



Preserving America's Heritage

ADVISORY COUNCIL ON HISTORIC PRESERVATION CONDUCTS RETROSPECTIVE ANALYSIS OF REGULATIONS, SEEKS PUBLIC COMMENT

June 1, 2011

Washington, D.C.: The Advisory Council on Historic Preservation (ACHP) is seeking public input on its plan to retrospectively review the regulations implementing Section 106 of the National Historic Preservation Act (NHPA). “The Section 106 regulations affect society broadly and include opportunities for all Americans to participate in the review of federal undertakings that may affect historic properties,” said ACHP Chairman Milford Wayne Donaldson, FAIA. “It is therefore important that we receive broad input on our plans to review these regulations to ensure that they are effective and do not impose an undue burden on society.”

[Executive Order 13563, “Improving Regulation and Regulatory Review”](#) (EO), issued on January 18, 2011, directs federal agencies to review existing significant regulations and identify those that can be made more effective or less burdensome in achieving regulatory objectives. The ACHP 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.

Input from a wide variety of constituents is 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 critical issues.

INSTRUCTIONS FOR COMMENTING

A request for public comments is 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.

Please e-mail your response to the questions below to regreview@achp.gov and be sure to number your responses in association with each question. These questions are not intended to be exhaustive, and respondents are encouraged to raise additional issues or make suggestions unrelated to these questions. Respondents are also 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. The ACHP is seeking public comment for a period of 30 days ending July 1, 2011, after which it will revise the plan and make it available to the public.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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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 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?