



Preserving America's Heritage

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Draft Preliminary Plan for Retrospective Analysis of Existing Regulation in Accordance with Executive Order 13563 “Improving Regulations and Regulatory Review”

May 11, 2011

Background. Executive Order 13563 (EO), issued on January 18, 2011, directs federal agencies to develop and submit a preliminary plan to the Office of Information and Regulatory Affairs (OIRA) within 120 days that will explain how they will review existing significant regulations and identify those that can be made more effective or less burdensome in achieving regulatory objectives. The Advisory Council on Historic Preservation (ACHP) has determined that it is subject to the EO and is treating the regulations implementing Section 106 of the National Historic Preservation Act (NHPA) titled “Protection of Historic Properties” (36 CFR Part 800) as a significant rule that warrants review pursuant to the EO.

The following actions and schedule of events constitutes the ACHP’s draft preliminary plan to review its Section 106 regulations in response to the EO. In conducting this review, the ACHP will seek input from stakeholders and the public in preparing the plan and identifying opportunities to improve these regulations by modifying, streamlining, or expanding them if deemed necessary and appropriate.

Reviewing the Section 106 Regulations. The Section 106 regulations affect society broadly, as they include opportunities for all Americans to participate in the review of federal undertakings regarding the protection of historic properties. Input from a wide variety of constituents is also critically important since much of the regulatory process is implemented by federal agencies, State Historic Preservation Officers (SHPOs), and Indian tribes, without direct involvement from the ACHP. Likewise, preservation organizations, applicants, local government, and industry are likely to have knowledge about the full effects of the regulations on people and the economy and offer ideas on how to streamline or improve them. This request for information will inform the ACHP’s decision on whether adjustments to the regulations are necessary and appropriate, and whether additional guidance, education, or outreach would better assist Section 106 users and the public to address certain issues.

The ACHP has developed this plan under the direction of its 23 statutorily designated or presidentially appointed members. On May 5, 2011, the draft preliminary plan was reviewed and commented on by the ACHP’s membership at its spring quarterly business meeting. The input of the ACHP’s membership, which includes citizen members, federal, state, tribal, and local government representatives, and historic preservation experts and organizations, resulted in refinements to the plan prior to public dissemination.

A request for public comments will be the ACHP’s first step in complying with the President’s directive to develop a plan that ensures the agency’s regulations are effective and not burdensome. This request will seek suggestions from stakeholders and the public on how the ACHP can ensure its regulations implementing Section 106 can be reviewed periodically to ensure that they achieve their goal of protecting historic properties in a manner that reflects the public interest. The request will be posted on

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the ACHP's Web site and electronically broadcast to a wide range of stakeholders, including federal agencies; SHPOs; Indian tribes; Native Hawaiian organizations; preservation organizations and partners; industry representatives; and organizations representing local, state, and tribal government. The ACHP will further request that these stakeholders assist in notifying the public about the request for comment.

The ACHP will also conduct additional outreach to other federal agencies that implement related regulations, such as the Council on Environmental Quality which oversees the regulations implementing the National Environmental Policy Act, and the National Park Service, which implements other regulations under the NHPA, to identify opportunities for greater coordination among these rules.

Questions for the Public. The ACHP's request for comment will be based on the questions below. These questions are not intended to be exhaustive, and respondents would be encouraged to raise other issues or make suggestions unrelated to these questions. Respondents will also be encouraged to share examples and a detailed explanation of how the suggestion will support the goal of protecting historic properties through the Section 106 process.

1. How should the ACHP periodically review its regulations to ensure they are serving their stated purpose efficiently and effectively? Please provide specific recommendations on appropriate outreach and timing.
2. How can the ACHP reduce burdens and maintain flexibility for participants in the Section 106 regulatory process in a way that will promote the protection of historic properties?
3. How can the process set forth in the Section 106 regulations better achieve promote positive preservation outcomes?
4. How can the regulations be better harmonized with other federal environmental review procedures, such as the National Environmental Policy Act?
5. How can the ACHP ensure that the Section 106 regulations are consistent with and coordinated effectively with other regulations promulgated by the National Park Service pursuant to the National Historic Preservation Act?
6. How can the ACHP ensure that information developed to support findings under the regulations is guided by objective scientific evidence?
7. Should performance metrics that demonstrate agency compliance and document Section 106 outcomes be developed? Please cite specific areas where metrics are needed.
8. Are there better ways to encourage public participation and an open exchange of views as part of Section 106 review? Please cite specific areas where improvements could be made and indicate what tools or mechanisms might be made available to achieve this goal.
9. How else might the ACHP modify, clarify, or improve the regulations to reduce burdens and increase efficiency?

Next Steps. The ACHP will make the preliminary plan and questions available for public comment on its Web site for a period of 30 days, beginning within two weeks after May 18, 2011. Posting the plan on the ACHP Web site will be accompanied by a broadcast e-mail to constituents noted above. Respondents will be provided with a dedicated e-mail address to submit comments. Following this review period, the ACHP anticipates taking the following actions:

- *Day 31 – 60 after releasing preliminary plan:* Revise and refine plan in a manner that is responsive to public input.
- *Days 61 – 80 after releasing preliminary plan:* Finalize plan, seek further input from ACHP membership, and make plan available to the public on the ACHP Web site.