

## National Park Service, Interior

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Budget and Finance in Washington, DC, the original and two copies.

(b) *Advance by Treasury Check.* The Request for Advance or Reimbursement (OMB Circular A-102, Attachment H) is the standard form for all requests for advance. An advance by Treasury check is a payment made by Treasury check to a grantee upon its request, or through the use of a predetermined payment schedule. Advances shall be limited to the minimum amounts needed and shall be timed to be in accord with only the actual cash requirements of the grantee in carrying out the purpose of the approved project. Advances shall be limited to one month's cash requirements. The request for advance shall be submitted by the grantee in an original and three copies to the appropriate Regional Office. The Region will forward to the Division of Budget and Finance in Washington, D.C., the original and two copies.

Grantees must submit an "Outlay Report and Request for Reimbursement for Construction Programs" monthly showing expenditures made the previous month from the funds advanced.

Upon Bureau acceptance of the expenditures involved, these reports shall be used as the basis for liquidating obligations, reducing the advance account, and making charges to the appropriate cost account.

(c) *Report of Federal Cash Transactions (OMB Circular A-102, Attachment H).* When funds are advanced with Treasury checks, the grantee shall submit a report to monitor the cash advance. Grantees shall submit the original and three copies no later than 15 working days following the end of each quarter.

### § 64.16 Retention and custodial requirements for records.

(a) Financial records, supporting documents, statistical records, and other records pertinent to a grant program shall be retained for a period of three years after final payment. The records shall be retained beyond the three-year period if audit findings have not been resolved.

(b) The Secretary of the Interior and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and

records of the State and local governments and their subgrantees which are pertinent to a specific project for the purpose of making audit, examinations, excerpts, and transcripts.

### § 64.17 Project termination and settlement procedures.

Project Termination and Settlement Procedures will be in accord with Bureau of Outdoor Recreation Manual, chapter 675.8.

### § 64.18 Retention and use.

Property acquired or developed by State and local governments with section 809(b) assistance will be available to the general public and retained for recreation/conservation use. The acquiring agency will cause to have placed in the legal title to the property a restriction which precludes its conversion to other than public recreation/conservation use without the consent of the Secretary of the Interior. The Secretary shall not permit conversion to any use that would preclude future reactivation of rail transportation on such right-of-way.

## PART 65—NATIONAL HISTORIC LANDMARKS PROGRAM

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AUTHORITY: 16 U.S.C. 461 *et seq.*; 16 U.S.C. 470 *et seq.*

SOURCE: 48 FR 4655, Feb. 2, 1983, unless otherwise noted.

### § 65.1 Purpose and authority.

The purpose of the National Historic Landmarks Program is to identify and designate National Historic Landmarks, and encourage the long range preservation of nationally significant

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properties that illustrate or commemorate the history and prehistory of the United States. These regulations set forth the criteria for establishing national significance and the procedures used by the Department of the Interior for conducting the National Historic Landmarks Program.

(a) In the Historic Sites Act of 1935 (45 Stat. 666, 16 U.S.C. 461 *et seq.*) the Congress declared that it is a national policy to preserve for public use historic sites, buildings and objects of national significance for the inspiration and benefit of the people of the United States and

(b) To implement the policy, the Act authorizes the Secretary of the Interior to perform the following duties and functions, among others:

(1) To make a survey of historic and archeological sites, buildings and objects for the purpose of determining which possess exceptional value as commemorating or illustrating the history of the United States;

(2) To make necessary investigations and researches in the United States relating to particular sites, buildings or objects to obtain true and accurate historical and archeological facts and information concerning the same; and

(3) To erect and maintain tablets to mark or commemorate historic or prehistoric places and events of national historical or archeological significance.

(c) The National Park Service (NPS) administers the National Historic Landmarks Program on behalf of the Secretary.

### § 65.2 Effects of designation.

(a) The purpose of the National Historic Landmarks Program is to focus attention on properties of exceptional value to the nation as a whole rather than to a particular State or locality. The program recognizes and promotes the preservation efforts of Federal, State and local agencies, as well as of private organizations and individuals and encourages the owners of landmark properties to observe preservation precepts.

(b) Properties designated as National Historic Landmarks are listed in the National Register of Historic Places upon designation as National Historic

Landmarks. Listing of private property on the National Register does not prohibit under Federal law or regulations any actions which may otherwise be taken by the property owner with respect to the property.

(c) Specific effects of designation are:

(1) The National Register was designed to be and is administered as a planning tool. Federal agencies undertaking a project having an effect on a listed or eligible property must provide the Advisory Council on Historic Preservation a reasonable opportunity to comment pursuant to section 106 of the National Historic Preservation Act of 1966, as amended. The Advisory Council has adopted procedures concerning, *inter alia*, their commenting responsibility in 36 CFR part 800.

(2) Section 110(f) of the National Historic Preservation Act of 1966, as amended, requires that before approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council a reasonable opportunity to comment on the undertaking.

(3) Listing in the National Register makes property owners eligible to be considered for Federal grants-in-aid and loan guarantees (when implemented) for historic preservation.

(4) If a property is listed in the National Register, certain special Federal income tax provisions may apply to the owners of the property pursuant to section 2124 of the Tax Reform Act of 1976, the Economic Recovery Tax Act of 1981 and the Tax Treatment Extension Act of 1980.

(5) If a property contains surface coal resources and is listed in the National Register, certain provisions of the Surface Mining and Control Act of 1977 require consideration of a property's historic values in determining issuance of a surface coal mining permit.

(6) Section 8 of the National Park System General Authorities Act of 1970, as amended (90 Stat. 1940, 16 U.S.C. 1–5), directs the Secretary to prepare an annual report to Congress which identifies all National Historic

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Landmarks that exhibit known or anticipated damage or threats to the integrity of their resources. In addition, National Historic Landmarks may be studied by NPS for possible recommendation to Congress for inclusion in the National Park System.

(7) Section 9 of the Mining in the National Parks Act of 1976 (90 Stat. 1342, 16 U.S.C. 1980) directs the Secretary of the Interior to submit to the Advisory Council a report on any surface mining activity which the Secretary has determined may destroy a National Historic Landmark in whole or in part, and to request the advisory Council's advice on alternative measures to mitigate or abate such activity.

### § 65.3 Definitions.

As used in this rule:

(a) *Advisory Council* means the Advisory Council on Historic Preservation, established by the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*). Address: Executive Director, Advisory Council on Historic Preservation, 1522 K Street NW, Washington, DC 20005.

(b) *Chief elected local official* means the mayor, county judge or otherwise titled chief elected administrative official who is the elected head of the local political jurisdiction in which the property is located.

(c) *Advisory Board* means the National Park System Advisory Board which is a body of authorities in several fields of knowledge appointed by the Secretary under authority of the Historic Sites Act of 1935, as amended.

(d) *District* means a geographically definable area, urban or rural, that possesses a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

(e) *Endangered property* means a historic property which is or is about to be subjected to a major impact that will destroy or seriously damage the resources which make it eligible for National Historic Landmark designation.

(f) *Federal Preservation Officer* means the official designated by the head of each Federal agency responsible for coordinating that agency's activities under the National Historic Preservation Act of 1966, as amended, including nominating properties under that agency's ownership or control to the National Register.

(g) *Keeper* means the Keeper of the National Register of Historic Places.

(h) *Landmark* means National Historic Landmark and is a district, site, building, structure or object, in public or private ownership, judged by the Secretary to possess national significance in American history, archeology, architecture, engineering and culture, and so designated by him.

(i) *National Register* means the National Register of Historic Places, which is a register of districts, sites, buildings, structures and objects significant in American history, architecture, archeology, engineering and culture, maintained by the Secretary. (Section 2(b) of the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461) and section 101(a)(1) of the National Historic Preservation Act of 1966 (80 Stat. 915; 16 U.S.C. 470), as amended.) (Address: Chief, Interagency Resource Management Division, 440 G Street NW, Washington, DC 20243.)

(j) *National Historic Landmarks Program* means the program which identifies, designates, recognizes, lists, and monitors National Historic Landmarks conducted by the Secretary through the National Park Service. (Address: Chief, History Division, National Park Service, Washington, DC 20240; addresses of other participating divisions found throughout these regulations.)

(k) *Object* means a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

(l) *Owner* or *owners* means those individuals, partnerships, corporations or public agencies holding fee simple title to property. "Owner" or "owners" does not include individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature.

(m) *Property* means a site, building, object, structure or a collection of the above which form a district.

(n) *Site* means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure.

(o) *State official* means the person who has been designated in each State to administer the State Historic Preservation Program.

(p) *Structure* means a work made by human beings and composed of interdependent and interrelated parts in a definite pattern of organization.

[48 FR 4655, Feb. 2, 1983, as amended at 62 FR 30235, June 3, 1997]

#### § 65.4 National Historic Landmark criteria.

The criteria applied to evaluate properties for possible designation as National Historic Landmarks or possible determination of eligibility for National Historic Landmark designation are listed below. These criteria shall be used by NPS in the preparation, review and evaluation of National Historic Landmark studies. They shall be used by the Advisory Board in reviewing National Historic Landmark studies and preparing recommendations to the Secretary. Properties shall be designated National Historic Landmarks only if they are nationally significant. Although assessments of national significance should reflect both public perceptions and professional judgments, the evaluations of properties being considered for landmark designation are undertaken by professionals, including historians, architectural historians, archeologists and anthropologists familiar with the broad range of the nation's resources and historical themes. The criteria applied by these specialists to potential landmarks do not define significance nor set a rigid standard for quality. Rather, the criteria establish the qualitative framework in which a comparative professional analysis of national significance can occur. The final decision on whether a property possesses national significance is made by the Secretary on the basis of docu-

mentation including the comments and recommendations of the public who participate in the designation process.

(a) Specific Criteria of National Significance: The quality of national significance is ascribed to districts, sites, buildings, structures and objects that possess exceptional value or quality in illustrating or interpreting the heritage of the United States in history, architecture, archeology, engineering and culture and that possess a high degree of integrity of location, design, setting, materials, workmanship, feeling and association, and:

(1) That are associated with events that have made a significant contribution to, and are identified with, or that outstandingly represent, the broad national patterns of United States history and from which an understanding and appreciation of those patterns may be gained; or

(2) That are associated importantly with the lives of persons nationally significant in the history of the United States; or

(3) That represent some great idea or ideal of the American people; or

(4) That embody the distinguishing characteristics of an architectural type specimen exceptionally valuable for a study of a period, style or method of construction, or that represent a significant, distinctive and exceptional entity whose components may lack individual distinction; or

(5) That are composed of integral parts of the environment not sufficiently significant by reason of historical association or artistic merit to warrant individual recognition but collectively compose an entity of exceptional historical or artistic significance, or outstandingly commemorate or illustrate a way of life or culture; or

(6) That have yielded or may be likely to yield information of major scientific importance by revealing new cultures, or by shedding light upon periods of occupation over large areas of the United States. Such sites are those which have yielded, or which may reasonably be expected to yield, data affecting theories, concepts and ideas to a major degree.

(b) Ordinarily, cemeteries, birthplaces, graves of historical figures,

properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings and properties that have achieved significance within the past 50 years are not eligible for designation. Such properties, however, will qualify if they fall within the following categories:

- (1) A religious property deriving its primary national significance from architectural or artistic distinction or historical importance; or
- (2) A building or structure removed from its original location but which is nationally significant primarily for its architectural merit, or for association with persons or events of transcendent importance in the nation's history and the association consequential; or
- (3) A site of a building or structure no longer standing but the person or event associated with it is of transcendent importance in the nation's history and the association consequential; or
- (4) A birthplace, grave or burial if it is of a historical figure of transcendent national significance and no other appropriate site, building or structure directly associated with the productive life of that person exists; or
- (5) A cemetery that derives its primary national significance from graves of persons of transcendent importance, or from an exceptionally distinctive design or from an exceptionally significant event; or
- (6) A reconstructed building or ensemble of buildings of extraordinary national significance when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other buildings or structures with the same association have survived; or
- (7) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own national historical significance; or
- (8) A property achieving national significance within the past 50 years if it is of extraordinary national importance.

#### § 65.5 Designation of National Historic Landmarks.

Potential National Historic Landmarks are identified primarily by means of theme studies and in some instances by special studies. Nominations and recommendations made by the appropriate State officials, Federal Preservation Officers and other interested parties will be considered in scheduling and conducting studies.

(a) *Theme studies.* NPS defines and systematically conducts organized theme studies which encompass the major aspects of American history. The theme studies provide a contextual framework to evaluate the relative significance of historic properties and determine which properties meet National Historic Landmark criteria. Theme studies will be announced in advance through direct notice to appropriate State officials, Federal Preservation Officers and other interested parties and by notice in the FEDERAL REGISTER. Within the established thematic framework, NPS will schedule and conduct National Historic Landmark theme studies according to the following priorities. Themes which meet more of these priorities ordinarily will be studied before those which meet fewer of the priorities:

(1) Theme studies not yet begun as identified in "History and Prehistory in the National Park System," 1982.

(2) Theme studies in serious need of revision.

(3) Theme studies which relate to a significant number of properties listed in the National Register bearing opinions of State Historic Preservation Officers and Federal Preservation Officers that such properties are of potential national significance. (Only those recommendations which NPS determines are likely to meet the landmarks criteria will be enumerated in determining whether a significant number exists in a theme study.)

(4) Themes which reflect the broad planning needs of NPS and other Federal agencies and for which the funds to conduct the study are made available from sources other than the regularly programmed funds of the National Historic Landmarks Program.

(b) *Special Studies.* NPS will conduct special studies for historic properties

outside of active theme studies according to the following priorities:

(1) Studies authorized by Congress or mandated by Executive Order will receive the highest priority.

(2) Properties which NPS determines are endangered and potentially meet the National Historic Landmarks criteria, whether or not the theme in which they are significant has been studied.

(3) Properties listed in the National Register bearing State or Federal agency recommendations of potential national significance where NPS concurs in the evaluation and the property is significant in a theme already studied.

(c)(1) When a property is selected for study to determine its potential for designation as a National Historic Landmark, NPS will notify in writing, except as provided below, (i) the owner(s), (ii) the chief elected local official, (iii) the appropriate State official, (iv) the Members of Congress who represent the district and State in which the property is located, and, (v) if the property is on an Indian reservation, the chief executive officer of the Indian tribe, that it will be studied to determine its potential for designation as a National Historic Landmark. This notice will provide information on the National Historic Landmarks Program, the designation process and the effects of designation.

(2) When the property has more than 50 owners, NPS will notify in writing (i) the chief elected local official, (ii) the appropriate State official, (iii) the Members of Congress who represent the district and State in which the property is located, and, (iv) if the property is on an Indian reservation, the chief executive officer of the Indian tribe, and (v) provide general notice to the property owners. This general notice will be published in one or more local newspapers of general circulation in the area in which the potential National Historic Landmark is located and will provide information on the National Historic Landmarks Program, the designation process and the effects of designation. The researcher will visit each property selected for study unless it is determined that an onsite investigation is not necessary. In the case of districts with more than 50

owners NPS may conduct a public information meeting if widespread public interest so warrants or on request by the chief elected local official.

(3) Properties for which a study was conducted before the effective date of these regulations are not subject to the requirements of paragraphs (c) (1) and (2) of this section.

(4) The results of each study will be incorporated into a report which will contain at least

(i) A precise description of the property studied; and

(ii) An analysis of the significance of the property and its relationship to the National Historic Landmark criteria.

(d)(1) Properties appearing to qualify for designation as National Historic Landmarks will be presented to the Advisory Board for evaluation except as specified in paragraph (h) of this section.

(2) Before the Advisory Board's review of a property, NPS will provide written notice of this review, except as provided below, and a copy of the study report to (i) the owner(s) of record; (ii) the appropriate State official; (iii) the chief elected local official; (iv) the Members of Congress who represent the district and State in which the property is located; and, (v) if the property is located on an Indian reservation, the chief executive officer of the Indian tribe. The list of owners shall be obtained from official land or tax record, whichever is most appropriate, within 90 days prior to the notification of intent to submit to the Advisory Board. If in any State the land or tax record is not the appropriate list an alternative source of owners may be used. NPS is responsible for notifying only those owners whose names appear on the list. Where there is more than one owner on the list each separate owner shall be notified.

(3) In the case of a property with more than 50 owners, NPS will notify, in writing, (i) the appropriate State official; (ii) the chief elected local official; (iii) the Members of Congress who represent the district and State in which the property is located; (iv) if the property is located on an Indian reservation, the chief executive officer of the Indian tribe; and, (v) will provide general notice to the property owners.

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The general notice will be published in one or more local newspapers of general circulation in the area in which the property is located. A copy of the study report will be made available on request. Notice of Advisory Board review will also be published in the FEDERAL REGISTER.

(4) Notice of Advisory Board review will be given at least 60 days in advance of the Advisory Board meeting. The notice will state date, time and location of the meeting; solicit written comments and recommendations on the study report; provide information on the National Historic Landmarks Program, the designation process and the effects of designation and provide the owners of private property not more than 60 days in which to concur in or object in writing to the designation. Notice of Advisory Board meetings and the agenda will also be published in the FEDERAL REGISTER. Interested parties are encouraged to submit written comments and recommendations which will be presented to the Advisory Board. Interested parties may also attend the Advisory Board meeting and upon request will be given an opportunity to address the Board concerning a property's significance, integrity and proposed boundaries.

(5) Upon notification, any owner of private property who wishes to object shall submit to the Chief, History Division, a notarized statement that the party is the sole or partial owner of record of the property, as appropriate, and objects to the designations. Such notice shall be submitted during the 60-day commenting period. Upon receipt of notarized objections respecting a district or an individual property with multiple ownership it is the responsibility of NPS to ascertain whether a majority of owners have so objected. If an owner whose name did not appear on the list certifies in a written notarized statement that the party is the sole or partial owner of a nominated private property such owner shall be counted by NPS in determining whether a majority of owners has objected. Each owner of private property in a district has one vote regardless of how many properties or what part of one property that party owns and regard-

less of whether the property contributes to the significance of the district.

(6) The commenting period following notification can be waived only when all property owners and the chief elected local official have agreed in writing to the waiver.

(e)(1) The Advisory Board evaluates such factors as a property's significance, integrity, proposed boundaries and the professional adequacy of the study. If the Board finds that these conditions are met, it may recommend to the Secretary that a property be designated or declared eligible for designation as a National Historic Landmark. If one or more of the conditions are not met, the Board may recommend that the property not be designated a landmark or that consideration of it be deferred for further study, as appropriate. In making its recommendation, the Board shall state, if possible, whether or not it finds that the criteria of the landmarks program have been met. A simple majority is required to make a recommendation of designation. The Board's recommendations are advisory.

(2) Studies submitted to the Advisory Board (or the Consulting Committee previously under the Heritage Conservation and Recreation Service) before the effective date of these regulations need not be resubmitted to the Advisory Board. In such instances, if a property appears to qualify for designation, NPS will provide notice and a copy of the study report to the parties as specified in paragraphs (d)(2) and (3) of this section and will provide at least 30 days in which to submit written comments and to provide an opportunity for owners to concur in or object to the designation.

(3) The Director reviews the study report and the Advisory Board recommendations, certifies that the procedural requirements set forth in this section have been met and transmits the study reports, the recommendations of the Advisory Board, his recommendations and any other recommendations and comments received pertaining to the properties to the Secretary.

(f) The Secretary reviews the nominations, recommendations and any comments and, based on the criteria

set forth herein, makes a decision on National Historic Landmark designation. Properties that are designated National Historic Landmarks are entered in the National Register of Historic Places, if not already so listed.

(1) If the private owner or, with respect to districts or individual properties with multiple ownership, the majority of such owners have objected to the designation by notarized statements, the Secretary shall not make a National Historic Landmark designation but shall review the nomination and make a determination of its eligibility for National Historic Landmark designation.

(2) The Secretary may thereafter designate such properties as National Historic Landmarks only upon receipt of notarized statements from the private owner (or majority of private owners in the event of a district or a single property with multiple ownership) that they do not object to the designation.

(3) The Keeper may list in the National Register properties considered for National Historic Landmark designation which do not meet the National Historic Landmark criteria but which do meet the National Register criteria for evaluation in 36 CFR part 60 or determine such properties eligible for the National Register if the private owners or majority of such owners in the case of districts object to designation. A property determined eligible for National Historic Landmark designation is determined eligible for the National Register.

(g) Notice of National Historic Landmark designation, National Register listing, or a determination of eligibility will be sent in the same manner as specified in paragraphs (d)(2) and (3) of this section. For properties which are determined eligible the Advisory Council will also be notified. Notice will be published in the FEDERAL REGISTER.

(h)(1) The Secretary may designate a National Historic Landmark without Advisory Board review through accelerated procedures described in this section when necessary to assist in the preservation of a nationally significant property endangered by a threat of imminent damage or destruction.

(2) NPS will conduct the study and prepare a study report as described in paragraph (c)(4) of this section.

(3) If a property appears to qualify for designation, the National Park Service will provide notice and a copy of the study report to the parties specified in paragraphs (d)(2) and (3) and will allow at least 30 days for the submittal of written comments and to provide owners of private property an opportunity to concur in or object to designation as provided in paragraph (d)(5) of this section except that the commenting period may be less than 60 days.

(4) The Director will review the study report and any comments, will certify that procedural requirements have been met, and will transmit the study report, his and any other recommendations and comments pertaining to the property to the Secretary.

(5) The Secretary will review the nomination and recommendations and any comments and, based on the criteria set forth herein, make a decision on National Historic Landmark designation or a determination of eligibility for designation if the private owners or a majority of such owners of historic districts object.

(6) Notice of National Historic Landmark designation or a determination of eligibility will be sent to the same parties specified in paragraphs (d)(2) and (3) of this section.

#### **§ 65.6 Recognition of National Historic Landmarks.**

(a) Following designation of a property by the Secretary as a National Historic Landmark, the owner(s) will receive a certificate of designation. In the case of a district, the certificate will be delivered to the chief elected local official or other local official, or to the chief officer of a private organization involved with the preservation of the district, or the chief officer of an organization representing the owners of the district, as appropriate.

(b) NPS will invite the owner of each designated National Historic Landmark to accept, free of charge, a landmark plaque. In the case of a district, the chief elected local official or other local official, or the chief officer of an



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organization involved in the preservation of the district, or chief officer of an organization representing the owners of the district, as appropriate, may accept the plaque on behalf of the owners. A plaque will be presented to properties where the appropriate recipient(s) (from those listed above) agrees to display it publicly and appropriately.

(c) The appropriate recipient(s) may accept the plaque at any time after designation of the National Historic Landmark. In so doing owners give up none of the rights and privileges of ownership or use of the landmark property nor does the Department of the Interior acquire any interest in property so designated.

(d) NPS will provide one standard certificate and plaque for each designated National Historic Landmark. The certificate and plaque remain the property of NPS. Should the National Historic Landmark designation at any time be withdrawn, in accordance with the procedures specified in § 65.9 of these rules, or should the certificate and plaque not be publicly or appropriately displayed, the certificate and the plaque, if issued, will be reclaimed by NPS.

(e) Upon request, and if feasible, NPS will help arrange and participate in a presentation ceremony.

### § 65.7 Monitoring National Historic Landmarks.

(a) NPS maintains a continuing relationship with the owners of National Historic Landmarks. Periodic visits, contacts with State Historic Preservation Officers, and other appropriate means will be used to determine whether landmarks retain their integrity, to advise owners concerning accepted preservation standards and techniques and to update administrative records on the properties.

(b) Reports of monitoring activities form the basis for the annual report submitted to Congress by the Secretary of the Interior, as mandated by section 8, National Park System General Authorities Act of 1970, as amended (90 Stat. 1940, 16 U.S.C. 1a-5). The Secretary's annual report will identify those National Historic Landmarks which exhibit known or anticipated

damage or threats to their integrity. In evaluating National Historic Landmarks for listing in the report, the seriousness and imminence of the damage or threat are considered, as well as the integrity of the landmark at the time of designation taking into account the criteria in § 65.4.

(c) As mandated in section 9, Mining in the National Parks Act of 1976 (90 Stat. 1342, 16 U.S.C. 1980), whenever the Secretary of the Interior finds that a National Historic Landmark may be irreparably lost or destroyed in whole or in part by any surface mining activity, including exploration for, removal or production of minerals or materials, the Secretary shall (1) notify the person conducting such activity of that finding;

(2) Submit a report thereon, including the basis for his finding that such activity may cause irreparable loss or destruction of a National Historic Landmark, to the Advisory Council; and

(3) Request from the Council advice as to alternative measures that may be taken by the United States to mitigate or abate such activity.

(d) Monitoring activities described in this section, including the preparation of the mandated reports to Congress and the Advisory Council are carried out by NPS regional offices under the direction of the Preservation Assistance Division, NPS [Address: Chief, Resource Assistance Division, National Park Service, 440 G Street NW, Washington, DC 20243] in consultation with the History Division, NPS.

### § 65.8 Alteration of National Historic Landmark boundaries.

(a) *Two justifications exist for enlarging the boundary of a National Historic Landmark:* Documentation of previously unrecognized significance or professional error in the original designation. Enlargement of a boundary will be approved only when the area proposed for addition to the National Historic Landmark possesses or contributes directly to the characteristics for which the landmark was designated.

(b) *Two justifications exist for reducing the boundary of a National Historic*

*Landmark:* Loss of integrity or professional error in the original designation. Reduction of a boundary will be approved only when the area to be deleted from the National Historic Landmark does not possess or has lost the characteristics for which the landmark was designated.

(c) A proposal for enlargement or reduction of a National Historic Landmark boundary may be submitted to or can originate with the History Division, NPS. NPS may restudy the National Historic Landmark and subsequently make a proposal, if appropriate, in the same manner as specified in § 65.5 (c) through (h). In the case of boundary enlargements only those owners in the newly nominated but as yet undesignated area will be notified and will be counted in determining whether a majority of private owners object to listing.

(d)(1) When a boundary is proposed for a National Historic Landmark for which no specific boundary was identified at the time of designation, NPS shall provide notice, in writing, of the proposed boundary to (i) the owner(s); (ii) the appropriate State official; (iii) the chief elected local official; (iv) the Members of Congress who represent the district and State in which the landmark is located, and (v) if the property is located on an Indian reservation, the chief executive officer of the Indian tribe, and shall allow not less than 30 nor more than 60 days for submitting written comments on the proposal. In the case of a landmark with more than 50 owners, the general notice specified in § 65.5(d)(3) will be used. In the case of National Historic Landmark districts for which no boundaries have been established, proposed boundaries shall be published in the FEDERAL REGISTER for comment and be submitted to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives and not less than 30 nor more than 60 days shall be provided for the submittal of written comments on the proposed boundaries.

(2) The proposed boundary and any comments received thereon shall be submitted to the Associated Director for National Register Programs, NPS,

who may approve the boundary without reference to the Advisory Board or the Secretary.

(3) NPS will provide written notice of the approved boundary to the same parties specified in paragraph (d)(1) of this section and by publication in the FEDERAL REGISTER.

(4) Management of the activities described in paragraphs (d)(1), (2), and (3) of this section is handled by the National Register of Historic Places, NPS, [Address: National Register of Historic Places, National Park Service, Department of the Interior, Washington, DC 20240].

(e) A technical correction to a boundary may be approved by the Chief, History Division, without Advisory Board review or Secretarial approval. NPS will provide notice, in writing, of any technical correction in a boundary to the same parties specified in (d)(1).

#### **§ 65.9 Withdrawal of National Historic Landmark designation.**

(a) National Historic Landmarks will be considered for withdrawal of designation only at the request of the owner or upon the initiative of the Secretary.

(b) Four justifications exist for the withdrawal of National Historic Landmark designation:

(1) The property has ceased to meet the criteria for designation because the qualities which caused it to be originally designated have been lost or destroyed, or such qualities were lost subsequent to nomination, but before designation;

(2) Additional information shows conclusively that the property does not possess sufficient significance to meet the National Historic Landmark criteria;

(3) Professional error in the designation; and

(4) Prejudicial procedural error in the designation process.

(c) Properties designated as National Historic Landmarks before December 13, 1980, can be dedesignated only on the grounds established in paragraph (a)(1) of this section.

(d) The owner may appeal to have a property dedesignated by submitting a request for dedesignation and stating

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the grounds for the appeal as established in subsection (a) to the Chief, History Division, National Park Service, Department of the Interior, Washington, DC 20240. An appellant will receive a response within 60 days as to whether NPS considers the documentation sufficient to initiate a restudy of the landmark.

(e) The Secretary may initiate a restudy of a National Historic Landmark and subsequently a proposal for withdrawal of the landmark designation as appropriate in the same manner as a new designation as specified in § 65.5 (c) through (h). Proposals will not be submitted to the Advisory Board if the grounds for removal are procedural, although the Board will be informed of such proposals.

(f)(1) The property will remain listed in the National Register if the Keeper determines that it meets the National Register criteria for evaluation in 36 CFR 60.4, except if the property is redesignated on procedural grounds.

(2) Any property from which designation is withdrawn because of a procedural error in the designation process shall automatically be considered eligible for inclusion in the National Register as a National Historic Landmark without further action and will be published as such in the FEDERAL REGISTER.

(g)(1) The National Park Service will provide written notice of the withdrawal of a National Historic Landmark designation and the status of the National Register listing, and a copy of the report on which those actions are based to (i) the owner(s); (ii) the appropriate State official; (iii) the chief elected local official; (iv) the Members of Congress who represent the district and State in which the landmark is located; and (v) if the landmark is located on an Indian reservation, the chief executive officer of the Indian tribe. In the case of a landmark with more than 50 owners, the general notice specified in § 65.5(d)(3) will be used.

(2) Notice of withdrawal of designation and related National Register listing and determinations of eligibility will be published periodically in the FEDERAL REGISTER.

(h) Upon withdrawal of a National Historic Landmark designation, NPS

will reclaim the certificate and plaque, if any, issued for that landmark.

(i) An owner shall not be considered as having exhausted administrative remedies with respect to dedesignation of a National Historic Landmark until after submitting an appeal and receiving a response from NPS in accord with these procedures.

### § 65.10 Appeals for designation.

(a) Any applicant seeking to have a property designated a National Historic Landmark may appeal, stating the grounds for appeal, directly to the Director, National Park Service, Department of the Interior, Washington, DC 20240, under the following circumstances:

Where the applicant—

(1) Disagrees with the initial decision of NPS that the property is not likely to meet the criteria of the National Historic Landmarks Program and will not be submitted to the Advisory Board; or

(2) Disagrees with the decision of the Secretary that the property does not meet the criteria of the National Historic Landmarks Program.

(b) The Director will respond to the appellant within 60 days. After reviewing the appeal the Director may:

(1) Deny the appeal;

(2) Direct that a National Historic Landmark nomination be prepared and processed according to the regulations if this has not yet occurred; or

(3) Resubmit the nomination to the Secretary for reconsideration and final decision.

(c) Any person or organization which supports or opposes the consideration of a property for National Historic Landmark designation may submit an appeal to the Director, NPS, during the designation process either supporting or opposing the designation. Such appeals received by the Director before the study of the property or before its submission to the National Park System Advisory Board will be considered by the Director, the Advisory Board and the Secretary, as appropriate, in the designation process.

(d) No person shall be considered to have exhausted administrative remedies with respect to failure to designate a property a National Historic

Landmark until he or she has complied with the procedures set forth in this section.

## **PART 67—HISTORIC PRESERVATION CERTIFICATIONS UNDER THE IN- TERNAL REVENUE CODE**

### **Sec.**

- 67.1 Program authority and function.
- 67.2 Definitions.
- 67.3 Introduction to certifications of significance and rehabilitation and information collection.
- 67.4 Certifications of historic significance.
- 67.5 Standards for evaluating significance within registered historic districts.
- 67.6 Certifications of rehabilitation.
- 67.7 Standards for rehabilitation.
- 67.8 Certifications of statutes.
- 67.9 Certifications of State or local historic districts.
- 67.10 Appeals.
- 67.11 Fees for processing certification requests.

**AUTHORITY:** 16 U.S.C. 470a(a)(1)(A); 26 U.S.C. 47 and 170(h).

**SOURCE:** 54 FR 6771, Feb. 26, 1990, unless otherwise noted.

**EDITORIAL NOTE:** Nomenclature changes to part 67 appear at 76 FR 30541, May 26, 2011.

### **§ 67.1 Program authority and function.**

(a) Section 47 of the Internal Revenue Code designates the Secretary as the authority for the issuance of certifications of historic district statutes and of State and local historic districts, certifications of significance, and certifications of rehabilitation in connection with certain tax incentives involving historic preservation. These certification responsibilities have been delegated to the National Park Service (NPS); the following office issues those certifications: National Park Service, Washington Area Service Office, Technical Preservation Services, Heritage Preservation Services (WASO), 1849 C Street, NW., Washington, DC 20240.

(b) NPS WASO establishes program direction and considers appeals of certification denials. It is the responsibility of owners wishing certifications to provide sufficient documentation to the Secretary to make certification decisions. These procedures, upon their effective date, are applicable to future and pending certification requests, except as otherwise provided herein.

(c) States receiving Historic Preservation Fund grants from the Department participate in the review of requests for certification, through recommendations to the Secretary by the State Historic Preservation Officer (SHPO). The SHPO acts on behalf of the State in this capacity and, therefore, the NPS is not responsible for any actions, errors or omissions of the SHPO.

(1) Requests for certifications and approvals of proposed rehabilitation work are sent by an owner first to the appropriate SHPO for review. State comments are recorded on National Park Service Review Sheets (NPS Forms 10–168 (d) and (e)) and are carefully considered by the Secretary before a certification decision is made. Recommendations of States with approved State programs are generally followed, but by law, all certification decisions are made by the Secretary, based upon professional review of the application and related information. The decision of the Secretary may differ from the recommendation of the SHPO.

(2) A State may choose not to participate in the review of certification requests. States not wishing to participate in the comment process should notify the Secretary in writing of this fact. Owners from such nonparticipating States may request certifications by sending their applications directly to the appropriate NPS WASO listed above. In all other situations, certification requests are sent first to the appropriate SHPO.

(d) The Internal Revenue Service is responsible for all procedures, legal determinations, and rules and regulations concerning the tax consequences of the historic preservation provisions described in this part. Any certification made by the Secretary pursuant to this part shall not be considered as binding upon the Internal Revenue Service or the Secretary of the Treasury with respect to tax consequences under the Internal Revenue Code. For example, certifications made by the Secretary do not constitute determinations that a structure is of the type subject to the allowance for depreciation under section 167 of the Code.

[54 FR 6771, Feb. 26, 1990, as amended at 76 FR 30541, May 26, 2011]