

ADVISORY COUNCIL ON HISTORIC PRESERVATION**Program Comment Issued for the U.S. General Services Administration on Select Envelope and Infrastructure Repairs and Upgrades to Historic Public Buildings**

AGENCY: Advisory Council on Historic Preservation.

ACTION: Program Comment Issued for the U.S. General Services Administration on Select Envelope and Infrastructure Repairs and Upgrades to Historic Public Buildings.

SUMMARY: The Advisory Council on Historic Preservation (ACHP) issued a Program Comment for the U.S. General Services Administration setting forth the way in which it will comply with Section 106 of the National Historic Preservation Act for select repairs and upgrades to windows, lighting, roofing, and heating, ventilating, and air-conditioning (HVAC) systems within historic public buildings.

DATES: The Program Comment went into effect on August 7, 2009.

ADDRESSES: Address all questions concerning the Program Comment to Kirsten Brinker Kulis, Office of Federal Agency Programs, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 803, Washington, DC 20004. Fax (202) 606-8647. You may submit electronic questions to: kkulis@achp.gov.

FOR FURTHER INFORMATION CONTACT: Kirsten Brinker Kulis, (202) 606-8517, kkulis@achp.gov.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act requires federal agencies to consider the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. The ACHP has issued the regulations that set forth the process through which Federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 (Section 106 regulations).

Under Section 800.14(e) of those regulations, agencies can request the ACHP to provide a "Program Comment" on a particular category of undertakings in lieu of conducting individual reviews of each individual undertaking under such category, as set forth in 36 CFR 800.4 through 800.7. An agency can meet its Section 106 responsibilities with regard to the effects of particular aspects of those undertakings by taking into account ACHP's Program Comment

and following the steps set forth in that comment.

I. Background

The ACHP has issued a Program Comment to the U.S. General Services Administration (GSA) which streamlines Section 106 compliance for select repairs and upgrades to windows, lighting, roofing, and heating, ventilation, and air-conditioning (HVAC) systems. The ACHP membership voted unanimously to issue the Program Comment via an unansembled vote on August 7, 2009.

While the Program Comment may be applied to the types of projects noted above at all of GSA's historic public buildings, the repairs and upgrades must be undertaken using GSA's Technical Preservation Guidelines (Guidelines), written by the GSA's Center for Historic Buildings, Office of the Chief Architect, Public Buildings Service. The following Guidelines are included as part of the Program Comment as appendices:

- Upgrading Historic Building Windows;
- Upgrading Historic Building Lighting;
- Historic Building Roofing;
- HVAC Upgrades in Historic Buildings.

Due to their volume, the Guidelines will not be copied into this notice. However, they can be accessed in their entirety on the Internet at: <http://www.gsa.gov/technicalpreservationguidelines>. Those without access to the Internet can contact Kirsten Brinker Kulis at (202) 606-8517, or by e-mail at kkulis@achp.gov, to arrange an alternate method of access to these appendices.

The GSA has consulted with the National Park Service (NPS) with regard to the cited Guidelines, and the NPS has confirmed their consistency with the Secretary of the Interior's Standards for Rehabilitation when applied under the conditions set out in the Program Comment.

In addition, the repairs and upgrades contemplated by the Program Comment are limited to projects executed by GSA employees and contractors who meet the professional standards developed by the Secretary of the Interior. The Program Comment is further limited to those projects where the proposed repairs and upgrades would not adversely affect the qualities that qualify a subject building for the National Register of Historic Places.

Before using the Program Comment, these findings will be made by GSA's Regional Historic Preservation Officers (RHPO), who will notify the relevant

State Historic Preservation Officer (SHPO) by providing them with the GSA's Section 106 Short Form (appended to the Program Comment) for a ten business day review period, during which time they may object to use of this Program Comment for the project. If the SHPO objects within that timeframe, GSA will follow the standard Section 106 review process, rather than this Program Comment, for the proposed work. If GSA already has a Section 106 agreement that covers the proposed work (e.g., a state or regional Programmatic Agreement) GSA will have the option of following that agreement, rather than this Program Comment.

The Program Comment provides for regular reports and meetings on its implementation.

The Program Comment is the result of consultation among the GSA, the ACHP, the NPS, the National Conference of State Historic Preservation Officers (NCSHPO), the National Trust for Historic Preservation (NTHP), the National Alliance of Preservation Commissions (NAPC), and the National Association of Tribal Historic Preservation Officers (NATHPO).

Public comments resulting from a June 26, 2009 public notice in the **Federal Register** (74 FR 30608-30610) were received by the ACHP by July 20, 2009.

Preservation Idaho expressed an interest in GSA's National Register eligibility survey efforts for their public building inventory. The ACHP forwarded materials to Preservation Idaho regarding this topic.

The Georgia Department of Natural Resources provided language clarification suggestions. It noted that references to "work" should be made more specific. The Program Comment was edited accordingly. It also proposed that the reports and meeting provisions could be moved to the last section of the Program Comment. The ACHP did not follow that recommendation, deeming such a move unnecessary.

The Pennsylvania Historical and Museum Commission requested a final copy of the GSA Short Form. The text of the form is included herein. The ACHP will send the Commission a copy with the final formatting. The Commission also noted that the 10-day objection period "seems a bit tight." However, the ACHP deemed that the 10-day review period was sufficient for the types of projects contemplated by the Program Comment.

The National Housing and Rehabilitation Association suggested incorporation of their draft "Guide Specifications for the Evaluation of

Fenestration Products Installed in Historical Buildings” into the GSA’s Technical Guidelines for windows. However, the ACHP deemed that GSA’s Technical Guidelines, as reviewed by the NPS, were sufficient for purposes of the Program Comment.

The ACHP also received a letter from the State of Hawaii, Office of Hawaiian Affairs, which stated that OHA had no comments on the Program Comment.

II. Final Text of the Program Comment

The text of the Program Comment is included below. As noted above, due to their volume, the Guideline appendices are not included herein, but can be accessed on the Internet at <http://www.gsa.gov/technicalpreservationguidelines>. The relevant Guidelines are those for:

- Upgrading Historic Building Windows;
- Upgrading Historic Building Lighting;
- Historic Building Roofing;
- HVAC Upgrades in Historic Buildings.

Those without access to the Internet can contact Kirsten Brinker Kulis at (202) 606–8517, or by e-mail at kkulis@achp.gov to arrange an alternate method of accessing these appendices.

The following is the text of the Program Comment, without the Guideline appendices:

Program Comment for General Services Administration

Repairs and Upgrades to Windows, Lighting, Roofing, and Heating, Ventilating, and Air-Conditioning (HVAC)

I. *Establishment and Authority:* This Program Comment was issued by the Advisory Council on Historic Preservation (ACHP) on August 7, 2009, pursuant to 36 CFR 800.14(e).

It provides the General Services Administration (GSA) with an alternative way to comply with its responsibilities under Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, and its implementing regulations, 36 CFR part 800 (Section 106), with regard to the effects of repairs and upgrades to windows, lighting, roofing, and heating, ventilating and air-conditioning (HVAC) systems (Repairs/Upgrades) that follow the appended GSA Technical Preservation Guidelines (Guidelines). The appended Guidelines have been reviewed by the National Park Service, which confirms that they are in keeping with the Secretary of the Interior’s Standards on Rehabilitation.

II. *Applicability to General Services Administration:* Only GSA may use this Program Comment.

III. *Date of Effect:* This Program Comment will go into effect on August 7, 2009.

IV. *Use of This Program Comment To Comply With Section 106 Regarding the Effects of the Repairs and Upgrades:*

(1) GSA may comply with Section 106 regarding the effects of Repairs/Upgrades on historic properties by:

- (i) Making a determination that the proposed Repair/Upgrade may not adversely affect a historic property;
- (ii) Notifying the relevant SHPO, through use of the notice form appended to this Program Comment that it intends to carry out a Repair/Upgrade:

(a) If, within 10 business days from receipt of the notification, the SHPO objects to the use of this Program Comment for the proposed Repair/Upgrade, GSA may not use the Program Comment for the proposed Repair/Upgrade. GSA will then comply with Section 106 for the proposed Repair/Upgrade in accordance with 36 CER §§ 800.3 through 800.7 or any applicable alternative per 36 CFR 800.14.

(b) If the SHPO agrees with the proposed Repair/Upgrade, or does not object within 10 business days from receipt of the notification, GSA may proceed with the proposed Repair/Upgrade in accordance with this Program Comment;

(iii) Conducting such Repair/Upgrade as provided by the relevant Guidelines appended to this document;

(iv) Ensuring that all work on the Repair/Upgrade is designed by an architect and supervised and approved by a cultural resources professional, both of whom meet the relevant standards outlined in the Secretary of the Interior’s Professional Qualification Standards, pursuant to 36 CFR part 61. In addition, the qualified supervisor will ensure construction phase preservation competency and quality control measures are implemented; and

(v) Keeping a record, at the relevant GSA Region, detailing each use of this Program Comment for no less than five years from the final date of the implementation. Each record must include the following information:

(a) A description of the implementation of the Program Comment (including the specific location of the work);

(b) The date(s) when the Program Comment was implemented;

(c) The name(s) of the qualified personnel that carried out and/or supervised the use of the Program Comment; and

(d) A summary of the implementation, indicating how the Repair/Upgrade was carried out, any problems that arose, and the final outcome.

GSA must provide copies of these records, within a reasonable timeframe, when requested by the ACHP or the relevant SHPO.

V. *Discoveries:* If previously unknown features are discovered while work under this Program Comment is being implemented (e.g., a mural behind plaster), GSA will notify SHPO of the discovery and provide SHPO an opportunity to object to the use of this Program Comment, per Stipulation IV(l)(ii), above.

VI. *Program Comment Does Not Cover Undertakings Involving Activities Beyond the Specific Repairs/Upgrades:* The Repairs/Upgrades within the scope of this Program Comment will be discrete undertakings that do not include activities beyond the Repairs/Upgrades themselves. Among other things, the Repairs/Upgrades themselves will not include earth disturbing activities, new construction, site acquisition, change of occupancy or use, or alteration of exteriors or significant interior spaces.

VII. *Process for Adding or Updating Repairs/Upgrades and Guidelines:* While this Program Comment, as originally adopted, was limited to Repairs/Upgrades relating to four Guidelines, more Repairs/Upgrades (and their relevant Guidelines) may be added to it. Moreover, Guidelines already included in the Program Comment may eventually need updating. Accordingly, Repairs/Upgrades and their Guidelines may be added to this Program Comment, or updated, as follows:

(1) GSA will notify the ACHP, the National Conference of State Historic Preservation Officers (NCSHPO), and the Department of the Interior (DOI) (collectively, parties) that it wants to add an Upgrade/Guideline, or to update a Guideline that is already a part of the Program Comment. Such a notification will include a draft of the proposal.

(2) The parties will consult on the proposal; and

(3) If a final version of the proposal is approved by the ACHP Executive Director, the ACHP will publish a notice of availability of the approved addition or update in the Federal Register. The addition or update will go into effect as part of this Program Comment upon such publication.

VIII. *Process for Removing a Repair/Upgrade and Its Guideline:* After consulting with the parties, the ACHP may remove a Repair/Upgrade and its Guideline from the scope of this Program Comment by publishing a **Federal Register** notice to that effect. The Program Comment will continue to operate with the other Repairs/Upgrades

and their Guidelines that have not been removed.

IX. GSA Option To Use Applicable Section 106 Agreements: If an existing Section 106 agreement applies to a proposed Repair/Upgrade, GSA may follow either that existing agreement or this Program Comment.

X. Latest Version of the Program Comment: GSA and/or the ACHP will include the most current version of the Program Comment (with the latest amendments and updates) in a publicly accessible Web site. The latest Web address for that site will be included in each of the **Federal Register** notices for amending, removing or updating the Program Comment. This document and its 41 appended form and guidelines will initially be available at <http://www.achp.gov> and <http://www.gsa.gov/historicpreservation>.

XI. Meetings and Reports: The parties shall meet in September 2011 and every three years thereafter, to discuss the implementation of the Program Comment. GSA will include in its reports under Section 3 of Executive Order 13287, a summary of its experience implementing this Program Comment, how often and where the Program Comment has been utilized, examples of successful implementation, and examples of failures or problems with implementation.

XII. Amendment: The ACHP may amend this Program Comment (other than the appended Guidelines themselves, which are added, updated or removed according to Stipulations VI and VII, above) after consulting with the parties and publishing a **Federal Register** notice to that effect.

XIII. Termination: The ACHP may terminate this Program Comment by publication of a notice in the **Federal Register** 30 days before the termination takes effect.

XIV. Sunset Clause: This Program Comment will terminate on its own accord on August 1, 2018, unless it is amended before that date to extend that period.

XV. Historic Properties of Significance to Indian Tribes and Native Hawaiian Organizations: This Program Comment does not apply in connection with effects to historic properties that are located on tribal lands and/or that are of religious and cultural significance to Indian tribes or Native Hawaiian organizations.

XVI. Definitions: The definitions found at 36 CFR part 800 apply to the terms used in this Program Comment.

XVII. Notification Form and GSA Technical Preservation Guidance Appendices:

Appendix A

GSA Program Comment Notification Form

I. General
 Building Name(s):
 Address (city, state):
 Project Title:
 Qualified Preservation Professional
 Preparing Report:
 Date: (Note: Qualified professionals must meet the relevant standards outlined in the Secretary of the Interior's Professional Qualification Standards, pursuant to 36 CFR part 61.)
 Location of Work in the Building:
 Project Team: A/E firm, Preservation Consultant, GSA Project Officer, Building Manager, and GSA Regional Historic Preservation Officer or Historic Preservation Program staff reviewer:
 II. Scope and Purpose of Project (bullets are acceptable):
 III. Locations and Materials Affected (check all that apply) Preservation Zones affected (see Building Preservation Plan; contact RHPO for assistance)
 ___ Restoration ___ Rehabilitation
 ___ Renovation
 Where does the project affect the historic property?
 ___ Exterior ___ Interior ___ Lobbies/Vestibules
 ___ Corridors
 ___ Stairwells ___ Elevators ___ Restrooms
 ___ Courtrooms ___ Executive Suites
 ___ General Office Space ___ Other (specify)
 What materials are affected by the project?
 ___ Stone ___ Brick ___ Architectural Concrete
 ___ Historic Roofing
 ___ Bronze ___ Architectural Metals (specify)
 ___ Woodwork
 ___ Ornamental Plaster ___ Other (specify)
 What assemblies are affected by the project?
 ___ Windows and Skylights ___ Doors
 ___ Lighting ___ Other (specify)
 IV. Preservation Design Issues:
 List solutions explored, how resolved and why, such as (not inclusive)
 —Locating new work/installation: visibility, protection of ornamental finishes, cost concerns
 —Design of new work/installation: compatibility with existing original materials, research on original design (if original materials non-extant), materials/finishes chosen
 —Method of supporting new work/installation
 —Preservation and protection of historic materials
 V. Graphics—include:
 —Site or floor plan showing work location(s)
 —Captioned photographs of existing site conditions in affected restoration zone locations
 —Reduced project drawings, catalogue cut sheets or photographs showing solutions
 VI. Confirmation
 The undersigned hereby confirms and represents to the best of his or her knowledge and belief, the following as of this date:

- (1) The information in this form is correct;
 - (2) GSA has determined that the proposed work may not adversely affect a historic property;
 - (3) This project approach is consistent with the relevant GSA Technical Preservation Guidelines;
 - (4) The design team includes a qualified preservation architect, engineer or conservator;
 - (5) The design addresses construction phase preservation competency and quality control; and
 - (6) This form will be submitted to the relevant SHPO for its review and opportunity for objection in a timely manner.
- Signature and Date: GSA Regional Historic Preservation Officer

Appendix B

GSA Technical Preservation Guidelines

[Please refer to <http://www.gsa.gov/technicalpreservationguidelines> for a copy of the relevant guidelines. They are linked in that web page under the headings "Upgrading Historic Building Windows," "Upgrading Historic Building Lighting," "HVAC Upgrades in Historic Buildings," and "Historic Building Roofing."]

Authority: 36 CFR 800.14(e).

Dated: August 13, 2009.

Ralston Cox,

Acting Executive Director.

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS-2009-0102]

Privacy Act of 1974; U.S. Immigration and Customs Enforcement-003 General Counsel Electronic Management System, System of Records

AGENCY: Privacy Office, DHS.

ACTION: Modification to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, U.S. Immigration and Customs Enforcement is updating an existing system of records titled General Counsel Electronic Management System (March 31, 2006) to reflect changes in the system that provide Immigration and Customs Enforcement attorneys and other Immigration and Customs Enforcement personnel with additional information regarding immigration cases and with additional means of accessing the information. General Counsel Electronic Management System is a case management system used primarily by attorneys in the Immigration and Customs Enforcement