

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Division of Culture and History TITLE NUMBER: 82

RULE TYPE: Legislative; CITE AUTHORITY WV Code § 29-1-8d

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Certified Local Government Program

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

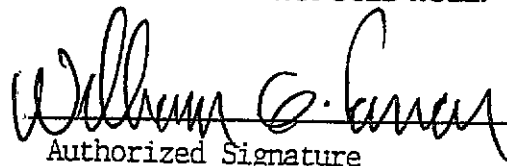
TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON October 24, 1997 AT 5:00 pm

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Mr. William G. Farrar
State Historic Preservation Office
The Cultural Center
1900 Kanawha Blvd., East
Charleston, WV 25305-0300

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Summary of
Title 82
Legislative Rules
Division of Culture and History

Series 1
Certified Local Government Program

This legislative rule establishes general rules for the certification of local governments to participate in the National Historic Preservation Program with the state and allow local governments to apply for matching funds with the State Historic Preservation Officer and review nomination of properties to the National Register of Historic Places.

**Summary of Proposed Changes to
Title 82
Legislative Rules
Division of Culture and History**

**Series 1
Certified Local Government Program**

The proposed changes to this legislative rule will provide corrections and clarifications in keeping with existing authorizing WV Code § 29-1-8d, will stipulate acceptance of avocational experience as a substitute for professional qualification, and will stipulate when the Certified Local Government may provide recommendations about properties nominated to the National Register of Historic Places.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Certified Local Government

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Culture and History

Address: The Cultural Center
1900 Kanawha Blvd., East
Charleston, WV 25305-0300

1. Effect of Proposed Rule N/A

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

3. Objectives of these rules:

Rule Title: Certified Local Government

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

C. Economic Impact on Citizens/Public at Large.

Date: 7/30/97

Signature of Agency Head or Authorized Representative

William G. Farmer

TITLE 82
LEGISLATIVE RULES
DEPARTMENT DIVISION OF CULTURE AND HISTORY

SERIES 1
CERTIFIED LOCAL GOVERNMENT PROGRAM

§82-1-1. General.

Scope. — These regulations establish general rules for the certification of local governments to participate in the National Historic Preservation Program with the state and allow local governments to apply for matching funds with the State Historic Preservation Officer and review nomination of properties to the National Register of Historic Places.

1.2. Authority. — W.Va. Code ~~§ 29-1-6 (5)~~ § 29-1-8 (d)

1.3. Filing Date. — ~~June 5, 1985~~

1.4. Effective Date. — ~~June 17, 1985~~

§82-1-2. Definitions.

2.1. “Local Government.” — Is a city, county, municipality, or other general purpose political subdivision of the state.

2.2. “Historic Landmark Commission.” — (HLC) or “Commission” means a board, council, commission, or other similar body established by state or local legislation.

2.3. “Certified Local Government (CLG).” — Means any local government certified as meeting the requirement set forth in this document.

2.4. “State Historic Preservation Officer (SHPO).” — Means the official in the Department Division of Culture and History appointed by the Governor to carry out the provisions of the National Historic Preservation Act of 1966, as amended, in West Virginia.

2.5. “Secretary.” — Means the United States Secretary of the Interior.

§82-1-3. Introduction.

3.1. General purposes. — Since 1966, when Congress established a preservation program for the United States, the National Historic Preservation Program has operated as a decentralized partnership between the federal government and the states. In the simplest of terms, the federal

government established a program of identification, evaluation and protection of historic properties which the states, primarily, carry out. The success of that working relationship prompted Congress to expand the partnership to provide for participation by local governments. The National Historic Preservation Amendments Act of 1980 (P.L. 96-515), as amended, contains the legal basis for the new federal-state-local preservation partnership. The Federal Law directs the State Historic Preservation Officer and the Secretary of the Interior to certify local governments to participate in this partnership and specifies several requirements which the local government must meet. The purpose of these regulations is to implement that partnership in West Virginia. The role of the "Certified Local Governments" in the partnership involves (1) eligibility to apply to the State Historic Preservation Officer, for matching funds earmarked for "Certified Local Governments," and (2) responsibility for review of nominations of properties to The National Register of Historic Places. C.L.G.'s CLGs will help to promote the preservation of prehistoric and historic sites, structures, objects, buildings and historic districts by establishing a partnership between the local government and the West Virginia State Historic Preservation Office (SHPO), a unit of the West Virginia Department Division of Culture and History, which seeks to encourage and expand local involvement in preservation issues. This partnership will help to ensure that: Historic preservation issues are understood and addressed at the local level; local interests and concerns are identified in the evaluation and nomination process of the SHPO; information concerning local historic preservation issues is provided to the SHPO and to the public; local landmark legislation and historic preservation Commissions are established in localities where they do not yet exist and are updated, if necessary, where they already exist; existing inventory data and technical information is made available to the local community preservation needs.

In order to become certified, a local government must meet several requirements, chief of which are to have enacted an historic preservation ordinance and appointed a qualified Historic Preservation Commission. The Federal Act directs the State Historic Preservation Officer (SHPO) and the Secretary of the Interior to certify local governments to participate in the partnership.

§82-1-4. Requirements for certification of local government programs in West Virginia.

4.1. Enforcement. — Local government must "Enforce appropriate state or local legislation for the designation and protection of historic properties."

(a) The local government must have established, through ordinance or county order, a municipal or county Historic Landmark Commission or Commission under provisions of the West Virginia State Code, article twenty-six-a, chapter eight.

(b) The Commission must establish a clearly defined process for the local designation and protection of significant individual historic properties (landmarks) and/or historic districts. Both the criteria for determining significant properties and the procedure for designating and protecting those properties must be defined. Additionally, the local government must have the legal capacity to enforce legislation that is on or may be on the books relating to the designation and protection of properties.

4.2. Establishment of review Commission. — Local government shall “Have established an adequate and qualified Historic Preservation Review Commission by state or local legislation.”

(a) The local government shall have created a Historic Landmark Commission or Commission, consisting of five (5) members, to carry out the provisions of the ordinance or order.

(b) HLC or Commission membership shall be drawn from among persons with demonstrated interest, competence or knowledge in historic preservation and local history. To the extent available in the community, members of the HLC shall be preservation-related professionals (including the professions of history, architecture, architectural history, planning, real estate, American studies, geography, landscape architecture, law, engineering or archaeology, as defined by 36 CFR 61). Members who are not professionally qualified shall demonstrate avocational experience in preservation and associated disciplines. When a discipline is not represented in the Commission membership, commissioners shall seek expertise in this area when reporting on National Register nominations and other actions that will impact properties which are normally evaluated by a professional in such discipline. This may be accomplished through consultation with universities or colleges. Prior to the consultation process, the Commission must notify the State Historic Preservation Officer in writing that the appropriate professional assistance has been obtained and identified.

(c) The local government, to be certified without the minimum number or types of professional disciplines, must report to the SHPO’s satisfaction that it has made a reasonable effort to fill those positions. The requirements for professional representation on the Commission shall not exceed those of the State Review Board.

(d) Commission meetings shall be held at regular intervals at least four (4) times each year, advertised in advance and open to the public. The Commission shall establish rules of procedure or bylaws including a code of conduct, using standards established by the West Virginia Open Meeting Law, §6-9A-1 et seq.

(e) The Commission shall transmit an annual report of its activities to the State Historic Preservation Officer. Such reports shall include, at a minimum, new designations made, progress on survey activities and attendance records. Reports shall be submitted within sixty (60) days after the end of the fiscal year for the local government or portion of the fiscal year in the first year of the establishment of the Commission. These reports will be reviewed and evaluated by the SHPO to ensure that the Commission’s activities are consistent with the State Historic Preservation Plan. The annual report will adhere to the guidelines established by the SHPO.

(f) The Commission shall monitor and report to the State Historic Preservation Officer any activity affecting any property in its jurisdiction listed in the National Register of Historic Places.

(g) Records of proceedings shall be transmitted to the members of the Commission.

(h) In addition to the above stated duties and those specified in the State Code, article twenty-six-a, chapter eight, the Commission shall report on all proposed National Register nominations for properties within the boundaries of the CLG's jurisdiction. When a Commission reviews a nomination which is normally evaluated by a professional in a specific discipline and that discipline is not represented on the Commission, the Commission must seek expertise in that discipline before rendering its decision. This can be accomplished through consulting or by other means that the SHPO has determined to be appropriate.

(i) Commission responsibilities must be complementary to and carried out in coordination with those of the State Historic Preservation Office as outlined in 36CFR 61.4 (b). The State Historic Preservation Office shall cooperate with the HLC or Commission by making available materials and training to provide a working knowledge of the roles and operations of federal, state and local preservation programs.

4.3. System for survey and inventory. — The local government "Maintains a system for the survey and inventory of historic properties."

(a) The local government must carry out a systematic and professionally comprehensive method of inventories historic properties as outlined in the SHPO's West Virginia Historic Resource Survey Handbook. This survey information must be clearly organized and accessible to the public. The State Historic Preservation Office should be consulted in the initial development of such a system and inventory forms should be those used by the State Historic Preservation Officer. The local inventory should also clearly indicate those properties which have been designated local landmarks as well as those listed on the National Register of Historic Places. The local government survey shall in all cases be coordinated with and complementary to those of the state.

(b) The local government must submit a copy of inventory documentation for all locally surveyed resources to the State Historic Preservation Office within an appropriate time frame.

(c) The State Historic Preservation Office may request additional survey and inventory data from the local government as part of the development of the state's comprehensive planning process (RP3):

(d) All inventory material shall be updated every third year to reflect changes, alterations and demolitions.

4.4. Public participation. — Local governments "Provide for adequate public participation in the local Historic Preservation Programs, Including The process of recommending properties for nomination to The National Register," as outlined in CFR. 61.5 (c) (4).

(a) All meetings of the Commission shall adhere to the West Virginia Open Meetings Law, section one, article nine-a, chapter six et seq. (§6-9A-1). If the meeting place does not conform

to ADA standards, the public notice shall allow for requests for accommodation.

(b) Careful minutes shall be kept of all actions and all responsibilities of the Commission and must be kept on file and available to the public upon request.

(c) The SHPO and the CLG will cooperate to provide adequate opportunity for public participation in the nomination of properties to the National Register. All reports submitted by the CLG to the SHPO regarding historic properties shall include assurances of public input. The CLG shall retain a list of all persons contracted during the review and comment period and record responses which they received. If a public meeting was held, a list of those attending shall be included in the report.

(d) The local government must perform the responsibilities delegated to it under the National Historic Preservation Act, as amended.

§82-1-5. Process for certification of local governments in West Virginia.

5.1. Request for certification. — The chief elected official of the appropriate local governing body shall request certification from the West Virginia Historic Preservation office. The request for certification shall include the following:

(a) A written assurance by the chief elected official that the local government does fulfill all the standards for certification outlined above.

(b) A copy of the local historic landmark ordinance or order.

(c) A listing of districts and designated historic landmarks under the local ordinance together with statements of the historical significance of the properties and maps including their locations.

(d) Resumes of each of the members of the Historic Landmark Commission including credentials of member expertise in fields related to historic preservation. Where no professional members have been appointed an explanation and information demonstrating good faith efforts to obtain such members shall be included.

(e) A set of goals and objectives for the coming year.

5.2. State Historic Preservation Office response to local government request. — The West Virginia State Historic Preservation Office shall respond to the chief elected official within sixty (60) days of the receipt of an adequately documented written request. The request for certification may be made at any time throughout the year and is separate from requests for funding from the Historic Preservation Fund.

5.3. Determination that local government fulfills requirements for certification. — If the

State Historic Preservation Officer determines that the local government fulfills the requirements for certification, the State Historic Preservation Officer will prepare a written certification agreement with the local government that lists the specific responsibilities of the local government where certified. These responsibilities will include those powers and duties as stated in Section 4.2 of these rules. The SHPO will notify the United States Secretary of the Interior or designee and furnish a copy of the approved request and the certification agreement and shall respond to the local government within fifteen (15) days of the Secretary's response.

5.4. Local government certification to participate. — The local government shall be certified to participate in the National Historic Preservation Program if no comment is received by the SHPO from the Secretary of the Interior within fifteen (15) working days. The certification agreement between the SHPO and the local government will then be final.

5.5. Local government condition for continued certification. — Once a local government is certified it remains certified without further action unless after substantive review, the SHPO recommends and proceeds with decertification or the local government requests that they no longer be certified.

§82-1-6. Certified local government participation in the nomination process for the National Register of Historic Places (National Historic Preservation Act, Section 101 (c) (2)).

6.1. Notification of Commission of by SHPO of National Register nomination of property within local government jurisdiction. — Before a property within the jurisdiction of the certified local government may be considered by the State to be nominated to the Secretary for inclusion on the National Register, the State Historic Preservation Officer shall notify the owner, the applicable chief local elected official and the local Historic Preservation Commission. The Commission, after reasonable opportunity for public comment, shall prepare a report as to whether or not such property, in its opinion, meets the criteria of the National Register. When the National Register nomination materials are received first or prepared by the local Historic Landmarks Commission, the Commission may submit a copy of the nomination to the SHPO for review and comment. The CLG may provide its recommendation and report at the time to the SHPO with the nomination package.

Within sixty (60) days of notice from the State Historic Preservation Officer, the chief local elected official shall transmit the report of the Commission and his recommendation to the State Historic Preservation Officer. Except as provided in Section 6.2 below, after receipt of such report and recommendation or if no such report and recommendation are received within sixty (60) days, the state shall make the nomination pursuant to section 101 (a) of the National Historic Preservation Act, as amended. The state may expedite such process with the concurrence of the certified local government.

6.2. Commission and chief local elected official recommend that a property not be nominated to the National Register. — (National Historic Preservation Act, section 101 (c) (2) (b).) If both the Commission and the chief local elected official recommend that a property not be nominated to the National Register, the State Historic Preservation Officer shall take no further

action, unless within thirty (30) days of the receipt of such recommendation by the State Historic Preservation Officer an appeal is filed with the state. If such an appeal is filed, the state shall follow the procedures for making a nomination pursuant to established procedures (section 101 (a) of the Act). Any report and recommendation made under this Section shall be included with any nomination submitted by the state to the Secretary.

6.3. Commission option for required professional qualifications and review of National Register nominations. — All nominations, when sent by the State Historic Preservation Officer to the HLC or Commission for comment, will be classified as primarily historic, archaeological, and/or architectural in nature.

If an HLC or Commission does not have a professional member with the necessary federal qualifications in the area, the HLC can obtain the opinion of a qualified professional in the area and consider their opinion in their recommendation.

6.4. Commission qualification for federal pass through funds. — Federal regulations also require that Commissions possess certain qualifications in order to receive federal pass through funds. These are explained in Section 4.2 of these rules.

§82-1-7. Process for monitoring and decertification of certified local governments.

7.1. Performance review of certified local government by SHPO. — The SHPO will review the Commission's annual report to ensure that the performance of the local government is consistent with the State Historic Preservation Plan. If the SHPO determines that the performance of a certified local government is not in conformance with the certification agreement and the State Historic Preservation Plan the State Historic Preservation Officer shall document that determination and recommend to the certified local government steps which may be taken to improve their performance. The Historic Preservation Officer shall also review the administration of funds allocated from the Historic Preservation Fund and other documents as necessary. The SHPO shall maintain written records for all SHPO evaluations of ~~CLG's~~ CLGs so that they may be available to the Secretary at any time.

7.2. Timetable for ~~CLG~~ CLG improvement. — The certified local government shall have no less than thirty (30) days nor more than one hundred twenty (120) days to implement improvements acceptable to the State Historic Preservation Officer. The SHPO shall provide advice and assistance when CLG performance is inadequate.

7.3. Revocation of certification. — If the State Historic Preservation Officer determines that sufficient improvement has not occurred, the State Historic Preservation Officer shall recommend the revocation of the certification of the certified local government to the Secretary citing specific reasons for the recommendation. If the local government is decertified, the SHPO will terminate any financial assistance and will conduct a close up review of any funds received from the SHPO by the CLG. This close out will follow procedures specified in the National Register Program Guidelines.

7.4. Final approval for ~~CLG~~ CLG decertification. — SHPO recommendations for CLG decertification shall be approved and final if the Secretary does not object within thirty (30) days of receipt of SHPO recommendations for decertification.

§82-1-8. Transfer of historic preservation funds to certified local governments.

8.1. General purposes. — A minimum of ten percent (10%) of the state's annual apportionment from the Historic Preservation Fund of the Department of the Interior will be set aside for transfer to qualified ~~CLG's~~ CLGs in accordance with the National Historic Preservation Act as amended. In any year in which the total Historic Preservation Fund appropriation exceeds sixty-five (65) million dollars, one half (1/2) of the amount over sixty-five (65) million dollars will also be transferred to CLG according to procedures to be provided by the Secretary.

8.2. Grants awards basis, application, and eligible activities. — All ~~CLG's~~ CLGs are eligible to apply for funds but will not automatically receive funds. Grants will be awarded on a competitive basis. Applications for funds will be separate from applications for certification. Applications for funds will be evaluated by the SHPO and reviewed by the State Review Board and, whose recommendations will be made to the West Virginia Archives and History Commission (State Review Board). In general, eligible activities will include any project which further the goals of identification, evaluation, nomination and protection for the community's cultural resources and allows the CLG to carry out the minimum requirements specified in its local legislation or responsibilities delegated to it by the State Historic Preservation Officer. This could include survey, reviewing nominations and of properties to the National Register, public education programs, planning studies and research. Priority will be given to projects which assist in the establishment of a process for incorporation of the consideration of historic preservation goals and objectives with into the community's planning process, which increase the community's awareness and understanding of historic preservation values, or which increase the capability and effectiveness of the local government in addressing local historic preservation issues and needs.

8.3. Project eligibility in accordance with National Register Programs Manual. — All funded projects must be eligible for assistance in accordance with the National Register Programs Manual and must be consistent with the goals and objectives of the West Virginia comprehensive historic preservation plan, ~~ning process (RP3)~~.

8.4. Distribution of funds to produce impact and measurable results. — The SHPO will make every effort to distribute the funds set aside for ~~CLG's~~ CLGs to the maximum number of jurisdictions to the extent such distribution is consistent with 35 CFR 61.7 (f) (1) which states that the amount awarded to any applicant must be sufficient to produce a specific impact. This requirement to provide sufficient funds to produce measurable results cannot be waived regardless of the number of eligible ~~CLG's~~ CLGs which apply for funds.

Under normal circumstances no CLG will receive more than thirty percent (30%) of the total amount of funds available from the CLG set aside. The SHPO will also seek a reasonable distribution between urban and rural areas. The SHPO will make available, upon request, the rationale for the

applicants selected and the amount awarded.

8.5. Application and selection criteria. — Project application forms and selection criteria will be made available through individual notification and public advertisement from the SHPO of the West Virginia Department Division of Culture and History in June of each year. The criteria will be coordinated with those used to select survey and planning grants during that fiscal year. Funds must be applied for by August 30 of each year. Funding in any prior year does not guarantee continued funding. The project schedule and deadlines may vary from year to year and is dependent upon the time frame in which the Secretary of the Interior notifies the state of its apportionment from the annual Historic Preservation Fund.

8.6. Subgrantee requirements and financial management. — All ~~CLG's~~ CLGs which receive funding are considered subgrantees of the state and must adhere to all requirements of the National Register Programs Manual and maintain an adequate financial management system as specified in Office of Management and Budget (OMB) Circular A-102 Attachment G — (“Standards for Grantee Financial Management Systems”) as well as any specific requirements mandated by Congress regarding the use of such funds. Local financial management systems shall be auditable in accordance with the ~~general accounting office's~~ General Accounting Office (GAO) standards for audit of governmental organizations, programs, activities & and functions. The SHPO is responsible for ensuring proper accounting of Historic Preservation Fund grants to ~~CLG's~~ CLGs in accordance with Office Management and Budget Circular A-102, Attachment P Audit Requirements. Grants made from the Historic Preservation Fund cannot be used as matching share for other federal grants. Only direct costs may be charged as part of the project unless the CLG has a current indirect cost rate approved by a cognizant federal agency.

8.7. Limitation of use of funds. — Use of federal funds will be limited by all existing restrictions imposed by the federal government. The intent of Historic Preservation Fund assistance is to augment, not replace, existing local commitment to historic preservation activities.

8.8. National Register review and funding application. — Certification of local governments and their participation in review and approval of National Register nominations is not dependent upon whether or not the CLG elects to apply for or receives funds from the CLG set aside.

Department of the Interior Regulations
36 CFR PART 61:
PROCEDURES FOR APPROVED STATE AND LOCAL GOVERNMENT
HISTORIC PRESERVATION PROGRAMS

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

Source: 49 FR 14899, Apr. 13, 1984, unless otherwise noted.

§61.1 Authorization.

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

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

- (1) Approving State historic preservation programs;
- (2) Certifying local governments to carry out the purposes of the Act;
- (3) The allocation by States of a share of the grants received by the States under the Act to certified local governments (CLGs);

(b) Directs the Secretary to conduct performance evaluations of State programs periodically;

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

(d) Requires the Secretary to establish guidelines for the use and distribution of funds transferred to local governments to ensure that no local government receives a disproportionate share of the funds available; and

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

§61.2 Definitions.

As used in this part:

(a) "Approved State program" means a State historic preservation program that has been approved by the Secretary of the Interior in accordance with section 101(b) of the National Historic Preservation Act, as amended. All State programs will be treated as approved programs until December 12, 1983, unless specifically disapproved by the Secretary before that time.

(b) "Certified local government" means a local government that has been certified to carry out the purposes of the National Historic Preservation Act, as amended, in accordance with section 101(c) of the Act.

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

(d) "CLG share" means the funding authorized for transfer to local governments in accordance with section 103(c) of the National Historic Preservation Act, as amended.

(e) "Comprehensive historic preservation planning" means an ongoing process that is consistent with technical standards issued by the Department of the Interior and which produces reliable, understandable, and up-to-date information for decisionmaking related to the identification, evaluation, and protection/treatment of historic resources.

(f) "Comprehensive statewide historic preservation plan" means the part of the planning process that conforms to the Secretary's Standards for Preservation Planning and is approved as part of the State Program Approval Process. The comprehensive plan entails the organization into a logical sequence of preservation information pertaining to identification, evaluation, registration, and treatment of historic properties, and setting priorities for accomplishing preservation activities.

(g) "Historic Preservation Fund" means the monies accrued under the Outer Continental Shelf Lands Act, as amended, to support the program of matching grants-in-aid to the States for historic preservation programs and projects, as authorized by section 101(d)(1) of the National Historic Preservation Act, as amended.

(h) "Historic preservation review commission" means a board, council, commission, or other similar collegial body which is established in accordance with §61.4(c)(2) of these rules.

(i) **"Local government"** means a city, county, parish, township, municipality, or borough, or any other general purpose political subdivision of any State.

(j) **"National Register of Historic Places"** means the national list of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture, maintained by the Secretary of the Interior under authority of section 101(a)(1)(A) of the National Historic Preservation Act, as amended.

(k) **"The National Register Programs Manual"** means the manual that sets forth NPS administrative procedures and guidelines for activities concerning the federally related historic preservation programs of the National Trust for Historic Preservation, the States, and local governments. This manual includes guidelines and procedures for the administration of the historic preservation grants-in-aid program, and supercedes the HPF Grants Management Manual.

(l) **"National Park Service"** means the bureau of the Department of the Interior to which the Secretary of the Interior has delegated the authority and responsibility for administering the National Historic Preservation Program.

(m) **"Secretary"** means the Secretary of the Interior. Unless otherwise stated in law or regulation, the Secretary has delegated the authority and responsibility for administering the National Historic Preservation Program to the National Park Service.

(n) **"Secretary's Standards and Guidelines"** means the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. The Standards and Guidelines provide technical information about archeological and historic preservation activities and methods. The Standards and Guidelines are prepared under the authority of sections 101(f), (g), and (h), and section 110 of the Act. The subjects covered in the Standards and Guidelines may include: Preservation Planning, Identification, Evaluation, Registration, Historic Research and Documentation, Architectural and Engineering Documentation, Archeological Investigation, Historic Preservation Projects, and Preservation Terminology.

(o) **"State"** means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands.

(p) **"State Historic Preservation Officer"** is the official within each State who has been designated and appointed by the Governor to administer the State historic preservation program in the State.

(q) **"State Program"** means the State historic preservation program in the State.

(r) "Subgrantee" means the agency, institution, organization or individual to which a subgrant is made by the State and which is accountable to the State for use of the funds provided.

§61.3 Implementation of 36 CFR Part 61.

(a) *The National Register Programs Manual.* The National Park Service maintains this Manual for the use of the States, Certified Local Governments, and the National Trust for Historic Preservation in performing federally related historic preservation activities authorized by the National Historic Preservation Act, as amended.

(1) The Manual is the vehicle through which the National Park Service implements 36 CFR Part 61.

(2) The Manual provides guidelines and procedures for approved historic preservation programs to use matching grant assistance for preservation program activities.

(3) The Manual does not include technical information on preservation techniques.

(b) *The Secretary of the Interior's Standards and Guidelines.* The *National Register Programs Manual* includes The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. The Standards and Guidelines apply to federally authorized activities and will be used by the National Park Service as the technical performance standards for matters covered by these rules.

(c) *Availability of The National Register Programs Manual.*

(1) Copies of the Manual may be obtained from the National Park Service.

(2) The National Park Service issues updates of the Manual as necessary and annually issues a summary of all additions, changes, or deletions made during the previous fiscal year.

§61.4 Approved State Programs.

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

(b) It shall be the responsibility of the SHPO to:

(1) Direct and conduct a comprehensive statewide survey of historic properties and maintain an inventory of such properties; this high priority responsibility entails locating historic and archeological resources at a level of documentation such that the resources can be evaluated for potential nomination to the National Register of Historic Places and so that

the survey data collected can be incorporated into State priorities and planning decisions concerning the area surveyed;

(2) Identify and nominate eligible properties to the National Register of Historic Places and otherwise administer applications for the National Register (see 36 CFR Part 60: "National Register of Historic Places");

(3) Prepare and implement a comprehensive statewide historic preservation planning process; this high priority responsibility entails the organization of preservation activities (identification, evaluation, registration, and treatment of historic properties) into a logical interrelated sequence so that effective and efficient decisions and/or recommendations can be made concerning preservation in the State;

(4) Administer the State program of Federal assistance for historic preservation within the State; if Historic Preservation Fund (HPF) monies are appropriated, this includes the administration of the HPF Grant-in-Aid program;

(5) Advise and assist Federal, State, and local government agencies in carrying out their historic preservation responsibilities;

(6) Cooperate with the Secretary, the Advisory Council on Historic Preservation, and other Federal, State, and local government agencies to ensure that historic properties are taken into consideration at all levels of planning and development;

(7) Provide public information, education, training, and technical assistance relating to the National and State historic preservation programs; and otherwise fulfill the State's liaison responsibility with the Federal preservation programs, other States, local governments, Indian tribes, private organizations, and individuals;

(8) Cooperate with local governments in development of local historic preservation programs and assist local governments in becoming certified.

(c)(1) State programs shall be approved by the Secretary if he determines that the program meets the requirements of paragraphs (a), (b), (d), (e), and (f) of this section. Compliance with these requirements shall be evaluated by the Secretary as required by §61.4 of these regulations. These evaluations shall determine the State's continued eligibility for approved program status.

(2) Procedures for Review and Approval of State Historic Preservation Programs.

(i) The Secretary will evaluate each State program for compliance with the requirements of the Act and other applicable laws and regulations. The program evaluation process will be conducted after the end of every second or third fiscal year. It will be rigorous with respect to assessing the State's performance of the requirements in the Act. The State

programs will be selectively examined to the depth of existing regulations and standards pertinent to each requirement but only to the extent these were in effect during the performance period being evaluated. The Secretary will verify the accuracy of required periodic State reports used in allocating grant funds and in reporting on the status of the national historic preservation program and provide States with analyses of program strengths and weaknesses.

(ii) The categories of activities to be evaluated are:

(A) Requirements of the Act.

(1) Legal authority and designation of the State Historic Preservation Officer.

(2) State Staff Qualifications and Composition.

(3) State Review Board Qualifications and Composition.

(4) Historic Preservation Fund Grant Management.

(5) Comprehensive Historic Preservation Planning.

(6) Survey and Inventory.

(7) National Register.

(8) Public Participation.

(9) Technical Assistance to Governmental Agencies.

(10) Review and Compliance.

(11) Public Education.

(12) Certification Assistance to Local Governments.

(B) Conditions and other requirements as specified in *The National Register Programs Manual* (NPS Guideline 49).

(C) Annual Historic Preservation Fund grant applications.

(D) OMB circular and Treasury requirements.

(E) Appropriate implementing regulations.

(iii) The Secretary will use a combination of on-site and off-site inquiries to perform the evaluation. To achieve uniformity of review and comprehensive coverage of the approval criteria, the following questions will generally form the basis for verifying State activities for each of the requirements:

(A) Is there an adequate system or process in place for the requirement?

(B) Is the system or process being used such that a minimal level of activity for each requirement can be demonstrated?

(C) Have all conditions of any grant awards been met?

(D) Are the data contained in the previous year's End-of-Year Report accurate?

(iv) Approval Method.

(A) States meeting all requirements in the review will receive immediate official notice that their approved status is continued.

(B) States not meeting all requirements will receive immediate notice of deficiencies along with recommendations on how to correct them. The Secretary will defer making a decision on program approval for up to a 4 month period during which time technical assistance in correcting the problems will be offered. States must either correct cited deficiencies, or provide an acceptable justification for requiring additional time and a plan and timetable for correcting deficiencies. During this period, States have the opportunity to appeal to the Secretary any findings and recommendations.

(C) States successfully resolving deficiencies will receive notice from the Secretary that their approved status is continued. Once approved status is renewed, States will not be reviewed until the next regular evaluation period, although evaluations may be conducted more often in individual States if the Secretary deems this necessary. The Secretary may disapprove a State program as a result of any such evaluation subject to the provisions of §61.4(c)(2)(iv)(A), (B), and (D).

(D) States will be "disapproved" only when, after the expiration of the specified period, they are officially notified that their approved status is removed for failure to correct cited deficiencies. The Secretary will then initiate financial suspension and other actions in accordance with administrative guidelines specified in *The National Register Programs Manual* (NPS Guideline 49).

(v) Instructions on carrying out the evaluation process are provided in *The National Register Programs Manual* (NPS Guideline 49).

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

(1) Except as approved pursuant to paragraph (d)(2) of this section, the staff shall include at a minimum, one full-time professional in each of the following disciplines: history, archeology, and architectural history. Required professional State staff members shall meet the standards set forth in Appendix A to these rules. Two or more part-time staff members

may be substituted for one full-time professional in any of the required disciplines as long as the equivalent of one full-time professional is achieved in each discipline. States shall determine what other professional disciplines, such as planning, law, architecture, historic architecture, historical archeology, accounting and grants management are needed to carry out the responsibilities of the State historic preservation program. State professional staff members approved by the Secretary prior to September 21 1977, shall remain approved until such time that they are no longer employed on the State staff.

(2) The Secretary will consider proposals submitted by States for alternative staffing requirements for States with resources and needs which cannot be served or met by the composition outlined in paragraph (d)(1) of this section. Such alternative requirements must ensure adequate professional expertise on the staff, comparable to that required in paragraph (d)(1) of this section, to perform the required responsibilities of the State. These proposals will be reviewed and approved by the Secretary in writing on a State-by-State basis. Approved alternatives will remain in effect until they are reviewed, at the Secretary's discretion, or at the request of the State.

(3) The State shall annually certify according to procedures provided by the Secretary that the State program meets the minimum staffing requirements.

(4) When a required staff position becomes vacant, and if the expertise of the person filling that position is required by law, regulation, or implementing procedure the State shall take immediate steps to ensure that the requisite expertise is replaced. This may be done on a temporary basis (such as by contracting the responsibility) pending the permanent filling of the vacant required staff position. Measures taken pursuant to §61.4(d)(2) or §61.8 are other possible techniques to follow. However, States should ensure that technical matters are addressed by the corresponding technical expertise.

(5) If these requirements for permanent required staff are not met for a period exceeding three months, the State shall communicate by letter to NPS, the timetable for filling the vacancy, or propose an alternative pursuant to paragraph (d)(2) of this section.

(6) If the lapse in staffing requirements persists for more than six months, the Secretary may require further restrictions in State program operations or HPF financial assistance that will remain in effect until the staff vacancy has been filled or an alternative has been approved by the Secretary pursuant to paragraph (d)(2) of this section.

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

(1) The State Review Board shall consist of at least five persons. The Review Board shall consist of members who have demonstrated a compe-

tence, interest, or knowledge in historic preservation and a majority of Review Board members shall be recognized professionals in the following and related disciplines defined in Appendix A to these rules. Except as approved pursuant to paragraph (e)(4) of this section, the membership shall include a minimum of one professional in each of the following disciplines: history, prehistoric and historic archeology, and architectural history and architecture. All of these professionals shall meet the standards set forth in Appendix A. The State shall determine what other professional disciplines and/or additional members are needed.

(2) The archeologist shall be qualified in both prehistoric and historic archeology, or an additional qualified person shall be appointed to the State Review Board so that expertise in both prehistoric and historic archeology will be represented.

(3) The architectural historian or architect shall be qualified in both architectural history and architecture or an additional qualified person shall be appointed to the State Review Board so that expertise in both architectural history and architecture will be represented.

(4) The Secretary will consider proposals for alternative Review Board requirements for States with historic resources and needs which cannot be served or met by the composition outlined in paragraph (e)(1) of this section. Such alternative requirements must ensure adequate professional expertise on the Review Board, comparable to that required in paragraph (e)(1) of this section to perform the responsibilities of the Review Board. Such proposals will be reviewed and approved in writing by the Secretary on a State-by-State basis. Approved alternatives will remain in effect until they are reviewed, at the Secretary's discretion, or at the request of the State.

(5) The State shall annually certify according to procedures provided by the Secretary that the State program meets the minimum Review Board requirements. If these requirements are not met for a period exceeding three months, the State shall communicate by letter to the Secretary, the timetable for filling the vacancy, or propose to NPS an alternative pursuant to paragraph (e)(4) of this section. During such lapse in minimum Review Board requirements, the State shall take steps to ensure that temporary measures provide expertise so that the Review Board continues to operate as a professional body that can objectively evaluate the historic significance of properties and provide professional advice on historic preservation matters. If a lapse in Review Board requirements persists for more than six months, the Secretary may require further restrictions in State program operations or HPF financial assistance to remain in effect until the Review Board vacancy has been filled or an alternative has been proposed and approved by the Secretary pursuant to paragraph (e)(4) of this section.

(6) The State Review Board shall meet at least three times a year and shall adopt procedures governing its operations consistent with the provisions of this section. In making decisions the Review Board must have access to the expertise necessary to make objective professional judgments.

(7) The responsibilities that the State Review Board performs include, but need not be limited to, the following:

(i) Reviewing each National Register nomination proposal prior to submission to the National Register to determine whether or not the property meets the National Register criteria for evaluation, and to make a recommendation that the State nominate or reject the proposed nomination;

(ii) Participating in the review of appeals to National Register nominations and providing written opinions on the significance of the properties;

(iii) Providing advice to the State about documentation submitted in conjunction with the Historic Preservation Fund including but not limited to grant applications, end-of-year reports, and the State comprehensive historic preservation planning process;

(iv) Providing general advice, guidance, and professional recommendations to the SHPO in carrying out the duties and responsibilities listed in §61.4(b).

(f) Mechanisms shall be provided for adequate public participation in the State historic preservation program. As part of the process of recommending properties to the National Register, the State shall comply with all consultation and notification procedures contained in 36 CFR Part 60.6.

(g) Any State may carry out all or any part of its responsibilities by contract or cooperative agreement with any qualified nonprofit organization, educational institution or otherwise pursuant to State law. A State may not delegate its responsibility for compliance with grant assistance terms and conditions.

[49 FR 14899, Apr. 13, 1984, as amended at 50 FR 35224, Aug. 30, 1985]

§61.5 Approved Local Programs.

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

(b) All approved State historic preservation programs shall develop, for approval by the Secretary, procedures for the certification of local governments. Procedures also shall be defined for removal of CLG status for cause. States shall indicate specific requirements for certification, specific responsibilities that will be delegated to certified local governments (CLGs), and the schedule for the certification process. The requirements outlined in paragraph (c) of this section must be incorporated into the State's process for local certification that is submitted to the Secretary for approval. Beyond the minimum delegations of authority that must be made to all CLGs, States may make additional delegations of responsibil-

ity to individual CLGs. These delegations may not include the State's overall responsibility derived from the National Historic Preservation Act, as amended, or where specified by law or regulation (e.g., the operations of the Review Board and nominations to the National Register). Regulations and standards governing performance of State functions (e.g., rules relating to conflict of interest) are to be enforced by States when the functions are delegated.

(c) States shall require local governments to satisfy the following minimum requirements:

(1) Enforce appropriate State or local legislation for the designation and protection of historic properties. The State shall define what constitutes appropriate legislation so long as it is consistent with the purposes of the Act. Where State enabling legislation or home rule authority permits local historic preservation ordinances, a State may require adoption of an ordinance and indicate specific provisions that must be included in the ordinance.

(2) Establish by State or local law an adequate and qualified historic preservation review commission (Commission) composed of professional and lay members. All Commission members shall have a demonstrated interest, competence, or knowledge in historic preservation. To the extent available in the community, the local government shall appoint professional members from the disciplines of architecture, history, architectural history, planning, archeology, or other historic preservation related disciplines, such as urban planning, American Studies, American Civilization, Cultural Geography, or Cultural Anthropology.

(i) States may specify the minimum number and type of professional members that the local government shall appoint to the Commission and indicate how additional expertise can be obtained. Requirements set by the State for local Commissions shall not be more stringent or comprehensive than its requirements for the State Review Board. Local governments may be certified without the minimum number or types of disciplines if they can demonstrate that they have made a reasonable effort to fill those positions. When a discipline is not represented in the Commission membership, the Commission shall be required to seek expertise in this area when considering National Register nominations and other actions that will impact properties which are normally evaluated by a professional in such discipline. This can be accomplished through consulting (e.g., universities, private preservation organizations, or regional planning commissions) or by other means that the State determines appropriate.

(ii) States shall specify the role and responsibilities of the local government's Commission in local preservation decisions. These responsibilities must be complementary to and carried out in coordination with those of the State as outlined in §61.4(b) of these rules.

(iii) States shall make available orientation materials and training to all local Commissions. The orientation and training shall be designed to

provide a working knowledge of the roles and operations of Federal, State, and local preservation programs.

(3) Maintain a system for the survey and inventory of historic properties. States shall formulate guidelines for local survey and inventory systems which ensure that such systems and the data they produce can be readily integrated into statewide comprehensive historic preservation planning and other appropriate planning processes. Local government survey and inventory efforts shall be coordinated with and complementary to those of the State. The State also shall require that local survey data be in a format that is consistent with the planning processes noted above.

(4) Provide for adequate public participation in the historic preservation program, including the process of recommending properties to the National Register. States shall require adequate public participation in relation to all responsibilities that are delegated to CLGs. States shall outline specific mechanisms to ensure adequate public participation in local preservation programs. These may include requirements for open meetings, published minutes, and the publication of procedures by which assessments of potential National Register nominations, design review, etc. will be carried out as well as compliance with appropriate regulations. National Register notification requirements may be found in 36 CFR Part 60.

(5) Satisfactorily perform the responsibilities delegated to it under the Act. States shall monitor and evaluate the performance of CLGs. States shall outline procedures and standards by which the performance of CLGs in program operation and administration will be evaluated. Written records shall be maintained for all State evaluations of CLGs so that results are available for the Secretary's performance evaluations of States. If a State evaluation of a CLG's performance indicates that, in the State's judgment, such performance is inadequate, the State shall suggest ways to improve performance. If, after a period of time stipulated by the State, the State determines that there has not been sufficient improvement, it may recommend decertification of the local government to the Secretary for his concurrence. This recommendation shall cite the specific reasons why decertification is proposed. If the Secretary does not object within 30 working days of receipt, the decertification shall be considered approved by the Secretary. Appropriately documented State recommendations for decertification ordinarily will be accepted by the Secretary. When a local government is decertified, the State shall conduct financial assistance closeout procedures as specified in *The National Register Programs Manual*.

(d) Effects of certification:

(1) Inclusion in the process of nominating properties to the National Register of Historic Places in accordance with Sections 101(c)(2)(A) and (c)(2)(B) of the Act. The State may delegate to a CLG any of the responsibilities of the SHPO and the State Review Board in processing National Register nominations as specified in 36 CFR Part 60, except for

the authority to review and nominate properties directly to the National Register. CLGs may make nominations directly to the National Park Service only when the State does not have an approved program. States shall ensure that CLG performance of these responsibilities is consistent and coordinated with the identification, evaluation, and preservation priorities of the comprehensive State historic preservation planning process.

(2) Eligibility to apply for a portion of the State's annual HPF grant. At least 10 percent of the State's annual HPF apportionment shall be set aside for transfer to CLGs. All CLGs in the State shall be eligible to receive funds from the designated CLG share of the State's annual HPF grant; no government, however, is automatically entitled to receive funds. Local governments that receive these monies shall be considered subgrantees of the State.

(3) The requirements set forth in paragraph (c) of this section may be amplified by the Secretary and/or the States as necessary to reflect particular State and or local government program concerns.

(e) States shall submit, within 180 days of publication of the final rule for local certification and funds transfer, their proposed local certification processes to the Secretary for review and approval. In developing the submission, the State shall consult with local governments, local historic preservation commissions, and all other parties likely to be interested in the CLG process; consider local preservation needs and capabilities; and invite comments on the proposed process from local governments, commissions, and parties in the State likely to be interested. The State's proposal shall review the results of this consultation process. States shall keep a record of their consultation processes and make them available to the Secretary upon request.

(f) States shall establish procedures to ensure that all parties likely to be interested are notified and provide a 60-day period for public comment on the proposal before it is submitted to the Secretary. Records of all comments received during the commenting period shall be kept by the State and shall be made available to the Secretary upon request. The State should be able to respond to all suggestions that it does not adopt.

(g) The Secretary shall review State proposals and within 90 days of receipt issue an approval or disapproval. This review will be based on compliance with all requirements set forth in this section.

(h) If a State proposal is disapproved, the Secretary will recommend changes that would make the proposed process acceptable and, in consultation with the State, will designate a date by which the revision must be submitted. Final approval by the Secretary must be achieved by October 1, 1985, or States will be ineligible to continue their approved State program status beyond that time.

(i) A State may begin certification of local governments as soon as the State's proposed certification process is approved by the Secretary. When a local government certification request has been approved in accord-

ance with the State's approved certification process, the State shall prepare a written certification agreement that lists the specific responsibilities of the local government when certified. The State shall forward to the Secretary a copy of the approved request and the certification agreement. If the Secretary does not take exception to the request within 15 working days of receipt, the local government shall be regarded as certified by the Secretary.

(j) A State may agree with a CLG to change the delegation of responsibilities by amending the certification agreement. The State must submit the amendment to the National Park Service for review to ensure that it is in conformance with the approved State process, this rule, and the Act. If the National Park Service does not object within 15 working days, the amendment shall be considered approved.

(k) States may amend their approved State certification and funds transfer processes. In developing the amendment, the State shall follow to the extent appropriate the same consultation procedures outlined in §61.5(e)/(f) and §61.7(g)(h). The State shall submit the proposed amendment to the National Park Service. The National Park Service shall review the proposed amendment for conformance with this rule and the Act, and, within 45 working days of receipt, issue an approval or disapproval notice.

(l) State administration of its local certification process shall be reviewed by the Secretary during performance evaluations and audits of State programs as required by section 101(b)(2) of the National Historic Preservation Act, as amended. Local governments may appeal to the Secretary State decisions to deny certification or to decertify. Appealed actions shall be examined for conformance with approved State procedures for CLGs, these regulations, and the Act.

(m) The District of Columbia shall be exempted from the requirements of section 61.5 because there are no subordinated local governments in the District. If a territory believes that its political subdivisions lack authorities similar to those of local governments in other States and hence cannot satisfy the requirements for local certification, it may apply to the Secretary for exemption from the requirements of §61.5.

(n) Procedures for direct certification by the Secretary where there is no approved State program.

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

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

(3) The Secretary shall review certification applications under this subsection and take action within 90 days of receipt.

(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 historic preservation program. Therefore, if a now disapproved State program had an approved local government certification process and had already certified local governments, the Secretary will consider the process in his review of any applications for local government certification from within the State.

[49 FR 14899, Apr. 13, 1984, as amended at 50 FR 35225, Aug. 30, 1985]

§61.6 Grants to Approved State Programs.

(a) All States with approved State historic preservation programs shall be eligible for matching grants-in-aid from the Historic Preservation Fund for carrying out the responsibilities of the SHPO including preparing comprehensive statewide historic surveys and plans, and for preserving and protecting properties listed in the National Register of Historic Places.

(b) Administration of HPF matching grants-in-aid shall be in accordance with The *National Register Programs Manual*. States receiving HPF grants shall adhere to the procedures and guidelines in The *National Register Programs Manual* and its supplements.

(c) States are responsible, through financial audit, for the proper accounting of HPF grants in accordance with OMB Circular A-102, Attachment P, "Audit Requirements," and The *National Register Programs Manual*.

(d) States are responsible, through the program performance evaluation requirements of §61.4(c), for administration of HPF grants in accordance with the requirements of this section.

§61.7 Transfer of Grants to Certified Local Governments.

(a) At least 10 percent of each State's annual HPF allocation shall be designated for transfer by States to CLGs as subgrants. States may transfer more than 10 percent unless otherwise prohibited. Any year in which the annual HPF State grant appropriation exceeds \$65,000,000, one half of the excess shall also be transferred to CLGs according to procedures to be provided by the Secretary.

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

(c) CLGs receiving HPF grants from the CLG share shall be considered subgrantees of the State. Transferred monies shall not be applied as matching share for any other Federal grant.

(d) States shall require all local governments receiving a portion of the local share of the State's annual HPF grant to satisfy the following minimum requirements:

(1) Maintain adequate financial management systems. Local financial management systems shall be in accordance with the standards specified in OMB Circular A-102, Attachment G, "Standards for Grantee Financial Management Systems." Local financial management systems shall be auditable in accordance with the General Accounting Office's *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*. States shall be responsible, through financial audit, for the proper accounting of HPF CLG share monies in accordance with OMB Circular A-102, Attachment P, "Audit Requirements." The periodic State evaluations of CLG performance shall include an assessment of the fiscal management of HPF monies.

(2) Adhere to all requirements of *The National Register Programs Manual*. *The National Register Programs Manual* sets forth administrative procedures and policies for HPF grants awarded by the Secretary. It serves as a basic reference for the State management of HPF grants. Indirect costs may be charged as part of the CLG grant only if the CLG subgrantee meets the requirements of the Manual. Unless the CLG has a current indirect cost rate approved by the cognizant Federal agency, only direct costs may be charged.

(3) Adhere to any requirements mandated by Congress regarding the use of such funds. The Secretary will advise States of any directives contained in annual appropriations laws regarding the use of HPF State grants that must be applied to local governments receiving a share of these grants.

(e) The requirements listed in paragraph (d) of this section shall be used by States as minimum requirements for local governments receiving HPF funds; they also shall be included in the State's required written grant agreement with the local government. States may require specific uses of funds as long as such requirements are consistent with the State comprehensive historic preservation planning process and are eligible for HPF assistance.

(f) Each State shall develop, for approval by the Secretary, a procedure for allocating the CLG share of its annual Historic Preservation Fund grant to eligible local governments in the State. States shall articulate a clear rationale on which funding decisions will be based. Although only aggregate program matching funds are required, States may require a matching share for CLG grants, but if excess matching funds are available from other sources, ability to provide matching funds need not be a primary allocation factor. Allocation procedures shall include guidelines for the review of applications and the selection of applicants. At a minimum, these guidelines shall include the following:

(1) The amount awarded to any applicant must be sufficient to produce a specific impact. While no lower limit is prescribed by these rules,

States must ensure that the funds awarded are sufficient to generate effects directly as a result of the funds transfer. The requirement for tangible results may not be waived even if there are many otherwise eligible applicants for the amount set aside for CLG share; States may use additional funds from their regular HPF annual grant to satisfy competing demands.

(2) To promote local preservation activities, States shall make reasonable efforts to distribute these monies among the maximum number of eligible local jurisdictions to the extent that such distribution is consistent with paragraph (f)(1) of this section. States also shall seek to ensure a reasonable distribution between urban and rural areas in the State. States must ensure that no CLG receives a disproportionate share of the allocation.

(3) States shall make available to the public, upon request, the rationale for the applicants selected and the amounts awarded.

(g) Within 180 days of publication of final rules for local certification and funds transfer, but not before submitting their proposed local certification process, States shall submit to the Secretary for review and approval their proposed procedure for transfer of funds.

(h) States shall set up notice procedures to ensure that all parties likely to be interested are notified and provide a 60-day period for public comment on the proposal before it is submitted to the Secretary. Records of all comments received during the commenting period shall be kept by the State and shall be made available to the Secretary upon request.

(i) The Secretary shall review State proposals and within 90 days of receipt issue an approval or disapproval. This review will be based on compliance with the requirements set forth in this section.

(j) If a State proposal is disapproved, the Secretary will recommend changes that would make the proposed process acceptable and, in consultation with the State, will designate a date by which the revision must be submitted. Final approval by the Secretary must be achieved by October 1, 1985, or States will be ineligible to continue their approved State program status beyond that time.

(k) Once a State's proposed process for funds transfer has been approved by the Secretary and the Secretary has obligated the State's annual HPF grant, the State shall begin the transfer of HPF monies unless otherwise prohibited as a consequence of actions described in §61.7(d)(3).

(l) Each State shall ensure that its procedure is widely publicized so that all eligible local governments have the opportunity to apply for funding.

(m) States shall be responsible for reviewing requests from CLG subgrantees for grant amendments as required by OMB Circular A-87, and for issuing approval or denial of such requests. If any action by a CLG

will result in a change in the overall grant project or budget requiring NPS approval, the State shall obtain such approval prior to granting approval to the CLG subgrantee. A State shall not forward to NPS any action which is inconsistent with the purpose or terms of the grant. CLG subgrantee requests for revisions to the grant are invalid unless they are in writing and signed by an authorized official of the State grantee.

(n) State performance in transferring funds to CLGs shall be reviewed by the Secretary during performance evaluations and audits of State programs as required by §101(b)(2) of the National Historic Preservation Act, as amended.

(o) States may submit grant amendment requests to NPS to reallocate monies set aside for local governments in instances where no certified governments exist, wish to receive funds, or are qualified to receive funds. Such requests will be considered grant reprogramming actions and shall be submitted to NPS not less than one calendar year after the beginning of the fiscal year of the State's HPF appropriation. All such requests shall clearly document the State's attempts to encourage and assist local governments in developing local historic preservation programs pursuant to §61.5 of these regulations, in being certified, and in applying for funding.

(p) The District of Columbia shall be exempted from the requirements of §61.7 because there are no subordinate local governments in the District. If a territory believes that its political subdivisions lack authorities similar to those of local governments in other States and hence cannot satisfy the requirements for local certification, it may apply to the Secretary for exemption from the requirements of §61.7.

(q) Where there is no approved State program, the method for allocating funds will be determined by the Secretary in accordance with the procedures set forth for States in this section. To the extent feasible, there should be consistency and continuity in funding allocation policy of the CLG program of a State that does not have an approved historic preservation program. Therefore, if a now disapproved State program had an approved allocation process, the Secretary will consider it in the review of any application for funding from CLGs within that State.

[49 FR 14899, Apr. 13, 1984, as amended at 50 FR 35225, Aug. 30, 1985]

§61.8 Waiver.

The Secretary may waive any of the requirements of these rules which are not mandated by statute or by government-wide regulations, if, in his/her opinion, as expressed in writing to the State, the State historic preservation program would benefit from such waiver, and the purposes, conditions, and requirements of the National Historic Preservation Act, as amended, would not be compromised.

§61.9 Information Collection Requirements.

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

Appendix A—Professional Qualifications Standards

In the following definitions, a year of full-time professional experience need not consist of a continuous year of full-time work but may be made up of discontinuous periods of full-time or part-time work adding up to the equivalent of a year of full-time experience.

(a) **History.** The minimum professional qualifications in history are a graduate degree in history or closely related field; or a bachelor's degree in history or closely related field plus one of the following:

(1) At least two years of full-time experience in research, writing, teaching, interpretation or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or

(2) Substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

(b) **Archeology.** The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

(1) At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;

(2) At least four months of supervised field and analytic experience in general North American archeology; and

(3) Demonstrated ability to carry research to completion.

In addition to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period. A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

(c) **Architectural history.** The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history, or a bachelor's degree in architectural history, art history, historic preservation, or closely related field plus one of the following:

(1) At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or

(2) Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

(d) **Architecture.** The minimum professional qualifications in architecture are a professional degree in architecture plus at least two years of full-time professional experience in architecture; or a State license to practice architecture.

(e) **Historic Architecture.** The minimum professional qualifications in historic architecture are a professional degree in architecture or State license to practice architecture, plus one of the following:

(1) At least one year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field; or

(2) At least one year of full-time professional experience on historic preservation projects. Such graduate study or experience shall include detailed investigations of historic structures, preparation of historic structures research reports, and preparation of plans and specification for preservation projects.

Appendix B—Information Sources

Note: NPS Regional Office structure and geographical responsibilities as well as the addresses of both NPS and SHPO have changed since the original publication of 36 CFR 61. The following information has been updated as of 1/1/90.

The following National Park Service Regional Offices and State Historic Preservation Offices are sources of information concerning the programs covered by these regulations.

Alaska Region

Alaska Regional Office, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503, 907-257-2575

Alaska: Chief of History and Archeology, Division of Parks, Department of Natural Resources, P.O. Box 107001, Anchorage, Alaska 99510-7001, 907-762-2622

North Atlantic Region

North Atlantic Regional Office, 15 State Street, Boston, Massachusetts 02109, 617-223-3774

Maine: Maine Historic Preservation Commission, 55 Capitol Street, Station 65, Augusta, Maine 04333, 207-289-2132

Connecticut: Connecticut Historical Commission, 59 South Prospect Street, Hartford, Connecticut 06106, 203-566-3005

Massachusetts: Massachusetts Historical Commission, 80 Boylston Street, Suite 310, Boston, Massachusetts 02116, 617-727-8470

New Hampshire: Division of Historical Resources and State Historic Preservation Office, Walker Building, State Office Park South, 15 South Fruit Street, P.O. Box 2043, Concord, New Hampshire 03301, 603-271-3483 or 503-271-3558

New Jersey: Department of Environmental Protection, CN 402, 401 East State Street, Trenton, New Jersey 08625, 609-292-2885

New York: Office of Parks, Recreation & Historic Preservation, Agency Building 1B1, Empire State Plaza, Albany, New York 12238, 518-474-0468

Rhode Island: Rhode Island Historical Preservation Committee, Old State House, 150 Benefit St., Providence, Rhode Island 02903, 401-277-2678

Vermont: Director, Vermont Division for Historic Preservation, Pavilion Office Building, Montpelier, Vermont 05602, 802-828-3226

Mid-Atlantic Region

Mid-Atlantic Regional Office, 143 South Third St., Philadelphia, Pennsylvania 19106, 215-597-8068

Delaware: Division of Historical & Cultural Affairs, Hall of Records, Dover, Delaware 19901, 302-736-5313

Maryland: Director of Historical and Cultural Programs, Department of Housing and Community Development, 45 Calvert Street, Annapolis, Maryland 21401, 301-974-3644

Pennsylvania: State Historic Preservation Officer, Pennsylvania Historical & Museum Commission, P.O. Box 1026, Harrisburg, Pennsylvania 17108, 717-787-2891

Virginia: Department of Historic Resources, 221 Governor Street, Richmond, Virginia 23219, 804-786-3143

West Virginia: Department of Culture & History, State Capitol Complex, Charleston, West Virginia 25304, 304-348-0220

National Capitol Region

National Capitol Regional Office, 1100 Ohio Drive, S.W., Washington, DC., 20242, 202-485-9790

District of Columbia: City Administrator, 1350 Pennsylvania Avenue, N.W. District Building, Washington DC., 20004. 202-727-6365

This Region includes nearby Maryland, Virginia and West Virginia.

Southeast Region

Southeast Regional Office, 75 Spring Street, S.W., Atlanta, Georgia 30303, 404-331-5714

Alabama: Alabama Historical Commission, 725 Monroe Street, Montgomery, Alabama 36130, 205-261-3184

Florida: Director, Division of Historical Resources, Department of State, R.A. Gray Building, 500, S. Bronaugh Street, Tallahassee, Florida 32309-0250, 904-488-1480

Georgia: Chief, Historic Preservation Section, Department of Natural Resources, 205 Butler Street, S.E., 1252 Floyd Towers East, Atlanta, Georgia 30334, 404-656-2840

Kentucky: State Historic Preservation Office, Kentucky Heritage Council, Capitol Plaza Tower, 12th floor, Frankfort, Kentucky 40601, 502-564-7005

Mississippi: Department of Archives & History, P.O. Box 571, Jackson, Mississippi 39205, 601-359-1424

North Carolina: Department of Cultural Resources, 109 East Jones Street, Raleigh, North Carolina 27611, 919-733-7305

South Carolina: Department of Archives & History, P.O. Box 11669, Columbia, South Carolina 29211, 803-734-8592

Tennessee: Department of Conservation, 701 Broadway, Nashville, Tennessee 37219-523703, 615-742-6758

Commonwealth of Puerto Rico: Office of Historic Preservation, Box 82, La Fortaleza, San Juan, Puerto Rico 00918, 809-721-2676

Virgin Islands: Department of Planning and Natural Resources, Division of Archeology & Historic Preservation, # 179 Altona and Weigunst, St. Thomas, Virgin Islands 00801, 809-773-1082

Midwest Region

Midwest Regional Office, 1709 Jackson Street, Omaha, Nebraska 68102, 402-221-3456

Indiana: Department of Natural Resources, 608 State Office Building, Indianapolis, Indiana 46204, 317-232-4020

Michigan: Michigan History Division, Department of State, 208 North Capitol, Lansing, Michigan 48918, 517-373-6362

Wisconsin: State Historical Society of Wisconsin, 816 State Street, Madison, Wisconsin 53706, 608-262-1339

Minnesota: Minnesota Historical Society, 345 Kellogg Boulevard West, St. Paul, Minnesota 55102-1906, 612-296-2747

Illinois: Illinois Historic Preservation Agency, Old State Capitol, Springfield, Illinois 62701, 217-782-4836

Ohio: The Ohio Historical Society, Historic Preservation Division, 1985 Velma Avenue, Columbus, Ohio 43211, 614-297-2470

Iowa: State Historical Society of Iowa, Capitol Complex, East 6th and Locust Street, Des Moines, Iowa 50319, 515-281-5113

Kansas: Kansas State Historical Society, 120 West 10th Street, Topeka, Kansas 66612, 913-296-3251

Missouri: State Department of Natural Resources, P.O. Box 176,
Jefferson City, Missouri 65102, 314-751-4422

Nebraska: The Nebraska State Historical Society, P.O. Box 82554,
Lincoln, Nebraska 68501, 402-471-4787

Rocky Mountain Region

Rocky Mountain Regional Office, P.O. Box 25287, Denver Service
Center, Box 25287, Denver, CO 80225-0287, 303-969-2727

Colorado: State Historic Preservation Officer, Colorado Historical
Society, 1300 Broadway, Denver, Colorado 80203, 303-866-2136

Montana: Montana Historical Society, 225 North Roberts Street,
Veterans Memorial Building, Helena, Montana 59620-9990, 406-444-7715

North Dakota: State Historical Society of North Dakota, ND Heritage
Center, Bismarck, North Dakota 58505, 701-224-2667

South Dakota: Director, Office of History, South Dakota State Historical
Society, 900 Governors Drive, Pierre, South Dakota 57501, 605-773-3458

Wyoming: Director, Department of Archives, Museums & History,
Barrett Building, 2301 Central Avenue, Cheyenne, Wyoming 82002
307-777-7013

Utah: Utah State Historical Society, 300 Rio Grande, Salt Lake City,
Utah 84101, 801-533-5755

Southwest Region

Southwest Regional Office, P.O. Box 728, Santa Fe, New Mexico 87501,
505-988-6427

Arkansas: Arkansas Historic Preservation Program, Suite 200,
The Heritage Center, 225 E. Markham, Little Rock, Arkansas 72201,
501-371-2763

Louisiana: Office of Cultural Development, P.O. Box 44247,
Baton Rouge, Louisiana 70804, 504-342-8200

New Mexico: Historic Preservation Division, Office of Cultural Affairs,
Villa Rivera, Room 101, 228 E. Palace Avenue, Santa Fe, New Mexico
87503, 505-827-8320

Oklahoma: State Historic Preservation Officer, Oklahoma Historical
Society, Wiley Post Historical Building, Oklahoma City, Oklahoma 73105,
405-521-2491

Texas: Texas Historical Commission, P.O. Box 12276, Capitol Station,
Austin, Texas 78711, 512-463-6100

Western Region

Western Regional Office, P.O. Box 36063, San Francisco, California 94102, 415-556-7230

Arizona: Chief, Office of Historic Preservation, Arizona State Parks, 800 West Washington, # 415, Phoenix, Arizona 85007, 602-542-4009

California: Office of Historic Preservation, Department of Parks and Recreation, P.O. Box 942896, Sacramento, California 94296-0001, 916-445-8006

Nevada: State Historic Preservation Officer, Department of Conservation & Natural Resources, Room 213, 201 S. Fall Street, Carson City, Nevada 89710, 702-885-4360

Pacific Northwest Region

Pacific Northwest Regional Office, 83 South King Street, Suite 212, Seattle, Washington 98106, 206-442-4409

Idaho: Historic Preservation Coordinator, Idaho Historical Society, 210 Main Street, Boise, Idaho 83702, 208-334-3890

Oregon: State Parks Superintendent, 525 Trade Street SE, Salem, Oregon 97310, 503-378-5019

Washington: State Historic Preservation Officer, Office of Archeology & Historic Preservation, 111 West 21st Avenue, KL-11, Olympia, Washington 98504, 206-753-4011

Pacific Region

Pacific Regional Office: Box 50165, 300 Ala Moana Boulevard, Room 6305, Honolulu, Hawaii 96850

Hawaii: State Historic Preservation Officer, Department of Land and Natural Resources, P.O. Box 621, Honolulu, Hawaii 96809, 808-548-6550

American Samoa: Department of Parks and Recreation, Government of American Samoa, Pago Pago, American Samoa 96799, 684-699-9614

Northern Mariana Islands: Historic Preservation Officer, c/o Department of Community & Cultural Affairs, Commonwealth of the Northern Mariana Islands, Saipan, Mariana Islands 96950, 670-322-9556

Trust Territory of the Pacific Islands: Department of Community and Cultural Affairs, Trust Territory of the Pacific Islands, Saipan, Mariana Islands 96950, Saipan 9722 or 9411

DEPARTMENT OF EDUCATION AND THE ARTS
Office of the Secretary

State Capitol Bldg. 1, R-151
Charleston, West Virginia 25305
Telephone: (304) 558-2440
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Cecil H. Underwood
Governor

David R. Ice
Acting Cabinet Secretary

September 17, 1997

The Honorable Ken Hechler
Secretary of State
State Capitol Building 1
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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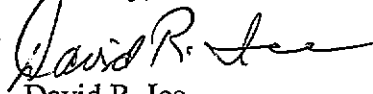
Dear Secretary Hechler,

Please find enclosed the following Legislative Rules of the State Historic Preservation Section of the Division of Culture and History which I have approved for public comment:

- Title 82, Series 1: Certified Local Government Program
- Title 82, Series 2: Standards and Procedures for Administering State Historic Preservation Programs

Copies of the rules are attached.

Sincerely,



David R. Ice
Acting Cabinet Secretary

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Attachments