

September 11, 2026

VIA EMAIL: foia@achp.gov

Freedom of Information Act Officer
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

RE: FREEDOM OF INFORMATION REQUEST: Proposed Amendments to 36 C.F.R. Part 800; Expedited Processing and Fee Waiver Requested

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, and the Advisory Council on Historic Preservation's ("Council" or "ACHP") implementing regulations at 36 C.F.R. Part 810. Consistent with 36 C.F.R. § 810.2(a), this request is clearly marked "FREEDOM OF INFORMATION REQUEST" in the caption above and in the subject line of the transmitting email.

Cultural Heritage Partners, PLLC ("CHP"), requests the records described below. CHP also requests expedited processing under 5 U.S.C. § 552(a)(6)(E) and a waiver of all fees under 5 U.S.C. § 552(a)(4)(A)(iii), on the grounds set out under the headings Request for Expedited Processing and Request for a Fee Waiver.

Records Requested

CHP requests the following records created, received, or maintained by the ACHP.

Category 1. The rulemaking record for the proposed amendments to 36 C.F.R. Part 800.

All records concerning the development, drafting, internal deliberation, review, and approval of the proposed amendments to the Section 106 implementing regulations at 36 C.F.R. Part 800, in whatever form and wherever located. This category includes records held in personal email accounts used to conduct agency business; records held in email accounts issued by any other federal agency, including any U.S. Environmental Protection Agency account; text messages and other electronic messages sent or received on personal or government-issued phones or other devices; messages exchanged through any messaging, chat, or collaboration application on any computer or mobile device; and any related handwritten notes. The category includes without limitation:

- (1) all drafts, redlines, and document comparisons of the proposed rule text, including every version circulated to Council members or to any other federal entity;
- (2) all memoranda, legal analyses, options papers, decision memoranda, talking points, and briefing materials prepared for or provided to the Chairman, the Vice Chairman, the Executive Director, the General Counsel, or any Council member concerning the proposed amendments;
- (3) all materials circulated in connection with any Council vote on the proposed amendments, including vote notices, ballots, tallies, proxies, recusals, abstentions, and any record memorializing the result of the vote;
- (4) all agendas, minutes, transcripts, recordings, and notes of any Council meeting, business meeting, committee or subcommittee meeting, or staff meeting at which the proposed amendments were discussed;

- (5) all records reflecting the ACHP's analysis of its legal authority for the proposed amendments, including any analysis of 54 U.S.C. § 304108(a) or of the ACHP's rulemaking authority under the National Historic Preservation Act; and
- (6) all records reflecting communications with any Indian Tribe, Tribal Historic Preservation Officer, State Historic Preservation Officer, Native Hawaiian organization, or national preservation organization concerning the proposed amendments.

Category 2. Interagency communications concerning the proposed amendments.

All communications between the ACHP and any other federal entity concerning the proposed amendments to 36 C.F.R. Part 800, in whatever form and wherever located, including communications by personal email used to conduct agency business, by an email account issued by any other federal agency (including any U.S. Environmental Protection Agency account), by text message or other electronic message on personal or government-issued phones or other devices, and through any messaging, chat, or collaboration application on any computer or mobile device. This category includes without limitation communications with:

- (1) the Office of Management and Budget, including the Office of Information and Regulatory Affairs ("OIRA"), and all records generated in connection with review under Executive Order 12866, including rule packages transmitted for review, OIRA comments and change documents, records of meetings held under section (6)(b)(4) of the Order, and any return letter or record concluding review;
- (2) the Executive Office of the President, including the Domestic Policy Council, the Council on Environmental Quality, and the Office of the Counsel to the President;
- (3) the Department of the Interior, including the National Park Service and the Office of the Solicitor; and
- (4) any other federal agency, department, entity, or component.

Category 3. The July 17, 2026 redline: the document, its provenance, and related communications.

CHP does not assume that any particular person prepared the redline described below. This category should not be read as limited to records authored by, or in the custody of, any single individual. CHP seeks to establish who prepared the document and how it came to the Council. This category reaches records in whatever form and wherever located, including personal email accounts used to conduct agency business, email accounts issued by any other federal agency (including any U.S. Environmental Protection Agency account), text messages and other electronic messages on personal or government-issued phones or other devices, and messages exchanged through any messaging, chat, or collaboration application on any computer or mobile device. Accordingly, CHP requests:

- (1) all versions of the redline of proposed amendments to 36 C.F.R. Part 800 circulated to or within the ACHP on or about July 17, 2026, produced in native electronic format with document properties and metadata intact, including the author and last-modified-by fields, creation and modification dates, and any tracked changes, comments, or revision history the file contains;
- (2) all records reflecting the transmission of that redline to the ACHP or to any ACHP official, including cover emails and their attachments, transmittal letters, calendar invitations, meeting materials, file-sharing or cloud-storage notifications, and any log or system record identifying the sender, the recipients, and the date and time of transmission;

- (3) all records identifying or discussing the person or entity that prepared, drafted, edited, or supplied any portion of the text of that redline, including any record reflecting that the document or any part of it was prepared in whole or in part by a person outside the ACHP;
- (4) all emails, including attachments and all messages in any thread containing a responsive message, and all text messages and messages exchanged through any messaging, chat, or collaboration application, sent or received by Vice Chairman Travis Voyles that refer or relate to that redline, whether on his ACHP account, on an account issued by another federal agency (including any U.S. Environmental Protection Agency account), or on any personal account, phone, or other device used to conduct agency business;
- (5) all communications between the ACHP and any person or entity outside the federal government, including any trade or industry association, advocacy organization, consultant, contractor, or law firm, concerning the drafting of that redline or of any proposed text for 36 C.F.R. Part 800; and
- (6) all records reflecting the ACHP's receipt, handling, circulation, or confidentiality designation of that redline, including any instruction limiting its distribution and any record reflecting the basis on which it was marked or treated as non-public.

Time Period, Custodians, and Scope of Search

Unless otherwise specified above, this request covers records created or received between January 1, 2026, and the date the search is conducted.

CHP asks that the ACHP search, at a minimum, the files of the following custodians: the Vice Chairman; the Executive Director; the General Counsel and the Office of General Counsel; the Office of Federal Agency Programs; the Office of Native American Affairs; and any staff member who participated in drafting, reviewing, or clearing the proposed amendments.

The search should reach every record system in which responsive records are reasonably likely to be found, including email accounts and archives, including any account issued to an ACHP official by another federal agency (such as any U.S. Environmental Protection Agency account); instant messaging, chat, and collaboration platforms accessed on agency or personal computers or mobile devices; calendar entries; text messages and other electronic messages, including those sent or received on personal or government-issued phones and on personal email accounts or devices used to conduct agency business; shared network drives and cloud storage; and paper files. If the ACHP declines to search any of these systems, CHP asks that the ACHP identify the system and state the basis for the decision.

Form of Production

CHP requests production in electronic form, in native format with metadata intact where practicable and otherwise as text-searchable PDF, delivered by email or secure file transfer. CHP requests rolling production as responsive records are located and cleared, rather than a single production at the conclusion of processing.

For any record withheld in whole or in part, CHP requests an index identifying the record by date, author, and recipients, describing the record with sufficient particularity to permit assessment of the claim, and stating the exemption asserted and the basis for it. CHP further requests that the ACHP segregate and release all reasonably segregable non-exempt portions of any partially withheld record, and that it mark the location of each redaction.

CHP specifically objects to production of the record described in Category 3(1) in PDF or any other converted format. Conversion strips the document properties and revision data that are themselves the object of that portion of this request. CHP asks that the file be produced as it is maintained, in the format in which the ACHP received it.

Note Regarding Exemption 5

Should the ACHP withhold any record responsive to Category 3 under Exemption 5, 5 U.S.C. § 552(b)(5), CHP notes that the exemption's threshold condition is that the communication be inter-agency or intra-agency. A document prepared outside the government by a party with its own stake in the outcome of the rulemaking does not satisfy that condition, and the consultant corollary does not extend to it. *Dep't of the Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 11–12 (2001).

Accordingly, if the ACHP asserts Exemption 5 over any record within Category 3, CHP asks that the ACHP state, for each such record, whether the record was prepared by a federal employee acting in that capacity and, if it was not, identify the person or entity that prepared it and the basis on which the ACHP treats the record as an inter-agency or intra-agency communication.

Records Originating with Other Agencies

CHP objects in advance to any withholding of, or refusal to process, a responsive record on the ground that another federal entity created the record or has an interest in it.

36 C.F.R. § 810.6(b) provides that where a request encompasses records of concern to, or created primarily by, another federal agency, the Council will make the record available only if the document was created primarily to meet the requirements of the Council's regulations implementing Section 106 of the National Historic Preservation Act or of other law administered primarily by the Council. That provision is not a FOIA exemption. The Act authorizes withholding only under the nine exemptions enumerated at 5 U.S.C. § 552(b), and the origin of a document is not among them. A record in the ACHP's possession and control is an agency record subject to disclosure without regard to which entity created it. To the extent § 810.6(b) conflicts with the statute, the statute controls. CHP asks that the ACHP process every responsive record in its possession on the merits and that, if it withholds any record, it identifies the specific subsection of 5 U.S.C. § 552(b) on which it relies.

CHP separately objects to referral of any responsive record to another agency, and referral of the interagency records sought in Category 2 would place the bulk of this request beyond the statutory deadlines. If the ACHP concludes that consultation with an originating entity is warranted, CHP asks that the ACHP consult rather than refer, retain processing responsibility for the record, and notify the undersigned in writing at the time of any consultation, identifying the record and the entity consulted.

Request for Expedited Processing

CHP requests expedited processing under 5 U.S.C. § 552(a)(6)(E). A determination on this request is due, and notice of the determination must be provided, within ten (10) calendar days of the date of this request. 5 U.S.C. § 552(a)(6)(E)(ii)(I).

(1) Compelling need

FOIA defines “compelling need” to include, with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged federal government activity. 5 U.S.C. § 552(a)(6)(E)(v)(II).

CHP is engaged in the dissemination of information to the public concerning federal historic preservation law. CHP publishes analysis of federal rulemaking and Section 106 practice on its public website, where it has posted the ACHP’s own redline of the proposed amendments so that Tribes, State and Tribal Historic Preservation Officers, and the public can read the text the Council considered. CHP issues public statements and press releases on matters of national preservation policy, and its attorneys are regularly sought out by national and Native press for comment on this rulemaking, including in coverage published by The Washington Post. CHP prepares and distributes plain-language explanatory materials on the proposed amendments for distribution to Tribal governments nationwide.

(2) Urgency to inform

Courts assess three factors in evaluating urgency to inform: whether the request concerns a matter of current exigency to the American public; whether the consequences of delaying a response would compromise a significant recognized interest; and whether the request concerns federal government activity. *Al-Fayed v. Cent. Intel. Agency*, 254 F.3d 300, 310 (D.C. Cir. 2001). Each factor is satisfied.

First, the proposed amendments are the subject of a live and unfolding national controversy. They would rewrite the regulations that govern how every federal agency considers the effects of its undertakings on historic properties, including properties of religious and cultural significance to Indian Tribes. The rulemaking is proceeding now, it has drawn national press coverage, and it is the subject of active congressional attention.

Second, delay would compromise a significant recognized interest. The public’s opportunity to comment on a proposed rule is time-limited and, once closed, cannot be reopened. Records showing how the ACHP developed these amendments, what legal analysis it relied on, and what changes were made during interagency review bear directly on whether the public and affected Tribal governments can comment meaningfully. Records produced after the comment period closes cannot inform comments that have already been filed, and the same records bear on legislative proposals now under consideration that would alter the statutory framework this rulemaking implements.

Third, the request concerns federal government activity in the most direct sense: it seeks the records of a federal agency’s own rulemaking and of that agency’s communications with other federal entities about it.

(3) Alternative basis

FOIA separately directs agencies to provide expedited processing in other cases determined by the agency. 5 U.S.C. § 552(a)(6)(E)(i)(II). The ACHP has not promulgated regulations defining additional categories, but nothing in the statute or in 36 C.F.R. Part 810 limits the Council’s discretion to grant expedition here. CHP asks the ACHP to exercise that discretion if it does not grant expedition on the ground of compelling need.

I, Jessie Barrington, certify that the foregoing statements made in support of expedited processing are true and correct to the best of my knowledge and belief. 5 U.S.C. § 552(a)(6)(E)(vi).

Request for a Fee Waiver

CHP requests a waiver of all search, review, and duplication fees. Fees shall be waived or reduced where disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii).

The records sought concern the operations of a federal agency in the most literal sense: how the ACHP developed a proposed rule that will govern federal decision-making nationwide. The subject matter is of demonstrable public interest, as reflected in national press coverage of the rulemaking. CHP has the ability and the intent to convey the records to the affected public, including through its website, its public statements, and materials prepared for distribution to Tribal governments. CHP seeks these records to inform public participation in a pending rulemaking, not for any commercial purpose; no client is billed for this request and CHP will derive no commercial benefit from the records.

If the ACHP declines to grant a full waiver, CHP requests that it be placed in the news media or, alternatively, the educational or non-commercial scientific institution fee category, and that fees be limited accordingly. CHP notes that the fee schedule at 36 C.F.R. § 810.5 predates the statutory fee categories and fee-waiver standard and is superseded by them to the extent of any conflict.

So that processing is not suspended under 36 C.F.R. § 810.5(c), CHP agrees in advance to pay processing fees up to \$500 should the waiver be denied in whole or in part. CHP asks that the ACHP contact the undersigned before incurring fees in excess of that amount.

Applicable Procedural Standards

CHP notes the following, so that no question arises later about the timeliness or sufficiency of this request. The ACHP's FOIA regulations were promulgated in 1981, 46 Fed. Reg. 45334 (Sept. 11, 1981), and have not since been amended. To the extent Part 810 conflicts with the current statute, the statute controls.

- (1) 36 C.F.R. § 810.2(a) directs requests to the Administrative Officer at 1522 K Street NW, Washington, D.C., an address the Council no longer occupies. CHP has directed this request to the FOIA Officer at the address and email address the ACHP currently publishes on its website and asks that the request be treated as received on the date of this letter. CHP further asks that the ACHP acknowledge receipt and assign a tracking number. 5 U.S.C. § 552(a)(7).
- (2) The ten (10) working day determination period in 36 C.F.R. § 810.3(d) predates the 1996 amendments to the statute, which set a twenty (20) working day period. 5 U.S.C. § 552(a)(6)(A)(i). The statute sets the outer limit on agency delay; it does not cap what an agency may commit to by its own regulation. CHP therefore expects a determination within the ten (10) working days provided by the Council's own regulation and in no event later than the twenty (20) working days the statute allows.
- (3) Part 810 contains no provision governing expedited processing, although 5 U.S.C. § 552(a)(6)(E)(i) directs every agency to promulgate one. The absence of an implementing regulation is not a ground on which expedition may be denied; the statutory standard applies of its own force. A determination on the request for expedited processing is due within ten (10) calendar days. 5 U.S.C. § 552(a)(6)(E)(ii)(I). CHP will treat a failure to determine within that period as a denial for purposes of judicial review.
- (4) The fee schedule at 36 C.F.R. § 810.5 predates the statutory fee categories and the fee-waiver standard at 5 U.S.C. § 552(a)(4)(A) and is superseded by them to the extent of any conflict, as set out in this request under the "Request for a Fee Waiver" heading.

- (5) 36 C.F.R. § 810.6(b) conditions release of records concerning or created primarily by another federal agency on whether the document was created primarily to meet requirements the Council administers. That condition appears nowhere in 5 U.S.C. § 552(b) and is superseded by the statute, as set out in this request under “Records Originating with Other Agencies” heading.

The foregoing is illustrative and not exhaustive. CHP reserves the right to identify any other respect in which Part 810 conflicts with the current statute.

Conclusion

CHP is willing to confer with Council staff to refine the scope of this request or to establish a production sequence that prioritizes the most significant records. *See* 36 C.F.R. § 810.2(d). Please direct any questions, and any request to narrow or clarify, to the undersigned.

If this request is denied in whole or in part, or if expedited processing or the fee waiver is denied, please state the basis for the determination and identify the official responsible, and advise of CHP’s appeal rights. CHP reserves all rights, including the right to seek judicial review of a denial of expedited processing without first pursuing an administrative appeal.

Thank you for your attention to this request.

Sincerely,



Jessie Barrington
Partner and Chair, Tribal Nations Practice
Cultural Heritage Partners, PLLC
jessie@culturalheritagepartners.com
(503) 422-1080