

RRT2 Guidance on National Historic Preservation Act Section 106 Compliance During Emergency Response

RRT2 Meeting

November 8-9, 2023



NHPA Background

- Passed in 1966
- Established a national policy for the protection of historic and archaeological sites
- Outlined responsibilities for Federal and State governments to preserve our nation's history.
- Created the Advisory Council on Historic Preservation
- Requires the ***lead federal agency to consult*** with State Historic Preservation Offices (SHPOs), Tribal Historic Preservation Officers (THPOs), Federal land managers, and other stakeholders ***regarding any adverse effects*** on Historic Properties ***prior to the commencement of the undertaking***

National
Programmatic
Agreement (PA) on
the Protection of
Historic Properties
during Emergency
Response under
the NCP

Signed in 1998, between:

- Advisory Council on Historic Preservation
- National Conference of SHPOs
- EPA
- USCG
- DOI
- NPS (administers the National Registry of Historic Places)
- NOAA
- DOE
- DOD
- USDA

The PA Focused on Pre- Incident Planning:

Identification of Historic Properties

Parties to be Notified

Identification of Emergency Response Strategies

Identify who will provide HP expertise to the FOSC

Identification of appropriate training for HP
Specialists

Development of HP Information for Response
Personnel

Emergency Response in the PA:

Determination of whether Categorical Exclusions Apply

Activation of HP Specialist


Identification of Historic Properties

Assessment of Potential Effects of Emergency Response Strategies on Historic Properties

Implementation of Decisions about Appropriate Emergency Response Actions

Determination that the National PA Cannot be Satisfied

Why an RRT2 Compliance Guide?

- Issues identified/lessons learned during DWH response
 - Recognized that NHPA decision-making process was often not fully documented during response actions
 - Documentation focused on Actions Taken that Resulted in Unavoidable Injury to Historic Properties
 - Didn't effectively document decisions made to Avoid or Minimize Affects
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What's In the Guidance?

- Steps FOSCs Must Take During an Emergency Response
 - Notifications, Protective Measures, HPS Activation, Documentation
- Important Concepts about Section 106 for the FOSC
 - Applies to FOSC response actions, not the impacts from spill/release
 - All response-related actions can adversely impact
 - Steps for the FOSC to make an informed decision
- Factors that may call for an Historic Properties Specialist

What's In the Guidance?

- Integrating Section 106 Obligations into ICS
 - HPS may serve in Environmental Unit/Technical Specialist
 - In Unified Command, ***the relationship of the HPS to the FOSC is unique*** among the command staff
 - Include protection of H/C Resources in Incident Objectives (ICS-202)
 - Provide special instructions in Assignment List (ICS-204)
 - Include H/C Resource info in Resources at Risk Summary (ICS-232)
 - Document completion of relevant forms in Unit Logs (ICS-214)
- Providing Documentation of Actions Taken/Adverse Effects
 - Adverse Affect, Did not Adversely Affect, Did Not Affect

New Additions:

- Notice to Response Personnel on Required Actions After Discovery of Cultural Resources
- Modified Checklist: Documentation of ER Response Decision THAT ADVERSELY AFFECTS HP/CR (vs. “unavoidable injury”)
- New Checklists:
 - Documentation of Actions Taken that DID NOT AFFECT Historic Properties/Cultural Resources
 - Documentation of Actions Taken that DID NOT RESULT IN AN ADVERSE AFFECT on HP/CR

Other Relevant Information:

The PA and the Guidance do not specifically address:

- Archaeological Resources Protection Act (ARPA)
- Antiquities Act
- National Marine Sanctuaries Act
- Native American Graves Protection and Repatriation Act (NAGPRA)

NRT NEC Subcommittee:

- Considering as a framework for national Section 106 guidance
- May also develop guidance for the other Acts

Main Take-Aways:

- Guidance does NOT place new/additional responsibilities on the FOSC.
- Intended to assist the FOSC:
 - In the decision-making process
 - Documenting those decisions
 - Incorporating H/C resource protection in ICS
- Appendix 10 of the Regional Contingency Plan (RCP)
 - www.nrt.org/RRT2plans



Questions?

