

# Notices

## Federal Register

Vol. 69, No. 249

Wednesday, December 29, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

### ADVISORY COUNCIL ON HISTORIC PRESERVATION

#### Exemption Regarding Historic Preservation Review Process for Effects to the Interstate Highway System

**AGENCY:** Advisory Council on Historic Preservation.

**ACTION:** Notice of intent to issue exemption regarding the Interstate Highway System.

**SUMMARY:** The Advisory Council on Historic Preservation ("ACHP") proposes an exemption that would relieve Federal agencies from the requirement of taking into account the effects of their undertakings on the Interstate Highway System, except with regard to certain individual elements or structures that are part of the system. The public is invited to comment on the exemption before it is finalized and submitted for adoption by the ACHP.

**DATES:** Submit comments on or before January 28, 2005.

**ADDRESSES:** Address all comments concerning this exemption to Carol Legard, Federal Highway Administration ("FHWA") Liaison, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. Fax (202) 606-5072. You may submit electronic comments to: [clegard@achp.gov](mailto:clegard@achp.gov).

**FOR FURTHER INFORMATION CONTACT:** Carol Legard, 202-606-8522.

**SUPPLEMENTARY INFORMATION:** Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, requires Federal agencies to consider the effects of their undertakings on historic properties and provide the Advisory Council on Historic Preservation ("ACHP") a reasonable opportunity to comment with regard to such undertakings. Historic properties are those that are listed on the National

Register of Historic Places ("National Register") or eligible for such listing.

Section 214 of the National Historic Preservation Act ("NHPA") authorizes the ACHP, with the concurrence of the National Park Service, to promulgate regulations for exempting undertakings "from any or all of the requirements of" the NHPA. 16 U.S.C. 470v. The Section 106 regulations, found at 36 CFR part 800, detail the process for the approval of such exemptions. 36 CFR 800.14(c).

In accordance with the Section 106 regulations, the ACHP may approve an exemption for an undertaking if it finds that: (i) The actions within the program or category would otherwise qualify as "undertakings" as defined in 36 CFR 800.16; (ii) The potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and (iii) exemption of the program or category is consistent with the purposes of the NHPA.

#### I. Background

As the fiftieth anniversary in 2006 of the designation of the Dwight D. Eisenhower National System of Interstate and Defense Highways ("Interstate System") nears, resolving the question of how the Interstate System will be treated under the NHPA has taken on increased urgency. Since the year 2001, when parts of the Interstate System were first suggested as potentially eligible for inclusion in the National Register, the Federal Highway Administration ("FHWA") has been considering how best to deal with the historic preservation implications of managing the Interstate System. FHWA and State Departments of Transportation ("State DOTs") were concerned that without appropriate provisions in place, such a designation could present an inordinate administrative burden under the provisions of Section 106 of the NHPA and Section 4(f) of the Department of Transportation Act ("Section 4(f)"). Section 4(f) prohibits transportation agencies from approving a project that uses land from, among other things, historic properties unless there is no prudent and feasible alternative to using the property and the project includes all possible planning to minimize the harm resulting from the use of the property.

FHWA initially worked with an ad hoc task force representing FHWA divisions, State DOTs, State Historic

Preservation Officers ("SHPOs"), the National Register, and the ACHP to develop a strategy to address the historic preservation issues. All agreed that a nationally coordinated approach was needed. The FHWA, in consultation with the ACHP and the National Conference of State Historic Preservation Officers ("NCSHPO"), determined that this nationwide approach should acknowledge the importance of the Interstate System in American history, but also recognize that ongoing maintenance, improvements, and upgrades are necessary to allow the system to continue to serve the transportation needs of the nation. ACHP and FHWA staff developed a draft Programmatic Agreement ("PA"), which was circulated for comment among the ad hoc task force members, FHWA Divisions, the American Association of State Highway and Transportation Officials ("AASHTO"), NCSHPO, and SHPOs. A PA is an alternative that Federal agencies can use to better tailor the Section 106 review process to their programs and needs. In most cases where there is a finding of No Adverse Effect for historic transportation facilities under the Section 106 process, the Section 4(f) process is not invoked under the Section 4(f) regulations. Accordingly, the PA addressed the Section 106 process directly and the Section 4(f) requirements by implication.

Comments received on the draft PA, and the proposed approach, varied. Some FHWA divisions and AASHTO objected to the approach taken in the PA, primarily due to the statement in that document that the entire 46,700 mile long Interstate System would be treated as if eligible for inclusion in the National Register. Many FHWA divisions were also concerned with the expectation that each State would be responsible for identifying sections of the Interstate System within that State having national (as opposed to State or local) significance and then requiring consideration of such sections under Section 106. AASHTO urged FHWA and the ACHP to consider developing an exemption instead. ACHP staff met with FHWA in August, 2004, agreed on a revised set of principles and concepts for an administrative approach and set out to look at the possible use of an exemption. As consultation continued,

an administrative exemption, as authorized by Section 214 of the NHPA, was determined to be the most appropriate approach to resolving all parties' concerns.

## II. Exemption Concept

The proposed exemption contained herein would release all Federal agencies from the Section 106 requirement of having to consider the effects of their undertakings on the Interstate System, except for a limited number of individual elements associated with the system. The exemption embodies the view that the Interstate System is historically important, but only certain particularly important components of that system, as noted below, warrant consideration under Section 106 of the NHPA and would, therefore, be excluded from the exemption.

Those exclusions would be limited to: (a) Elements that are at least 50 years old, possess national significance, and meet the National Register eligibility criteria (36 CFR part 63); (b) elements that are less than 50 years old, possess national significance, meet the National Register eligibility criteria, and are of exceptional importance; and (c) elements that were listed in the National Register, or determined eligible for the National Register by the Keeper pursuant to 36 CFR part 63, prior to the effective date of the exemption. FHWA, at the headquarters level, in consultation with stakeholders, would make the determination of which elements of the system meet these criteria. Additionally, FHWA may exclude historic bridges, tunnels, and rest areas of State or local significance, provided they meet the National Register eligibility criteria, were constructed prior to 1956, and were later incorporated into the Interstate System.

The exemption concerns only the effects of Federal undertakings on the Interstate System and does not alter the Section 106 review obligations for other types of historic properties that may be affected by an undertaking. Each Federal agency would remain responsible for considering the effects of its undertakings on other historic properties that are not components of the Interstate System. For example, Federal agencies would still have to take appropriate actions to identify and consider archaeological sites that may be affected by ground disturbing activities, historic properties of religious and cultural significance to Indian tribes that may be impacted, and historic buildings or districts located within the area of potential effect of a proposed

Federal undertaking in accordance with subpart B of the Section 106 regulations.

## III. Exemption Criteria

Pursuant to 36 CFR 800.14(c)(1), Section 106 exemptions must meet certain criteria. Only actions that qualify as undertakings, as defined in 36 CFR 800.16, may be considered for exemption, and the exemption itself must be consistent with the purposes of NHPA. Furthermore, in order to be considered exempted, the potential effects on historic properties of those undertakings should be "foreseeable and likely to be minimal or not adverse." The ACHP believes that the proposed exemption meets these conditions. Federal funding, permits, or approvals for actions required for maintenance, alterations, or improvements to the Interstate System meet the definition of "undertaking."

The exemption was originally drafted to cover actions carried out under FHWA's Federal-aid program. It was later expanded to ensure that other federal actions constituting undertakings affecting interstate highway projects were subject to the same requirements as FHWA (*e.g.*, issuance of a permit under Section 404 of the Clean Water Act for a project on the Interstate System).

The Interstate System is comprised of 46,700 miles of roadway forming a web across the intercontinental United States. The scale of this system and its attendant impact to social, commercial, and transportation history of the second half of the twentieth century make the construction of this system an extremely important event in American history. The integrity of the system depends on continuing maintenance and upgrades so that it can continue to move traffic efficiently across great distances. Actions carried out by Federal agencies to maintain or improve the Interstate System will, over time, alter various segments of the system, but such changes are considered to be minimal or not adverse when viewing the system as a whole. The exemption does not apply to certain historically important elements of the system. By excluding these elements from the exemption, the ACHP and FHWA ensure that the important character-defining features of the Interstate System are considered through the normal Section 106 review process.

## IV. Public Participation

In accordance with 36 CFR 800.14(c)(2), public participation must be arranged on a level commensurate with the subject and scope of the exemption. This notice is intended to

meet the requirement for public participation in the development of this exemption. In developing the draft PA and this exemption, the ACHP and FHWA have also consulted directly with SHPOs, all FHWA Division, State DOTs, AASHTO, NCSHPO, and the National Trust for Historic Preservation.

Neither the ACHP nor the FHWA have engaged in consultation with Indian tribes and Native Hawaiian organizations pursuant to 36 CFR 800.14(c)(4), since the exemption is limited to effects on the Interstate System itself, which does not qualify as a property of cultural and religious significance to such tribes and organizations. Also, the exemption will not apply on tribal lands.

## V. Text of the Exemption

The full text of the proposed exemption is reproduced below:

### Section 106 Exemption Regarding Effects to the Interstate Highway System

#### I. Exemption From Section 106 Requirements

Except as noted in Sections II and III, all Federal agencies are exempt from the Section 106 requirement of taking into account the effects of their undertakings on the Interstate Highway System.

This exemption concerns solely the effects of Federal undertakings on the Interstate Highway System. Each Federal agency remains responsible for considering the effects of its undertakings on other historic properties that are not components of the Interstate Highway System (*e.g.*, adjacent historic properties or archaeological sites that may lie within undisturbed areas of the right of way) in accordance with subpart B of the Section 106 regulations or according to an applicable program alternative executed pursuant to 36 CFR 800.14.

#### II. Process for Designating Individual Elements Requiring Section 106 Review

By June 30, 2006, the Federal Highway Administration shall designate individual elements of the Interstate System that are to be excluded from this exemption. The Federal Highway Administration headquarters shall make the designations, following consultation with the relevant State Transportation Agencies, Federal Highway Administration Divisions, State Historic Preservation Officers, the Advisory Council on Historic Preservation, and the public. The Federal Highway Administration headquarters may, as needed, consult the Keeper of the National Register to resolve questions or

disagreements about the National Register eligibility of certain elements.

### III. Individual Elements Excluded From Exemption

(a) The following elements of the Interstate Highway System shall be excluded from the scope of this exemption, and therefore shall require Section 106 review:

(i) Elements that are at least 50 years old, possess national significance, and meet the National Register eligibility criteria (36 CFR part 63), as determined pursuant to Section II;

(ii) Elements that are less than 50 years old, possess national significance, meet the National Register eligibility criteria, and are of exceptional importance (and therefore meet criteria consideration G for properties that have achieved significance within the last fifty years), as determined pursuant to Section II; and

(iii) Elements that were listed in the National Register, or determined eligible for the National Register by the Keeper pursuant to 36 CFR part 63, prior to the effective date of this exemption.

(b) The following elements of the Interstate Highway System may be excluded from the exemption, at the discretion of the Federal Highway Administration: bridges, tunnels, and rest areas that were constructed prior to June 30, 1956, were later incorporated into the Interstate Highway System, possess State or local significance, and meet the National Register eligibility criteria, as determined pursuant to Section II.

### IV. Interpretation and Commemoration

The Federal Highway Administration will recognize, interpret, and commemorate the public history of the Interstate Highway System as it shaped the latter half of the twentieth century. Available for broad public use, this effort shall include the completion of a popular publication and/or development of a web site providing information and educational material about the Interstate Highway System and its role in American history.

### V. Potential for Termination

The Advisory Council on Historic Preservation may terminate this exemption in accordance with 36 CFR 800.14(c)(7) if it determines that the purposes of Section 106 are not being adequately met.

### VI. Definitions

The following definitions shall apply to this exemption:

(a) "Section 106" means Section 106 of the National Historic Preservation

Act, 16 U.S.C. 470f, and its implementing regulations, found under 36 CFR part 800.

(b) "Undertaking" means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.

(c) "Interstate Highway System" shall be defined as the Dwight D. Eisenhower National System of Interstate and Defense Highways as set forth in 23 U.S.C. 103(c), that being commonly understood to be the facilities within the rights-of-way of those highways carrying the official Interstate System shield, including but not limited to the road bed, engineering features, bridges, tunnels, rest stops, interchanges, off-ramps, and on-ramps.

**Authority:** 16 U.S.C. 470v; 36 CFR 800.14(c).

Dated: December 22, 2004.

**John M. Fowler,**

*Executive Director.*

[FR Doc. 04-28483 Filed 12-28-04; 8:45 am]

**BILLING CODE 4310-10-P**

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

[Docket No. 04-048N]

#### Codex Alimentarius Commission: Thirty-third Session of the Codex Committee on Food Labelling

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of public meeting, request for comments.

**SUMMARY:** The Office of the Under Secretary for Food Safety, United States Department of Agriculture (USDA), and the Food and Drug Administration (FDA), United States Department of Health and Human Services, are sponsoring a public meeting on January 19, 2005, to provide information and receive public comments on certain agenda items that will be discussed at the Thirty-third Session of the Codex Committee on Food Labelling (CCFL) of the Codex Alimentarius Commission (Codex). The 33rd Session of the CCFL will be held in Kota Kinabalu, Malaysia, May 9-13, 2005. The Under Secretary and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the agenda items that

will be discussed at this forthcoming session of the CCFL.

**DATES:** The public meeting is scheduled for Wednesday, January 19, 2005 from 1 p.m. to 4 p.m.

**ADDRESSES:** The public meeting will be held in the Auditorium (Room 1A-003), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD. Documents related to the 33rd Session of the CCFL will be accessible via the World Wide Web at the following address: <http://www.codexalimentarius.net/current.asp>.

FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

- Mail, including floppy disks or CD-ROMs, and hand- or courier-delivered items: Send to the FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102, Cotton Annex, Washington DC 20730. All comments received must include the Agency name and docket number 04-048N.

All comments submitted in response to this notice, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at [http://www.fsis.usda.gov/regulations/2004\\_Notices\\_Index/index.asp](http://www.fsis.usda.gov/regulations/2004_Notices_Index/index.asp)

*Participation by Conference Call:* A call-in number has been arranged: 1-877-322-9654, participant code 920770.

**FOR FURTHER INFORMATION ABOUT THE 33RD SESSION OF THE CCFL CONTACT:** U.S. Delegate, Leslye Fraser, J.D. Director, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition, FDA. 5100 Paint Branch Parkway (HFS-004), College Park, MD 20740. Phone: (301) 436-2378 Fax: (301) 436-2637, E-mail: [leslye.fraser@fda.hhs.gov](mailto:leslye.fraser@fda.hhs.gov).

**FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT:** Ellen Matten, International Issues Analyst, U.S. Codex Office, FSIS, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC 20250-3700, Phone: (202) 205-7760, Fax: (202) 720-3157.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Codex Alimentarius Commission (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international standard-setting organization for