



NEPA Substitution for Section 106 and ACHP Updates

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May 12, 2026



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What is NEPA?

The National Environmental Policy Act (NEPA) requires a federal agency to prepare and make available to the public an Environmental Impact Statement (EIS) for any major federal action significantly affecting the human environment.

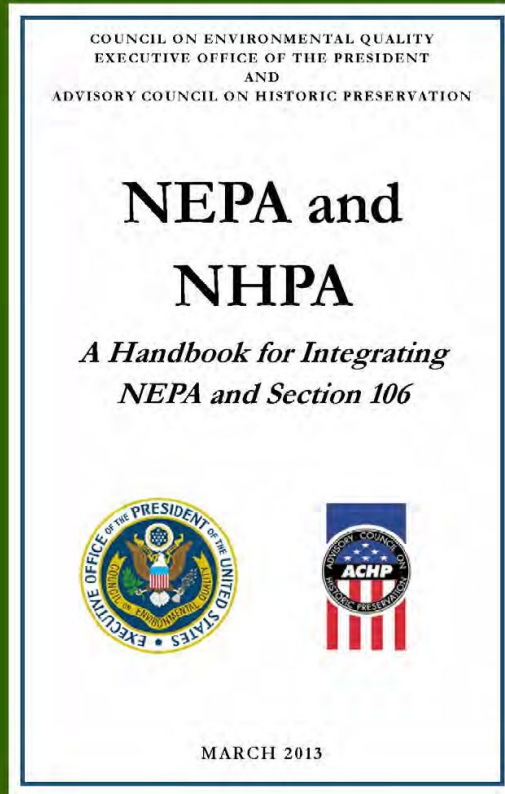


What is Section 106 of the NHPA?

Section 106 of the NHPA requires federal agencies to consider how projects with federal involvement may affect historic properties before the expenditure of federal funds or issuance of a federal permit, license, or approval and to provide the ACHP an opportunity to comment on projects with adverse effects on historic properties prior to their implementation.



NEPA and NHPA Handbook



To be revised



Managing NEPA Decision-Making



Integrating the two laws makes sense.

Substitution (36 CFR § 800.8)

- Four substitution principles:
 - Prior notice to SHPO or THPO and the ACHP;
 - Consult with consulting parties on:
 - Determinations of eligibility,
 - Finding of effect, and
 - Resolution of adverse effects, if any;
 - Prepare EA or EIS to comply with Section 106 standards; and
 - Resolve any objections raised before the agency's final decision on the action.



Is substitution right for this project?

Factors to consider:

- Degree of federal involvement
- Agency readiness
- Interest of the public
- Protection of historic properties



Substitution checklist

ATTACHMENT C CHECKLIST FOR SUBSTITUTION

This checklist was developed by the Advisory Council on Historic Preservation (ACHP) as a guide for those preparing or reviewing a NEPA document – Environmental Impact Statement (EIS) or Environmental Assessment (EA) – used for Section 106 purposes in accordance with Section 800.8(c) of the Section 106 implementing regulations, “Protection of Historic Properties” (36 C.F.R. Part 800). The checklist is based on the standards for developing environmental documents to comply with Section 106 at 36 C.F.R. § 800.8(c)(1). Ideally, the preparer or reviewer will be able to answer “yes” to all items.

NOTIFICATION	YES	NO	COMMENTS
Did the agency notify <i>in advance</i> the SHPO/THPO and the ACHP of its intent to use the NEPA process for Section 106 purposes?			
Is the notification correspondence included in the EA/DEIS or appendices?			
IDENTIFICATION OF THE CONSULTING PARTIES	YES	NO	COMMENTS
Is the effort to identify consulting parties described in the EA/DEIS?			
Is a list of the consulting parties provided in the EA/DEIS?			
Are all consulting parties included? (Indian tribes, Native Hawaiian organizations, ...)			



Aligning review documentation

- The Alternatives section of the EA or EIS should also inform the description of the Section 106 undertaking.
- The Affected Environment section of the EA or EIS should include the description of the APE for the undertaking and summarize the historic properties identification efforts and results.
- The Environmental Consequences section of the EA or EIS should include the federal agency's Section 106 effect finding.
- Summarize consultation and public involvement.
- Include consulting parties in the distribution list.



Opportunities from substitution

- Ensure interdisciplinary timing and communication
- Better address historic properties with natural resource characteristics
- Clarify opportunities for public involvement
- Inform agency decision making



ACHP - current status

- Membership:
 - Vice Chairman acting as Chairman
- Staff:
 - Reorganization based on anticipated FY 26 budget



Section 106 reviews

- OFAP staff continue to advise agencies and consulting parties, as well as participate in consultation
- Recommend reaching out to us through ofap_help@achp.gov
- Current adverse effect numbers are similar to previous years, but significant increase in the number of emergency notifications



EO 14156: National Energy Emergency

- February 2025: ACHP published advice on its website along with FAQs
- [achp.gov/Section_106_and_Energy_Emergency](https://www.achp.gov/Section_106_and_Energy_Emergency)
- Approximately 550 undertakings reviewed under 36 CFR 800.12(b)(2) in FY 2026
- Undertakings have primarily come from:
 - Rural Utilities Service
 - Rural Business Cooperative Service
 - Army Corps of Engineers



Guidance

- ACHP's Archaeology Guidance
- Section 110(k)
- Invited signatories in program PAs
- Traditional Cultural Places and Section 106
- e-Learning courses





Thank You

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