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: Final rule.

SUMMARY: Through this rule, the National Park Service (NPS) revises requirements (and the description of its own administrative procedures) for State, tribal, and local historic preservation programs carrying out actions under the National Historic Preservation Act of 1966, as amended. Many revisions derive from the 1992 amendments to the National Historic Preservation Act. Other changes reduce the regulatory burden on, and provide more flexibility to, State, tribal, and local historic preservation programs in response to the President's Regulatory Reinvention Initiative and Executive Order 12866. Still others are made in recognition of the changing and maturing professional practice of historic preservation nationwide.

DATES: This rule is effective on June 7, 1999.

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SUPPLEMENTARY INFORMATION:

Background

36 CFR part 61 is promulgated pursuant to the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470 *et seq.*) which creates the national historic preservation program, which is a partnership among Federal, State, tribal, and local governments, nonprofit and for profit organizations, and individual citizens. The Act also provides funding for this partnership through the Historic Preservation Fund. This partnership is dedicated to the preservation of historic properties (as defined by the Act) nationwide which provide the foundation of our Nation's rich and irreplaceable heritage. Through this partnership, the vital legacy of cultural, educational, aesthetic, inspirational, and economic benefits of our patrimony is 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 this national program administered by the Secretary of the Interior through the Director of the National Park Service (NPS). As of the date of publication of this rulemaking, all 59 States (as defined by the Act) participate as do more than 1,100 local governments and 17 tribal governments. The tribal sections (currently reserved) of this rule, which will address more particularly the needs of tribes participating in this program, may eventually lead to the participation in the national historic preservation program of the more than 300 federally recognized Indian tribes. NPS is responsible for providing national standards, guidance, and technical assistance to the State, tribal, and local historic preservation programs participating in the national historic preservation program. NPS also provides quality control for the activities funded by the Historic Preservation Fund grants-in-aid and matching monies. The responsibility for most decision making in the State, tribal, and local government programs and the selection of specific projects and activities lies largely with each State, tribal, and local government based on its particular needs. Public participation is a crucial part in guiding the course of this national historic preservation program.

This revision to 36 CFR part 61 is needed as the former regulation (promulgated in 1984) became outmoded due to changes in statute and the natural 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 as well as technical changes to the subject matter covered by these rules. Through day-to-day administration of the program, as well as through communication with partners in the national historic preservation program, NPS has become aware of the need for other changes to these rules.

One of the significant policy changes made to the Act in the 1992 amendments directed a substantive and meaningful role for Indian tribes within the national historic preservation program. The United States has a unique legal relationship with Indian tribes set out in the Constitution of the United States as well as in treaties, statutes, and Federal court decisions. The full participation of tribes within the national historic preservation program is a national policy goal and is recognized within this rule.

Pursuant to the 1992 amendments to the Act, Indian tribes can be approved by the Secretary of the Interior to assume formal responsibility for carrying out on tribal lands any or all of those functions previously assigned to State Historic Preservation Officers. Indian tribes can use (and to date 17 tribes have used) the statutory language of that amendment and the existing regulatory framework set out in this rule and in related regulations to assume those formal responsibilities. Sections 61.8 and 61.9 of this rule (currently reserved) will address in more detail the process for tribal assumption of program responsibilities. These two sections will also be used to implement the statutory mandate for providing greater flexibility in the application of statutory and regulatory requirements to tribal programs, in order to accommodate tribal values to the greatest extent feasible.

Sections 61.8 and 61.9 which are currently under development by NPS will be issued for general review and comment in the **Federal Register** and eventually issued for effect. In addition to those sections, other changes to this rule may be proposed in further recognition of the role of tribes in this program and will be issued for review and comment within the **Federal Register** at an appropriate time for public consideration and comment. In developing § 61.8, § 61.9, and other changes to the rule, NPS will consult with the tribes already participating in the program and with other interested parties.

The 1992 amendments to the Act also included a more formal recognition (within the breadth of programs authorized by the Act) of properties of traditional religious and cultural importance to Indian tribes or Native Hawaiian organizations. It is the intent of this rule to ensure that, to the extent feasible, State and local governments operating under this rule identify, evaluate and protect these unique classes of properties in consultation with Indian tribes and Native Hawaiian organizations in activities listed in section 101(b)(3) of the Act for States and section 101(c) of the Act for local governments.

Revision of 36 CFR part 61 is the appropriate means to resolve many of these issues. 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 nationwide. By placing more reliance on State, tribal, and local governments, by eliminating unnecessary detail and procedures, and by expressing a more flexible oversight philosophy, these revisions to 36 CFR

part 61 can reduce the need for a future rulemaking.

The penalties for noncompliance as specified in this rulemaking include revoking the approved program status of any noncompliant party as mandated by statute. The regulation also recognizes government-wide requirements for Federal grants that include penalties (for noncompliance with the terms of such grants) ranging from increased oversight and reporting, to recovery of Federal funds, to suspension from the grant program until requirements are met. Monitoring these regulatory requirements is accomplished through a periodic review of programs; with quality control of documents such as nominations to the National Register of Historic Places and Federal Historic Preservation Tax Incentive applications that are forwarded by the State to NPS; and, by evaluation of standard reports on measures and accomplishments made using Federal grant money.

36 CFR part 61 provides the general procedural framework for State, local, and tribal 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 and 36 CFR part 67 for Federal Historic Preservation Tax Incentives. 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 NPS.

Comments on and Revisions to the Proposed Rule

This section summarizes and responds to comments received by NPS in response to the proposed revisions to 36 CFR part 61 published in the **Federal Register** on October 2, 1996 (61 FR 51536). This section summarizes those comments and is organized by general subject matter. Citations to the applicable part of the proposed rule are provided. Changes made as a result of the comments are minor and clarify rather than substantively change the proposed rule. This eliminates the normal need to repeat in this document the section-by-section rationale for the changes made to the 1984 rule. The Section-by-Section Analysis in the preamble to the proposed rule remains an accurate description of the rationale for the detailed changes except where modified in this document. For example, the Department of the Interior Solicitor's Office pointed out that the definition of ''State program'' in § 61.2(e) of the proposed rule leaves out statutory elements of a State program as described in section 101(b) of the Act. We have revised the definition accordingly.

Requirements for Certified Local Government Historic Preservation Review Commissions, State Historic Preservation Program Staff, and State Historic Preservation Review Boards

Comment: The largest number of comments received (15 in total) supported making a specific discipline (or disciplines) a requirement for each State's historic preservation program staff (State staff) in § 61.4(e)(1) and/or for each State's Historic Preservation Review Board (Review Board) in § 61.4(f)(1). Some commenters objected to the proposed elimination of specific mandatory disciplines while other commenters proposed that new disciplines be added as requirements. The proposal to eliminate Architecture and Prehistoric and Historic Archeology as requirements were most commonly mentioned. Additionally, the suggestion for State staff and Review Boards to have professional expertise in traditional cultural resources was promoted by a number of commenters especially for States in which there are extensive concentrations of such resources.

Response: It is the position of NPS that full-time State staff and Review Board member professional proficiency in History, Architectural History, and either Prehistoric or Historic Archeology is needed to provide a common national baseline given the frequency with which all State programs deal with certain repetitive classes of historic properties (as defined by the Act). Experience has shown that other disciplines may well be needed by some State programs but not by all State programs, and not necessarily full time. For example, traditional cultural properties expertise would be appropriate in a State with large concentrations of such properties. In States where this is not the case, this expertise may be less of a concern. These determinations are best made by the State Historic Preservation Officer (SHPO) and not by NPS through this rule. However, NPS expects each SHPO to maintain a State staff and Review Board appropriate to the historic properties (as defined by the Act) in that State.

Comment: Two commenters stated that all disciplines listed in the Act should be required on every State staff and Review Board.

Response: NPS disagrees. To require all disciplines cited in the Act would be an unnecessary burden for State programs in many instances given State resources, historic preservation needs, and program emphases. NPS expects each SHPO to fill professional positions as necessary to balance historic property, customer or constituent, and historic preservation needs of the State and to obtain expertise in disciplines as appropriate.

Comment: Three people expressed the view that there should be no specific required disciplines for either State staff or Review Board mandated in §§ 61.4(e)(1) and (f)(1).

Response: NPS disagrees. As stated above, it is the position of NPS that a common national baseline of historic preservation professionals on each State staff and Review Board is needed. This position was reached after detailed consultations with State Historic Preservation Officers over a period of several years.

Comment: Two commenters thought that only the disciplines of History, Architectural History, and Prehistoric or Historic Archeology could be represented on a State program's staff or Review Board, and that no other discipline could be allowed. They concluded that this would mean a State program would be without expertise in many essential areas. They also objected to the apparent position held by NPS that other disciplines are not as valuable as the required disciplines.

Response: Sections 61.4(e) and 61.4(f) have been revised to make clear that the required disciplines are not the only disciplines that can or should be represented in the ''professional positions.'' This rule, however, does not designate which additional disciplines to select. It is the position of NPS that each SHPO knows best what additional disciplines are needed to meet its particular needs and resources. Furthermore, the fact that certain disciplines are minimum regulatory requirements for State staffs and Review Boards does not mean that those disciplines are necessarily more critical than the other disciplines in a specific State.

Comment: One commenter thought that for a Certified Local Government's (CLG's) historic preservation review commission (Commission) to meet the requirements of § 61.6(e)(2)(i), every discipline listed in ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' would have to be represented on the Commission.

Response: This is not the case. The Act requires that professional membership on a Commission be drawn

from among (but not from all of) such disciplines to the extent available in the community. It is at the discretion of each SHPO as expressed in the Statewide local government certification procedures, how many and which disciplines should be represented on each Commission.

Comment: One person asked, concerning § 61.4(f)(1), who within each State has the authority to select the professional disciplines (beyond the requirements set by this rule) for the Review Board.

Response: The SHPO, pursuant to Section 301(12)(A) of the Act, has the authority to select the professional disciplines unless State law specifies to the contrary.

Comment: Three individuals stated that the alternative composition provisions of §§ 61.4(e)(2) and (f)(2) are unnecessary given how easy it is to meet the basic requirements for State staff and Review Board professional membership.

Response: NPS disagrees. The alternative composition provisions remain necessary and appropriate in allowing flexibility for State programs. In addition, Indian tribes are currently using this regulatory framework for assuming historic preservation responsibilities parallel to some or all State Historic Preservation Officer duties. The alternative composition provisions offer very important flexibility for accommodating these new tribal programs that vary greatly in their scope, size, and focus. Section 61.8, currently under development, will expand on these provisions for tribal programs.

Comment: One person asked what constitutes ''demonstrated competence, interest, or knowledge in historic preservation'' as specified in § 61.4(f)(1), how this is documented, and expressed concern that this requirement is in conflict with a State law that requires that only a majority of members have such ''demonstrated competence, interest, or knowledge in historic preservation.''

Response: Any ''professional'' meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' automatically meets the ''demonstrated competence, interest, or knowledge'' test. For other Review Board members, NPS expects each SHPO to use a rule of reasonableness to determine whether a person has competence, interest, or knowledge in historic preservation. For the programs and activities subject to this rule, the provisions of 36 CFR part 61 take precedence over conflicting State law.

Comment: Another person thought that requiring in § 61.4(f)(1) that every Review Board member have a demonstrated ''interest, competence, or knowledge in historic preservation'' meant that all Review Board members must be ''historic preservation practitioners'' who meet ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' for the discipline of ''Historic Preservation.''

Response: There is no such requirement.

Comment: One commenter suggested that ''as appropriate'' be added to § 61.6(e)(2)(i) to ensure that a ''professional'' would not be appointed to a Commission just because he or she is the only professional available in the community.

Response: This rule does not require a CLG to limit its Commission membership selection criteria to the Federal minimum requirements, provided that its additional selection criteria are not inconsistent with the purposes of the Act and Statewide procedures.

Comment: One person thought that the provision in § 61.6(e)(2)(ii) matching Commission membership requirements to those for the Review Board was too restrictive because in many States, Commissions and Review Boards have very different (although overlapping) responsibilities.

Response: NPS agrees and has modified the language of the rule accordingly to place an emphasis on local needs and functions for State procedure requirements relating to Commission membership.

Comment: Two commenters expressed concern that requiring only three disciplines on each Review Board means that only those three disciplines could be professional members of the Commission pursuant to § 61.6(e)(2).

Response: State programs and local offices can, and often do, set additional membership requirements that are responsive to particular State and local needs and issues. Nothing in this rule prohibits a CLG from appointing to its Commission more than the minimally required number or types of professional members.

Comment: Two commenters expressed concern that reducing the minimum number of Review Board meetings from three to one a year (§ 61.4(f)(4)), would make it more difficult for a State historic preservation office to justify State budgetary authority for additional meetings necessary to carry out Review Board responsibilities. Of particular concern was timely review of nominations to the National Register of Historic Places.

Response: NPS agrees and language has been added to make clear that each Review Board should meet as often as necessary to meet national historic preservation statutory and regulatory requirements.

Comment: Another individual expressed concern about the proposed change in § 61.4(f)(3) to extend from six months to one year the time period in which a vacancy on a Review Board could exist prior to NPS intervention.

Response: The rule change parallels the move in § 61.4(f)(4) to a one Review Board meeting per year minimum. If a Review Board meets only once a year, a ten-month-long vacancy between meetings would not necessarily be problematic. Note, however, that the rule retains the requirement that a vacancy be filled in a ''timely'' fashion. NPS would expect a more rapid response to a vacancy from a State that holds quarterly Review Board meetings.

Other State and Local Program Issues

Comment: One commenter raised the question as to whether municipalities were meant to be included in § 61.4(b)(4) as part of ''any qualified nonprofit organization, educational institution, or otherwise pursuant to State law'' regarding a SHPO's ability to carry out activities via contract or cooperative agreement. If so, the commenter suggests that this is in conflict with § 61.6(f)(1) which prohibits SHPOs from delegating the authority to nominate properties directly to the National Register.

Response: A SHPO may use third parties, including municipalities, to carry out aspects of the National Register process, but may not delegate the authority to nominate properties directly to the National Register. This section provides flexibility to each SHPO, but does not allow the SHPO to divest himself or herself of statutory authorities and responsibilities. NPS has added language to clarify this point.

Comment: One person found it problematic that Federal and State requirements for Commissions might not be stringent enough to justify conducting certain SHPO responsibilities through a CLG pursuant to § 61.6(d) if that CLG only meets the minimum requirements specified in § 61.6(e).

Response: It is each SHPO's responsibility to ensure that a CLG has adequate capacity to carry out any additional responsibilities.

Comment: Two commenters opposed the option in § 61.4(b)(3) to waive the face-to-face meeting requirement for the

Review Board (or a Commission acting for the Review Board) in considering a National Register nomination because they believe face-to-face meetings are an important part of the National Register and public participation process.

Response: NPS recognizes the value inherent in a face-to-face discussion of any nomination to the National Register. Therefore this provision is optional and can be used only when all parties (including the chief elected local official as the representative of the general public) consent to waive the face-to-face meeting.

Comment: Six commenters opposed the options provided in § 61.4(b)(3) to allow broader CLG participation in the National Register process because they believe that many CLGs may not be interested in, qualified for, or sufficiently objective to take the place of the Review Board in reviewing nominations. They expressed concern that the National Register process could be compromised.

Response: Even if a SHPO chooses to offer this option, if a CLG is not interested in participating more broadly in the National Register process, nothing in this rule would compel it to do so. However, in those situations in which a CLG has so requested, it must meet all applicable program criteria thus ensuring minimum levels of professional credibility and accountability. The integrity of the National Register process is protected also by the appeals process specified in 36 CFR part 60. Note that section 101(c)(2) of the Act sets parameters for CLG participation in the National Register process.

Comment: One person suggested that the provision in § 61.4(b)(3) requiring owner consent to waive a public meeting for the Review Board (or Commission) review of a National Register nomination conflicts with the owner objection provisions in section 101(a) of the Act regarding district nominations.

Response: NPS disagrees. NPS believes that there is no inconsistency because the subject matter is different; i.e., whether to waive a public hearing for considering National Register eligibility (in this case) versus whether historic properties should be listed in the case of district nominations.

Comment: Four people asserted that requiring consent from the chief elected local official for the waiver of the requirement for a public meeting as stated in § 61.4(b)(3) is unnecessary and could be eliminated or, alternatively, replaced by a notification.

Response: NPS disagrees. NPS believes that the consent of the chief elected local official (as the community's representative) is important in waiving a community's right to an open and public consideration of a property's nomination to the National Register.

Comment: One person requested that the rule provide detailed technical guidance about how the National Register-related public participation provisions of § 61.4(b)(3) should be carried out by interested SHPOs, Review Boards, and Commissions.

Response: NPS agrees with the need for technical guidance. However, the technical guidance does not need to be presented as part of this rule. NPS intends to prepare this technical guidance in consultation with affected parties and to issue it as soon as possible.

Comment: Four comments stated that State survey and inventory data (§ 61.4(b)(2)) which includes information on the absence of National Register eligible properties or on properties for potential future nomination to the National Register are wasteful and could lead to restriction of private property rights.

Response: NPS disagrees. Typically, though not a focus of all surveys, gathering and keeping data on ''no properties found'' (i.e., areas which include properties that are not National Register eligible) is ultimately highly cost effective. This information reduces the need for costly re-surveys to plan for both public and private projects. There is no evident reduction of property rights due to this provision because neither the Act nor this rule gives the SHPO the authority to carry out surveys on private land without owner permission. Furthermore, a property cannot be listed on the National Register if the private property owner (or majority of owners for districts) objects.

Comment: One person suggested changing the phrase ''absence of historic properties'' in § 61.4(b)(2) to ''absence of particular kinds of properties'' because a finding of no historic properties in an area may have been based only upon a particular class or type or survey, but be misconstrued to mean that there are no historic properties of any kind. For example, in a survey for a particular class or type of resources (e.g., archaeology only or bridges only), other kinds of historic properties resources would not necessarily be identified.

Response: While NPS agrees, changing the rule would weaken the point of this provision which is to highlight the cost-effectiveness and usefulness for planning purposes of knowing that there is no historic property in the area. Reminders (such as this comment) on the use and limitations of such ''negative'' surveys are more appropriately addressed, NPS believes, in a different venue; e.g., ''the Secretary's Standards and Guidelines for Identification'' or similar technical publications.

Comment: One person stated that the SHPO may not have authority to ensure that CLG survey and inventory data ''can be readily integrated into . . . local planning processes'' as stated in § 61.6(e)(3).

Response: The chief elected local official's signature on the CLG certification agreement carries with it a commitment to follow the Federal and State requirements for the CLG program. Also, this rule does not require the actual integration into local systems—clearly a local decision—but rather that the data are in a format compatible with the local planning process(es).

Comment: One person expressed concern that § 61.6(e)(1) seemed to be highlighting regulatory tools for local historic preservation programs rather than encouraging non-regulatory approaches to historic preservation.

Response: These provisions for CLG requirements follow the Act which specifically sets forth the use of regulatory tools by mandating that CLGs must enforce appropriate State and local legislation for the ''designation'' and ''protection'' of historic properties (see section 101(c)(4) of the Act). However, nothing in this rule should be interpreted to advocate only regulatory approaches to historic preservation at any level of government.

Tribal Issues

Comment: One person wondered why the tribal sections of the rule were reserved and suggested that information be provided explaining the status of this material.

Response: NPS believes that it is premature to provide language (either inclusive or exclusive) in this rulemaking that provides regulatory interpretation of the statutory mandate to establish tribal programs under section 101(d) of the Act. Preliminary consultation with the tribes and other interested parties is now underway but has not yet been completed, and the **Federal Register** review and comment process must still be undertaken.

Comment: One person asked what impact this rulemaking will have on the development of procedures for tribal historic preservation programs under section 101(d) of the Act. Concern was expressed that the State and local requirements contained in this rule would either limit or predetermine the direction of tribal program procedures.

Response: This rulemaking will not constrain or predetermine the development of tribal procedures because section 101(d) of the Act calls for flexibility and modifications to accommodate tribal settings. Any requirement for State programs is subject to modification for tribal programs in accordance with rules under NPS development.

Comment: One person recommended exempting tribes from State Historic Preservation Officer responsibilities specified in this rule.

Response: The position of NPS is that such a blanket exemption for the tribes is neither appropriate nor consistent with the intent and meaning of the Act. By law, State historic preservation program requirements provide a point of reference in the establishment of tribal historic programs under section 101(d) of the Act. In furtherance of the requirements of section 101(d) of the Act, § 61.8 of this rule (currently reserved and under development in consultation with the tribes) will propose significant flexibility for tribal programs by allowing for the case-by-case waiver or modification of requirements in the Act and its attendant regulations in order to accommodate tribal values to the greatest extent feasible. In the meantime, tribes already choosing to participate in the national program can avail themselves of the provisions of § 61.4 that allow for case-by-case approval of various program alternatives, as well as the provisions of § 61.10 that allow for case-by-case waiver of those requirements of this rule not otherwise required by statute or other regulation and as long as the purposes, conditions, or requirements of the Act would not be compromised.

Comment: Another concern expressed was that no definition of ''tribal historic preservation program'' or ''tribal program'' is included in this rulemaking.

Response: Again, these definitions will be developed as part of the consultation process for drafting the regulations for the tribal preservation programs and as such will be added to this rule at a later date.

Comment: One person suggested adding section 101(d) to the other referenced sections of the Act in § 61.2(a) of this rule.

Response: NPS agrees with the importance of section 101(d), but not with referencing it in § 61.2 of this rule. Section 61.2 is the ''definitions'' section of this rule and, unlike the other referenced sections of the Act, section 101(d) contains no definitions.

Comment: One person suggested changing the term ''Native Alaskan corporations'' to ''Native Alaskan groups.''

Response: NPS cannot adopt this suggestion. The term ''corporation'' comes directly from the definition of Indian tribe in section 301(4) of the Act which in turn is based on the definitions in section 3 of the Alaska Claims Settlement Act (43 U.S.C. 1602).

National Park Service (NPS) Roles

Comment: Five commenters expressed concern about the appropriateness of, and/or the lack of, a precise explanation in § 61.3(a) of ''management by exception'' for the administration of historic preservation programs under the Act.

Response: ''Management by exception'' is the preferred policy approach of NPS in administering the national historic preservation program. It presumes that State, tribal, and local programs are being administered in an accountable fashion in meeting all applicable government-wide requirements unless proved to the contrary. A management-by-exception approach uses oversight and analysis of systems and quality control processes rather than an in-depth, project-by-project approach. NPS has adopted this management policy wherever warranted in recognition of both the growing maturation of the national program, as well as changing Administration and Congressional directives concerning the relationship between the Federal Government and State, tribal, or local governments. However, whenever situations warrant, NPS can, and will, apply more rigorous oversight to ensure that requirements are met.

Comment: One person expressed the view that NPS is sometimes too responsive to SHPO views and does not hear the concerns of the State's clients.

Response: NPS makes every effort to serve equally each member of the national partnership in administering the national historic preservation program and considers all constituent comments. Oversight and accountability are not affected by our long-standing relationship with the State historic preservation programs.

Comment: Two people asked for clarification of ''independent peer review'' in § 61.3(a) as applied to a State, tribal, or local government substituting its own fiscal audit and management systems for comparable requirements set by the Secretary.

Response: ''Independent peer review'' is defined as a review carried out by entities (public or private) who are not a part of NPS but who can provide comparable independent, objective, and knowledgeable oversight, analysis, and review that inspires confidence that government-wide and Act-specific audit and management requirements are being met.

Comment: One person opposed eliminating the requirement that each SHPO make an annual certification that it has a fully qualified staff and Review Board because, in the commenter's opinion, SHPOs may not always inform NPS when there is a vacancy.

Response: The former regulatory requirement is redundant. The annual grant agreement (executed between NPS and each State participating in the national program) includes as a condition for receiving the grant award the mandate that the State program meets and will continue to meet all of the applicable requirements of the Act and this rule.

Comment: One person suggested amending ''appropriate action'' to ''suspension of approved status'' in §§ 61.4 (e) and (f) regarding the result of NPS intervention when a vacancy has not been filled in a timely fashion.

Response: NPS disagrees. NPS needs the flexibility to take a range of administrative steps (which might include suspension of approved status) to fit each situation.

Comment: One person thought that it is inconsistent to say in § 61.4 that State program reviews would take place at least once every four years but more often if the Secretary deems necessary.

Response: This confuses the minimum frequency of review of each State that must take place with the possible number of reviews that can take place. The Act requires an evaluation at least once every four years. Government-wide grant procedures authorize, and good management demands, an evaluation whenever the situation merits it.

Comment: One person stated that the current State program reviews were not frequent enough to address adequately serious problems.

Response: NPS disagrees. Nothing in the current system prevents NPS from undertaking a State program review whenever it believes one is warranted.

Comment: One person suggested that explicit time frames be added for the various stages of the State program review process.

Response: NPS disagrees. NPS needs the regulatory flexibility to tailor schedules to specific situations.

Comment: One person wondered what would constitute ''a major program inconsistency with the Act'' that would be sufficient to suspend a State

program's approved status after a State program review (see § 61.4(d)).

Response: NPS recognizes that loss of approved program status is not the appropriate administrative response to minor compliance problems. Refusal to carry out statutory requirements, a pattern of gross negligence, and illegal use of grant funds are among the factors that could contribute to a program's suspension or termination. However, the determination of ''a major program inconsistency'' must be done on a case-by-case basis.

Comment: Three people stated that § 61.6(c) should be changed to allow SHPOs with approved programs and NPS-certified CLG criteria and procedures to certify CLGs without NPS concurrence.

Response: NPS does not have the statutory authority to do this. The dual certification by the SHPO and NPS (acting for the Secretary) is specifically required by section 101(c)(1) of the Act.

Comment: One person further suggested changing § 61.6(e)(5) to vest SHPOs with the sole authority for an involuntary decertification of a CLG.

Response: NPS disagrees. Decertification procedures must generally parallel those for the certification of qualified local governments.

Terminology, Definitions, and References

Comment: Two commenters asked for clarification, in § 61.3(b), of the regulatory force of the ''Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.''

Response: NPS has added language to the rule to clarify two aspects of this issue. NPS will use the Standards set forth in the ''Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation'' as technical performance standards for matters covered by 36 CFR part 61. NPS may also use as technical performance standards (for matters covered by this part) additional guidance provided from time to time by NPS after appropriate consultation and notice. This additional guidance may include, but is not limited to, selected Guidelines set forth in the ''Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.''

Comment: Another person asked what is the relationship between the current initiative of NPS to revise ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' and the changes to §§ 61.4(e) and (f) of this rule.

Response: Revising ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' will not affect their regulatory relationship with this rule; i.e., in order for a person to satisfy a regulatory requirement for a historic preservation professional, that person must meet ''the Secretary's (Historic Preservation) Professional Qualifications Standards.'' Note that the grandfather provision in § 61.3(c) has been modified to account for changes to these Standards. Note also that the name of the Standards will officially change to ''the Secretary of the Interior's Historic Preservation Professional Qualifications Standards'' when they are issued in the **Federal Register**. To signal this forthcoming change, ''Historic Preservation'' is placed in parentheses as part of the current title of the Standards in this rulemaking.

Comment: One person suggested restoring to this rule all statutory definitions, Standards, and regulatory material that in the former rule were quoted verbatim.

Response: Repetition of standards or statutory and regulatory material would make this rule unwieldy to use and is unnecessary at this point in the program's history. These materials are widely available and known to customers. Nevertheless, NPS has included in § 61.6(e)(1) the CLG program definitions for ''designation'' and ''protection'' because they are relatively new and represent a significant statutory addition to CLG requirements.

Comment: One person suggested that in light of the elimination of the former Appendix B (the list of SHPO addresses), the regulation identify a central source to locate information.

Response: NPS agrees and have added appropriate language.

Comment: Two people found the references in this rule to the *National Register Programs Guideline* (*NPS–49*) confusing without further explanation.

Response: NPS agrees and has replaced them with more general references to NPS administrative guidance.

Comment: One person suggested replacing ''cultural resource'' with ''historic resource'' or ''historic property'' to be consistent with the Act.

Response: NPS has adopted this suggestion and used the term ''historic property'' as defined in section 301 of the Act except where quoting the Act.

Comment: One person suggested adding to § 61.2 a definition of ''partnership.''

Response: NPS has not defined the term ''partnership'' as suggested because, aside from a common commitment to the purposes of the Act, ''partnership'' is not amenable to a single definition. In general, however, the word ''partnership,'' in the context of the national historic preservation program, recognizes that this is a nation-wide initiative including full participation of not only the Federal but also State, tribal, and local governments; the not-for-profit as well as the for-profit sector; and, individual citizens.

Comment: One person suggested that the role of CLGs in the section 106 process be described in § 61.6(e)(1).

Response: This suggestion was not considered because that responsibility is more appropriately addressed by the Advisory Council on Historic Preservation through 36 CFR part 800.

Comment: One person suggested quoting in § 61.6(f) the text of section 101(c)(2) of the Act concerning National Register nominations within the jurisdiction of a CLG.

Response: NPS believes that the cross reference is sufficient.

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, the National Park Service (NPS) consulted extensively with State and local historic preservation programs prior to publishing the proposed revisions to the rule for general review and comment in the **Federal Register** (61 FR 51536) concerning which NPS received 38 comments. All governmental members of the national historic preservation partnership rely upon the public to help guide and otherwise assist in the functions of their historic preservation programs. Consequently, NPS encourages public participation in all of the programs under the purview of this rule. NPS welcomes comments at any time from any interested person concerning the direction, administration, oversight, or any other aspect of these programs. Interested parties should send written comments regarding these programs to Heritage Preservation Services, National Center for Cultural Resource Stewardship and Partnership Programs, National Park Service, 1849 C Street, NW (NC Suite 200), Washington, D.C. 20240 or via the National Park Service Home Page for cultural programs at http://www.cr.nps.gov.

Drafting Information: The primary author of this rule is John W. Renaud, Heritage Preservation Services, National Center for Cultural Resource Stewardship and Partnership Programs, National Park Service, 1849 C Street NW (NC Suite 200), Washington, D.C. 20240.

Paperwork Reduction Act

The collection of information contained in this rule has been approved by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.* and has been assigned clearance number 1024–0038. No comments were received on notice of submission to the OMB and the request for comments published in the **Federal Register** (62 FR 34484). The information is being collected as part of the process for reviewing the procedures and programs of State and local governments participating in the national historic preservation program and the Historic Preservation Fund grant program. The information will be used to evaluate those programs and procedures for consistency with the National Historic Preservation Act of 1966, as amended, and compliance with government-wide grant requirements. The obligation to respond is required to obtain a benefit under these programs. Note that a Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. No assurance of confidentiality is provided to respondents with the exception of locational information concerning some properties included in government historic preservation property inventories. Pursuant to section 304 of the National Historic Preservation Act of 1966, as amended, release of information is tightly controlled when such release could have the potential of damaging those qualities which make a property historic or of vital cultural or religious significance.

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 Ms. Diane M. Cooke, Information Collection Officer, National Park Service, 1849 C Street NW, Washington, D.C. 20240 and to 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 reviewed by the Office of Management and Budget 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 overall economic effects of this rulemaking should be negligible. There are no expected increases in costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions.

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

In accordance with Executive Order 12630, the NPS has determined that this rule does not have significant takings implications. The rule revises administrative procedures for the organization of State, tribal, and local historic preservation offices. This rule does not impact private property owners.

In accordance with Executive Order 12612, the NPS has determined that the rule does not have significant Federalism implications. State, tribal, and local government participation in these programs is voluntary. In the development of this rule, the NPS consulted State and local governments currently participating in these programs. The NPS has achieved the consensus of its State and local government partners that this rule should be published. No State or local government has opposed the promulgation of this rule.

The Department has determined that this rule meets the applicable standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988.

This rule is not a major rule under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)).

The National Park Service has determined that this 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, Appendix 7.4D (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement 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 foregoing, 36 CFR Chapter I is 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.
61.4 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.

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 and overseeing State historic preservation programs;

(2) Certifying local governments to carry out the purposes of the Act;

(3) Ensuring that applicable State Historic Preservation Officers (SHPOs) allocate to certified local governments (CLGs) a share of grants that the SHPOs receive under the Act; and

(4) Assisting Indian tribes in preserving their particular ''historic properties'' (as defined by the Act);

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

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

''historic properties'' (as defined by the Act) and the administration of historic preservation programs.

§ 61.2 Definitions.

As used in this part:

(a) All terms that the National Historic Preservation Act of 1966, as amended, defines have the same meaning in the regulations in this part that the statute provides; see especially sections 101(a)(1)(A), 101(b), 101(c)(4), 108, and 301.

(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 Secretary's Standards* means only the ''Standards'' portions and not the ''Guidelines'' portions of ''the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.'' The Secretary's Standards provide broad national principles of archeological and historic preservation practices and methods. ''The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation'' also contains ''the Secretary's Guidelines'' which provide broad national guidance on how to apply ''the Secretary's Standards.''

(e) *State historic preservation program* or *State program* means a State government organization or program meeting the requirements that section 101(b) of the Act specifies.

§ 61.3 Implementation of this part.

(a) *National Park Service policy of management by exception.* The National Park Service (NPS) will administer the regulations in this part in such a way (and where feasible) as to:

(1) Limit the use of direct Federal management review procedures to high risk situations, to new programs, or to activities that are appropriate for the Federal Government to oversee;

(2) Presume that State, tribal, and local government historic preservation officials manage their programs in an accountable way unless situations indicate the contrary; and

(3) Rely to the maximum extent feasible on State, tribal, and local government systems of financial and program management that meet Federal standards. At the discretion of the Secretary, each State, tribal, and local government may substitute its own fiscal audit and management systems for the Secretary's comparable fiscal audit and management requirements, so long as the State, tribal, or local government system establishes and maintains accounting standards substantially similar to Federal standards and provides for independent peer review.

(b) *The Secretary's Standards.* NPS will use the Secretary's Standards as technical performance standards for matters covered by this part. NPS may also use as technical performance standards (for matters covered by this part) additional guidance that NPS identifies and provides from time to time after appropriate consultation and notice.

(c) Each State historic preservation program staff member, State Historic Preservation Review Board (Review Board) member, and certified local government (CLG) historic preservation review commission (Commission) member whom the Secretary has approved as meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' will retain that status, regardless of subsequent revisions to those Standards, until such time as that individual no longer works in that program, or serves on that Review Board, or serves on that Commission with which that individual was affiliated as of the date of that individual's approval.

(d) You may obtain publications and other information mentioned in this part by contacting: Heritage Preservation Services, National Center for Cultural Resource Stewardship and Partnership Programs, National Park Service, 1849 C Street NW (NC Suite 200), Washington, D.C. 20240 or via the National Park Service Home Page for cultural programs at http://www.cr.nps.gov.

§ 61.4 State programs.

(a) For a State to participate in the program that this part describes, the Governor must appoint and designate a State Historic Preservation Officer (SHPO) to administer the State historic preservation program.

(b) It is the responsibility of the SHPO to carry out the duties and activities that section 101 (b)(3) of the Act describes. In performing those duties and activities:

(1) The SHPO must carry out a 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 property preservation throughout the State.

(2) The SHPO, in addition to surveying and maintaining inventories of historic properties, may also 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 for use in planning for public and private development projects.

(3) The SHPO must provide for adequate public participation in the State historic preservation program as a whole.

(i) As part of the process of recommending a property to the National Register, the SHPO must comply with the consultation and notification procedures contained in 36 CFR part 60.

(ii) The SHPO may authorize other persons or entities to fulfill the notice requirements in 36 CFR part 60 pursuant to the Secretary's written guidance.

(iii) The SHPO also may authorize the historic preservation review commission (Commission) of a certified local government (CLG) to act in place of the State Historic Preservation Review Board (Review Board) for the purpose of considering National Register nominations within its jurisdiction, provided that the Commission both meets the professional qualifications required for the Review Board when considering such nominations and otherwise follows the Secretary's written guidance.

(iv) In accordance with the Secretary's written guidance and with the consent of both the property owners in a nomination and the chief elected local official, the Review Board (or the Commission acting in its place) may consider the nomination without a face-to-face meeting.

(4) The SHPO may carry out all or any part of his or her responsibilities by contract or cooperative agreement with any qualified nonprofit organization, educational institution, or otherwise pursuant to State law. However, the SHPO may not delegate the responsibility for compliance with the Act or with grant assistance terms and conditions.

(c) The Secretary will consider individual SHPO proposals for programs that, for a specified period, include fewer duties than those section 101(b)(3) of the Act specifies, if a different approach would better serve an appropriate balance of historic property, customer or constituent, and historic preservation needs.

(d) *Procedures for review and approval of State historic preservation programs.* (1) In accordance with the Act, the Secretary will evaluate each State program for consistency with the Act periodically, but not less often than every four years. If the Secretary

determines that it meets the program requirements of paragraphs (a), (b), (e) and (f) of this section, he or she will approve the State program as set forth in this section.

(2) The Secretary may use on-site and/or off-site inquiries to perform such evaluation. The Secretary will provide the SHPO with a timely report containing written findings and analyses that highlight the strengths and weaknesses of the State program.

(3) *Approval method.* (i) If the Secretary determines that a State program is consistent with the Act, the report will include notice that the State program's approved status continues.

(ii) If the Secretary determines that a State program has major aspects not consistent with the Act, the report will include notice of deficiencies along with required actions for correcting them. Unless circumstances warrant immediate action, the Secretary will provide a specified period to allow the SHPO either to correct the deficiencies or to present for Secretarial approval a justifiable plan and timetable for correcting the deficiencies. During this period, the SHPO has the opportunity to request that the Secretary reconsider any findings and required actions.

(iii) The Secretary will provide timely notice of continued approved State program status to a SHPO successfully resolving deficiencies. Once the Secretary renews a State program's approved status, he or she generally will not review the program until the next regular evaluation period. However, if the Secretary deems it necessary, he or she may conduct a review more often.

(iv) The Secretary will provide timely notice of the revocation of a program's approved status to any SHPO whose program has deficiencies that warrant immediate action or that remain uncorrected after the expiration of the period specified pursuant to paragraph (d)(3)(ii) of this section. The Secretary will then initiate financial suspension and other actions in accordance with the Act, applicable regulatory requirements, and related guidance that the National Park Service issues.

(e) The SHPO must appoint or employ a professionally qualified staff.

(1) Except as approved pursuant to paragraph (e)(2) of this section, the staff must include at a minimum, one individual meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' for history, one individual meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' for historic or prehistoric archeology, and one individual meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' for architectural history. ''The Secretary's (Historic Preservation) Professional Qualifications Standards'' and related guidance are part of the larger ''Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.'' The SHPO may determine that additional professional staff members representing the required or other disciplines are necessary to administer the State program in accordance with the Act.

(2) The Secretary will consider proposals from a SHPO for a minimum required staff composition that differs from the requirement that paragraph (e)(1) of this section specifies, if the proposal addresses better an appropriate balance of historic property, customer or constituent, and historic preservation needs in that State.

(3) When a staff position that paragraph (e)(1) of this section requires becomes vacant, the SHPO must fill the vacancy in a timely manner. In the interim, the SHPO must ensure that appropriately qualified individuals address technical matters. A vacancy in a required position that persists for more than six months is cause for review, comment, and appropriate action by the Secretary.

(f) Unless State law provides for a different method of appointment, the SHPO must appoint an adequate and qualified State historic preservation Review Board (Review Board).

(1) All Review Board members must have demonstrated competence, interest, or knowledge in historic preservation. A majority of Review Board members must meet ''the Secretary of the Interior's (Historic Preservation) Professional Qualifications Standards'' which are part of the larger ''Secretary's Standards and Guidelines for Archeology and Historic Preservation.'' The members meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' must include at a minimum, one individual meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' for history, one individual meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' for prehistoric archeology or historic archeology, and one individual meeting ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' for architectural history. One person may meet the Standards for more than one required discipline. The other Review Board members, if any, who comprise the majority that meets ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' may represent, subject to the SHPO's selection, any of the disciplines that those ''Standards'' describe.

(2) The Secretary will consider proposals from a SHPO for a minimum required Review Board composition that differs from the requirement that paragraph (f)(1) of this section specifies, if the proposal addresses better an appropriate balance of historic property, customer or constituent, and historic preservation needs in that State.

(3) When a required Review Board position becomes vacant, the SHPO must fill the vacancy in a timely manner. In the interim, the SHPO must ensure that the Review Board has access to advice from appropriately qualified individuals. A lapse of more than one year in filling the vacancy is cause for review, comment, and appropriate action by the Secretary.

(4) The Review Board must meet as often as is necessary to complete its work in a timely fashion but no less often than once a year.

(5) The Review Board must adopt written procedures governing its operations consistent with the provisions of this section and related guidance that the National Park Service issues.

(6) Review Board responsibilities include, but are not limited to, the following:

(i) Providing advice to the SHPO on the full range of Historic Preservation Fund-supported activities, that section 101 (b)(3) of the Act describes;

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

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

(iv) Performing such other duties as may be appropriate.

§ 61.5 Grants to State programs.

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

(b) The National Park Service (NPS) will administer HPF matching grants-in-aid in accordance with the Act, OMB Circular A–133 and 43 CFR part 12, and related guidance that NPS issues. Failure by a State program to meet these requirements is cause for comment and appropriate action by the Secretary.

§ 61.6 Certified local government programs.

(a) Each approved State program must provide a mechanism for certification (by the State Historic Preservation Officer and the Secretary) of local governments to carry out the purposes of the Act.

(b) Each State Historic Preservation Officer (SHPO) must follow procedures that the Secretary approves for the certification of local governments. Each SHPO also must follow procedures for removal of certified local government (CLG) status for cause. A SHPO must submit any proposed amendment to its procedures to the Secretary for approval. The Secretary will act on each proposal in a timely fashion generally within 45 days of receipt.

(c) When a SHPO approves a local government certification request in accordance with the State program's National Park Service (NPS)-approved certification process, the SHPO must prepare a written certification agreement between the SHPO and the local government. The certification agreement must list the specific responsibilities of the local government when certified. The SHPO must submit to the Secretary the written certification agreement and any additional information as is necessary for the Secretary to certify the local government pursuant to the Act and this part. If the Secretary does not disapprove the proposed certification within 15 working days of receipt, the Secretary has certified the local government.

(d) Beyond the minimum responsibilities set out in the Act for all CLGs, the SHPO may make additional delegations of responsibility to individual CLGs. However, these delegations may not include the SHPO's overall responsibility derived from the Act or where law or regulation specifies.

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

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

(i) Designation provisions in such legislation 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 in such legislation 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 paragraph (e)(1)(i) of this section describes; 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 must have a demonstrated interest, competence, or knowledge in historic preservation. Unless State or local legislation provides for a different method of appointment, the chief elected local official must appoint all Commission members.

(i) The State procedures must encourage certified local governments to include individuals who meet ''the Secretary's (Historic Preservation) Professional Qualifications Standards'' among the membership of the Commission, to the extent that such individuals are available in the community.

(ii) The State procedures may specify the minimum number of Commission members who must meet ''the Secretary's (Historic Preservation) Professional Qualifications Standards.'' The State procedures may also specify which, if any, disciplines the Commission's membership must include from among those disciplines that the Standards describe. Membership requirements set by the State procedures for Commissions must be cognizant of the needs and functions of Commissions in the State and subject to the availability of such professionals in the community concerned.

(iii) Provided that the Commission is otherwise adequate and qualified to carry out the responsibilities delegated to it, the SHPO may certify a local government without the minimum number or types of disciplines established in State procedures, if the local government 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 SHPO must 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 SHPO must ensure that such systems and the data that they produce are capable of integration into and are compatible with statewide inventories and (when and as appropriate) with State and local planning processes.

(4) Provide for adequate public participation in the local historic preservation program as a whole. The SHPO must provide each CLG with appropriate guidance on mechanisms to ensure adequate public participation in the local historic preservation program including the process for evaluating properties for nomination to the National Register of Historic Places.

(5) Satisfactorily perform the responsibilities delegated to it under the Act. The SHPO must monitor and evaluate the performance of each CLG according to written standards and procedures that the SHPO establishes. If a SHPO's evaluation of a CLG's performance indicates that such performance is inadequate, the SHPO must suggest in writing ways to improve performance. If, after a period of time that the SHPO stipulates, the SHPO determines that the CLG has not improved its performance sufficiently, the SHPO may recommend that the Secretary decertify the local government. If the Secretary does not object within 30 working days of receipt, the Secretary has approved the decertification.

(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 SHPO may delegate to a CLG any of the responsibilities of the SHPO and the Review Board in processing National Register nominations as specified in 36 CFR part 60 (see also § 61.4(b)(3)), 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. Each State must transfer at least 10 percent of its annual HPF grant award to CLGs for historic preservation projects and programs in accordance with the Act and as § 61.7 specifies.

(g) The District of Columbia is exempt from the requirements of this section because there are no subordinated local governments in the District. If any other jurisdiction that section 301(2) of the Act defines as a State 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, a local government wishing to become 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 in a timely fashion generally within 90 days of receipt.

§ 61.7 Subgrants to certified local governments.

(a) Each SHPO must transfer at least 10 percent of its annual Historic Preservation Fund (HPF) grant award to CLGs as subgrants for historic preservation projects and programs in accordance with the Act. In any year that the annual HPF State grant appropriation exceeds $65,000,000, SHPOs must transfer one half of the amount over $65,000,000 to CLGs according to procedures that the Secretary will establish.

(b) Each CLG is eligible to receive funds from the 10 percent (or greater) CLG share of the State's total annual HPF grant award. However, the SHPO need not award funds to all CLGs.

(c) Each SHPO must maintain and follow a procedure that the Secretary approves for the use and distribution of funds from the State's annual HPF grant award to CLGs to ensure that no CLG receives a disproportionate share of the allocation. The procedure will provide a clear basis for the funding decisions. The SHPO must submit any proposed amendment to its procedure to the Secretary for approval. The Secretary will respond to such a proposal in a timely fashion generally within 45 days of receipt.

(d) Each SHPO must notify annually each CLG of its opportunity to apply for HPF 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 is a subgrantee of the State. The SHPO must ensure that each CLG adheres to all applicable grant conditions and government-wide and program specific requirements that the National Park Service issues. The SHPO may require specific uses of funds subgranted to CLGs. CLGs may not apply subgranted HPF monies as matching share for any other Federal grant.

(f) Where there is no approved State program pursuant to § 61.4, the Secretary will determine the method for allocating funds to CLGs in that State in accordance with the procedures set forth for the State in this section. 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 the Secretary finds, in writing, that the historic preservation program would benefit from such waiver and the waiver would not compromise the purposes, conditions, and requirements of the National Historic Preservation Act of 1966, as amended.

§ 61.11 Information collection.

(a) The Office of Management and Budget (OMB) under 44 U.S.C. 3507 *et seq.*, has approved the collection of information contained in this part. OMB has assigned clearance number 1024–0038 to this collection of information. The National Park Service (NPS) collects this information as part of the process for reviewing the procedures and programs of State and local governments participating in the national historic preservation program and the Historic Preservation Fund grant program. NPS will use the information to evaluate those programs and procedures for consistency with the National Historic Preservation Act of 1966, as amended, and compliance with government-wide grant requirements. The obligation to respond is required to obtain a benefit under these programs. Note that a Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. NPS provides no assurance of confidentiality to respondents with the exception of locational information concerning some properties that government historic preservation property inventories include. Pursuant to section 304 of the National Historic Preservation Act of 1966, as amended, NPS tightly controls release of information when such release could have the potential of damaging those qualities which make a property historic.

(b) We estimate the public reporting burden for the collection of this information 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 Ms. Diane M. Cooke, Information Collection Officer, National Park Service, 1849 C Street NW, Washington, D.C. 20240 and to 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.

Dated: July 9, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

Note: This document was received at the Office of the Federal Register on March 4, 1999.

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