



THE SECRETARY OF THE INTERIOR

WASHINGTON

ORDER NO. 3452

Subject: Timely Completion of National Historic Preservation Act Section 106 Reviews

Sec. 1. **Purpose.** The purpose of this Order is to streamline reviews under section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, by utilizing measures consistent with the Section 106 implementing regulations to timely and efficiently comply with section 106 and/or to conclude Section 106 consultations.

Sec. 2. **Authorities.** This Order is issued under the authority of section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended.

Sec. 3. **Background.** Section 106 of the NHPA requires Federal agencies to “take into account” the effects of their undertakings on historic properties eligible for or listed in the National Register of Historic Places and to afford the Advisory Council on Historic Preservation (Advisory Council) a reasonable opportunity to comment on such undertakings. 54 U.S.C. § 306108. “Undertakings” subject to Section 106 compliance include actions carried out by, or on behalf of, Federal agencies; actions carried out with Federal financial assistance; and actions requiring a Federal permit, license or approval. *Id.* § 300320. Like the National Environmental Policy Act (NEPA), compliance with section 106 of the NHPA is procedural and does not mandate any particular outcome.

The NHPA authorizes the Advisory Council, an independent regulatory agency, to promulgate regulations to govern the implementation of the Section 106 review process. The Advisory Council’s Section 106 implementing regulations (36 C.F.R. Part 800) set forth a four-step process Federal agencies must comply with to satisfy their Section 106 compliance obligations: (1) initiate the Section 106 process; (2) identify historic properties within the area of potential effect; (3) assess potential effects to historic properties; and (4) resolve adverse effects to historic properties. This process emphasizes “consultation” between the Federal agency and other parties, referred to as “consulting parties.” These consulting parties have the opportunity to weigh in on or object to Federal findings and determinations. When the Federal agency determines that the undertaking would adversely affect historic properties, it must seek to avoid, minimize or mitigate such adverse effects, which is reflected in either a memorandum of agreement or programmatic agreement signed by required consulting parties. If, after all consultation steps, no agreement is reached on how to address adverse effects, the termination process as allowed by the regulation at 36 CFR 800.7.

The Department of the Interior (Department) Bureaus attempting to meet the procedural requirements of section 106 for proposed undertakings are too often delayed by a consultation process that has become far more time-consuming, demanding, costly and complicated than what was contemplated in the statute or the regulations. Consequently, the Department’s Bureaus are

forced to unnecessarily extend the decision-making process for undertakings, with little or no benefit.

This Order identifies opportunities to streamline and expedite Section 106 compliance for Bureaus' undertakings and sets policy direction with the goals of (1) reducing the burden of Section 106 reviews on Bureaus and (2) timely completing such reviews consistent with the Section 106 implementing regulations.

Sec. 4. Policy. It is the policy of the Department that:

- a. The Section 106 compliance process should be conducted in a thorough and expeditious manner. As an initial step in the Section 106 process, Bureaus should plan for the timely completion of the process, identifying all steps that may be taken consistent with the Section 106 implementing regulations, 36 C.F.R. Part 800, to expedite completion of the process.
- b. The Section 106 and NEPA compliance processes should be integrated as much as possible and prudent, as contemplated in 36 C.F.R. § 800.8. The Section 106 process should conclude no later than the conclusion of the NEPA process.
- c. The Section 106 process allows agency officials¹ to make informed decisions; it requires those officials to consider alternatives to avoid, minimize or mitigate adverse effects to historic properties, but it does not require that all such effects be avoided, minimized or mitigated.
- d. Agency officials have the authority and obligation to weigh historic preservation values alongside other policy objectives and to make all decisions regarding the undertaking, including whether proposed measures to avoid, mitigate or minimize adverse effects to historic properties should be adopted.
- e. Agency officials should prioritize the adoption of measures that avoid, minimize or mitigate the undertaking's adverse effects to historic properties on site. Mitigation measures that do not lessen the adverse effects that are caused by the undertaking—such as offsite compensatory mitigation—should be evaluated only after the agency official determines that onsite mitigation measures are infeasible.
- f. Bureaus should seek to use existing alternative procedures for Section 106 compliance to the greatest extent possible, or to adopt new alternative procedures for Section 106 compliance, but only where such procedures would promote efficient and timely Government action.

¹ “The agency official has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of section 106 compliance.” 36 C.F.R. § 800.2(a)

Sec. 5. Directives.

a. Identify categories or types of undertakings with no potential to cause effects.

Consistent with 36 C.F.R. § 800.3(a)(1), Bureaus should conduct consultation under section 106 only for those undertakings that have the potential to cause effects on historic properties. To ensure that Bureaus are not conducting unnecessary Section 106 consultations, within 30 days of the date of this Order, all Bureaus, in coordination with the Office of the Solicitor, shall immediately conduct a review to identify categories or types of undertakings that do not have the potential to cause effects on historic properties, assuming that historic properties are present. Such list shall be transmitted to the Deputy Secretary's Office for review. The Bureaus will then work with the Department to finalize and disseminate the list to the field to apply to Section 106 consultations. The final list will be disseminated within 60 days of the date of this Order.

Even after this list is disseminated, Bureaus should continually identify undertakings with no potential to cause effects to historic properties and report them to the Deputy Secretary's Office on a quarterly basis.

b. Create efficiencies by implementing program alternatives, particularly exempted categories.

The Section 106 regulations at 36 CFR 800.14, allow for program alternatives, which can offer a more flexible and efficient approach to meeting Section 106 compliance. These alternatives (Programmatic Agreements, including Prototype Programmatic Agreements, Exempted Categories, Standard Treatments, Program Comments and Alternate Procedures) can enable Bureaus to tailor the review process for recurring undertakings or programs that may affect historic properties. Program alternatives can be particularly useful when Bureaus routinely conduct similar activities or when modifying the standard review process could reduce delays or improve program administration.

1. Identify exempted categories of undertakings.

All Bureaus, in coordination with the Solicitor's Office, shall also conduct a coordinated review to identify programs or categories of undertakings that meet the criteria in 36 C.F.R. § 800.14(c)(1) for an exemption from the requirements to comply with 36 C.F.R. §§ 800.3-800.13 where an exemption would create substantial efficiencies either for a single Bureau or if applied Department-wide. During this process, Bureaus should also consider whether other program alternatives may be a more effective means to streamline Section 106 compliance for a program or category of undertakings.

- a) Within 60 days of the date of this order, the Bureaus shall provide a list of recommended exemptions, including details regarding the exact undertakings to be included in the exemptions, to the

relevant Assistant Secretary to report to the Deputy Secretary's Office.

- b) Each of the Assistant Secretaries with the assistance of the Bureau Directors will identify a lead Bureau for any exemptions, or other Department-wide program alternatives that the Department elects to pursue. The lead Bureau will be responsible for coordinating with all other affected Bureaus. The lead Bureau will also be responsible for coordinating with the Advisory Council regarding the content of the proposed exemption, or other program alternative, and for complying with all substantive and procedural requirements in 36 C.F.R. § 800.14 necessary for the proposed exemption, or other program alternative, to be approved or otherwise effectuated, as appropriate.
- c) The Bureaus' responsibility to identify program alternatives that could streamline or otherwise render compliance with section 106 more efficient is ongoing. Bureaus shall continue to identify and pursue Bureau-specific and Department-wide alternatives, as appropriate, and report those quarterly to the Deputy Secretary's Office.

c. Implement existing efficiencies provided for in the regulations.

To promote timely, consistent and effective completion of Section 106 reviews, Bureaus should take full advantage of the efficiencies embedded in the Section 106 regulations. These regulatory provisions offer mechanisms that enable agency officials to streamline consultation, reduce delays and focus on agency resources where they are most needed. At a minimum, the following measures should be incorporated into Bureau practice:

1. Adhere to 30-day deadlines.

- a) If the State Historic Preservation Officer (SHPO), or a Tribal Historic Preservation Officer (THPO) that has assumed the SHPO's responsibilities on Tribal lands, fails to respond within 30 days of receipt of a request for review or of an adequately documented finding or determination, the agency official should proceed to the next step in the Section 106 process based on the finding or determination, consistent with 36 C.F.R. §§ 800.3(c)(4), 800.4(d)(1) and 800.5(c)). This deadline also applies to officials in the territories responsible for historic preservation.
- b) This deadline should only be extended for good cause shown and approved by the relevant Bureau director.
- c) At the request of a Tribe through a THPO (or appropriate Tribal representative) for undertakings occurring on or affecting historic properties on Tribal lands, a 45-day extension of this deadline may

be granted. Tribes or territories requesting an extension must certify that the lands in question have not been subject to a previous cultural survey that can be used to inform a Section 106 consultation.

2. Consolidate steps, where practicable.

- a) Agency officials should consider whether consolidating steps in the Section 106 process under 36 C.F.R. § 800.3(g) is appropriate and likely to lead to a more efficient and timely resolution of Section 106 consultation. If the agency official determines that consolidation of steps is appropriate, the official shall seek the concurrence of the SHPO, THPO, or appropriate territory official with the proposed consolidation.

3. Coordinate the Section 106 process with the NEPA process.

- a) For an undertaking in which a Bureau is the lead Federal agency preparing an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) to satisfy the requirements of NEPA, the Bureau shall consider using the substitution procedures set forth at 36 C.F.R. § 800.8(c) to comply with section 106, unless:
 - i) The agency official determines that compliance with section 106 compliance can be met under a program alternative prior to the target date for completing an EA or an EIS; or
 - ii) The undertaking is not an activity with the potential to cause effects on historic properties, assuming historic properties were present, as described in 36 C.F.R. § 800.3(a)(1), or is otherwise exempted from section 106.

d. Set target dates for completing Section 106 compliance and employ termination, when appropriate.

For any undertaking where the agency official has determined that there will be an adverse effect on one or more historic properties as a result of the undertaking, Bureaus should strive for a 180-day timeframe during which time the agency official will make a reasonable and good faith effort to resolve the adverse effect with the consulting parties and to afford the Advisory Council the ability to comment. If the adverse effect is not resolved within 180 days, the agency official shall determine whether further consultation will be productive and whether terminating consultation consistent with 36 C.F.R. § 800.7 is necessary to conclude the Section 106 process. If at any time during Section 106 consultation the agency official determines that further consultation will not be productive and that terminating consultation is necessary to timely conclude the Section 106 process, the official shall consider whether termination of consultation is appropriate and, if so, seek to follow the procedures in 36 C.F.R. § 800.7.

e. Offsite Compensatory Mitigation.

1. Offsite compensatory mitigation is not required by section 106 of the NHPA, does not lessen the adverse effects that are caused by the undertaking that is the subject of consultation and is disfavored as a matter of policy. Except as otherwise required by State, territorial, or other Federal law, or when offered voluntarily by a project proponent, any programmatic agreement, memorandum of agreement, record of decision or other instrument for which a Bureau of the Department is the lead Federal agency, the inclusion of offsite compensatory mitigation shall be subject to approval by the appropriate Bureau head.
2. For purposes of this Order, the term “offsite compensatory mitigation” means a project proponent’s activities, monetary payments or in-kind contributions to conduct offsite actions that are intended to offset adverse impacts or effects of a proposed action onsite.
3. Reasonable funding for the creation of appropriate records to document a historic property that is to be substantially altered or demolished, including costs directly associated with and attributable to the excavation, transportation, curation and storage of appropriate records and materials, is not considered offsite compensatory mitigation.
4. Requirements to make monetary or in-kind payments to support broad-based archaeological studies, educational programs or institutions that serve as a repository for historical documentation in excess of reasonable curation and storage costs directly attributable to the documentation of a specific historic property that is to be substantially altered or destroyed is considered offsite compensatory mitigation.
5. Compensatory mitigation is only offered voluntarily when a project proponent’s activities, payments or in-kind contributions to conduct offsite actions to compensate for the impacts of a proposed action are free of coercion or duress, including the agency’s withholding of authorization for otherwise lawful activity, or the suggestion that a favorable outcome is contingent upon adopting a compensatory mitigation program.

Sec. 6. Implementation Responsibilities.

- a. The Deputy Secretary’s Office is responsible for ensuring implementation of this Order including providing support to develop lists of undertakings with no potential to cause effects and the development of exempted categories and other program alternatives.
- b. Each Assistant Secretary is responsible for ensuring that their respective Bureaus and offices fully implement the provisions of this Order.
- c. Each Bureau head is responsible for ensuring compliance within their Bureau and shall assign a point of contact to collaborate with the Deputy Secretary’s Office

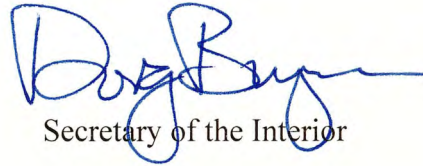
on the listings of undertakings with no potential to cause effects, program alternatives and related implementation guidance. Bureau heads shall ensure that the designated point of contact is afforded the necessary time and resources to support these efforts.

Sec. 7. Effect of this Order. This Order is intended to improve the internal management of the Department. This Order and any resulting report or recommendations are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officer or employees, or any other person. To the extent there is any inconsistency between the provisions of this Order and any Federal laws or regulations, the laws or regulations will control.

Sec. 8. Expiration Date. This Order is effective immediately and will remain in effect until it is amended, superseded, or revoked, whichever occurs first.

Aug 20th 2026

Date:


Secretary of the Interior