

**For:** State and County Office and State Environmental Coordinators

**National Historic Preservation Act, Section 106 Compliance Requirements**

**Approved by:** Acting Deputy Administrator, Farm Programs



**1 Overview**

**A Background**

FSA is obligated to take into account the effects of its proposed actions or activities on historic properties under National Historic Preservation Act, Section 106. To comply with National Historic Preservation Act, Section 106 requirements, FSA needs to follow the process described in:

- 36 CFR 800
- 1-EQ, subparagraph 50 D (Exhibit 1).

National Historic Preservation Act, Section 106 requirements may only be fulfilled if the findings letter in 1-EQ, Exhibit 6 (Exhibit 2) and necessary background information have been sent to the appropriate State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), and/or Tribal government for concurrence.

**Note:** After the appropriate consulting parties have received this information, the consulting parties have 30 calendar days to respond.

**B Purpose**

This notice:

- informs all FSA State and County Offices that the steps described in Exhibit 1 **must** be adhered to for FSA to meet National Historic Preservation Act, Section 106 requirements
- provides examples of information that should accompany Exhibit 2 letter.

Disposal Date	Distribution
October 1, 2013	State Offices; State Offices relay to County Offices and State Environmental Coordinators

## Notice EQ-135

### 2 FSA's Compliance Requirements

#### A Overview

For the examples in this subparagraph, it is important to remember that FSA should obtain **all** background data that supports any of the findings contained in an environmental analysis. This includes supporting documentation for all "Yes" or "No" answers on either FSA-850 or NRCS CPA-52. For FSA-850's or NRCS CPA-52's, **all** questions **must** be answered and **all** required signatures **must** be present **before** FSA-850 or NRCS CPA-52 is considered complete.

The background data need not accompany the findings letter to any consulting parties, but instead be kept in the producer's case file. Information about a Traditional Cultural Property (TCP) is considered confidential by the community that they serve. If an FSA action does involve TCP, then the information in any environmental document should respect that confidentiality.

#### B Farm Program Acceptable Types of Documentation

Acceptable documentation for farm programs includes the results of any cultural resources/historic property identification conducted by FSA or another party on behalf of FSA, including, but **not** limited to FSA 850, NRCS CPA-52, or professionally conducted identification survey.

#### C FLP Acceptable Types of Documentation

Acceptable documentation for FLP includes information from RD 1940-22, RD 1940-21, Class II EA, or any professionally conducted identification survey.

#### D Contact Information

If there are questions about this notice, contact Bennett W Horter, CEPD, FSA Federal Preservation Officer by either of the following:

- e-mail to **ben.horter@wdc.usda.gov**
- telephone at 202-690-1164.

### 3 Action

#### A SED Action

SED's shall ensure that the instructions in the notice are followed.

#### B State Environmental Coordinators (SEC) Action

SEC's shall ensure that all applicable FSA staff are notified and follow the requirements of Exhibits 1 and 2.

Example of 1-EQ, Subparagraph 50 D Required Review Process

Step	Action	
1	If user's State has SHPO exemption agreement, then determine if proposed activity is exempt. If no agreement, determine on a case-by-case basis, if proposed activity has the potential to affect a historic property, if present.	
2	If the proposed activity is not exempt, or if user determines that the activity has the potential to affect an historic property, identify consulting parties. These may include SHPO/THPO, tribes, landowners, and other interested parties. Details of consultation can be found in 1-EQ, subparagraph 50 G.	
3	<p>FSA County Office:</p> <ul style="list-style-type: none"> <li>• consults informational sources; such as NRHP, the landowner, SHPO database, if available, and other local information, such as museums, libraries, etc., to determine if known cultural resources exist within the activity's area of potential effect (APE)</li> <li>• gathers cultural resource information and sends it to SEC.</li> </ul>	
4	SEC, or designee, reviews the information and sends it to SHPO/THPO and other consulting parties (see subparagraph G for definition of consulting parties and when to consult). See Exhibit 2 for an example letter to the SHPO/THPO. SEC, or designee, will need to submit each finding; that is the results of each step; such as finding properties present, properties not present, etc.; to appropriate consulting parties for their review and comment. Include a map showing the location of the activity, a description of the activity, and information on any cultural resources identified in the documentation.	
5	SHPO/THPO may request a field survey of APE.	
	<b>IF...</b>	<b>THEN...</b>
	survey of APE is needed	survey shall be done by a professional that meets the Secretary of the Interior's standards at 36 CFR Part 61.
cultural resources are present within APE	<p>FSA will evaluate the cultural resources under NRHP criteria in consultation with SHPO/THPO and any other consulting parties.</p> <p><b>Note:</b> Often the survey preparer can offer their opinion about the eligibility of the cultural resources for NRHP.</p>	
6	After reviewing survey preparer's opinion, SEC will make their determination and submit it to the SHPO/THPO.	
	<b>IF cultural resources...</b>	<b>THEN SEC...</b>
	are determined eligible for NRHP	will determine if cultural resources will be adversely affected by the proposed activity.
will be adversely affected	SHPO/THPO will seek ways to avoid or minimize adverse effects, including archaeological excavation, and notify the other consulting parties of these efforts. The avoidance/minimization will be detailed in MOA. ACHP may/may <b>not</b> elect to participate in MOA.	

**Example of 1-EQ, Exhibit 6 Required Letter**

The following letter is required along with documentation according to subparagraphs 2 B and C.

**TO:** *[Point of Contact, if known  
Name and address of SHPO/THPO & Other Consulting Parties]*

**FROM:** *[Point of Contact Name]*

**SUBJECT:** Request for Concurrence on *[choose 1: No Historic Properties Affected; No Historic Properties Adversely Affected; Finding of Adverse Effect and Mitigation Measures; Memorandum of Agreement]*

The USDA, FSA is preparing an EA for *[name of EA/proposed activity]*. This proposed action involves *[brief overview of proposed activities; include specific location of proposed activity, including a map]*.

Attached please find a copy of *[choose 1: a summary of the inspection of the property by \_\_\_\_\_ showing that No Historic Properties are Affected in the proposed area; a report by \_\_\_\_\_ that documents the presence of XX cultural resources and a recommendation that they are not eligible for listing in the National Register of Historic Places and as such No Historic Properties are Affected; a report by \_\_\_\_\_ that documents the presence of historic properties that are eligible for listing in the National Register of Historic Places; a recommendation that the proposed undertaking will have No Adverse Effect on the eligible historic properties; a summary of the adverse effects on eligible Historic Properties and the mitigation measures proposed to avoid or lessen the finding of Adverse Effect; a Memorandum of Agreement for the proposed activity]*. The FSA endorses the conclusions and recommendations in these attachments and requests your written concurrence on them.

Please send all correspondence to:

*[Provide name and contact information for person responsible for preparing EA.]*

Sincerely,

*[Name and signature]*

Attachments

**Note:** Use appropriate and approved letterhead.