

# Notices

## Federal Register

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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 Projects Involving Historic Natural Gas Pipelines**

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

**ACTION:** Notice of intent to issue exemption regarding historic natural gas pipelines.

**SUMMARY:** The Advisory Council on Historic Preservation has preliminarily approved an exemption that would relieve Federal agencies from the requirement of taking into account the effects of their undertakings on historic natural gas pipelines. The public is invited to comment on the exemption before it goes into effect. Unless the Council withdraws its preliminary approval after considering such comments, the exemption will go into effect on April 5, 2002.

**DATES:** Submit comments on or before March 22, 2002.

**ADDRESSES:** Address all comments concerning this exemption to Javier Marqués, Office of General Counsel, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. Fax (202) 606-8672. You may submit electronic comments to: [achppreservation@aol.com](mailto:achppreservation@aol.com).

**FOR FURTHER INFORMATION CONTACT:** Javier Marqués, 202-606-8503.

**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 (“Council”) a reasonable opportunity to comment with regard to such undertakings. The Council 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”).

The National Historic Preservation Act (“Act”) authorizes the Council, with the concurrence of the National Park Service, to promulgate regulations for exempting undertakings “from any or all of the requirements” of the Act. 16 U.S.C. 470v. The section 106 regulations detail the process for the approval of such exemptions. 36 CFR 800.14(c).

In accordance with the Section 106 regulations, the Council may approve an exemption for an undertaking if it finds that: (1) The potential effects of the undertaking upon historic properties are foreseeable and likely to be minimal or not adverse; and (2) the exemption is consistent with the purpose of the Act.

The Federal Energy Regulatory Commission (“Commission”) has proposed an exemption regarding the effects of undertakings on historic natural gas pipelines. The Council has preliminarily approved that exemption, pending the results of the public comment opportunity provided through this notice. The full text of the exemption can be found at the end of this notice. Unless the Council decides (prior to April 5, 2002, and based on the results of this final round of public comments) to withdraw its preliminary approval, the exemption will go into effect on April 5, 2002.

#### I. Background

On October 19, 2001, the Council published for public comment in the *Federal Register* a *Draft Program Comment Regarding Historic Preservation Review Process for Projects Involving Historic Natural Gas Pipelines* which was intended to streamline the historic preservation review process for projects involving natural gas pipelines (66 FR 53198). That draft Program Comment proposed an alternative way for the Commission to address its responsibilities under Section 106 with regard to effects on natural gas pipelines and related facilities when authorizing projects under section 7 of the Natural Gas Act (NGA) by either applicants pursuant to 18 CFR part 157, subpart A, or certificate holders pursuant to 18 CFR part 157, Subpart F, and 18 CFR part 284 of the regulations of the Commission.

The draft Program Comment was meant to apply only to those

undertakings affecting natural gas pipelines determined to be eligible for the National Register of Historic Places (“National Register”) by the applicant/certificate holder and the respective State Historic Preservation Office (“SHPO”). When the applicant or certificate holder implemented a level and type of documentation agreeable to the applicant/certificate holder and the SHPO, and deposited that record in an appropriate repository, the project could not then be found to have an effect upon the characteristics that make the pipeline eligible for inclusion in the National Register.

The Commission noted on its review of this Program Comment that it “provide(d) guidance and a basic mechanism for section 106 compliance that could make more complex and time consuming processes unnecessary.” Indeed, the Council developed the Program Comment to respond directly to the delays in project review under the blanket certificate procedures when there was an effect to a historic natural gas pipeline. The Commission supported that objective, and the Council’s efforts to keep them involved throughout the initiative.

After the Council and the Commission staff had reviewed the public comments on that proposal, the Commission proposed that the Council use the Exempted Categories alternatives pursuant to 36 CFR 800.14(c) to streamline the historic preservation review process for historic natural gas pipelines.

Based on a number of factors discussed below, the Council believes that using the Exempted Categories program alternative offers a more focused, practical, predictable, and elegant way to address section 106 review for projects involving natural gas pipelines. In addition, comments from the affected industry reflected a preference for such an approach as opposed to the Program Comment alternative.

#### II. Exemption Concept

The exemption would release all Federal agencies from the Section 106 requirement of having to consider the effects of their undertakings on historic natural gas pipelines. Historic natural gas pipelines are defined as those natural gas pipelines that meet the criteria for listing on the National Register of Historic Places.

A public comment stated that the Act never intended pipelines to be eligible for the National Register. The Council disagrees. The Act specifically states that the National Register is composed of "districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering and culture." 16 U.S.C. 470a(a)(1)(a) (emphasis added). This statement does not explicitly exclude pipelines from consideration, but rather, it acknowledges that a variety of types of properties could be significant to American engineering. As one of type of property which can be eligible for inclusion in the National Register, a structure is defined as one "made up of interdependent and interrelated parts in a definite pattern of organization [and] constructed by man it is often an engineering project large in scale." 36 CFR 60.3(p). Again, such a definition appears to be intentionally broad so as to embrace a variety of different structures, which arguably include natural gas pipelines.

The exemption would apply unconditionally for all undertakings except for those that entail the abandonment of a historic natural gas pipeline. The sole condition for those cases would be that the historic natural gas pipeline gets documented prior to abandonment. The documentation requirements are enumerated in the exemption document, as opposed to being subject to negotiations with SHPOs or others.

Public comments raised a concern that the earlier, proposed Program Comment only applied to the Commission and did not bind other Federal agencies whose lands the pipeline may cross. It was argued that such other Federal agencies could insist on a different, and possibly higher, process and documentation standard for pipelines crossing their lands. The comments also mentioned that unless the approach to historic natural gas pipelines was uniformly applicable to all Federal agencies, the benefit of the approach would be negated if any Federal land manager elected to impose a new or different standards. In response to this comment, the exemption now applies to all Federal agencies. The Council believes this makes sense since the approach is based on the type of resource involved (i.e., natural gas pipelines), and such resources are the same no matter what Federal agency is confronted with an undertaking affecting them.

Some of the public comments also expressed a concern that disputes over eligibility and documentation issues under the earlier, proposed Program

Comment would result in serious project delays. The Council agreed that such disputes could be time consuming, and therefore drafted the exemption in a way that will alleviate those concerns by: (1) Limiting the documentation requirement to only one type of pipeline activity (i.e., abandonment); (2) establishing a single, definitive documentation standard for such abandonments; and (3) clarifying that once a pipeline was documented, future undertakings would not have to consider effects to that pipeline. Since the exemption unconditionally applies to all activities other than abandonment, eligibility can only become an issue for abandonments.

Finally, the exemption would not apply on tribal land. Such application would require substantial and lengthy tribal consultation. 36 CFR 800.14(c)(4) and 800.14(f). It is our understanding from discussions with the Commission staff that, due to tribal sovereignty issues, pipeline projects through tribal lands are handled through separate agreements with the tribes. Moreover, the Council believes that such particularized consultation is not warranted since it is not aware of any natural gas pipeline that would be of religious and cultural significance to tribes, regardless of its location.

On a more general note, a public comment criticized the earlier, proposed Program Comment by stating that it was not binding on the SHPO and, therefore, could be disregarded. This is incorrect. The Council is the only entity with the authority to enact regulations implementing Section 106 (16 U.S.C. 470s) and to provide exemptions from compliance with Section 106 (16 U.S.C. 470v). An exemption or program comment approved by the Council defines the legal requirements of section 106 and, as such, cannot be disregarded by SHPOs.

### 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 Council believes that the proposed exemption meets these conditions.

In considering this proposition, it is important to recognize that neither the Commission nor any other Federal

agency regulates all of the activities which might affect historic natural gas pipelines. Because physically deteriorated or obsolete facilities are specifically excluded by regulation from section 7(c) of the NGA, pursuant to 18 CFR part 2.55, most repair and maintenance of historic pipelines will not need Commission authorization prior to implementation. As a result, the integrity of an historic natural gas pipeline is likely to vary considerably over its full extent. Although these maintenance activities may result in the loss of some historic fabric, these changes allow the continued safe operation of the historic property as a pipeline and, as such, serve to protect the use of the property.

The Council also believes that evaluation of the integrity of the pipeline as a historic property and the effect of any of these undertakings must be considered within the context of the totality of the historic natural gas pipeline, particularly when the historic significance of natural gas pipelines lies in both their engineering characteristics (Criterion C of the National Register) and their relationship to events (Criterion A of the National Register). From that perspective, for example, a 12 inch diameter tap inserted into a 1,000 mile pipeline is of minor consequences for the whole historic property, especially when the property exhibits considerable redundancy and uniformity in form over its entire extent.

With abandonment, although a portion of the historic pipeline will cease to function as such, it usually remains in place. Moreover, for reasons of safety and because they are buried resources, historic natural gas pipelines cannot be experienced by the public during their productive life. Accordingly, we believe that potential effects of abandonment can be adequately minimized through documentation of the historic pipeline. This approach is also in keeping with the earlier, draft Program Comment. Working with Commission staff, the Council has established a standard for documenting historic natural gas pipelines that would apply under the exemption whenever there is an abandonment. As the comments on the Council's Program Comment indicate, setting a standard is needed because it would largely eliminate the possibility for disagreement between applicants or certificate holders, and SHPOs regarding the appropriate level and type of documentation.

### 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. Since the proposed exemption was derived from, and is consistent with, the approach taken in the earlier, proposed Program Comment, the Council believes that the public participation requirement has been met through the extensive comment period already provided for that Program Comment. The Council only received a limited number of comments on the draft Program Comment. Those comments were shared, and discussed, with the Commission staff. As requested, that comment period was extended until December 9, 2001. Nevertheless, such extension only yielded one additional comment, for an overall total of 9 public comments. Likewise, although the Council made a special effort to notify SHPOs about the proposed Program Comment, comments from only three States, Arizona, Iowa, and Wyoming, were received. One of those comments was that the State had "no comment" on the proposal. Moreover, through this notice the Council is submitting the draft exemption for one last round of public comment.

Neither the Council nor the Commission have engaged in the particularized consultation with Indian tribes and Native Hawaiian organizations, pursuant to 36 CFR 800.14(c)(4), since such consultation does not seem to be warranted. As stated above, the proposed exemption would not apply on tribal lands. The Council also believes that the proposed exemption will have no consequences for historic properties of religious and cultural significance, regardless of location, to any Indian tribe or Native Hawaiian organizations since it is limited to effects on only historic natural gas pipelines.

## V. Text of the Exemption

The full text of the proposed program comment is reproduced below.

### *Section 106 Exemption Regarding Effects to Historic Natural Gas Pipelines*

#### *I. Exemption Regarding Effects to Historic Natural Gas Pipelines*

Except as noted on Section II, all Federal agencies are exempt from the Section 106 requirement of taking into account the effects of their undertakings on historic natural gas pipelines.

#### *II. Abandonment of Historic Natural Gas Pipelines*

Abandonment of a historic natural gas pipelines, in part or in whole, will qualify for the exemption under Section I, provided that the Federal agency or its

applicant has documented the historic natural gas pipeline by:

(a) Completing a determination of eligibility for the pipeline as a whole, which identifies contributing and non-contributing components of the pipeline, using standard information required on a National Register nomination form. The documentation must be prepared by an individual meeting the Secretary of the Interior's *Professional Qualification Standards* (48 FR 44738-9). The documentation must include the following components:

(i) A brief history of construction of the line with a bibliography recording the primary and secondary sources that were used;

(ii) Documentation through as-built drawings, historical photographs or, 35 mm photographs, as appropriate, of representative examples of significant features associated with the line;

(iii) A map of the historic property set at an appropriate scale; and

(iv) An annotated bibliography of other primary and secondary sources identified during research; and

(b) Placing the documentation in an appropriate repository, accessible to the general public, in each State crossed by the pipeline, and filing the documentation with the relevant State Historic Preservation Officer(s).

When the abandonment involved only a section of the historic natural gas pipeline, Federal agencies or application handling subsequent abandonment of other sections of the historic natural gas pipeline will not have to repeat the documentation requirements set forth above.

### *III. Existing Agreements*

This exemption is not intended to amend, invalidate or otherwise modify Section 106 Programmatic Agreements (PAs) in existence at the time this exemption goes into effect. Parties to such PAs may amend them according to their terms.

### *IV. Tribal Lands*

This exemption does not apply to those portions of undertakings that take place on tribal lands.

### *V. Definitions*

(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; those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

(c) *Historic natural gas pipelines* means natural gas pipelines, and their appurtenant facilities, that are listed, or eligible for listing, on the National Register of Historic Places.

(d) *Tribal lands* means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

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

Dated: February 25, 2002.

**John M. Fowler,**  
*Executive Director.*

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 01-101-1]

### Aventis CropScience; Availability of Environmental Assessment for Extension of Determination of Nonregulated Status for Canola Genetically Engineered for Glufosinate Herbicide Tolerance

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that an environmental assessment has been prepared for a proposed decision to extend to one additional canola event our determination that a canola event developed by Aventis CropScience, which has been genetically engineered for tolerance to the herbicide glufosinate, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. We are making this environmental assessment available to the public for review and comment.

**DATES:** We will consider all comments we receive that are postmarked, delivered, or e-mailed by April 1, 2002.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01-101-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River