

#### IV. Amendment Clarifying the 30-Day Review Period for No Adverse Effect Determinations

Questions have arisen under the current section 106 regulations as to whether a Federal agency can proceed with its undertaking immediately after the SHPO/THPO concurs in a finding of "No Adverse Effect." The current section 106 regulations specify a 30-day review period, during which the SHPO/THPO, the ACHP and other consulting parties can lodge an objection. The result of such objection is that the Federal agency must submit the finding to ACHP review. If the SHPO/THPO concurs, for example, on the fifth day of the 30 day period, the current language may have given some the erroneous impression that this would cut off the right of other parties to object thereafter within the 30 day period (e.g., on the 15th or 28th day).

The proposed, technical amendment provides clearer language, consistent with the original intent expressed in the preamble to the section 106 regulations ("the SHPO/THPO and any consulting party wishing to disagree to the [no adverse effect] finding must do so within the 30 day review period," 65 FR 77720 (December 12, 2000) (emphasis added)) and in subsequent ACHP guidance on the regulations ("Each consulting party has the right to disagree with the [no adverse effect] finding within that 30-day review period;" <http://www.achp.gov/106q&a.html#800.5>). All consulting parties have the full 30 day review period to object to a no adverse effect finding regardless of SHPO/THPO concurrence earlier in that period.

#### V. Amendments Authorizing the ACHP To Initiate Section 106 Exemptions

Under the current section 106 regulations, in order for the ACHP to begin its process of considering an exemption, the ACHP needs to wait for a Federal agency to propose such an exemption. Under the proposed amendment, the ACHP would be able to initiate the process for an exemption on its own.

The ACHP believes it is in an unique position, as overseer of the section 106 process, to find situations that call for a section 106 exemption and to propose such exemptions on its own. There may also be certain types of activities or types of resources that are involved in the undertakings of several different Federal agencies that would be good candidates for exemptions when looking at the undertakings of all of these agencies, but that may not be a high enough priority for any single one of

those agencies to prompt it to ask for an exemption or to ask for it in a timely fashion. The ACHP could step into those situations and propose such exemptions on its own, and then follow the already established process and standards for such exemptions.

#### VI. Impact Analysis

##### *The Regulatory Flexibility Act*

The ACHP certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The amendments in their proposed version only impose mandatory responsibilities on Federal agencies. As set forth in section 106 of the NHPA, the duties to take into account the effect of an undertaking on historic resources and to afford the ACHP a reasonable opportunity to comment on that undertaking are Federal agency duties. Indirect effects on small entities, if any, created in the course of a Federal agency's compliance with section 106 of the NHPA, must be considered and evaluated by that Federal agency.

##### *The Paperwork Reduction Act*

The proposed rule does not impose reporting or record-keeping requirements or the collection of information as defined in the Paperwork Reduction Act.

##### *The National Environmental Policy Act*

It is the determination of the ACHP that this action is not a major Federal action significantly affecting the environment. Regarding the National Environmental Policy Act (NEPA) documents for the regulation to be amended, as a whole, please refer to our Notice of Availability of Environmental Assessment and Finding of No Significant Impact at 65 FR 76983 (December 8, 2000). A supplemental Environmental Assessment and Finding of No Significant Impact is not deemed necessary because (1) these amendments do not present substantial changes in the regulations that are relevant to environmental concerns; (2) most of the amendments are a direct result of a court order; and (3) there are no significant new circumstances or information relevant to environmental concerns and bearing on the regulations or their impacts.

##### *Executive Orders 12866 and 12875*

The ACHP is exempt from compliance with Executive Order 12866 pursuant to implementing guidance issued by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs in a memorandum dated October 12, 1993. The ACHP also

is exempt from the documentation requirements of Executive Order 12875 pursuant to implementing guidance issued by the same OMB office in a memorandum dated January 11, 1994.

##### *The Unfunded Mandates Reform Act*

The proposed rule does not impose annual costs of \$100 million or more, will not significantly or uniquely affect small governments, and is not a significant Federal intergovernmental mandate. The ACHP thus has no obligations under sections 202, 203, 204 and 205 of the Unfunded Mandates Reform Act.

##### *Executive Order 12898*

The proposed rule does not cause adverse human health or environmental effects, but, instead, seeks to avoid adverse effects on historic properties throughout the United States. The participation and consultation process established by the section 106 process seeks to ensure public participation—including by minority and low-income populations and communities—by those whose cultural heritage, or whose interest in historic properties, may be affected by proposed Federal undertakings. The section 106 process is a means of access for minority and low-income populations to participate in Federal decisions or actions that may affect such resources as historically significant neighborhoods, buildings, and traditional cultural properties. The ACHP considers environmental justice issues in reviewing analysis of alternatives and mitigation options, particularly when section 106 compliance is coordinated with NEPA compliance.

#### VII. Text of Proposed Amendments

##### **List of Subjects in 36 CFR Part 800**

Administrative practice and procedure, Historic preservation, Indians, Inter-governmental relations, Surface mining.

For the reasons stated above, the Advisory Council on Historic Preservation proposes to amend 36 CFR part 800 as follows:

##### **PART 800—PROTECTION OF HISTORIC PROPERTIES**

1. The authority citation for part 800 continues to read as follows:

**Authority:** 16 U.S.C. 470s.

2. Amend § 800.4 by revising paragraph (d) to read as follows:

##### **§ 800.4 Identification of historic properties.**

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(d) *Results of identification and evaluation.*