

permit seven days for comment, the agency official shall notify the Council, the SHPO/THPO and the Indian tribe or Native Hawaiian organization and invite any comments within the time available.

(c) *Local governments responsible for section 106 compliance.* When a local government official serves as the agency official for section 106 compliance, paragraphs (a) and (b) of this section also apply to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or SHPO/THPO objects to the proposed action within seven days, the agency official shall comply with §§ 800.3 through 800.6.

(d) *Applicability.* This section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority. An agency may request an extension of the period of applicability from the Council prior to the expiration of the 30 days. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of section 106 and this part.

#### § 800.13 Post-review discoveries.

(a) *Planning for subsequent discoveries.*

(1) *Using a programmatic agreement.* An agency official may develop a programmatic agreement pursuant to § 800.14(b) to govern the actions to be taken when historic properties are discovered during the implementation of an undertaking.

(2) *Using agreement documents.* When the agency official's identification efforts in accordance with § 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking and no programmatic agreement has been developed pursuant to paragraph (a)(1) of this section, the agency official shall include in any finding of no adverse effect or memorandum of agreement a process to resolve any adverse effects upon such properties. Actions in conformance with the process satisfy the agency official's responsibilities under section 106 and this part.

(b) *Discoveries without prior planning.* If historic properties are discovered or unanticipated effects on historic properties found after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section, the agency official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:

(1) If the agency official has not approved the undertaking or if construction on an approved undertaking has not commenced, consult to resolve adverse effects pursuant to § 800.6; or

(2) If the agency official, the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property agree that such property is of value solely for its scientific, prehistoric, historic or archeological data, the agency official may comply with the Archeological and Historic Preservation Act instead of the procedures in this part and provide the Council, the SHPO/THPO, and the Indian tribe or Native Hawaiian organization with a report on the actions within a reasonable time after they are completed; or

(3) If the agency official has approved the undertaking and construction has commenced, determine actions that the agency official can take to resolve adverse effects, and notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery. The notification shall describe the agency official's assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects. The SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council shall respond within 48 hours of the notification. The agency official shall take into account their recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. The agency official shall provide the SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council a report of the actions when they are completed.

(c) *Eligibility of properties.* The agency official, in consultation with the SHPO/THPO, may assume a newly-discovered property to be eligible for the National Register for purposes of section 106. The agency official shall specify the National Register criteria used to assume the property's eligibility so that information can be used in the resolution of adverse effects.

(d) *Discoveries on tribal lands.* If historic properties are discovered on tribal lands, or there are unanticipated effects on historic properties found on tribal lands, after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section and construction has commenced, the agency official shall comply with applicable tribal regulations and procedures and obtain the concurrence of the Indian tribe on the proposed action.

**Subpart C—Program Alternatives**

**§ 800.14 Federal agency program alternatives.**

(a) *Alternate procedures.* An agency official may develop procedures to implement section 106 and substitute them for all or part of subpart B of this part if they are consistent with the Council's regulations pursuant to section 110(a)(2)(E) of the act.

(1) *Development of procedures.* The agency official shall consult with the Council, the National Conference of State Historic Preservation Officers, or individual SHPO/THPOs, as appropriate, and Indian tribes and Native Hawaiian organizations, as specified in paragraph (f) of this section, in the development of alternate procedures, publish notice of the availability of proposed alternate procedures in the FEDERAL REGISTER and take other appropriate steps to seek public input during the development of alternate procedures.

(2) *Council review.* The agency official shall submit the proposed alternate procedures to the Council for a 60-day review period. If the Council finds the procedures to be consistent with this part, it shall notify the agency official and the agency official may adopt them as final alternate procedures.

(3) *Notice.* The agency official shall notify the parties with which it has consulted and publish notice of final alternate procedures in the FEDERAL REGISTER.

(4) *Legal effect.* Alternate procedures adopted pursuant to this subpart substitute for the Council's regulations for the purposes of the agency's compliance with section 106, except that where an Indian tribe has entered into an agreement with the Council to substitute tribal historic preservation regulations for the Council's regulations under section 101(d)(5) of the act, the agency shall follow those regulations in lieu of the agency's procedures regarding undertakings on tribal lands. Prior to the Council entering into such agreements, the Council will provide Federal agencies notice and opportunity to comment on the proposed substitute tribal regulations.

(b) *Programmatic agreements.* The Council and the agency official may negotiate a programmatic agreement to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings.

(1) *Use of programmatic agreements.* A programmatic agreement may be used:

(i) When effects on historic properties are similar and repetitive or are multi-State or regional in scope;

(ii) When effects on historic properties cannot be fully determined prior to approval of an undertaking;

(iii) When nonfederal parties are delegated major decisionmaking responsibilities;

(iv) Where routine management activities are undertaken at Federal installations, facilities, or other land-management units; or

(v) Where other circumstances warrant a departure from the normal section 106 process.

(2) *Developing programmatic agreements for agency programs.*

(i) The consultation shall involve, as appropriate, SHPO/THPOs, the National Conference of State Historic Preservation Officers (NCSHPO), Indian tribes and Native Hawaiian organizations, other Federal agencies, and