



Preserving America's Heritage

**Update for Executive Order 13563  
Advisory Council on Historic Preservation  
Retrospective Review of Regulations  
July 11, 2016**

Periodic Regulatory Review: Executive Order 13563 calls not for a single exercise but for “periodic review of existing regulations.” Consistent with the commitment to periodic review and to public participation, the Advisory Council on Historic Preservation (ACHP) will continue to assess its existing significant regulations in accordance with the requirements of the E.O. The ACHP welcomes public suggestions about appropriate reforms at any time.

**Summary of ongoing initiatives to enhance regulatory effectiveness:**

**Public meetings:** The ACHP’s business meetings, held three times a year, are an important forum for engaging federal, state, tribal, Native Hawaiian, and non-federal stakeholders about issues relating to the effectiveness of the Section 106 regulations. The summer 2016 meeting will take place July 13-14 in Washington, DC. *Continuing.*

**Regulations training:** The ACHP offers a variety of classroom and web-based training courses in which the regulations implementing Section 106 of the National Historic Preservation Act (NHPA), and opportunities for achieving efficiencies in the review process, are explained. Course materials are updated each year to convey current guidance on the application of the regulations to project planning for federal or federally assisted projects. In June 2016, the ACHP opened its E-Learning Portal (see entry below) to provide on-demand online course access, making training in the use of the regulations available to new and broader audiences. Improving stakeholder understanding of the review process stands to significantly improve the efficiency and effectiveness of federal reviews conducted pursuant to the NHPA. *Continuing.*

**Interagency work group participation:** The ACHP’s participation as a member of interagency work groups allow the agency to inform other federal and non-federal stakeholders about opportunities to make historic preservation reviews of federal projects more efficient through provisions currently available in the Section 106 regulations, “Protection of Historic Properties” (36 CFR Part 800). The ACHP is currently participating in a Working Group led by the White House Office of Science and Technology to review the recommendations of the Broadband Opportunity Council created by Presidential Memorandum of March 23, 2015. This memorandum encourages agencies to explore program alternatives and other efficiencies in regulatory reviews for broadband installation on federal land and in federal buildings. The ACHP also participates in the work group charged with developing a Unified Federal Review for recovery efforts relating to federally declared disasters and in Rapid Response Teams on Transportation and Transmission. The ACHP is a member of the Federal Permitting Improvement Council created pursuant to Title 41 of the Fixing America’s Surface Transportation Act (FAST-41),

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which provides measures to improve federal environmental reviews for infrastructure and other major projects that require federal approvals or assistance. The Permitting Council's supporting Infrastructure Permitting Working Group is identifying areas in the permitting review process where efficiencies can be realized and areas where redundant reviews or requests for information could be significantly reduced.

**Electronic Section 106 compliance:** The ACHP developed a system for stakeholders to use electronic communication (e-106) to improve the efficiency of Section 106 reviews that was opened to all federal agencies in September 2015. Making the use of electronic submission tools available to all federal agencies will reduce paperwork and improve transmission of important information in Section 106 reviews. *Ongoing.*

### **Summary of initiatives new to this update:**

**Action Plan to Support State and Tribal Historic Preservation Officers (SHPOs and THPOs):** In July 2015, the ACHP adopted an Action Plan to encourage federal agencies to increase support to SHPOs and THPOs, as appropriate, to strengthen their capacity to participate in the Section 106 review process. The plan contains a series of action items that the ACHP chairman, executive director, and staff will carry out in collaboration with federal agencies and state and tribal partners. The staff subsequently developed a detailed work plan to support the ACHP's Action Plan. Among other activities, the work plan includes identifying further efficiencies in the Section 106 review process that might reduce SHPO/THPO workloads and help ensure Section 106 reviews are processed promptly. These efforts include identifying areas where program alternatives and exempted activities could be developed to reduce the volume of reviews, particularly for programs or activities that have limited potential to affect historic properties. *Continuing.*

**E-learning Portal:** In June 2016, the ACHP formally opened its new E-learning Portal ([achp.golearnportal.org](http://achp.golearnportal.org)) to the public. The portal provides anytime access to online Section 106 training courses, thus broadening the availability of information about how to use the Section 106 regulations effectively and efficiently. One of the first active courses, "Successfully Navigating Section 106 Review: An Orientation for Applicants," is specifically geared to making the regulatory review process understandable from the perspective of non-federal applicants for federal grants, permits, licenses, or other approvals. *Continuing.*

**Guidance on Use of Real Property Conditions or Restrictions in the Section 106 Process to Avoid Adverse Effects:** In October 2015, the ACHP released guidance on covenants and easements, referred to as "preservation conditions." The guidance seeks to help land managing agencies develop sound conditions to support a no adverse effect finding for Section 106 property transfer undertakings. The guidance also educates historic preservation stakeholders and the public, and assists parties working to amend existing preservation conditions. This guidance can help land managing agencies conclude Section 106 reviews without adverse effects to historic properties, affording potential time savings in the review process. *Completed October 2015.*

**Standard Treatment for Broadband on Federal Lands:** The ACHP participates in an interagency Working Group led by the White House Office of Science and Technology with members of land managing agencies including the Department of the Interior, Bureau of Land Management, National Park Service, Forest Service, and Department of Homeland Security regarding the installation of broadband on federal lands and federal buildings. The Working Group recently concluded it is appropriate to develop a Standard Treatment in accordance with 36 CFR Section 800.14(d) of the ACHP's regulations to achieve the greater consistency and efficiency for the review of broadband activities requiring Special Use Permits on federal land and to avoid adverse effects to historic properties where feasible. *Continuing.*

### **Methods to identify improvements:**

**Through the Section 106 process:** The primary groups with which the ACHP regularly engages include: 1) federal agencies of the executive branch, 2) private industry and applicants for all forms of federal assistance, licenses, and permits who assist federal agencies in compliance with the NHPA, 3) state, tribal, and local government agencies, including State and Tribal Historic Preservation Officers, and Native Hawaiian organizations, and 4) the National Trust for Historic Preservation and other non-federal preservation organizations. *Ongoing.*

**Coordination with other federal agencies:** The Administration has established several initiatives to advance high-priority infrastructure and energy development projects and improve federal environmental review and permitting processes. These initiatives include FAST-41, E.O. 13604, “Improving Performance of Federal Permitting and Review of Infrastructure Projects,” E.O. 13616, “Accelerating Broadband Infrastructure Deployment,” various rapid response teams, and two Presidential Memoranda on Permitting and Transmission. The ACHP continues to serve on steering committees and work groups for these initiatives. A principal goal of these initiatives is to improve coordination among federal agencies and improve environmental reviews, including the Section 106 process. *Ongoing.*

**50<sup>th</sup> Anniversary of the National Historic Preservation Act and the ACHP Public Policy Initiative:** As part of its commemoration of the 50<sup>th</sup> anniversary of the NHPA in 2016 (P50), the ACHP membership determined it would consider ways to improve the National Historic Preservation Program and the tools currently used under the NHPA and related authorities by developing policy recommendations to be shared with the incoming Administration and the 115<sup>th</sup> Congress. In January, the ACHP posted online a Statement on Challenges and Opportunities facing the National Historic Preservation Program, which was made available for public review for 60 days. Discussions of these ideas held at the ACHP’s March business meeting and other preservation forums in the spring provided further ideas and input. On May 11, 2016, a revised statement on Challenges and Opportunities was shared with the ACHP membership and distributed widely for public review and comment with a deadline for comments on June 10. There were extensive efforts to circulate the statement and call for input. The ACHP’s members will consider this input at the July business meeting and provide direction for moving forward on the development of the final P50 policy recommendations.

Though the P50 initiative is broad ranging in its consideration of ways to improve the National Historic Preservation Program, the extensive public outreach effort that has accompanied the development of policy recommendations has yielded stakeholder and public feedback on the efficacy and efficiency of the Section 106 review process specifically. The ACHP will consider these among other recommendations in its policy proposals this fall. *Continuing, with final policy recommendations expected by December 2016.*

### **Anticipated or realized savings in costs and/or burdens and anticipated or realized changes in benefits:**

Better understanding of the requirements of the existing Section 106 regulations and greater awareness of effective ways to comply with Section 106 of the NHPA should provide federal agencies with efficiencies and savings primarily in terms of time spent conducting environmental analyses.