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ADVISORY COUNCIL ON HISTORIC PRESERVATION

Exemption Regarding Historic Preservation Review Process for Effects to the Interstate Highway System

AGENCY: Advisory Council on Historic Preservation.

ACTION: Approval of exemption regarding the Interstate Highway System.

SUMMARY: The Advisory Council on Historic Preservation has approved an exemption that would relieve Federal agencies from the requirement of taking into account the effects of their undertakings on the Interstate Highway System, except with regard to certain individual elements or structures that are part of the system. The proposed exemption was published in the **Federal Register** on December 29, 2004 with a 30 day period for public comment. Minor revisions were made in response to these comments.

DATES: The exemption goes into effect on March 10, 2005.

FOR FURTHER INFORMATION CONTACT: Carol Legard, (202) 606-8522.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f ("Section 106"), requires Federal agencies to take into account the effects of their undertakings on historic properties and provide the Advisory Council on Historic Preservation ("ACHP") a reasonable opportunity to comment with regard to such undertakings. Historic properties are those that are listed on the National Register of Historic Places ("National Register") or eligible for such listing.

The National Historic Preservation Act ("NHPA") authorizes the ACHP to promulgate regulations for exempting undertakings "from any or all of the requirements of" the Act. 16 U.S.C. 470v. The Section 106 regulations,

found at 36 CFR part 800, detail the process for the approval of such exemptions. 36 CFR 800.14(c).

In accordance with the Section 106 regulations, the ACHP may approve an exemption for an undertaking if it finds that: (i) the actions within the program or category would otherwise qualify as "undertakings" as defined in 36 CFR 800.16; (ii) the potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and (iii) exemption of the program or category is consistent with the purposes of the NHPA.

I. Background

Since the year 2001, when parts of the Interstate Highway System were first suggested as potentially eligible for inclusion in the National Register, the Federal Highway Administration ("FHWA") has been considering how best to address the historic preservation implications of managing the Dwight D. Eisenhower National System of Interstate and Defense Highways ("Interstate System"). FHWA and State Departments of Transportation ("State DOTs") were concerned that without appropriate provisions in place, such National Register eligibility determinations could present an inordinate administrative burden under the provisions of Section 106 of the NHPA and Section 4(f) of the Department of Transportation Act, 23 U.S.C. 138 and 49 U.S.C. 303 ("Section 4(f)").

FHWA initially worked with an ad hoc task force of key stakeholders to develop a strategy to address the historic preservation issues. All agreed that a nationally coordinated approach was needed. The FHWA, in consultation with the ACHP and the National Conference of State Historic Preservation Officers ("NCSHPO"), determined that this nationwide approach should acknowledge the importance of the Interstate System in American history, but also recognize that ongoing maintenance, improvements, and upgrades are necessary to allow the system to continue to serve the transportation needs of the nation. ACHP and FHWA initially developed a draft Programmatic Agreement ("PA"), but a number of FHWA divisions and the American Association of State Highway and

Transportation Officials ("AASHTO") objected to the approach taken in the PA, in part due to the statement in that document that the entire 46,700 mile long Interstate Highway System would be treated as if it was eligible for inclusion in the National Register. Many divisions were also concerned with the expectation that each State would be responsible for identifying sections of the Interstate System within that State having national (as opposed to State or local) significance and then requiring consideration of such sections under Section 106. In light of these concerns, and the passage of a bill prohibiting FHWA from pursuing the proposed PA, an administrative exemption was determined to be the most appropriate approach to resolving all parties' concerns.

The ACHP published the proposed exemption in the **Federal Register** for public comment. 69 FR 77979-77981 (December 29, 2004). After considering all public comments, and making revisions accordingly, the ACHP approved the final exemption on February 18, 2005. The text of that final exemption can be found at the end of this notice.

II. Exemption Concept

The final exemption releases all Federal agencies from the Section 106 requirement of having to take into account the effects of their undertakings on the Interstate System, except for a limited number of individual elements associated with the system. The exemption embodies the view that the Interstate System is historically important, but only certain particularly important elements of that system, as noted below, warrant consideration. Such elements would still be considered under Section 106. The exemption takes no position on the eligibility of the Interstate System as a whole.

The Interstate System elements that will still be considered under Section 106 are limited to certain defined elements, such as historic bridges, tunnels, and rest areas, that: (a) Are at least 50 years old, possess national significance, and meet the National Register eligibility criteria (36 CFR part 63); (b) are less than 50 years old, possess national significance, meet the National Register eligibility criteria, and are of exceptional importance; or (c) were listed in the National Register, or

determined eligible for the National Register by the Keeper pursuant to 36 CFR part 63, prior to the effective date of the exemption. FHWA, at the headquarters level, in consultation with stakeholders in each State, will make the determination of which elements of the system meet these criteria. Additionally, FHWA may include properties of State or local significance, so long as they meet the National Register eligibility criteria, were constructed prior to 1956, and were later incorporated into the Interstate System.

The exemption requires FHWA to designate, by June 30, 2006, individual elements of the Interstate System that will continue being considered under Section 106. That date marks the 50 year anniversary of the legislation authorizing the system. FHWA Headquarters will be responsible for completing the necessary consultation and analysis to identify these elements. Prior to the completion of this study and publication of the list of designated elements by FHWA headquarters, FHWA Divisions may assume that an affected section of the Interstate System is not eligible for inclusion in the National Register unless: (1) it is already listed, or has been determined eligible for listing, in the National Register (such a determination would be one done either by the Keeper of the National Register or through consensus of the FHWA and the relevant State Historic Preservation Officer ("SHPO")); or (2) in FHWA's estimation, it is likely to meet the criteria established in Section III of the exemption.

The exemption concerns only the effects of Federal undertakings on the Interstate System. It does not alter the Section 106 review obligations regarding any non-Interstate System historic properties that may be affected by an undertaking. Each Federal agency remains responsible for complying with Section 106 regarding effects of its undertakings on historic properties that are not components of the Interstate System. For example, Federal agencies must still comply with Section 106 regarding archaeological sites that may be affected by ground disturbing activities and historic properties of religious and cultural significance to Indian tribes that may be affected.

This exemption supercedes the requirements for review and consultation contained in any existing Programmatic Agreement executed pursuant to the Section 106 regulations with regard only to the consideration of effects to elements of the Interstate System.

III. Exemption Criteria

Pursuant to 36 CFR 800.14(c)(1), Section 106 exemptions must meet certain criteria. Only actions that qualify as undertakings, as defined in 36 CFR 800.16, may be considered for exemption, and the exemption itself must be consistent with the purposes of NHPA. Furthermore, in order to be considered exempted, the potential effects on historic properties of those undertakings should be "foreseeable and likely to be minimal or not adverse." The ACHP believes that the proposed exemption meets these conditions.

Federal funding, permits, or approvals for actions required for maintenance, alterations, or improvements to the Interstate System meet the definition of "undertaking." See 36 CFR 800.16(y). The exemption is also consistent with the purposes of the NHPA. Among other things, the NHPA establishes as the policy of the Government to "use measures * * * to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations" and to "encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment." 16 U.S.C. 470-1(1) and (5). By facilitating the ongoing maintenance, improvements, and upgrades to the Interstate System that ensure the system can continue being utilized for its purposes, and providing for consideration of particularly important, historic elements of the system, the exemption is consistent with the expressed purposes of the NHPA.

The Interstate System is comprised of approximately 46,700 miles of roadway forming a web across the intercontinental United States. The scale of this system and its attendant impact to the social, commercial, and transportation history of the second half of the twentieth century make the construction of this system an extremely important event in American history. The integrity of the system depends on continuing maintenance and upgrades so that it can continue to move traffic efficiently across great distances. While actions carried out by Federal agencies to maintain or improve the Interstate System will, over time, alter various segments of the system, such changes are considered to be "minimal or not adverse" when viewing the system as a whole. Moreover, the exemption does not apply to certain historically important elements of the system. By

excluding these elements from the exemption, the ACHP and FHWA ensure that the important, character-defining features of the Interstate System are considered through the normal Section 106 review process.

IV. Public Participation

In accordance with 36 CFR 800.14(c)(2), public participation regarding exemptions must be arranged on a level commensurate with the subject and scope of the exemption. In order to meet this requirement, an earlier draft was published for public comment in the **Federal Register** on December 29, 2004 (69 FR 77979-77981). The ACHP has worked closely with FHWA in the development of this exemption and both the ACHP and FHWA consulted with SHPOs, all FHWA Divisions, State DOTs, AASHTO, NCSHPO, and the National Trust for Historic Preservation.

Neither the ACHP nor the FHWA have engaged in consultation with Indian tribes and Native Hawaiian organizations pursuant to 36 CFR 800.14(c)(4), since the exemption is limited to effects on the Interstate System itself, which does not qualify as a historic property of cultural and religious significance to such tribes and organizations. Moreover, the exemption will not apply on tribal lands.

V. Response to Public Comment

In response to publication of the draft exemption in the **Federal Register**, the ACHP received comments from 33 individuals and organizations. Of these, 26 expressed support for the proposed exemption (some offering constructive comments) and five opposed it. Two others offered comments without expressing either support or opposition.

Comments in support of the exemption were received from 18 State DOTs, AASHTO, the American Council of Engineering Companies, the American Cultural Resource Associates, the American Road and Transportation Builders Association, NCSHPO, the Society for American Archaeology, the Western Association of State Highway and Transportation Officials, and regional staff of the U.S. Forest Service.

Comments opposing the proposed exemption were received from regional staff of two Federal agencies (National Park Service and Federal Wildlife Service), the staff of two SHPOs (from Florida and Virginia), and two State DOTs (from Virginia and West Virginia). Objections to the exemption and the ACHP's responses are summarized below:

1. There was a concern by one comment that the exemption did not

meet all of the criteria for an exemption. In particular, that reviewer commented that the proposed exemption failed to meet the criterion that the effects be "foreseeable and likely to be minimal or not adverse." The reviewer argued that such effects should not be evaluated on the basis of impacts on the entire 46,700 mile-long Interstate System, since this was beyond the experiential scale of the property. The ACHP disagrees. The ACHP recognizes the Interstate System as a transportation system of exceptional importance based on its scale and attendant impact to social, commercial, and transportation history in the United States. The Interstate System has been evolving since its inception as it has been constructed, expanded, and upgraded to serve the transportation needs of the nation and, therefore, its integrity lies in its location, feeling, and association which are rooted in the connectivity of the system as a whole. Continuing maintenance, improvements, and upgrades will, by and large, maintain the characteristics that define the Interstate System. Furthermore, as already explained above, the exemption (in Section III) allows for the Section 106 consideration of historically significant elements of the system. Also, Section III(b) of the exemption allows States and local governments an opportunity to identify other elements of the system that have significance at the State or local level that were constructed prior to 1956 and later incorporated into the Interstate System.

2. Several parties expressed concern about the process for designating individual elements requiring Section 106 review. Comments included statements that the exemption provides insufficient time for FHWA to complete the work, that a context study should be completed prior to designating elements to be excluded from the exemption, that a context and a list of designated elements should be made available to other Federal agencies, and that the process for SHPO and public involvement should be detailed in the exemption. A comment also suggested that FHWA lacks the necessary expertise to identify individual elements that should be excluded from the exemption.

In response to these comments, the ACHP revised Section II to require FHWA to publish the list of designated elements on its Web site, and included the Web site location in the final exemption. FHWA headquarters is confident that it will be able, with the use of qualified consultants, to complete the designation of excluded elements by the June 30, 2006 deadline. A context

study for the Interstate System has already been completed, and FHWA will soon make it available to the public as part of its obligation under Section IV of the exemption to recognize, interpret, and commemorate the public historic of the Interstate System. State DOTs, FHWA Division staff and SHPOs will be consulted from each State and will be given an opportunity to identify additional parties (e.g., historic highway organizations) that should be consulted. FHWA will also consult with the ACHP, the National Trust for Historic Preservation, and the Keeper of the National Register in determining which elements should be excluded from the exemption. The identification of elements will be based on this consultation and existing information, rather than on a comprehensive survey of the system, and should be manageable in the time allotted. The intent of Section II of the exemption is to create a process that provides a national perspective and consistency in the application of the criteria. It was also intended to allow FHWA to designate elements of the system that will require further consideration in a cooperative and efficient manner, without placing the burden for this analysis on State DOTs and SHPOs. This effort will be conducted by a qualified consultant under the supervision of FHWA headquarters staff with expertise in historic preservation.

3. Concerns were also expressed about the individual elements to be excluded from the exemption (Section III of the exemption). Some objected that the exemption does not protect elements of the Interstate System of State or local significance, except for those already listed or determined eligible by the Keeper of the National Register. Concerns were also expressed about the protection of historic landscapes, viewsheds, and pristine segments of the Interstate System. Issues regarding protecting elements of State or local significance are addressed in the response to the first concern listed above.

In developing Section III of the exemption, the goal was to focus review and consultation on a limited number of important elements of the system, and thus freeing up FHWA and State DOTs from the burden of documenting and evaluating segments of Interstate highways in their State that lack distinction. In developing this exemption, FHWA and the ACHP agreed that the designation of excluded elements would not be restricted to bridges, tunnels, and rest stops. Rather, significant designed landscapes that include Interstate Highways, even those

less than 50 years old but of exceptional significance, might be included on the list. Moreover, viewsheds will be considered under Section 106 where they relate to another historic property affected by the undertaking, such as a National Register eligible traditional cultural property, or a historic district, but Federal agencies will not need to consider the viewshed as it relates to the historic values of the Interstate System itself, except where the relevant element of the system has been designated for exclusion under Section II.

Another comment offered a different perspective on this issue, expressing concern that the excluded elements are likely to be designated National Historic Landmarks (NHLs), thus adding an additional layer of process beyond that afforded most National Register properties. Neither the ACHP nor FHWA propose to nominate any of the designated properties as NHLs, nor has such a designation been proposed by any other party consulted in the development of this exemption. There is no "added" layer of review or separate review process required for NHLs or properties of national significance. The already existing requirements regarding NHLs, in Section 110(f) of the NHPA, 16 U.S.C. 470h-2(f), and Section 800.10 of the Section 106 regulations, remain the same.

4. Based on the comments received, it became clear that several reviewers read Section III of the proposed exemption to limit exclusions to bridges, tunnels, and rest areas. As noted above, this was not the ACHP's intent. To correct this, Section III(b) of the exemption has been revised to clarify that certain elements, "such as" bridges, tunnels, and rest areas, may be excluded from the exemption, but that the exclusions will not necessarily be limited to those three types of features or properties.

5. Finally, concerns were expressed about the longevity of the exemption. Several parties recommended that the exemption provide for the periodic review and update of the list of individual elements excluded from the exemption or for periodic review of implementation of the exemption by federal agencies. A specific provision for monitoring or periodic review has not been included. Certainly, the ACHP will need to periodically consider the effectiveness of the exemption and whether it continues to meet the purposes of Section 106, and the ACHP has the unilateral authority to terminate the exemption if it finds that it does not meet those purposes. Two comments recommended that ACHP not be able to unilaterally terminate the exemption. However, the Section 106 regulations

are clear regarding this matter: "The Council may terminate an exemption at the request of the agency official or when the Council determines that the exemption no longer meets the criteria of paragraph (c)(1) of this section." 36 CFR 800.14(c)(7). The ACHP would not, however, terminate the exemption without first consulting FHWA.

VI. Text of the Exemption

The full text of the final exemption is reproduced below:

Section 106 Exemption Regarding Effects to the Interstate Highway System

I. Exemption From Section 106 Requirements

Except as noted in Sections II and III, all Federal agencies are exempt from the Section 106 requirement of taking into account the effects of their undertakings on the Interstate Highway System.

This exemption concerns solely the effects of Federal undertakings on the Interstate Highway System. Each Federal agency remains responsible for considering the effects of its undertakings on other historic properties that are not components of the Interstate Highway System (e.g., adjacent historic properties or archaeological sites that may lie within undisturbed areas of the right of way) in accordance with subpart B of the Section 106 regulations or according to an applicable program alternative executed pursuant to 36 CFR 800.14.

II. Process for Designating Individual Elements Requiring Section 106 Review

By June 30, 2006, the Federal Highway Administration shall designate individual elements of the Interstate System that are to be excluded from this exemption. FHWA will publish the list of such designated elements on its Web site (<http://environment.fhwa.dot.gov/histpres/index.htm>). The Federal Highway Administration headquarters shall make the designations, following consultation with the relevant State Transportation Agencies, Federal Highway Administration Divisions, State Historic Preservation Officers, the Advisory Council on Historic Preservation, and the public. The Federal Highway Administration headquarters may, as needed, consult the Keeper of the National Register to resolve questions or disagreements about the National Register eligibility of certain elements.

III. Individual Elements Excluded From Exemption

(a) The following elements of the Interstate Highway System shall be

excluded from the scope of this exemption, and therefore shall require Section 106 review:

(i) Elements that are at least 50 years old, possess national significance, and meet the National Register eligibility criteria (36 CFR part 63), as determined pursuant to Section II;

(ii) Elements that are less than 50 years old, possess national significance, meet the National Register eligibility criteria, and are of exceptional importance (and therefore meet criteria consideration G for properties that have achieved significance within the last fifty years), as determined pursuant to Section II; and

(iii) Elements that were listed in the National Register, or determined eligible for the National Register by the Keeper pursuant to 36 CFR part 63, prior to the effective date of this exemption.

(b) The following elements of the Interstate Highway System may be excluded from the exemption, at the discretion of the Federal Highway Administration: Elements such as bridges, tunnels, and rest areas so long as they were constructed prior to June 30, 1956, were later incorporated into the Interstate Highway System, possess State or local significance, and meet the National Register eligibility criteria, as determined pursuant to Section II.

IV. Interpretation and Commemoration

The Federal Highway Administration will recognize, interpret, and commemorate the public history of the Interstate Highway System as it shaped the latter half of the twentieth century. Available for broad public use, this effort shall include the completion of a popular publication and/or development of a Web site providing information and educational material about the Interstate Highway System and its role in American history.

V. Potential for Termination

The Advisory Council on Historic Preservation may terminate this exemption in accordance with 36 CFR 800.14(c)(7) if it determines that the purposes of Section 106 are not being adequately met.

VI. Definitions

The following definitions shall apply to this exemption:

(a) "Section 106" means Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, and its implementing regulations, found under 36 CFR part 800.

(b) "Undertaking" means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency,

including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.

(c) "Interstate Highway System" shall be defined as the Dwight D. Eisenhower National System of Interstate and Defense Highways as set forth in 23 U.S.C. 103(c), that being commonly understood to be the facilities within the rights-of-way of those highways carrying the official Interstate System shield, including but not limited to the road bed, engineering features, bridges, tunnels, rest stops, interchanges, off-ramps, and on-ramps.

Authority: 16 U.S.C. 470v; 36 CFR 800.14(c).

Dated: March 7, 2005.

Don Klima,

Acting Executive Director.

[FR Doc. 05-4739 Filed 3-9-05; 8:45 am]

BILLING CODE 4310-10-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04-140-1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of poultry meat and other poultry products from Sinaloa and Sonora, Mexico, into the United States.

DATES: We will consider all comments that we receive on or before May 9, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- **EDOCKET:** Go to <http://www.epa.gov/feddocket> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.

- **Postal Mail/Commercial Delivery:** Please send four copies of your