

§ 801.5

36 CFR Ch. VIII (7–1–10 Edition)

Council's comments including recommendations for changes in Federal policy and programs, as appropriate.

(f) *Suspense of Action.* Until the Council issues its comments under these regulations and during the State Historic Preservation Officer Review Period and the determination period of the Secretary of the Interior, good faith consultation shall preclude the applicant from taking or sanctioning any action or making any irreversible or irretrievable commitment that could result in an adverse effect on a National Register property or property which may meet the Criteria or that would foreclose the consideration of modifications or alternatives to the proposed project that could avoid, mitigate, or minimize such adverse effects. In no case shall UDAG funds be used for physical activities on the project site until the Council comments have been completed. Normal planning and processing of applications short of actual commitment of funds to the project may proceed.

(g) *Lead Agency.* If the project proposed by the applicant involves one or more Federal agencies, they may agree on a single lead agency to meet the requirements of section 106 of the National Historic Preservation Act and section 110 of the Housing and Community Development Act of 1980 and notify the Executive Director. If the applicant is the designated lead agency, these regulations shall be followed. If a Federal agency is designated lead agency, the process in 36 CFR part 800 shall be used.

(h) *Compliance by a Federal Agency.* An applicant may make a finding that it proposes to accept a Federal agency's compliance with section 106 of the Act and 36 CFR 800 where its review of the Federal agency's findings indicate that:

(1) The project is identical with an undertaking reviewed by the Council under 36 CFR part 800; and

(2) The project and its impacts are included within the area of potential environmental impact described by the Federal agency;

The applicant shall notify the State Historic Preservation Officer and the Executive Director of its finding of compliance with section 106 of the Act

and 36 CFR part 800 and provide a copy of the Federal agency's document where the finding occurs. Unless the Executive Director objects within 10 days of receipt of such notice the Council need not be afforded further opportunity for comment. If the Executive Director objects to the finding of the applicant, the applicant shall comply with § 801.4.

§ 801.5 State Historic Preservation Officer responsibilities.

(a) The State Historic Preservation Officer shall have standing to participate in the review process established by section 110(c) of the HCDA of 1980 whenever it concerns a project located within the State Historic Preservation Officer's jurisdiction by the following means: providing, within 30 days, information requested by an applicant under § 801.3(b); responding, within 45 days, to submittal of a determination by the applicant under section 110 of the HCDA of 1980 that National Register property or property which meets the Criteria may be affected by the proposed project; participating in a Memorandum of Agreement that the applicant or the Executive Director may prepare under this part; and participating in a panel or full Council meeting that may be held pursuant to these regulations. Pursuant to section 110(c) of the HCDA of 1980, the State Historic Preservation Officer has a maximum period of 45 days in which to formally comment on an applicant's determination that the project may affect a property that is listed in the National Register or which may meet the Criteria for listing in the National Register. This period does not include the time during which the applicant seeks information from the State Historic Preservation Officer for determining whether a property meets the Criteria for listing in the National Register and whether such property is affected by the project.

(b) The failure of a State Historic Preservation Officer to participate in any required steps of the process set forth in this part shall not prohibit the Executive Director and the applicant from concluding the section 106 process, including the execution of a Memorandum of Agreement.