

Draft Guidance Conducting the Section 106 Process for Uranium Recovery Licensing Actions

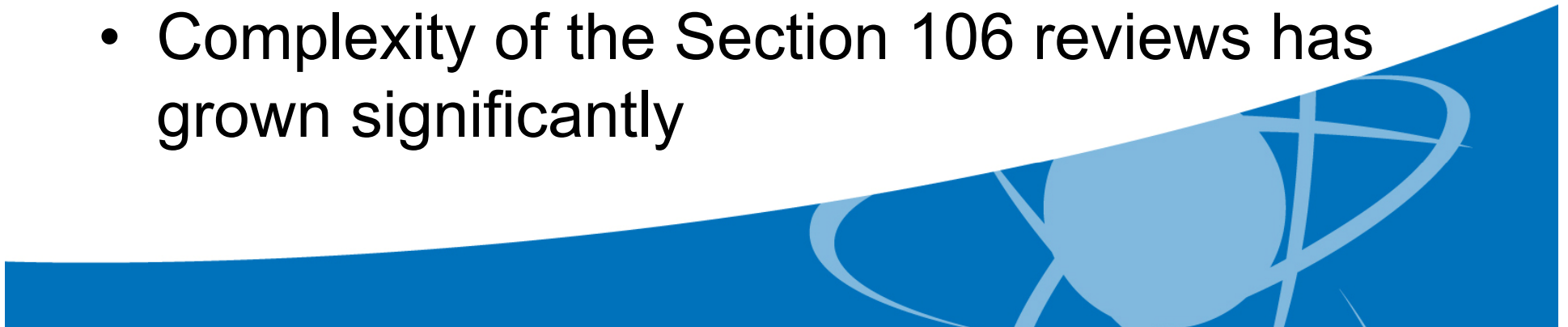
**Diana Diaz Toro, Project Manager
Joan Olmstead, Acting Deputy
Assistant General Counsel
U.S. Nuclear Regulatory Commission**

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Background



- NRC must complete the Section 106 process prior to making its licensing decision
- NRC is legally responsible for the NHPA findings
- Increase in the Section 106 activities for uranium recovery projects over the past several years
- Complexity of the Section 106 reviews has grown significantly



Purpose and Scope



- NRC's continuous improvement efforts
- Assist NRC staff in conducting the Section 106 process
- Useful for participants in the Section 106 process
- Incorporates lessons learned
- Provides guidance and does not impose regulatory requirements



The Section 106 Process



- Step 1 – Initiation of the Section 106 Process
(36 CFR 800.3)
- Step 2 – Identification of Historic Properties
(36 CFR 800.4)
- Step 3 – Assessment of Adverse Effects
(36 CFR 800.5)
- Step 4 – Resolution of Adverse Effects
(36 CFR 800.6)



Initiation of the Section 106 Process



- Early planning and coordination
- Begin the Section 106 process as soon as the NRC receives a license application
- Identification of consulting parties
- Timely invitations to consult
 - SHPO/THPO
 - Tribes
 - Other federal, state, and local agencies
 - Historic preservation organizations

Initiation of the Section 106 Process (cont'd)



- Coordination of Section 106 process with the NEPA review process, whenever possible
 - Plan and use the NEPA process and documents
 - Goal: Complete Step 2 within 14 months after completion of Step 1 or prior to the issuance of the draft NEPA document
 - Goal: Complete Step 4 within 6 months after completion of Step 3 or prior to the issuance of the final NEPA document
- Coordination with reviews required by other federal agencies, whenever possible

Identification of Historic Properties



- Area(s) of Potential Effects (APE)
 - Define the APE(s) early in the process
 - Factors to consider in defining the APE
 - Scope of the proposed activities to be licensed by NRC
 - Proposed facility's footprint and license boundary
 - Areas and extent of ground disturbance
 - Topography of the surrounding area
 - Introduction of visual, auditory, and other sensory elements
- Reasonable and good faith effort in carrying out the identification efforts



Identification of Historic Properties (cont'd)



- Surveys
 - Type of survey
 - State standards
 - Open-site approach
- Eligibility
 - Apply the National Register criteria
 - Consider consulting parties' input prior to making determinations
 - SHPO/THPO concurrence
 - No historic properties affected finding

Assessment of Adverse Effects



- Apply adverse effect criteria
- Consider consulting parties' input prior to making determinations
- Consider visual, auditory, or other sensory elements
- SHPO/THPO concurrence
- No adverse effects finding



Resolution of Adverse Effects



- Consult with parties on measures to avoid, minimize, or mitigate adverse effects
- Notify ACHP of adverse effect finding
- Make information available to the public
- Consider consulting parties' input
- Develop and execute MOA or PA to resolve adverse effects



Confidentiality



- Concerns about protecting location, religious or cultural information
 - Discuss with consulting parties before receiving information
- NHPA Part 800
 - Protection to withhold information concerning the location, character, or ownership of historic property when disclosure may cause a significant invasion of privacy, risk harm to historic property; or impede the use of a traditional religious site by practitioners
 - Require the federal agency to take into account any confidentiality concerns raised by Tribes
 - Protection limited to sites eligible or identified as historic properties

Confidentiality (cont'd)

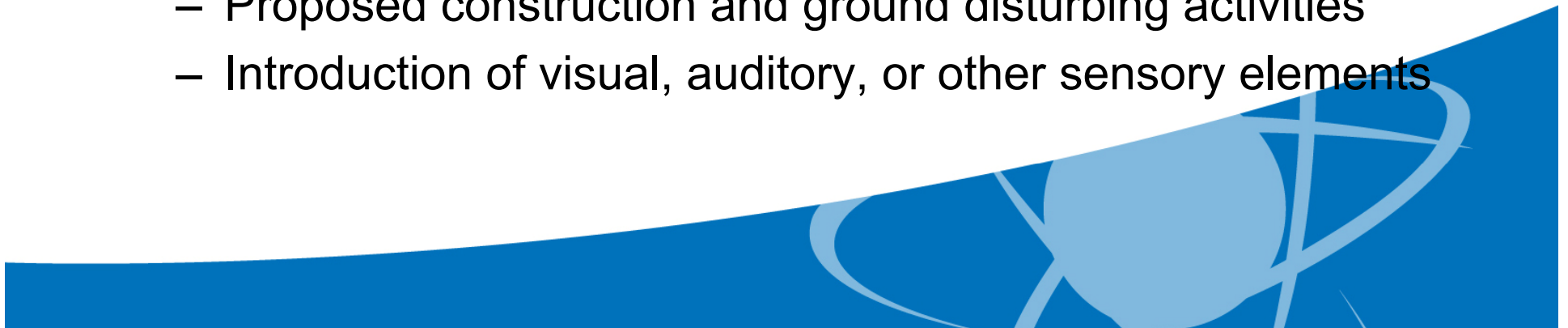


- Other Statutory Provisions
 - Archaeological Resources Protection Act (ARPA)
 - National Graves Protection and Repatriation Act (NAGPRA)
 - American Indian Religious Freedom Act (AIRFA)
 - Executive Order 13007 sacred sites
 - FOIA
- Other federal agency regulations
- SHPOs/THPOs program may have standards on protecting location of properties
- Use of confidentiality agreements or letters

How applicants can support the Section 106 process



- General factors to consider prior to the submittal of the license application
 - Contact and engage SHPO, THPO, Tribes, other federal, state, and local agencies
- Survey boundary
 - Location of known historic properties
 - Proposed project location is in areas known to be the aboriginal homelands of Tribes
 - Proposed construction and ground disturbing activities
 - Introduction of visual, auditory, or other sensory elements



How applicants can support the Section 106 process



- Surveys conducted prior to the submittal of the license application
 - Whenever possible, coordinate with tribal representatives at the project siting stage and when planning and conducting pre-application-submittal surveys
 - Consider measures to avoid, minimize, or mitigate potential adverse effects
- Confidential information
 - Discuss confidentiality concerns with potential consulting parties
 - Provide a redacted and non-redacted version of the historic and cultural resource report

How to Comment



- ADAMS Accession Number: ML14163A049
- Comments: Docket ID NRC-2014-0142
 - At www.regulations.gov; search on the Docket ID
 - Mail to: Cindy Bladey, Chief
Rules, Announcements, and Directives Branch
Office of Administration
Mail Stop: 3WFN-06-44M
U.S. Nuclear Regulatory Commission
Washington, DC 20555–0001
- Comment period ends on **September 2, 2014**
- We look forward to your comments

