



Preserving America's Heritage

**PLAN FOR REVIEWING THE REGULATIONS IMPLEMENTING SECTION 106
OF THE NATIONAL HISTORIC PRESERVATION ACT
PURSUANT TO EXECUTIVE ORDER 13563 "IMPROVING REGULATION AND
REGULATORY REVIEW"**

August 17, 2011

Findings. In reviewing the requirements of Executive Order 13563, "Improving Regulation and Regulatory Review" (EO) the ACHP finds the following:

- I. The Advisory Council on Historic Preservation (ACHP) is an independent federal agency subject to the requirements of EO 13563.
- II. The regulations implementing Section 106 of the National Historic Preservation Act (NHPA) will be treated as a significant rule subject to retrospective analysis pursuant to EO 13563.
- III. Consistent with the ACHP's own findings and the preponderance of public comment received through the current retrospective analysis, the ACHP finds that the current Section 106 regulations are not outmoded, ineffective, insufficient, or excessively burdensome, and therefore should not be modified, streamlined, expanded, or repealed.
- IV. It is in the interest of the ACHP and the public to seek continuous improvements to the Section 106 regulatory process, consistent with the ACHP's strategic plan, by issuing guidance and providing education, training, and outreach to support the effective participation of consulting parties and the public in the Section 106 process and to promote the effective consideration of historic preservation requirements in federal planning.

ACHP Plan. In response to the requirements of EO 13563, the ACHP will pursue improvements to the process for implementing the Section 106 regulations in order to assist federal agencies, the ACHP, states, Indian tribes and Native Hawaiian organizations, local government, applicants, the public, and other stakeholders in achieving the goals of NHPA as they pertain to the protection of historic properties. These actions will be taken consistent with the ACHP's current Strategic Plan and will include the following:

1. Periodic Regulatory Review:
 - a. Executive Order 13563 calls not for a single exercise but for "periodic review of existing significant regulations." It explicitly states that "retrospective analyses, including supporting data, should be released online wherever possible." Consistent with the commitment to periodic review and to public participation, the ACHP will continue to assess its existing significant regulations in accordance with the requirements of the EO. The ACHP welcomes public suggestions about appropriate reforms.
 - b. Consistent with ongoing requirements established by the Office of Information and Regulatory Affairs, at five-year intervals the ACHP will determine whether the

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004
Phone: 202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov

Section 106 regulations should be modified, streamlined, or expanded so as to make them more effective or less burdensome in achieving their regulatory objectives.

Such an assessment should include soliciting public comment from federal, state, tribal, and local governments; preservation organizations; professional organizations; industry; and the public. This solicitation should be conducted through electronic means, including e-mail, Web sites and webinars, and social media, and include also appropriate opportunities for engaging stakeholders at annual and regional meetings, professional meetings, and conferences. Comments should be solicited for a period of no less than 30 days and, preferably, 60 days. As such, the next review of the Section 106 regulations would occur in 2016.

- c. If, at any time, members of the public identify possible reforms to streamline requirements and to reduce existing burdens, the ACHP will give those suggestions careful consideration. The ACHP will continue to consider how its regulations might be designed and written in a way that facilitates evaluation of their consequences and thus promote retrospective analyses and the measurement of actual results.

2. Federal Agency Programs and Performance:

- a. Develop a mechanism to gather data from federal agencies and periodically report on the adequacy and effectiveness of their preservation programs in carrying out the requirements of Section 106. Request information from federal agencies on existing Programmatic Agreements to assist in evaluating their effectiveness.
- b. Utilize ACHPCConnect to track and report opinions, advice, and comments provided to federal agencies by the ACHP regarding their compliance with Section 106.
- c. Develop and implement performance measures to assess the overall effectiveness and efficiency of the Section 106 process and to survey practitioners' experience in complying with the requirements of the regulations.

3. Training and Education:

- a. Work with State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs) and Federal Preservation Officers (FPOs) to develop training opportunities that provide solutions to chronic Section 106 problems and which can be carried out independently by the ACHP or in partnership with SHPOs, THPOs, and FPOs.
- b. Work with the National Conference of State Historic Preservation Officers and the SHPOs to enhance their capabilities in carrying out Section 106.
- c. Advise federal agencies on developing and implementing tailored historic preservation planning and review systems and programmatic approaches that advance preservation goals and promote efficient decision making, including identifying systemic federal agency compliance issues under Section 106 and developing plans for resolving them at the policy level.
- d. Provide introductory and advanced instruction on the Section 106 process to practitioners via accessible onsite training in multiple locations across the country

and develop and offer Section 106 training using distance learning strategies such as online training, webinars, and videoconferencing in order to reach a broader audience and target constituencies not fully served by the onsite training program, such as applicants for federal approval or assistance.

- e. Deliver two Section 106 seminars for Indian tribes via distance learning, and develop downloadable training material and provide special Section 106 training for the Hawaii SHPO, Native Hawaiian organizations, agencies, and other stakeholders in Hawaii.
- f. Collaborate with federal agencies to encourage the development of training and agency-specific guidance to address the importance of public outreach in agency activities and programs.
- g. Develop and deliver training for ACHP staff regarding Native Hawaiian organizations and Native American concerns as well as alternative dispute resolution.

4. Provide Guidance:

- a. Finalize and distribute “Preparing Agreement Documents” guidance to encourage the inclusion of effective provisions for monitoring, amendments, sunset clauses, and dispute resolution language in final agreements.
- b. Working with the Council on Environmental Quality and other federal agencies, complete guidance and begin developing case studies and best practices that promote National Environmental Policy Act (NEPA) coordination and substitution consistent with Section 800.8(c) of the ACHP’s regulations. Enhance the ACHP’s training curricula to incorporate revised material on coordinating and integrating Section 106 and NEPA.
- c. Develop guidance, in collaboration with federal agencies and stakeholders, on appropriate measures for identifying and inviting the participation of consulting parties in Section 106 reviews.
- d. Assist Section 106 practitioners by developing guidance, education, and training on treating traditional cultural properties and traditional landscapes in the Section 106 process.
- e. Develop guidance for federal agencies on incorporating the public in the development of MOAs and program alternatives under Section 106, including case studies and best practices.
- f. Develop guidance, in collaboration with stakeholders, on the appropriate use of conditional no adverse effect determinations as a measure for streamlining Section 106 review.

5. Coordination with Other Federal Agencies:

- a. Collaborate with the Environmental Protection Agency in identifying appropriate NEPA documents for ACHP review and comment where the ACHP can promote coordination between NHPA and NEPA.

- b. Convey to the National Park Service (NPS) the recommendations made to update the Secretary of the Interior's qualification standards and certain bulletins.
- c. Promote the involvement of NPS and the ACHP in Section 106 reviews where a dispute regarding the eligibility of a property has occurred and where a National Historic Landmark may be affected by an undertaking.
- d. Promote awareness of joint guidance developed by the ACHP and NPS on the use of reports developed by the NPS pursuant to Section 213 of NHPA to support the effective consideration of impacts to National Historic Landmarks and properties of national significance.
- e. Identify opportunities to support NPS review of its regulations; convey public comments regarding the need to update the Secretary of the Interior's qualification standards; and support NPS efforts to update qualification standards and bulletins that intersect with Section 106.

6. ACHP Involvement and Assistance:

- a. Utilize ACHPConnect to prepare summary reports that assess and measure the results of ACHP involvement in individual cases, including outcomes and time frames of reviews.
- b. Focus ACHP involvement in individual cases where potential outcomes warrant the investment of resources as specified in Appendix A of the regulations.
- c. Create and maintain an ACHP Web site repository for opinions, policy letters, and other forms of instruction.

7. Communication:

- a. Convert the current quarterly *Case Digest* to a broader and regularly updated Web-based report on Section 106 cases and other ACHP activities that is made available in electronic format to an expanded audience; share case studies and best practices on developing alternative mitigation strategies; and collaborate with federal agencies to identify and highlight case studies and best management practices that have advanced Section 106 streamlining by the agency.
- b. Work with partners such as the National Trust to improve outreach to preservation audiences and the public, in order to increase understanding of Section 106 as a preservation tool and to publicize successful Section 106 outcomes.

Implementation. The ACHP will implement these measures consistent with the agency's Strategic Plan and the availability of funding and resources.