

HP FACT SHEET #2: TEN Q&As ON SECTION 106 COMPLIANCE

References: 36 CFR Part 800, 24 CFR Part 50, 24 CFR Part 58.

<p>1. Who is responsible for compliance with 36 CFR Part 800? [800.2(a)]</p> <ul style="list-style-type: none">• Under Part 50, it is HUD.• Under Part 58, it is the Responsible Entity. <p>2. Who is the “head of the agency”? [800.16(k)]</p> <ul style="list-style-type: none">• Under Part 50, it is the Secretary of HUD.• Under Part 58, it is the chief elected official (e.g., Mayor or County Executive). <p>3. What are the general responsibilities of the agency official?</p> <ul style="list-style-type: none">• The agency official must complete the Section 106 process “prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license.” In other words, the agency official should initiate Section 106 as early as possible in project planning. [800.1(c)]• The agency official must ensure that all actions taken by employees and/or contractors meet professional standards as noted in the Secretary of the Interior’s Standards for Archaeology and Historic Preservation (see http://www.cr.nps.gov/local-law/arch_stnds_0.htm). [800.2(a)(1)]• The agency official must consult with affected parties, plan consultations appropriate to the scale of the undertaking and scope of Federal involvement, and coordinate with NEPA and other related laws. [800.2(a)(4)] <p>4. How do I coordinate with NEPA and related laws?*</p> <ul style="list-style-type: none">• The agency official should make every effort to coordinate its Section 106 review with its overall environmental assessment, per its established NEPA procedures. [800.8]• The agency official may use its existing procedures for public involvement under NEPA or other program requirements if they provide adequate opportunities for public involvement consistent with Section 106 requirements. [800.2(d)(3)]	<p>5. What if the SHPO/THPO does not respond within 30 days of receipt of a request for review of a finding or determination?</p> <ul style="list-style-type: none">• The agency official may either proceed to the next step in the process based on the finding/determination or consult with ACHP in lieu of the SHPO/THPO. [800.3(c)(4)] <p>6. What if more than one agency is involved with a project?</p> <ul style="list-style-type: none">• The agencies should designate a “lead agency.” [800.2(a)(2)] <p>7. Who are the other participants, or consulting parties, in the Section 106 process?</p> <ul style="list-style-type: none">• The ACHP, SHPO/THPO, Indian tribes and Native Hawaiian organizations, applicants for Federal assistance, and members of the public. [800.2] <p>8. Who do I consult with when my project occurs <i>on tribal lands</i>?</p> <ul style="list-style-type: none">• The agency official must consult with the appropriate Indian tribe(s). When an Indian tribe is a THPO, the agency official consults with the THPO. When the Indian tribe is not a THPO, the agency official consults with the designated tribal representative <i>and</i> the SHPO. [800.2(c)(2)(i)] <p>9. What if my project affects historic properties of significance to Indian tribes or Native Hawaiian organizations?</p> <ul style="list-style-type: none">• <i>Regardless of location (e.g., on or off tribal lands),</i> the agency official must “make a reasonable and good faith effort” to identify Indian tribes and Native Hawaiian organizations with which to consult. [800.2(c)(2)(ii)(A)] <p>10. How do I expedite 106 consultation?</p> <ul style="list-style-type: none">• When the agency official and SHPO/THPO agree it is appropriate, a consultation by the agency official may address multiple steps of the Section 106 process. [800.3(g)]
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* Additional guidance on this is forthcoming from CEQ’s NEPA Task Force.

NEED ADDITIONAL HELP?

CONTACT YOUR LOCAL HUD ENVIRONMENTAL OFFICER, [INSERT CONTACT INFO].