

DEPARTMENT OF THE INTERIOR**National Park Service****36 CFR Part 61****RIN 1024-AC44****Procedures for State, Tribal and Local Government Historic Preservation Programs****AGENCY:** National Park Service, Interior.**ACTION:** Proposed rule.

SUMMARY: The National Park Service (NPS) proposes to revise the requirements for State and local historic preservation programs as well as the way NPS administers these programs. The proposed changes are intended to provide more flexibility in State historic preservation office staffing, State Historic Preservation Review Board membership and operations, and carrying out State Historic Preservation Officer responsibilities. This proposed revision also officially recognizes the growing role of tribal historic preservation programs. Some of the proposed changes are necessary because of the 1992 amendments to the National Historic Preservation Act (the Act). Other changes are proposed to reduce the regulatory burden on, and provide more flexibility for, State and local historic preservation programs as well as NPS. Much of this has been done pursuant to the President's Regulatory Reinvention Initiative and Executive Order 12866. Also, the evolution and growing maturity of State and local offices in the national historic preservation program have eliminated the need for some of the more detailed and restrictive requirements. Repetition, advice, and quotations from the Act are no longer needed and are removed from this regulation.

DATES: Written comments will be accepted through December 2, 1996.

ADDRESSES: All comments concerning this proposed regulation should be addressed to: Chief, Heritage Preservation Services Division, National Center for Cultural Resource Stewardship and Partnership Programs, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127; Attention: John W. Renaud. Comments may be hand-delivered or overnight mailed to 800 North Capitol Street, NW., Suite 200, Washington, D.C. 20002. Comments may be sent FAX'ed to 202-343-6004 or by E-mail to John_Renaud@nps.gov.

FOR FURTHER INFORMATION CONTACT: John W. Renaud, 202-343-1059, FAX 202-343-6004, John_Renaud@nps.gov (E-mail).

SUPPLEMENTARY INFORMATION:**Background**

36 CFR Part 61 is promulgated pursuant to the Act (16 U.S.C. 470 *et seq.*) that created the national historic preservation program as a partnership among Federal, State, tribal and local governments, nonprofit organizations, commercial organizations, and private individuals. The Act also created a mechanism for funding this partnership, the Historic Preservation Fund. This partnership is dedicated to the preservation of irreplaceable historic and archeological resources that provide the foundation of the Nation's heritage. Through this partnership the vital legacy of cultural, educational, aesthetic, inspirational, and economic benefits of our historical patrimony will be maintained and enriched for future generations of Americans. 36 CFR Part 61 provides the regulatory framework for voluntary participation by State, local, and tribal governments in the national historic preservation program. These programs are administered by the Secretary of the Interior operating through the Director of the NPS. As of the date of publication of this proposed revision to this rule, all 59 States and territories participate in the program, as do more than 1000 local governments. The tribal portion (currently reserved) of this proposed regulatory revision could lead to the participation in the national historic preservation program of the more than 500 federally recognized Indian tribes, Native Alaskan corporations, and Native Hawaiian organizations. When guidance on tribal programs is promulgated and tribal historic preservation programs are approved pursuant to the Act, a tribal government will have a role in the national historic preservation program that is similar to the role of a State. NPS is responsible for providing national standards, guidance, and technical assistance to the State and local historic preservation programs. NPS also provides quality control and an appeals mechanism for the activities funded by the Historic Preservation Fund grants-in-aid and matching monies. The responsibility for most decision making in the programs and the selection of specific projects and activities lies with each State, tribal, and local government based on its needs and the needs of its customers. Public participation is a crucial part in guiding the course of State and local historic preservation programs.

This proposed revision to 36 CFR Part 61 is necessary because the current regulation (promulgated in 1984) has become outmoded and incomplete due

to changes in statute and the evolution of the national historic preservation program. The National Historic Preservation Act Amendments of 1992 (Title XL of Pub L. 102-575) made a number of substantive and technical changes to the subject matter covered by these rules. Whole new program mandates (such as tribal preservation programs) were added to the Act and many refinements were made to existing programs such as State Historic Preservation Officer responsibilities and the periodic evaluation of State programs. Much of the language in the 1984 regulation dealt with the establishment of the certified local government (CLG) program and the establishment of a system for periodic evaluation of State Historic Preservation Offices. These programs now have been in operation for over a decade. The regulation needs to reflect the current maturity of these programs. For some topics (such as the periodic evaluations of State programs), the 1984 regulation set up a system that was more restrictive than is now deemed necessary. This regulatory revision proposes to build more flexibility into the regulation, rely more on State and local government programs, and reduce the standard, minimum oversight while retaining the ability to increase oversight in individual cases when needed.

Aside from the 1992 Amendments to the Act, NPS became aware of the need for changes to these rules through day-to-day administration of the program, as well as through communication with partners in the national historic preservation program.

Revision of 36 CFR Part 61 is the appropriate means to solve many of the problems identified above. The 1984 regulation is so narrowly defined that it limits the range of approaches available both to the Secretary in the administration of the program and to State and local governments in running the day-to-day operations of the programs. The national historic preservation program has grown in competency, responsibility, and accountability over the years. There also has been a maturation in the professional practice of historic preservation. There is every reason to believe that these trends will continue. 36 CFR Part 61 needs to acknowledge that change will be constant. By placing more reliance on State and local governments, by eliminating unnecessary detail and procedures, and by expressing a more flexible oversight philosophy, 36 CFR Part 61 can reduce the need for a future rulemaking.

The penalties for noncompliance as specified in this proposed rulemaking

involve the ability to retain approved program status. These are mandated by statute. The regulation also refers to government-wide requirements for Federal grants that include noncompliance penalties ranging from increased oversight and reporting, to recovery of Federal funds, to suspension from the program until requirements are met. Monitoring these regulatory requirements is accomplished through a periodic review of State Programs; with quality control of documents such as National Register nominations and Preservation Tax Incentive applications that are forwarded by the State to NPS; and by evaluation of standard reports on the accomplishments made using Federal grant money.

36 CFR Part 61 provides the general procedural framework for State, local, and tribal (reserved) historic preservation programs. Procedures can be found elsewhere for specific activities carried out by those programs and referred to in this document, e.g., 36 CFR Part 60 for the National Register of Historic Places, 36 CFR Part 67 for Federal Historic Preservation Tax Incentives, etc. National standards and guidance on general topics of applicability such as survey, planning, treatment of historic properties, and professional qualifications can be found in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation that can be obtained from the NPS.

Section-by-Section Analysis

This proposed revision includes a number of general and organizational changes to the regulation promulgated in 1984. The title of the regulation has been changed by removing the word "approved" and by adding tribal programs. The word "approved" also has been deleted from section titles. The word "approved" implied too much emphasis on the oversight role of the NPS. While oversight is part of the purpose of the regulation, it is not the entire focus of it. 36 CFR Part 61 defines the roles for all of the national historic preservation program partners. These responsibilities, not the oversight, are the key items of this regulation. Tribal programs were added to the title pursuant to section 101(d) of the Act, and in recognition of their growing role in the national historic preservation program partnership.

The sections of 36 CFR Part 61 have been reordered to put the State-related sections together, the local government sections together, and the tribal sections together. Previously, all "approval" sections were together and all grants sections were together. This proposal

reduces the need for the user to jump around the regulation to find needed information. Sections 61.8 and 61.9 have been reserved for tribal historic preservation programs. These sections will be published in the Federal Register at a later date.

All repetition has been eliminated within 36 CFR Part 61. Quotations from the Act have been eliminated. In the 1984 promulgation of this regulation, whole sections of the Act were repeated with little expansion or interpretation. In cases where little elaboration of statutory language was needed (such as with most of the responsibilities of the State Historic Preservation Officer), this proposed revision provides a citation to the specific section of the Act rather than quoting it.

Language has been removed when it is unnecessary for comprehension of a topic. Procedural details and titles that are subject to change have also been removed. Examples include (1) the listing of subparts in the definition of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, (2) the listing of how the NPS will organize its periodic evaluation of State Historic Preservation Offices, and (3) the statement of how often the NPS will issue revisions to the National Register Programs Guideline.

Advice and examples, such as possible methods to obtain temporary professional assistance, also have been removed from the regulation. Numerous editorial changes have also been made that will not be discussed in detail in this document.

Section 61.1 Authorization

This section has been revised to eliminate redundancy and to add tribal references.

Section 61.2 Definitions

Those terms defined in the Act that do not need any regulatory interpretation have been dropped from this proposal. Instead, specific cross references to the sections of the Act containing definitions have been provided.

Section 61.3 Implementation of This Part 61

A new subsection has been added that describes the NPS approach to administering the programs described in 36 CFR Part 61. It is a flexible approach drawn largely from OMB Circular A-102, as implemented in the Department of Interior through 43 CFR Part 12.

A new subsection has been added that authorizes State, tribal, or local government fiscal audit and management systems to be substituted

for comparable Federal procedures upon approval by the Secretary. Examples include accounting methods, cash management and internal audit controls and procedures. In the spirit of reinventing government, this revision recognizes the competence, objectivity and accountability of governments at all levels. Prior approval by the Secretary protects the interests of the Federal Government and the intent of the Act.

The grandfather clause (formerly located in subsection 61.4(d) that concerns State staff) has been moved to this section and broadened to include State Review Board members and CLG Commission members. Whenever the mandatory historic preservation professional qualification standards change, an individual officially qualified under the former Standards and still serving on State staff, a State Review Board, or a CLG commission may be considered to be professionally qualified as long as he/she continues to hold that position.

Section 61.4 State Programs 61.4(b)

The quotation of State Historic Preservation Officer responsibilities enumerated in the Act has been replaced by a citation to Section 101(b)(3) of the Act.

61.4(b)(1)

An updated description of comprehensive statewide historic preservation planning has been added that more clearly describes the purpose of the statewide plan.

61.4(b)(2)

This new paragraph has been added to clarify that, though each State is required to conduct surveys for "historic properties" (i.e., properties eligible for listing in the National Register of Historic Places) and maintain an inventory of such properties, it is permissible, and important for each State to maintain an inventory of what is known about the presence or absence of historic properties within its boundaries. For example, when choosing a location for a new economic development project so as not to harm historic properties, it would be helpful and cost effective for project planners to know that an area has been intensively surveyed two years previously for both archeological and architectural/historical resources and nothing was found.

61.4(b)(3)

The subsection regarding public participation was formerly subsection 61.4(f) and has been revised to reflect

the flexibility that is possible (e.g., within the National Register nomination process) while meeting the requirements of the Act.

61.4(b)(4)

This subsection on contracts and cooperative agreements was formerly subsection 61.4(g).

61.4(c)

This new subsection acknowledges that there may be temporary situations during which it would not make sense to require a State Historic Preservation Officer to carry out all of the statutory responsibilities. Examples might include emergencies or other conditions that compel a State Historic Preservation Officer to concentrate staffing and financial resources on certain activities and thus delay or curtail other responsibilities.

61.4(d)

State Program Review. This section, formerly subsection 61.4(c), has been revised to reflect the changes made by the 1992 Amendments to the Act and to remove the procedural details from the regulation.

61.4(d)(1)

Pursuant to the Act, State programs now will be evaluated for "consistency" rather than "compliance" with the Act. The evaluation will take place at least once every four years rather than once every two to three years. This proposed revision reflects the flexibility provided for in the Act without preventing a more frequent program evaluation if necessary. The former detailed description of how each evaluation will be conducted has been removed because experience since 1984 has revealed that it restricted the flexibility necessary to administer the program.

61.4(d)(2)

Proposed new language in this paragraph provides more flexibility in the process used to evaluate State programs.

61.4(d)(3)

New language has been proposed that reflects the 1992 Amendments to the Act. State program approval will be continued if the program is "consistent with the Act," and disapproval will take place only if a State is found to have "major program aspects" inconsistent with the Act. Minor inconsistencies, even though they may require correction, cannot be grounds for disapproving the entire program as part of the State program review process. A technical correction has been made to

make it clear that the Secretary has the authority to take immediate action to disapprove a State program if the situation warrants.

61.4(e)

State Staff. The proposed changes to this subsection, formerly subsection 61.4(d), are largely editorial and technical. Inasmuch as Appendix A has been eliminated (see below), the historic preservation professional qualifications now refer to the "Secretary's Standards." The annual certification that the State has a fully qualified staff has been removed from the regulation. By applying for its annual grant, the State Historic Preservation Officer is confirming that all program prerequisites (including a qualified staff) are, and will continue to be, met. Each State generally can be relied upon to inform NPS when there is a vacancy in required staff. Consequently, detailed notification requirements are no longer needed in this regulation.

61.4(f)

State Review Board. Formerly subsection 61.4(e), the professional disciplines required in this subsection for each State's Review Board have been changed to match the requirements for State staff; i.e., each Review Board must include the disciplines of history, architectural history and either prehistoric or historic archeology. Architecture has been dropped as a national requirement but most likely will be represented on Review Boards because of the usefulness of that expertise. Following the logic of the expanded statutory definition of "State Historic Preservation Review Board" in the Act (see Section 301(12)), the required "professional majority" in Review Board membership may be drawn from any of the disciplines defined in the Secretary's historic preservation professional qualification standards. Each State can be relied upon to select a professional composition for its Review Board that best fits the State's historic preservation needs within the State. These "professional qualification" requirements apply to whatever State board or boards, commissions, etc., that carry out the Review Board responsibilities specified in this regulation that normally require access to specialized historic preservation expertise.

The minimum required number of Review Board meetings has been changed from three to one per year. Each State is expected to convene its Review Board as often as is necessary to complete its work in a timely fashion.

The minimum number of meetings required will vary from State to State and from year to year. The regulatory change is being proposed to avoid requiring meetings that might not be needed.

The language regarding Appendix A, the annual certification of the State Review Board, and vacancy on a State Review Board has been removed for reasons that parallel those described above for the revisions to section 61.4(e).

Section 61.5 Grants to State Programs

The proposed changes to this section, formerly § 61.6, include a new name, and the changes are all editorial, technical, or discussed in the general changes section.

Section 61.6 Certified Local Government Programs

This section, formerly § 61.5, has been renamed, reoriented, reorganized and greatly reduced in length. A large number of editorial changes have been made in this section, but relatively few substantive changes are proposed. In the 1984 version, much of the language in this section mandated how each State must establish its procedures for certifying local governments. Since 1985, every eligible State has had NPS-approved procedures. In this proposed revision, the lengthy and detailed language on how to establish State procedures has been replaced by much shorter language concerning the maintenance and amendment of State procedures.

61.6(e)(i)

Pursuant to the 1992 Amendments to the Act, this subsection has been changed to require that State and local designation and protection legislation meet the definition of "designation" and "protection" in the Act.

Section 61.7 Subgrants to Certified Local Governments

This section has been renamed, reoriented, reorganized and greatly reduced in length. The changes parallel those described above for the revisions to Section 61.6. In addition, the following revisions are proposed:

Inasmuch as CLG subgrants are treated like any other subgrant, all language specifying standard subgrant requirements has been eliminated from this section and replaced with a single statement that standard requirements must be met as specified in the National Register Programs Guideline.

The old section exempting the District of Columbia from this CLG subgrant section has been eliminated as

unnecessary inasmuch as it is exempted in Section 61.6 from the entire CLG program.

Section 61.8 Tribal Programs [Reserved]

This new section has been added and reserved for later use.

Section 61.9 Grants to Tribal Programs [Reserved]

This new section has been added and reserved for later use.

Section 61.10 Waiver

This section, formerly § 61.8, is redesignated § 61.10 and is mostly unchanged.

Section 61.11 Information Collection Requirements [Reserved]

This section, formerly § 61.9, is redesignated and reserved. After OMB approval of the information collection requirements, this section will be updated at the final rule to reflect program changes and the Paperwork Reduction Act of 1995.

Appendix A to Part 61—Professional Qualifications Standards

This Appendix has been dropped as redundant to the historic preservation professional qualification standards found in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.

Appendix B to Part 61—Information sources

This revision to 36 CFR Part 61 proposes the elimination of Appendix B as growing too large, too quickly becoming out of date and not as necessary as it was in 1984. The 1984 version contained names, addresses and phone numbers of NPS Regional Offices and State Historic Preservation Offices; there were no CLGs at that time. Some of that information became out of date within a year of publication. An Appendix B updated to 1996 would become almost twenty times longer with the addition of CLGs. At some point, tribal historic preservation offices, and Federal agency historic preservation offices would need to be added. A list with more than a thousand entries (not including tribes, Federal agencies and new CLGs) would become out of date faster than the 1984 list of 62 entries. The growth of technological tools, such as E-mail, FAX machines and the Internet, makes the need to have such a list of information sources in 36 CFR Part 61 unnecessary.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to

afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this rule to the address noted at the beginning of this rulemaking. The NPS will review all comments and consider making changes to the rule based upon an analysis of the comments.

Drafting Information

The primary author of this rule is John W. Renaud, Heritage Preservation Services Division, National Center for Cultural Resource Stewardship and Partnership Programs, National Park Service, P.O. Box 37127, Washington, DC 20013-7127.

Paperwork Reduction Act

The collection of information contained in this section has previously been approved by the Office of Management and Budget under 44 U.S.C. 3507, *et seq.*, and assigned clearance number 1024-0038. This approval expired in January 1996 and renewal of this approval has been submitted to OMB. The information is being collected as part of the process of reviewing the procedures and programs of State and local governments participating in the national historic preservation program. The information will be used to evaluate those procedures and programs. The obligation to respond is required to obtain a benefit.

The public reporting burden for the collection of this information is estimated to average 14.06 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, National Park Service, 800 North Capitol Street, Washington, D.C. 20001; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior (1024-0038), Washington, D.C. 20503.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The economic effects of this rulemaking are negligible.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rule will not impose a cost of \$100 million or more in any given year on local, State, or tribal governments or private entities.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

- (a) increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;
- (b) introduce incompatible uses which compromise the nature and characteristics of the area or cause physical damage to it;
- (c) conflict with adjacent ownership or land uses; or
- (d) cause a nuisance to adjacent owners or occupants.

Based on this determination, the regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

List of Subjects in 36 CFR Part 61

Grant programs-natural resources, Historic preservation, Reporting and recordkeeping requirements.

In consideration of the forgoing, 36 CFR Chapter I is proposed to be amended as follows:

1. 36 CFR Part 61 is revised to read as follows:

PART 61—PROCEDURES FOR STATE, TRIBAL AND LOCAL GOVERNMENT HISTORIC PRESERVATION PROGRAMS

Sec.

- 61.1 Authorization.
- 61.2 Definitions.
- 61.3 Implementation of this part 61.
- 61.4 State programs.
- 61.5 Grants to State programs.
- 61.6 Certified local government programs.
- 61.7 Subgrants to certified local governments.
- 61.8 Tribal programs. [Reserved]
- 61.9 Grants to Tribal programs. [Reserved]
- 61.10 Waiver.
- 61.11 Information collection. [Reserved]

Authority: 16 U.S.C. 470 *et seq.*

§ 61.1 Authorization.

The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*):

(a) Requires the Secretary of the Interior (Secretary) to promulgate regulations for:

- (1) Approving State historic preservation programs;
- (2) Certifying local governments to carry out the purposes of the Act;
- (3) The allocation by the State of a share of the grants received by the State under the Act to certified local governments (CLGs); and
- (4) Assisting Indian tribes in preserving their particular historic properties.

(b) Directs the Secretary to administer a program of grants-in-aid to the States and Indian tribes for historic preservation projects and programs approved by the Secretary; and

(c) Requires the Secretary to make available information concerning professional standards, methods, and techniques for the preservation of historic properties and the administration of historic preservation programs.

§ 61.2 Definitions.

As used in this part:

(a) All terms defined in the National Historic Preservation Act of 1966, as amended, have the same meaning as provided by that statute. See especially Sections 101(a), 101(b)(1), 101(c)(4), 108 and 301 of the Act.

(b) *Act* means the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470 *et seq.*)

(c) *Chief elected local official* means the elected head of a local government.

(d) *The National Register Programs Guideline* means the official NPS document that establishes administrative procedures and guidelines for historic preservation programs of the National Trust for Historic Preservation, and the State, tribal and local governments supported by the Historic Preservation Fund (HPF) or matching funds.

(e) *The Secretary's Standards and Guidelines* means the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, that provide broad national policy guidance on archeological and historic preservation practices, methods and qualifications.

(f) *State historic preservation program* or *State program* means those activities listed in Section 101(b)(3) of the Act as responsibilities of the "State Historic Preservation Officer".

§ 61.3 Implementation of this part 61.

(a) *NPS policy of management by exception.* The regulations in this part will be implemented in such a way, where it is feasible to be consistent with its terms, as to:

(1) Rely to the maximum extent feasible on State, tribal and local government systems of financial and program administration that meet Federal standards;

(2) Presume that historic preservation programs are managed in an accountable way unless situations indicate the contrary; and

(3) Limit the use of direct Federal management review procedures to high risk situations, to new programs or to activities more appropriately overseen at the Federal level.

(b) At the discretion of the Secretary, each State, tribal and local government may substitute its own fiscal audit and management systems for comparable fiscal audit and management requirements issued by the Secretary, so long as the system establishes and maintains substantially similar accounting standards and provides for independent peer review.

(c) *The National Register Programs Guideline.* NPS will maintain this Guideline to ensure that each State, certified local government, tribal government, and the National Trust for Historic Preservation meets the requirements of the Act and of applicable regulations in performing historic preservation activities, pursuant to the Act.

(d) *The Secretary of the Interior's Standards and Guidelines.* The National Register Programs Guideline will include The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. The Standards and Guidelines will be used by NPS as the technical performance standards for matters covered by this part.

(e) Each State staff, State Review Board member and certified local government Commission member approved by the Secretary as meeting the Secretary's Professional Qualification Standards will retain that status, regardless of any subsequent changes in the Standards, until such time as that individual no longer is employed by the State office, serves on the State Review Board, or serves on the certified local government Commission with which that individual was affiliated as of the date of that individual's approval.

(f) Publications mentioned in this part can be obtained by contacting: Heritage Preservation Services Division, National Center for Cultural Resource Stewardship and Partnership Programs, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127.

§ 61.4 State programs.

(a) A State Historic Preservation Officer (SHPO) will be appointed or designated by the Governor to administer the State historic preservation program.

(b) It will be the responsibility of the SHPO to carry out the duties and activities described in section 101 (b)(3) of the Act. In performing those duties and activities:

(1) The SHPO will carry out an historic preservation planning process that includes the development and implementation of a comprehensive statewide historic preservation plan that provides guidance for effective decision making about historic and cultural resource preservation throughout the State.

(2) In addition to State activities to survey and maintain inventories of historic properties, eligible activities also include efforts to record a broad range of properties in order to obtain:

(i) Comparative data valuable in determining the National Register eligibility of properties;

(ii) Information on properties that may become eligible for the National Register of Historic Places with the passage of time; and/or

(iii) Information on the absence of historic properties to be used in planning for public and private development projects.

(3) The State will provide for adequate public participation in the State historic preservation program as a whole. As part of the process of recommending a property to the National Register, the State will comply with the consultation and notification procedures contained in 36 CFR part 60. The State may authorize other persons or entities to fulfill the notice requirements in 36 CFR part 60. The State also may authorize the Local Preservation Commission of a certified local government to act for the State Review Board for the purpose of considering National Register nominations within its jurisdiction, provided the Commission meets the professional qualifications required for the State Review Board when considering such nominations. With the consent of all property owners in a nomination and the chief elected local official, the State Review Board or the Local Commission acting on its behalf may consider the nomination without a face-to-face meeting.

(4) The State may carry out all or any part of its responsibilities by contract or cooperative agreement with any qualified nonprofit organization, educational institution, or otherwise pursuant to State law. However, the

State may not delegate its responsibility for compliance with grant assistance terms and conditions.

(c) The Secretary will consider individual State proposals that include fewer than all of the SHPO duties in the Act in cases where the historic resources and needs would be better served for a specified period by implementing an alternative approach.

(d) *Procedures for review and approval of State historic preservation programs.* (1) The Secretary will evaluate each State program for consistency with the Act periodically, but not less often than every four years, and will provide the State with written findings and analyses that highlight program strengths and weaknesses. A State program will be approved by the Secretary if the Secretary determines that it meets the program requirements of paragraphs (a), (b), (e) and (f) of this section.

(2) The Secretary may use on-site and/or off-site inquiries to perform the evaluation.

(3) *Approval method.* (i) Each State with a program determined to be consistent with the Act will receive timely written notice from the Secretary that its approved status is continued.

(ii) Each State found to have major program aspects not consistent with the Act will receive timely written notice of deficiencies from the Secretary, along with required actions for correcting them. Unless circumstances warrant immediate action, the Secretary will defer making a decision on program approval for a specified period to allow the State to correct deficiencies or present a justifiable plan and timetable for correcting deficiencies. During this period, the State has the opportunity to appeal to the Secretary any findings and requirements.

(iii) A State successfully resolving deficiencies will receive timely written notice from the Secretary that its approved status is continued. Once approved status is renewed, a State generally will not be reviewed until the next regular evaluation period, although evaluations may be conducted more often if the Secretary deems this necessary.

(iv) A State with deficiencies that warrant immediate action or that remain after the expiration of the period specified pursuant to paragraph (d)(3)(ii) of this section will receive written notice from the Secretary that its approved status is removed. The Secretary will then initiate financial suspension and other actions in accordance with administrative guidelines specified in the National

Register Programs Guideline and applicable regulatory requirements.

(4) Instructions on carrying out the evaluation process are provided in the National Register Programs Guideline.

(e) A professionally qualified staff will be appointed or employed by the State historic preservation program.

(1) Except as approved pursuant to paragraph (e)(2) of this section, the staff will include at a minimum, one individual meeting The Secretary's Standards and Guidelines professional qualifications for history, one individual meeting the qualifications for historic or prehistoric archeology and one individual meeting the qualifications for architectural history. The State will determine the qualifications for staff positions in addition to this required minimum.

(2) The Secretary will consider individual proposals made by States whose historic resources, needs or circumstances would be better served or met by an alternative staff composition.

(3) When a staff position required by paragraph (e)(1) of this section becomes vacant, the State will ensure that the vacancy is filled in a timely manner. In the interim, the State will ensure that technical matters are addressed by appropriately qualified individuals. A vacancy in a required position that persists for more than six months will be cause for review and appropriate action by the Secretary.

(f) An adequate and qualified State historic preservation Review Board will be appointed by the SHPO unless an alternative method of appointment is provided by State law.

(1) All Review Board members will have demonstrated competence, interest or knowledge in historic preservation. A majority of Review Board members will meet the Secretary of the Interior's Professional Qualification Standards. Among the members meeting the Professional Qualification Standards will be individuals who meet the Standards for history, prehistoric archeology or historical archeology, and architectural history. One person may meet the Standards for more than one required discipline. The State will determine qualifications for any additional Review Board members.

(2) The Secretary will consider individual proposals made by States whose historic resources, needs or circumstances would be better served or met by an alternative Review Board composition.

(3) When a required Review Board position becomes vacant, the State will ensure that the vacancy is filled in a timely manner. In the interim, the State will ensure that the Review Board has

access to advice from appropriately qualified individuals. A lapse of more than one year in filling the vacancy will be cause for review and appropriate action by the Secretary.

(4) The State Review Board will meet at least once a year and will adopt written procedures governing its operations consistent with the provisions of this section and with the National Register Programs Guideline.

(5) State Review Board responsibilities include, but need not be limited to, the following:

(i) Reviewing and making recommendations on National Register nomination proposals;

(ii) Participating in the review of appeals to National Register nominations; and

(iii) Providing advice to the State on the full range of Historic Preservation Fund-supported activities, as described in Section 101 (b)(3) of the Act.

§ 61.5 Grants to State programs.

(a) Each State with an approved State program will be eligible for grants-in-aid from the Historic Preservation Fund (HPF).

(b) Administration of HPF matching grants-in-aid will be in accordance with the Act, the National Register Programs Guideline, OMB Circular A-128 and 43 CFR part 12. Failure by a State to meet these requirements will be cause for appropriate action by the Secretary.

§ 61.6 Certified local government programs.

(a) All approved State programs will provide a mechanism for certifying local governments (CLGs) to participate in the National program.

(b) All approved State historic preservation programs will maintain procedures approved by the Secretary for the certification of local governments. Procedures also will be maintained for removal of certified local government status for cause. The State will submit any proposed amendments to its procedures to the Secretary for approval. The Secretary will act on such proposals within 45 days of receipt.

(c) When a local government certification request has been approved by the State in accordance with the State's approved certification process, the State will prepare a written certification agreement that lists the specific responsibilities of the local government. The State will submit to the Secretary such information as is necessary for the Secretary to certify the local government pursuant to the Act and this part. If the Secretary does not take exception to the proposed certification within 15 working days of

receipt, the local government will be regarded as certified by the Secretary.

(d) Beyond the minimum responsibilities set out in the Act for all CLGs, the State may make delegations of responsibility to individual CLGs. However, these delegations may not include the State's overall responsibility derived from the National Historic Preservation Act, as amended, or where specified by law or regulation.

(e) The State must ensure that each local government satisfies the following minimum requirements as conditions for certification. Each certified local government will:

(1) Enforce appropriate State or local legislation for the designation and protection of historic properties. The State will define what constitutes appropriate legislation, as long as:

(i) Designation provisions include the identification and registration of properties for protection that meet criteria established by the State or the locality for significant historic and prehistoric resources within the jurisdiction of the local government;

(ii) Protection provisions include a local review process under State or local law for proposed demolitions of, changes to, or other action that may affect historic properties as described in paragraph (e)(1)(i) of this section; and

(iii) The legislation otherwise is consistent with the Act.

(2) Establish by State or local law and maintain an adequate and qualified historic preservation review commission (Commission). All Commission members will have a demonstrated interest, competence or knowledge in historic preservation.

(i) The State will encourage certified local governments to include individuals meeting the Secretary's Professional Qualification Standards among the membership of the Commission, to the extent that such individuals are available in the community.

(ii) The State may specify the minimum number of Commission members that must meet the Secretary's Professional Qualification Standards. The State may also specify which, if any, of the disciplines listed in the Standards must be represented on the Commission. Membership requirements set by the State for Commissions will not be more stringent or comprehensive than its requirements for the State Review Board.

(iii) Provided that the Commission is otherwise adequate and qualified to carry out the responsibilities delegated to it, a local government may be certified without the minimum number or types of disciplines established in

State procedures, if it can demonstrate that it has made a reasonable effort to fill those positions, or that an alternative composition of the Commission best meets the needs of the Commission and of the local government.

(iv) The State will make available to each Commission orientation materials and training designed to provide a working knowledge of the roles and operations of Federal, State and local historic preservation programs, and historic preservation in general.

(3) Maintain a system for the survey and inventory of historic properties. The State will ensure that such systems and the data that they produce can be readily integrated into statewide inventories and appropriate State and local planning processes.

(4) Provide for adequate public participation in the historic preservation program as a whole. The State will provide each CLG with appropriate guidance on mechanisms to ensure adequate public participation in the local historic preservation program.

(5) Satisfactorily perform the responsibilities delegated to it under the Act. The State will monitor and evaluate the performance of each CLG according to written standards and procedures established by the State. If a State evaluation of a CLG's performance indicates that such performance is inadequate, the State will suggest ways to improve performance. If, after a period of time stipulated by the State, the State determines that there has not been sufficient improvement, it may recommend to the Secretary that the local government be decertified. If the Secretary does not object within 30 working days of receipt, the decertification will be considered approved by the Secretary.

(f) Effects of certification include:

(1) Inclusion in the process of nominating properties to the National Register of Historic Places in accordance with sections 101 (c)(2)(A) and (c)(2)(B) of the Act. The State may delegate to a CLG any of the responsibilities of the SHPO and the State Review Board in processing National Register nominations as specified in 36 CFR part 60, except for the authority to nominate properties directly to the National Register. A CLG may make nominations directly to NPS only when the State does not have an approved program pursuant to § 61.4.

(2) Eligibility to apply for a portion of the State's annual Historic Preservation Fund (HPF) grant award. At least 10 percent of the State's annual HPF grant award will be set aside for transfer to CLGs.

(g) The District of Columbia will be exempted from the requirements of this section because there are no subordinated local governments in the District. If a territory believes that its political subdivisions lack authorities similar to those of local governments in other States, and hence cannot satisfy the requirements for local government certification, it may apply to the Secretary for exemption from the requirements of this section.

(h) *Procedures for direct certification by the Secretary where there is no approved State program pursuant to § 61.4.* To the extent feasible, the Secretary will ensure that there is consistency and continuity in the CLG program of a State that does not have an approved State program.

(1) Where there is no approved State program, local governments wishing to be certified must apply directly to the Secretary.

(2) The application must demonstrate that the local government meets the specifications for certification set forth in paragraph (e) of this section.

(3) The Secretary will review certification applications under this paragraph (h) and take action within 90 days of receipt.

§ 61.7 Subgrants to certified local governments.

(a) At least 10 percent of each State's annual Historic Preservation Fund (HPF) grant award will be designated for transfer by the State to CLGs as subgrants. In any year that the annual HPF State grant appropriation exceeds \$65,000,000, one half of the amount over \$65,000,000 will also be transferred to CLGs according to procedures to be provided by the Secretary.

(b) Each CLG will be eligible to receive funds from the 10 percent (or greater) CLG share of the State's total annual HPF grant award. The State is not required to award funds to all governments eligible to receive funds.

(c) Each State will maintain a procedure approved by the Secretary for allocating the CLG share of its annual HPF grant award. The procedure will provide a clear basis for funding decisions and ensure that no CLG receives a disproportionate share of the allocation. The State will submit any proposed amendments to its procedure to the Secretary for approval. The Secretary will act on such proposals within 45 days of receipt.

(d) Each State will notify annually each eligible local government of its opportunity to apply for funding as well as what is entailed in the application and project selection process.

(e) Each CLG receiving an HPF grant award from the CLG share will be considered a subgrantee of the State. The State will ensure that each CLG adheres to all applicable requirements of the National Register Programs Guideline. The State may require specific uses of funds subgranted to CLGs. Subgranted monies will not be applied as matching share for any other Federal grant.

(f) Where there is no approved State program pursuant to § 61.4, the method for allocating funds to CLGs in that State will be determined by the Secretary in accordance with the procedures set

forth for the State in this § 61.7. To the extent feasible, the Secretary will ensure consistency and continuity in the funding allocation policy of the CLG program for a State that does not have an approved historic preservation program.

§ 61.8 Tribal programs. [Reserved]

§ 61.9 Grants to Tribal programs. [Reserved]

§ 61.10 Waiver.

The Secretary may waive any of the requirements of the rules in this part that are not mandated by statute or by

other applicable regulations, if, in the Secretary's written opinion, the historic preservation program would benefit from such waiver and the purposes, conditions, and requirements of the National Historic Preservation Act of 1966, as amended, would not be compromised.

§ 61.11 Information collection. [Reserved]

Dated: September 18, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

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