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Subpart A—General Provisions

§ 102–78.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. The policies in this part are in furtherance of GSA's preservation program under section 110 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and apply to properties under the jurisdiction or control of the Administrator and to any Federal agencies operating, maintaining or protecting such properties under a delegation of authority from the Administrator.

§ 102–78.10 What basic historic preservation policy governs Federal agencies?

To protect, enhance and preserve historic and cultural property under their control, Federal agencies must consider the effects of their undertakings on historic and cultural properties and give the Advisory Council on Historic Preservation (Advisory Council), the State Historic Preservation Officer (SHPO), and other consulting parties a reasonable opportunity to comment regarding the proposed undertakings.

Subpart B—Historic Preservation

§ 102–78.15 What are historic properties?

Historic properties are those that are included in, or eligible for inclusion in, the National Register of Historic Places (National Register) as more specifically defined at 36 CFR 800.16.

§ 102–78.20 Are Federal agencies required to identify historic properties?

Yes, Federal agencies must identify all National Register or National Register-eligible historic properties under their control. In addition, Federal agencies must apply National Register Criteria (36 CFR part 63) to properties that have not been previously evaluated for National Register eligibility and that may be affected by the undertakings of Federally sponsored activities.

§ 102–78.25 What is an undertaking?

The term 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—

(a) Carried out by or on behalf of the agency;

(b) Carried out with Federal financial assistance; or

(c) Requiring a Federal permit, license, or approval.

§ 102–78.30 Who are consulting parties?

As more particularly described in 36 CFR 800.2(c), consulting parties are those parties having consultative roles in the Section 106 process (i.e., Section 106 of the National Historic Preservation Act), which requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. Specifically, consulting parties include the State Historic Preservation Officer; the Tribal Historic Preservation Officer; Indian tribes and Native Hawaiian organizations; representatives of local governments; applicants for Federal assistance, permits, licenses, and other approvals; other individuals and organizations

with a demonstrated interest in the undertaking; and the Advisory Council (if it elects to participate in the consultation).

§ 102–78.35 Are Federal agencies required to involve consulting parties in their historic preservation activities?

Yes, Federal agencies must solicit information from consulting parties to carry out their responsibilities under historic and cultural preservation laws and regulations. Federal agencies must invite the participation of consulting parties through their normal public notification processes.

§ 102–78.40 What responsibilities do Federal agencies have when an undertaking adversely affects a historic or cultural property?

Federal agencies must not perform an undertaking that could alter, destroy, or modify an historic or cultural property until they have consulted with the SHPO and the Advisory Council. Federal agencies must minimize all adverse impacts of their undertakings on historic or cultural properties to the extent that it is feasible and prudent to do so. Federal agencies must follow the specific guidance on the protection of historic and cultural properties in 36 CFR part 800.

§ 102–78.45 What are Federal agencies' responsibilities concerning nomination of properties to the National Register?

Federal agencies must nominate to the National Register all properties under their control determined eligible for inclusion in the National Register.

§ 102–78.50 What historic preservation services must Federal agencies provide?

Federal agencies must provide the following historic preservation services:

(a) Prepare a Historic Building Preservation Plan for each National Register or National Register-eligible property under their control. When approved by consulting parties, such plans become a binding management plan for the property.

(b) Investigate for historic and cultural factors all proposed sites for direct and leased construction.

§ 102–78.55 For which properties must Federal agencies assume historic preservation responsibilities?

Federal agencies must assume historic preservation responsibilities for real property assets under their custody and control. Federal agencies occupying space in buildings under the custody and control of other Federal agencies must obtain approval from the agency having custody and control of the building.

§ 102–78.60 When leasing space, are Federal agencies able to give preference to space in historic properties or districts?

Yes, Executive Order 13006 requires Federal agencies that have a mission requirement to locate in an urban area to give first consideration to space in historic buildings and districts inside central business areas. Agencies may give a price preference of up to 10 percent to space in historic buildings and districts, in accordance with §§ 102–73.120 and 102–73.125 of this chapter.

§ 102–78.65 What are Federal agencies' historic preservation responsibilities when disposing of real property under their control?

Federal agencies must—

(a) To the extent practicable, establish and implement alternatives for historic properties, including adaptive use, that are not needed for current or projected agency purposes. Agencies are required to get the Secretary of the Interior's approval of the plans of transferees of surplus Federally-owned historic properties; and

(b) Review all proposed excess actions to identify any properties listed in or eligible for listing in the National Register. Federal agencies must not perform disposal actions that could result in the alteration, destruction, or modification of an historic or cultural property until Federal agencies have consulted with the SHPO and the Advisory Council.