

US EPA ARCHIVE DOCUMENT



## XIII. National Historic Preservation Act (NHPA)

**B**efore beginning any construction project associated with a federal agency, you must determine whether any NHPA requirements apply to your project. NHPA is a multi-faceted statute with a variety of initiatives, including programs for identifying and listing significant historic resources; partnerships between federal agencies and federally approved state and tribal historic preservation programs; and grants. Section 106 of NHPA requires federal agencies to account for the effects of their undertakings on historic properties and to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. Federal funding or permitting of a project may constitute an undertaking under the NHPA. If NHPA requirements are applicable to your project, these requirements must be met before and possibly during construction activities. The requirements of Section 106 apply prior to the approval of the expenditure of any federal funds on, or prior to the issuance of any federal license for, an undertaking.

NHPA applies to your construction project if your project constitutes an undertaking and will have a potential effect on a property that is eligible for or included in the National Register of Historic Places (NRHP). Note that many states and communities use the NRHP as the basis for their planning processes and designation criteria. In some cases, state and local ordinances may establish protections for historic preservation. To find out if your state or community has such processes in place, contact your State Historic Preservation Officer (SHPO). This guide addresses federal environmental requirements and does not address state requirements.

Under the NHPA regulations, a federal agency determines whether its action constitutes an undertaking, and, if so, whether the undertaking has the potential to affect historic properties. Historic properties include any prehistoric or historic district, site, building, structure, or object included, or eligible for inclusion, in the NRHP (which is maintained by the National Park Service), including artifacts, records, and material remains

related to such a property or resource. If the undertaking has the potential to affect historic properties, the Federal agency identifies the appropriate state or tribal historic preservation officer (SHPO or THPO) and begins a consultation regarding the impacts of the undertaking. The consultation consists of the following steps: (1) identifying other appropriate consulting parties and developing plans to involve the public; (2) determining the area of potential effects of the undertaking; (3) identifying any historic properties within that area; (4) determining whether the undertaking will affect such properties and, if so, whether the effects may be adverse; and (5) resolving any identified adverse effects. Typically, measures to resolve adverse effects that are adopted as a result of Section 106 consultation are documented in memoranda of agreement or programmatic agreements that then govern the undertaking.

NHPA regulations impose procedural obligations to consider the effects of agency undertakings on historic properties, to consult with appropriate entities, and to develop and evaluate ways to minimize or mitigate any adverse effects. There is no substantive requirement to actually avoid or minimize adverse effects. Other provisions of NHPA may impose additional requirements. For instance, under NHPA Section 110(f), where a federal undertaking may directly and adversely affect a property designated as a National Historic Landmark, the agency must (prior to approving the undertaking and to the maximum extent possible) undertake such planning and actions necessary to minimize harm to such landmark. Additionally, with certain limited exceptions, federal agencies are prohibited by NHPA Section 110(k) from granting loans, loan guarantees, permits, licenses, or other assistance to any applicant who intentionally significantly adversely affected a historic property to which the assistance would relate with the intent to avoid the requirements of Section 106. If you perform these activities prior to the start of construction, it will help to avoid significant project delays and possible project cancellation.

You can get additional information on NHPA requirements from the following sources.

- The Advisory Council on Historic Preservation's web page provides the most comprehensive information about NHPA requirements (<http://www.achp.gov>). This web page details NHPA requirements and provides links to contact information for federal, state, and tribal historic preservation officers.
- The National Park Service's web page (<http://www.cr.nps.gov/nr/>) provides additional information on properties listed on the National Register of Historic Places, such as the location and historic nature of these properties (through the National Register Information System database) and details on how properties are listed.
- The Construction Industry Compliance Assistance Center provides plain language explanations of environmental rules for the construction industry, including tools to identify state-specific requirements: <http://www.cicacenter.org>.
- The National Environmental Compliance Assistance Clearinghouse contains a search engine to help in finding compliance assistance tools, contacts, and EPA-sponsored programs: <http://cfpub.epa.gov/clearinghouse/>.