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[Page 332]

TITLE 36--PARKS, FORESTS, AND PUBLIC PROPERTY

CHAPTER I--NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

PART 61_PROCEDURES FOR STATE, TRIBAL, AND LOCAL GOVERNMENT HISTORIC PRESERVATION PROGRAMS--Table of Contents

Sec. 61.1 Authorization.

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.

Source: 64 FR 11742, Mar. 9, 1999, unless otherwise noted.

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.

Sec. 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.

Sec. 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>.

Sec. 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, [[Page 334]] 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 [[Page 335]] 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.

Sec. 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.

Sec. 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. [[Page 336]] 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 [[Page 337]] 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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.

Sec. 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. [[Page 338]]
- (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 Sec. 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.

Sec. 61.8 Tribal programs. [Reserved]

Sec. 61.9 Grants to tribal programs. [Reserved]

Sec. 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.

Sec. 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 [[Page 339]] and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior (1024-0038), Washington, D.C. 20503.