

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: December 9, 2008.

David Stawick,

Secretary of the Commission.

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DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Department of Defense Adoption of a Program Comment for DoD Rehabilitation Treatment Measures

AGENCY: Department of Defense.

ACTION: Notice of Department of Defense (DoD) Adoption of a Program Comment for DoD Rehabilitation Treatment Measures (Program Comment).

SUMMARY: This provides notice of the DoD adoption of the Advisory Council on Historic Preservation's (ACHP's) Program Comment for DoD Rehabilitation Treatment Measures. The Program Comment provides DoD with an alternative way to comply with its responsibilities under Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, and its implementing regulations, 36 CFR part 800 (Section 106), with regard to the effects of rehabilitation treatment measures.

DATES: The Program Comment went into effect on November 14, 2008.

ADDRESSES: Copies of the Program Comment are available on the Defense Environmental Network Information eXchange (DENIX) Web site at <https://www.denix.osd.mil/ProgramAlternatives>.

FOR FURTHER INFORMATION CONTACT: Brian Lione, Deputy Federal Preservation Officer, Department of Defense, 3400 Defense Pentagon Room 5C646, Washington, DC 20301-3400. Fax (703) 607-3124. brian.lione@osd.mil.

Dated: December 10, 2008.

Patricia L. Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

SUPPLEMENTARY INFORMATION: On November 14, 2008, the ACHP approved and issued to DoD a Program Comment for DoD Rehabilitation Treatment Measures. The following information includes the full text of the Program Comment. Copies of appurtenant rehabilitation treatment measures are

available at the DENIX Web address listed above.

Program Comment for Department of Defense

Rehabilitation Treatment Measures

I. Establishment and Authority: This Program Comment was issued by the ACHP on November 14, 2008 pursuant to 36 CFR 800.14(e).

It provides DoD with an alternative way to comply with its responsibilities under Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, and its implementing regulations, 36 CFR part 800 (Section 106), with regard to the effects of rehabilitation treatment measures [available at <https://www.denix.osd.mil/ProgramAlternatives>] to this Program Comment.

The intent of this Program Comment is to reduce compliance timeframes for routine repair and maintenance undertakings involving historic properties where DoD chooses to repair and maintain those resources in accordance with the Secretary of the Interior's Standards for Rehabilitation, 36 CFR part 67 (Secretary's Standards for Rehabilitation).

II. Applicability to Department of Defense: Only DoD may use this Program Comment.

III. Date of Effect: This Program Comment [went] into effect on November 14, 2008.

IV. Use of Rehabilitation Treatment Measures To Comply With Section 106 Regarding Their Effects:

(1) DoD may comply with Section 106 regarding the effects of rehabilitation treatment measures on historic properties, and those properties whose eligibility has not yet been determined, by:

(i) Conducting such work as provided by the relevant rehabilitation treatment measure(s) [available at <https://www.denix.osd.mil/ProgramAlternatives>], in conformance with the implementation guidance documents numbered 01060.01 and 01091.01 in those [documents];

(ii) Ensuring that all work described in the rehabilitation treatment measures is conducted under the supervision and approval of a cultural resources professional who meets the relevant standards outlined in the Secretary of the Interior's Professional Qualification Standards, pursuant to 36 CFR part 61 (Secretary's Standards on Professional Qualification); and

(iii) Keeping a record, at the relevant DoD installation, detailing each use of a rehabilitation treatment measure under this Program Comment for no less than

five years from the final date of the implementation of the rehabilitation treatment measure. Each record must include the following information:

(a) A description of the implementation of the rehabilitation treatment measure (including the specific location of the treatment);

(b) The date(s) when the rehabilitation treatment measure was implemented;

(c) The name(s) of the personnel that carried out and/or supervised the use of the rehabilitation treatment measure;

(d) A summary of the treatment implementation, indicating how the rehabilitation treatment measure was carried out, any problems that arose, and the final outcome; and

(e) A summary of any refinements to the rehabilitation treatment measures that the installation and relevant State Historic Preservation Officer (SHPO) has agreed upon per Stipulation IV(4), below.

DoD must provide copies of these records, within a reasonable timeframe, when requested by the ACHP or the relevant SHPO.

(2) Before it begins using this Program Comment, a DoD installation must provide written notification to the relevant SHPO stating that it intends to begin using it and specifying which rehabilitation treatment measures it deems appropriate for use with regard to the historic properties at the installation. The installation may begin using this Program Comment 30 days after such notification.

(3) A DoD installation must also provide written notification to the relevant SHPO when it intends to begin using a rehabilitation treatment measure that has been added to this Program Comment per Stipulation VI. The installation may begin using such an added rehabilitation treatment measure 30 days after such notification.

(4) If, in the opinion of a DoD personnel or DoD contractor meeting the Secretary's Standards on Professional Qualification, quantifiable scientific or qualitative historic data indicates that a rehabilitation treatment measure covered by this Program Comment should be refined to accommodate a specific material or rehabilitation technique that is more suitable for the relevant historic properties at the installation and/or that more specifically meets the intent of the Secretary's Standards for Rehabilitation, the installation shall notify the relevant SHPO of that proposed refinement. (An example of a refinement would be the selection of a mortar joint profile appropriate for the historic property under consideration.) If, within 30 days of receiving that notification, the

relevant SHPO disputes whether the proposed refinement to the rehabilitation treatment measure meets the Secretary's Standards for Rehabilitation, the installation and the relevant SHPO shall consult to attempt to resolve that dispute. If the relevant SHPO and the installation agree to a proposed refinement, or the relevant SHPO fails to dispute it within the 30 day period, the installation may proceed in accordance with the proposed refinement. Consultation about, and agreement or disagreement regarding, proposed refinements does not affect the ability of an installation to continue using this Program Comment and any of its existing rehabilitation treatment measures.

V. Program Comment Does not Cover Aspects of Undertakings Beyond the Specific Rehabilitation Treatment Measures: While DoD may comply with Section 106 regarding the effects of rehabilitation treatment measures on historic properties in accordance with this Program Comment, the effects of those aspects of its undertakings that are not specifically covered by the appended rehabilitation treatment measures must still undergo Section 106 review in accordance with the process found at 36 CFR 800.3 through 800.7, or applicable alternatives under 36 CFR 800.14 other than this Program Comment. For example, a DoD undertaking that includes the treatment of the exterior masonry of a historic building (in accordance with a rehabilitation treatment measure of this Program Comment) and the demolition of its interior walls, will still have to undergo Section 106 review outside this Program Comment for those aspects of the undertaking involving the demolition of the interior walls.

VI. Process for Adding or Updating Rehabilitation Treatment Measures: While this Program Comment, as originally adopted, was limited to five rehabilitation treatment measures, the ACHP expects more rehabilitation treatment measures to be added to it. The ACHP also expects that rehabilitation treatment measures included in the Program Comment may eventually need updating. Accordingly, rehabilitation treatment measures may be added to this Program Comment, or updated, as follows:

(1) DoD will notify the ACHP, the National Conference of State Historic Preservation Officers (NCHSPO), and DOI (collectively, parties) that it wants to add a rehabilitation treatment measure to the Program Comment, or to update a rehabilitation treatment measure that is already a part of the

Program Comment. Such a notification will include a draft of the proposal.

(2) The parties will provide a copy of the draft to the National Trust for Historic Preservation, the American Institute of Architects, the American Institute for the Conservation of Historic and Artistic Works, and the Association for Preservation Technology, and consult with them before finalizing the proposal. The parties may invite other entities, including members of professional associations with expertise on the particular subject matter of the proposed rehabilitation treatment measure or update, to the consultation.

(3) After such consultation, DoD will submit the finalized version to DOI with a request for confirmation from DOI that the proposed rehabilitation treatment measure or update meets the criteria set forth in the Secretary's Standards for Rehabilitation. DOI will have 45 days to provide a written response to DoD. Should DOI determine that the proposed rehabilitation treatment measure or update does not meet the Secretary's Standards for Rehabilitation, DoD may consult with those listed on sub-stipulations (1) and (2), above, and revise the proposal for reconsideration by DOI.

(4) After DOI confirmation that the proposal meets the Secretary's Standards for Rehabilitation, or after the allotted 45 days pass without a DOI response (at which point, DOI confirmation will be assumed), DoD may submit the finalized version to the ACHP Executive Director. If the ACHP Executive Director approves it, the ACHP will publish a notice of availability of the approved addition or update in the **Federal Register**. The addition or update will go into effect upon such publication.

VII. Process for Removing Rehabilitation Treatment Measures: The ACHP may remove a rehabilitation treatment measure from the Program Comment by publishing a **Federal Register** notice to that effect. The Program Comment will continue to operate with the other rehabilitation treatment measures that have not been removed.

VIII. Latest Version of the Program Comment: DoD and/or the ACHP will include the most current version of the Program Comment (with the latest amendments and updates) in a publicly accessible Web site. The latest Web address for that site will be included in each of the **Federal Register** notices for amending, removing or updating rehabilitation treatment measures in the Program Comment. This document and its appended rehabilitation measures will initially be available at [https://](https://www.denix.osd.mil/ProgramAlternatives)

www.denix.osd.mil/ProgramAlternatives.

IX. Annual Reports and Meetings: The parties shall meet once a year, in November, to discuss the implementation of the Program Comment and to consider whether rehabilitation treatment measures that have not been updated in five years should be updated in accordance with Stipulation VI. At least 60 days prior to such meetings, the parties may request of DoD more information on any issues at specific military installations. DoD will collect information from these military installations on their experience, for the previous twelve months, on how often and where the Program Comment has been utilized, examples of successful implementation, and examples of failures or problems with implementation.

X. Amendment: The ACHP may amend this Program Comment (other than the * * * rehabilitation treatment measures themselves, which are amended according to Stipulations VI and VII, above) after consulting with the parties and publishing a **Federal Register** notice to that effect.

XI. Termination: The ACHP may terminate this Program Comment by publication of a notice in the **Federal Register** 30 days before the termination takes effect.

XII. Sunset Clause: This Program Comment will terminate on its own accord on November 1, 2018, unless it is amended before that date to extend that period.

XIII. Historic Properties in Tribal Lands and Historic Properties of Significance to Indian Tribes and Native Hawaiian Organizations: This Program Comment does not apply in connection with effects to historic properties that are located on tribal lands and/or that are of religious and cultural significance to Indian tribes or Native Hawaiian organizations.

XIV. Definitions: The definitions found at 36 CFR part 800 apply to the terms used in this Program Comment.

XV. Rehabilitation Treatment Measure Appendices: [see <https://www.denix.osd.mil/ProgramAlternatives>].

Authority: 36 CFR 800.14(e).

Dated: Date of submission.

Signed: Maureen Sullivan,

Director, Environmental Management.

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