

Section 106 Frequently Asked Questions

What is "Section 106"?

Section 106 refers to a specific part of the National Historic Preservation Act of 1966 (16 USC 470). It requires federal agencies to consider the effects of their actions on historic properties and afford the President's [Advisory Council on Historic Preservation](#) the opportunity to comment on federal projects prior to implementation. Section 106 encourages, but does not require, preservation of historic properties. Rather, it ensures that preservation values are factored into decisions regarding federal undertakings.

What is a federal undertaking?

An undertaking is a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including activities carried out by or on behalf of a federal agency; those carried out with federal financial assistance; and those requiring a federal permit, license, or approval. For school projects involving facility modifications in Iowa, at least two current sources of federal funding fall under this category: the Iowa Demonstration Construction grant and the School, Renovation, IDEA, and Technology (SRIT) grant. (IDEA stands for Individuals with Disabilities Education Act.)

Who is responsible for conducting the Section 106 Review?

The primary responsibility for meeting the requirements of Section 106 rests with the federal agency; in this case, the federal agency is the US Department of Education. Federal agencies cannot delegate their legal obligation to comply with Section 106 to an applicant or non-Federal party without clear statutory authority. However, the US Department of Education has asked the Iowa Department of Education to: initiate Section 106 consultation on their behalf, identify and evaluate historic resources, and assess effects to historic resources. By signing the assurances page of the grant application, the grant recipient agrees to assist the Iowa Department of Education complete the Section 106 requirements. However, the US Department of Education remains responsible for all findings and determinations submitted for comment, and will enter into active consultation when an adverse effect to a historic property is found, the state agency and SHPO disagree during consultation, consulting parties object to findings and determinations, or there is potential for a foreclosure of comment or anticipatory demolition.

What is a historic property? How might a school be historic?

A historic property is any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places. The National Register is the nation's official list of properties recognized for their significance in history, architecture, archeology, and culture. Properties on the National Register can be significant locally, statewide, nationally, or to Indian tribes. For properties to be eligible for inclusion in the National Register, they must have significance and retain integrity. Schools are significant primarily for their architecture and for their association with the history of education in Iowa.

What is the "APE" and how do I define it?

The Area of Potential Effects, or APE, is the geographic area within which an undertaking has the potential to cause effects to historic properties, if such properties exist. It is important to remember that the APE must include the area where either *direct* or *indirect* effects can occur. For example, while the construction of a new school building may directly affect an archeological site or any existing buildings on the property, it could also have an indirect, visual impact to neighboring historic properties. It could also impact traffic patterns in the neighborhood, affecting the use of a historic district. The new school's construction might also be part of an overall proposal to close other schools in the district. Those schools, then, would also be affected by the project because their use would be substantially changed. Keep in mind that the APE is supposed to be developed in consultation with SHPO [see 36 CFR Part 800.4(a)(1)], so be sure to contact the appropriate reviewer if there are any questions.

What is a finding?

The federal agency must present the SHPO with "findings and determinations" on which to comment. This refers to the potential the project has to affect historic properties. There are three possible findings: No Historic Properties Affected [see 36 CFR Part 800.4(d)(1)], No Adverse Effect on Historic Properties [see 36 CFR Part 800.5(a)], or Adverse Effect on Historic Properties [see 36 CFR Part 800.5(b)].

What is an adverse effect?

A project is considered to have an "adverse effect" on a historic property if it alters the characteristics that qualify the property for inclusion on the National Register of Historic Places. Adverse effects can be direct or indirect and include effects that are reasonably foreseeable and cumulative. Typical adverse effects include: physical destruction or damage; alterations inconsistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties; relocation of the property; change in the property's use or setting; introduction of audible, atmospheric or visual elements that diminish the property's significant features; and transfer, sale, or lease of the property out of federal ownership or control without appropriate preservation restrictions.

How long will the review process take?

If the information you submit is complete, and the Iowa Department of Education has signed the appropriate forms, SHPO has 30 days for review once the information is received. If SHPO agrees with the determination and finding, and the project results in a "No Historic Properties Affected" or a "No Adverse Effect" to historic properties, consultation with them is complete. If they disagree with the finding, need additional information, or agree to an "Adverse Effect" finding, consultation will continue. To expedite review, please submit comprehensive and accurate information.

What happens if State Historic Preservation Office does not agree with the finding?

If the State Historic Preservation Office does not agree with the finding, a letter will be issued with an explanation. Often, disagreements can be resolved with further consultation. This sometimes requires additional information being provided to SHPO to better illustrate the reasoning behind the finding, or it might require slight modifications to the scope of work so that everyone is in agreement with the finding. If the disagreement cannot be resolved through consultation with SHPO, the Advisory Council on Historic Preservation will need to be invited to consult [see 36 CFR Part 800.5(c)(2)].

If facility modifications are planned for a historic school, will the grant be taken away?

No. The goal of consultation under Section 106 is to ensure that effects to historic resources are considered in planning for a federal undertaking. Not all modifications are considered "adverse effects." One way to avoid adverse effects is to ensure that the proposed modifications to the historic property are in keeping with the Secretary of the Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*. The SHPO will work with you to avoid, minimize, or mitigate any adverse effects that are found.