

Lesson Overview

This lesson describes the main components of Sections 106 and 110 of the National Historic Preservation Act (NHPA).

Lesson Objectives

At the end of this lesson, you will be able to:

- Explain the Section 106 process.
 - Define FEMA's responsibilities under Section 106.
 - Identify FEMA requirements under Section 110.
 - Apply the requirements of Sections 106 and 110 to a case study.
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National Historic Preservation Act: Sections 106 & 110

Let's begin by introducing the basic requirements of Sections 106 and 110.

Key Points

- Two sections in NHPA, Sections 106 and 110, outline Federal agency requirements for historic preservation.
 - To comply with Section 106, FEMA must enter a four-step review process to consider the effects of any FEMA-funded actions on historic properties.
 - To comply with Section 110, FEMA must fully integrate historic preservation into its agency mission and programs.
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National Historic Preservation Act: Section 106

Section 106 of NHPA states that Federal agencies must . . .

". . . prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register."

Considerations Required by Section 106

As a Federal agency, FEMA must:

- Take into account the effects of undertakings on historic properties. An undertaking is defined as any project, activity, or program funded in whole or in part with Federal money or under the direct or indirect jurisdiction of a Federal agency.
 - Afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on FEMA actions prior to the approval of the expenditure of any Federal funds.
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Section 106 Regulations

Regulations issued by the ACHP guide Section 106 review and specify actions Federal agencies must take to meet their legal obligations.

The Section 106 regulations are published in the Code of Federal Regulations (36 CFR Part 800).

The Section 106 process encourages, but does not mandate, preservation. This process ensures that preservation values are factored into Federal agency planning and decisions.

Section 106 Undertakings

The following are examples of projects, programs, or activities that are considered Section 106 undertakings, with the potential to affect historic properties:

- Construction of new facilities
 - Rehabilitation and repair of existing facilities
 - Demolition of residences
 - Licenses and permits
 - Loans and loan guarantees
 - Grants
 - Federal property transfers
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Section 106 Review Triggers

FEMA funds various programs that may trigger Section 106 review. These disaster assistance programs encompass:

Response & Recovery

- Public Assistance Program. Most projects funded under the PA program are triggers.
- Individuals and Households Program. Although Section 106 does not apply to most assistance provided to individuals and households, it does apply to ground-disturbing activities associated with temporary or permanent housing.

Mitigation Programs

- Hazard Mitigation Grant Program
 - Flood Mitigation Assistance Program
 - Pre-Disaster Mitigation Programs
 - Supplemental Assistance
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Standard Section 106 Process

36 CFR Part 800 establishes a standard review process. The standard Section 106 review encompasses:

Step 1: Initiate the process.

Step 2: Identify and evaluate historic properties in the project area.

Step 3: Assess adverse effects.

Step 4: Resolve adverse effects.

These review steps will be discussed in depth in the following lessons.

Programmatic Agreements

Normally, Section 106 review is carried out on a project-by-project basis. As an alternative to the standard Section 106 process, agencies may execute reviews on a programmatic basis, eliminating the need for case-by-case review.

The Programmatic Agreement is the primary tool used by FEMA to:

- Integrate Section 106 responsibilities into its mission and programs.
 - Allow for programmatic reviews.
 - Expedite the standard review process and completely substitute for Section 106 review in the States where it is executed.
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The Agreement

The Programmatic Agreement may be executed among FEMA, the ACHP, the State, the Tribe, and the SHPO/THPO. This agreement:

- Establishes a coordination and scoping process at the beginning of the disaster response.
- Excludes routine activities from SHPO/THPO review.
- Shortens timeframes for review by the SHPO/THPO.
- Should be executed prior to a disaster, but disaster events may dictate otherwise.
- May address State/Tribe-specific needs and resources.

Regardless of whether the review is conducted using the standard process or under a Programmatic Agreement, FEMA may use expedited procedures to accelerate historic review when emergency situations arise.

National Historic Preservation Act: Section 110

Section 110 is another key provision of the National Historic Preservation Act. Section 110 sets out broad historic preservation responsibilities for Federal agencies and is intended to ensure that historic preservation is fully integrated into the ongoing programs of all Federal agencies.

Section 110 Requirements

Section 110 requires that FEMA:

- Designate a Federal Preservation Officer.
 - Establish a historic preservation program.
 - Locate, inventory, and nominate all historic properties under its control, and document properties to be altered or demolished.
 - Minimize, to the extent possible, any harm to National Historic Landmarks.
 - Deny funding to applicants if they intentionally avoid compliance with Section 106.
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Program Goal

FEMA's Historic Preservation and Cultural Resources Program considers how disasters affect historic properties and cultural resources. The goal of FEMA's program is:

"To address the needs of communities in preparing for, mitigating, responding to, and recovering from the devastating effects disasters may have on historic properties and cultural resources while meeting FEMA's primary mission of reducing the loss of life and property to all types of hazards."

Program Activities

To achieve this goal, the program works with other Federal agencies, Tribal entities, and regional and national organizations to:

- Integrate historic preservation considerations into FEMA's programs.
 - Provide streamlined review for FEMA's programs and activities.
 - Provide timely and expert assistance to owners of historic properties to protect against the effects of disasters.
 - Help communities protect their historic and cultural resources.
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Lesson Summary

You have now completed the second lesson in the Historic Preservation section of this course! You should be able to:

- Explain the Section 106 process.
 - Define FEMA's responsibilities under Section 106.
 - Identify FEMA requirements under Section 110.
 - Apply the requirements of Sections 106 and 110 to a case study.
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