

Purpose and Summary

Pursuant to Executive Order 10, the Authority proposes to rescind Chapter 414 and adopt a new chapter in lieu thereof. The chapter describes the policies and procedures related to review of federal agency undertakings by the State Historic Preservation Office as required by Section 106 of the National Historic Preservation Act.

The updated chapter will be clearer and more concise throughout. Definitions will be added for clarity. Language that duplicates federal law or regulation will be omitted from the chapter. The chapter will include new language to address consultation required by Iowa Code section 15.121(7) for State-owned properties.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- **Classes of persons that will bear the costs of the proposed rulemaking:**

Entities for which consultation of the State Historic Preservation Office is required pursuant to Section 106 or Iowa Code section 15.121(7) will bear the costs of the proposed rulemaking.

- **Classes of persons that will benefit from the proposed rulemaking:**

Entities for which consultation of the State Historic Preservation Office is required pursuant to Section 106 or Iowa Code section 15.121(7) will benefit from the proposed rulemaking.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- **Quantitative description of impact:**

Costs may be incurred to gather materials necessary for review and consultation.

- **Qualitative description of impact:**

Only entities and individuals that are required to consult with the State Historic Preservation Office pursuant to Section 106 or Iowa Code section 15.121(7) will incur any costs. The costs to the State to administer the program are proportional to the directives in Section 106 and Iowa Code section 15.121(7).

3. Costs to the State:

- **Implementation and enforcement costs borne by the agency or any other agency:**

Authority staff time is required to review materials submitted for historic property evaluation. The new language regarding review of modifications to State-owned properties captures existing policies and procedures.

- **Anticipated effect on State revenues:**

This proposed rulemaking does not have an impact on State revenues. The new language regarding review of modifications to State-owned properties captures existing policies and procedures.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The costs associated with the proposed rulemaking are necessary to carry out the directives in Section 106 and Iowa Code section 15.121(7).

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Authority has not identified any less costly methods or less intrusive methods for carrying out the directives in Section 106 or Iowa Code section 15.121(7).

6. Alternative methods considered by the agency:

- **Description of any alternative methods that were seriously considered by the agency:**

The Authority did not consider any other methods.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

The Authority did not consider any other methods.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking impacts only small businesses for which consultation of the State Historic Preservation Office is required. The requirements are no more stringent than necessary to comply with federal statute and regulations and Iowa Code section 15.121(7). The rulemaking does not establish schedules or deadlines for small businesses. The rulemaking does not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 261—Chapter 414 and adopt the following **new** chapter in lieu thereof:

CHAPTER 414

REVIEW AND COMPLIANCE PROGRAM

261—414.1(15) Definitions. For purposes of this chapter, unless the context otherwise requires:

“*Act*”_means the National Historic Preservation Act of 1966, PL 89-665, 54 U.S.C. Subtitle III, Division A.

“*Advisory Council*”_means the Advisory Council on Historic Preservation established under the Act.

“Agency” means the same as defined in 54 U.S.C. §300301.

“Historic property” means the same as defined in 54 U.S.C. §300308.

“National Register of Historic Places” or *“National Register”* means the federal government’s list of historic properties authorized under the Act, administered by the National Park Service, United States Department of the Interior.

“Section 106” means the section of the Act that requires federal agencies to take into account the effects of the undertakings that the agencies carry out, fund, license, permit or approve on historic properties and afford the Advisory Council a reasonable opportunity to comment.

“State historic preservation officer” or *“SHPO”* means the officer appointed and certified pursuant to Iowa Code section 15.121.

“Undertaking” means the same as defined in 54 U.S.C. §300320.

261—414.2(15) Laws, regulations, and other requirements. In addition to this chapter, the Iowa review and compliance program shall operate in accordance with the following:

414.2(1) The Act, including but not limited to Section 106.

414.2(2) 36 CFR Part 60 (National Register of Historic Places).

414.2(3) 36 CFR Part 61 (Procedures for State, Tribal, Local Government Historic Preservation Programs).

414.2(4) 36 CFR Part 63 (Determinations of Eligibility for Inclusion in the National Register of Historic Places).

414.2(5) 36 CFR Part 800 (Protection of Historic Properties).

414.2(6) Contract terms outlined in a Historic Preservation Fund grant agreement between the SHPO and the National Park Service.

414.2(7) Iowa Code sections 15.121 and 15.122.

261—414.3(15) Procedures.

414.3(1) *Technical assistance.* In addition to the technical assistance described in rule 261—415.3(303), the SHPO shall advise and assist agencies as prescribed in 36 CFR §800.2(c)(1)(i).

414.3(2) *SHPO review of federal undertakings.*

a. Agency officials and agency program applicants or recipients requesting consultation with the SHPO on an undertaking pursuant to Section 106 shall submit documentation regarding the undertaking and potential effects to historic properties.

b. The SHPO will make appropriate forms and guidelines available to the public for submission of project documentation to the SHPO.

261—414.4(15) State-owned properties. This rule applies to consultation with the SHPO required pursuant to Iowa Code section 15.121(7).

414.4(1) If a property owned by a state agency has not been listed in, or identified as eligible for, the National Register of Historic Places, the state agency shall submit information sufficient for the SHPO to determine if the property is a historic property. The SHPO will determine whether a property is eligible for listing on the National Register or state register of historic places. A property may be reevaluated for this purpose for subsequent modifications to the property. Consultation with the Keeper of the National Register of Historic Places may be requested to determine whether a property is a historic property.

414.4(2) The SHPO will make appropriate forms and guidelines available to state agencies for submission of project documentation for review and comment by the SHPO. Required information shall include but not be limited to the area of potential effects and a description of modifications to the historic property.

414.4(3) The SHPO shall provide comments within 45 days of submission of required information. If the information is incomplete when submitted, the 45-day review period will

restart when the SHPO receives a complete submission. Comments may include requests for further information or address any of the following:

- a.* The scope, scale, and nature of the proposed project;
- b.* The potential for effects on historic properties;
- c.* The likelihood that historic properties are present within the area of potential effects;

and

- d.* Applicable professional standards and state, tribal, and local laws, regulations, and guidelines.

414.4(4) Modifications to historic properties that may be considered adverse effects include but are not limited to physical destruction of or damage to the historic property, alteration of a property that would affect the eligibility for or listing on the National Register, or removal of the property from its historic location. The SHPO will consult with the state agency to evaluate potential methods to avoid or minimize effects to the historic property. Alternatively, the state agency and SHPO may enter into an agreement to mitigate the adverse effects.

261—414.5(15) References. All references to the Act, United States Code, or Code of Federal Regulations in this chapter are as in effect on [effective date of this rulemaking].

These rules are intended to implement Iowa Code section 15.121 and 54 U.S.C. Subtitle III, Division A.