

EMERGENCY PROCESS FOR SECTION 106 COMPLIANCE

Using the Emergency Provisions to Comply with Section 106 of the National Historic Preservation Act in Response to the National Energy Emergency

On January 20, 2025, President Donald J. Trump declared a national energy emergency and directed the heads of executive departments and agencies, including the Secretary of the Interior, to “identify and exercise any lawful emergency authorities available to them, as well as all other lawful authorities they may possess, to facilitate the identification, leasing, siting, production, transportation, refining, and generation of domestic energy resources, including, but not limited to, on Federal lands” (Sec. 2(a), Executive Order (EO) 14156, titled “Declaring a National Energy Emergency”). The definition of “energy resources” in the declaration includes “crude oil, natural gas, lease condensates, natural gas liquids, refined petroleum products, uranium, coal, biofuels, geothermal heat, the kinetic movement of flowing water, and critical minerals, as defined by 30 U.S.C. § 1606(a)(3)” (section 8(a), EO 14156).

The Advisory Council on Historic Preservation’s (ACHP) regulations that implement section 106 of the National Historic Preservation Act (NHPA) expressly recognize the need for alternative procedures for compliance concerning proposed undertakings that address emergency situations, including when the President declares an emergency (36 C.F.R. § 800.12(a)). In the case of an emergency, the regulations offer several ways to comply with the requirements of section 106 of the NHPA:

- (1) development of formal emergency procedures, 36 C.F.R. § 800.12(a);
- (2) use of an existing Programmatic Agreement (PA) that includes specific provisions covering emergency procedures, 36 C.F.R. § 800.12(b)(1); or
- (3) an ad hoc process for undertakings responding to an emergency declaration when there is no formal emergency procedure or an applicable PA, 36 C.F.R. § 800.12(b)(2).

Using these provisions, as appropriate, involves complying with certain minimal requirements, but each provision allows for expedited approval of undertakings that respond to the emergency.

Given the national energy emergency declaration in EO 14156, the Department of the Interior (Department) intends to use the emergency provisions in 36 C.F.R. § 800.12 to satisfy compliance with section 106 for those undertakings that respond to the National Energy Emergency.¹ As described below, the Department has identified an initial criteria of projects that would facilitate an essential and immediate response to the declared national energy emergency. The Department further sets forth below the steps that the appropriate Interior Bureaus will undertake to meet the emergency provisions covered under 36 C.F.R. § 800.12(b)(1) or (2). Currently, the Department does not have formal emergency procedures approved by the ACHP that are applicable to the National Energy Emergency consistent with 36 C.F.R. § 800.12(a).

¹ On February 25, 2025, the ACHP issued guidance on the use of the emergency provisions in the regulations (36 C.F.R. § 800.12) implementing Section 106 of the NHPA relating to EO 14156. The ACHP’s guidance implicitly interprets its Section 106 regulations regarding emergencies, identified in the regulations as a “disaster or emergency declared by the President . . . , or another immediate threat to life or property,” 36 CFR § 800.12(b), as applying to the energy emergency declaration. The guidance also extends the time in which an agency may use the emergency provisions for an applicable undertaking relating to EO 14156 from 30 days to a period coinciding with the duration of the emergency declaration.

However, the Department, or Interior Bureaus, will consider the utility of developing such procedures.

This document serves as notice to applicants for projects related to “energy resources” as defined by EO 14156, as well as to the ACHP, all State Historic Preservation Offices (SHPOs), Tribal Historic Preservation Offices (THPOs), and Indian tribes, that the Department will rely on the emergency provisions set forth at 36 C.F.R. § 800.12(b)(2) to satisfy its obligations under section 106 of the NHPA as follows:

1. The only projects eligible for alternate procedures for compliance with section 106 of the NHPA will be those projects:
 - a. that seek to identify, lease, develop, produce, transport, refine, or generate energy resources, as defined in section 8(a) of EO 14156; and
 - b. for which the project applicant(s) have submitted plans of operations, applications for permits to drill, or other applications.
2. The energy project applicants must affirm in writing to the Responsible Official(s) that they
 - a. want to proceed under the alternative procedures; and
 - b. will implement, to the extent prudent and feasible, measures that avoid or minimize harm to historic properties.
3. The relevant Responsible Official(s) are responsible for notifying the ACHP, relevant SHPOs, THPOs, and Indian tribes of the specific energy project(s) for which they intend to use the emergency section 106 alternative procedures as provided in 36 C.F.R. § 800.12(b)(2) and will invite comments within seven days of the notice.

For those eligible projects under the Bureau of Land Management’s (BLM) jurisdiction that qualify to use the specific emergency procedures included in an existing Programmatic Agreement (or State Protocol Agreement), BLM will follow those existing emergency procedures as authorized under 36 C.F.R. § 800.12(b)(1).

During the national energy emergency, these alternative procedures described herein for energy-related projects will remain applicable unless superseded by subsequent alternative procedures for section 106 compliance. If the ACHP rescinds or revises the section 106 regulations or the emergency provisions during the national energy emergency, the Department will continue to rely on the alternative procedures that have already been used to demonstrate compliance with section 106 of the NHPA unless explicitly superseded by interim or final guidance or regulations. Following termination or expiration of the national energy emergency, the Department will not use the emergency alternative procedures for section 106 compliance and instead will comply with the standard section 106 process.



Adam Suess,
Acting Assistant Secretary – Land and Minerals Management.

ATTACHMENT 1

Request to Use the Department of the Interior’s Alternative Procedures for Compliance with Section 106 of the National Historic Preservation Act for an Energy Resources Project during the National Energy Emergency

ATTN: [APPROPRIATE DISTRICT/STATE/REGIONAL OFFICE CONTACTS OF THE FEDERAL ACTION AGENCY]

Company name: [INSERT COMPANY NAME]
Project name: [INSERT COMPANY NAME]
Project city, state: [INSERT INFORMATION]
Lead agency: [INSERT LEAD AGENCY NAME]

Our company, [INSERT COMPANY NAME], requests to use the Department of the Interior’s emergency provisions for [INSERT PROJECT NAME] to comply with section 106 of the National Historic Preservation Act because it will provide an essential and immediate response to the national energy emergency, as declared in Executive Order 14156.

The latest version of the [proposed plan of operation or other application] is attached. [ATTACH PLAN OF OPERATION OR OTHER APPLICATION]

If the attached [plan of operation or other application] is approved, our company agrees to implement, to the extent prudent and feasible, measures that avoid or minimize harm to historic properties.

Signature

Date

Name

Title