

**§ 102-78.15**

**41 CFR Ch. 102 (7-1-04 Edition)**

**§ 102-78.15 What are historic properties?**

Historic properties are those that are included in, or eligible for inclusion in, the National Register of Historic Places (National Register) as more specifically defined at 36 CFR 800.16.

**§ 102-78.20 Are Federal agencies required to identify historic properties?**

Yes, Federal agencies must identify all National Register or National Register-eligible historic properties under their control. In addition, Federal agencies must apply National Register Criteria (36 CFR part 63) to properties that have not been previously evaluated for National Register eligibility and that may be affected by the undertakings of Federally sponsored activities.

**§ 102-78.25 What is an undertaking?**

The term undertaking means a project, activity, or program under the direct or indirect jurisdiction of a Federal agency, including those:

- (a) Carried out by or on behalf of the agency;
- (b) Carried out with Federal financial assistance;
- (c) Requiring a Federal permit, license, or approval; and
- (d) Subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

**§ 102-78.30 What are consulting parties?**

As more particularly described in 36 CFR 800.2(c), consulting parties are those parties having consultative roles in the Section 106 process (*i.e.*, Section 106 of the National Historic Preservation Act) that requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. Specifically, consulting parties include the State Historic Preservation Officer; Tribal Historic Preservation Officer; Indian tribes and Native Hawaiian organizations; Representatives of local governments; Applicants for Federal assistance, permits, licenses and other approvals; and other individuals and organizations

with a demonstrated interest in the undertaking.

**§ 102-78.35 Are Federal agencies required to involve consulting parties in their historic preservation activities?**

Yes, Federal agencies must solicit information from consulting parties to carry out their responsibilities under historic and cultural preservation laws and regulations. Federal agencies must invite the participation of consulting parties through their normal public notification processes.

**§ 102-78.40 What responsibilities do Federal agencies have when an undertaking adversely affects a historic or cultural property?**

Federal agencies must not perform an undertaking that could alter, destroy, or modify an historic or cultural property until they have consulted with the SHPO and the Advisory Council. Federal agencies must minimize all adverse impacts of their undertakings on historic or cultural properties to the extent that is feasible and prudent. Federal agencies must follow the specific guidance on the protection of historic and cultural properties in 36 CFR part 800.

**§ 102-78.45 What are Federal agencies' responsibilities concerning nomination of properties to the National Register?**

Federal agencies must nominate to the National Register all properties under their control determined eligible for inclusion in the National Register.

**§ 102-78.50 What historic preservation services must Federal agencies provide?**

Federal agencies must provide the following historic preservation services:

- (a) Prepare a Historic Building Preservation Plan for each National Register or National Register-eligible property under their control. When approved by consulting parties, such plans become a binding management plan for the property; and
- (b) Investigate for historic and cultural factors all proposed sites for direct and leased construction.