

23 December 1997

Re: NEPA Technical Inquiry 0115 - Accordion Partition and
Section 106

Dear NEPA Call-In User:

This letter is in response to your July 1, 1997 request for guidance on GSA's responsibility for implementing Section 106 of the National Historic Preservation Act (NHPA) of 1966 in an historic Federal building in Indiana. You stated a corridor in the building is proposed to be partitioned by an accordion-style security screen, which is ten feet wide by eight feet tall. You also stated the screen does not have to be attached to any walls, it is portable (on wheels), and it is not a permanent action because the partition will be moved according to building use. You specifically asked if this action is considered an undertaking under Section 106 of the NHPA and whether a review process is required for such an action.

SUMMARY OF FINDINGS

NEPA Call-In determined that this action may qualify as an undertaking under Section 106 of the NHPA. An undertaking may be determined to have either no effect, no adverse effect, or an adverse effect on the historic resource. Section 106 of the NHPA requires documentation for each of these determinations, including the determination of no effect. Therefore, if you determine your project is an undertaking, some review and documentation will be necessary in order to fully comply with the NHPA. NEPA Call-In's detailed findings are presented below.

DETAILED FINDINGS

In order to determine if your project is considered an undertaking, NEPA Call-In reviewed information in GSACRM, a computer software program developed by the Public Building Service designed to lead decisionmakers through the Section 106 process. The program provides the following as GSA definition of an undertaking:

"An undertaking is any project, activity or program under the direct or indirect jurisdiction of a Federal agency that can result in changes in the character or use of historic properties. The rule of thumb is that if the Federal government is involved in any way, and if there is an historic resource, or potential historic resource involved, then the action should be considered an undertaking for the purpose of compliance with NHPA."

Since you stated the Federal building in question is historic and the Federal government is involved in partitioning off a corridor in the building, this may be considered an undertaking under Section 106 of NHPA, and the project's effect must be determined.

We then reviewed GSA Order ADM 1020.1, "Procedures for historic properties," August 1982. Paragraph seven of this order, "Determination of effect," (enclosed) provides guidelines for determining if an undertaking will have no effect, no adverse effect, or an adverse effect on an historic resource. Section (b) of this paragraph states:

"The Advisory Council on Historic Preservation's (Council) 'Criteria of Effects', Title 36 Code of Federal Regulations (CFR) Part 800.3(a), shall be applied to all properties listed in or determined eligible for listing in the National Register of Historic Places (Register) within an undertaking's area of potential environmental impact. The Regional Historic Preservation Officer (RHPO) shall determine the effect of all GSA undertakings on Register or Register-eligible properties in consultation with the State Historic Preservation Officer (SHPO) and those official representatives of Native Americans with interests in properties within the undertaking's area of potential environmental impact."

Sections (b)(1), (b)(2), and (b)(3) of Paragraph seven indicate the level of documentation required for each of the three possible determinations of effect an undertaking will have. If an undertaking is found to have no effect, the minimum documentation requirement is as follows:

"Where it is determined that an undertaking will not affect Register or Register-eligible properties, the RHPO shall provide documentation to support the finding to the SHPO and the GSA Historic Preservation Officer concurrently. Additionally, any representatives of Native Americans with interests in the properties within the area of potential environmental impact shall be informed of the effect determination. Unless the SHPO objects to the finding of 'no effect' within 30 days, or other objections are raised, GSA may proceed with the undertaking."

NEPA Call-In reviewed Title 36 CFR Part 800, "Protection of Historic and Cultural Properties." Subpart B (Parts 800.3-800.9), "The Section 106 Process," (enclosed) contains the implementation regulations for NHPA. These regulations provide details for documenting the various determinations of effect for compliance with the NHPA. The purpose of the documentation is to provide sufficient information to explain how the Agency official reached the particular determination of effect. Specific documentation requirements for an undertaking are outlined in 36 CFR Part 800.8, "Documentation requirements."

The level of documentation required for an undertaking is dependent on the effect the undertaking has on an historic resource. 36 CFR Part 800.9, "Criteria of effect and adverse effect," provides guidance in determining effect. Subpart (b)(3) states, "Adverse effects on historic properties include, but are not limited to ...Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting." However, since you stated the partition is not intended to be used on a permanent basis, a determination of "no effect" or "no adverse effect" may be found upon proper consultation of the regulations and SHPO. To ensure compliance with Section 106 of the NHPA, NEPA Call-In suggests fully documenting the use of the proposed partition according to 36 CFR 800.8, "Documentation requirements," and sending all information to the SHPO. This information should include the applicable elements of 36 CFR 800.8(a)(1)-(5).

We then contacted the NEPA Program Coordinator, Cultural and Environmental Programs, National Office, GSA, to confirm the above information. The NEPA Program Coordinator stated the term "undertaking" should be applied to any Federal project concerning historic resources where potential effects exist on the resource by the project.

Finally, NEPA Call-In contacted a GSA Advisor, Cultural Resource

Compliance. The advisor stated your project might not qualify as an undertaking because the partition will serve to keep the public from areas in the building they should not have access to during non-business hours. The advisor further stated that to be on the safe side, your project could be documented under Section 106 as having "no effect".

The materials in this TI have been prepared for use by GSA employees and contractors and are made available at this site only to permit the general public to learn more about NEPA. The information is not intended to constitute legal advice or substitute for obtaining legal advice from an attorney licensed in your state and may or may not reflect the most current legal developments. Readers should also be aware that this response is based upon laws, regulations, and policies in place at the time it was prepared and that this response will not be updated to reflect changes to those laws, regulations and policies.

Sincerely,

(Original Signed)

NEPA Call-In Researcher