

**PART II**  
**CHAPTER 12**  
**Section 106 and NEPA**

**March 2014**

## **Contents**

<b>12-1.0 National Environmental Policy Act of 1969 (NEPA)</b> .....	3
<b>12-2.0 Coordinating Section 106 and NEPA</b> .....	3
<b>12-3.0 Documenting Section 106 for Categorical Exclusions (CEs)</b> .....	4

## 12-1.0 National Environmental Policy Act of 1969 (NEPA)

Under NEPA, agencies have broad responsibilities concerning the impacts of their activities on the environment. FHWA adopted the policy of managing the NEPA project development and decision making process as an "umbrella" under which all applicable environmental laws (including NHPA) and regulations are considered and addressed prior to the final project decision and document approval. The conclusion of the NEPA process results in a decision that addresses multiple environmental concerns and requirements, including Section 106 of the NHPA.

NEPA mandates that the type of documentation for federal actions be determined by the potential impacts projects may have on the surrounding natural, cultural, and social environment. The Council on Environmental Quality (CEQ) regulations implementing NEPA may be found at 40 CFR 1500-1508, and FHWA regulations describing the policies and procedures for implementing NEPA and the CEQ regulations may be found at 23 CFR 771. The three types of NEPA documentation include:

- [Environmental Impact Statement \(EIS\)](#): Prepared for projects where it is known that the action will have a significant effect on the environment;
- [Environmental Assessment \(EA\)](#): Prepared for actions in which the significance of the environmental impact is not clearly established. Should environmental analysis and interagency review during the EA process find a project to have no significant impacts on the quality of the environment, a [Finding of No Significant Impact \(FONSI\)](#) is issued;
- [Categorical Exclusions \(CEs\)](#): Prepared for actions that do not individually or cumulatively have a significant effect on the environment.

Refer to the [INDOT CE Manual](#) and the [Procedural Manual for Environmental Studies](#) for detailed information on NEPA compliance.

## 12-2.0 Coordinating Section 106 and NEPA

Both NEPA and the Section 106 are decision-making processes that are intended as analytical tools so that issues concerning both the natural and human environments receive reasonable and fair consideration. The review processes for both should be conducted early in the development of the project, when adverse impacts to the natural and human environment can still be avoided or mitigated. Section 106 and NEPA require consideration of project impacts, during:

- identification of resources
- analysis of alternatives;
- public disclosure of information and consideration of public views;
- direct consultation with key stakeholders;

Since NEPA acts as the umbrella under which project development and decision making occurs, responsibilities under Section 106 should be initiated as early as possible. NEPA documentation cannot be finalized until the Section 106 process is completed, which means that Section 106 is often the critical path to completing CE projects. A project that is "categorically excluded" under

NEPA is not exempt from Section 106 review. Instructions for documenting Section 106 compliance within the environmental document is discussed in detail in the [INDOT CE Manual](#) and the [Procedural Manual for Environmental Studies](#).

As stipulated in 36 CFR 800.8, the steps of Section 106 can be combined with that of NEPA. In this regard, in 2013 the ACHP released a handbook for integrating these laws- [NEPA and NHPA: A Handbook for Integrating NEPA and Section 106](#). Integrating the steps of NEPA and Section 106 are especially helpful for EA and EIS level projects. When integrating these processes, it is crucial to consider how public involvement will be achieved for both, since this is a primary facet of compliance.

For EA and EIS level projects, it is especially important to work closely with INDOT's Environmental Policy Office, CRO, and FHWA to integrate these procedures. Generally speaking, the FHWA will have a higher level of day-to-day involvement in the Section 106 process for EIS projects. Due to the complexity of EIS projects, the FHWA (in consultation with the Project Coordination Team and the SHPO) may elect to adopt a phased approach to compliance with Section 106 in accordance with 36 CFR § 800.4(b)(2) and § 800.5(a)(3). In addition, particularly in the context of EIS projects, FHWA may choose to incorporate the required Section 106 documentation into the EIS, as provided in 36 CFR § 800.8.

## 12-3.0 Documenting Section 106 for Categorical Exclusions (CEs)

CEs constitute the majority of environmental documents prepared for transportation projects in Indiana. In Indiana, INDOT and FHWA have agreed to four levels in which a project may qualify as a CE. The appropriate level of CE is based on the type of action and the anticipated impacts of the project. The Section 106 finding is a factor in determining the CE level, so close coordination with these procedures is necessary to complete the CE. The CE will not be approved until the Section 106 process has been successfully concluded and documented.

The following Section 106 information must be documented in the CE:

- Description of the APE;
- Coordination with consulting parties;
- Archaeology (include the results and recommendations of the archaeology report);
- Historic properties (include a description of each above-ground historic property and whether or not it is listed in or eligible for inclusion in the National Register);
- Documentation and findings (summarize and provide submittal dates for the following: the finding and associated documentation, all correspondence with the SHPO and INDOT, and options considered to minimize harm and potential mitigation or enhancements). If applicable, include the executed MOA to resolve “adverse effects”;

**Remember:**

**If a project complies with the Minor Projects PA, the applicable category should be listed. If a Category B project, the determination form should be attached to the CE.**

- Public involvement (include the date the legal notice was published and whether any comments were received from the public or consulting parties, especially objections). The following should appear in an appendix to the CE Document Form:

1. The FHWA-approved APE, eligibility determinations, and effect finding. Include the date of each determination on the CE form;
2. Documentation that supports the effect finding;
3. If the FHWA has made an “adverse effect” finding, then attach a copy of the fully signed MOA. Include the date the MOA was fully signed on the CE form;
4. Summary of Archaeology report (retain the entire report in the project file but do not include in the CE);
5. Summary of historic properties report (retain the entire report in the project file but do not include in the CE).
6. All correspondence with consulting parties, SHPO, FHWA, and INDOT, including the outgoing invitation to consulting parties;
7. The affidavit of publication of the legal notice advertising the finding of effect and a copy of the notice;
8. The Minor Projects PA determination form (for Category B projects) if applicable.

**Remember:**

**Be certain that specific locations of archaeological sites are not circulated to the public.**