

**Section 106 Procedures for Compliance
with the National Historic Preservation Act
for Non-Assigned DOT&PF Federal-aid Projects
October 2012**

These procedures are intended to outline the process for compliance with Section 106 of the National Historic Preservation Act as amended (16 U.S.C.470s) and 36 CFR 800 on Federal Highway Administration (FHWA) projects that are not assigned to the Alaska Department of Transportation and Public Facilities (DOT&PF) under 23 U.S.C. 326. These Section 106 Procedures are in effect until changed.

I. Roles and Responsibilities:

Professionally Qualified Individuals: The professionally qualified individuals (PQIs) are DOT&PF cultural resources staff who meet the Secretary of the Interior's Professional Qualifications Standards (published in 48 FR 44738-44739). Each PQI will serve as a member of the Cultural Resources Team (CRT) whose roles and responsibilities are defined in Section 5, Quality Assurance and Quality Control (QA/QC) Program Review(s), of this document.

Regional PQIs:

- The Regional PQIs will be responsible for preparing or reviewing Section 106 documentation (ex. reports, surveys, consultation letters, etc.). The Regional PQIs can consult or coordinate with the State Historic Preservation Officer (SHPO) and or Statewide Environmental Office (SEO) PQIs on more complicated issues as necessary.
- If a Region is without Regional PQI staff (because of leave or other absence) or needs assistance, other Regional PQIs (or SEO PQI as approved by the Chief Engineer) can assist as needed with an advance request from the REM.

Regional Environmental Managers: The regional environmental manager (REM) serves as the point of contact for the region for environmental issues. The REM will provide FHWA with all necessary Section 106 processing letters and supporting documentation. The REM will only submit documents to FHWA after review and acceptance by a Regional PQI (or a SEO PQI, if requested by the region or FHWA, and approved by the Chief Engineer). The PQI can acknowledge acceptance via email to the REM with a cc to the FHWA NEPA Project Manager. The email documentation of the PQI acceptance is to be submitted as part of the REM project transmittal package to FHWA. The REM is responsible for ensuring that all Section 106 materials are reviewed for quality and consistency prior to submission to FHWA.

Statewide PQIs: The SEO PQIs are available to provide support for the regions. This can take the form of training, or support on more complicated or involved projects. The SEO PQIs are to conduct a quality assurance review of all draft memoranda of agreement before they are in final form for signature to ensure statewide consistency.

II. General Guidance:

- **Section 106 Compliance:** To comply with Section 106, DOT&PF will conduct all process phases with FHWA oversight. FHWA will approve and sign all Section 106 project correspondence to federally recognized Tribes, the State Historic Preservation Officer (SHPO), and other consulting parties (collectively referred to hereafter as Consulting Parties).
- **Quality Control Assurance:** All Section 106 documentation shall be prepared by, or reviewed by, and be accepted by DOT&PF PQI.
- **Section 106 Documentation:** The regions will prepare Section 106 processing letters using the current approved template language as available on the DOT&PF Environmental website. The Regional PQIs are to ensure that Section 106 processing submittals are consistent with the current approved templates and in compliance with 36 CFR 800. Regional PQI acceptance of Section 106 documentation, which can be in the form of an email acknowledgement to the REM with a cc to FHWA, is to be included in the project file.
- **Section 106 Submittals:** The DOT&PF regional offices will coordinate and forward formal Section 106 processing documentation for projects through the REM to their designated FHWA NEPA Project Manager for FHWA signature and submittal to the Consulting Parties. The REM's transmittal certifies that the correspondence conforms to the current approved templates, that the PQI has accepted all submittals, and that all correct contact information for consulting parties has been verified. The PQI acceptance is also to be submitted as part of the REM transmittal package to FHWA.

As directed per the approved templates, hard copies of all enclosures for the Section 106 submittals should be provided to FHWA.

- **Consultation Meetings:** The DOT&PF regions will provide adequate advance notice of scheduled Section 106 consultation meetings with Consulting Parties to their FHWA NEPA Project Manager.
- **Communication with SHPO:** The DOT&PF will communicate with the SHPO early and often on Section 106 matters.

III. Section 106 Procedures:

1) Initiation of Consultation:

- The DOT&PF will prepare Section 106 consultation initiation letters using the current approved template(s) as available from the DOT&PF website.

- The Regional PQI will prepare or review, and accept all submittals prior to routing through the REM. The Regional PQI acceptance is to be documented in the project files. After completing the quality control assurance, the REM will transmit the consultation initiation letters and hard copies of all enclosures to FHWA for formal submittal to the Consulting Parties. A copy of the Regional PQI acceptance is to be submitted as part of the REM transmittal to FHWA.
- Exceptions to the submittal of formal consultation initiation letters will be made on a case by case basis in consultation with FHWA. The Regional PQI will document the recommendation with supportive rationale using the FHWA approved “Direct to Findings” form. A copy of the PQI completed form must be documented in the project files and the REM will provide a copy to the FHWA for their consideration.
- Once FHWA initiates Section 106 consultation, and if the Tribes allow, the Region, with the Regional PQI, will conduct the project consultation. Otherwise, Tribal consultations will be conducted by FHWA. The REM will communicate ongoing efforts to their FHWA NEPA Project Manager, providing adequate and advance notice of Section 106 consultation meetings.

2) Identification of Historic Properties, and Findings of “No Historic Properties Affected” and “No Adverse Effect”:

- The DOT&PF will conduct or contract for research and/or a survey as necessary to fulfill the Section 106 identification and evaluation effort. The work will be accomplished by a person or persons meeting the Secretary of the Interior’s Professional Qualifications Standards (published in 48 FR 44738-44739) in the appropriate field of expertise.
- If the Regional PQI makes a recommended finding of either “no historic properties affected” or “no adverse effect”, DOT&PF will draft letters to the Consulting Parties. These letters provide the FHWA’s finding of effect, and as necessary, National Register of Historic Places (NRHP) eligibility determinations. The Regional PQI findings recommendation and acceptance of the 106 submittal is to be documented in the project file. A copy of the PQI acceptance is to be submitted as part of the REM transmittal to FHWA. The findings letters will use the current approved template language from the DOT&PF website.
- The REM will forward the findings letters and hard copies of all enclosures to FHWA for submittal to the Consulting Parties.
- Should a Regional PQI consider it appropriate, the determination of eligibility and the finding of effect may be forwarded in separate processing letters (rather than being combined as provided in the approved templates) to FHWA.

3) Findings of “Adverse Effects”:

- If the Regional PQI makes a recommended finding of "adverse effect", then the Region will consult with the FHWA NEPA Project Manager and the SEO PQI staff.
- The Regional PQI will prepare or review, and accept findings letters to the Consulting Parties and a notification letter to the Advisory Council on Historic Preservation (ACHP) for FHWA signature with the finding of "adverse effect". The Regional PQI approval and recommendation is to be documented in the project file(s). A copy of the PQI acceptance is to be submitted as part of the REM transmittal to FHWA.
- The REM will forward the findings letters and hard copies to FHWA for formal submittal to the Consulting Parties. The findings letters will use the current approved template language from the DOT&PF website.

4) Resolution of “Adverse Effects”:

- The Region, with the Regional PQI, will conduct the Section 106 consultation as necessary to establish and formalize the mitigation for the “adverse effect”. The SEO PQI staff will participate and assist the Regions as requested. To ensure statewide consistency regarding mitigation commitments the SEO PQI will participate in these discussions. The REM will communicate ongoing efforts to their FHWA NEPA Program Manager.
- As appropriate, the Regional PQI in consultation with the SEO PQI staff will prepare a draft Memorandum of Agreement (MOA) (or a Programmatic Agreement [PA]) for FHWA signature to formalize the mitigation among the Consulting Parties. The Regional PQI acceptance of the draft MOA or PA is to be documented in the project files. A copy of the PQI acceptance is to be submitted as part of the REM transmittal to FHWA.

IV. Quality Assurance and Quality Control (QA/QC):

1) Review of Region Projects:

- Regional PQI: prepares or reviews, and accepts all project submittals prior to routing through the REM to FHWA for signature. The Regional PQI acceptance is to be documented (via email, memo, note to file, etc.) in the project file. A copy of the PQI acceptance is to be submitted as part of the REM transmittal to FHWA.
- The REM is required to conduct a review of all project submittals to ensure regional consistency; all necessary consulting parties have been included, all

contact information for consulting parties is current and correct, all work has been completed, and to ensure that the submittals are consistent with current approved templates.

2) Program Review(s):

- The CRT will provide a minimum of one review of the Section 106 program per year. The CRT will develop a monitoring plan that will outline how the Section 106 program is to be reviewed. The CRT will develop a process to monitor project documentation, review consistency with these procedures, use of current approved templates, review of determinations and supporting documentation.
- The CRT as a group will conduct a review of each region and develop a draft report that will be submitted to the Statewide Environmental Manager. The report will summarize review activities, provide a description of any observations or findings, and provide suggested recommendations or corrective actions that need to be implemented to improve the Section 106 program.
- The Statewide Environmental Manager will provide a copy of the draft report to the FHWA Environmental Program Manager for review and comment. The Statewide Environmental Manager will review the draft report, and discuss the findings with the CRT and the REMs.
- The Statewide Environmental Manager will work with the CRT to develop a final report that will be formally submitted through DOT&PF management to the FHWA Division Office. The final report will provide the CRT's observations and findings from the review, and any recommendations or corrective actions that will be implemented to the FHWA Division Office and the DOT&PF management.