National Historic Preservation Act: Advisory Council and Historic Preservation Proposes Revised 106 Rules

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07/28/2026

The Advisory Council on Historic Preservation ("ACHP") voted on July 24 in favor of a Notice of Proposed Rule Making ("NPRM") regarding revisions to the regulations implementing Section 106 of the National Historic Preservation Act ("NHPA"). An NHPA news release states in part:

…ACHP Vice-Chairman, Trvis Voyles, convened an unassembled meeting if the ACHP on July 17 to vote on the proposed rulemaking action.

The draft NPRM is stated to now be forwarded to the interagency review process with the Office of Management and Budget's Office of Information and Regulatory Affairs.

The NHPA was signed into law in 1966. The statute establishes a national preservation program and a system of procedural protection which Congress intended to encourage both the identification and protection of historic resources at the federal level and indirectly at the state and local level.

The NHPA arguably represents the most extensive preservation legislation ever enacted in the United States.

The NHPA directs roles and responsibility for a federal historic preservation program. It authorizes several tools to carry out preservation activities. One of those tools is a review process known as Section 106. Section 106 objective is to ensure that federal agencies consider the effects of federally licensed, assisted regulated, or funded activities on funded properties, listed or eligible for listing on the National Register.

The AHCP is an independent federal agency comprised of 24 statutorily designated members from federal agencies, preservation organizations, Indian tribes, and export private citizens. The AHCP has staff based in Washington D.C. whose duties include carrying out historic preservation case reviews, provide training in historic preservation law and policy, conduct outreach to the American public on the importance of historic sites and community preservation.

Various organizations have expressed significant concern about the NPRM. The National Parks Conservation Association states in a July 23 news release:

… The proposed draft completely changes the intention of Section 106, gutting the consultation process and giving the agency power to decide if public input is "useful. The removal of language regarding consultation undermines Tribal sovereignty and federal trust responsibilities. … The proposed revisions

also change the definition of “historic properties” limiting the cultural historic places considered for protection in this process. For example, the language claims the properties must have “past, tangible human improvements” and natural features such as mountains, bodies of water, and landscapes do not apply.”

Earth Justice, in a July 27 news release states in part regarding the NPRM:

…New rules proposed by the ACHP would make Tribal consultation and public participation largely optional and would drastically limit the law’s scoped historic properties that are geographically compact, excluding rivers, mountains and other Traditional Cultural Landscapes that are core to the history and identity of many Indigenous people.

The National Historic Preservation Association states in the July 21 news release in part:

…The ACHP’s proposed changes to Section 106 will eviscerate the preservation of our shared civic and cultural heritage in the United States. … As a voting member of the ACHP, the National Trust vehemently opposes these changes and is working with our partners to encourage the Council to withdraw this dangerous proposal.

A copy of the ACHP news release is attached.