



**EIGHTH AMENDMENT TO
EMERGENCY SITUATION PROCEDURES REGARDING
SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT COMPLIANCE FOR
FEDERAL EMERGENCY MANAGEMENT AGENCY UNDERTAKINGS RESPONDING TO
COVID-19 DISASTERS AND EMERGENCIES**

WHEREAS, on May 14, 2020, the Advisory Council on Historic Preservation (ACHP) approved the “Emergency Situation Procedures Regarding Section 106 of the National Historic Preservation Act Compliance for Federal Emergency Management Agency Undertakings Responding to COVID-19 Disasters and Emergencies” (Emergency Procedures) in accordance with 36 C.F.R. 800.12(a);

WHEREAS, on August 27, 2020, December 16, 2020, April 29, 2021, August 30, 2021, January 27, 2022, June 28, 2022, and November 29, 2022, the ACHP approved amendments to the Emergency Procedures that, among other things, extended the use of its Stipulations II and III through December 31, 2020, April 30, 2021, August 31, 2021, January 31, 2022, June 30, 2022, November 30, 2022, and then April 30, 2023, respectively;

WHEREAS, the Federal Emergency Management Agency (FEMA) reports that, since May 14, 2020:

- it has utilized the Emergency Procedures for the Section 106 review of 31,161 FEMA funded emergency/disaster response undertakings, including 25,491 undertakings with no potential to affect historic properties, for a total of \$57,370,180,364 (federal cost share as of March 27, 2023);
- approximately 82% of the 5,670 undertakings with potential to affect historic properties have been requests for reimbursement from FEMA after completion of eligible emergency work; and
- while approximately 57 proposed and completed undertakings have required ground disturbance, FEMA has determined that, in all cases, the disturbance will occur or has occurred in previously disturbed areas; and
- only one proposed or completed undertaking submitted to FEMA has resulted in adverse effects to a historic property;

WHEREAS, without amendments to the Emergency Procedures, the ability of FEMA to use such procedures would effectively end on April 30, 2023;

WHEREAS, FEMA asserts that, given the still active emergency and disaster declarations based on the persistent threat of the virus to public health and safety and the continued distribution, transport, storage, and administration of COVID testing and approved vaccines, including booster shots, FEMA’s continued reliance upon the Procedures remains critical;

WHEREAS, on January 30, 2023, the Administration stated its plan extend the national and public health emergency declarations regarding COVID (emergencies) to May 11, 2023, and then end the emergencies

on that date in recognition that the declarations are no longer necessary based on the progress made since March 2020 in responding to the virus;

WHEREAS, on February 10, 2023, FEMA published in the Federal Register a 90-day advance notice to State, local, Tribal, and Territorial governments and eligible private non-profit organizations (applicants) that the “incident period” for COVID emergency and disaster declarations would end on May 11, 2023, coinciding with the end of the public health emergency;

WHEREAS, while May 11, 2023 would be the date by which all eligibility of work and reimbursable costs associated with the COVID-19 emergencies ends, based on the need for demobilization, disposition, and disposal of equipment and supplies associated with COVID emergency protective measures (demobilization work) afterwards, FEMA has approved an extension to the emergency work period of performance for these demobilization, disposition, and disposal activities for an additional 90 days beyond May 11, 2023 to August 9, 2023;

WHEREAS, while a final decision has not yet been made on this matter, applications for assistance regarding undertakings that responded to the emergencies may be accepted by FEMA well past the end of the emergencies and possibly through close to the end of calendar year 2023;

WHEREAS, accordingly, the following is the presently foreseeable calendar regarding the conclusion of this Procedure, pending potential extensions at the discretion of the FEMA Administrator:

- May 11, 2023: Emergencies end
- May 11, 2023: Eligibility of work other than demobilization, disposition, and disposal of equipment and supplies (non-demobilization work) ends;
- May 11, 2023: Applicability of Stipulation III of this Procedure regarding non-demobilization work should also end since FEMA will not be accepting non-reimbursable applications for that work that occurs after May 11, 2023;
- August 9, 2023: Eligibility of demobilization work ends;
- August 9, 2023: Applicability of Stipulation III of this Procedure regarding demobilization work should also end since FEMA will not be accepting non-reimbursable applications for that work after August 9, 2023. Therefore, all further need for Stipulation III ends;
- November 7, 2023: Possible deadline for the acceptance of all assistance requests by FEMA for all eligible work done after July 2022;
- November 7, 2023: Applicability of Stipulation II for all eligible work should also end since applications for reimbursements will no longer be accepted by FEMA;
- February 21, 2024: As in past versions of this Procedure, FEMA needs about three months to comply with the requirements of Stipulation IV.A., B., and C.; and
- May 31, 2024: As in past versions of this Procedure, FEMA needs about three additional months to comply with the requirements of Stipulation IV.D; and

WHEREAS, after previous consultation with ACHP staff and notice to the National Conference of State Historic Preservation Officers and the National Association of Tribal Historic Preservation Officers, and in accordance with Stipulation IX.A. of the Emergency Procedures, FEMA requested the ACHP to

approve the continued applicability and implementation as noted in the amendments that follow; and

NOW THEREFORE, in accordance with Stipulations V and IX of the Emergency Procedures, the ACHP:

1. amends Stipulation IX of the Emergency Procedures to read as follows:

“IX. Duration

This Procedure will expire on May 31, 2024. However, use of Stipulation II after November 7, 2023, use of Stipulation III after May 11, 2023 for non-demobilization work, and use of Stipulation III for any work after August 9, 2023, will require:

A. A written request from the FEMA FPO to the Executive Director of the ACHP, with a copy to the Executive Director of NCSHPO and the Chair of NATHPO; and

B. The written approval of the Executive Director of the ACHP.

C. For purposes of this Procedure, the term ‘demobilization work’ refers to the demobilization, disposition, and disposal of equipment and supplies associated with COVID emergency protective measures; and the term ‘non-demobilization work’ refers to work other than demobilization work.”; and

2. amends Stipulation IV of the Emergency Procedures to read as follows:

“IV. Post COVID-19 Consultations to Consider Mitigation Measures to Resolve Adverse Effects

No later than March 1, 2024, FEMA will:

A. Reasonably gather and summarize information about the undertakings documented in accordance with Stipulation II.D, including any adverse effects to historic properties that may have resulted from them, undertakings documented in accordance with Stipulation III.D.4.ii, as well as any inadvertent discoveries; and

B. Share the summary of all undertakings, including findings of effects to historic properties, with the ACHP, the NPS NHLs, NCSHPO, NATHPO, Indian tribes and NHOs;

C. Meet with the ACHP, the SHPOs/THPOs for States and tribal lands where FEMA reported that particular undertakings may have resulted in adverse effects to historic properties, and Tribes or NHOs, and other consulting parties, including the Recipient and subrecipient of FEMA funding (Post-COVID Consulting Parties) via methods chosen by FEMA, to discuss mitigation measures that FEMA should consider to resolve any adverse effects not otherwise resolved in accordance with Stipulation III.D.3.i-iv;

D. then no later than May 31, 2024, determine, through further consultation with the Post-COVID Consulting Parties, what mitigation measures, if any, will be feasible to carry out to resolve identified adverse effects, and notify the Post-COVID Consulting Parties about such a determination in writing.

E. As such mitigation measures are completed, notify the appropriate Post-COVID consulting parties.”

A handwritten signature in black ink, appearing to read 'Reid Nelson', written over a horizontal line.

Reid Nelson
Executive Director
Advisory Council on Historic Preservation

4/27/2023

Date