



CHRONICLE™
HERITAGE

SECTION 106 REGULATORY UPDATE: WHAT DO THE PROPOSED REVISIONS MEAN FOR YOUR PROJECTS?

Where the rewrite process stands, what the proposed changes may do,
and what to expect in the future





For the first time since 2000, the regulations that implement Section 106 of the National Historic Preservation Act are headed for a comprehensive rewrite.



WHY DOES THIS MATTER FOR YOUR PROJECT?

Two practical risks accompany this rulemaking:

- **Delay.** Projects in consultation now, or starting soon, may encounter uncertainty about which procedures apply if the rule changes while they are underway, or while agencies and consulting parties align on how a revised process works in practice.
- **Litigation.** Rewrites of long-standing federal review regulations are frequently challenged in court. A legal challenge to this rule, if filed, could affect its status or applicability after it takes effect.

Both risks warrant tracking this process and building schedule flexibility into projects where Section 106 compliance is on the critical path.

HOW DID WE GET HERE?

- **2000–2004:** ACHP's current 36 CFR Part 800 regulations were substantially rewritten in 2000, with technical amendments in 2004.
- **Early-mid 2026:** ACHP began developing a broad revision to Part 800, under a Council-approved review timeline.
- **July 17, 2026:** ACHP convened an unassembled meeting to vote on a draft Notice of Proposed Rulemaking (NPRM).
- **July 24, 2026:** ACHP voted to move the draft NPRM forward.



WHAT WOULD THE PROPOSED CHANGES DO?

The draft restructures several parts of the Section 106 process rather than making only minor adjustments. Based on our review of the redline:

Redefined federal actions. The draft adds explicit tests for what counts as an “undertaking” that triggers Section 106 review: actions carried out by or on behalf of a federal agency, third-party actions funded by and under federal jurisdiction, and third-party actions requiring a federal permit, license, or approval. It also limits review to the action or project over which the agency has discretion and control.

Section 106 Report. Several checkpoints where a State Historic Preservation Officer, Tribal Historic Preservation Officer, or the Council currently has an independent right to review or object to an agency’s findings would be replaced with an agency-certified “Section 106 Report.”

Discretionary language in place of mandatory language. In a number of provisions, “shall” becomes “may” or “should,” including provisions on public participation and on involving consulting parties in agency findings.

New categorical exemptions. The draft adds categories of federal involvement that would fall outside Section 106 review entirely, rather than being reviewed on a streamlined basis.

Revised core definitions. The draft changes how “area of potential effects,” “historic property,” and “adverse effect” are defined.

Shortened internal timelines. Several internal agency and Council deadlines would be shortened.



WHAT CAN WE DO FOR YOUR PROJECT TODAY?

- **Assess your exposure.** We review your project portfolio and identify which undertakings depend on which federal triggers, which would be affected by the proposed changes, and which state requirements apply regardless.
- **Keep projects moving through the transition.** Proposed transition provisions, agency-specific procedures, and pending litigation will create a period where different projects operate under different rules. We help sponsors choose the most advantageous compliant path and keep schedules intact.
- **Plan consultation strategically.** From Tribal consultation to SHPO coordination to applicant-led early consultation, we design engagement that resolves issues before they become delays.



FREQUENTLY ASKED QUESTIONS

Are the Section 106 regulations changing in 2026? The ACHP is considering proposed revisions to 36 CFR Part 800. Any changes require public notice and comment before taking effect, and the current regulations remain fully in force today.

Does my project still need Section 106 review? Yes, existing requirements apply until a final rule takes effect, and projects already in consultation are expected to continue under current procedures. Many projects also carry independent state and tribal requirements.

How fast can Section 106 compliance move? With early planning, the right consultation strategy, and complete documentation, most reviews conclude far faster than the worst-case timelines cited in policy debates. Efficient compliance is a design problem, and it's what Chronicle Heritage does.