ADVISORY COUNCIL ON HISTORIC PRESERVATION
SECTION 106 REVIEW MEMORANDUM
Final Rule: Adopting Interim Final Rule that Removed 36 CFR Part 805, "Procedures for Implementation of National Environmental Policy Act"
11-3-2026

Pursuant to the National Historic Preservation Act and the regulations implementing Section 106, 36 CFR Part 800, specifically, 36 CFR § 800.3(a)(1), I have determined that adopting the Interim Final Rule, which rescinded 36 CFR Part 805, "Procedures for Implementation of National Environmental Policy Act," constitutes an undertaking that is the type of activity that lacks the potential to affect historic properties, assuming such historic properties were present. Therefore, no further Section 106 review is required.

Signature Approval:



Executive Director	11-3-2026
Signature Title	Date

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Additional Documentation
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The Advisory Council on Historic Preservation (ACHP) prepared this documentation in support of its Section 106 Review Memorandum for promulgating a final rule to adopt its interim final rule (IFR) that rescinded 36 CFR Part 805, "Procedures for Implementation of National Environmental Policy Act" (NEPA regulations). The NEPA regulations outlined the process by which the ACHP implemented its NEPA responsibilities for major federal actions.

The ACHP finds that it is not required to carry out a Section 106 review for this undertaking because it lacks the potential to affect historic properties, assuming such historic properties are present.

Background

The Advisory Council on Historic Preservation (ACHP) is an independent federal agency that promotes the preservation of the nation's historic places and advises the President and Congress on national historic preservation policy (see 54 U.S.C. Chapter 3041). In 1980, the ACHP promulgated regulations at 36 CFR Part 805 that set forth the procedures for the ACHP to comply with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq. The ACHP rarely proposes any major federal action that requires review under NEPA and, therefore, rarely utilized these procedures.

On January 20, 2025, the President issued Executive Order (E.O.) 14154, Unleashing American Energy (90 FR 8353), revoking E.O. 11991, Relating to Protection and Enhancement of Environmental Quality (42 FR 26967; May 24, 1977) and directing the Council on Environmental Quality (CEQ) to propose rescinding its regulations implementing NEPA (formerly located at 40 CFR part 1500). On January 8, 2026, CEQ issued a final rule removing all iterations of its NEPA regulations from the Code of Federal Regulations (91 FR 618; Jan. 8, 2026).

In response to the rescission of CEQ's NEPA regulations, the ACHP issued an interim final rule (IFR), on June 5, 2026, to remove its NEPA regulations at 36 CFR Part 805 from the Code of Federal Regulations (91 FR 34159; June 5, 2026). The ACHP determined that its NEPA regulations ceased to function properly in the absence of CEQ's NEPA regulations, which the ACHP regulations were intended to supplement. Further, in consultation with CEQ, ACHP determined that there is no need for the ACHP to maintain agency-specific procedures, at this time, due primarily to the types of major federal actions the ACHP may propose as well as how rarely ACHP proposes any major federal action that would be subject to NEPA. This decision may be later revisited. In the event the ACHP proposes a major federal action, the ACHP will follow the procedural steps set forth in the NEPA statute, as amended, to carry out its environmental review.

The IFR went into effect on June 5, 2026, the date of its publication in the Federal Register. Publication of the IFR initiated a 30-day public comment period that commenced after the effective date of the IFR and concluded on July 6, 2026. In the IFR, the ACHP stated that it would consider any public comments received and provide responses in a final rule, with changes, if warranted.

The ACHP received three written submissions in response to the IFR. None of the comments received alter the ACHP's decision to rescind its NEPA regulations without issuing agency-specific procedures. Therefore, the ACHP proposes to adopt as final the IFR, without changes.

Proposed Undertaking

The proposed undertaking is adopting as final the IFR that rescinded the ACHP's NEPA regulations.

Section 106 Determination

In accordance with 36 CFR § 800.3(a)(1), the ACHP determined that the proposed undertaking lacks the potential to affect historic properties, assuming such historic properties are present, because the NEPA regulations were administrative and procedural in nature.

The ACHP's NEPA regulations prescribed internal procedures for the ACHP on when to prepare an environmental review document and how to incorporate the document and environmental review into agency decision-making. The ACHP's NEPA regulations did not establish any substantive requirements that would impose binding legal obligations on other parties or members of the public. Furthermore, the ACHP's NEPA regulations did not dictate any substantive outcomes. The ACHP's NEPA regulations were also not self-executing in that they did not authorize any project or major federal action or restrict the ACHP's discretion to authorize future actions under applicable laws and regulations.

Prior to issuing its IFR, the ACHP reviewed its records for major federal actions it has previously proposed. As stated in the IFR, the last environmental document that the ACHP issued pursuant to NEPA was an Environmental Assessment in the late 1990s for its rulemaking to revise and update its Section 106 regulations at 36 CFR Part 800. The ACHP concluded this review with a Finding of No Significant Impact (see 64 FR 27044; May 18, 1999). Considering how rarely the ACHP has previously utilized its NEPA regulations and the risk of confusion following the rescission of CEQ's NEPA regulations, the ACHP determined, in consultation with CEQ, that the most appropriate mechanism would be to issue an immediately effective IFR removing its NEPA regulations from the Code of Federal Regulations. The ACHP may develop agency-specific procedures at a later date if the ACHP determines such procedures would be useful. In any event, the ACHP will carry out the appropriate level of environmental review in compliance with NEPA for all major federal actions. The final rule does not authorize any project or action or restrict the ACHP's discretion to authorize future actions under applicable laws and regulations.