

TITLE 7 - AGRICULTURE
CHAPTER XVIII - RURAL DEVELOPMENT, DEPARTMENT OF AGRICULTURE
SUBCHAPTER H - GENERAL
PART 1901 - PROGRAM RELATED INSTRUCTIONS
SUBPART F - PROCEDURES FOR THE PROTECTION OF HISTORICAL AND
ARCHAEOLOGICAL PROPERTIES

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PART 1901- PROGRAM RELATED INSTRUCTIONS

SUBPART F - PROCEDURES FOR THE PROTECTION OF HISTORICAL
AND ARCHAEOLOGICAL PROPERTIES

§1901.251 Purpose.

This Subpart prescribes Rural Development policies, procedures, and guidelines for compliance with Section 106 of the National Historic Preservation Act of 1966 (Public Law 89-665), the Reservoir Salvage Act of 1960 (Public Law 86-523), as amended May 24, 1974, by the Archeologic and Historic Preservation Act (Public Law 93-291), and Section 1(3) of Executive Order 11593. This subpart is inapplicable to Farm Service Agency, Farm Loan Programs. (Revised 01-09-08, PN 417.)

§1901.252 Policy.

- (a) The Rural Development recognizes that significant scientific, prehistorical, historical and archaeological (HA) resources are an important part of our National Heritage.
- (b) The Rural Development will consult with appropriate Federal, State, and local Agencies; other organizations; the State Historic Preservation Officer (SHPO) and individuals to assess the impact of any proposed Rural Development undertaking on properties having historical or archaeological significance in order to avoid or mitigate any adverse effects on the properties.
- (c) The procedures in this Subpart have been developed in accordance with Section 1(3) of Executive Order 11593.

§1901.253 Definitions.

- (a) "Undertaking" means any new or continuing projects or program activities supported in whole or in part through Rural Development contracts, grants, subsidies, loans, or other forms of funding assistance. This does not include any actual construction by Rural Development.
- (b) "National Register" means the National Register of Historic Places, which is a register of districts, sites, buildings, structures, and objects, significant in American history, architecture, archeology, and culture maintained by the Secretary of the Interior under the authority of Section 2(b) of the Historic Sites Act of 1935 and

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Section 101(a)(1) of the National Historic Preservation Act. The National Register is published in its entirety in the Federal Register each year in February. Addenda are published on the first Tuesday of each month.

(c) "National Register Property" means a district, site, building, structure, or object included in the National Register.

(d) "Property eligible for inclusion in the National Register" means any district, site, building, structure, or object which the Secretary of the Interior determines is likely to meet the National Register criteria.

(e) "State Historic Preservation Officer" (SHPO) means the official within each State, designated by the Governor at the request of the Secretary of the Interior, to administer the National Register and historic preservation grants program and to coordinate preservation planning within the State.

(f) "Criteria of effect" means when any condition of an undertaking causes or may cause any change, beneficial or adverse, in the scientific, historical, architectural, archaeological, or cultural character of a National Register property that qualifies the property under the National Register criteria.

(g) "Historical and archaeological assessment" means a determination by the Rural Development State Director using the criteria of effect as a guide, as to whether a proposed undertaking may have an effect upon any properties located within the project area which are included or eligible for inclusion in the National Register.

(h) "National Register criteria" means the following criteria established by the Secretary of the Interior for use in evaluating and determining the eligibility of properties for listing in the National Register: The quality of significance in American History, Architecture, Archeology, and the culture is present in districts, sites, buildings, structures, and objects of State and local importance that possess integrity of location, design, setting, materials, workmanship, feeling, and association; and

(1) That are associated with events that have made a significant contribution to the broad patterns of our history; or

(2) That are associated with the lives of persons significant in our Past; or

(3) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

(4) That have yielded, or may be likely to yield, information important in prehistory or history.

(i) "Rural Development official" means the Rural Development County Supervisor, the Rural Development State Director or his designated representative.

(j) "Project area" means those geographical or legally defined areas directly under or to be under the applicants control that are effected by the undertaking such as building sites, easements, rights-of-way, leasehold interests and those areas which are directly and significantly impacted by the undertaking.

(k) "Advisory council" means the Advisory Council on Historic Preservation, Suite 430, 1522 K Street, NW, Washington, DC, 20005, created by Title II of Public Law 89-665 and charged with the responsibility of advising the President, Congress, and others on matters relating to historic preservation.

(l) "HA" as used in this regulation is an abbreviation of the term "scientific, prehistorical, historical, and archaeological".

§1901.254 Scope.

Rural Development will evaluate all undertakings for possible HA significance. This Subpart covers the following types of undertakings:

(a) Undertakings requiring a historical and archaeological assessment. Although the following undertakings are presumed to involve nonfederally owned lands, they may have an effect on properties having HA significance and, therefore, will require a historical and archaeological assessment:

(1) Loans and grants for the development of business and industry including guaranteed loans.

(2) Loans and grants for multiple family housing projects of 25 or more dwelling units.

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- (3) Subdivision plans submitted for approval having 25 or more building sites.
 - (4) Loans and grants in rural areas to construct, enlarge, extend, or otherwise improve:
 - (i) Community water, sanitary sewage, solid waste disposal, and storm waste water disposal systems.
 - (ii) Other essential community facilities such as fire and rescue, health, safety, public buildings, schools, transportation, traffic, and law enforcement.
 - (5) Loans to develop community irrigation, drainage, and other soil and water conservation and use facilities.
 - (6) Loans to acquire and develop grazing land for livestock of an association of members.
 - (7) Loans in areas designated by the Soil Conservation Service (SCS), U.S. Department of Agriculture (USDA), to conserve and develop natural resources and to contribute to economic improvement of the area.
 - (8) Loans to protect and develop land and water resources in small watersheds.
 - (9) Loans to permit Indian tribes to buy land within their reservations.
- (b) *Undertakings presumed not to require a historical and archaeological assessment.* The following undertakings are generally presumed to involve nonfederally owned lands and not to have an effect on properties of historical and archaeological value and will therefore not usually require a historical and archaeological assessment. However, when the State Director or County Supervisor finds or has had communication or obtains information from a recognized historical and archaeological authority that a specific undertaking may have an effect on a property included or eligible for inclusion in the National Register, a historical and archaeological assessment will be made.
- (1) Loans to farmers and ranchers in rural areas for the purchase, development, and operation of farms and ranches.

(2) Loans to individual families in rural areas for the purchase, construction, or improvement of single family residences.

(3) Loans and grants for multiple family housing projects of not more than 24 family dwelling units.

(4) Subdivision plans submitted for approval having 24 or less building sites.

(5) Loans to farmers, ranchers, and other rural residents to develop land, water, and other related resources for increased production of food and other crops, improved pastures, feed crops, water facilities for livestock, and improved habitats for fish and wildlife.

(6) Emergency and disaster loans to farmers, ranchers and other rural residents in declared or designated areas as a result of a major or national disaster.

§1901.255 Historical and archaeological assessments.

(a) The Rural Development official, normally the Rural Development County Supervisor, who receives a preapplication or application for loan or grant assistance on an undertaking that may have an effect on HA properties will, as part of the process, take the following actions:

(1) Carefully review the State supplements issued by the State Director pursuant to §1901.262 (a) to determine whether there are any properties within the project area that appear in the National Register.

(2) Document the following:

(i) A brief narrative report of the findings and conclusions of an on-site reconnaissance of the project area.

(ii) Any "in-house" knowledge of known or suspected HA sites in the project area.

(3) Submit the information outlined in paragraph (a) (2) of this section to the Rural Development State Director as part of the preapplication or application.

(b) Upon receipt of the preapplication/application, the Rural Development State Director will, as a concurrent part of the preapplication/application review, prepare a historical and archaeological assessment of the undertaking. In making the assessment the State Director will consider information from the following sources:

- (1) State and Regional Clearinghouse comments.
- (2) Information submitted by the County Supervisor pursuant to paragraph (a) (2) of this section.
- (3) Factual comments or recommendations of the SHPO or other responsible Federal, State, or local officials.
- (4) Any other reliable information concerning properties in the project area having HA significance.

(c) Upon completion of the preapplication or application review, the State Director will take the following actions:

- (1) When his assessment indicates that no properties of HA significance will be effected by the proposed undertaking, he will proceed with processing of the preapplication or application.
- (2) When his assessment indicates that there are properties included in the National Register that may be effected by the proposed undertaking, he will in consultation with the SHPO, the applicant and its representatives, and other appropriate historical and archaeological authorities plan appropriate measures to avoid or mitigate any adverse effects. He will also notify the Advisory Council and Secretary of the Interior of the proposed undertaking, and of its possible effect on the National Register properties and provide them with a copy of the proposed plan in order to afford them a reasonable opportunity for comment. Comments that are received within 45 calendar days of notification in accordance with the requirements for comment as outlined in Section 106 of the National Historic Preservation Act of 1966, will be considered in further development of the undertaking.
- (3) When his assessment indicates that there are properties that may be eligible for inclusion in the National Register, based on his application of the National Register criteria, he will request the Regional Director of the National Park Service, U.S. Department of the Interior, Attention: Interagency Archaeological Services, in writing, to cause a survey of the project area to be made to determine the significance of the properties in accordance with Section 3(b) of Public Law 93-291. The State Director's letter to the Regional Director should request

a response within 45 calendar days as to whether the National Park Service intends to cause a survey to be made, declines to undertake a survey, or that a survey is not warranted based on available data. The addresses of the Regional Offices of the National Park Service are listed in Exhibit A of this Subpart. If no response is received within the 45-day period, the State Director will proceed as outlined in paragraph (c) (7) of this section.

(4) The State Director will cooperate fully with the National Park Service in the conduct of a survey should one be undertaken to assure that:

(i) The professional archaeologist/historian conducting the survey provides his written opinion as to the eligibility of any identified properties for inclusion in the National Register.

(ii) When the professional archaeologist/historian recommends recovery, protection, or preservation of identified properties, the National Park Service is requested to undertake this project.

(5) When the survey made in paragraph (c) (3) of this section does not identify any historical and archaeological properties that may be eligible for inclusion in the National Register, or the National Park Service is not going to undertake activity pursuant to paragraph (c) (4) (ii) of this section, the State Director, after consultation with the SHPO and the National Park Service, will document the findings and proceed with processing of the application.

(6) When the survey identifies properties that may be eligible for inclusion in the National Register, the State Director will request the SHPO to proceed with the nomination of such properties. The State Director will then proceed as outlined in paragraph (c) (2) of this section for any properties accepted for inclusion in the National Register.

(7) When the National Park Service declines to cause a survey to be made or determines that one is not warranted, the State Director will document such facts and proceed with processing of the application.

§§1901.256-1901.258 [Reserved].

§1901.259 Actions to be taken when archaeological properties are discovered during construction.

(a) When properties of significant HA value are discovered during construction, the State Director will immediately consult with the applicant, the SHPO and the Regional Director of the National Park Service to determine whether there is sufficient factual evidence to warrant a decision to stop construction and undertake detailed survey and recovery.

(b) When the consultations in paragraph (a) of this section result in a determination by the National Park Service to request the applicant to stop construction, such stop action should be taken so that the Park Service can initiate measures for immediate recovery within 60 days after notification of a discovery.

(c) When the consultations in paragraph (a) of this section do not result in a determination by the National Park Service to stop construction and to undertake a survey and recovery, construction should be permitted to proceed with caution. In the event that the National Park Service determines that recovery is necessary, the Rural Development applicant/ borrower and the Park Service should determine that the consent of all persons, associations, or public entities having legal interest in the property involved has been secured. Also, the applicant should be informed that the Secretary of the Interior is authorized to compensate any person, association, or public entity damaged as a result of delay in construction or as a result of the temporary loss of the use of public or any nonfederally owned lands.

(d) No survey or recovery work will be required which in the determination of the State Director would seriously impede Rural Development actions in providing assistance where the State Director determines that immediate action is required to avoid loss or damage of life or property. Nevertheless, appropriate measures will be taken to the extent practical to preserve, protect, or mitigate any damage to properties having HA significance.

§1901.260 Coordination with other Agencies.

(a) When other Agencies are directly involved in any undertaking that requires a historical and archaeological assessment, the State Director will contact the Agencies concerned to determine if a

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joint assessment will be prepared and whether a single lead Agency will assume primary responsibility for preparing the assessment.

(b) When a lead Agency is agreed upon other than Rural Development, Rural Development will provide that Agency with information about its respective areas of responsibility. Assessments will indicate Agency participation and concurrence.

(c) When Rural Development program activities are planned that primarily supplement those of the SCS, USDA, such as watershed projects, resource conservation and development measures, and irrigation and drainage projects, the SCS will be designated as the lead Agency.

§1901.261 [Reserved].

§1901.262 State supplement.

(a) The State Director shall be responsible for preparing a list of all properties included in the National Register in his area of jurisdiction and issuing such list as a part of a State supplement. Such a list will be updated as needed to reflect changes in the National Register.

(b) State Directors may also supplement this Subpart and its Exhibit as appropriate to meet State and local laws and regulations.

§§1901.263-1901.300 [Reserved].

Attachments: Exhibit A

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National Park Service
U.S. Department of the Interior Regional Offices

Contact should be made to:

Chief, Interagency Archaeological Services Division
Office of Archaeological and Historic Preservation
National Park Service

The three Regional Offices are:

San Francisco Office

Old Post Office Building
Mission and 7th Streets
Post Office Box 5700
San Francisco, CA 94104

States Covered

Arizona, Utah, Idaho and
West, including Hawaii
and Alaska

Attention: Mr. Garland Gordon
Telephone: 415-556-7711

Denver Office

1978 South Garrison Street
Denver, CO 80225

States Covered

Wisconsin, Iowa, Missouri,
Oklahoma, Texas and West
to San Francisco area

Attention: Mr. Jack R. Rudy
Telephone: 303-234-2560

Atlanta Office

730 Peachtree Street
Atlanta, GA 30308

States Covered

All others East of Denver
area

Attention: Mr. Wilford Husted
Telephone: 404-526-2611

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