

Notes on  
Title 54 of the United States Code  
“National Park Service and Related Programs”

March 15, 2016

Please note that this document does not provide legal advice. Instead, it reflects how the National Park Service’s (NPS’) Cultural Resources, Partnerships, and Science directorate currently intends to address/interpret the issues presented by the creation of Title 54 of the United States Code. Please consult your own legal resources in determining how to approach these issues.

I. The Basics.

1. United States Code. The United States Code (U.S. Code or U.S.C.) is the compendium or codification of all statutory law, as amended. The U.S. Code is to statutory law what the Code of Federal Regulations (CFR) is to regulatory law. The U.S. Code and the CFR have always been similar in that both provide the law as amended. Until now for historic preservation purposes, the U.S. Code and the CFR have differed in that the CFR is the official source of regulatory law whereas the U.S. Code was a convenient compilation of statutory law but the public laws were the official source of statutory authority. That is why our citations always began with the name of the statute followed by the U.S. Code citation in parentheses. The U.S. Code also contains the legislative history of the statutes that have been codified. Most codified statutes related to the national historic preservation partnership and to the NPS used to appear in Title 16 of the U.S. Code, “Conservation.” That is no longer the case.
2. Creation of Title 54. On December 19, 2014, the President signed into law P.L. 113-287 which created a new title in the United States Code – Title 54, “National Park Service and Related Programs.”
3. The Consequences of the Creation of Title 54.
  - A. Many national historic preservation statutes and most NPS-related statutes now reside (or eventually will reside) in Title 54.
  - B. The creation of Title 54 made no changes to the legal meaning of the statutes that were moved.
  - C. Congress made “house cleaning” changes as a part of passing P.L. 113-287, so there is different language in some places. Consequently, anyone who quotes from NPS-related or Federal historic preservation statutes should check the current language.
  - D. Unlike previous changes to the law, this was not an amendment to existing laws. P.L. 113-287 repealed the laws and then re-enacted their statutory content into Title 54. Title 54 is now the official “positive law” for these provisions. What this means to you is that you will

need to change official citations in two ways. That is, for all references to statutory language now in Title 54: 1) Title 54 will now substitute for Title 16 citations, and 2) in formal/legal documents the order of citation will switch in many situations. See Section II.4 below.

- E. In the United States Code format, commonly-used terms such as “Section 106” and “Section 4f” have never appeared. Common, non-formal usage for historic preservation laws is unlikely to change due to the creation of Title 54.
  - F. Because of the changes to the language of the statutes, some programs may wish to make educational changes for their statutory references.
  - G. The changes are not limited to Title 16. In other titles of the U.S. Code, seventy-six former citations to a statute whose content is now in Title 54 (e.g., the National Historic Preservation Act), now refer to Title 54.
  - H. Title 54 is in effect, but the legislative process relating to Title 16 and Title 54 is not complete. For example, several hundred Park-specific and associate entity-specific (e.g., National Heritage Areas) statutes eventually will move to Title 54.
  - I. No decision has been made yet about making changes to the citations for statutes that remain in Title 16.
  - J. Of all the Federal historic preservation statutory laws, P.L. 113-287 moved/repealed some, amended some, and left some unchanged.
  - K. You can find Title 54 on the United States Code website (<http://uscode.house.gov>).
  - L. New vs. Old Citations. In new documents, we should stop using Title 16 citations for statutory provisions that now appear in Title 54. For older documents, there is no statutory reason for a rush to update Title 16 citations in old documents, regulations, websites, etc. See Section II.1E below.
  - M. Like all of the U.S. Code, Title 54 is dynamic, not static. For example, it has taken the Office of Law Revision Counsel several months to complete the details for the “Historical and Revision Notes.” This process included moving National Historic Site statutes and Executive Orders from Title 16 “Notes” to Title 54 “Notes.” Furthermore, any new legislation that affects Title 54 (e.g., the December 2014 revisions to the American Battlefield Protection Program’s authorizing legislation) eventually will appear in Title 54.
4. A Summary of Actions to Consider Taking.
- A. If you cite a statute that was in Title 16 or if you use any Title 16 citation in any of your documents, websites, signs, etc., check to determine if your statute has moved to Title 54.
  - B. Start using references to Title 54 in your new documents, websites, signs, etc.

- C. If you quote from legislation that has been moved to Title 54, check to confirm that the creation of Title 54 has not changed the quoted language.
  - D. You are *not* required to update immediately old documents, websites, signs, etc. but you have the option to do so.
5. Documents Needed To Understand Title 54 and Its Effects on Your Statutory Law.
- A. Title 54, United States Code, “National Park Service and Related Programs”. See Section II.1 below for guidance on the components of Title 54.
  - B. P.L. 113-287. This public law creates Title 54, but it does more than create Title 54. See Section II.6 below for details.
  - C. House Report 113-44. This is the Committee Report for H.R. 1068, the Bill that became P.L. 113-287. Among other things, this report includes a “Disposition Table” (i.e., a crosswalk) for each of the provisions that P.L. 113-287 affects. Use this table to determine if your statutory provision has changed. See Section II.7 below for more noteworthy features of the Report.
  - D. U.S. House of Representatives, Office of the Law Revision Counsel, Explanatory Statement for H.R. 1068. The Office of the Law Revision Counsel is an office that is a part of the U.S. House of Representatives. This office is responsible for creating and maintaining the United States Code. This office was also responsible for drafting H.R. 1068, which became P.L. 113-287. The explanatory statement provides useful background information.
  - E. National Park Service Office of Legislative and Congressional Affairs PowerPoint presentation on: “Title 54 of the U.S. Code: Background and Guidance.” This NPS-gearred presentation is especially good in providing the basics and background for those who have little experience with statutory law and the United States Code.
  - F. List of Affected Statutes. The National Park Service has posted a partial list of Federal historic preservation laws that P.L. 113-287 has moved to Title 54.
  - G. NPS Website for Historic Preservation Laws. NPS has posted the documents mentioned above on its historic preservation laws page (<http://www.nps.gov/subjects/historicpreservation/laws.htm>).

The link for P.L. 113-287 takes you to the Congress.gov site for H.R. 1068 which without alteration became P.L. 113-287. Click on the “Text” tab and then on the “PDF” link to reach a clean copy of P.L. 113-287.

NPS is in the process of revising its “Historic Preservation Laws, Regulations, and Orders” webpage (see link above). In addition to the Title 54 documents, you will still find the individual statutes along with their old Title 16 citations. Until this webpage is updated, you can use it to help you find the Title 16 citations for historic preservation statutes which in turn (with the help of House Report 113-44) will allow you to determine if P.L. 113-287

moved your statute to Title 54. Make this determination before quoting any language that might have been moved to Title 54.

## II. The Details.

### 1. The Components of Title 54.

- A. Table of Contents. The Table of Contents appears at the beginning of Title 54.
- B. Disposition Table – Crosswalk. Immediately after the Table of Contents the reader will find the “Disposition Table” (or crosswalk) from the old Title 16 citations to the new Title 54 citations. This is any easy way to find out if (and, if so, how) provisions in Title 16 appear in Title 54. The Disposition Table also indicates where and why certain provisions have been repealed without re-enactment into Title 54.
- C. Enactment of Title. This provision appears immediately after the Disposition Table. It is the enacting language for the creation of Title 54.
- D. Purpose; Conformity with Original Intent. This provision appears immediately after the “Enactment of Title” language. The “Purpose” provision includes the intent in the creation of Title 54 to “...conform to the understood policy, intent, and purpose of Congress in the original enactments...”
- E. Transitional and Savings Provisions. These provisions appear immediately after the “Purpose” provision.
  - (a) Definitions. “Source Provision” means a provision of law that a Title 54 provision replaces.
  - (b) Cutoff Date. This explains the dates of laws that are covered by P.L. 113-287 and what happens to laws that are passed subsequent to the passage of P.L. 113-287.
  - (c) Original Date of Enactment Unchanged. A Title 54 provision is deemed to have been enacted on the date of the “Source Provision’s” enactment. For example, the statutory language that was part of the original National Historic Preservation Act is still deemed to have passed in 1966.
  - (d) References to Title 54 Provisions. A reference to a Title 54 provision is deemed to refer to the corresponding “Source Provision.”
  - (e) References to “Source Provisions.” A reference to a “Source Provision” is deemed to refer to the corresponding Title 54 provision.
  - (f) Regulations, Orders, and Other Administrative Actions. Any of these actions in effect under a “Source Provision” remains in effect under the corresponding Title 54 provision.
  - (g) Actions Taken and Offenses Committed. An action taken or an offense committed under a “Source Provision” is deemed to have been taken or committed under the corresponding Title 54 provision.
- F. Repeals. This provision appears immediately after the Transitional and Savings provisions. The “Repeals” provision is a general statement that repeals of specific statutes took place as a part of the creation of Title 54.

G. Title 54 Codified Text and “Historical and Revision Notes.” Every so often within the codified text of Title 54, there will appear “Historical and Revision Notes.” These notes provide a “reverse crosswalk” in that they provide the U.S. Code source of all the provisions in Title 54. The notes also provide a legislative history of each provision in Title 54. Other useful information appears in the notes such as the names of selected statutes (e.g., the National Historic Preservation Act), National Historic Site statutes, National Heritage Area statutes, and Executive Orders (e.g., E.O. 11593).

## 2. Interpreting Title 54.

- A. Official vs. Informal References. Historic Preservationists often speak a different language than lawyers. They likely will continue to do so. The “Section 106” reference never existed in Title 16. Consequently, while we must use Title 54 citations in official, legal documents, we should also include a “commonly known as” reference (or something similar) so that our partners will know what we are talking about. Conversely, in more informal settings or documents, it is perfectly permissible to lead with the commonly known name, as long as we include a parenthetical citation to Title 54. See Section II.4 below for more details about appropriate citation approaches.
- B. New vs. Old Citations. In new documents, we should stop using Title 16 citations for statutory provisions that now appear in Title 54. For older documents, there is no statutory reason for a rush to update Title 16 citations in old documents, regulations, websites, etc. See Section II.1.E above.
- C. Even without the supporting documents discussed in these notes, the United States Code includes a Legislative History. Anyone going to the current version of Title 16 will be able to find a note that a particular provision has been repealed by P.L. 113-287 and re-enacted in Title 54.
- D. P.L. 113-287 creates no legal changes, but there are some language changes (e.g., the elimination of “prehistoric and historic resources”). Not only should everyone check the language when quoting Title 54, but some programs may want to create educational additions to their standard presentations and/or add a citation to the definition. For example, given the new uses of “historic property” in Title 54 and given how many people don’t read definitions, perhaps it would be appropriate to cite the definition of “historic property” and/or start a “historic includes prehistoric” campaign.
- E. Title 54 Organizational Names. The name of Title 54 and many of its subtitles, divisions, chapters, etc. are NPS–centric. In the citations, we expect that there will be no need to include the name of Title 54 or the names of its subtitles, divisions, subdivisions, chapters, etc.; just as we never did for Title 16 citations. It is likely that using more than the basics will be up to whoever cites Title 54.
- F. The Provision Moved but the Statutes in the Notes Have Not Yet Appeared in Title 54. In Title 16, many statutes, Executive Orders, and other useful information appeared in the “Notes” to the text. In many cases, the text of Title 16 moved immediately to Title 54 but the associated notes took significantly longer. For example, the Historic Sites Act was originally codified at 16 U.S.C. 461. The U.S. Code codified many NPS-related statutes

(e.g., the creation of National Historic Sites) in the notes to 16 U.S.C. 461. As of December 2014, the Historic Sites Act became a part of Title 54 (54 U.S.C. 320101). The statutes in the notes to 16 U.S.C. 461 did not begin appearing in Title 54 until April 2015. If one of your statutes appears in the notes of Title 16 and the over-arching statute has moved to Title 54 but your statute has not yet appeared, as a temporary citation to your statute use an alternative citation such as the Public Law number and add a note that the statute will likely appear eventually in the Title 54 notes.

- G. Drafting Mistakes in Title 54. There are drafting errors in Title 54. For example, in Section 112(a)(1)(A) of the National Historic Preservation Act, as amended (16 U.S.C. 470h-4(a)(1)(A)), the “Office of Personnel Management” transformed to the “Office of Management and Budget” in 54 U.S.C. 306131. Given the size of Title 54, readers will no doubt discover other errors.

For the short term, remember that the statutory purpose in the creation of Title 54 is to create no change in legal meaning. Therefore, if the language is different and it would change the legal meaning of the provision and the revision is not mentioned in the “Historical and Revision Notes,” the argument could be made that drafting error could be ignored. We recommend that you check with the Federal agency/program responsible for administering that provision.

For the long term, most agencies have a process by which they alert Congress about the need to make technical corrections in statutory law. One possibility for correcting drafting errors in Phase I of the creation of Title 54 is to make technical corrections as a part of Phase II of creating Title 54.

3. Types of Changes Undertaken in Moving Language from Title 16 to Title 54 (with examples from the National Historic Preservation Act).

- A. Legal conventions of statutory construction (interpretation) have been applied throughout. Whenever the legal conventions conflicted with educational requests to retain language, the legal conventions won out. The statutory authors believed that they needed to take this approach to meet their statutory mandates. For example, Title 54 changes the language in Section 106 of the National Historic Preservation Act. In one instance, the phrase “...district, site, building, or object that is included in or eligible for inclusion in the National Register” no longer exists. Instead Title 54 uses “historic property” because the definition of “historic property” includes all of the elements of the discarded text.
- B. If language does not provide direction, authorization, or explanation, it has not been codified. Such language, though not codified, will remain in effect. For example, Section 2 (the purpose section) of the National Historic Preservation Act (NHPA) has been codified at 54 U.S.C. 300101. The Congressional Findings (Section 1 of the NHPA) has not been codified. The Disposition Table for this provision states: “Not repealed but omitted from the text of title 54. Provides findings for this subchapter.” In short, this information is still useable but it will have to be cited differently. See Section II.4 below for more citation details.

- C. Inherently obvious language has been dropped. For example, the definition of “Secretary” used to be: “the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.” The “of the National Park Service except where otherwise specified” language has been dropped. Within the context of Title 54, “Director” means the Director of the National Park Service unless it is obvious that it does not.
  - D. “Inconsistent” use of terms has been fixed. For example, “prehistoric and historic resources” has been changed to “historic properties” because the NHPA uses “historic properties” elsewhere and the definition of “historic property” includes archeological sites.
  - E. Obsolete references have been dropped. For example, the 1980 Amendments to the NHPA mandated a number of reports which long since have been completed. Those mandates do not appear in the text of Title 54.
  - F. Reorganization – Similar Subjects Moved Together. For example, Section 106 is now located with other Federal agency requirements.
  - G. Reorganization – Expansion. By reserving certain divisions, sub-divisions, and chapters, and by assigning six digits to section numbers, the drafters of Title 54 have left plenty of room for expansion. The citations in Title 16 had reached a significant level of complexity and awkwardness.
  - H. Some Inconsistencies between Provisions (i.e., Drafting Errors) Have Been Fixed. For example, in one place, the NHPA mandated funding to Certified Local Governments (CLGs); in another place the NHPA referred to funds being awarded to CLGs or local governments in the process of becoming CLGs. The 1980 Committee Report clearly indicated that the second option was an unintentional drafting error. That mistake was corrected in the creation of Title 54.
  - I. Standard Changes. See Section II.7C below.
  - J. Statutory Names. Names of individual statutes (e.g., “the National Historic Preservation Act”, “Historic Sites Act”, etc.) have all been removed from the text of the U.S. Code. Some statutory names now appear in the notes to 54 U.S.C. 100101. See Section II.4 below.
4. Citing Provisions of Title 54. The provisions below describe approaches to citing provisions of Title 54. Please note that these provisions do not provide legal advice. Please consult your own legal resources in determining how to approach these issues.
- A. Standard Approach to Citing an Entire Statute (as Opposed to Citing Specific Sections). The standard approach to citing an entire statute is the Title 54 citation appearing first followed by parenthetical information that provides the name of the Act before it was repealed and its text re-enacted as a part of Title 54. It would look something like this: 54 U.S.C. NNNNNN (commonly/formerly known as—for example—the Big Show Act) or 54 U.S.C. NNNNNN, commonly/formerly known as the Big Show Act. Using either “commonly” or “formerly” or some other similar term is acceptable.

- B. Exception to the Standard Approach to Citing an Entire Statute. In the notes for Section 100101, Title 54 includes “the National Historic Preservation Act” and the short title for a number of other statutes. Where a short title is included in Title 54 notes, the citation may take the form of, for example, the National Historic Preservation Act (54 U.S.C. 300101, et seq.) or the National Historic Preservation Act, 54 U.S.C. 300101 et seq. There is no requirement that the citer use the exception to the standard citation approach. The exception is merely an option.
- C. Standard Approach to Citing a Section of a Statute. The standard approach to citing a section of a statute is the Title 54 citation appearing first followed by parenthetical information that provides the name of the Act before it was repealed and its text re-enacted as part of Title 54. It would look something like this: 54 U.S.C. 307108 (commonly/formerly known as Section 109 of the National Historic Preservation Act) or 54 U.S.C. 307108, commonly/formerly known as Section 109 of the National Historic Preservation Act.
- D. The “Popularity Exception” Approach to Citing a Section of a Statute. There is an exception to the standard approach to citing a section of a statute. It is easy to remember if you think of it as the “popularity exception.”

Section 4f of the Department of Transportation Act, went through a recodification that was similar to the creation of Title 54, yet the use of this name has continued long after its recodification. Based on this precedent, under certain circumstances a commonly-used reference to a section of a source statute may continue to be cited in its traditional form despite the creation of Title 54; e.g., Section 106 of the National Historic Preservation Act (54 U.S.C. 306108) or Section 106 of the National Historic Preservation Act, 54 U.S.C. 306108.

There are two prerequisites for using the Popularity Exception. First, the name of the Act (e.g., the National Historic Preservation Act) must appear somewhere in the notes in Title 54. Second, the section in question truly must be popular. For example, in any group of historic preservationists, if someone mentions “Section 106,” there is no need to add “of the National Historic Preservation Act.” Everyone already knows which Act “Section 106” refers to. There is no requirement that the citer use the exception to the standard citation approach. The exception is merely an option.

- E. Judicial Filings. As is always the case for judicial filings/briefs, individual courts/judges might have their own preferences for citation formats.
- F. “Not Repealed But Omitted From the Text of Title 54”. There are provisions of previous statutory law which the Disposition Table of Title 54 indicates to be “not repealed but omitted from the text of Title 54.” The Congressional Findings section of the National Historic Preservation Act (formerly cited as 16 U.S.C. 470(b)) is a good example of this. The proper citation for these statutory provisions is to the public law(s) that created/amended them; e.g., P.L. 96-515 for the Congressional Findings section of the National Historic Preservation Act, as amended.

5. Background to the Creation of Title 54.

- A. P.L. 113-287 is a part of a long project that began in 1974. P.L. 93-554 (2 U.S.C. 285b(1)) directed the Office of Law Revision Counsel to clean up the entire United States Code. In other words, the creation of Title 54 is not a result of any action or omission on the part of NPS or Federal, State, Tribal, or local historic preservation programs.
- B. NPS did have an opportunity to shape Title 54 as did NPS' historic preservation partners. The language is much better than the original draft. For example, Title 54 was originally named "National Park System" even though it covered more than the National Park System. NPS convinced the Bill's drafters to use the broader, more inclusive name of "the National Park Service and Related Programs."
- C. Given the mission behind the creation of Title 54 and the fact that the authors were lawyers rather than preservationists, biologists, etc., NPS and other historic preservation partners did not win arguments to retain language that was useful solely for educational purposes. For example, "prehistoric and historic resources" was replaced by "historic properties" because the definition of "historic properties" includes archeological sites.
- D. Phase I and Phase II.
  - (a) Phase I is now mostly complete.
  - (b) Phase II in the creation of Title 54 will involve moving Park-specific legislation and legislation related to associated entities (e.g., National Heritage Areas) into Title 54. Phase II will take additional legislation to accomplish. P.L. 113-287 has reserved parts of Title 54 for Phase II moves. Like Phase I, Phase II is likely to involve the repeal of existing statutes and the re-enactment of their content into Title 54.

6. The Components of P.L. 113-287. P.L. 113-287 has seven sections. See below. Note that some components appear in Title 54 of the U.S. Code and some do not.

- A. Section 1. Table of contents for P.L. 113-287.
- B. Section 2. Purpose; conformity with original intent. This section states the Act's intent to "...conform to the understood policy, intent, and purpose of Congress in the original enactments..." This provision appears in Title 54 of the U.S. Code immediately after the Disposition Table which in turn appears immediately after the Table of Contents for Title 54.
- C. Section 3. Enactment of Title 54, United States Code. This is the exact language (without change) that is now Title 54. See Section II.7 below for the kinds of changes to the preexisting statutes that P.L. 113-287 made. This provision appears in Title 54 of the U.S. Code immediately after the Disposition Table which in turn appears immediately after the Table of Contents for Title 54.
- D. Section 4. Conforming amendments. This section lists four other changes to statutory law: Title 18 of the U.S. Code, Title 28 of the U.S. Code, P.L. 106-206, and P.L. 111-24.

- E. Section 5. Conforming cross-references. This section lists seventy-six changes in other titles of the U.S. Code. These changes all involve cross references to statutory law that is now part of Title 54. The changes are: Title 7 (1 change), Title 10 (1), Title 15 (1), remaining parts of Title 16 (37), Title 20 (3), Title 23 (3), Title 25 (1), Title 26 (1), Title 36 (1), Title 40 (7), Title 42 (5), Title 43 (9), Title 45 (2), Title 46 (1), Title 48 (2), and Title 49 (1).
- F. Section 6. Transitional and savings provisions. This provision appears in Title 54 of the U.S. Code immediately after the Disposition Table which in turn appears immediately after the Table of Contents for Title 54.
- (a) Definitions. “Source Provision” means a provision of law that a Title 54 provision replaces.
  - (b) Cutoff Date. This explains the dates of laws that are covered by P.L. 113-287 and what happens to laws that are passed subsequent to the passage of P.L. 113-287.
  - (c) Original Date of Enactment Unchanged. A Title 54 provision is deemed to have been enacted on the date of the “Source Provision’s” enactment. For example, the statutory language that was part of the original National Historic Preservation Act is still deemed to have passed in 1966.
  - (d) References to Title 54 Provisions. A reference to a Title 54 provision is deemed to refer to the corresponding “Source Provision.”
  - (e) References to “Source Provisions.” A reference to a “Source Provision” is deemed to refer to the corresponding Title 54 provision.
  - (f) Regulations, Orders, and Other Administrative Actions. Any of these actions in effect under a “Source Provision” remains in effect under the corresponding Title 54 provision.
  - (g) Actions Taken and Offenses Committed. An action taken or an offense committed under a “Source Provision” is deemed to have been taken or committed under the corresponding Title 54 provision.
- G. Section 7. Repeals. This section is a list of all laws that P.L. 113-287 has repealed. This provision in part appears in Title 54 of the U.S. Code immediately after the Disposition Table which in turn appears immediately after the Table of Contents for Title 54.
7. Noteworthy Portions of House Report 113-44. Note that some components appear in Title 54 of the U.S. Code and some do not.
- A. Contents. See page one of the Report.
  - B. Disposition Table – Crosswalk. Beginning on page 5 of the Report, the reader will find “Changes in Existing Law Made by the Bill, as Reported.” This is the “Disposition Table” (or crosswalk) from the old Title 16 citations to the new Title 54 citations. This is any easy way to find out if (and, if so, how) provisions in Title 16 appear in Title 54. The Disposition Table also indicates where and why certain provisions have been repealed without re-enactment into Title 54. This provision also appears in Title 54 of the U.S. Code immediately after the Table of Contents for Title 54.
  - C. Standard Changes. On page 17, immediately after the Disposition Table, there is a section of the Report called “Standard Changes.” An example of this section is: “The word ‘may’ is substituted for ‘is authorized to’, ‘is empowered to’, or words of like import to eliminate

unnecessary words, for clarity, and for consistency in the title.” The other standard changes involve:

- Congressional Committee names
- The word “shall”
- The phrase “in his discretion”
- The word “includes”
- The word “ensure”
- The word “such”
- The words “that” and “which”
- The words “regulation” and “rule”
- The word “person”
- The word “consider”

D. Section-by-Section Explanation. Immediately after “Standard Changes,” the Report (on page 18) provides a Section-by-Section explanation of the legislation that would become P.L. 113-287. This section provides a more detailed explanation of the changes (and in larger font) than the Disposition Table does. It also provides a “reverse crosswalk” in that it provides the U.S.C. source of all the provisions in Title 54. This information also appears throughout Title 54 as “Historical and Revision Notes.”