

**U.S. Department of Transportation  
Office of Policy**

**Overview of Section 1301, Satisfaction of Requirements for Certain Historic Sites**

**Overview**

Section 1301 of the Fixing America's Surface Transportation Act (FAST Act) amends Section 4(f) (23 U.S.C. 138 and 49 U.S.C. 303) and directs the Secretary (DOT) to align to the maximum extent practicable the procedures to satisfy the requirements of Section 4(f), the National Environmental Policy Act (NEPA) and Section 106 of the Historic Preservation Act (Section 106) in coordination with the Secretary of the Department of the Interior (DOI) and the Executive Director of the Advisory Council on Historic Preservation (ACHP) for the purpose of accelerating project delivery. Additionally, Section 1301 creates an optional alternate process to comply with Section 4(f) for historic sites where DOT determines there is no feasible or prudent alternative to the use of a historic site and receives certain concurrences from Federal and State entities.

**NEPA/Section 4(f)/Section 106 Alignment (23 U.S.C. 138(c)(1)/49 U.S.C. 303 (e)(1))**

This subsection requires DOT to coordinate with DOI and ACHP within 90 days after the date of enactment of the FAST Act, to establish procedures to align, to the maximum extent practicable, the requirements of Section 4(f) with the requirements of NEPA and Section 106.

DOT is committed to aligning Section 4(f) with NEPA and Section 106. Examples of specific initiatives to align Section 4(f) with NEPA and Section 106 include:

- Developing a Section 106 exemption for rail/transit rights-of-way
- Implementing Section 4(f) exemptions for rail/transit rights-of-way
- National Highway Institute (NHI) course on Section 4(f) includes an exercise on aligning Section 4(f), Section 106, and NEPA
- National Transit Institute (NTI) course, Managing the Environmental Review Process, includes a module, Coordinating and not Confusing Section 4(f) and Section 106, with a case study exercise
- ACHP Program Comments on categories of Section 106 undertakings, e.g., Common post-1945 bridges, Positive Train Control, and Wireless Communication Towers
- Presidential Memorandum, [Modernizing Federal Infrastructure Review and Permitting Regulations, Policies, and Procedures](#) (May 17, 2013)
- [NEPA and NHPA: A Handbook for Integrating NEPA and Section 106](#) (March 2013)
- [Executive Order 13604](#), Improving Performance of Federal Permitting and Review of Infrastructure Projects (March 22, 2012)
- Synchronizing Environmental Reviews for Transportation and Other Infrastructure Projects (2015 Redbook)

- [Unified Federal Environmental and Historic Preservation Review for Presidentially Declared Disasters](#)

DOT practice already aligns NEPA, Section 4(f), and Section 106 where possible. FHWA and FTA regulations, as well as FAA's and FRA's procedures, currently seek to align Section 4(f) with NEPA and Section 106 where possible. Typically, DOT includes the Section 4(f) analysis and determination in NEPA documentation, and the Section 106 resolution of adverse effects process parallels the identification of all possible planning to minimize harm under Section 4(f). DOT is also updating its NEPA implementing procedures, which will promote alignment of NEPA, Section 4(f) and Section 106. DOT is currently working with ACHP to develop additional program alternatives for compliance with Section 106 to help expedite project delivery. The Department has met with ACHP and interested stakeholders to initiate work to exempt Federal agencies from the requirement of taking into account the effects of their undertakings on certain historic rail and transit rights-of-way. Section 11504 of the FAST Act (49 U.S.C. 24202) also requires the development of this program alternative.

DOT has the discretion to choose the best mechanisms to maximize the alignment of the requirements of Section 4(f) with NEPA and Section 106, which may range from issuing additional guidance or departmental policy to conducting a rulemaking. ACHP hosted a meeting among DOT, DOI, ACHP, and the Council on Environmental Quality (CEQ) on Friday, February 5, 2016, which satisfied the 90-day requirement to begin coordination with DOI and ACHP. DOT will continue coordination activities with these agencies as well as stakeholders.

### **Avoidance Alternative Analysis and Aligning Historical Reviews (23 U.S.C. 138(c)(2)-(3)/49 U.S.C. 303(e)(2)-(3))**

This subsection creates an optional process for complying with Section 4(f) for historic sites where DOT determines there is no feasible or prudent alternative and receives certain concurrences from Federal and State entities. If DOT chooses to follow this process and DOT determines as part of the NEPA process that there is no feasible and prudent alternative to avoid the use of a historic site, DOT would provide notice to DOI, the state historic preservation officer (SHPO) or tribal historic preservation officer (THPO), and ACHP (if participating) and request their concurrence. If DOI, SHPO or THPO, and ACHP concur, no separate Section 4(f) analysis to identify feasible and prudent alternatives is required. After receiving concurrence, the Secretary then notifies DOI, SHPO or THPO, and ACHP that DOT intends on using the consultation process under Section 106 to identify treatment measures that will also serve as the measures to minimize harm to the historic site. DOI, SHPO or THPO, and ACHP must concur in the treatment measures identified in the applicable memorandum of agreement or programmatic agreement developed under Section 106.

This optional review process does not change the substantive requirements of Section 4(f) or preclude DOT from using existing procedures for Section 4(f) and Section 106 reviews. This process is currently

available for use and does not require rulemaking. However, DOT does not expect that the process will be used frequently.