

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF THE SECRETARY OF STATE
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Division of Culture and History TITLE NUMBER: 82

CITE AUTHORITY WV Code § 29-1-8 (see also 29-1-1; 29-1-5; 29-1-8a; and 29-3-5

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Standards and Procedures for Administering
State Historic Preservation Programs

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE
MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT
BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE
FILED WITH THE SECRETARY OF STATE.

Authorized Signature

PLEASE SEE ATTACHED LETTER

\$8.20

WEST VIRGINIA STATE COLLEGE

Institute, West Virginia
25112-1000



Department of History

STATE HISTORIC
PRESERVATION
OFFICE

DEC 2 1998

RECEIVED

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

Dear Secretary Hechler:

Greetings, Mr. Secretary. I hope the blessings of the Thanksgiving holiday were bountiful for you and yours. Christmas fast approaches with all its warmth and beauty.

Part of my duty as Chairman of the West Virginia Archives and History Commission is to inform your office of the commission's approval of changes in the Legislative Rules governing the Division of Culture and History. I have attached the relevant passages from our official minutes.

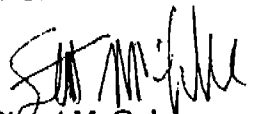
On June 21, 1996, the West Virginia Archives and History Commission approved proposed changes to the following Division of Culture and History Legislative Rules:

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

On another note, here at West Virginia State College our Division of Social Sciences has planned a special unit on the Executive Branch, as the enclosed attachment attests. I rather think it would be inappropriate to host such an academic session without your honored presence. I shall call you early in the year.

Keep up the good work, and as always, if I can help in any way, please do not hesitate to call upon me.

Your Obedient Servant.


C. Stuart McGehee
Associate Professor
Chair

CSM/jbg

cc: Ms. Susan Pierce

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TITLE 82
LEGISLATIVE RULES
~~DEPARTMENT~~ DIVISION OF CULTURE AND HISTORY

OFFICE OF THE CLERK OF THE HOUSE OF DELEGATES

SERIES 2
STANDARDS AND PROCEDURES FOR ADMINISTERING
STATE HISTORIC PRESERVATION PROGRAMS

§82-2-1. General.

1.1 Scope. — This legislative rule provides guidelines for the establishment of ~~establishes~~ a state register of historic places, ~~and~~ criteria and procedures for listing properties on the register. ~~The rule~~ adopts standards for rehabilitation of historic structures on state assisted undertakings; ~~and~~ establishes procedures for the ~~Department~~ Division of Culture and History to review the effect state projects may have on resources eligible for the state register. ~~It~~ establishes procedures for the ~~Department~~ Division of Culture and History to assist the State Fire Marshal in providing compliance alternatives when enforcing fire and building codes for structures eligible for the state register, ~~and~~ In addition, the rule establishes criteria and procedures for spending state funds provided for threatened and endangered historic properties, ~~by the voluntary check-off program.~~

1.2. Authority. — W.Va. Code § § ~~29-1-5; 29-1-4; 29-1-1; 29-1-5; 29-1-8; 29-1-8a; 29-3-5~~

1.3. Filing Date. — ~~June 26, 1989~~

1.4. Effective Date. — ~~July 1, 1989~~

§82-2-2. Definitions.

2.1. "Historic District" means a group of buildings, structures, or sites that taken together make up a coherent whole with similar historic and/or architectural meaning.

2.2. "Integrity" means the authenticity of a property's historic identity as evidenced by the survival of physical characteristics that existed during the property's prehistoric or historic period. ~~It is the composite of the following seven qualities: location, design, setting, materials, workmanship, feeling or association that makes a site eligible for the State Register.~~

2.3. "Undertaking" means any project, activity, or program that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a State agency or licensed, permitted, or assisted by a State agency. Undertakings include new and continuing projects, activities, or programs.

2.4. "Effect" means the results of an undertaking that may alter characteristics of a site, for better or worse.

2.5. "No Adverse Effect" means an effect that would not be harmful to the characteristics that qualify a site for the State Register.

2.6. "Adverse Effect" means an effect that could diminish the integrity of characteristics that qualify a site for the State Register.

2.7. "Mitigate" means to take action, to reduce or compensate for damage an undertaking does to site(s).

2.8. "Historic Building or Structure" means any building or structure so designated by the State Historic Preservation Officer as individually significant or as contributing to the historic character of a historic district.

§82-2-3. West Virginia Register of Historic Places.

3.1. Eligibility Criteria. The following criteria will be used when evaluating the eligibility of sites for West Virginia Register of Historic Places:

3.1.a. The site must possess significance in West Virginia, American, or local history or prehistory, architecture, archaeology, or culture;

3.1.b. The site must possess integrity;

3.1.c. The site must meet at least one of the following criteria:

3.1.c.A. It must be associated with events that have made a significant contribution to the broad patterns of our history;

3.1.c.B. It must be associated with the lives of persons significant in our past;

3.1.c.C. It must embody the distinctive characteristics of type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

3.1.c.D. It must have yielded, or may be likely to yield, information important in prehistory or history.

3.1.d. Ordinarily cemeteries, birthplaces, or graves of historical figures, properties

owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past fifty (50) years are not considered eligible for the State Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

3.1.d.A. A religious property deriving primary significance from architectural or artistic distinction or historical importance;

3.1.d.B. A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event;

3.1.d.C. A birthplace or grave of a historical figure of outstanding importance if there is no other appropriate site or building directly associated with his productive life;

3.1.d.D. A cemetery that derives its primary significance from graves of persons of transcendent importance, age, distinctive design features, or association with historic events;

3.1.d.E. A reconstructed building when accurately executed in suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived;

3.1.d.F. A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historical significance; or

3.1.d.G. A property achieving significance within the past fifty (50) years if it is of exceptional importance.

3.1.e. The following types of properties shall be considered eligible for State Register:

3.1.e.A. Districts;

3.1.e.B. Historic Sites;

3.1.e.C. Buildings;

3.1.e.D. Structures;

3.1.e.E. Objects;

- 3.1.e.F. Vistas;
- 3.1.e.G. Landscapes; and
- 3.1.e.H. Natural sites.

3.1.f. Sites listed in the National Register of Historic Places shall be listed in the State Register and not be required to follow the process described in Section 3.2 of this rule.

3.2. Registration Process. The ~~Department~~ Division of Culture and History shall prepare an application form for listing sites in the State Register and determine documentation requirements for minimal packages.

3.2.a. Any person may make application for nomination of a property to the State Register of Historic Places by completing and submitting a registration form to the ~~Department~~ Division of Culture and History. The ~~Department~~ Division of Culture and History may also initiate registration of properties to the State Register.

3.2.b. Upon receipt of a nomination package, the ~~Department~~ Division of Culture and History shall notify property owners and local elected officials that the property is being considered for listing on the State Register.

3.2.b.A. Property owners must be given no less than thirty (30) days to object in writing to the nomination. If a property owner objects, the nomination shall be tabled.

3.2.b.B. In the event of a historic district, at least fifty-one percent (51%) of the property owners must object in writing to table a nomination.

3.2.c. The Archives and History Commission shall evaluate all state nomination applications and determine their eligibility for the State Register.

3.2.d. If the commission determines a site eligible, it shall be listed on the State Register.

3.2.e. Upon receipt of the listing, the Governor, or governor's designee, signs the nomination form, officially proclaiming the property a West Virginia registered site.

~~3.3. Benefits of Listing. Once a site is listed in the State Register, either individually or as a contributing property within a historic district, it becomes eligible for several benefits. Sites in the State Register will:~~

~~3.3.a. Receive a certificate.~~

- ~~3.3.b. Be eligible to receive historic preservation grants.~~
- ~~3.3.c. Be eligible for compliance alternatives to fire and building codes.~~
- ~~3.3.d. Receive protection from state and federal undertakings.~~
- ~~3.3.e. Be eligible for assistance through the voluntary check-off.~~

§82-2-4. Rehabilitation Standards.

4.1. The ~~Department~~ Division of Culture and History will adopt and apply the Secretary of the Interior Standards for Rehabilitation, United States Department of the Interior's ~~rulemaking Regulation at 36 CFR 67~~(See Appendix A), as the accepted state rehabilitation standards.

4.2. The Secretary of the Interior Standards for Rehabilitation will be applied in the following instances:

- 4.2.a. The administration of State Historic Preservation Grants;
- 4.2.b. The review of compliance alternatives for fire and building codes;
- 4.2.c. The administration of funds expended ~~form from~~ from the voluntary check-off program Endangered Historic Properties Fund Program;
- 4.2.d. The review of state assisted undertakings;
- 4.2.e. The rehabilitation of structures eligible for the State Register in any other state assisted programs.

§82-2-5. State Review Process.

5.1. The Division of Culture and History will review all undertakings permitted, funded, licensed or otherwise assisted, in whole or in part, by the state for the purposes of furthering the duties outlined in WV Code § 29-1-8. The following review process will be conducted on lands owned or leased by the state, or on private lands where investigation and development rights have been acquired by the state by lease or contract as outlined in WV Code § 29-1-8b. Permit approval of activities affecting historic properties will be demonstrated by written letter from the Division of Culture and History upon completion of the review process. The following procedures is to be used by agency officials and the Department of Culture and History in the conduct of the state review process will be waived in lieu of the Section 106 review process as outlined in 36 CFR 800, "The Protection of Historic Properties".

- 5.1.a. If the project receives federal funding or requires a federal permit, the agencies

shall follow the procedures outlined in 36 CFR 800, "The Protection of Historic Properties" (See Appendix B). When a state agency begins planning for or becomes involved in an undertaking, the agency shall make a reasonable and good faith effort to identify and evaluate sites listed on or eligible for listing on the State Register. The Department of Culture and History will provide an annual listing of sites on the Register to all state agencies and encourage them to initiate an ongoing survey and evaluation of all of their owned or controlled properties.

5.1.b. The Division of Culture and History will provide an annual listing of sites on the Register to all state agencies. The Division will also provide the criteria of significance of the Register and encourage the agencies to work with the Division to initiate an ongoing survey and evaluation of their owned or controlled properties. Should such sites be found, the agency shall assess the effects of the undertaking in the characteristics that qualify the property for the State Register.

5.1.c. The Division of Culture and History will annually request planning information or brief comprehensive descriptions of scheduled activities from state agencies in order to evaluate whether or not their programs will potentially impact historic properties. If the Division determines that there are potential impacts, the Division will conduct a project review. Cooperation of the affected agency is encouraged. Consultation with the Department of Culture and History regarding the implementation of this phase of the review is encouraged.

5.1.d. Members of the public with interest in or knowledge of an undertaking will should have the opportunity to notify the Division of Culture and History and will have a reasonable opportunity to participate in the review process.

5.2. The Division of Culture and History shall request from the state agency a description of the project, including a map showing its location, photographs of the project area or subject of the undertaking, plans, elevations and specifications. Additional information as deemed appropriate to the description of the project will also be requested. With the cooperation and assistance of the agency, the Division shall conduct the review as outlined in Subsections 5.3 and 5.4. The agency shall submit an appropriate description of the undertaking to the Department of Culture and History. Upon receipt of adequate information, the Department of Culture and History shall have thirty (30) days to review the undertaking and respond to the agency's findings. The Department shall concur with the agency's findings or shall not concur and suggest appropriate changes, as outlined in Section 5.3 of this rule.

5.3. Identification of Historic Properties. Criteria of Effect and Adverse Effect. The Division of Culture and History will identify the project's area of potential effect to historic properties. Within that area of potential effect, the Division of Culture and History shall identify historic properties that may be impacted by the project.

5.3.a. For the purposes of review, the State Historic Preservation Office shall identify both listed historic properties and those eligible for listing on the state or National Register of Historic Places. If it is agreed by the agency and the Department of Culture and History that the undertaking

~~will have no effect, the agency may proceed with the undertaking as proposed.~~

5.3.b. If the Division of Culture and History determines that a property is not eligible, the property shall be considered ineligible for review purposes. The office shall provide this information to the agency for their consideration.

If the State Historic Preservation Office determines that a property is eligible, the property shall be considered eligible for review purposes. The office shall provide this information to the agency for their consideration. ~~If it is agreed by the agency and the Department of Culture and History that the undertaking will have no adverse effect, the agency may proceed with the undertaking as proposed.~~

5.3.c. If the agency and the Division of Culture and History do not agree on the eligibility of a property to the National Register of Historic Places, the Division of Culture and History shall request that the evaluation be submitted to the Keeper of the National Register of Historic Places for final evaluation. If it is agreed by the agency and the Department of Culture and History that an undertaking will have an adverse effect, the agency will provide a description and evaluation of any proposed mitigative measures or alternatives that were considered to deal with the undertaking's effect. The Department of Culture and History will make recommendations to the agency for maintaining the integrity of the property.

5.3.d. If the agency and the Division agree that there are no historic properties within the project area, the Division shall comment that the review of the individual project is complete. -

~~5.3.c.A. — The agency shall consult with the Department of Culture and History to indicate acceptance of the recommendations or how they will otherwise mitigate the adverse effect.~~

5.3.e. If historic properties are identified within the project area, the Division shall request the agency to conduct an assessment of the effect of the project on the resource(s), in accordance with subpart 5.4. of this rule, as part of the process to obtain a permit as stipulated under WV Code § 29-1-8(b).

~~5.3.c.B. — If the agency decides to continue with the project, thereby causing an adverse effect, they must first provide the Department of Culture and History an adequate opportunity to document the site before the undertaking begins.~~

5.4. Assessment of Effects. In consultation with the agency, the Division of Culture and History shall evaluate the undertaking's potential effect to historic properties, giving consideration to the views, if any, of interested persons.

5.4.a. If the agency and the Division of Culture and History find that the undertaking shall have no effect on historic properties, the Division of Culture and History shall document that finding and provide comments to the sponsor agency.

5.4.b If the agency and the Division of Culture and History find that there will be an effect to the historic properties by the project, the Division of Culture and History shall apply the Criteria of Effect and Adverse Effect in accordance with subsection 5.5 of this rule.

5.4.c. If the agency and the Division of Culture and History find that there will be no adverse effect, the Division of Culture and History shall document that finding and provide comments to the agency.

5.4.d. If the agency and the Division of Culture and History find that there will be an adverse effect, they shall seek ways to avoid or reduce the effects on historic properties.

5.4.d.1 If the agency and the Division of Culture and History agree upon how the effects will be taken into account, they shall execute a Memorandum of Agreement which shall document the actions to be taken.

5.4.d.2. If the agency and the Division of Culture and History do not agree upon how the effects will be taken into account, the Division of Culture and History will provide final comments to the agency and document the historic properties prior to initiation of the undertaking.

5.5 Criteria of Effect and Adverse Effect. An undertaking has an effect on a historic property when the undertaking may alter characteristics of the property that may qualify the property for inclusion on the State/National Register. For the purpose of determining effect, alteration to features of the property's location, immediate setting, or use may be relevant depending on a properties significant characteristics and should be considered.

5.5 a An undertaking is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling or association. Adverse effects on historic properties include, but are not limited to:

5.5.a.1. Physical destruction, damage, or alteration of all or part of the property;

5.5.a.2. Isolation of the property from or alteration of the character of the property's setting when that character contributes to the properties qualification for the State/National Register;

5.5.a.3. Introduction of a significant change to visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

5.5.a.4. Neglect of a property resulting in its deterioration or destruction; and

5.5.a.5. Transfer, lease or sale of the property without protective restrictions.

~~5.64.~~ Programmatic Agreement. The Division of Culture and History and the agency may fulfill these review requirements for a particular program, a large or complex project, or a class of undertakings that would normally require numerous reviews, through a programmatic agreement with the Department Division of Culture and History. Programmatic agreements are appropriate for programs or projects when:

~~5.6.a.~~ Effects are non-existent;

~~5.6.b. 4.a.~~ Effects on historic properties are similar and repetitive;

~~5.6.c. 4.b.~~ Effects on historic properties cannot be fully determined prior to action;

~~5.6.d. 4.c.~~ Non-state parties are delegated major decision making responsibilities;

~~5.6.e. 4.d.~~ Projects involve development of regional or land-management plans;

~~5.6.f. 4.e.~~ Projects involve routine management activities.

~~5.7.5.~~ Emergency Undertakings. The Division of Culture and History may waive or alter the review process in consideration of emergency events or activities.

~~5.5.a. When an agency official proposes an emergency undertaking as an essential and immediate response to a State of Emergency declared by the Governor or the legislature, the agency official may fulfill the state review process by notifying the Department of Culture and History of the emergency undertaking and allowing it an opportunity to comment within ten days if the agency official considers that circumstances permit.~~

~~5.7.a 5.b.~~ This section does not apply to undertakings that will not be implemented within thirty days after the a disaster or emergency.

~~5.86. Accidental Discovery of Historic Properties. Should additional historic properties or archaeological sites be discovered in the course of an undertaking, the agency shall notify the Division of Culture and History so that amendments can be made to the review/permit process in accordance with WV Code § 29-1-8a and its legislative rule, 82 CSR 3, and WV Code § 29-1-8b. will allow for the opportunity of the Department of Culture and History to respond and to suggest appropriate measures.~~

§82-2-6. Fire and Building Code Alternatives.

6.1. Intent and Purpose.

~~6.1.a. The intent of this section is to provide guidelines for the uniform application of fire and building related codes to historic buildings and structures; to provide acceptable alternative safeguards to requirements of various fire and building code provisions where strict compliance is not~~

practical; to specify various hazardous conditions in existing buildings and structures which should not be permitted to exist; to relieve building and fire code enforcement authorities from certain liabilities when applying the provisions of this chapter; to provide for rules and regulations; to provide construction and fire safety standards for historic buildings; to exempt historic buildings from certain laws and regulations; and to provide for other matters relative thereto.

6.1.b. It is a purpose of this section to encourage the sensitive rehabilitation, restoration, stabilization, or preservation of historic buildings and to encourage the preservation of buildings and structures deemed to be historic in total or in part. Provided, That rehabilitation and preservation efforts should provide for the upgrading of the safety features of the building or structure to provide a practical level of safety to the public and surrounding property. It is the further purpose of this section to provide guidance regarding acceptable alternative solutions and to stimulate enforcement authorities to utilize alternative compliance concepts wherever practical to permit the continued use of existing buildings and structures without overly restrictive financial burdens on owners or occupants.

6.1.c. The provisions of this section shall not be applicable to new construction.

6.2†. Identification of State and National Register sites. The ~~Department~~ Division of Culture and History shall provide to the State Fire Marshal and appropriate local building officials as requested, a listing of sites in the State and National Register within their jurisdiction.

6.2†.a. The ~~Department~~ Division of Culture and History shall provide an annual update of this listing to the State Fire Marshal and appropriate local building officials as requested.

6.2†.b. The ~~Department~~ Division of Culture and History shall advise the State Fire Marshal and appropriate local building officials as requested on the eligibility of any sites not currently listed in the State or National Registers.

6.32. Fire Code Alternatives. The Division of Culture and History shall review historic structures in accordance with compliance alternatives and otherwise assist the State Fire Marshal when enforcing fire code requirements on sites listed or eligible for listing in the State or National Registers, the State Fire Marshal shall provide compliance alternatives if the normal requirements would damage the integrity of the structure, as provided for in WV Code § 29-3-5 and §29-1-8(d).

6.32.a. The Division of Culture and History ~~State Fire Marshall~~ shall consult with the ~~State Fire Marshal~~ Department of Culture and History when enforcing fire code requirements on sites listed or eligible for listing in the State or National Registers.

6.32.b. The ~~Department~~ Division of Culture and History will determine if the requirements recommended will maintain the integrity of the structure.

6.32.c. If the recommended requirements will damage the integrity of the structure, the State Fire Marshal and the ~~Department~~ Division of Culture and History will agree to alternatives

~~appended to these rules shall be used as a guideline to determine alternatives.~~

~~6.2.d. The State Fire Marshal and the Department Division of Culture and History will examine the issues of transoms and battery smoke alarms vs. hard wire alarm systems and will devise alternative standards for use in historic structures.~~

6.43. Building Code Alternatives. The Department Division of Culture and History will confer with appropriate local building officials upon their request to determine the effect of enforcement of building code requirements on sites listed or eligible for listing in the State or National Register of Historic Places. ~~If the recommended requirements will damage the integrity of the structure, the local building official and the Department of Culture and History shall use the proposed model code appended to these rules, as a guideline to determine alternatives.~~

§82-2-7. Voluntary Check-Off Program. Endangered Historic Properties Fund Program.

7.1. Eligible Sites. Funds from ~~the voluntary check-off program are to be deposited in the~~ West Virginia Endangered Historic Properties Fund ~~and~~ must be used on sites which are:

- 7.1.a. Listed on the West Virginia Register of Historic Places;
- 7.1.b. Determined eligible for listing on the West Virginia Register of Historic Places;
- 7.1.c. Listed on the National Register of Historic Places; or
- 7.1.d. Determined eligible for listing on the National Register of Historic Places.

7.2. Eligible Projects. Funds from the West Virginia Endangered Historic Properties Fund may be used:

- 7.2.a. If sites, as defined in Section 7.1 of this rule, face probable threat of destruction or irreversible damage;
- 7.2.b. If the property owner requests assistance or consents to the request;
- 7.2.c. If the funds are likely to provide a solution to the situation; and
- 7.2.d. If the project is of one of the following:
 - 7.2.d.A. A grant to an organization, property owner, or public agency;
 - 7.2.d.B. A low or no interest loan to an organization, property owner, or public agency; or

7.2.d.C. Direct assistance, contracted and paid for by the ~~Department~~ Division of Culture and History.

7.3. Funding Process. The ~~Department~~ Division of Culture and History will administer the West Virginia Endangered Historic Properties Fund.

7.3.a. The Archives and History Commission shall recommend to the ~~department~~ Division of Culture and History actions to be funded.

7.3.a.A. The Commission may establish categories of actions to be funded at the approval of the ~~Division~~ Department;

7.3.a.B. The Commission may form a Committee to recommend funding actions;

7.3.a.C. The Commission may require that funding requests come before the full Commission; or

7.3.a.D. The Commission may use any combination of these methods to make funding recommendations.

7.3.b. If the ~~Department~~ Division of Culture and History becomes aware of a project meeting the criteria of Section 7.1 and 7.2 of this rule, it may choose to contract directly to carry out the action in accordance with Section 7.3.a of this rule.

7.3.c. If an organization, agency, or property owner requests assistance for a project meeting the criteria of Section 7.1 and 7.3 of this rule, the ~~Department~~ Division of Culture and History may fulfill the request by awarding a grant or providing a loan in accordance with Section 7.3.a of this rule.

7.3.d. If an organization, agency or property owner accepts assistance from the West Virginia Endangered Historic Properties Fund, the ~~Department~~ Division of Culture and History will require that the recipient and owner sign a Letter of Agreement specifying conditions under which the funds may be spent and protecting the site in the future.

7.3.e. The recipient of funds shall provide to the ~~Department~~ Division of Culture and History, within sixty (60) days after completion of the project, a report describing the results of the assistance.

7.3.f. Funds repaid to the West Virginia Endangered Historic Properties ~~fund~~ Fund will ~~return to the fund to~~ be used for future Endangered Historic Properties.

APPENDIX A

BUILDING AND FIRE CODES
MODEL ORDINANCE
FOR THE APPLICATION OF CODES TO
EXISTING, HISTORIC AND LANDMARK
MUSEUM BUILDINGS

BE IT ENACTED BY THE

(CITY OR COUNTY GOVERNING BODY):

1. Intent and Purpose:

1.1. The intent of this chapter is to provide guidelines for the uniform application of fire and building related codes to existing building and structures throughout (city and county); to define certain terms; to provide acceptable alternative safeguards to requirements of various fire and building code provisions where strict compliance is not practical; to specify various hazardous conditions in existing buildings and structures which should not be permitted to exist; to relieve building and fire code enforcement authorities from certain liabilities when applying the provisions of this chapter; to provide for rules and regulations; to provide construction and fire safety standards for landmark museum buildings and for historic buildings; to exempt landmark museum buildings and historic buildings from certain laws and regulations; to provide for other matters relative thereto; to provide an effective date; to repeal conflicting laws; and for other purposes.

1.2. It is a purpose of this chapter to encourage the sensitive rehabilitation, restoration, stabilization, or preservation of existing buildings throughout (city or county and to encourage the preservation of buildings and structures deemed to be historic in total or in part, provided, however, such rehabilitation and preservation efforts should provide for the upgrading of the safety features of the building or structure to provide a practical level of safety to the public and surrounding property. It is the further purpose of this chapter to provide guidance regarding acceptable alternative solutions and to stimulate enforcement authorities to utilize alternative compliance concepts wherever practical to permit the continued use of existing buildings and structures without overly restrictive financial burdens on owners or occupants.

1.3. The provisions of this chapter shall not be applicable to new construction, except as specifically provided herein.

2. Definitions:

2.1. "Enforcement Authority" means (add the official title of the local building inspector and fire marshal).

2.2. "Existing building or structure" means any completed building or structure which has

been placed in service for a minimum of five years.

2.3. ~~“Building system” means any utility, mechanical, electrical, structural, egress, or fire protection/safety system.~~

2.4. ~~“Historic Building” means any building so designated by the State Historic Preservation Officer as individually significant or as contributing to the historic character of a historic district, pursuant to the rules and regulations adopted by the Board of Natural Resources or as so designated pursuant to the provisions of Article 2 of Chapter 10 of Title 44 of the O.C.G.A., the Georgia Historic Preservation Act²².~~

2.5. ~~“Landmark Museum Building” means a historic building or structure used as an exhibit of the building or structure itself, and which exhibits a high degree of architectural integrity, and which is open to the public not less than twelve (12) days per year; however, additional uses, original or ancillary, to the use as a museum shall be permitted within the same building subject to the provisions of paragraph three (3) of subsection (b) of Cod Section 25-2-13 of the O.C.G.A. Landmark museum buildings shall be so designated by the State Historic Preservation Officer pursuant to rules and regulations adopted by the Board of Natural Resources.~~

3. ~~Jurisdiction:~~

3.1. ~~Where an existing building or structure falls within the jurisdiction of both state and local enforcement authorities, the final review of any part of the project which is under the jurisdiction of both such enforcement authorities shall occur with the state authority, provided, however, the local fire and building authorities shall agree in writing with any compliance alternatives before such can be approved by the state authority.~~

4. ~~Conditions for Application:~~

4.1. ~~The provisions of this chapter authorize the enforcement authority to permit the repair alternation, addition, or change of use or occupancy of existing buildings without total compliance with any rule, regulation, code, or standard for new construction requirements under the following general conditions:~~

4.1.1. ~~All noted conditions hazardous to life, based on the provisions of applicable state and local standards or codes for existing buildings and outlined in Section 5, shall be corrected to a reasonable and realistic degree as set forth in this chapter;~~

4.1.2. ~~The existing building becomes the minimum performance standard; and,~~

4.1.3. ~~The degree of compliance of the building after changes must not be below that existing before the changes. Nothing in this chapter will require nor prohibit compliance with requirements more stringent than those provided in this chapter.~~

~~5. Hazardous Conditions. With reference to existing buildings, authorized enforcement authorities should assure that any of the conditions or defects described in this section are identified and corrected as deemed appropriate by the enforcement authority having jurisdiction and through the utilization of appropriate compliance alternatives:~~

~~5.1. Structural. Any building or structure or portion thereof which is in imminent danger of collapse because of but not limited to the following factors:~~

~~5.1.a. Dilapidation, deterioration, or decay;~~

~~5.1.b. Faulty structural design or construction;~~

~~5.1.c. The removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; or~~

~~5.1.d. The deterioration, decay, or inadequacy of the foundation.~~

~~5.2. Number of exits. Less than two (2) approved independent, remote, and properly protected exit ways serving every story of a building, except where a single exit way is permitted by the applicable state or local fire or building code or life safety code;~~

~~5.3. Capacity of exits. Any required door, aisle, passageway, stairway, or other required means of egress which is not of sufficient capacity to provide for the population of the portions of the building served and which is not so arranged as to provide safe and adequate means of egress to a place of safety; and~~

~~5.4. Mechanical Systems. Utilities and mechanical systems not in conformance with the codes in effect at the time of construction of a building which create a serious threat of fire or threaten the safety of the occupants of the building.~~

~~6. Additions to Existing Building.~~

~~6.1. Additions to an existing building shall comply with the applicable requirements of state and local laws, rules, regulations, codes, and standards for new construction. Such additions shall not impose loads either vertical or horizontal which would cause the existing building to be subjected to stresses exceeding those permitted under new construction. If the existing building does not comply with the standards provided in this chapter and the authorized enforcement authority finds that the addition adversely affects the performance of the total building, the authorized enforcement authority may require:~~

~~6.1.1. The new addition to be separated from the existing structure by at least a two (2) hour fire wall with openings therein properly protected; or~~

~~6.1.2. The installation of an approved automatic fire suppression system; or~~

~~6.1.3. — Other remedies which may be deemed appropriate by the enforcement authority.~~

~~7. — Minor alterations and New Mechanical Systems.~~

~~7.1. — Minor alterations or repairs to an existing building which do not adversely affect the performance or safety of the building may be made with the same or like materials. Existing buildings which, in part or as a whole, exceed the requirements of any applicable construction or fire safety code, may, in the course of compliance with this chapter, have reduced or removed, in part or total, features not required by such code for new construction; provided, however, that such features were not a condition of prior approval. Existing buildings and structures which, in part or as a whole, do not meet the requirements of the applicable code for new construction may be altered or repaired without further compliance to any such code by utilizing the provisions of this chapter, provided their present degree of compliance to any applicable construction or fire safety code is not reduced. Any new mechanical systems installed in an existing building shall conform to applicable codes for new construction to the fullest extent practical as approved by the authorized enforcement authorities.~~

~~8. — Continued Use.~~

~~8.1. — The legal use and occupancy of any building or structure may be continued without change, except as may be provided otherwise by this chapter or as may be legally provided for by any applicable state or local law, ordinance, rule, regulation, code, or standard.~~

~~9. — Change in Use.~~

~~9.1. — A total change in the use or occupancy of an existing building which would cause a greater hazard to the public shall not be made unless such building is made to comply with the requirements of the applicable state and local rules, regulations, codes, and standards for the new use or occupancy; provided, however, the compliance alternative provisions of this chapter may be utilized by authorized enforcement authorities where total or strict compliance with applicable state or local rules, regulations, codes, or standards is not practical.~~

~~9.2. — When the proposed use is of equal or lesser hazard as determined by an authorized enforcement authority, further compliance with any code for new construction is not required unless otherwise provided in this chapter. Alterations or repairs to an existing building or structure which do not adversely affect the performance of the building may be made with like materials. Any proposed change to the existing building or change in type of contents of the existing building shall not increase the fire hazard to adjacent buildings or structures. If the fire hazard to adjacent buildings or structures is increased, then requirements of applicable construction or fire safety codes for exterior walls shall apply.~~

~~10. — Change in Use of a Portion of a Building.~~

~~10.1. — If a portion of a building is changed to a new use or occupancy and that portion is~~

~~separated from the remainder of the building with vertical or horizontal fire separations complying with applicable state or local rules, regulations, codes, or standards or with compliance alternatives; then the portion changed shall be made to comply to the applicable requirements for the new use or occupancy to the extent noted in Section 9.~~

~~10.2. If a portion of the building is changed to a new use or occupancy and that portion is not separated from the remainder of the building as noted in subsection (1) of this section, then the provisions of the applicable state and local rules, regulations, codes, and standards applying to each use or occupancy of the building shall apply to the entire building to the extent noted in Section 9; provided, however, if there are conflicting provisions in requirements for the various uses or occupancies, the authorized enforcement authority shall apply the strictest requirements.~~

~~11. Floor Loading:~~

~~11.1. Any proposed change in the use or occupancy of an existing building or portion thereof which could increase the floor loading should be investigated by a Georgia registered professional engineer to determine the adequacy of the existing floor system to support the increased loads. If the existing floor system is found to be inadequate, it should be modified to support the increased loads or the proposed allowable floor loading shall be reduced by and posted by the appropriate enforcement authority.~~

~~12. Documentation:~~

~~12.1. Whenever action is taken on any existing building to repair, make alterations, or change the use or occupancy of an existing structure and, when said action proposes the use of compliance alternatives, the authorized enforcement authority shall ensure that at least one copy of the accepted compliance alternatives approved, including applicable plans, test data, or other data submitted for evaluation, be maintained on file in the office of the local enforcement authority. If said structure also falls under the jurisdiction of a state level enforcement authority, at least one copy of same material shall be maintained on file with that authority.~~

~~13. Compliance Alternatives:~~

~~13.1. Paragraphs one (1) through five (5) contain generally acceptable compliance alternatives illustrating principles which shall be applied to the rehabilitation of existing buildings by enforcement authorities in (city/county). It is recognized for purposes of this chapter that all building systems interact with each other; therefore any consideration of compliance alternatives should take into account all existing and proposed conditions to determine their acceptability. The compliance alternatives should take into account all existing and proposed conditions to determine their acceptability. The compliance alternatives are not all-inclusive and do not preclude consideration and approval of other alternatives by any enforcement authority.~~

~~13.1.1. Compliance alternatives for an inadequate number of exits include, but are not limited to, the following:~~

~~13.1.1.a. Provide connecting fire-exit balconies acceptable to the enforcement authority between buildings;~~

~~13.1.1.b. Provide alternate exit or agrees facilities leading to safety outside the building or to a place of safe refuge in the building or an adjoining building as acceptable to the enforcement authority;~~

~~13.1.1.c. Provide an exterior fire escape or escapes as acceptable to the enforcement authority where the providing of enclosed interior or enclosed exterior stairs is not practical; or~~

~~13.1.1.d. Install early fire warning and fire suppression systems.~~

~~13.2. Compliance alternatives for excessive travel distances to an approved exit include, but are not limited to the following:~~

~~13.2.a. Install an approved smoke detection system throughout the building;~~

~~13.2.b. Install an approved complete automatic fire suppression system;~~

~~13.2.c. Subdivide the exit travel route with smoke-stop doors acceptable to the enforcement authority;~~

~~13.2.d. Increase the fire resistance rating of corridor walls and doors; or~~

~~13.2.e. Provide additional approved means of escape.~~

~~13.3. Compliance alternatives for unenclosed or improperly enclosed exit stairways or vertical shafts include, but are not limited to the following:~~

~~13.3.a. Improve enclosure of exit stairway;~~

~~13.3.b. Add a partial fire suppression system;~~

~~13.3.c. Add a sprinkler draft curtain; or~~

~~13.3.d. Add a smoke detection system.~~

~~13.4. Compliance alternatives for inadequate or a total lack of fire partitions or fire separation walls shall be as set forth in paragraph (3).~~

~~13.5. Compliance alternatives for a lack of required protection of openings in exterior walls where a fire exposure is a risk include, but are not limited to, the following:~~

~~13.5.a. — Improve fire resistance of existing openings and protect them with fire-rated windows or doors as appropriate;~~

~~13.5.b. — Seal the openings with fire-related construction as approved by the enforcement authority; or~~

~~13.5.c. — Install an approved fire suppression system.~~

~~14. — Appeals:~~

~~14.1. — Should a party not agree with a decision of the enforcement authority or should an enforcement authority desire a ruling, an appeal may be made to the (Board of Adjustments and Appeals) as provided for in the (city/county) code.~~

~~15. — Liability Provisions:~~

~~15.1. — Nothing in this chapter shall be construed to constitute a waiver of the sovereign immunity of the (city/county) or any officer or employee thereof in carrying out the provisions of this chapter. Further, no action shall be maintained against (city/council), or any duly authorized elected or appointive officer or duly authorized employee thereof, for damages sustained as a result of any fire or hazard covered by this chapter by reason of inspection or other action taken or not taken pursuant to this chapter. Nothing in this chapter shall be construed to relieve any property owner or lessee or person in charge thereof from any legal duty, obligation, or liability incident to the ownership, maintenance, or use of such property.~~

~~16. — Landmark Museum Building:~~

~~16.1. — The provisions of this paragraph relating to landmark museum buildings shall apply only to those portions of such buildings which meet all the requirements of a landmark museum building, except as otherwise provided in paragraphs (2) and (3) of this section. Paragraphs (2) and (3) of this section shall unless otherwise provided in such paragraphs, preempt all laws, regulations, or rules governing reconstruction, alteration, repair, or maintenance of landmark museum buildings.~~

~~16.2. — A landmark museum building shall be subject to the following provisions:~~

~~16.2.a. — Repairs, maintenance, and restoration shall be allowed without conformity to any building or fire safety related code, standard, rule, or regulation, provided the building is brought into and remains in full compliance with this section;~~

~~16.2.b. — In the case of fire or other casualty to a landmark museum building, it may be rebuilt, in total or in part, using such techniques and materials as are necessary to restore it to the condition prior to the fire or casualty and use as a totally preserved building; or~~

~~16.2.c. — If a historic building or structure, as a result of proposed work or changes~~

in use, would become eligible and would be so certified as a landmark museum building, and the State Historic Preservation Officer so certifies and such is submitted to the local fire and building code official with the construction or building permit application, then the work may proceed under the provisions of this section.

~~16.3. — All landmark museum buildings shall comply with the following requirements:~~

~~16.3.a. — Every landmark museum building shall have portable fire extinguishers as deemed appropriate by the local fire authority having jurisdiction based on the applicable state or local fire safety codes or regulations;~~

~~16.3.b. — All landmark museum buildings which contain residential units shall have electrically powered smoke or products of combustion detectors installed within each living unit between living and sleeping areas. Such detectors shall be continuously powered by the buildings' electrical system. When activated, the detector shall initiate an alarm which is audible in sleeping rooms of that living unit. These unit detectors shall be required in addition to any other protective system that may be installed in the building;~~

~~16.3.c. — For all landmark museum buildings, except those protected by a total automatic fire suppression system and one and two family dwellings, approved automatic fire warning protection shall be provided as follows. Install at least one listed smoke or products of combustion detector for every twelve hundred (1,200) square feet of floor area per floor or story. In addition, all lobbies, common corridors, hallways, and ways of exit access shall be provided with listed smoke or products of combustion detectors not more than thirty feet (30') apart. Detectors shall be so connected as to sound an alarm audible throughout the structure or building. With respect to buildings which are totally protected by an automatic fire suppression system, activation of the sprinkler system shall sound an alarm throughout the structure or building;~~

~~16.3.d. — Smoke or products of combustion detectors shall be listed by a nationally recognized testing laboratory;~~

~~16.3.e. — All multistory landmark museum buildings, except one and two family dwellings, with occupancy above or below the street or grade level shall have manual fire alarm pull stations in the natural path of egress. The activation of a manual pull station shall cause the building fire warning system to sound;~~

~~16.3.f. — Approved exit signs shall be located where designated by the authority having jurisdiction in accordance with the applicable code, standard, rule, or regulation;~~

~~16.3.g. — Except for one and two family dwellings, every landmark museum building occupied after daylight, or which has occupied areas subject to being totally darkened during daylight hours due to a power failure or failure of the electrical system, shall be equipped with approved emergency lighting meeting the provisions of the applicable code, standard, rule, or regulation;~~

~~16.3.h. Occupant loading of landmark museum buildings or structures shall be limited by either the actual structural floor load capacity or by the limitations of means of egress or by a combination of factors. Actual floor load capacity shall be determined by a Georgia registered professional engineer. Said floor load shall be posted at three (3) conspicuous location. The building owner shall submit evidence of this certification and related computations to the enforcement authority having jurisdiction upon request. Where one or more floors of a landmark museum building have only one means of egress, the occupant load shall be computed and occupancy limited as determined by the fire marshal, and~~

~~16.3.i. The electrical, heating, and mechanical systems of landmark museum buildings shall be inspected and any conditions that create a threat of fire or a threat to life shall be corrected in accordance with applicable standards to the extent deemed necessary by the authority having jurisdiction.~~

~~17. Historic Buildings.~~

~~17.1. Historic buildings not classified as landmark museum buildings shall meet the requirements of applicable building and fire safety laws, ordinances, codes, standards, rules, or regulations as they pertain to existing buildings. If a historic building or structure is damaged from fire or other casualty, it may be restored to the condition prior to the fire or casualty, it may be restored to the condition prior to the fire or casualty using techniques and methods consistent with its original construction, or it shall meet the requirements for new construction of the applicable codes, standards, rules, or regulations, provided these requirements do not significantly compromise the features for which the building was considered historically significant.~~

~~17.2. As to any buildings or structures in (city/county) which have been designated as historic buildings or structures by the State Historic Preservation Officer, the appropriate enforcement authority, in granting or denying a variance shall consider the intent of this chapter, with special attention to Section 16 of this chapter, Article 3 of Chapter 2 of Title 8 of the O.C.G.A., "The Uniform Act for the Application of Building and Fire Related Codes to Existing Building," Article 2 of Chapter 10 of Title 44 of the O.C.G.A., the "Georgia Historic Preservation Act," and the Secretary of Interior's Standards for Preservation Projects.~~

~~18. This ordinance shall become effective _____
(Date)~~

~~19. All laws and parts of laws in conflict with this ordinance are repealed.~~

Appendix A

CODE OF FEDERAL REGULATIONS
TITLE 36--PARKS, FORESTS, AND PUBLIC PROPERTY
CHAPTER I--NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR
PART 67--HISTORIC PRESERVATION CERTIFICATIONS PURSUANT TO THE TAX REFORM ACT
OF 1976, THE REVENUE ACT OF 1978, THE TAX TREATMENT EXTENSION ACT OF 1980, AND
THE ECONOMIC RECOVERY TAX ACT OF 1981

67.1 The Tax Reform Act of 1976, the Revenue Act of 1978, the Tax Treatment Extension Act of 1980, and the Economic Recovery Tax Act of 1981.

67.2 Definitions.

67.3 Introduction to certifications of significance and rehabilitation and information collection.

67.4 Certifications of historic significance.

67.5 Standards for evaluating significance within registered historic districts.

67.6 Certifications of rehabilitation.

67.7 Standards for rehabilitation.

67.8 Certifications of statutes.

67.9 Certifications of State or local historic districts.

67.10 Appeals.

67.11 Expedited review system for qualified States.

67.12 Fees for processing rehabilitation certification requests.

Authority: Sec. 101(a)(1), National Historic Preservation Act of 1966 U.S.C. 470a-1(a)(170 ed.), as amended; sec. 2124, Tax Reform Act of 1976, 90 Stat. 1519; secs. 701(f) and 315, Revenue Act of 1978, 92 Stat. 2828; sec. 6, Tax Treatment Extension Act of 1980, 94 Stat. 3204; and secs. 212 and 214, Economic Recovery Tax Act of 1981, 95 Stat. 172.

s 67.1 The Tax Reform Act of 1976, the Revenue Act of 1978, the Tax Treatment Extension Act of 1980, and the Economic Recovery Tax Act of 1981.

(a) The Tax Reform Act of 1976, 90 Stat. 1519, the Revenue Act of 1978, 92 Stat. 2828, the Tax Treatment Extension Act of 1980, 94 Stat. 3204, and the Economic Recovery Tax Act of 1981, 95 Stat. 172, require the Secretary to make certifications of historic district statutes and of State and local districts, certifications of significance, and certifications of rehabilitation in connection with certain tax incentives involving historic preservation. These certification responsibilities have been delegated to the National Park Service ("NPS"); the following five regional offices issue certifications for the States listed below them:

Alaska Regional Office, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503: Alaska

Mid-Atlantic Regional Office, National Park Service, 143 South Third Street, Philadelphia, Pennsylvania 19106: Connecticut, New Jersey, Delaware, New York, District of Columbia, Ohio, Indiana, Pennsylvania, Maine, Rhode Island, Maryland, Vermont, Massachusetts, Virginia, Michigan West Virginia, New Hampshire.

Rocky Mountain Regional Office, National Park Service, 655 Parfet Street, P.O. Box 25287, Denver, Colorado 80225: Colorado New Mexico, Illinois, North Dakota, Iowa, Oklahoma, Kansas, South Dakota, Minnesota, Texas, Missouri, Utah, Montana, Wisconsin, Nebraska, Wyoming.

Southeast Regional Office, National Park Service, 75 Spring Street, SW., Atlanta, Georgia 30303: Alabama, Mississippi, Arkansas, North Carolina, Florida, Puerto Rico, Georgia, South Carolina, Kentucky, Tennessee, Louisiana, Virgin Islands.

Western Regional Office, National Park Service, 450 Golden Gate Avenue,

San Francisco, California 94102: Arizona, Nevada, California, Oregon, Hawaii, Washington, Idaho

(b) The Washington office of the National Park Service establishes program direction and considers appeals of certification denials. The procedures for obtaining certifications are set forth below. It is the responsibility of owners wishing certifications to provide sufficient documentation to the Secretary to make certification decisions. These procedures, upon their effective date, are applicable to future and pending certification requests, except as otherwise noted herein.

(c) Most States participate in the review of requests for certification, through recommendations to the Secretary, although this participation is voluntary and by law all certification decisions are made by the Secretary. Three levels of participation are available to all States:

(c)(1) Regular Participation. States wishing to participate in the review process are given a 30-day opportunity to comment on all certification requests upon receipt of a complete, adequately documented application. In these situations, requests for certification and approvals of proposed rehabilitation work are sent first to the appropriate State official. State comments are carefully considered by the Secretary before a certification decision is made. Certification requests channeled through "regular participation" States are normally processed within 30 days by the Secretary.

(c)(2) Expedited Review Participation. States wishing to participate in the review of Part 1 and Part 2 certification requests, and which meet qualifications in sec. 67.11, are also given a 30-day opportunity to comment on these requests. Like the "regular participation" explained above, certification requests are first sent to the appropriate State official. Because qualified States assume greater responsibility for making certification recommendations, certification requests channeled through "expedited review" States are normally processed within 15 days by the Secretary. The recommendations of qualified States are generally followed, but by law, all certification decisions are made by the Secretary, based upon his review of the application and related information. Expedited review does not apply to the review of State or local statutes or districts.

(c)(3) No Participation. A State may choose not to participate in the review and comment of certification requests. States not wishing to participate in the commenting process are requested to notify the Secretary in writing of this fact. Owners requesting certification from these States may send their applications directly to the appropriate NPS office listed above. In all other situations certification requests are sent first to the appropriate State official.

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

s 67.2 Definitions.

As used in these regulations:

"Certified Historic Structure" means a building (and its structural components) which is of a character subject to the allowance for depreciation provided in Section 167 of the Internal Revenue Code of 1954 which is either
(a) individually listed in the National Register; or (b) located in a

registered historic district and certified by the Secretary as being of historic significance to the district. Portions of larger buildings, such as single condominium apartment units, are not independently considered certified historic structures. Row houses, even with abutting or party walls, are considered as separate buildings.

For purposes of the charitable contribution provisions only, a certified historic structure need not be depreciable to qualify, may be a structure other than a building and may also be a remnant of a building such as a facade, if that is all that remains, and may include the land area on which it is located. For purposes of the demolition expense provisions and the 15 percent and 20 percent tax investment credits under the Economic Recovery Tax Act of 1981, any building located in a registered historic district is considered a certified historic structure; exemption from this provision can generally occur only if the Secretary has determined, prior to the demolition or rehabilitation of the building, that it is not of historic significance to the district.

"Certified Rehabilitation" means any rehabilitation of a certified historic structure which the Secretary has certified to the Secretary of the Treasury as being consistent with the historic character of such structure and, where applicable, with the district in which such structure is located.

"Duly Authorized Representative" means a State or locality's Chief Elected Official or his or her representative who is authorized to apply for certification of State/local statutes and historic districts.

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

"Inspection" means a visit by an authorized representative of the Secretary to a certified historic structure for the purposes of reviewing and evaluating the significance of the structure and the ongoing or completed rehabilitation work.

"National Register of Historic Places" means the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture that the Secretary is authorized to expand and maintain pursuant to Section 101(a)(1) of the National Historic Preservation Act of 1966, as amended.

"National Register Program" means the survey, planning, and registration program that is administered by the Secretary pursuant to 101(a)(1) of the National Historic Preservation Act of 1966, as amended. The procedures of the National Register program appear in 36 CFR part 60, et seq.

"Owner" means a person, partnership, corporation, or public agency holding a fee-simple interest in a building or any other person or entity recognized by the Internal Revenue Code for purposes of the applicable tax benefits.

"Qualified State" means a State which has agreed to participate in the certification program and which the Secretary has determined to meet established professional and review standards.

"Registered Historic District" means any district listed in the National Register or any district (a) which is designated under a State or local statute which has been certified by the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of significance to the district; and, (b) which is certified by the Secretary as meeting substantially all of the requirements for the listing of

districts in the National Register.

"Rehabilitation" means the process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the building(s) which are significant to its historic, architectural and cultural values.

"Secretary" means the Secretary of the Interior or the designee authorized to carry out his responsibilities.

"Standards for Rehabilitation" mean the Secretary's "Standards for Rehabilitation" set forth in s 67.7 hereof.

"State or Local Statute" means a law of a State or local government designating, or providing a method for the designation of, a historic district or districts.

"State official" means an official within each State, designated by the Governor or by State statute, to act as liaison for purposes of reviewing and commenting upon historic preservation certification applications. In most cases this will be the State Historic Preservation Officer (SHPO). In the event the Governor or a state statute has not designated such an official, the term "State official" shall refer to the Governor.

s 67.3 Introduction to certifications of significance and rehabilitation and information collection.

(a) Who may apply:

(a)(1) Ordinarily, only the fee simple owner of the building in question may apply for the certification described in ss 67.4 and 67.6 hereof. If an application for an evaluation of significance or rehabilitation project is made by someone other than the fee simple owner, however, the application must be accompanied by a written statement from the fee simple owner indicating that he or she is aware of the application and has no objection to the request for certification.

(a)(2) Upon request of a State official the Secretary may determine whether or not a particular building located within a registered historic district qualifies as a certified historic structure. The Secretary shall do so, however, only after notifying the fee simple owner of record of the request, informing such owner of the possible tax consequences of such a decision, and permitting the property owner a 30 day time period to submit written comments to the Secretary prior to decision. Such time period for comment may be waived by the fee simple owner.

(a)(3) The Secretary may undertake the certifications described in ss 67.4 and 67.6 on his own initiative after notifying the fee simple owner and the appropriate State official and allowing a comment period as specified in s 67.3(a)(2).

(a)(4) Owners of buildings which appear to meet National Register criteria but are not yet listed in the National Register or which are located within potential historic districts may request preliminary determinations from the Secretary as to whether such buildings may qualify as certified historic structures when and if the buildings or the potential historic districts in which they are located are listed in the National Register. Preliminary determinations may also be requested for buildings outside the period or area of significance of registered historic districts as specified in s 67.5(c). Procedures for obtaining these determinations shall be the same as those described in s 67.4. Such determinations are preliminary only and are not binding upon the Secretary. Preliminary determinations will be made final as

of the date of the listing of the individual building or district in the National Register. For buildings outside the period or area of significance of a registered historic district, preliminary determinations will be made final, except as provided below, when the district documentation on file with NPS is formally amended. If during review of a Request for Certification of Rehabilitation, it is determined that the building does not contribute to the significance of the district because of changes made after the preliminary determination was made, certified historic structure designation will be denied.

(a)(5) Owners of buildings not yet designated certified historic structures may obtain determinations from the Secretary on whether or not rehabilitation proposals meet the Secretary of the Interior's "Standards for Rehabilitation." Such determinations will be made only when the owner has requested a preliminary determination of the significance of the building as described in paragraph (a)(4) of this section and such determination has been acted upon by the NPS. Final certifications of rehabilitation will be issued only to owners of certified historic structures. Procedures for obtaining these determinations shall be the same as those described in s 67.6.

(b) How to apply:

(b)(1) Requests for certifications of historic significance and/or of rehabilitation shall be made on "Historic Preservation Certification Applications" (approved OMB form No. 1024-0009). The information collection requirements contained in the application and in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1024-0009. Part 1 of the application shall be used in requesting a certification of historic significance or non-significance and preliminary determinations, while Part 2 shall be used in requesting an evaluation of a proposed rehabilitation project or a certification of a completed rehabilitation project. Information contained in the application is required to obtain a benefit.

(b)(2) Application forms are available from National Park Service regional offices or the appropriate State official.

(b)(3) Requests for certifications, preliminary determinations, and approvals of proposed rehabilitation projects shall be sent to the appropriate State official in participating States. Requests in nonparticipating States should be sent to the appropriate NPS regional office.

(b)(4) Generally review of certification requests shall be concluded within 60 days of receipt of a complete, adequately documented application, as defined in ss 67.4 and 67.6 (30 days at the State level and 30 days at the Federal level). Where certification requests come from qualified States, review shall be concluded within 45 days (30 days at the State level and 15 days at the Federal level; see s 67.11 for procedures regarding qualified States). Where a State has chosen not to participate in the review process, review by the NPS shall be concluded within 60 days of receipt of a complete, adequately documented application. Where adequate documentation is not provided, the owner will be notified of the additional information needed to undertake or complete review. The time periods in this part are based on the receipt of a complete application; they will be adhered to as closely as possible and are defined as calendar days. They are not, however, considered to be mandatory, and the failure to complete review within the designated periods does not waive or alter any certification requirement.

(b)(5) State comments received within the time period will be considered by the Secretary in the review process. Reviews of complete certification requests taking longer than 30 days at the State level may be brought to the attention of the Secretary. The Secretary in turn will consult with the appropriate State to ensure that a review is completed in a timely manner. If

necessary the Secretary may process a certification request without the recommendations of the State. The recommendations of qualified States are generally followed, but by law, all certification decisions are made by the Secretary based on his review of the application and related information.

(b)(6) Although certifications of significance and rehabilitation are discussed separately below, owners are encouraged to submit Part 1 of the "Historic Preservation Certification Application" prior to, or with, Part 2. Part 2 of the application will not be processed until an adequately documented Part 1 is on file and acted upon unless the building is already a certified historic structure. Reviews of rehabilitation projects will also not be undertaken if the owner has objected to the listing of the building in the National Register.

s 67.4 Certifications of historic significance.

(a) Requests for certifications of historic significance should be made by the owner to determine--

(a)(1) That a building within a registered historic district is of historic significance to such district; or

(a)(2) That a building located within a registered historic district is not of historic significance to such district; or

(a)(3) That a building not yet on the National Register appears to meet National Register criteria; or

(a)(4) That a building located within a potential historic district appears to contribute to the significance of such district.

(b) If the building is individually listed in the National Register it automatically is considered a certified historic structure, except as provided below.

(b)(1) To determine whether or not a building is individually listed or is part of a district in the National Register, the owner may consult the listing of National Register properties in the "Federal Register" (found in most large libraries), or contact the appropriate SHPO for current information.

(b)(2) If the building is individually listed in the National Register and the owner believes it has lost the characteristics which caused it to be nominated and therefore wishes it delisted, the owner should refer to the delisting procedures outlined in 36 CFR Part 60.

(b)(3) Many individual listings in National Register include more than one building. In such cases, the Secretary will utilize the Standards for Evaluating Significance within Registered Historic Districts for the purpose of determining which of the buildings included within the listing are of historic significance to the property. An individual listing containing more than one building where the buildings are judged by the Secretary to have been functionally related to serve an overall purpose, such as a mill complex or an industrial plant, will be treated as a single certified historic structure, when rehabilitated as part of an overall project. For questions concerning demolition of separate structures as part of an overall rehabilitation project, see s 67.6.

(b)(4) If it is proposed that a building individually listed in the National Register be moved as a part of a request for certification of rehabilitation, the owner must follow the procedures outlined in 36 CFR 60. When a building is moved, every effort should be made to reestablish its historic orientation, immediate setting, and general environment.

(c) If the building is located within the boundaries of a registered historic district and the owner wishes the Secretary to certify as to whether the building contributes or does not contribute to the historic significance of the district or if the owner is requesting a preliminary determination in accordance with subsection 67.3(a)(4), the owner must complete Part 1 of the "Historic Preservation Certification Application" according to instructions accompanying the application. Such documentation includes but is not limited to:

(c)(1) Name and mailing address of owner;

(c)(2) Name and address of building;

(c)(3) Name of historic district;

(c)(4) Current photographs of building; photographs of the building prior to alteration if rehabilitation has been completed; photograph(s) showing the building along with adjacent buildings and structures on the street; and photographs of interior features and/or spaces adequate to document significance;

(c)(5) Brief description of appearance including alterations, distinctive features and spaces, and date(s) of construction;

(c)(6) Brief statement of significance summarizing how the building reflects the values that give the district its distinctive historical and visual character, and explaining any significance attached to the building itself (i.e. unusual building techniques, important events that took place there, etc.);

(c)(7) Sketch map clearly delineating building's location within the district; and

(c)(8) Signature of fee simple owner requesting or concurring in a request for evaluation.

(d) Applications for preliminary determinations for individual listing must show how the building individually meets the National Register Criteria for Evaluation. An application for a building located in a potential historic district must document how the district meets the criteria and how the building contributes to the significance of that district. An application for a preliminary determination for a building in a registered historic district which is outside the period or area of significance in the district documentation on file with the NPS must document and justify the expanded significance of the district and how the building contributes to the significance of the district or document the individual significance of the building. Applications must contain substantially the same level of documentation as National Register nominations, as specified in 36 CFR Part 60 and "How to Complete National Register Forms." Applications must also include written assurance from the State that the district nomination is being revised to expand its significance or, for certified districts, written assurance from the duly authorized representative that the district documentation is being revised to expand its significance. Owners should understand that confirmation of intent to nominate by a State does not constitute listing in the National Register, nor does it constitute a certification of significance as required by law for Federal tax incentives. Owners should further understand that they are proceeding at their own risk. In the event that: (1) the building or district is not listed in the National Register for procedural, substantive or other reasons, (2) district documentation is not formally amended, or (3) the significance of the building has been lost as a result of alterations, final certifications will not be issued. The SHPO for

National Register districts and the duly authorized representative for certified districts must submit documentation and have it approved by the NPS to amend the National Register nomination or certified district before the preliminary certification can become final.

(e) For purposes of the 15 and 20 percent tax credits under the Economic Recovery Tax Act of 1981, buildings within registered historic districts are presumed to contribute to the significance of such districts unless certified as non-significant by the Secretary. Owners of non-historic buildings within registered historic districts, therefore, must obtain certification of non-significance in order to qualify for either the 15 percent (buildings 30-39 years old) or the 20 percent (buildings 40 years or older) investment tax credit. If an owner begins or completes demolition or substantial alteration (within the meaning of Section 167(n) of the Internal Revenue Code) of a building in a registered historic district without knowledge of requirements for certification of non-significance, he or she may request certification that the building was not of historic significance to the district prior to substantial alteration or demolition in the same manner as stated in (c). The owner should be aware, however, of the requirements under section 701(f)(2)(B)(iii) and 701(f)(5)(b) of the Revenue Act of 1978 and section 212(b) of the Economic Recovery Tax Act of 1981 that the taxpayer must certify to the Secretary of the Treasury that, at the beginning of such demolition or substantial alteration, he or she in good faith was not aware of the certification requirement by the Secretary of the Interior.

(f) If an owner wishes to obtain certification of a building which has been moved (or is proposed to be moved) into a registered historic district or which is within a registered historic district and which has been moved (or will be moved) elsewhere in the district, he must complete Part 1 of the Historic Preservation Certification Application and should submit additional documentation which demonstrates:

(f)(1) The effect of the move on the building's appearance (and proposed demolition, proposed changes in foundations, etc.);

(f)(2) The new setting and general environment of the proposed site;

(f)(3) The effect of the move on the distinctive historical and visual character of the district;

(f)(4) The method to be used for moving the building.
Photographs showing the proposed location must be sent with the documentation. When a building is moved, every effort should be made to reestablish its historic orientation, immediate setting, and general environment.

(g) Buildings within registered historic districts will be evaluated to determine if they contribute to the significance of the district by application of the Secretary's "Standards for Evaluating Significance within Registered Historic Districts" as set forth in s 67.5.

(h) Once the significance of a building located within a registered historic district or a potential historic district has been determined by the Secretary, written notification will be sent to the owner and the State official in the form of a certification of significance or non-significance.

s 67.5 Standards for evaluating significance within registered historic districts.

(a) Buildings located within registered historic districts are reviewed by the Secretary to determine if they contribute to the significance of the district by applying the following "Standards for Evaluating Significance within Registered Historic Districts."

(a)(1) A building contributing to the historic significance of a district is one which by location, design, setting, materials, workmanship, feeling and association adds to the district's sense of time and place and historical development.

(a)(2) A building not contributing to the historic significance of a district is one which does not add to the district's sense of time and place and historical development; or one where the location, design, setting, materials, workmanship, feeling and association have been so altered or have so deteriorated that the overall integrity of the building has been irretrievably lost.

(a)(3) Ordinarily buildings that have been built within the past 50 years shall not be considered to contribute to the significance of a district unless a strong justification concerning their historical or architectural merit is given or the historical attributes of the district are considered to be less than 50 years old.

(b) A condemnation order may be presented as evidence of physical deterioration of a building but will not of itself be considered sufficient evidence to warrant certification of non-significance for loss of integrity. In certain cases it may be necessary for the owner to submit a structural engineer's report to help substantiate physical deterioration and/or structural damage.

(c) Certifications of significance and non-significance must be consistent with documentation on official file for registered historic districts and individually listed properties. In the event that a certification request is received for a building which is outside a district's established period or area of significance, a preliminary determination of significance will only be issued if the request includes adequate documentation to support the revision and if there is written assurance from the State that the district nomination in question is being revised to expand its significance or for certified districts, written assurance from the duly authorized representative that the district documentation is being revised to expand the significance. Final certifications will be issued when the district documentation is officially amended unless the significance of the building has been lost as a result of alterations. For procedures on amending listings to the National Register, consult the appropriate SHPO or NPS regional office.

(d) Where rehabilitation credits are sought, certifications of significance will be made on the appearance and condition of the building before rehabilitation was begun.

(e) In cases where a nonhistoric surface material obscures a facade so that it is impossible to discern whether the building contributes to the significance of the historic district, it may be necessary for the owner to remove a portion of the surface material prior to requesting certification so that a determination of significance can be made.

(f) Additional guidance on certifications of historic significance is available from State officials and NPS regional offices.

s 67.6 Certifications of rehabilitation.

(a) Owners wanting rehabilitation projects for certified historic structures to be certified by the Secretary as being consistent with the historic character of the structure, and, where applicable, the district in which the structure is located, thus qualifying as "certified rehabilitations," shall comply with the procedures listed below. A fee, as described in s 67.12, for reviewing all proposed, ongoing or completed rehabilitation work is charged by the Secretary. Final action will not be taken on any application until the

appropriate remittance is received.

(a)(1) To initiate review of a rehabilitation project for certification purposes, an owner must complete Part 2 of the Historic Preservation Certification Application according to instructions accompanying the application. These instructions explain in detail the documentation required for certification of a rehabilitation project. The application may describe a proposed rehabilitation project, a project in progress, or a completed project. In all cases, documentation, including photographs adequate to document the appearance of the building(s) prior to rehabilitation, both on the exterior and on the interior, must accompany the application as well as the social security or taxpayer identification number(s) of the owner(s). Other documentation may be required by reviewing officials to evaluate certain rehabilitation projects. Plans for any attached or adjacent new construction also must accompany the application. Where such documentation is not provided, review and evaluation may not be completed. Owners are encouraged to submit Part 2 of the application prior to undertaking any rehabilitation work. Owners who undertake rehabilitation projects without prior approval from the Secretary do so at their own risk.

(a)(2) If requesting certification of a completed rehabilitation project, the owner shall also provide the project completion date and a signed statement indicating that, in the owner's opinion, the completed rehabilitation project meets the Secretary's "Standards for Rehabilitation" and is consistent with the work described in Part 2 of the Historic Preservation Certification Application. Also required in requesting certification of a completed rehabilitation project are: costs attributed to the rehabilitation and photographs adequate to document the completed rehabilitation. A determination that the completed rehabilitation of a building not yet designated a certified historic structure meets the Secretary's "Standards for Rehabilitation" does not constitute a certification of rehabilitation.

(b) A rehabilitation project for certification purposes encompasses all work on the significant interior and exterior features of the certified historic structure(s) and its setting and environment, as determined by the Secretary, and, related demolition, construction or rehabilitation work which may affect the historic qualities, integrity or setting of the certified historic structure(s). More specific considerations in this regard are as follows:

(b)(1) All elements of the rehabilitation project must meet the Secretary's ten "Standards for Rehabilitation" (s 67.7); portions of the rehabilitation project not in conformance with the Standards may not be exempted. In general, an owner undertaking a rehabilitation project will not be held responsible for rehabilitation work undertaken by previous owners or third parties. However, if the Secretary considers or has reason to consider that a project submitted for certification does not include the entire rehabilitation project undertaken by the owner, or beneficial owner, the Secretary may choose to deny a rehabilitation certification or to withhold a decision on such a certification until such time as the Internal Revenue Service, through a private letter ruling, has determined, pursuant to these regulations and applicable provisions of the Internal Revenue Code and income tax regulations, the proper scope of the rehabilitation project to be reviewed by the Secretary. Factors to be taken into account by the Secretary and the Internal Revenue Service in this regard include, but are not limited to, the facts and circumstances of each application and (i) whether previous demolition, construction or rehabilitation work irrespective of ownership or control at the time was in fact undertaken as part of the rehabilitation project for which certification is sought, and (ii) whether property conveyances, reconfigurations, ostensible ownership transfers or other transactions were transactions which purportedly limit the scope of a rehabilitation project for the purpose of review by the Secretary without substantially altering beneficial ownership or control of the property. The fact that a building may still qualify as a certified historic structure after having undergone

inappropriate rehabilitation, construction or demolition work does not preclude the Secretary or the Internal Revenue Service from determining that such inappropriate work is part of the rehabilitation project to be reviewed by the Secretary.

(b) (2) Conformance to the Standards will be determined by evaluating the building as it existed prior to the commencement of the rehabilitation project, regardless of when the building becomes or became a certified historic structure.

(b) (3) For rehabilitation projects involving more than one certified historic structure where the structures are judged by the Secretary to have been functionally related historically to serve an overall purpose, such as a mill complex or an industrial plant, rehabilitation certification will be issued on the merits of the overall project rather than on individual components.

(b) (4) In situations involving rehabilitation of a certified historic structure in a historic district, the Secretary will review the rehabilitation project both as it affects the certified historic structure and its district and make a certification decision accordingly.

(b) (5) In the event that an owner of a portion of a certified historic structure requests certification for a rehabilitation project related only to that portion, but there is or was a larger related rehabilitation project(s) occurring with respect to the certified historic structure, the Secretary's decision on the requested certification will be based on review of the overall rehabilitation project(s) for the certified historic structure.

(c) Upon receipt of the complete application describing the rehabilitation project, the Secretary shall determine if the project is consistent with the "Standards for Rehabilitation." If the project does not meet the "Standards for Rehabilitation," the owner shall be advised of that fact in writing and, where possible, will be advised of necessary revisions to meet such standards. For additional procedures regarding rehabilitation projects determined not to meet the "Standards for Rehabilitation," see s 67.6(f).

(d) Once a proposed or ongoing project has been approved, substantive changes in the work as described in the application shall be promptly brought to the attention of the Secretary by written statement, with a copy to the appropriate State official, to ensure continued conformance to the Standards; such changes should be made using a Historic Preservation Certification Application Continuation Sheet. The Secretary will notify the owner and the State official in writing whether the revised project continues to meet the Standards. Oral approvals of revisions are not authorized or valid.

(e) Completed projects may be inspected by an authorized representative of the Secretary to determine if the work meets the "Standards for Rehabilitation." The Secretary reserves the right to make inspections at any time up to five years after completion of the rehabilitation and to revoke a certification, after giving the owner 30 days to comment on the matter, if it is determined that the rehabilitation project was not undertaken as presented by the owner in his or her application and supporting documentation, or the owner, upon obtaining certification, undertook unapproved further alterations as part of the rehabilitation project inconsistent with the Secretary's "Standards for Rehabilitation." The tax consequences of a revocation of certification will be determined by the Secretary of the Treasury.

(f) In the event that a proposed, ongoing, or completed rehabilitation project does not meet the "Standards for Rehabilitation," an explanatory letter will be sent to the owner with a copy to the State official. A rehabilitated building not in conformance with the "Standards for Rehabilitation" and which is determined to have lost those qualities which caused it to be nominated to the National Register, will be removed from the National Register in accord

with Department of the Interior regulations 36 CFR Part 60. Similarly, if a building has lost those qualities which caused it to be designated a certified historic structure, it will be certified as non-contributing (see ss 67.4 and 67.5). In either case, the delisting or certification of non-significance is considered effective as of the date of issue and is not considered to be retroactive. In these situations, the Internal Revenue Service will be notified of the substantial alteration. The tax consequences of a denial of certification will be determined by the Secretary of the Treasury.

s 67.7 Standards for rehabilitation.

(a) The following "Standards for Rehabilitation," a section of the Secretary's "Standard for Historic Preservation Projects" (see 36 CFR Part 68), are the guidelines used to determine if a rehabilitation project of a certified historic structure qualifies as a certified rehabilitation. The Standards shall be applied taking into consideration the economic and technical feasibility of each project; in the final analysis, however, to be certified, the rehabilitation project must be consistent with the historic character of the structure(s) and, where applicable, the district in which it is located.

(a)(1) Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration of the building, structure, or site and its environment, or to use a property for its originally intended purpose.

(a)(2) The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.

(a)(3) All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.

(a)(4) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.

(a)(5) Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, or site shall be treated with sensitivity.

(a)(6) Deteriorated architecture features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.

(a)(7) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.

(a)(8) Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to any project.

(a)(9) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural, or cultural material, and such design is compatible with the size, scale, color, material, and character of

the property, neighborhood or environment.

(a)(10) Wherever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

(b) Certain treatments, if improperly applied, or certain materials by their physical properties, may cause or accelerate physical deterioration of historic buildings. Inappropriate physical treatments include, but are not limited to: improper repointing techniques and improper exterior masonry cleaning methods; and the introduction of insulation into cavity walls of historic woodframe buildings where damage to historic fabric would result. In almost all situations, use of these materials and treatments will result in certification denial. Similarly, exterior additions that duplicate the form, material, style and detailing of the structure to the extent that they compromise the historic character of the structure will result in certification denial. For specific information on appropriate and inappropriate rehabilitation treatments, owners should consult the "Preservation Briefs" series published by the National Park Service. Additional guidelines and other technical information to help property owners formulate plans for the rehabilitation, preservation, and continued use of historic properties consistent with the intent of the Secretary's "Standards for Rehabilitation" are available from the appropriate SHPO or NPS regional office.

(c) In certain limited cases, it may be necessary to dismantle and rebuild portions of a certified historic structure to stabilize and repair weakened structural members and systems. In such cases, the Secretary will consider such extreme interventions as part of a certified rehabilitation if (1) the necessity for dismantling is justified in supporting documentation; (2) significant architectural features and overall design are retained; and (3) adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure. Substantial alterations undertaken between June 30, 1976, and December 31, 1981, may be subject to the provisions of section 167(n) of the Internal Revenue Code. The Economic Recovery Tax Act of 1981 requires that 75 percent or more of the existing external walls remain as external walls in the rehabilitation process to qualify for the investment tax credit.

(d) Prior approval of a project by Federal, State and local agencies and organizations does not ensure certification by the Secretary for Federal tax purposes. The Secretary's Standards take precedence over other regulations and codes in determining whether the rehabilitation project is consistent with the historic character of the building and/or the district in which it is located.

s 67.8 Certification of statutes.

(a) State or local statutes which will be certified by the Secretary. For the purpose of this regulation, a State or local statute is a law of the State or local government designating, or providing a method for the designation of, a historic district or districts. This includes any by-laws or ordinances that contain information necessary for the certification of the statute. A statute must contain criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district. To be certified by the Secretary, the statute generally must provide for a duly designated review body, such as a review board or commission, with power to review proposed alterations to structures of historic significance within the boundaries of the district or districts designated under the statute except those owned by the State.

(b) When the certification of State statutes will have an impact on districts

in specific localities, the Secretary encourages State governments to notify and consult with appropriate local officials prior to submitting a request for certification of the statute.

(c) State enabling legislation which authorizes local governments to designate, or provides local governments with a method to designate, a historic district or districts will not be certified unless accompanied by local statutes that implement the purpose of the State law. Adequate State statutes which designate specific historic districts and do not require specific implementing local statutes will be certified. If the State enabling legislation contains provisions which do not meet the intent of the law, local statutes designated under the authority of the enabling legislation will not be certified. When State enabling legislation exists, it must be certified before any local statutes enacted under its authority can be certified.

(d) Who may apply. Requests for certification of State of local statutes may be made only by the Chief Elected Official of the government which enacted the statute or his or her duly authorized representative. The applicant shall certify in writing that he or she is authorized by the appropriate State of local governing body to apply for certification.

(e) Statute certification process. Requests for certification of State of local statutes shall be made as follows:

(e)(1) The request shall be made in writing from the duly authorized representative certifying that he or she is authorized to apply for certification. The request should include the name or title of a person to contact for further information and his or her address and telephone number. The authorized representative is responsible for providing historic district documentation for review and certification prior to the first certification of significance in a district unless another responsible person is indicated including his or her address and telephone number. The request shall also include a copy of the statute(s) for which certification is requested, including any bylaws or ordinances that contain information necessary for the certification of the statute. Local governments shall also submit a copy of the State enabling legislation, if any, authorizing the designation of historic districts.

(e)(2) The address to which requests should be sent may be obtained by contacting the appropriate NPS regional office or State official. These requests shall be sent to the appropriate State official in participating States. Requests from owners in non-participating States should be sent to the appropriate NPS regional office.

(e)(3) The Secretary shall review the statute(s) and assess whether the statute(s) and any bylaws or ordinances that contain information necessary for the certification of the statute contain criteria which will substantially achieve the purposes of preserving and rehabilitating building of historic significance to the district(s) based upon the standards set out above in s 67.8(a). The State shall be given a 30-day opportunity to comment upon the request. State comments received within this time period will be considered by the Secretary in the review process. If the statute(s) contain such provisions and if this and other provisions in the statute will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, the Secretary will certify the statute(s).

(e)(4) The Secretary shall provide written notification within 60 days to the duly authorized representative and the State official when certification of the statute is given or denied. If certification is denied, the notification will provide an explanation of the reason(s) for such denial.

(f) Amendment or Repeal of statute(s). State or local governments, as appropriate, must notify the Secretary in the event that certified statutes

are repealed, whereupon the certification of the statute (and any districts designated thereunder) will be withdrawn by the Secretary. If a certified statute is amended, the duly authorized representative shall submit the amendment(s) to the Secretary, with a copy to the State, for review in accordance with procedures outlined above. Written notification of the Secretary's decision as to whether the amended statute continues to meet these criteria will be sent to the duly authorized representative and the State official within 60 days of receipt.

(g) The Secretary may withdraw certification of a statute (and any districts designated thereunder) on his own initiative if it is repealed or amended to be inconsistent with certification requirements after providing the duly authorized representative and the State official 30 days in which to comment prior to the withdrawal of certification.

s 67.9 Certifications of State or local historic districts.

(a) The particular State or local historic district must also be certified by the Secretary as substantially meeting National Register criteria, thereby qualifying it as a "registered historic district," before the Secretary will process requests for certification of individual buildings within a district or districts established under a certified statute.

(b) The provisions described herein will not apply to buildings within a State or local district until the district has been certified, even if the statute creating the district has been certified by the Secretary.

(c) The Secretary considers the duly authorized representative requesting certification of a statute to be the official responsible for submitting district documentation for certification. If another person is to assume responsibility for the district documentation, the letter requesting statute certification shall indicate that person's name, address and telephone number. The Secretary considers the authorizing statement of the duly authorized representative to indicate that the jurisdiction involved wishes not only that the statute in question be certified but also wishes all historic districts designated by the statute to be certified unless otherwise indicated.

(d) The address to which requests should be sent may be obtained by contacting the appropriate NPS regional office or State official. These requests shall be sent to the appropriate State official in participating States. Requests from duly authorized representatives in non-participating States should be sent to the appropriate NPS regional office. The State shall be given a 30 day opportunity to comment upon an adequately documented request. State comments received within this time period will be considered by the Secretary in the review process. Each request should include the following documentation:

(d)(1) A concise description of the general physical or historical qualities which make this a district; an explanation for the choice of boundaries for the district; descriptions of typical architectural styles and types of buildings in the district.

(d)(2) A concise statement of why the district has significance and why it substantially meets National Register criteria for listing (see 36 CFR 60); the relevant criteria should be identified (A, B, C, or D).

(d)(3) A definition of what types of buildings do not contribute to the significance of the district as well as an estimate of the percentage of buildings within the district that do not contribute to its significance.

(d)(4) A map showing all district buildings with, if possible, identification of contributing and non-contributing buildings; the map should clearly show the district's boundaries.

(d)(5) Photographs of typical areas in the district as well as major types of contributing and non-contributing buildings (all photos should be keyed to the map).

(e) Districts designated by certified State or local statutes shall be evaluated using the National Register criteria (36 CFR 60) within 60 days of the receipt of the required documentation. Written notification of the Secretary's decision will be sent to the duly authorized representative or to the person designated as responsible for the district documentation.

(f) Certification of statutes and districts does not constitute certification of significance of individual buildings within the district or of rehabilitation projects by the Secretary.

(g) Districts certified by the Secretary as substantially meeting the requirements for listing will be determined eligible for listing in the National Register at the time of certification and will be published as such in the Federal Register.

(h) Documentation on additional districts designated under a State or local statute that has been certified by the Secretary should be submitted to the Secretary for certification following the same procedure and including the same information outlined in the section above.

(i) State or local governments, as appropriate, shall notify the Secretary if a certified district designation is amended (including boundary changes) or repealed. If a certified district designation is amended, the duly authorized representative shall submit documentation describing the change(s) and, if the district has been increased in size, information on the new areas as outlined in s 67.9. A revised statement of significance for the district as a whole shall also be included to reflect any changes in overall significance as a result of the addition or deletion of areas. Review procedures shall follow those outlined in s 67.9 (d) and (e). The Secretary will withdraw certification of repealed or inappropriately amended certified district designations, thereby disqualifying them as registered historic districts.

(j) The Secretary may withdraw certification of a district on his own initiative if it ceases to meet the National Register Criteria for Evaluation after providing the duly authorized representative and the State official 30 days in which to comment prior to withdrawal of certification.

(k) The Secretary urges State and local review boards or commissions to become familiar with the standards used by the Secretary of the Interior for certifying the rehabilitation of historic buildings and to consider their adoption for local design review.

s 67.10 Appeals.

(a) An appeal by the owner or duly authorized representative as appropriate may be made from any of the certifications or denials of certification made pursuant to this part or any decisions made pursuant to s 67.6(e). Such appeals must be in writing and received by the Chief Appeals Officer, Cultural Resources, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240, within 30 days of receipt of the decision which is the subject of the appeal. The appellant may request an opportunity for a meeting to discuss the appeal. The State official will be notified that an appeal is pending. The Chief Appeals Officer will review such appeals and the written record of the decision in question, and shall notify the appellant of his decision within 30 days of its receipt if circumstances permit.

(b) The denial of a preliminary determination of significance for an individual building may not be appealed by the owner because the denial itself

does not exhaust the administrative remedy that is available. The owner instead must seek recourse by undertaking the usual nomination process (36 CFR Part 60). Similarly, the denial of preliminary certification for a rehabilitation project for a building that is not a certified historic structure may not be appealed. The owner must seek a final certification of significance as the next step, rather than appealing the denial of rehabilitation certification. Administrative reviews in these circumstances may be performed at the discretion of the Chief Appeals Officer. The decision to undertake an administrative review will be made on a case-by-case basis, depending on particular facts and circumstances and the Chief Appeals Officer's schedule, the expected date for nomination, and the nature of the rehabilitation project (proposed, ongoing or completed). Administrative reviews of rehabilitation projects will not be undertaken if the owner has objected to the listing of the building in the National Register.

(c) In such appeals or administrative reviews: (1) The Chief Appeals Officer shall consider: (i) alleged errors in professional judgment; (ii) alleged prejudicial procedural errors; and (iii) any additional information provided. (2) The Chief Appeals Officer's decision may: (i) reverse the appealed decision; (ii) affirm the appealed decision, (iii) resubmit the matter to the appropriate Regional Director for further consideration; or (iv) where appropriate, withhold a decision until issuance of a ruling from the Internal Revenue Service pursuant to Section 67.6(b)(1). The Chief Appeals Officer is authorized to issue the certifications discussed in this part only if he considers that the requested certification meets the applicable statutory standard upon application of the guidelines set forth herein or prejudicial procedural error legally compels issuance of the request certification.

(d) The decision of the Chief Appeals Officer shall be the final administrative decision on the appeal. No person shall be considered to have exhausted his or her administrative remedies with respect to the certifications or decisions described in this part until the Chief Appeals Officer has issued a final administrative decision pursuant to this section.

s 67.11 Expedited review system for qualified States.

(a) Expedited review of certification requests is an objective of the Secretary. Qualified States wishing to participate in the review and processing of Part 1 and Part 2 certification requests can greatly assist in expediting the process. The procedures detailed below will eliminate duplication of effort and enable qualified States to assume greater responsibility for making certification recommendations. The procedures will enable the Secretary to make certification decisions in 15 days, shortening the total review time for applications from 60 to 45 days. This system does not apply to the review of State or local statutes or districts.

(b) States wishing to obtain "qualified State" status will be evaluated by the Secretary prior to receiving such status to ensure that:

(b)(1) Each certification request, for evaluations of significance and rehabilitation, is reviewed by professionally qualified staff in accordance with procedures set forth herein.

(b)(2) The State is able to document that it has reviewed, and is reviewing, certification requests and has made, and is making certification recommendations consistent with established standards, within the specified 30-day time frame, and other guidelines established by the Secretary. Guidelines for evaluating whether or not a State is qualified shall be established by the Secretary.

(c) A request for "qualified State" status may be made in writing at any time by the State official to the appropriate National Park Service regional office. The Secretary shall evaluate each request and notify the State in writing of his determination.

(d) The performance of a qualified State in administering the certification program shall be reviewed on an ongoing basis. "Qualified" status, however, may be revoked at any time, with 30 days notice, if it is determined by the Secretary that the State is not meeting the guidelines for qualified State status.

(e) All certification requests from qualified States will generally be processed within 15 days by the Secretary. These time frames, however, are not binding upon the Secretary.

(f) Qualified States are encouraged to provide local governments certified in accordance with the National Historic Preservation Act and Department of the Interior guidelines an opportunity to participate in the certification program, within the time periods established in s 67.3.

(g) States not wishing "qualified State" status may continue to comment on any or all certification requests within their jurisdiction, as described in s 67.1(c).

s 67.12 Fees for processing rehabilitation certification requests.

(a) Fees are charged for reviewing rehabilitation certification requests in accordance with the schedule below. The fee schedule described in this part shall apply to all requests for certification of rehabilitation received by the State official or the NPS regional office after the effective date of this regulation.

(b) Payment shall not be made until requested by the NPS Regional Office according to instructions accompanying the Historic Preservation Certification Application. All checks shall be made payable to: NATIONAL PARK SERVICE. Final action will not be taken on an application until the appropriate remittance is received. Fees are nonrefundable.

(c) The fee for review of proposed or ongoing rehabilitation projects for projects over \$20,000 is \$250. The fees for review of completed rehabilitation projects are based on the dollar amount of the costs attributed solely to the rehabilitation of the certified historic structure provided by the owner in the Historic Preservation Certification Application, Request for Certification of Completed Work, as follows:

Fee	Size of rehabilitation
\$500	\$20,000 to \$99,999.
\$800	\$100,000 to \$499,999.
\$1,500	\$500,000 to \$999,999.
\$2,500	\$1,000,000 or more.

If review of a proposed or ongoing rehabilitation project had been undertaken by the Secretary prior to submission of a Request for Certification of Completed Work, the initial fee of \$250 will be deducted from these fees. No fee will be charged for rehabilitations under \$20,000.

(d) In general, each rehabilitation of a separate certified historic structure will be considered a separate project for purposes of computing the size of the fee.

(d)(1) In the case of a rehabilitation project which includes more than one certified historic structure where the structures are judged by the Secretary to have been functionally related historically to serve an overall purpose, the fee for preliminary review is \$250 and the fee for final review is computed on the basis of the total rehabilitation costs.

(d)(2) In the case of multiple building projects which are under the same ownership; are located in the same historic district; are adjacent or contiguous; are of the same architectural type (e.g., rowhouses, loft buildings, etc.), and are submitted for review at the same time, the maximum total fee is \$2,500. In this situation, the fee for preliminary review is \$250 per building to a maximum of \$2,500 and the fee for final review is computed on the basis of the total rehabilitation costs of the entire multiple building project to a maximum of \$2,500. If the \$2,500 maximum fee was paid at the time of review of the proposed or ongoing rehabilitation project, no further fee will be charged for a Request for Certification of Completed Work.

Appendix B

CODE OF FEDERAL REGULATIONS
TITLE 36--PARKS, FORESTS, AND PUBLIC PROPERTY
CHAPTER VIII--ADVISORY COUNCIL ON HISTORIC PRESERVATION
PART 800--PROTECTION OF HISTORIC AND CULTURAL PROPERTIES
SUBPART A--BACKGROUND AND POLICY

s 800.1 Authorities, purposes, and participants.

(a) Authorities. Section 106 of the National Historic Preservation Act requires a Federal agency head with jurisdiction over a Federal, federally assisted, or federally licensed undertaking to take into account the effects of the agency's undertaking on properties included in or eligible for the National Register of Historic Places and, prior to approval of an undertaking, to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. Section 110(f) of the Act requires that Federal agency heads, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking and, prior to approval of such undertaking, afford the Council a reasonable opportunity to comment. These regulations define the process used by a Federal agency to meet these responsibilities, commonly called the section 106 process.

(b) Purposes of the section 106 process. The Council seeks through the section 106 process to accommodate historic preservation concerns with the needs of Federal undertakings. It is designed to identify potential conflicts between the two and to help resolve such conflicts in the public interest. The Council encourages this accommodation through consultation among the Agency Official, the State Historic Preservation Officer, and other interested persons during the early stages of planning. The Council regards the consultation process as an effective means for reconciling the interests of the consulting parties. Integration of the section 106 process into the normal administrative process used by agencies for project planning ensures early, systematic consideration of historic preservation issues. To this end, the Council encourages agencies to examine their administrative processes to see that they provide adequately for the efficient identification and consideration of historic properties, that they provide for participation by the State Historic Preservation Officer and others interested in historic preservation, that they provide for timely requests for Council comment, and that they promote cost-effective implementation of the section 106 process. When impediments are found to exist in the agency's administrative process, the agency is encouraged to consult with the Council to develop special section 106 procedures suited to the agency's needs.

(c) Participants in the section 106 process--

(1) Consulting parties. Consulting parties are the primary participants in the section 106 process whose responsibilities are defined by these regulations. Consulting parties may include:

(i) Agency Official. The Agency Official with jurisdiction over an undertaking has legal responsibility for complying with section 106. It is the responsibility of the Agency Official to identify and evaluate affected historic properties, assess an undertaking's effect upon them, and afford the Council its comment opportunity. The Agency Official may use the services of grantees, applicants, consultants, or designees to prepare the necessary information and analyses, but remains responsible for section 106 compliance. The Agency Official should involve applicants for Federal assistance or approval in the section 106 process as appropriate in the manner set forth below.

(ii) State Historic Preservation Officer. The State Historic Officer coordinates State participation in the implementation of the National

Historic Preservation Act and is a key participant in the section 106 process. The role of the State Historic Preservation Officer is to consult with and assist the Agency Official when identifying historic properties, assessing effects upon them, and considering alternatives to avoid or reduce those effects. The State Historic Preservation Officer reflects the interests of the State and its citizens in the preservation of their cultural heritage and helps the Agency Official identify those persons interested in an undertaking and its effects upon historic properties. When the State Historic Preservation Officer declines to participate or does not respond within 30 days to a written request for participation, the Agency Official shall consult with the Council, without the State Historic Preservation Officer, to complete the section 106 process. The State Historic Preservation Officer may assume primary responsibility for reviewing Federal undertakings in the State by agreement with the Council as prescribed in s 800.7 of these regulations.

(iii) Council. The Council is responsible for commenting to the Agency Official on an undertaking that affects historic properties. The official authorized to carry out the Council's responsibilities under each provision of the regulations is set forth in a separate, internal delegation of authority.

(2) Interested persons. Interested persons are those organizations and individuals that are concerned with the effects of an undertaking on historic properties. Certain provisions in these regulations require that particular interested persons be invited to become consulting parties under certain circumstances. In addition, whenever the Agency Official, the State Historic Preservation Officer, and the Council, if participating, agree that active participation of an interested person will advance the objectives of section 106, they may invite that person to become a consulting party. Interested persons may include:

(i) Local governments. Local governments are encouraged to take an active role in the section 106 process when undertakings affect historic properties within their jurisdiction. When a local government has legal responsibility for section 106 compliance under programs such as the Community Development Block Grant Program, participation as a consulting party is required. When no such legal responsibility exists, the extent of local government participation is at the discretion of local government officials. If the State Historic Preservation Officer, the appropriate local government, and the Council agree, a local government whose historic preservation program has been certified pursuant to section 101(c)(1) of the Act may assume any of the duties that are given to the State Historic Preservation Officer by these regulations or that originate from agreements concluded under these regulations.

(ii) Applicants for Federal assistance, permits, and licenses. When the undertaking subject to review under section 106 is proposed by an applicant for Federal assistance or for a Federal permit or license, the applicant may choose to participate in the section 106 process in the manner prescribed in these regulations.

(iii) Indian tribes. The Agency Official, the State Historic Preservation Officer, and the Council should be sensitive to the special concerns of Indian tribes in historic preservation issues, which often extend beyond Indian lands to other historic properties. When an undertaking will affect Indian lands, the Agency Official shall invite the governing body of the responsible tribe to be a consulting party and to concur in any agreement. When an Indian tribe has established formal procedures relating to historic preservation, the Agency Official, State Historic Preservation Officer, and Council shall, to the extent feasible, carry out responsibilities under these regulations consistent with such procedures. An Indian tribe may participate in activities under these regulations in lieu of the State Historic Preservation Officer with respect to undertakings affecting its lands,

provided the Indian tribe so requests, the State Historic Preservation Officer concurs, and the Council finds that the Indian tribe's procedures meet the purposes of these regulations. When an undertaking may affect properties of historic value to an Indian tribe on non-Indian lands, the consulting parties shall afford such tribe the opportunity to participate as interested persons. Traditional cultural leaders and other Native Americans are considered to be interested persons with respect to undertakings that may affect historic properties of significance to such persons.

(iv) The public. The Council values the views of the public on historic preservation questions and encourages maximum public participation in the section 106 process. The Agency Official, in the manner described below, and the State Historic Preservation Officer should seek and consider the views of the public when taking steps to identify historic properties, evaluate effects, and develop alternatives. Public participation in the section 106 process may be fully coordinated with, and satisfied by, public participation programs carried out by Agency Officials under the authority of the National Environmental Policy Act and other pertinent statutes. Notice to the public under these statutes should adequately inform the public of preservation issues in order to elicit public views on such issues that can then be considered and resolved, when possible, in decision making. Members of the public with interests in an undertaking and its effects on historic properties should be given reasonable opportunity to have an active role in the section 106 process.

s 800.2 Definitions.

(a) "Act" means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470-470w-6.

(b) "Agency Official" means the Federal agency head or a designee with authority over a specific undertaking, including any State or local government official who has been delegated legal responsibility for compliance with section 106 and section 110(f) in accordance with law.

(c) "Area of potential effects" means the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.

(d) "Council" means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(e) "Historic property" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. This term includes, for the purposes of these regulations, artifacts, records, and remains that are related to and located within such properties. The term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register listing criteria.

(f) "Indian lands" means all lands under the jurisdiction or control of an Indian tribe.

(g) "Indian tribe" means the governing body of any Indian tribe, band, nation, or other group that is recognized as an Indian tribe by the Secretary of the Interior and for which the United States holds land in trust or restricted status for that entity or its members. Such term also includes any Native village corporation, regional corporation, and Native Group established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1701, et seq.

(h) "Interested person" means those organizations and individuals that are concerned with the effects of an undertaking on historic properties.

- (i) "Local government" means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.
- (j) "National Historic Landmark" means a historic property that the Secretary of the Interior has designated a National Historic Landmark.
- (k) "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior.
- (l) "National Register Criteria" means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR Part 60).
- (m) "Secretary" means the Secretary of the Interior.
- (n) "State Historic Preservation Officer" means the official appointed or designated pursuant to section 101(b)(1) of the Act to administer the State historic preservation program or a representative designated to act for the State Historic Preservation Officer.
- (o) "Undertaking" means any project, activity, or program that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a Federal agency or licensed or assisted by a Federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements not previously considered under section 106.

s 800.3 General.

(a) Scope. The procedure in this subpart guides Agency Officials, State Historic Preservation Officers, and the Council in the conduct of the section 106 process. Alternative methods of meeting section 106 obligations are found in s 800.7, governing review of undertakings in States that have entered into agreements with the Council for section 106 purposes, and s 800.13, governing Programmatic Agreements with Federal agencies that pertain to specific programs or activities. Under each of these methods, the Council encourages Federal agencies to reach agreement on developing alternatives or measures to avoid or reduce effects on historic properties that meet both the needs of the undertaking and preservation concerns.

(b) Flexible application. The Council recognizes that the procedures for the Agency Official set forth in these regulations may be implemented by the Agency Official in a flexible manner reflecting differing program requirements, as long as the purposes of section 106 of the Act and these regulations are met.

(c) Timing. Section 106 requires the Agency Official to complete the section 106 process prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license or permit. The Council does not interpret this language to bar an Agency Official from expending funds on or authorizing nondestructive planning activities preparatory to an undertaking before complying with section 106, or to prohibit phased compliance at different stages in planning. The Agency Official should ensure that the section 106 process is initiated early in the planning stages of the undertaking, when the widest feasible range of alternatives is open for consideration. The Agency Official should establish a schedule for completing the section 106 process that is consistent with the planning and approval schedule for the undertaking.

s 800.4 Identifying historic properties.

(a) Assessing information needs.

(1) Following a determination by the Agency Official that a proposed project, activity, or program constitutes an undertaking and after establishing the undertaking's area of potential effects, the Agency Official shall:

(i) Review existing information on historic properties potentially affected by the undertaking, including any data concerning the likelihood that unidentified historic properties exist in the area of potential effects;

(ii) Request the views of the State Historic Preservation Officer on further actions to identify historic properties that may be affected; and

(iii) Seek information in accordance with agency planning processes from local governments, Indian tribes, public and private organizations, and other parties likely to have knowledge of or concerns with historic properties in the area.

(2) Based on this assessment, the Agency Official should determine any need for further actions, such as field surveys and predictive modeling, to identify historic properties.

(b) Locating historic properties. In consultation with the State Historic Preservation Officer, the Agency Official shall make a reasonable and good faith effort to identify historic properties that may be affected by the undertaking and gather sufficient information to evaluate the eligibility of these properties for the National Register. Efforts to identify historic properties should follow the Secretary's "Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716) and agency programs to meet the requirements of section 110(a)(2) of the Act.

(c) Evaluating historical significance.

(1) In consultation with the State Historic Preservation Officer and following the Secretary's Standards and Guidelines for Evaluation, the Agency Official shall apply the National Register Criteria to properties that may be affected by the undertaking and that have not been previously evaluated for National Register eligibility. The passage of time or changing perceptions of significance may justify reevaluation of properties that were previously determined to be eligible or ineligible.

(2) If the Agency Official and the State Historic Preservation Officer agree that a property is eligible under the criteria, the property shall be considered eligible for the National Register for section 106 purposes.

(3) If the Agency Official and the State Historic Preservation Officer agree that the criteria are not met, the property shall be considered not eligible for the National Register for section 106 purposes.

(4) If the Agency Official and the State Historic Preservation Officer do not agree, or if the Council or the Secretary so request, the Agency Official shall obtain a determination from the Secretary of the Interior pursuant to the applicable National Park Service regulations.

(5) If the State Historic Preservation Officer does not provide views, then the State Historic Preservation Officer is presumed to agree with the Agency Official's determination for the purpose of this subsection.

(d) When no historic properties are found. If the Agency Official determines in accordance with s s 800.4(a)-(c) that there are no historic properties that may be affected by the undertaking, the Agency Official shall provide

documentation of this finding to the State Historic Preservation Officer. The Agency Official should notify interested persons and parties known to be interested in the undertaking and its possible effects on historic properties and make the documentation available to the public. In these circumstances, the Agency Official is not required to take further steps in the section 106 process.

(e) When historic properties are found. If there are historic properties that the undertaking may affect, the Agency official shall assess the effects in accordance with Section 800.5.

s 800.5 Assessing effects.

(a) Applying the Criteria of Effect. In consultation with the State Historic Preservation Officer, the Agency Official shall apply the Criteria of Effect (s 800.9(a)) to historic properties that may be affected, giving consideration to the views, if any, of interested persons.

(b) When no effect is found. If the Agency Official finds the undertaking will have no effect on historic properties, the Agency Official shall notify the State Historic Preservation Officer and interested persons who have made their concerns known to the Agency Official and document the findings, which shall be available for public inspection. Unless the State Historic Preservation Officer objects within 15 days of receiving such notice, the Agency Official is not required to take any further steps in the section 106 process. If the State Historic Preservation Officer files a timely objection, then the procedures described in s 800.5(c) are followed.

(c) When an effect is found. If an effect on historic properties is found, the Agency Official, in consultation with the State Historic Preservation Officer, shall apply the Criteria of Adverse Effect (s 800.9(b)) to determine whether the effect of the undertaking should be considered adverse.

(d) When the effect is not considered adverse.

(1) If the Agency Official finds the effect is not adverse, the Agency Official shall:

(i) Obtain the State Historic Preservation Officer's concurrence with the finding and notify and submit to the Council summary documentation, which shall be available for public inspection; or

(ii) Submit the finding with necessary documentation (s 800.8(a)) to the Council for a 30-day review period and notify the State Historic Preservation Officer.

(2) If the Council does not object to the finding of the Agency Official within 30 days of receipt of notice, or if the Council objects but proposes changes that the Agency Official accepts, the Agency Official is not required to take any further steps in the section 106 process other than to comply with any agreement with the State Historic Preservation Officer or Council concerning the undertaking. If the Council objects and the Agency Official does not agree with changes proposed by the Council, then the effect shall be considered as adverse.

(e) When the effect is adverse. If an adverse effect on historic properties is found, the Agency Official shall notify the Council and shall consult with the State Historic Preservation Officer to seek ways to avoid or reduce the effects on historic properties. Either the Agency Official or the State Historic Preservation Officer may request the Council to participate. The Council may participate in the consultation without such a request.

(1) Involving interested persons. Interested persons shall be invited to

participate as consulting parties as follows when they so request:

(i) The head of a local government when the undertaking may affect historic properties within the local government's jurisdiction;

(ii) The representative of an Indian tribe in accordance with s 800.1(c) (2) (iii);

(iii) Applicants for or holders of grants, permits, or licenses, and owners of affected lands; and

(iv) Other interested persons when jointly determined appropriate by the Agency Official, the State Historic Preservation Officer, and the Council, if participating.

(2) Documentation. The Agency Official shall provide each of the consulting parties with the documentation set forth in s 800.8(b) and such other documentation as may be developed in the course of consultation.

(3) Informing the public. The Agency Official shall provide an adequate opportunity for members of the public to receive information and express their views. The Agency Official is encouraged to use existing agency public involvement procedures to provide this opportunity. The Agency Official, State Historic Preservation Officer, or the Council may meet with interested members of the public or conduct a public information meeting for this purpose.

(4) Agreement. If the Agency Official and the State Historic Preservation Officer agree upon how the effects will be taken into account, they shall execute a Memorandum of Agreement. When the Council participates in the consultation, it shall execute the Memorandum of Agreement along with the Agency Official and the State Historic Preservation Officer. When the Council has not participated in consultation, the Memorandum of Agreement shall be submitted to the Council for comment in accordance with s 800.6(a). As appropriate, the Agency Official, the State Historic Preservation Officer, and the Council, if participating, may agree to invite other consulting parties to concur in the agreement.

(5) Amendments. The Agency Official, the State Historic Preservation Officer, and the Council, if it was a signatory to the original agreement, may subsequently agree to an amendment to the Memorandum of Agreement. When the Council is not a party to the Memorandum of Agreement, or the Agency Official and the State Historic Preservation Officer cannot agree on changes to the Memorandum of Agreement, the proposed changes shall be submitted to the Council for comment in accordance with s 800.6.

(6) Ending consultation. The Council encourages Agency Officials and State Historic Preservation Officers to utilize the consultation process to the fullest extent practicable. After initiating consultation to seek ways to reduce or avoid effects on historic properties, State Historic Preservation Officer, the Agency Official, or the Council, at its discretion, may state that further consultation will not be productive and thereby terminate the consultation process. The Agency Official shall then request the Council's comments in accordance with s 800.6(b) and notify all other consulting parties of its requests.

s 800.6 Affording the Council an opportunity to comment.

(a) Review of a Memorandum of Agreement.

(1) When an Agency Official submits a Memorandum of Agreement accompanied by the documentation specified in s 800.8(b) and (c), the Council shall have 30 days from receipt to review it. Before this review period ends, the Council shall:

(i) Accept the Memorandum of Agreement, which concludes the section 106 process, and informs all consulting parties; or

(ii) Advise the Agency Official of changes to the Memorandum of Agreement that would make it acceptable; subsequent agreement by the Agency Official, the State Historic Preservation Officer, and the Council concludes the section 106 process; or

(iii) Decide to comment on the undertaking, in which case the Council shall provide its comments within 60 days of receiving the Agency Official's submission, unless the Agency Official agrees otherwise.

(2) If the Agency Official, the State Historic Preservation Officer, and the Council do not reach agreement in accordance with s 800.6(a)(1)(ii), the Agency Official shall notify the Council, which shall provide its comments within 30 days of receipt of notice.

(b) Comment when there is no agreement.

(1) When no Memorandum of Agreement is submitted, the Agency Official shall request Council comment and provide the documentation specified in s 800.8(d). When requested by the Agency Official, the Council shall provide its comments within 60 days of receipt of the Agency Official's request and the specified documentation.

(2) The Agency Official shall make a good faith effort to provide reasonably available additional information concerning the undertaking and shall assist the Council in arranging an onsite inspection and public meeting when requested by the Council.

(3) The Council shall provide its comments to the head of the agency requesting comment. Copies shall be provided to the State Historic Preservation Officer, interested persons, and others as appropriate.

(c) Response to Council comment.

(1) When a Memorandum of Agreement becomes final in accordance with s 800.6(a)(1)(i) or (ii), the Agency Official shall carry out the undertaking in accordance with the terms of the agreement. This evidences fulfillment of the agency's section 106 responsibilities. Failure to carry out the terms of a Memorandum of Agreement requires the Agency Official to resubmit the undertaking to the Council for comment in accordance with s 800.6.

(2) When the Council had commented pursuant to s 800.6(b), the Agency Official shall consider the Council's comments in reaching a final decision on the proposed undertaking. The Agency Official shall report the decision to the Council, and if possible, should do so prior to initiating the undertaking.

(d) Foreclosure of the Council's opportunity to comment.

(1) The Council may advise an Agency Official that it considers the agency has not provided the Council a reasonable opportunity to comment. The decision to so advise the Agency Official will be reached by a majority vote of the Council or by a majority vote of a panel consisting of three or more Council members with the concurrence of the Chairman.

(2) The Agency Official will be given notice and a reasonable opportunity to respond prior to a proposed Council determination that the agency has foreclosed the Council's opportunity to comment.

(e) Public requests to the Council.

(1) When requested by any person, the Council shall consider an Agency Official's finding under ss 800.4(b), 800.4(c), 800.4(d), or 800.5(b), and, within 30 days of receipt of the request, advise the Agency Official, the State Historic Preservation Officer, and the person making the request of its views of the Agency Official's finding.

(2) In light of the Council views, the Agency Official should reconsider the finding. However, an inquiry to the Council will not suspend action on an undertaking.

(3) When the finding concerns the eligibility of a property for the National Register, the Council shall refer the matter to the Secretary.

s 800.7 Agreements with States for section 106 reviews.

(a) Establishment of State agreements.

(1) Any State Historic Preservation Officer may enter into an agreement with the Council to substitute a State review process for the procedures set forth in these regulations, provided that:

(i) The State historic preservation program has been approved by the Secretary pursuant to section 101(b)(1) of the Act; and

(ii) The Council, after analysis of the State's review process and consideration of the views of Federal and State agencies, local governments, Indian tribes, and the public, determines that the State review process is at least as effective as, and no more burdensome than, the procedures set forth in these regulations in meeting the requirements of section 106.

(2) The Council, in analyzing a State's review process pursuant to s 800.7(a)(1)(ii), shall:

(i) Review relevant State laws, Executive orders, internal directives, standards, and guidelines;

(ii) Review the organization of the State's review process;

(iii) Solicit and consider the comments of Federal and State agencies, local governments, Indian tribes, and the public;

(iv) Review the results of program reviews carried out by the Secretary; and

(v) Review the record of State participation in the section 106 process.

(3) The Council will enter into an agreement with a State under this section only upon determining, at minimum, that the State has a demonstrated record of performance in the section 106 process and the capability to administer a comparable process at the State level.

(4) A State agreement shall be developed through consultation between the State Historic Preservation Officer and the Council and concurred in by the Secretary before submission to the Council for approval. The Council may invite affected Federal and State agencies, local governments, Indian tribes, and other interested persons to participate in this consultation. The agreement shall:

(i) Specify the historic preservation review process employed in the State, showing that this process is at least as effective as, and no more burdensome than, that set forth in these regulations;

(ii) Establish special provisions for participation of local governments or Indian tribes in the review of undertakings falling within their jurisdiction, when appropriate;

(iii) Establish procedures for public participation in the State review process;

(iv) Provide for Council review of actions taken under its terms, and for appeal of such actions to the Council; and

(v) Be certified by the Secretary as consistent with the Secretary's Standards and Guidelines for Archaeology and Historic Preservation.

(5) Upon concluding a State agreement, the Council shall publish notice of its execution in the Federal Register and make copies of the State agreement available to all Federal agencies.

(b) Review of undertakings when a State agreement is in effect.

(1) When a State agreement under s 800.7(a) is in effect, an Agency Official may elect to comply with the State review process in lieu of compliance with these regulations.

(2) At any time during review of an undertaking under a State agreement, an Agency Official may terminate such review and comply instead with ss 800.4 through 800.6 of these regulations.

(3) At any time during review of an undertaking under a State agreement, the Council may participate. Participants are encouraged to draw upon the Council's expertise as appropriate.

(c) Monitoring and termination of State agreements.

(1) The Council shall monitor activities carried out under State agreements, in coordination with the Secretary of the Interior's approval of State programs under section 101(b)(1) of the Act. The Council may request that the Secretary monitor such activities on its behalf.

(2) The Council may terminate a State agreement after consultation with the State Historic Preservation Officer and the Secretary.

(3) A State agreement may be terminated by the State Historic Preservation Officer.

(4) When a State agreement is terminated pursuant to s 800.7(c)(2) and (3), such termination shall have no effect on undertakings for which review under the agreement was complete or in progress at the time the termination occurred.

s 800.8 Documentation requirements.

(a) Finding of no adverse effect. The purpose of this documentation is to provide sufficient information to explain how the Agency Official reached the finding of no adverse effect. The required documentation is as follows:

(1) A description of the undertaking, including photographs, maps, and drawings, as necessary;

(2) A description of historic properties that may be affected by the undertaking;

(3) A description of the efforts used to identify historic properties;

(4) A statement of how and why the criteria of adverse effect were found inapplicable; and

(5) The views of the State Historic Preservation Officer, affected local governments, Indian tribes, Federal agencies, and the public, if any were provided, as well as a description of the means employed to solicit those views.

(b) Finding of adverse effect. The required documentation is as follows:

(1) A description of the undertaking, including photographs, maps, and drawings, as necessary;

(2) A description of the efforts to identify historic properties;

(3) A description of the affected historic properties, using materials already compiled during the evaluation of significance, as appropriate; and

(4) A description of the undertaking's effects on historic properties.

(c) Memorandum of Agreement. When a memorandum is submitted for review in accordance with s 800.6(a)(1), the documentation, in addition to that specified in s 800.8(b), shall also include a description and evaluation of any proposed mitigation measures or alternatives that were considered to deal with the undertaking's effects and a summary of the views of the State Historic Preservation Officer and any interested persons.

(d) Requests for comment when there is no agreement. The purpose of this documentation is to provide the Council with sufficient information to make an independent review of the undertaking's effects on historic properties as the basis for informed and meaningful comments to the Agency Official. The required documentation is as follows:

(1) A description of the undertaking, with photographs, maps, and drawings, as necessary;

(2) A description of the efforts to identify historic properties;

(3) A description of the affected historic properties, with information on the significant characteristics of each property;

(4) A description of the effects of the undertaking on historic properties and the basis for the determinations;

(5) A description and evaluation of any alternatives or mitigation measures that the Agency Official proposes for dealing with the undertaking's effects;

(6) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection;

(7) Documentation of consultation with the State Historic Preservation Officer regarding the identification and evaluation of historic properties, assessment of effect, and any consideration of alternatives or mitigation measures;

(8) A description of the Agency Official's efforts to obtain and consider the views of affected local governments, Indian tribes, and other interested persons;

(9) The planning and approval schedule for the undertaking; and

(10) Copies or summaries of any written views submitted to the Agency Official concerning the effects of the undertaking on historic properties and alternatives to reduce or avoid those effects.

s 800.9 Criteria of effect and adverse effect.

(a) An undertaking has an effect on a historic property when the undertaking may alter characteristics of the property that may qualify the property for inclusion in the National Register. For the purpose of determining effect, alteration to features of a property's location, setting, or use may be relevant depending on a property's significant characteristics and should be considered.

(b) An undertaking is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects on historic properties include, but are not limited to:

(1) Physical destruction, damage, or alteration of all or part of the property;

(2) Isolation of the property from or alteration of the character of the property's setting when that character contributes to the property's qualification for the National Register;

(3) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(4) Neglect of a property resulting in its deterioration or destruction; and

(5) Transfer, lease, or sale of the property.

(c) Effects of an undertaking that would otherwise be found to be adverse may be considered as being not adverse for the purpose of these regulations:

(1) When the historic property is of value only for its potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research, and such research is conducted in accordance with applicable professional standards and guidelines;

(2) When the undertaking is limited to the rehabilitation of buildings and structures and is conducted in a manner that preserves the historical and architectural value of affected historic property through conformance with the Secretary's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings", or

(3) When the undertaking is limited to the transfer, lease, or sale of a historic property, and adequate restrictions or conditions are included to ensure preservation of the property's significant historic features.

s 800.10 Protecting National Historic Landmarks.

Section 110(f) of the Act requires that the Agency Official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in ss 800.4 through 800.6 and give special consideration to protecting National Historic Landmarks as follows:

(a) Any consultation conducted under s 800.5(e) shall include the Council;

(b) The Council may request the Secretary under section 213 of the Act to provide a report to the Council detailing the significance of the property, describing the effects of the undertaking on the property, and recommending measures to avoid, minimize, or mitigate adverse effects; and

(c) The Council shall report its comments, including Memoranda of Agreement, to the President, the Congress, the Secretary, and the head of the agency responsible for the undertaking.

s 800.11 Properties discovered during implementation of an undertaking.

(a) Planning for discoveries. When the Agency Official's identification efforts in accordance with s 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking, the Agency Official is encouraged to develop a plan for the treatment of such properties if discovered and include this plan in any documentation prepared to comply with s 800.5.

(b) Federal agency responsibilities.

(1) When an Agency Official has completed the section 106 process and prepared a plan in accordance with s 800.11(a), the Agency Official shall satisfy the requirements of section 106 concerning properties discovered during implementation of an undertaking by following the plan.

(2) When an Agency Official has completed the section 106 process without preparing a plan in accordance with s 800.11(a) and finds after beginning to carry out the undertaking that the undertaking will affect a previously unidentified property that may be eligible for inclusion in the National Register, or affect a known historic property in an unanticipated manner, the Agency Official shall afford the Council an opportunity to comment by choosing one of the following courses of action:

(i) Comply with s 800.6;

(ii) Develop and implement actions that take into account the effects of the undertaking on the property to the extent feasible and the comments from the State Historic Preservation Officer and the Council pursuant to s 800.11(c); or

(iii) If the property is principally of archeological value and subject to the requirements of the Archeological and Historic Preservation Act, 16 U.S.C. 469(a)-(c), comply with that Act and implementing regulations instead of these regulations.

(3) Section 106 and these regulations do not require the Agency Official to stop work on the undertaking. However, depending on the nature of the property and the undertaking's apparent effects on it, the Agency Official should make reasonable efforts to avoid or minimize harm to the property until the requirements of this section are met.

(c) Council comments.

(1) When comments are requested pursuant to s 800.11(b)(2)(i), the Council will provide its comments in a time consistent with the Agency Official's schedule, regardless of longer time periods allowed by these regulations for Council review.

(2) When an Agency Official elects to comply with s 800.11(b)(2)(ii), the Agency Official shall notify the State Historic Preservation Officer and the Council at the earliest possible time, describe the actions proposed to

take effects into account, and request the Council's comments. The Council shall provide interim comments to the Agency Official within 48 hours of the request and final comments to the Agency Official within 30 days of the request.

(3) When an Agency Official complies with s 800.11(b)(2)(iii), the Agency Official shall provide the State Historic Preservation Officer an opportunity to comment on the work undertaken and provide the Council with a report on the work after it is undertaken.

(d) Other considerations.

(1) When a newly discovered property has not previously been included in or determined eligible for the National Register, the Agency Official may assume the property to be eligible for purposes of section 106.

(2) When a discovery occurs and compliance with this section is necessary on lands under the jurisdiction of an Indian tribe, the Agency Official shall consult with the Indian tribe during implementation of this section's requirements.

s 800.12 Emergency undertakings.

(a) When a Federal agency head proposes an emergency action and elects to waive historic preservation responsibilities in accordance with 36 CFR 78.3, the Agency Official may comply with the requirements of 36 CFR Part 78 in lieu of these regulations. An Agency Official should develop plans for taking historic properties into account during emergency operations. At the request of the Agency Official, the Council will assist in the development of such plans.

(b) When an Agency Official proposes an emergency undertaking as an essential and immediate response to a disaster declared by the President or the appropriate Governor, and s 800.12(a) does not apply, the Agency Official may satisfy section 106 by notifying the Council and the appropriate State Historic Preservation Officer of the emergency undertaking and affording them an opportunity to comment within seven days if the Agency Official considers that circumstances permit.

(c) For the purposes of activities assisted under Title I of the Housing and Community Development Act of 1974, as amended, s 800.12(b) also applies to an imminent threat to public health or safety as a result of natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or the State Historic Preservation Officer objects, the Agency Official shall comply with ss 800.4 through 800.6.

(d) This section does not apply to undertakings that will not be implemented within 30 days after the disaster or emergency. Such undertakings shall be reviewed in accordance with ss 800.4 through 800.6.

s 800.13 Programmatic Agreements.

(a) Application. An Agency Official may elect to fulfill an agency's section 106 responsibilities for a particular program, a large or complex project, or a class of undertakings that would otherwise require numerous individual requests for comments through a Programmatic Agreement. Programmatic Agreements are appropriate for programs or projects:

(1) When effects on historic properties are similar and repetitive or are multi-State or national in scope;

(2) When effects on historic properties cannot be fully determined prior

to approval;

(3) When non-Federal parties are delegated major decision making responsibilities;

(4) That involve development of regional or land-management plans; or

(5) That involve routine management activities at Federal installations.

(b) Consultation process. The Council and the Agency Official shall consult to develop a Programmatic Agreement. When a particular State is affected, the appropriate State Historic Preservation Officer shall be a consulting party. When the agreement involves issues national in scope, the President of the National Conference of State Historic Preservation Officers or a designated representative shall be invited to be a consulting party by the Council. The Council and the Agency Official may agree to invite other Federal agencies or others to be consulting parties or to participate, as appropriate.

(c) Public involvement. The Council, with the assistance of the Agency Official, shall arrange for public notice and involvement appropriate to the subject matter and the scope of the program. Views from affected units of State and local government, Indian tribes, industries, and organizations will be invited.

(d) Execution of the Programmatic Agreement. After consideration of any comments received and reaching final agreement, the Council and the Agency Official shall execute the agreement. Other consulting parties may sign the Programmatic Agreement as appropriate.

(e) Effect of the Programmatic Agreement. An approved Programmatic Agreement satisfies the Agency's section 106 responsibilities for all individual undertakings carried out in accordance with the agreement until it expires or is terminated.

(f) Notice. The Council shall publish notice of an approved Programmatic Agreement in the Federal Register and make copies readily available to the public.

(g) Failure to carry out a Programmatic Agreement. If the terms of a Programmatic Agreement are not carried out or if such an agreement is terminated, the Agency Official shall comply with ss 800.4 through 800.6 with regard to individual undertakings covered by the agreement.

s 800.14 Coordination with other authorities.

To the extent feasible, Agency Officials, State Historic Preservation Officers, and the Council should encourage coordination of implementation of these regulations with the steps taken to satisfy other historic preservation and environmental authorities by:

(a) Integrating compliance with these regulations with the processes of environmental review carried out pursuant to the National Environmental Policy Act, and coordinating any studies needed to comply with these regulations with studies of related natural and social aspects;

(b) Designing determinations and agreements to satisfy the terms not only of section 106 and these regulations, but also of the requirements of such other historic preservation authorities as the Archeological and Historic Preservation Act, the Archeological Resources Protection Act, section 110 of the National Historic Preservation Act, and section 4(f) of the Department of Transportation Act, as applicable, so that a single document can be used for the purposes of all such authorities;

(c) Designing and executing studies, surveys, and other information-gathering activities for planning and undertaking so that the resulting information and data is adequate to meet the requirements of all applicable Federal historic preservation authorities; and

(d) Using established agency public involvement processes to elicit the views of the concerned public with regard to an undertaking and its effects on historic properties.

§ 800.15 Counterpart regulations.

In consultation with the Council, agencies may develop counterpart regulations to carry out the section 106 process. When concurred in by the Council, such counterpart regulations shall stand in place of these regulations for the purposes of the agency's compliance with section 106.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Staff Counsel: Rita A. Pauley
Date: August 12, 1998
Agency: Division of Culture and History
Subject: Standards and Procedures for Administering State
Historic Preservation Programs, 82 CSR 2

PERTINENT DATES

Filed for public comment: September 22, 1997
Public comment period ended: October 24, 1997
Filed following public comment period: October 28, 1997
Filed LRMRC: October 28, 1997
Filed as emergency: N/A

Fiscal Impact: N/A

ABSTRACT

The proposed rule amends a current legislative rule. The purpose of this rule is to establish the guidelines for the placement on the state register of historic places. It adopts standards for the rehabilitation of historic structures when the state is involved in the project. The rule also establishes procedures for the Division of Culture and History to utilize when reviewing the effect of state projects on funds available for historic places and for expenditure of state funds for threatened and endangered historic properties.

Primarily the changes proposed for this rule are technical clean-up to conform with language and stylistic changes that have occurred since the rule was last revised.

Section six of the proposed rule attempts to establish procedures by which the Division may assist the State Fire Marshal in developing compliance alternatives to the fire and building codes for structures eligible for the state historic register. The agency has exceeded its authority in two aspects of this section by compelling other agencies to take some specific action. First, it requires the Fire Marshall to "provide compliance alternatives if the normal requirements would damage the integrity of the structure." The agency is only authorized by WVC §29-1-8a (4) to "review of historic structures in accordance with compliance alternatives and other provisions in any state fire regulation, and shall coordinate standards with the appropriate regulatory officials regarding their application;" Second, the rule requires local building officials to use the proposed model code provided in

the rule as a guideline to determine alternatives to the local building code if its requirements would damage the integrity of an historic structure.

AUTHORITY

Statutory authority: W.Va. Code, §29-1-8(d), which provides, in part, as follows:

(d) The director shall promulgate rules and regulations with the approval of the archives and history commission and in accordance with chapter twenty-nine-a of this code concerning: (1) The professional policies and functions of the historic preservation section; (2) the review of, and, when required, issuance of permits for, all undertakings permitted, funded, licensed or otherwise assisted, in whole or in part, by the state as indicated in subsection (a) of this section, in order to carry out the duties and responsibilities of the section; (3) the establishment and maintenance of a West Virginia state register of historic places, including the criteria for eligibility of buildings, structures, sites, districts and objects for the state register and procedures for nominations to the state register and protection of nominated and listed properties; (4) the review of historic structures in accordance with compliance alternatives and other provisions in any state fire regulation, and shall coordinate standards with the appropriate regulatory officials regarding their application; (5) review of historic structures in conjunction with existing state or local building codes, and shall coordinate standards with the appropriate regulatory officials for their application; and (6) such other rules and regulations as may be deemed necessary to effectuate the purposes of this article.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

Yes, please see discussion of section six.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

No, see question I.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

Yes, section six attempts to exercise the authority given to the Fire Marshall in WVC §29-3-5 (c).

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes, with the above noted exceptions.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

No, the final agency approved rule does not have the authorization of the Chairman of Archives & History Commission per WVC §29-1-5.

VIII. OTHER.

Counsel has suggested technical modifications.



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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FILED
DEC 16 9 31 AM '98
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Lora A. Lamarre
Division of Culture & History
Capitol Complex
Cultural Center

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Standards and Procedures for Administering State Historic
Preservation Programs, 82CSR2**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule;
a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with
certain amendments; amendments and a statement of reasons
for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as
modified with certain amendments; amendments and a
statement of reasons for such recommendation is attached.

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