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in part in the event of a major natural disaster or an imminent threat to the national security. Waiver of responsibilities under section 110 does not affect an agency's section 106 responsibilities for taking into account the effects of emergency activities on properties included in or eligible for the National Register of Historic Places and for affording the Advisory Council on Historic Preservation an opportunity to comment on such activities.

### § 78.2 Definitions.

*Federal Agency Head* means the highest administrative official of a Federal agency, or designee.

*Imminent Threat to the National Security* means the imminence of any natural, technological, or other occurrence which, in determination of a Federal Agency Head, because of its size or intent, seriously degrades or threatens the national security of the United States such that an emergency action would be impeded if the Federal Agency were to concurrently meet its historic preservation responsibilities under section 110 of the National Historic Preservation Act, as amended.

*Major Natural Disaster* means any hurricane, tornado, storm, flood, high water, tidal wave, earthquake, volcanic eruption, landslide, snowstorm, fire, explosion, or other catastrophe, in any part of the United States which, in the determination of a Federal Agency Head, causes damage of sufficient severity and magnitude such that an emergency action is necessary to the preservation of human life or property, and that such emergency action would be impeded if the Federal Agency were to concurrently meet its historic preservation responsibilities under section 110 of the National Historic Preservation Act, as amended.

[50 FR 7590, Feb. 25, 1985, as amended at 62 FR 30235, June 3, 1997]

### § 78.3 Federal Agency decision to waive responsibilities.

(a) When a Federal Agency Head determines, under extraordinary circumstances, that there is an imminent threat of a major natural disaster or an imminent threat to the national security such that an emergency action is necessary to the preservation of human life or property, and that such emergency action would be impeded if the Federal Agency were to concurrently meet its historic preservation responsibilities under section 110 of the Act, that Federal Agency Head may immediately waive all or part of those responsibilities, subject to the procedures set forth herein and provided that the agency head implements such measures or procedures as are possible in the circumstances to avoid or minimize harm to historic properties.

(b) Waiver under § 78.3(a) shall not exceed the period of time during which the emergency circumstances necessitating the waiver exist.

(c) In no event shall a Federal Agency Head delay an emergency action necessary to the preservation of human life or property for the purpose of complying with the requirements in section 110 of the Act.

### § 78.4 Federal Agency notice.

(a) Federal Agency Heads making use of the waiver authority shall, within 12 days of the effective date of the waiver, notify the Secretary of the Interior, in writing, identifying:

(1) The major natural disaster or imminent threat to the national security necessitating the waiver and the emergency action taken;

(2) The period of effect of the waiver;

(3) Which provisions of section 110 have been waived;

(4) The geographic area to which the waiver applies; and

(5) The measures and procedures used to avoid or minimize harm to historic properties under the conditions necessitating the waiver.

(b) Information copies of the notice under § 78.4(a) shall be forwarded by the Federal Agency Head to the Advisory Council on Historic Preservation and the appropriate State Historic Preservation Officer.

### § 78.5 Review by the Secretary of the Interior.

(a) If the Secretary considers that all or part of the agency's decision as outlined under § 78.4(a) is inconsistent with the intent of the Act or these regulations for use of the waiver under extraordinary circumstances, the Secretary shall notify the Agency Head