

RD AN No. 3976 (1940-G and 1901-F)
April 22, 2004

TO: Rural Development State Directors,
Rural Development Managers, and
Community Development Managers

ATTN: State Environmental Coordinators, and
Program Directors

FROM: Arthur A. Garcia *(Signed by James E. Selmon, III)*
Administrator
Rural Housing Service

John Rosso *(Signed by Peter Thomas)* *for*
Administrator
Rural Business-Cooperative Service

SUBJECT: 36 C.F.R. part 800
National Historic Preservation Act
Revised Section 106 Regulations

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to clarify that our current environmental regulation, Rural Development Instruction 1940-G, encompasses compliance with the revised regulation for implementing the National Historic Preservation Act (NHPA), codified at 36 C.F.R. part 800.

RD Instruction 1901-F provides direction for compliance with historic preservation requirements; but does not reflect the most recent revisions to NHPA regulations promulgated at 36 C.F.R. part 800. The requirements of RD Instruction 1940-G, sections 1940.304(d) and 1940.305(g), and the NHPA regulations take precedence.

EXPIRATION DATE: April 30, 2005

FILING INSTRUCTIONS:
Preceding RD Instruction 1940-G

BACKGROUND:

On December 12, 2000, the Advisory Council on Historic Preservation (ACHP) issued a revised regulation to implement the 1992 amendments to the NHPA and to streamline the review process under section 106 of NHPA. This regulation, which is binding on all Federal agencies, became effective January 11, 2001. It revises and replaces the NHPA regulation published in the *Federal Register* on May 18, 1999 that became effective June 17, 1999.

COMPARISON WITH PREVIOUS AN:

This is a revision of AN No. 3740 (1940-G), that expired April 30, 2003.

IMPLEMENTATION RESPONSIBILITIES:

The new NHPA regulation encourages Federal agencies to integrate section 106 reviews with the environmental reviews completed under the National Environmental Policy Act. Since we already do this, the impact on the Rural Housing Service and the Rural Business-Cooperative Service is minimized. Nevertheless, there are changes that require our particular attention. Two of the most important:

1. The revised regulation identifies individuals and organizations, including Indian Tribes, Native Hawaiian organizations, and local governments, in addition to the State Historic Preservation Officer (SHPO), as consulting parties in the section 106 review process.
2. Public notice of the potential for impact to historic property listed or eligible for listing on the National Register of Historic Places is now explicitly required. The preliminary public notice procedures used for floodplains and wetlands under RD Instruction 1940-G must now be used, when appropriate, for proposed actions requiring a Class I or Class II environmental assessment under sections 1940.311 and 1940.312.

For actions listed as Categorical Exclusions in RD Instruction 1940-G, section 1940.310, we will consult with the SHPO when that action has the potential to impact property either listed or potentially eligible for listing on the National Register of Historic Places, unless the State office has a programmatic agreement with the SHPO which states otherwise. Any structure 50 years old or older or located within a designated historic district should be considered potentially eligible and trigger consultation with the SHPO.

The Nationwide Programmatic Agreement for the Housing Preservation Grant Program (RD Instruction 2000-FF, Exhibit A) remains in effect. Any reference therein to 36 C.F.R. part 800 refers to the revised regulation.

State Environmental Coordinators (SECs) will take the lead in providing the necessary guidance and direction. SECs should establish and continue liaison with the SHPO and all Federally recognized tribes with an interest in traditional cultural properties regardless of whether or not a Tribal Historic Preservation Officer has been designated.

Field employees are encouraged to work closely with the SEC to implement the revised regulation. The ACHP maintains an excellent website with considerable explanatory information at www.achp.gov. Questions or comments should be directed to Linda Rodgers, Federal Preservation Officer for RHS and RBS, Program Support Staff, at (202) 720-9647, email: linda.rodgers@usda.gov or Donna Meyer, Environmental Protection Specialist at (202) 720-1827, email: donna.meyer@usda.gov.