September 19, 2012, a notice of intent to participate. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and related filings, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by October 5, 2012. Responses to comments, protests, requests for conditions, and other opposition, and rebuttal in support of the primary application or related filings must be filed by October 26, 2012, see the Appendix A (Procedural Schedule). Further procedural orders, if any, will be issued by the Board as necessary.

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's Web site at "www.stb.dot.gov" at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an electronic version) to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, one copy of each filing in this proceeding must be sent (and may be sent by email only if service by email is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) Terence M. Hynes (representing RailAmerica), Sidley Austin LLP, 1501 K Street NW., Washington, DC 20005; (4) David H. Coburn (representing GWI), Steptoe & Johnson LLP, 1330 Connecticut Ave. NW., Washington, DC 20036; and (5) any other person designated as a POR on the service list notice (as explained below, the service list notice will be issued as soon after September 19, 2012, as practicable).

FOR FURTHER INFORMATION CONTACT:

Jonathon Binet, (202) 245-0368. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: GWI is a publicly traded, noncarrier holding company. RailAmerica is a publicly traded, noncarrier holding company. See Appendix B for a complete list of each company's relevant holdings.

Applicants state that, pursuant to an agreement and plan of merger (Agreement), Jaguar Acquisition Sub, Inc., a newly formed, wholly owned noncarrier subsidiary of GWI, would acquire control of RailAmerica and its railroad subsidiaries. RailAmerica's shareholders would receive \$27.50 per share of RailAmerica common stock.

According to GWI, all shares of common stock of RailAmerica will be placed into an independent voting trust.¹ Applicants state that, on or after the effective date of the Board's decision authorizing the Transaction, the voting trust would be terminated, RailAmerica's shares would be transferred to GWI, and RailAmerica would become a wholly owned subsidiary of GWI.

Applicants state four primary purposes for pursuing the Transaction. First, Applicants state that expanding GWI's safe and efficient rail operation of regional and shortline railroads would improve customer service for GWI and RailAmerica customers, as well as the Class I railroads with which they connect. Second, Applicants anticipate an increased likelihood of industrial and manufacturing development opportunities in the communities they serve. Third, they seek to enhance operational efficiencies by combining the best practices of each company. Lastly, Applicants assert that the Transaction would create stability for employees and customers.

Financial Arrangements. Under the Agreement, the purchase price would be paid in cash. RailAmerica would not issue any new railroad securities in connection with the Transaction although, following approval by the Board, it may guarantee debt obligations incurred by GWI. GWI would incur approximately \$2 billion of debt obligations and would issue up to \$800 million of equity and/or equity-linked securities in connection with the Transaction.

¹ See *GWI Voting Trust—Control Exemption—RailAmerica, Inc.*, FD 35660 (STB served Aug. 17, 2012).