



CT WAP Weatherization Guidance No. 5

Effective Date: June 22, 2010

Updated: April 1, 2022

Compliance with DOE Historic Preservation

The purpose of this guidance is to address compliance and implementation of the Department Of Energy's policies for Historic Preservation and provide reference to updated executed agreements effecting the CT Weatherization Assistance Programs.

Note: Effective 12/1/2020 - 12/31/2030 CT executed an amendment to the programmatic agreement between the United States Department of Energy, The Connecticut Office of Policy and Management, The Connecticut Department of Energy and Environmental Protection and the Connecticut State Historical Preservation Office regarding EECBG, SEP and WAP undertakings.

Summary of DOE-NHPA Agreement

The Department of Energy (DOE) released program guidance effective February 11, 2010, to address issues surrounding compliance with the National Historic Preservation Act (NHPA) as it pertains to Weatherization, the State Energy Program and the Energy Efficiency and Conservation Block Grant.

DOE's guidance surrounds the Prototype Programmatic Agreement (Prototype PA) released on February 5, 2010 and specifies that each Grantee must meet with their State Historic Preservation Office (SHPO) and either sign the prototype PA or modify it to better encapsulate the specific needs of that state.

Note: That Connecticut has not yet entered a Programmatic Agreement with the State Historic Preservation Office and therefore the policies outlined above must remain in effect until further notice.

Prototype Programmatic Agreement

One February 5, 2010, the Advisory Council on Historic Preservation (ACHP) released the Prototype Programmatic Agreement for use by DOE, State Energy Office Grantees and individual SHPOs to address preservation requirements.

The terms of a PA that is executed by a State Energy Office Grantee will be made applicable to that state's counties, municipalities, and other local governments. This will ensure comprehensive coverage of DOE's program Grantees and Sub-Grantees

The Prototype PA exempts most routine activities with limited potential to affect historic properties from review, thus easing the burden placed on SHPOs to execute the NHPA.

The Prototype PA is a template that can be readily signed to evidence compliance; however, it may be modified by individual states as needed, (specifically Stipulations IV, V, VI, and VII).

Note: All amendments must be approved by DOE.

DOE expects that SHPOs and State Energy Office Grantees will promptly execute a PA and will file all executed PAs with ACHP prior to their use.

Roles and Responsibilities

The Prototype PA outlines the following responsibilities for DOE, the Grantee Recipient, the SHPO and ACHP in ensuring compliance with Section 106 of the NHPA:

DOE

DOE will be responsible for providing oversight of the PA, executing PAs with SHPOs, participating in the resolution of disputes between the SHPO and the Recipient, and providing technical assistance and guidance as needed.

DOE will also be responsible for government-to-government consultation with Indian tribes Recipient

The Recipient is responsible for consulting with Consulting Parties and conducting Section 106 reviews in a timely manner, preparing documentation for the SHPO and DOE, and maintaining records on undertakings. The following individuals and organizations are entitled to participate as a Consulting Party:

- SHPO
- Indian Tribes
- Local Government Representatives
- Applicants for Federal Assistance, Permits, Licenses and Other Approvals
- Certain individuals and organizations with a demonstrated interest in the undertaking may participate due to their legal and/or economic relation to the undertaking.

Recipient will be responsible for ensuring that the provisions of the PA apply to its sub- awards and is encouraged to use qualified professionals in conducting their Section 106 requirements.

Note: Undertakings that involve properties greater than fifty (50) years old and involve work that is determined to have potential to cause effects on historic properties (See Appendices A&B) must be submitted by the recipient to the SHPO for review in accordance with the PA.

SHPO

Responsible for reviewing project documentation and participation in consultation as set forth in the PA

ACHP

Responsible for providing technical guidance, participating in dispute resolutions if appropriate, and

monitoring the effectiveness of the PA.

Exemptions from Review

The following undertakings are considered exempt from the PA and are thus not subject to SHPO review:

- Undertakings that are in accordance with Appendices A or B are exempt from review, as they do not have the potential to cause effects on historic properties, even when historic properties may be present.
- If a property has been determined to be ineligible for inclusion in the National Register within the last five (5) years from the date the Recipient made its application for DOE financial assistance, then no further review is required.

Non-Exempt Review Process

As stated in the Prototype PA, if an undertaking is determined to be non-exempt, the following procedures must be followed:

Identification and Evaluation

The Recipient will establish the Area of Potential Effect (APE) for all program undertakings defined in the DOE grant agreement for the State.

The Recipient will complete the identification and evaluation of historic properties utilizing existing information including the National Register, state surveys, and county and local surveys.

The Recipient will consult with Indian tribes or NHOs to determine if there are historic properties of religious or cultural significance that were not previously identified or considered in surveys, as appropriate.

Archaeology surveys are required only for new ground disturbing project undertakings and will be limited in scope subject to the concurrence of Indian tribes or NHOs that may attach religious or cultural significance to historic properties in the project area. Project undertakings requiring more than 4 minimal ground disturbances shall be forwarded to the SHPO and THPOs or Indian tribes or NHOs concurrently for review.

To avoid potential delays, prior to initiating undertakings the SHPO may review the Recipient's scopes of work for above ground surveys and archaeology surveys that are deemed necessary to administer the Recipient's Programs and to implement the terms of the PA.

The Recipient will refer disputes regarding determinations of eligibility to DOE for review and referral to the Keeper of the National Register.

Treatment of Historic Properties

When the Recipient and the SHPO agree that an undertaking is designed and planned in accordance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR Part 68, July 12, 1995, *Federal Register*) (Standards), that undertaking will not be subject to further Section 106 review.

The Recipient and SHPO will make best efforts to expedite reviews through a finding of "No Adverse Effect with conditions" when the Recipient and the SHPO concur that plans and specifications or scopes of work can be modified to ensure adherence to the Standards. If the undertaking cannot meet the Standards or would otherwise result in an adverse effect to historic properties, the Recipient will proceed in accordance with Stipulation VII.

Resolution of Adverse Effects

The Recipient must consult with the SHPO, and Indian tribes or NHOs as appropriate, to resolve adverse effects. The Recipient will notify DOE of the pending consultation, and DOE will participate through its designated representative.

The Recipient may use standard stipulations included in Attachment A of the PA, or as negotiated as part of the PA between the SHPO and the Recipient, or if the project warrants, use of an alternate PA due to the complexity of the project activity.

Consultation will be coordinated to be concluded in 45-days or less to avoid the loss of funding. In the event the consultation extends beyond this period, DOE will formally invite the ACHP to participate in consultation. The ACHP will consult with DOE regarding the issues and the opportunity to negotiate a Memorandum of Agreement (MOA). Within seven (7) days after notification, the ACHP will enter consultation and provide its recommendation for either concluding the Section 106 review through an MOA or Chairman's comment from the ACHP to the Secretary of DOE within 21 days.

In the case of an ACHP Chairman comment, DOE may proceed once DOE provides its response to the ACHP.

Emergency Undertakings

When an emergency undertaking is required for historic properties associated with the undertakings, the Recipient will allow SHPO five (5) business days to respond, if feasible. Emergencies exist when there is a need to eliminate an imminent threat to health and safety of residents as identified by local or county building inspectors, fire department officials, or other local or county officials.

The Recipient will forward documentation to the SHPO for review immediately upon notification that an emergency exists. Documentation should include a) nature of the emergency; b) the address of the historic property involved; c) photographs showing the current condition of the building; and d) the time- frame allowed by local officials to respond to, or correct, the emergency.

The Recipient will consider mitigation measures recommended by the SHPO and implement them, if feasible.

Public and Consulting Party Involvement

The Recipient must maintain a list of undertakings and make the documentation available to the public

and will notify the SHPO if it's notified of other consulting parties or public interest in any undertakings covered under the terms of the PA.

The Recipient, independently or at the recommendation of the SHPO, may invite interested persons to participate as consulting parties in the consultation process for adverse effects.