



## **Framing Paper | Northern Border Programmatic Agreement**

U.S. Customs and Border Protection (CBP) is proposing a Programmatic Agreement (PA) for undertakings CBP conducts along the U.S. northern border subject to review under Section 106 of the National Historic Preservation Act (54 United States Code § 306108). Pursuant to 36 Code of Federal Regulations (CFR) § 800.14(b) (Section 106 Implementing Regulations), a PA can be pursued by a federal agency in order to tailor the Section 106 review process when undertakings that are similar and repetitive in nature and regional or multi-state in scope are proposed; where routine activities are undertaken at Federal installations; and when effects on historic properties cannot be determined prior to approval of an undertaking.

CBP's goals are to establish stipulations in the PA for the following:

- Programmatic allowances (for the exclusion from further Section 106 review) for some undertakings if they have the potential to cause minimal to no adverse effect on historic resources.
- Parameters/protocols for after-action reporting of certain law enforcement undertakings whose nature does not allow for advanced planning efforts.
- Project review protocols with State Historic Preservation Offices (SHPO) and Tribes for undertakings subject to further Section 106 review once the document is executed.

**Applicability |** The proposed PA will govern Section 106 compliance for CBP projects, activities, and operations identified as "undertakings" (per 36 CFR 800.16(y)) on the U.S. Northern Border and 100 miles into U.S. Territory in the following States: Idaho, Maine, Michigan, Minnesota, Montana, New York, North Dakota, Ohio, Pennsylvania, Wisconsin, Vermont, and Washington. The PA will only take effect in States where the SHPO decides to participate as a Signatory. CBP will invite the respective SHPO for each State to consult (the SHPOs for Ohio and Maine previously opted not to participate but will be invited again). The proposed PA will address undertakings such as facility maintenance, law enforcement, installation of surveillance equipment, and emergency response. Lack of participation or termination of participation by a SHPO only affects applicability in their jurisdiction and does not invalidate the PA's applicability overall.

**Applicability on Tribal Lands |** As per 36 CFR § 800.14(b)(2)(iii), "A programmatic agreement shall take effect on tribal lands only when the Tribal Historic Preservation Office (THPO), Indian Tribe, or a designated representative of the tribe is a signatory to the agreement." Tribes may also participate as consulting parties.

**Information sought from Tribal Nations |** CBP invites formal Tribal participation in the establishment of these Stipulations so that the identification of historic properties of religious and cultural significance to Tribes are identified, and measures to avoid, minimize, or mitigate adverse effects to historic resources may be discussed in a collaborative, respectful manner. CBP hopes to arrive at one or several consultation protocols with Tribes that may be affected and wish to consult further.