

Subpart A - General

401.0 Purpose

This part establishes the Natural Resources Conservation Service (NRCS) policy regarding responsibilities to historic and cultural properties under the National Historic Preservation Act of 1966 (NHPA), implementing regulations, NRCS Nationwide Programmatic Agreement, and other related authorities. This policy

- (1) Is consistent with Section 106 of the NHPA, recognizes NRCS' lead responsibility to take into account the effects of its actions, or the voluntary actions of participants in NRCS administered conservation programs, on any cultural resource (district, site, building, structure, object, or traditional cultural property) and to appropriately protect historic properties under its control or affected by agency programs, projects, activities or assistance;
- (2) Acknowledges NRCS' responsibility to consult with its partners, including but not limited to the State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), federally recognized American Indian Tribes, and local governments;
- (3) Is consistent with Sections 106, 110, and 112 of the NHPA, acknowledges NRCS' responsibility to establish an historic preservation program appropriate to its conservation mission; designate a Federal Preservation Officer (FPO) to coordinate policy development and implementation; protect historic properties through avoidance of adverse effects whenever possible and through the professionalism of its employees and contractors; and to ensure NRCS actions meet the basic professional standards for the implementation of Federal historic preservation and environmental laws, regulations, and associated authorities.
- (4) Is consistent with the NRCS Nationwide Programmatic Agreement with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers, ratified on May 31, 2002, which was developed in accordance with the National Historic Preservation Act (16 USC 470f) and implementing regulations for Section 106 of the Act, found at 36 CFR Part 800.14(c), and provides policy for streamlined compliance with the NHPA.

401.1 Authorities

- (1) National Historic Preservation Act of 1966 (NHPA), (P.L. 89-665, 80 Stat. 915, as amended; 16 U.S.C. 470; et seq.)
- (2) NRCS' Nationwide Programmatic Agreement (PA) NRCS A-3A75-2-64, May 31, 2002, entitled: Programmatic Agreement among the United States Department of Agriculture, Natural Resources Conservation Service, The Advisory Council on Historic Preservation, and The National Conference of State Historic Preservation Officers, Relative to: Conservation Assistance, see: http://www.nrcs.usda.gov/technical/ECS/culture/PA_31.pdf
- (3) National Environmental Policy Act of 1969 (NEPA), (P.L. 91-190, 83 Stat. 852, 42 U.S.C. 4321, et seq.)
- (4) Executive Order 13007 "American Indian Sacred Sites," May 24, 1996
- (5) Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments," November 6, 2000
- (6) Executive Order 13287 "Preserve America", March 3, 2003
- (7) Archeological and Historic Preservation Act of 1974, (P.L. 93 291, 88 Stat. 174, 16 U.S.C. 469a, et seq.).
- (8) American Indian Religious Freedom Act of 1978 (AIRFA), (P.L. 95-341, 92 Stat. 469, 42 U.S.C. 1996).
- (9) Alaska Native Claims Settlement Act of 1971 (Public Law 92-203).
- (10) Alaska National Interest Lands Conservation Act of 1980 (Public Law 96-487).
- (11) Advisory Council on Historic Preservation: Protection of Historic and Cultural Properties (36 CFR 800).
- (12) The Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic preservation Act (63 FR 20495) published April 24, 1998, see http://www.cr.nps.gov/hps/fapa_110.htm

(13) The Secretary of Interior's Standards and Guidelines, Professional Qualification Standards.
http://www.cr.nps.gov/local-law/arch_stnds_9.htm

(14) Archeology and Historic Preservation: The Secretary of the Interior's Standards and Guidelines 1983 (48 FR 44716), as amended and annotated June 18, 2001, see http://www.cr.nps.gov/local-law/arch_stnds_2.htm

(15) Definitional Policy: "American Indian and Alaska Native Policy of the Natural Resources Conservation Service," June 7, 2000. Outlines establishment of Tribal Conservation Districts and bases for government-to-government relationship with American Indian Tribes.

401.2 Definitions

Terms listed below are used in the discussion of policy principles in the following sections. A full glossary of terms may be found in the **NRCS National Cultural Resources Procedures Handbook** (Title 190, Part 601) and is consistent with definitions found in the Advisory Council on Historic Preservation's regulations for implementation of Section 106 of the NHPA (36 CFR Part 800.16).

(1) **Adverse Effect.** The reduction in the characteristics that make an historic property eligible for the National Register of Historic Places. The integrity of the location, design, setting, materials, workmanship, association, or other qualities that are important to defining the National Register eligibility of the historic property is diminished.

(2) **Advisory Council on Historic Preservation (ACHP or Council).** The independent Federal agency charged with the responsibility of advising the President, Congress, and Federal agencies on historic preservation policy and reviewing agency programs and activities related to historic and cultural properties. The ACHP was established pursuant to Title II of the National Historic Preservation Act of 1966 (NHPA, 80 Stat. 915, 16 U.S.C. 470) and, with considerable public participation, authored the regulations for implementation of Section 106 of the NHPA. The Council has twenty members, including selected positions from the Cabinet, such as the Secretary of Agriculture. The Council also has support staff in Washington, D.C. who work directly with agencies, State Historic Preservation Officers (SHPOs), Tribes (including THPOs), local governments and members of the public in advising on compliance with Section 106 of the NHPA and other related matters.

(3) **Area of Potential Effect (APE).** The geographic area or areas within which an undertaking (project, activity, program or practice) may cause changes in the character or use of any historic properties or cultural resources present.

(4) **Consultation.** The legal responsibility of Federal agencies to seek advice, guidance, and counsel from, and confer with authorized parties on program, project, and policy issues. These issues include all matters related to historic preservation and cultural resources compliance. Authorized parties include, but are not limited to, State Historic Preservation Officers, American Indian Tribes, Tribal Historic Preservation Officers, project partners, landowners, the Departmental Consulting Archeologist, the Advisory Council on Historic Preservation and interested members of the public.

(5) **Cultural Resources.** Cultural resources are not defined in any of the pertinent legislation however, the term is used throughout the Federal government to refer to historic, aesthetic and cultural aspects of the human environment (see also the National Environmental Policy Act (NEPA)). In NRCS, the term is sometimes used interchangeably to refer to any historic or archaeological property that has been identified during planning or to refer to "historic properties" as defined by the ACHP regulations. In fact, the term "cultural resources" is not identical to the term "historic properties." See this definition of historic property below.

(6) **Cultural Resources Coordinator (CRC).** The NRCS staff member officially designated by the State Conservationist as the point of contact for addressing historic properties, cultural resources, and compliance with the NHPA and related authorities. The CRC is responsible to the State Conservationist for the implementation of cultural resources policies and procedures and for the overall compliance and program activities in NRCS operations. The position is generally collateral to other duties and requires advanced NRCS and ACHP training in historic preservation and cultural resources compliance procedures in order to consult with State and Tribal Historic Preservation Officers staff, the Advisory Council staff, and the public and to work with NRCS' own Cultural Resources Specialist assigned to the State.

(7) **Cultural Resources Specialist. (CRS).** An individual (NRCS staff or consultant who works closely with the CRC) who meets the professional education and experience requirements in Archeology and Historic Preservation: The Secretary of the Interior's Standards and Guidelines, Professional Qualification Standards. These requirements include a graduate degree in anthropological archeology, history, cultural anthropology, architectural history, historic architecture or related fields that are most appropriate to the State Office's primary activities.

In addition, a cultural resources specialist should have several years of supervised experience and at least one full year of direct cultural resources management experience to perform (or fully supervise a contractor performing) all phases of identification, evaluation, and treatment of cultural resources and/or historic properties.

(8) Effect. Any action or activity that alters those characteristics of a historic or cultural property that qualify it for inclusion in the National Register of Historic Places. An effect, whether positive or negative, requires Section 106 review and consultation. Effects are determined by applying the ACHP "Criteria of Adverse Effect" found in 36 CFR 800.5(1)

(9) Evaluation. The application of the National Register of Historic Places eligibility criteria, found at 36 CFR 60.4, to a cultural resource. A professionally trained cultural resources specialist must complete this task for NRCS in consultation with SHPO/THPO or tribal staff. Components of an evaluation may be performed by specifically trained individuals under the direction and guidance of a Cultural Resource Specialist (CRS).

(10) Federal Preservation Officer. The agency position responsible for coordinating the preservation program or agency-wide historic preservation policy and procedures is the Federal Preservation Officer (FPO). In accordance with Section 110(c) of the NHPA (unless specifically exempted under section 214 of the NHPA) this position must be established in every agency. An FPO may have other agency duties in addition to historic preservation coordination, depending on the magnitude and degree of the agency's historic preservation activities and responsibilities. [Sec. 110(c)]. Agency officials designated as FPO should have substantial experience administering Federal historic preservation activities and/or specifically assigned staff under their supervision who has such experience. Section 112 of the NHPA requires that agency personnel or contractors responsible for historic resources meet qualification standards established by the Office of Personnel Management in consultation with the Secretary of Interior.

(11) Historic Property. Defined by the National Historic Preservation Act and expanded in the ACHP's 36 CFR 800 regulations as: "any prehistoric or historic district, site, building, structure, or object, included on, or eligible for inclusion on the National Register of Historic Places." This term includes artifacts, records and remains that are related to and located within such properties. The term also includes historic and cultural landscapes, properties of traditional and cultural importance to an American Indian Tribe or Native Hawaiian organization and that meet the National Register criteria. The term is often (incorrectly) used interchangeably with "cultural resource."

(12) Identification. A process of using specific methods or techniques to locate and define the characteristics, nature and extent, including the horizontal and vertical boundaries of cultural resources and historic properties.

(13) Indian Tribe. Means an Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation or village corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(14) Mitigation. Actions or treatments which lessen, eliminate, or compensate for the adverse effects of undertakings to historic properties. These actions may include, but are not limited to:

- (i) Moving the undertaking to avoid effects ("avoidance")
- (ii) Reducing the extent of the effects by redesigning the undertaking
- (iii) Compensating for the effects by repairing, rehabilitating, restoring or interpreting (or any combination of these actions) the affected historic properties
- (iv) Preservation and protection actions during actual implementation of the undertaking
- (v) Compensating for the effect by moving or documenting the historic property or conducting data recovery.

(15) National Register of Historic Places (NRHP). The Nation's official list of districts, sites, buildings, structures, and objects which meet the NRHP criteria and are worthy of preservation because of their importance in American history, prehistory, architecture, archeology, and culture. The NRHP is maintained by the Secretary of the Interior under the authority of Section 101 of the National Historic Preservation Act. The criteria are published at 36 CFR 60.1.

(16) Nationwide Programmatic Agreement (PA) the "Nationwide Programmatic Agreement with

the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers” provides policy for streamlined compliance with Section 106 of the NHPA and means to develop alternate procedures at the State level. This 10-year agreement was ratified in May 2002.

(17) **Section 106 Process.** The series of actions (including continuous consultation, background studies, surveys, resources identifications, assessments and treatments) that implement the section of the National Historic Preservation Act that requires federal agencies to take into account the effects of their undertakings on any cultural resources or historic properties that meet the National Register of Historic Places criteria. Part of this process involves taking action to avoid or minimize harm to eligible resources.

(18) **State Historic Preservation Officer (SHPO).** The official who is responsible for administering the NHPA within the State or jurisdiction and is appointed pursuant to Section 101(b)(1) of the NHPA, as amended, or is a designated representative authorized to act for the SHPO. The SHPO is a required consulting party in the Section 106 process; the SHPO does not have an oversight or regulatory role in Section 106 and should not be asked to be the final decisionmaker in the Section 106 process. The SHPO may concur with an agency’s documented determination, decline to comment, disagree, or recommend consultation with the ACHP.

(19) **State Level Agreement (SLA).** An operating agreement with the SHPO; developed in accordance with Stipulation 2 of the nationwide Programmatic Agreement (PA). When developed under the provisions of and used in conjunction with the nationwide PA, serves as alternate procedures (as defined by the ACHP regulations (see 36 CFR Part 800.14(a)). The SLA(s) are designed to streamline the Section 106 process and are tailored to meet State needs and legal requirements.

(20) **Technical Service Provider (TSP).** Is an individual, private business, public agency, or non-profit organization outside of USDA that help agriculture producers apply conservation practices on the land. These TSPs are certified as professionals by NRCS. For cultural resources compliance studies, TSPs function as data collectors and advisors. As with consultants and professional service contractors, NRCS is not authorized to delegate its consultation and findings responsibilities to TSPs.

(21) **Traditional Cultural Properties (TCPs).** Properties associated with cultural practices or beliefs of a living community that are rooted in the history of the community, and are important in maintaining the continuing cultural identity of the community. TCPs may be determined eligible for the NRHP, and as such, are considered under the Section 106 process.

(22) **Treatment.** Describes the mitigation and/or management procedures and desired outcomes for an historic property or cultural resource, designed to reduce or avoid adverse effects.

(23) **Tribal Consultation Protocol.** An operating agreement or procedure with a Tribal government or THPO; developed in accordance with Stipulation 2 of the Nationwide PA. When developed under the provisions of and used in conjunction with the nationwide PA, serves as alternate procedures (as defined by the ACHP regulations (see 36 CFR Part 800.14(a)). The Tribal Consultation Protocol(s) are designed to streamline the Section 106 process and are tailored to meet State needs and legal requirements.

(24) **Tribal Historic Preservation Officer (THPO).** The tribal official appointed by the tribe’s chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act. This official is approved to assume the responsibilities of the SHPO on Tribal Lands by the Secretary of the Interior, National Park Service, under the NHPA. The THPO is a required consulting party in the Section 106 process; the THPO does not have a regulatory role in Section 106 and should not be asked to be the final decisionmaker in the Section 106 process. The THPO may have a regulatory role under tribal law on designated tribal lands.

(25) **Tribal Lands.** All lands within the exterior boundaries of any Indian reservation and all dependent Indian communities. This definition is consistent with the definition in the NHPA; other statutes use alternate definitions.

(26) **Undertaking.** Any project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval. Only those undertakings that have the potential to affect historic properties, that can result in changes in the character or use of these properties, if any such historic properties are located in the area of potential effects, and for which NRCS is able to exercise control over the outcomes are subject to review under Section 106 of the NHPA. This determination is either documented in the State Level Agreement and Tribal Consultation

Protocols or on a case-by-case basis, as appropriate. In instances where agreements with the SHPO and/or Tribes do not exist, NRCS will comply with the ACHP regulations and assess the effects of each undertaking that has the potential to affect National Register listed or eligible resources. This assessment shall occur in consultation with the SHPO, THPO, appropriate Federally recognized Tribe(s), and other appropriate consulting parties (see 36 CFR Part 800.3).

401.3 Applicability and Exceptions

A. This part applies to all NRCS programs and activities that may affect historic properties through policies, procedures, or service to the agency's diverse clients. Section 106 of the NHPA (and implementing regulations) requires every Federal agency to take into account the effects of their programs (including assistance programs), actions, and decisions on historic properties (i.e. cultural resources that meet the National Register eligibility criteria) in consultation with the SHPO, THPO, American Indian Tribe, and other consulting parties, as appropriate. NRCS policy found herein and in the nationwide PA is consistent with the NHPA.

B. Section 110(k) of the NHPA prohibits Federal agencies from providing assistance to an applicant who, with the intent to avoid the requirement of Section 106, significantly adversely affects or destroys historic properties that are in the assistance project's area of potential effect (APE). See 16 U.S.C. 470h-2(k) and 36 CFR Part 800.9(c) for complete discussion. In such cases, NRCS may give the assistance if it determines, after consultation with the ACHP, that circumstances justify the action despite the effects to the historic property.

C. In accordance with the NRCS Nationwide Programmatic Agreement (PA), State Level Agreements (SLAs) and Tribal Consultation Protocols may exempt certain conservation practices from Section 106 review. These SLAs and Protocols are subject to review by the ACHP and NRCS FPO. Once the SLAs and Protocols are final, programmatic exemptions listed in the PA also apply within the State.

Subpart B - Administrative Responsibilities

401.10 General Agency Responsibilities

In accordance with the National Historic Preservation Act and related statutes and regulations, the Natural Resources Conservation Service is responsible for the identification and evaluation of cultural resources and the protection of historic properties affected by NRCS undertakings. In addition, NRCS will manage the historic properties under its jurisdiction (owned or leased land) in an effort to protect, preserve, rehabilitate, restore, and maintain them.

401.11 Lead Agency Responsibilities

A. The Natural Resources Conservation Service is responsible for historic preservation and cultural resources compliance in all actions where NRCS is considered the lead agency, i.e., where NRCS has legislated responsibility or designated Departmental authority to administer specific Federal programs or when providing to nonfederal participants direct, single agency actions of technical and/or financial assistance where we may control the outcome of the assistance.

B. On Federal or State lands managed by other agencies or participation in multi-agency projects, the lack of lead agency status does not abrogate NRCS responsibility to ensure that cultural resources and historic properties are adequately protected. NRCS shall request copies of or verification that the lead agency involved has met historic preservation and cultural resources compliance requirements.

(1) When NRCS provides cooperative conservation technical assistance to other Federal agency programs or projects

(i) NRCS may provide preliminary information, i.e., cultural resources and historic property identification and the recommended conservation alternatives, to the lead agency and participants either separated from or as part of the NRCS program or project planning performed for conservation practices.

(ii) The lead agency's failure to comply with cultural resources and historic preservation compliance requirements may result in NRCS withdrawal from the action.

(2) NRCS may provide additional cultural resources assistance to another Federal agency by assuming responsibilities for certain technical cultural resources and historic property identification activities under the following conditions:

(i) A formal, written agreement has been executed between NRCS and the agency that references the policy and procedures that are being used, identifies the technical cultural resources activities NRCS will undertake and clearly states if, when and how funds or other resources will be transferred to NRCS to defray expenses or compensate for staff time.

(ii) NRCS has advised the SHPO, THPOs, Tribal governments (as appropriate) and ACHP of the agreement and explained NRCS' technical (non-administrative) role.

(iii) NRCS does not agree to carry-out administrative compliance activities, such as government-to-government consultation with Tribal governments, and cannot take responsibility for making final decisions regarding evaluation or treatment of historic properties as part of compliance for the other agency.

401.12 NRCS Personnel Responsibilities

A. Chief

The NRCS Chief is the senior Federal official responsible for implementing historic preservation legislation, protecting historic properties in NRCS conservation technical assistance programs, signing documents allowing adverse effects on historic properties when the agency and other consulting parties fail to agree on the terms of treatment. The NRCS Chief shall designate a Senior Policy Official (SFO) Federal Preservation Officer (FPO) for the agency in accordance with Section 110(c) of NHPA.

B. Regional Assistant Chief

The NRCS organization in each of the three regions is headed by a Regional Assistant Chief. Regional Assistant Chiefs are management representatives of the Chief and are responsible for providing overall direction of NRCS programs, policies and activities consistent with the Chief's guidance; acting as representatives of the Chief at meetings; and supervising the State Conservationists and the Directors of the Pacific Islands or Caribbean Areas.

C. Senior Policy Official

An NRCS Associate Chief, Deputy Chief, or the equivalent, who has agency-wide policy oversight responsibility for the agency's historic preservation program. This official, or a subordinate employee reporting directly to the official, shall serve as the agency's Federal Preservation Officer in accordance with section 110(c) of the NHPA.

D. Program Manager

The NRCS employee who is responsible for the fiscal, resource and scientific administration of a conservation program, either at the national or state level.

E. Federal Preservation Officer

The NRCS Federal Preservation Officer (FPO) is the National Cultural Resources Specialist who meets the professional standards for this position set by Section 110 of the National Historic Preservation Act. The FPO is responsible for coordinating NRCS' overall cultural resources and historic preservation policy, procedures, training requirements beyond those specified by the NHPA, and national activities associated with compliance with the National Historic Preservation Act and related authorities. This position is charged with providing policy advice to the Chief, Senior Policy Official, Associate and Deputy Chiefs, the National Headquarters' Divisions, Program Managers, and Centers, and other natural resource disciplinary leaders, and upon request, Regional Assistant Chiefs and State Conservationists (also see definitions).

F. State Conservationist

(1) Within each State or Area, the NRCS State Conservationist is the senior Federal official responsible for cultural resources and historic preservation compliance and the protection of historic properties in all NRCS activities. The State Conservationist shall designate a Cultural Resources Coordinator (CRC) to carry out the cultural resources administrative responsibilities, and will ensure that the State office has on staff or has regular and continuing access to a qualified Cultural Resources Specialist (CRS). All new and continuing CRCs and CRSs must complete the NRCS web-based modular Cultural Resources Training (modules 1-6), the classroom and field modules (modules 7 and 8) and modules 1-8 of the Conservation Planning Training within the first six months of their tenure and take the ACHP Section 106 basic and advanced training as soon after their appointment as the State budget permits.

(2) The State Conservationist is also responsible for providing historic properties information, guidance, and education programs for NRCS personnel within the State and for interested partners. The State Conservationist takes the lead in developing and executing both a State Level Agreement (SLA) with the State Historic Preservation Officer (SHPO) and Consultation Protocols with American Indian Tribal governments in accordance with the nationwide "Programmatic Agreement Among the United States Department of Agriculture Natural Resources Conservation Service, The Advisory Council on Historic Preservation and The National Conference of State Historic Preservation Officers for Conservation Assistance" (PA).

(3) The State Conservationist ensures that field personnel who work with NRCS cultural resources specialists in implementing Section 106 compliance responsibilities, receive up-to-date NRCS modular (web-based and field) cultural resources training and, as appropriate, external training, to, at a minimum, permit these individuals to determine if an action or practice is an undertaking that has the potential to affect historic properties and to recognize physical evidence of cultural resources in the field.

G. Cultural Resources Coordinator (CRC)

The person is officially designated by the State Conservationist to act as a liaison responsible for the daily functioning of the cultural resources compliance activities. The CRC serves as the knowledgeable liaison among NRCS, SHPO, ACHP, and historic preservation professionals and provides assistance and information to the field offices. The responsibilities of the CRC are described in Part D, Subpart 401.42, "Cultural Resources Specialist and Coordinator Qualifications and Duties". Because of their duties, all CRCs receive advanced training in cultural resources management and law—at a minimum, all new and continuing CRCs must complete the NRCS web-based and field-based modular training within the first six months of their tenure (the field modules taken in an adjacent or nearby state that has a CRS on staff) and take the ACHP Section 106 basic and advanced training as soon after their appointment as the State budget permits. The CRC is charged with ensuring that all field personnel working in any manner with Section 106 compliance complete the NRCS web-based and field modules before they carry-out their historic preservation responsibilities.

H. Area and District Conservationist

Within each area and conservation district or field office service area, the persons responsible for ensuring that the provisions of this part are implemented in coordination with the State CRC and CRS. If appropriate and with sufficient specialized cultural resources training approved by the State Conservationist, Area and District Cultural Resources Coordinators or Specialists may be designated to facilitate assistance and back-up the CRC and CRS.

I. Cultural Resources Specialist (CRS)

These are individuals who meet the Professional Qualification Standards established by the Secretary of the Interior (SOI) pursuant to the NHPA (Section 112(a)(i)(B), 12 U.S.C. 470-4(a)) and the Office of Personnel Management. They are responsible for providing technical, scientific and procedural guidance for considering and managing cultural resources and historic properties within their state or jurisdiction. They also conduct cultural resources and historic property investigations, evaluations, and develop treatment plans for mitigation. The responsibilities of the CRS are further described in Part D, Subpart 401.42 Cultural Resources Specialist and Coordinator Qualifications and Duties. Because of their duties, all CRSs must receive advanced training in cultural resources management and law—at a minimum, all new and continuing CRSs must complete the NRCS web-based modular training within the first six months of their tenure (including the field modules taken from a CRS in an adjacent or nearby state) and take the ACHP Section 106 basic and advanced training as soon after their appointment as the State budget permits. The CRS is charged with working with the CRC in ensuring that all field personnel working in any manner with Section 106 compliance complete the NRCS web-based and field modules before they carry-out their historic preservation responsibilities. The CRSs also are charged with designing in accordance with NRCS requirements outlined in AgLearn and presenting the field-based training modules to State and field staff and partners, generally in collaboration with SHPO staff and THPOs.

401.13 Advisory Council on Historic Preservation (ACHP) Responsibilities

The ACHP is an independent Federal agency established by Title II of the National Historic Preservation Act to advise the President and Congress on historic preservation matters. Among other things, the Council administers implementation of Section 106 of the National Historic Preservation Act through its regulations (36 CFR 800). The law directs Federal agencies to "take into account" the effects of their undertakings on properties listed in or eligible for inclusion in the National Register of Historic Places and to afford the Council a reasonable opportunity to comment with regard to such undertakings. The Council may provide technical advice and assistance to NRCS, State and Tribal Historic Preservation Officers and Indian Tribes. The Council also serves to monitor activities, participate in formal review and consultation, and help ensure that members of the public and other interested parties are provided an opportunity to participate in the planning, consultation, and decision-making process.

401.14 State Historic Preservation Officer (SHPO) Responsibilities

A. The State Official appointed by the Governor to administer the programs of the National Historic Preservation Act for that State. By federal law, the SHPO is charged to:

- (1) In cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties;
- (2) Identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register;
- (3) Prepare and implement a comprehensive statewide historic preservation plan;
- (4) Administer the State program of Federal assistance for historic preservation within the State;
- (5) Advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;
- (6) Cooperate with the Secretary of the Interior, the Advisory Council on Historic Preservation, and other Federal and State agencies, local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning; and
- (7) Provide public information, and education and training, and technical assistance in historic preservation.

B. The SHPO may be assigned additional duties and responsibilities based on state legislation requiring individual NRCS State Offices to supplement the national policy (i.e. permits, reporting

requirements) or address those in SLAs.

401.15 Tribal Historic Preservation Officer

A. The tribal official appointed by the tribe's chief governing authority or designated by tribal ordinance or preservation program to carry out the responsibilities of the SHPO for Section 106 compliance on tribal lands (in accordance with Section 101(d)(2) of the NHPA). The THPO also may administer the Tribal Historic Preservation Program, including:

- (1) In cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive survey of Historic properties and maintain inventories of such properties;
- (2) Identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register;
- (3) Prepare and implement a comprehensive historic preservation plan;
- (4) Administer the program of Federal assistance for historic preservation;
- (5) Advise and assist, as appropriate, Federal, Tribal, and State agencies and local governments in carrying out their historic preservation responsibilities;
- (6) Cooperate with the Secretary of the Interior, the Advisory Council on Historic Preservation, and other Federal and State agencies, local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development;
- (7) Provide public information, education and training, and technical assistance in historic preservation;
- (8) Cooperate with local governments in the development of local historic preservation programs;
- (9) Consult with appropriate Federal agencies in accordance with the National Historic Preservation Act on Federal undertakings that may affect historic properties; the content and sufficiency of any plans developed to protect, manage, or to mitigate harm to such properties; and advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for Federal assistance.

B. The THPO may be assigned additional duties and responsibilities based on Tribal law requiring individual NRCS State Offices to supplement the national policy (i.e. permits, reporting requirements) or address those in Tribal Protocol Agreements..

401.16 American Indian Tribes without THPOs

Federally recognized American Indian tribes may elect to consult with NRCS on its programs, projects and other undertakings. This is covered in more detail in Subpart C, Policy, Section 401.21, Considering Cultural Resources in NRCS Programs and Activities and Subpart D, Section 401.41, Consultation with American Indian Tribes.

Subpart C - Policy

401.20 General Policy

A. NRCS recognizes that cultural resources, including historic properties, are an integral part of our national heritage and recognizes its responsibilities for historic preservation, particularly for properties listed on or eligible for listing on the National Register of Historic Places. Further, the National Historic Preservation Act of 1966, as amended, mandates that all Federal agencies must take into account the effects of their undertakings on these historic properties.

B. NRCS shall ensure that cultural resources and historic properties are considered in all NRCS actions and programs. Furthermore, the conservation mission of NRCS is in harmony with the requirements of Sections 110 and 112 of NHPA. Those sections mandate and authorize each Federal agency to develop a preservation program and become an active participant in the stewardship of our Nation's historic properties. Under the provisions of those sections, NRCS shall promote the conservation and protection of historic properties.

C. NRCS shall identify cultural resources and historic properties early in the NRCS planning and environmental review processes for all assistance activities classified as undertakings that have the potential to affect historic properties.

401.21 Considering Cultural Resources in NRCS Programs and Activities

A. NRCS shall fulfill NHPA Section 106 requirements in accordance with the ACHP implementing regulations, 36 CFR 800, or the nationwide PA, executed under 36 CFR 800.14(a). This PA, when implemented by the State Conservationists with State Level Agreements (SLA) and Tribal Consultation Protocols serves as alternate procedures to the ACHP regulations (i.e. substitutes for all or part of Subpart B of the regulations) pursuant to 800.14(a) and Section 110(a)(2)(E) of the NHPA. NRCS shall also follow procedures set forth in the NRCS National Cultural Resources Procedures Handbook.

B. The nationwide PA provides for a streamlined Section 106 process appropriate for conservation technical assistance, financial assistance, and other activities. Under the PA, State Conservationists are required to take steps to negotiate and execute State Level Agreements with their SHPO and to take steps to develop consultation protocols with Indian Tribes.

C. With or without the PA in place, in order to consider cultural resources during project and program planning:

- (1) NRCS will determine if a proposed undertaking has the potential to affect historic properties.
- (2) NRCS will initiate consultation with the SHPO/THPO, American Indian Tribes and other consulting parties if the State Conservationist (upon the advice of the State Cultural Resources Specialist or Coordinator) determines that the undertaking has the potential to affect cultural resources, including historic properties, listed in or that might meet the criteria for listing in the National Register of Historic Places.
- (3) NRCS shall initiate consideration of historic properties as early in the planning as practical to identify and define which properties or other important cultural resources require additional consideration.
- (4) NRCS shall ensure that initial identification of cultural resources, including historic properties, will be conducted by qualified Cultural Resources Specialists (CRS), trained NRCS personnel, or trained conservation partners, in consultation with SHPOs, THPOs, Indian Tribes, and other identified consulting parties, as appropriate.
- (5) NRCS shall ensure that if identified cultural resources, cannot be avoided and may be affected by a proposed undertaking, a CRS will evaluate the identified property against the National Register Eligibility criteria in consultation with the SHPO/THPO/Tribes. This evaluation must completely delineate the boundaries of the identified property. If NRCS and the SHPO/THPO/Tribes cannot agree on whether identified cultural resources are eligible (meet National Register criteria) as historic properties, then NRCS must submit a formal request for a determination of eligibility to the Keeper of the National Register in the National Park Service. The Keeper's decision on eligibility is final.

401.22 Adverse Effects

It is the policy of NRCS to protect cultural resources in situ to the fullest extent possible. If an undertaking has been determined to have an adverse effect on an historic property as outlined in 36 CFR 800.5, NRCS will undertake treatment measures as described in the National Cultural Resources Procedures Handbook. If adverse effects to an historic property cannot be avoided and treatment

alternatives cannot be implemented, NRCS will consider:

- (1) Withdrawing all assistance from the specific undertaking; or
- (2) Proceeding with the adverse effects due to special circumstances. NRCS will follow ACHP regulations (36 CFR 800.7) and NRCS' steps in the National Cultural Resources Procedures Handbook (601.26, Failure to Resolve Adverse Effects).

401.23 Withdrawal of NRCS Assistance

Any decision to withdraw NRCS assistance shall be made by the State Conservationist. The reasons why the State Conservationist may make this decision are as follows:

- (1) NRCS may withdraw assistance from a participant when it is determined by the State Conservationist that the cost or other factors involved with cultural resource compliance jeopardize the feasibility of an undertaking.
- (2) NRCS may withdraw assistance if a participant, after application to NRCS:
 - (i) Intentionally carries out an irreversible action associated with requested technical or financial assistance that adversely impacts a cultural resource prior to completion of NRCS compliance responsibilities (see Section 110(k) of the NHPA), or
 - (ii) Refuses to permit implementation of a recommended mitigation plan.
- (3) All NRCS actions pertaining to the withdrawal of assistance because of cultural resources shall be approved by the State Conservationist and fully documented, in accordance with the NRCS National Cultural Resources Procedures Handbook (601.27).

401.24 Post-review Discovery

When other pertinent procedures of this part have been completed and a previously unknown cultural resource is discovered, an unevaluated cultural resource will be affected, or it is determined that known cultural resources will be affected in a previously unanticipated manner by the NRCS assisted undertaking, NRCS will protect the resource from further damage to the fullest extent possible and follow procedures for discoveries as described in the ACHP Regulations (36 CFR 800.13) and the NRCS National Cultural Resources Procedures Handbook.

401.25 Emergency Work

- A. This section considers cultural resources affected by emergency work carried out by NRCS in the Emergency Watershed Program or as lead agency in accordance with the National Response Plan (NRP). Preservation of human life and property shall be the priority concern and focus of the emergency measures while taking into account the effects on cultural resources to the fullest extent practicable.
- B. State Level Agreements and Tribal Protocols shall contain emergency provisions consistent with the NRCS Nationwide PA (Stipulation 2.A.(7) and B.(8)). When no SLA or Tribal Protocols exist, procedures outlined in the NRCS National Cultural Resources Procedures handbook shall be followed.
- C. The State Conservationist may elect to either follow NRCS procedures (and those derived under state agreements); ACHP regulations; or have the NRCS Chief or designee request an emergency waiver under 36 CFR 78 as an alternative for dealing with disasters of major scale. In this case NRCS will either develop an appropriate plan consistent with 36 CFR Part 78 or execute a programmatic agreement with ACHP for considering historic properties.

401.26 Training of NRCS Personnel and Partners

- A. NRCS will provide basic awareness training and informational materials to field personnel and partners and other interested parties that outline NRCS' responsibilities and procedures for considering cultural resources and historic properties in accordance with Section 106 of the National Historic Preservation Act, 36 CFR 800 implementing regulations, the nationwide PA and State Level Agreements and State Tribal Consultation protocols and agreements.
- B. All NRCS employees responsible for planning or implementing NRCS programs shall complete NRCS' web-based, classroom and field cultural resources training modules (modules 1-8). Additional training may be required to ensure appropriate consideration of historic properties in the performance of official duties. Further guidance on standards for employee training is listed in the **National Cultural Resources Procedures Handbook** and in this part, Section 401.14, NRCS Personnel Responsibilities. Additional information on completion of the NRCS training may be obtained through

the State Training Officer or AgLearn.

C. Technical Service Providers who are to carry out cultural resources compliance studies or the cultural resources portions of conservation planning, will complete the same training as NRCS employees (see the TechReg Web site <http://techreg.usda.gov/>).

401.27 Funding for Cultural Resources Compliance

State Conservationists, consistent with NRCS Programs policy and in consultation with the National and State Program Managers, are responsible for deciding when CTA, TA or FA funds are to be used for complying with Section 106.

401.28 Access to Cultural Resources Specialists

Each State Office shall have available on staff or have regular and continuing access to a qualified Cultural Resources Specialist. Regular and continuing access is defined as being able to obtain expert advice and opinion from an assigned specialist to ensure that conservation technical assistance is not delayed and that cultural resources are not adversely impacted. Specialist oversight may be obtained through direct hire with single or multistate coverage as worked out between States Conservationists; open-ended (indefinite quantity indefinite delivery) contracts for services as required; or cooperative agreements with other agencies or institutions. Technical Service Providers (TSPs) and professional service contracts may be used to carry-out project-specific work but not to provide the Cultural Resources Specialist long-term oversight and guidance for the State.

401.29 Deferring Identification and Evaluation of Cultural Resources

NRCS' policy is to identify and evaluate cultural resources as early as possible during the planning process. This policy is consistent with the Section 106 and Section 110 (a) and (f) of the NHPA. There are rare instances when this is not possible and cultural resources compliance identification activities must be deferred or phased (including the use of monitoring during construction). The instances when this is acceptable and the procedures that must be followed are found in the ACHP regulations (36 CFR 800.4(b)(2)). Such deferral may require negotiation and execution of a memorandum of agreement pursuant to 36 CFR 800.6.

401.30 Compliance Documentation and Reporting Cultural Resources

A. Compliance Documentation. For the purposes of management continuity, monitoring, and reduction of work duplication, all NRCS field offices shall keep records of their cultural resources decisions, including supporting data. A record of all cultural resources agreements and communications with SHPO, THPO, ACHP, participants, or other relevant parties concerning NRCS undertakings should be maintained at the State Office.

B. Reporting. NRCS shall report on cultural resources identification studies and cultural resources and historic properties found within the APE to the SHPO/THPO/Tribe. Such reports shall explain and describe the survey methodologies used, field and analytical recording methods employed, the findings, and recommendations. The amount, content, and frequency of reporting such cultural resources information for the APE shall be determined in consultation with the SHPO/THPO/Tribe and incorporate any requirements of state or Tribal law, state or tribal agreements, and resource security.

C. Documentation standards are outlined in the ACHP regulations (36 CFR 800.11) and supplemental ACHP guidance. NRCS must follow these standards in its Section 106 compliance work. NRCS shall document and report cultural resources in the following manner:

(1) Cultural resources identified outside the APE may be documented either in the NRCS Field Office producer file or with the SHPO/THPO/Tribe. This documentation is not required but is encouraged in order to facilitate decisions regarding protection of cultural resources and avoid the duplication of identification efforts.

(2) If a cultural resource within the APE can be avoided, NRCS shall provide documentation and effect determination (i.e. No Adverse Effect) to the SHPO/THPO/Tribe and landowner. If the SHPO/THPO/Tribe does not respond within 30 days, NRCS will continue assistance. NRCS may request shorter SHPO/THPO/Tribal review periods on an individual basis or through state-level agreements/Tribal protocols.

(3) If a historic property cannot be avoided NRCS, in consultation with all consulting parties, will develop a mitigation plan.

401.31 Access To Data and Reports

A. Historic property data shall be protected. Access is appropriate for planning by NRCS, or other planners, and the landowner. Section 304 of the NHPA provides that the head of a Federal agency, after consulting with the Secretary of Interior, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners.

B. Other issues of confidentiality and data access can be found in 36 CFR 800.11(c) and sections 601.41 and 601.42 of the NRCS National Cultural Resources Procedures Handbook.

401.32 Ethical Conduct on the Collection and Use of Information

During cultural resources investigations, NRCS employees are required to conduct themselves in a professional manner, i.e., using cultural resources objects and remains and information as follows:

(1) NRCS employees (other than Cultural Resources Specialists) shall not collect artifacts or other cultural items while on official duty except during the course of compliance studies when directed by a specialist or as defined in state supplements or agreements with the SHPO/THPO and with permission of the participant or Federal/state land manager.

(2) NRCS employees shall use cultural resources information gained on the job only for official purposes or professional study. They shall always follow NRCS policy for reporting studies and finds and for confidentiality and privacy.

(3) See also NRCS Ethics Chapter of the General Manual Title 110 Part 405 and Section 112 of the NHPA.

401.33 Ownership and Curation of Artifacts and Collections

(1) When archeological or historic material remains are recovered during the course of NRCS activities on Federal or Indian lands, recovered materials are the property of the landowner (individual, Tribe, government agency, community). When such materials are recovered from lands administered by a state or municipal agency or other public entity, the recovered materials are the property of that agency or entity. When archeological or historic material remains are recovered from privately owned lands (nonfederal, and/or not tribally owned), recovered materials are the property of the landowner (s) unless state or local laws require otherwise. When archeological or historic material remains are recovered from Tribal lands as defined herein, recovered materials are the property of the Tribal government in accordance with tribal law. Curation of materials from Federal, Tribal, state, or municipally administered lands is the responsibility of the landowner (s). NRCS shall encourage the owner of recovered material remains from private lands to donate them to an appropriate curatorial facility. If human remains are recovered and have not been repatriated in accordance with State, local or tribal law, NRCS shall encourage donation to the appropriate parties (in accordance with ACHP policy).

(2) On lands owned, managed, leased, or otherwise directly controlled by NRCS (such as some Plant Materials Centers), NRCS is responsible for the curation of recovered cultural materials. All recovered materials and records will be curated at appropriate curatorial facilities to the standards found in 36 CFR 79.

(3) If materials are recovered during the course of an NRCS sponsored or assisted data recovery effort, the NRCS will ensure that appropriate analyses of all recovered materials are complete (as state, tribal or local law permit) prior to returning them to the owners. Associated records that are prepared or assembled in connection with a federally authorized cultural resources survey, excavation, or other study, regardless of the location of the resource, become the property of NRCS. Copies of all records shall be made to accompany all collections.

(4) Treatment of burials and other human remains shall follow the process(es) outlined in applicable Federal, Tribal, state, or local law and/or ACHP policy. All human remains shall be treated with respect.

401.34 State Supplements

This section is reserved for State Conservationists to add any required state or tribal laws or regulations which may affect how cultural resources are considered during the planning of agency undertakings. Please see guidance provided in Part 401.43 below.

401.35 Cultural Resources Beyond Section 106

A. Many of NRCS programs allow for the treatment, interpretation, and protection of historic properties. This includes assistance, easement, and cost-share programs. Refer to individual program policies and

manuals for further guidance.

B. NRCS State Offices are encouraged to work with outside organizations and other agencies which can assist in the protection of cultural resources on private lands on which NRCS may give assistance. These groups include the National Trust for Historic Preservation and the Advisory Council's Preserve America Program.

Subpart D - Coordination With Other Authorities and Responsibilities

401.40 Coordination with the National Environmental Policy Act (NEPA)

(1) Early Coordination. NRCS will coordinate compliance with Section 106 of the NHPA with procedures to comply with the National Environmental Policy Act (see GM 190, Part 410). When coordinating Section 106 compliance with NEPA, NRCS will follow guidance set forth in the 36 CFR 800.8, "Coordination with the National Environmental Policy Act."

(i) The NEPA documents including NRCS' Environmental Evaluation Sheet (EE Sheet, CPA-52), Environmental Assessments /Findings of No Significant Impacts (EAs/FONSIs) or Environmental Impact Statements /Records of Decision (EISs/RODs) require explanation and documentation of the level of Section 106 compliance already completed and scheduled for completion prior to implementation of the proposed project.

(ii) Section 106 compliance must start early in the NEPA planning process. NRCS will, whenever feasible, plan public participation, analysis, and review of public comment in such a way that they meet the purposes and requirements of both statutes.

(2) Scoping. NEPA planning includes appropriate scoping, identification of historic properties (in addition to other resources), and assessment of effects, and consultation (with all appropriate participants, including SHPOs, Tribes and partners) leading to resolution of adverse effects in accordance with memoranda of agreement, treatment plans, or other cultural resources and NEPA planning documents.

(3) Documentation. NEPA planning documents record Section 106 compliance planning activities but do not necessarily include information on all of the required consultations, Section 106 technical and resource documents, correspondence, and records of research and consultations.

401.41 Consultation with American Indian Tribes

Consultation with American Indian tribal governments and Tribal Historic Preservation Officers is to be carried-out in accordance with Section 106 of the NHPA and implementing regulations, related authorities on consultation, and policy principles found in GM 410 Part 405, **American Indians and Native Alaskans**, and guidance outlined in the **National Cultural Resources Procedures Handbook**. The authorities include:

(1) USDA Department Regulation 1340-6, Policies on American Indians and Alaska Natives, October 16, 1992.

(2) Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, November 6, 2000.

(3) Executive Order 13270, Tribal Colleges and Universities, July 3, 2002.

(4) Public Law 89-665, October 15, 1966, 16 U.S. C. 470, et seq. (National Historic Preservation Act and its 22 amendments, and implementing regulations for Section 106 of the Act, 36 CFR Part 800), especially regarding special the consultation role of American Indian Tribes, Tribal Historic Preservation Officers and Native Hawaiian Organizations.

(5) Executive Order 13007, Indian Sacred Sites, May 24, 1996.

(6) Nationwide Programmatic Agreement among the United States Department of Agriculture Natural Resources Conservation Service, Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers, May 31, 2002 (NRCS A-3A75-2-64), especially regarding government-to-government negotiation of tribal cultural resources consultation protocols.

401.42 Cultural Resources Specialist and Coordinator Qualifications and Duties

(1) Cultural Resources Specialist Qualifications:

Cultural Resources Specialists used by NRCS must meet minimum OPM education requirements and commensurate experience or the qualifications outlined in the Secretary of the Interior's Qualification Standards listed in the National Cultural Resources Procedures Handbook; see also Section 112(b) of the NHPA.

(2) Cultural Resources Specialist Principal Duties

Cultural Resources Specialists are to, upon request, provide advice to the State Conservationist and

principal staff, provide assistance in determinations of significance, consulting with SHPOs/THPOs on National Register of Historic Places eligibility, oversight for reviews of NRCS undertakings, field surveys, guidance for field personnel on identification and avoidance, compliance documentation for SHPO/THPO, training, and quality assurance and/or control reviews. Specialists may also serve as the Cultural Resources Coordinator and provide assistance to the contracting officer on cultural resources projects (see CRC duties below). If the CRS is not an NRCS employee (i.e. contractor or TSP) all formal findings, decisions, and consultation with SHPO/THPO and Tribes must be made by NRCS.

(3) Cultural Resources Coordinator Principal Duties

The State Conservationist designates a Cultural Resources Coordinator (CRC) to oversee the cultural resources activities in each state. The CRC is the principal coordinator of administrative and procedural matters associated with cultural resources. Coordination may be accomplished by a cultural resources specialist if the specialist is on the staff, and thus the coordinator and specialist may be the same person. In the absence of a specialist on the NRCS staff, and even with a specialist on staff, the duties may be effectively divided between technical matters done by the specialist and coordination of non-technical, administrative and many procedural actions done by the CRC.

(4) The CRC:

- (i) Advises the State Conservationist on staffing, training, and cultural resources compliance needs and implementation barriers to ensure that NRCS can carry out its legal responsibilities.
- (ii) Develops, maintains, and makes available to NRCS staff and partners up-to-date reference files of national, state, and local laws, regulations, standards, guidelines, authorities and other materials relevant to NRCS cultural resources responsibilities.
- (iii) Coordinates consultation and other cultural resources activities with other NRCS offices, the State Historic Preservation Officer, American Indian Tribes, National Park Service, the Advisory Council on Historic Preservation, other Federal and State agencies, and NRCS clients.
- (iv) Creates and maintains cultural resources data and information files and makes them available to NRCS staff, as appropriate and permitted under the law, for planning purposes.
- (v) Inputs or oversees input of cultural resources compliance information in NRCS' Performance Results System (PRS) and other NRCS performance tracking systems, compiles State office information for the annual national report of NRCS cultural resources activities and provides these data to national headquarters on schedule.
- (vi) With the direct guidance from a cultural resources specialist, the CRC may assist with:
 - Design and delivery of technical aspects of NRCS cultural resources training;
 - Literature review, records checks, field inspections, and minor technical aspects of limited survey activity;
 - Preparation of technical specifications for contracts and agreements or may act as the Contracting Officer's Technical Representative (COTR) or Contracting Officer's Representative (COR);
- (vii) Reviews technical reports to ensure that essential administrative and technical information is present;
- (viii) Preparation of documentation of compliance with this part and with the cultural resources sections of NRCS plans and other pertinent documents.

If the CRC is not a cultural resources specialist, the CRC may coordinate or assist with other cultural resources activities as agreed to with the SHPO in specific cases or as agreed to in state agreements between NRCS and the SHPO.

401.43 Guidance for Executing Agreements and State Supplements

The scope, purpose, and type of agreements concerning cultural resources are diverse. Agreements improve the efficiency of carrying out NRCS responsibilities, minimizing delays of NRCS assistance. Agreements may be international, national, multistate, or for each specific state in order to implement stewardship through NRCS programs or to carry out NRCS responsibilities in individual or multiple undertakings.

(1) National and Multi-State Agreements

(i) NRCS may request execution of a programmatic agreement with the ACHP for a particular program or class of undertakings that would otherwise require numerous individual requests for comments under this part or the ACHP regulations (36 CFR 800). Such agreements will be developed in accordance with 36 CFR 800 and shall include the National Conference of State Historic Preservation Officers (NCSHPO) or multiple SHPOs involved as parties to the agreement.

(ii) National and multi-state agreements may also be necessary for stewardship activities not centrally related to the Section 106 process, such as policy or resource studies that do not affect historic properties or other cultural resources but contribute to the general purposes of the National Historic Preservation Act. These agreements shall include as signatories all parties that will substantively contribute to the activity, such as the ACHP, other federal agencies, individual Tribal governments or groups, the National Conference of State Historic Preservation Officers, or others as appropriate.

(2) State Level Agreements (SLAs)

These agreements are developed and operated at the state level to facilitate NRCS actions. The minimum and suggested contents address items that vary greatly between states and across program lines within individual states. The State Conservationist shall negotiate an agreement subordinate to this with the SHPO. The nationwide PA lists items that should be included in every agreement. Copies of the signed SLAs shall be sent to the National Cultural Resources Specialist in the Ecological Sciences Division for review and comment and transfer to the ACHP for their review. All reviews and suggestions for modifications will be complete within 30 days of receipt of the SLA by the ACHP. If no comments are returned to the State Office within these 30 days, the SLA is filed as final.

(3) American Indian Tribal Consultation Protocols or Agreements.

NRCS State Offices shall consult with THPOs and the governments of Federally recognized Indian Tribes that do not have designated THPOs in order to attempt to establish consultation protocols, procedures or agreements regarding undertakings on tribal lands and lands which a tribe holds as traditionally or culturally important under Section 101(d) (6). Discussions in developing consultation protocols shall be government-to-government and direct, in person, and otherwise initiated in an appropriate and respectful manner for each individual Tribal government. More information on consultation protocols may be found in the nationwide PA and Cultural Resources Procedures Handbook. Copies of the signed protocols shall be sent to the National Cultural Resources Specialist in the Ecological Sciences Division for review and comment and transfer to the ACHP staff for their review. All reviews and suggestions for modifications will be completed within 30 days of receipt of the SLA by the ACHP. If no comments are returned to the State Office within these 30 days, the signed protocol is filed as final.

(4) Agreements of less than national scope for Section 106 compliance.

NRCS State Offices may develop a memorandum of agreement with the ACHP, SHPO, THPO, Indian Tribe(s) and/or other partners for completion of a large, complex, or lengthy undertaking. State Offices may develop programmatic agreements with the ACHP, SHPO, THPO, Indian Tribe and other consulting parties for programs or classes of undertakings, as appropriate, in accordance with the ACHP regulations (36 CFR 800). Such agreements may involve more than one state.

(5) State Supplements to the General Manual

(i) State policy on cultural resources matters must be established and implemented by means of supplements to this part.

(ii) Draft copies of state supplements to this part will be sent to the National Cultural Resources Specialist (Federal Preservation Officer) for review before they are issued.

(iii) Copies of final state supplements, technical notes, and guidelines relating to cultural resources state agreements will be sent to the NRCS Federal Preservation Officer for central records.